

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of, Determining the Proper
Carrier Classification of, and Complaint for
Penalties Against:

Dolly, Inc.

Docket No: TV-171212

DOLLY, INC'S RESPONSE OPPOSING
COMMISSION STAFF'S MOTION FOR
IMPOSITION OF PENALTIES FOR
VIOLATION OF COMMISSION ORDER

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I. INTRODUCTION

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Dolly, Inc. ("Dolly") opposes Washington Utilities and Transportation Commission Staff's ("Staff" or "Commission Staff") Motion for Imposition of Penalties for Violation of Commission Order ("Staff's Motion" or "Motion"). Accordingly, pursuant to WAC 480-07-375 Dolly files this Response Opposing Commission Staff's Motion and requests the Washington Utilities and Transportation Commission ("Commission") deny Staff's Motion.

II. REQUESTED RELIEF

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Dolly requests the Commission maintain the suspension of penalties imposed in Docket Number TV-171212, Order 04 ("Order 04").

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III. BACKGROUND AND FACTS

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On May 18, 2018 the Commission filed Order 04 which ordered Dolly to immediately cease operating as a household goods carrier, common carrier, and solid waste collection company unless it obtains authority from the Commission. Order 04 also assessed a \$69,000 penalty, \$34,500 of which was suspended until June 19, 2019 if Dolly either obtained operating authority from the Commission or made numerous changes to its business operations.

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On March 26, 2018, well before Order 04 was even filed, Dolly inquired about the Commission's permitting process.¹ After Order 04 was filed, rather than cease operating, Dolly chose to make significant changes to its business operations and also obtain operating authority

¹ See Attachment A dated March 26, 2018: Email to Commission Licensing Services Division requesting guidance regarding the application permit process.

1 from the Commission. On May 29, Dolly again contacted Staff seeking guidance regarding
2 requirements for the permit application process.² Also, on May 29, Staff Assistant Attorney
3 General (“AAG”) Jeffrey Roberson contacted Dolly to provide advice regarding the permit
4 application process.³ This advice included recommending that Dolly “request an exemption
5 from some of the Commission’s rules” that AAG Roberson believes do not apply to Dolly’s
6 business model. *Id.*

7 While Dolly appreciated AAG Roberson’s gesture, it nevertheless acknowledges the
8 complications inherent with Dolly complying with Order 04. In light of this fact, Dolly filed a
9 Petition for Rule Exemption with the permit applications it filed on July 9.⁴ As of this filing,
10 Commission Staff has neither granted or denied Dolly’s permit applications as Staff now moves
11 for the Commission to enforce the suspended penalties imposed in Order 04.

12 **IV. ARGUMENTS**

13 **A. Dolly has acted in good faith to comply with Order 04**

14 Even though Dolly’s Motion to Stay the Effectiveness of Order 04 was denied, it was
15 filed on May 29 with the good faith intention of complying with the Order. Yet, Staff’s current
16 Motion asserts that Dolly intends to, “flout the law and the Commission’s Order with impunity.”
17 The facts however do not support this statement. Indeed, since the Commission issued Order 04,
18 Dolly has filed household goods and common carrier permit applications with the Commission;
19 exactly what Order 04 requests even though Commission Licensing Division staff now assert
20 that Dolly is not required to obtain a common carrier permit.⁵

21 Dolly began compliance with Order 04 within the timeframe the Order permits and has
22 worked diligently towards that end since then. As of the date of this filing, Dolly’s permit
23 applications have been submitted and are currently under review by the Commission’s Licensing

² See Attachment B dated May 29, 2018: Email to Commission Licensing Services Division requesting guidance regarding the application permit process.

³ See Attachment C dated May 29, 2018: Email from AAG Mr. Jeffrey Roberson suggesting that Dolly request exemptions from specific regulations.

⁴ See Attachment D dated July 17, 2018: Email from Dolly’s counsel Ms. Donna Barnett confirming Dolly’s permit applications and Petition for Exemption were filed on July 6, 2018.

