

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

DOCKET TV-170999

DOLLY, INC.,

ORDER 01

To Amend Motor Carrier Rules or in the
Alternative to Initiate Rulemaking.

ORDER DENYING PETITION

BACKGROUND

- 1 On September 26, 2017, Dolly, Inc. (Dolly) filed a Petition to Amend Motor Carrier Rules or in the Alternative to Initiate Rulemaking (Petition). The Petition requests that the Washington Utilities and Transportation Commission (Commission) amend its rules governing household goods (HHG) moving carriers and services either to exempt Dolly’s operations from regulation or to modify HHG regulations as they apply to the services Dolly offers.
- 2 According to the Petition, Dolly is similar to transportation network companies (TNCs) like Uber and Lyft in that it arranges for, rather than provides, transportation services – in Dolly’s case for moving “household and non-household items.”¹ Dolly has contracts with over 2,000 “Helpers” or “independent contractors who provide ‘on demand micro-moving’ – generally, local moves of just a few items that will fit into a consumer sized pickup truck, that happen within 24 hours of a customer request, and cost less than \$100.”² Dolly contends that such “services are completely different than the traditional household goods movers who only conduct household goods moves with professional movers using commercial equipment generally days or weeks after the customer request at significantly higher price points.”³
- 3 Dolly proposes that the Commission amend its motor carrier rules to define companies like Dolly as “carrier network companies” and “Helpers” as “micro-movers” and that the Commission exempt such entities from Commission regulation.⁴ Alternatively, Dolly

¹ Petition ¶ 8.

² *Id.*

³ *Id.*

⁴ *Id.* ¶¶ 11-13.

“requests that the Commission initiate a rulemaking proceeding to engage stakeholders in a collaborative effort to adopt reasonable regulations to address the concerns raised in this Petition.”⁵

- 4 Dolly maintains that the Commission’s “motor carrier regulations have not kept up with technology or this new industry, and new regulations are necessary to recognize and regulate ‘micro’ movers who work exclusively in the digital marketplace.”⁶ More specifically, according to the Petition, those “regulations need to be updated to appropriately regulate businesses that do not conduct any moves, have no physical contact with the customer or any customer belongings, and do not even own vehicles.”⁷ Dolly asserts that “the current regulations are not adequate to safeguard consumers who seek convenient transportation options for small household moves on short notice.”⁸ Dolly claims, “Initiating a rulemaking will allow for regulations that provide more employment opportunities for people who want to work, and appropriate safeguards to ensure the customer is protected.”⁹
- 5 On October 16, 2017, the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) submitted a response to the Petition, requesting that the Commission grant Dolly’s alternative request to initiate a rulemaking. Public Counsel agrees that “technological innovations have outpaced the current regulatory framework leaving regulators struggling to figure out how to apply current rules.”¹⁰ Thus “Public Counsel views the lack of specific rules applicable to Petitioner’s business model as an opportunity for the Commission to provide direction and clarity to the industry, in addition to providing guidance to other jurisdictions through the development of novel regulatory frameworks.”¹¹

DISCUSSION

- 6 The Petition requests that the Commission either amend its motor carrier rules or initiate a rulemaking. The Commission cannot amend its rules outside of a rulemaking and thus would need to conduct a rulemaking to provide either form of requested relief.

⁵ *Id.* ¶ 14.

⁶ *Id.* ¶ 16.

⁷ *Id.* ¶ 17.

⁸ *Id.* ¶ 19.

⁹ *Id.* ¶ 20.

¹⁰ Public Counsel Response ¶ 3.

¹¹ *Id.* ¶ 4.

Accordingly, the Commission construes the Petition to be a petition for rulemaking. Within 60 days after receiving a petition for rulemaking, the Commission either must

(a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rulemaking proceedings in accordance with RCW 34.05.320.

We deny Dolly’s Petition for the reasons we explain below.

