

Service Date: August 3, 2018

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOLLY, INC.

DOCKET TV-171212

ORDER 06

GRANTING STAFF'S MOTION FOR
IMPOSITION OF SUSPENDED
PENALTY FOR VIOLATION OF
COMMISSION ORDER

BACKGROUND

- 1 The Washington Utilities and Transportation Commission (Commission), on January 18, 2018, entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing initiating this docket on its own motion. Order 01 alleged that Dolly, Inc. (Dolly) should be classified as a household goods carrier under RCW 81.80.010(5) because it advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington. Order 01 further alleged that Dolly advertised as a motor freight carrier for the transportation of property other than household goods without first obtaining a common carrier permit in violation of RCW 81.80.070, and that Dolly operated as a solid waste collection company by advertising for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity in violation of RCW 81.77.040.
- 2 The Commission entered Order 02, on March 29, 2018, and Corrected Order 02, on April 9, 2018. Corrected Order 02 is the Commission's Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance.¹ Order 02 required Dolly to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company in Washington and assessed a \$69,000 penalty for violations of state laws. Order 02, however, provided that one-half of the penalty amount, \$34,500, would be suspended:

¹ We subsequently refer to "Corrected Order 02" in this Order as "Order 02" for the sake of brevity.

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conditioned on Dolly ceasing and desisting fully from activities such as described in this order that define it under the Commission's governing statutes as a household goods carrier, a common carrier transporting property other than household goods (*i.e.*, a motor freight carrier), and a solid waste hauler. This means, among other things, that Dolly must state clearly in its web-based application on the Internet, and in its advertising on Facebook, Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its services known that it does not offer or perform services in the state of Washington as a household goods carrier, as a common carrier transporter of property other than household goods, or as a solid waste hauler.²

Order 02 also informed Dolly that the Commission would investigate whether the Company was complying with these conditions on, or shortly after, 10 days following the date the Initial Order became final by operation of law or following affirmation by the Commission on review. Order 02 put Dolly on notice that any failure to comply with the conditions at that time, or subsequently within a period of two years would be duly noticed by the Commission and the suspended penalty amount of \$34,500 would be due and payable within five days following the date of Commission notice without further action by the Commission.

³ Dolly filed its Petition for Administrative Review on April 19, 2018, and Staff filed its Answer to Dolly's Petition on May 8, 2018. The Commission entered Order 04, its Final Order Denying Petition for Administrative Review on May 18, 2018.

⁴ The Commission stated in Order 04 that it found "no merit in the legal arguments contained in the Company's petition."³ The Commission expressly recognized, however, Dolly's argument that the Washington state legislature passed a budget proviso during the pendency of this matter that clearly indicated legislative interest in the regulation of companies like Dolly. Order 04 made clear that the budget proviso did not "effect a change in the law or affect our responsibility to enforce it."⁴ Order 04 stated further that:

The legislature did not, by passing the proviso, order the Commission to cease enforcing the public service laws that do not allow for Dolly to

² Order 02 ¶ 43.

³ Order 04 ¶ 51.

⁴ *Id.* ¶ 50.

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operate as it does without a permit. The legislature also declined to amend the definition of household goods carrier, common carrier, and solid waste collection company to exclude companies like Dolly from those definitions.⁵

5 Nonetheless, in light of the 2018 legislative deliberations on regulation of companies like Dolly, the enacted budget proviso with a report due by December 15, 2018, and likely consideration of legislation in the 2019 session, Order 04 established a due date for the penalty assessed in Order 02 that would allow for ongoing work on the study directed in the budget proviso to continue and to provide an opportunity for the 2019 legislature to amend current Commission statutes in this area if it so chooses. The Commission conditioned this postponement in the due date for the penalty assessment, making it “contingent on the Company’s full compliance with the terms of [Order 04], including those requiring it to cease and desist from operations described in and found unlawful in Corrected Order 02.”⁶ The Commission put Dolly on notice in Order 04 that if it found going forward that Dolly failed to cease and desist from its unlawful operations, the full \$69,000 penalty assessed would become due immediately.

6 Dolly filed a Motion to Stay Effectiveness of Final Order 04 on May 29, 2018. Dolly stated that it contacted Staff following service of Order 04 and inquired about applying for household goods carrier, common carrier, and solid waste collection company permits to obtain authority from the Commission to provide those services. Dolly said it needed additional time to file petitions for exemptions from certain Commission rules applicable to the permit process that the Company believes do not apply to its operations. The Company argued that the Final Order’s effectiveness would cause Dolly irreparable harm because the cease and desist provisions require Dolly to permanently refrain from advertising and providing service.⁷ Dolly also stated that the Company’s “applications to

⁵ *Id.*

⁶ *Id.* ¶ 51.

⁷ We note that this mischaracterizes what Order 04 provided. Order 04 required 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 ¶ 75 (emphasis added). Order 04 also required Dolly:

[T]o clearly indicate in its web-based application on the Internet and in its advertising on Facebook, Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its services known that it does not offer or perform services in the state of Washington as a household goods carrier,

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obtain Commission authority to operate comply with the terms of the cease and desist orders” and further claimed that the stay would allow “Commission Staff and Dolly . . . to process those applications and for the Commission to rule on Dolly’s petitions for exemption from relevant and applicable Commission permitting rules.”⁸

⁷ Staff responded to Dolly’s Motion for Stay stating that it essentially “amounts to a request that the Commission waive RCW 81.04.510 and authorize it to operate without first obtaining a permit.”⁹ Staff argued, among other things, that the Commission does not have discretion to approve violations of the public service laws and should deny Dolly’s Motion for Stay on that basis.