⁵ See Attachment E dated July 10, 2018: Email from Mr. Michael Dotson informing Dolly’s counsel that Dolly, “will receive Common Carrier authority with [a] Household Goods Moving permit.”

1 Services Division. In fact, the Commission has allowed Dolly until August 18, 2018, to provide
2 additional information supporting its application.⁶

3 There is no question that Dolly is working diligently and in full cooperation with Staff to
4 perfect its current application and to obtain the authority required by the Commission. Under
5 these circumstances, it appears that Staff's Motion is seeking to punish Dolly for exercising its
6 right to contest Staff's earlier assertion of regulatory jurisdiction over Dolly's business activities;
7 it certainly is not necessary to force compliance.

8 In conclusion, Dolly and the Commission's Licensing Staff are working cooperatively
9 and should conclude the licensing process within the timeline proposed by Licensing Staff.⁷
10 Staff's Motion seeks relief unnecessary to ensure compliance with Order 04 and is based on
11 assertions inconsistent with the facts. For these reasons, it ignores Dolly's good faith efforts to
12 comply with Order 04 and should be denied.

13 **B. Dolly has not been granted sufficient time to obtain operating permits from the**
14 **Commission as ordered in Order 04**

15 As evidenced by AAG Roberson's communication with Dolly, Dolly's permit application
16 process was atypical. This additional complexity demanded more time than Dolly anticipated to
17 complete the application process. Dolly submitted applications for operating permits to
18 Commission Staff on July 6, before Staff filed this Motion.⁸ Clearly Staff was aware of those
19 applications but nevertheless filed this Motion, which if granted, would have the effect of
20 punishing Dolly for the complicated application process expressly acknowledged by AAG
21 Roberson. Commission Staff also clearly recognized Dolly's application process would take
22 more time than the ten days Order 04 allowed because their investigation did not begin until June
23 15 and continued until July 10. Under the circumstances, the Commission should deny Staff's
24 Motion or at the very least allow Commission Staff the opportunity adequate time to process
25 Dolly's permit applications before determining to enforce suspended penalties.

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⁶ See Attachment F dated July 18, 2018: Email from Mr. Michael Dotson Dolly notifying Dolly that its application was under review and required clarification in two areas; the relationship between the application's UBI number and corporate name and justification for specific requests for waivers from Commission rules.

⁷ See Attachment F.

⁸ See Attachment D.



Attachment A

Armikka Bryant <armikka@dolly.com>

Federal Motor Carrier Safety Administration Registration DOT Number

Armikka Bryant <armikka@dolly.com>

Mon, Mar 26, 2018 at 2:12 PM

To: transportation@utc.wa.gov

Hi,

I represent a company that is seeking to apply for a HHGC permit. It appears there are several kinds of DOT numbers/permits available from the Federal Motor Carrier Safety Administration Registration. Will you please let me know what kind of DOT permit we need to complete the HHGC application?

Thank you,

Armikka Bryant**Dolly** | Director of Legal and Government Affairs

901 Fifth Avenue

Suite 600

Seattle, WA 98104-3188

[646.303.3533](tel:646.303.3533)armikka@dolly.comdolly.com

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Attachment B

Armikka Bryant <armikka@dolly.com>

US DOT Number Licensing Question/Assistance

3 messages

Armikka Bryant <armikka@dolly.com>
To: sstillwe@utc.wa.gov

Tue, May 29, 2018 at 10:44 AM

Hi Suzanne,

I represent Dolly, Inc., a company that created and owns a proprietary software application that establishes a marketplace which connects people who need an item moved either within the same location or from one location to another location with people who have the capacity to move the item.

Dolly does not own any vehicles and the individuals who move the items are independent contractors, not employees.

However, we would like to apply for household goods carrier, common carrier, and solid waste collection permits. It appears we are required to have a US DOT number but we do not own, lease, or rent any trucks.

Are you able to assist us with completing the application, or do we not qualify due to the lack of the US DOT number?