- 7 The Commission regulates HHG carriers pursuant to RCW Chapter 81.80. The statute provides, “No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.”¹² A “household goods carrier” is a “a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods as defined by the commission.”¹³ Commission rules incorporate and implement the statute.¹⁴
- 8 The Commission cannot amend its rules as the Petition requests. The Commission lacks the authority to forebear from regulating any person or class of persons who meets the statutory definition of an HHG carrier. As the Petition depicts the company, Dolly “advertises, solicits, offers, or enters into an agreement to transport household goods” and thus is an HHG carrier as defined in the statute. The “Helpers” Dolly describes “transport[] for compensation, by motor vehicle within this state . . . household goods” and thus are also HHG carriers by statutory definition. The Commission cannot modify this definition or otherwise exempt Dolly and its Helpers from regulation. Only the legislature can do that.
- 9 Dolly’s alternative form of relief seeks to have the Commission initiate a more general rulemaking to “establish a new classification of common carrier and reasonable rules, regulations and requirements.”¹⁵ The Commission’s authority, however, remains constrained by the statute, which requires HHG carriers to obtain a permit from the Commission. Dolly and each of its Helpers, as HHG carriers, must obtain a permit from

¹² RCW 81.80.075(1).

¹³ RCW 81.80.010(5).

¹⁴ WAC 480-15.

¹⁵ Petition ¶ 15.

the Commission, regardless of any new classification or rates, regulations, and requirements the Commission could otherwise establish. Commission records reflect that Dolly does not have, and has not applied for, an HHG carrier permit. Unless both Dolly and its Helpers obtain these permits, any rulemaking the Commission undertakes to modify its regulations to accommodate “micro-moving” would not be productive. Again, the legislature is the appropriate venue for the changes to the law that Dolly requests.

- 10 Dolly nevertheless contends, “The time has come to expand the Commission’s jurisdiction to cover . . . ‘household goods brokers’” and “to recognize and regulate ‘micro’ movers who work exclusively in the digital marketplace.”¹⁶ According to Dolly, “A significant portion of the household goods regulations contain rules regarding equipment and driver safety, yet a company advertising and arranging for a micro move, such as Dolly, is not likely to employ any drivers or even own a vehicle, so these regulations are wholly inappropriate.”¹⁷ Public Counsel states, “In some cases, either existing regulations do not apply to the full scope of business models in the marketplace or, they are applied to facts regulators never contemplated or conceived when the regulation was enacted.”¹⁸
- 11 While Dolly has a novel business model, the Commission cannot consider such a company in isolation. Dolly may not employ any drivers or own any vehicles, but Dolly’s Helpers do, and they are precisely the persons to whom the Commission’s equipment and driver safety rules are designed to apply. Our primary goal in regulating HHG moving carriers is to protect consumers and the public,¹⁹ and that objective does not vary with the size of the move or the nature of the carrier providing the service. The “digital marketplace” may alter how customers obtain service, but provisioning HHG moving service remains the same as it has been for centuries – using vehicles to move items from one household to another. We will not sacrifice safety and consumer protection for convenience, nor will we authorize entities purporting to be “brokers” to do so.
- 12 The Commission is not insensitive to technological and market developments. To the contrary, in October 2016, the Commission adopted changes to Tariff 15-C, the tariff under which all HHG carriers operate, to reduce the regulatory requirements for

¹⁶ *Id.* ¶ 16.

¹⁷ *Id.* ¶ 17.

¹⁸ Public Counsel Response ¶ 3.

¹⁹ *See, e.g.*, RCW 81.80.130 (requiring the Commission to fix “just, fair, and reasonable . . . rules and regulations for all common carriers” and to “regulate the accounts, service, and safety of operations thereof”).

transporting small HHG loads from a customer's residence to a storage facility.²⁰ The Commission seeks to tailor regulation to markets as they evolve, but we can make such regulatory adjustments only within statutory limits. The statute requires that all HHG carriers, regardless of size, obtain a permit from the Commission. Dolly, therefore, must obtain an HHG carrier permit and either (1) own its own vehicles and employ the Helpers transporting the goods, or (2) require each of its Helpers also to have an HHG carrier permit. No Commission rulemaking can alter those requirements. Because Dolly seeks just such a change, we deny the Petition.

- 13 Although we are denying Dolly's petition today, we nevertheless believe the changing market warrants further Commission exploration of the business model and operations of companies like Dolly that wish to engage only in household goods brokerage services or arrangement of so called "micro moves." The Commission intends to schedule at a future date a forum where all interested parties can better understand the impact existing statutes and Commission rules have on these proposed business models.

ORDER

- 14 THE COMMISSION ORDERS That the Petition of Dolly, Inc., to Amend Motor Carrier Rules or in the Alternative to Initiate Rulemaking is DENIED.

Dated at Olympia, Washington, and effective October 31, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

²⁰ *In re Amending Tariff 15-C*, Docket TV-151474, Order 01 (Oct. 6, 2016).