⁸ The Commission, on June 8, 2018, entered Order 05 Denying [Dolly’s] Motion for Stay, saying that:

As a threshold matter, the Commission is not authorized to grant Dolly’s request to stay the effectiveness of the cease and desist portions of the Final Order. RCW 81.04.510 provides that, upon a finding that a carrier is engaging in regulated activity, the Commission is “authorized and *directed* to issue cease and desist orders to all parties involved in the operations or acts.” The Commission has no discretion to waive this statutory requirement. Although our analysis ends here, we nevertheless dispose of Dolly’s claims for the purpose of discussion.¹⁰

⁹ It would serve no purpose to repeat here the balance of the Commission’s discussion rejecting Dolly’s arguments, but it is important relate the guidance given Dolly in Order 05, as follows:

Our denial of Dolly’s Motion to Stay today does not preclude the Company from filing with the Commission applications for permits or

as a common carrier transporting property other than household goods, or as a solid waste hauler *unless it obtains authority from the Commission*.

Id. ¶ 76 (emphasis added). Thus, the Commission did not “require Dolly to permanently refrain from advertising and providing service;” it required Dolly to immediately cease its operations that would continue to violate Washington statutes and Commission rules unless and until the Company obtained necessary permits from the Commission.

⁸ Dolly Motion for Stay ¶ 5.

⁹ Staff Response to Motion for Stay ¶ 7.

¹⁰ Order 05 ¶ 5.

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petitioning for exemption from certain rules consistent with the requirements of state law. *The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process.*¹¹

DISCUSSION

- 10 The Commission's regulatory Staff conducted an investigation of Dolly, Inc., after the Commission entered Order 04 and determined that Dolly had not ceased its Washington operations as required by the Order and, moreover, had in fact continued to actively promote and market its illegal activities.¹² Staff, relying on the records on file in this docket and an attached Declaration by Commission Investigator Susie Paul, requested that the Commission "enter an order lifting its suspension of the \$69,000 penalty imposed against Dolly, Inc., in Order 04 in this matter and require Dolly, Inc., to pay the \$69,000 penalty immediately," as provided in Order 04.¹³ Staff argued in its motion that:

The Commission suspended the penalty it imposed against Dolly, Inc. to incent the company's compliance with Order 04, including the order's cease and desist provisions. That incentive has failed. Dolly, Inc. has continued to perform regulated services without operating authority from the Commission, and it has continued to advertise that it provides those services. The Commission should lift the suspension of penalties and require Dolly, Inc. to pay the full \$69,000 penalty imposed in Order 04 in this docket.¹⁴

- 11 Dolly responded, opposing Staff's Motion, on July 19, 2018. Dolly requested that the Commission maintain the suspension of penalties imposed by Order 04. Dolly did not dispute the operative allegations in Ms. Paul's Declaration and admitted in its response that it has not ceased and desisted from its illegal operations.¹⁵ Dolly argues, in effect, that because it now has filed for operating authority and various exemptions from

¹¹ Order 05 ¶ 8 (emphasis added).

¹² Staff Motion for Imposition of Suspended Penalty ¶ 3 (citing Decl. of Susie Paul).

¹³ *Id.* ¶ 4.

¹⁴ *Id.* ¶ 6.

¹⁵ Declaration of Susie Paul ¶¶ 5 – 13; Dolly Response, first page, line 19 – second page, line 1. Dolly's Response includes neither page numbers nor paragraph numbers.

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Commission rules, it should be excused from the consequences that follow logically, and necessarily, from its refusal to obey the Commission's orders that plainly require it to cease and desist immediately from its illegal operations.¹⁶

- 12 Order 04 and Order 02, which the Commission adopted in, and expanded on, in Order 04, are self-executing insofar as their penalty provisions are concerned.¹⁷ The evidence is undisputed that Dolly has engaged in the business operations that trigger these provisions. It follows that the full penalty amount assessed against Dolly, \$69,000, is now due and payable within five days following the date of this Order giving notice of Dolly's failure to comply with the conditions imposed by the Commission's prior orders in this docket.

ORDER**THE COMMISSION ORDERS THAT:**

- 13 (1) Dolly, Inc., has failed to comply with the Commission's orders in this docket, including provisions in those order that impose penalties and suspend penalties, in part, subject to conditions.
- 14 (2) The full \$69,000 in penalties assessed against Dolly, Inc., is now due and payable.

DATED at Olympia, Washington, and effective August 3, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS

Chief Review Judge

¹⁶ Order 05 ¶ 8 ("The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process"); Order 04 ¶ 51 (making postponement in the due date for the penalty assessment "contingent on the Company's full compliance with the terms of [Order 04], including those requiring it to cease and desist from operations described in and found unlawful in Corrected Order 02).

¹⁷ Order 02 ¶¶ 55, 56; Order 04 ¶¶ 4, 5.