

**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 07

DENYING APPLICATION FOR
MITIGATION OF PENALTIES

BACKGROUND

- 1 On January 18, 2018, the Washington Utilities and Transportation Commission (Commission), 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 On March 29, 2018, the Commission entered Order 02, and on April 9, entered Corrected Order 02.¹ 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 also suspended a \$34,500 portion of the penalty conditioned on Dolly ceasing and desisting its Washington operations as a household goods carrier, as a common carrier of property other than household goods, and as a solid waste hauler.²

¹ 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. We refer to “Corrected Order 02” in this Order as “Order 02.”

² Order 02 ¶ 43.

- 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. Order 04 postponed payment of the \$34,500 portion of the penalty that was not suspended until July 10, 2019, and suspended the remaining \$34,500 portion until June 30, 2020. Order 04 put Dolly on notice that if it failed to cease and desist its unlawful operations, the full \$69,000 penalty would become due immediately.
- 4 On May 29, 2018, Dolly filed a Motion to Stay Effectiveness of Final Order 04. On June 8, 2018, the Commission entered Order 05 Denying Dolly's Motion for Stay.
- 5 On July 12, 2018, Staff filed a Motion to Impose Penalties. In its Motion, Staff requested the Commission impose the \$69,000 suspended penalty based on Dolly continuing to operate and advertise regulated services in violation of Order 04.
- 6 On August 3, 2018, the Commission entered Order 06, Granting Staff's Motion and imposing the \$69,000 penalty for violating a Commission order.
- 7 On August 20, 2018, Dolly filed an Application for Penalty Mitigation (Application for Mitigation). In its Application for Mitigation, Dolly argues that a penalty is not necessary to compel compliance with Order 04 because Dolly was not granted sufficient time to obtain operating permits before penalties were imposed. Because the Commission's licensing services division has not yet made a final determination regarding the disposition of Dolly's permit application, Dolly argues that imposing penalties without mitigation would be contrary to the Commission's objective of obtaining compliance with the law.

DISCUSSION

- 8 We deny Dolly's Application for Mitigation. As a threshold matter, we find that neither applicable laws nor Commission rules permit the Company to submit an application for mitigation. Order 04 imposed penalties pursuant to RCW 81.04.380, which provides for a hearing prior to the Commission's decision to assess penalties, but does not provide a procedural mechanism by which companies may seek mitigation of penalties following a Commission final order.³ As discussed above, Dolly previously exercised its right to administrative review, and thus has exhausted its administrative remedies related to the

³ Unlike RCW 81.04.405, which permits public service companies to apply for mitigation within 15 days of receiving notice that penalties are due, RCW 81.04.380 provides no such process.

penalty assessed in Order 02 and affirmed by Order 04. Likewise, WAC 480-07, the Commission's procedural rules, contemplate applications for mitigation only when penalties are assessed without a prior hearing.⁴

9 Even if there were a procedural basis on which we could accept Dolly's Application for Mitigation, the Company failed to introduce new information not previously considered or explain other circumstances that demonstrate a lesser penalty would be equally or more effective in ensuring compliance with applicable statutory and regulatory requirements.⁵

10 Instead, Dolly argues that the Commission has "controlled the timeline for Dolly's compliance with Order 04" because it has not yet approved the Company's application. By doing so, Dolly fails to accept responsibility for its decision to continue operating in violation of the Commission's cease and desist order, which required the Company to shut down its operations until such time its application is approved. As we observed in Order 06:

Dolly argues, in effect, that because it now has filed for operating authority and various exemptions from 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.⁶

11 Because Dolly reiterates those same arguments in its Application for Mitigation, it failed to present any new information or changed circumstances that would warrant further suspension or reduction of the penalty.

⁴ See WAC 480-07-300(2)(g), WAC 480-07-305(3)(d), and WAC 480-07-610(2)(e).

⁵ See Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission, ¶ 19 (January 7, 2013), which sets out the criteria the Commission considers when deciding whether to grant a request for mitigation.

⁶ 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").

ORDER

THE COMMISSION ORDERS THAT:

- 12 (1) Dolly, Inc.'s Application for Mitigation of Penalties is DENIED.
- 13 (2) The full \$69,000 in penalties assessed against Dolly, Inc., remains due, and must be paid within five days of the date of this Order.

DATED at Olympia, Washington, and effective August 31, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Director, Administrative Law Division