Thank you,
Armikka Bryant
Dolly | Director of Legal and Government Affairs
901 Fifth Avenue
Suite 600
Seattle, WA 98104-3188
646.303.3533
armikka@dolly.com
dolly.com

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Stillwell, Suzanne (UTC) <suzanne.stillwell@utc.wa.gov>
To: Armikka Bryant <armikka@dolly.com>
Cc: "Dotson, Michael (UTC)" <michael.dotson@utc.wa.gov>

Tue, May 29, 2018 at 11:54 AM

Yes, please submit each industry application without a DOT number. Include a letter explaining the situation with each application. Sincerely, Suzanne Stillwell

Suzanne Stillwell

Licensing Services Manager

360-664-1224

SStillwe@utc.wa.gov

Utilities and Transportation Commission

Respect. Professionalism. Integrity. Accountability.

www.utc.wa.gov



From: Armikka Bryant [mailto:armikka@dolly.com]
Sent: Tuesday, May 29, 2018 10:45 AM
To: Stillwell, Suzanne (UTC) <suzanne.stillwell@utc.wa.gov>
Subject: US DOT Number Licensing Question/Assistance

[Quoted text hidden]

Armikka Bryant <armikka@dolly.com>
To: "Stillwell, Suzanne (UTC)" <suzanne.stillwell@utc.wa.gov>
Cc: "Dotson, Michael (UTC)" <michael.dotson@utc.wa.gov>

Tue, May 29, 2018 at 11:54 AM

Thank you very much!

Armikka Bryant
Dolly | Director of Legal and Government Affairs
901 Fifth Avenue
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Seattle, WA 98104-3188
[646.303.3533](tel:646.303.3533)
armikka@dolly.com
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[Quoted text hidden]



Attachment C

Armikka Bryant <armikka@dolly.com>

Application

Roberson, Jeff (UTC) <jeff.roberson@utc.wa.gov>
To: Armikka Bryant <armikka@dolly.com>

Tue, May 29, 2018 at 1:33 PM

Hey Armikka,

Suzanne Stillwell told me you had a question about applying for a permit. I asked her to convey that you needed to complete the application and send a letter explaining your circumstances. I looked a bit more into it, and, in the interest of saving Mike Dotson and you some emails, I'm going to direct you to some WACs: 480-07-110; 480-14-020, -180, and -250; 480-15-035, -186, -302, and -305; and WAC 480-70-006, and -091. I can't give you legal advice, but I can say that it looks like Dolly needs to request an exemption from some of the Commission's rules. The cites I just provided should get you started (I can't say the list is exhaustive, especially with solid waste).

Cheers,

Jeff



Attachment D

Armikka Bryant <armikka@dolly.com>

UTC Permit Applications

Barnett, Donna L. (Perkins Coie) <DBarnett@perkinscoie.com>

Tue, Jul 17, 2018 at 11:46 AM

To: Armikka Bryant <armikka@dolly.com>

I filed online in Docket 171212 using the web portal, so there is no email but I received the attached confirmation that it was received. I followed it up on Monday with payment, and that email is attached.

Donna Barnett | Perkins Coie LLP**PARTNER**

10885 N.E. Fourth Street Suite 700

Bellevue, WA 98004-5579

1.425.635.1419

PERKINScoie**From:** Armikka Bryant [mailto:armikka@dolly.com]**Sent:** Tuesday, July 17, 2018 10:34 AM**To:** Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>**Subject:** UTC Permit Applications

[Quoted text hidden]

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

----- Forwarded message -----

From: Records Service Center <Sharepointadmins@utc.wa.gov>**To:** "Barnett, Donna L. (Perkins Coie)" <DBarnett@perkinscoie.com>**Cc:****Bcc:****Date:** Fri, 6 Jul 2018 23:17:38 +0000**Subject:** UTC Electronic Submission Received, Confirmation ID 10900

Your electronic submission has been received by the Washington Utilities and Transportation Commission. Please save this email, and reference the confirmation ID when contacting the Commission.

* Please do not reply to this message. This is an automated message, and the originating account cannot receive emails.

Electronic submission details:

Confirmation ID: 10900

Docket No: TV-171212

Company: Dolly, Inc.

Filing Description: Application for Common Carrier and Household Goods Carrier Permit and related Petition for Exemption of Commission Rules

Documents Filed:

File Name: 171212 Dolly Appl HHG (7-6-18)(R).zip

Description: Application for Common Carrier and Household Goods Carrier Permit and related Petition for Exemption of

Commission Rules
Confidentiality: None

Documents Filed:
File Name: 171212 Dolly Appl HHG (7-6-18)(C).pdf
Description: Application for Household Goods Carrier Permit
Confidentiality: Confidential

Documents Filed:
File Name: 171212 Dolly Appl HHG (7-6-18)(R).pdf
Description: Redacted version of 171212 Dolly Appl HHG (7-6-18)(C).pdf
Confidentiality: None

----- Forwarded message -----

From: "Barnett, Donna L. (Perkins Coie)" <DBarnett@perkinscoie.com>
To: "transportation@utc.wa.gov" <transportation@utc.wa.gov>
Cc: "Weis, Amanda (Perkins Coie)" <AWeis@perkinscoie.com>
Bcc:

Date: Mon, 9 Jul 2018 20:24:43 +0000

Subject: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Attached please find applications for a common carrier and household goods carrier permits in behalf of Dolly, Inc. Please also note that the attached applications, as well as the following documents (also attached), were filed last week in the above-referenced docket and payment has been made via the Commission's website:

1. Filing letter,
2. Application for Household Goods Carrier permit, with exhibits,
3. Application for Common Carrier permit,
4. Petition for Exemption of Commission Rules, and
5. Cert. of Service

Please note the attached contains information designated as confidential per WAC 480-07-160 on the basis that it contains valuable commercial information, including trade secrets or confidential marketing, cost, or financial information.

Please contact me if you have any questions.

Sincerely,

Donna Barnett

Donna Barnett | Perkins Coie LLP

PARTNER









10885 N.E. Fourth Street Suite 700

Bellevue, WA 98004-5579

1.425.635.1419

E. <<mailto:%20AWeis@perkinscoie.com>> AWeis@perkinscoie.com

8 attachments

-  **noname.eml**
3K
-  **171212 Dolly Letter (7-6-18).pdf**
602K
-  **171212 Dolly Pet-Exmpt (7-6-18).pdf**
161K
-  **171212 Dolly Appl CC (7-6-18).pdf**
602K
-  **171212 Dolly Appl HHG (7-6-18)(C).pdf**
3539K
-  **171212 Dolly Appl HHG (7-6-18)(R).pdf**
2340K
-  **171212 Dolly COS (7-6-18).pdf**
83K
-  **noname.eml**
10035K



Attachment E

Armikka Bryant <armikka@dolly.com>

FW: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Barnett, Donna L. (Perkins Coie) <DBarnett@perkinscoie.com>

Tue, Jul 10, 2018 at 12:56 PM

To: "Armikka Bryant (armikka@dolly.com)" <armikka@dolly.com>

See below, especially regarding confidentiality. Although it appears anyone can file confidential information per RCW 80.04.095, the Commission has treated transportation and solid waste companies different than other companies and have not let them file confidential information. We've argued about this at bench bar conferences, and while I don't think they are legally correct, they have nonetheless treated these companies differently. We can try to get a protective order, but that will likely be denied. We can pursue a court order so it would be protected from the PRA under 42.56.270, but that will take time and could also be denied. We could also withdraw the application if it is a deal breaker, and Mike says he'll wait to hear from us before he posts it.

Donna Barnett | Perkins Coie LLP**PARTNER**

10885 N.E. Fourth Street Suite 700

Bellevue, WA 98004-5579

1.425.635.1419

PERKINScoie

From: Dotson, Michael (UTC) [mailto:michael.dotson@utc.wa.gov]**Sent:** Tuesday, July 10, 2018 12:09 PM**To:** Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>**Cc:** Weis, Amanda (BEL) <AWeis@perkinscoie.com>**Subject:** RE: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Hello Donna, thank you for your application. A couple of things before I get it going. First off, you actually will receive Common Carrier authority with your Household Goods Moving permit, so you do not need to separately apply. If you would like separate permits that's fine, but it is not necessary. I can refund your \$275 payment for that one, just let me know how you would like to proceed.

Additionally, per WAC 480-07-160 only Solid Waste companies may submit confidential documents, so your household goods application will be available, in full, on our public website once it is docketed. The only thing we would redact would be personally identifiable information, which currently there is none of in the application.

Thanks, let me know if you have any questions. I will wait for your response before I file the application publically.

Mike Dotson

Transportation Specialist 3

Licensing Services

Washington Utilities and Transportation Commission

PH: 360-664-1223

FAX: 360-586-1181

From: Barnett, Donna L. (Perkins Coie) [<mailto:DBarnett@perkinscoie.com>]
Sent: Monday, July 9, 2018 1:25 PM
To: UTC DL Transportation <transportation@utc.wa.gov>
Cc: Weis, Amanda (Perkins Coie) <AWeis@perkinscoie.com>
Subject: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Attached please find applications for a common carrier and household goods carrier permits in behalf of Dolly, Inc. Please also note that the attached applications, as well as the following documents (also attached), were filed last week in the above-referenced docket and payment has been made via the Commission's website:

1. Filing letter,
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5. Cert. of Service

Please note the attached contains information designated as confidential per WAC 480-07-160 on the basis that it contains valuable commercial information, including trade secrets or confidential marketing, cost, or financial information.

Please contact me if you have any questions.

Sincerely,

Donna Barnett

Donna Barnett | Perkins Coie LLP

PARTNER

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Bellevue, WA 98004-5579

1.425.635.1419

PERKINScoie

E. AWeis@perkinscoie.com

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.



Attachment F

Armikka Bryant <armikka@dolly.com>

Notice of Deficient Household Goods moving permit application - Dolly Apple Inc./Dolly Inc.

Dotson, Michael (UTC) <michael.dotson@utc.wa.gov>

Wed, Jul 18, 2018 at 2:32 PM

To: "armikka@dolly.com" <armikka@dolly.com>

July 17, 2018

Dolly Inc.

Dolly Apple Inc.

901 5th Ave, Suite 600

Seattle, WA 98164

Re: Notice of Deficient Application

Docket # TV-180605

Dear Dolly Apple Inc.:

The following items need to be completed and/or corrected for prompt processing of your application for operating authority. Please address these issues and return the application, with any additional materials necessary, to the Commission by August 17, 2018. You may not operate until these issues are resolved and you have received your approved permit.

- The UBI number you provided on your application is for "Dolly Inc." "Dolly Apple Inc." has a UBI number as well, and a registration with the Secretary of State, but does not appear to have an active business license. Please either correct the application to reflect Dolly, Inc. as the applicant or contact Business Licensing Services/DOR at 1-800-451-7985 or www.bls.dor.wa.gov and obtain a business license for Dolly Apple Inc.. If Dolly Apple Inc. is the applicant, please supplement Mr. Bryant's letter of July 13, 2018, to provide evidence that Dolly Apple Inc. has the financial resources to operate a moving company.

- You requested exemptions from a number of rules. Per WAC 480-07-110(2)(1) please provide a full explanation of the reason for requesting the exemption for each specific rule, not including the requests for exemptions from the regulations found in chapter 480-14 WAC, which have been rendered moot by the withdrawal of your application for a Common Carrier permit.

Who do I contact if I have questions?

You may call 360-664-1222 or e-mail us at transportation@utc.wa.gov. Our fax number is 360-586-1181.

Thank you,

Licensing Services

Washington Utilities and Transportation Commission