

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

Dolly, Inc.

for a permit to operate as a motor carrier  
of household goods and a permit to  
operate as a motor freight common  
carrier

DOCKET TV-180605

NOTICE OF INTENT TO DENY  
APPLICATION FOR PERMANENT  
AUTHORITY

NOTICE OF OPPORTUNITY FOR  
HEARING

**BACKGROUND**

- 1 On July 6, 2018, Dolly, Inc. (Dolly) filed an application with the Washington Utilities and Transportation Commission (Commission) for authority to operate in Washington State as a household goods carrier (Application).<sup>1</sup>
- 2 RCW 81.80.075(3) requires the Commission to consider (1) whether an applicant for a household goods carrier permit is fit to perform the services proposed and conform to the requirements, rules, and regulations of the Commission, and (2) whether the Applicant's operations are consistent with the public interest.
- 3 The Commission will grant or deny an application for permanent authority after it conducts a complete review of the application, including supporting statements, reports, or other information necessary to determine fitness. Commission rules provide that the Commission may reject or deny an application for permanent authority if the Commission believes the applicant is unfit or if issuing the permit is not in the public interest.
- 4 If it is necessary to resolve outstanding issues or concerns related to the Applicant's fitness, whether the Applicant's operations would be consistent with the public interest,

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<sup>1</sup> Dolly included with its Application a petition for exemption from a number of the Commission's household goods carrier rules. After reviewing the petition, the Commission's licensing staff (Staff) determined that Dolly failed to comply with the Commission rules governing petitions for exemption, which require the petitioner to provide a "full explanation of the reason the exemption is requested." WAC 480-15-035(2). Staff informed Dolly of the petition's infirmity and asked Dolly to supplement it. Dolly did so on August 10, 2018, reducing the scope of its exemption request. The Commission will postpone consideration of Dolly's petition for exemption, *see* WAC 480-07-035(3), pending a final determination of whether to grant Dolly's permit application because that determination may moot the exemption request.

or any other issue resulting from a complaint or public comment, the Commission may hold a hearing or brief adjudicative proceeding on any application for permanent authority.<sup>2</sup>

- 5 Commission staff (Staff) evaluated the Application and recommends the Commission deny the Application for reasons set out below.

### FACTUAL ALLEGATIONS

- 6 On May 18, 2018, the Commission entered Order 04 in Docket TV-171212. The order denied Dolly's petition for administrative review of the order of an Administrative Law Judge (ALJ) classifying Dolly as a household goods carrier, a motor freight carrier, and a solid waste collection company. In denying Dolly's petition, the Commission affirmed the ALJ's findings.
- 7 In Order 04, the Commission ordered Dolly to cease and desist from operating as a household goods carrier, common carrier, and solid waste collection company unless and until it first obtained authority from the Commission. Because a person engages in business as a household goods carrier by advertising to do so, the Commission ordered Dolly to make specific changes to its advertising to comply with the cease and desist order.
- 8 In Order 04, the Commission also affirmed the \$69,000 penalty imposed by the ALJ, but suspended it for a period of two years conditioned on Dolly's compliance with the terms of Order 04, including its cease and desist provisions.
- 9 On May 29, 2018, Dolly moved to stay the effectiveness of Order 04. In its request for a stay, Dolly explicitly noted that it would need to cease operations in the event that Order 04 became effective.
- 10 On June 8, 2018, the Commission denied Dolly's motion to stay the effectiveness of Order 04.
- 11 Staff investigated and determined that Dolly continued to advertise for and provide regulated services despite the provisions in Order 04 requiring Dolly to cease and desist. As a result, Staff, by motion, requested that the Commission impose the suspended penalty.
- 12 On June 15, 2018, Dolly petitioned for review of Order 04 in Thurston County Superior Court. Dolly then moved the Superior Court to stay the effectiveness of Order 04. In

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<sup>2</sup> WAC 480-15-350.

doing so, Dolly contended that unless the court stayed Order 04, Dolly would need to cease providing service in Washington. The Superior Court denied Dolly's motion for stay on June 29, 2018.

- 13 On August 3, 2018, the Commission granted Staff's motion and imposed the suspended penalty by entering Order 06 in Docket TV-171212. It did so after determining that Dolly admitted that it continued to operate in violation of Order 04's cease and desist provisions. The Commission, in its order, made the penalty immediately due and payable.
- 14 Staff reviewed Dolly's website and digital advertisements throughout the months of August and September. As of September 20, 2018, Dolly continued to advertise for the provision of regulated services on its website and its Facebook, Twitter, and Instagram pages. The text and pictures on those pages are largely unchanged from how they appeared when the ALJ determined that Dolly had violated the public service laws by displaying them.
- 15 Dolly's webpage contains a map showing that it provides service in several American cities, including Seattle. Clicking on the website's hyperlink for Seattle opens a different map, one showing Dolly providing service in the Puget Sound area, including to cities in Thurston, Pierce, King, and Snohomish counties. Another map on Dolly's website displays a map of Seattle neighborhoods that Dolly claims to serve. Dolly's Facebook page contains a link that routes users to one of these maps on its homepage.
- 16 Dolly also offers to transport household goods or other property between two points in Washington State for compensation on its website. The website contains fields allowing users to obtain quotes for this transportation by inputting certain data, including the type of move and the origin and destination of the move. On September 20, 2018, Staff used the website and obtained a quote for an "apartment move" between two points in Thurston County, Washington.
- 17 As of September 20, 2018, Dolly has not paid the \$69,000 penalty ordered by the Commission.
- 18 To establish fitness to obtain a permit an applicant must demonstrate financial and regulatory fitness. Regulatory fitness concerns whether an applicant is likely to comply with the Commission's rules.<sup>3</sup> The Commission considers past operating history as one of the best indicators of a company's willingness and ability to comply with regulatory requirements.<sup>4</sup> The Commission, however, does not consider a past history of engaging in

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<sup>3</sup> *In re Application of Redline Courier, Inc. for a permit to operate as a Common Carrier*, App. No. P-77664, Order M.V.C. No. 148367, Hearing No. P-77664 (Dec. 13, 1994).

<sup>4</sup> *Id.*

illegal conduct a per se bar to a finding of fitness; an applicant may overcome such a history with credible assurances of future compliance coupled with objective manifestations of intent to comply.<sup>5</sup>

- 19 Staff recommends that the Commission deny the Application because the Company fails to show regulatory fitness due to its continuing operations. Staff notes that those operations violate both the public service laws and a Commission cease and desist order. Staff alleges that Dolly manifested awareness that Order 04's cease and desist provision required it to cease operating in unsuccessful motions for stay to two different tribunals, and that Dolly is therefore knowingly and flagrantly disregarding the Commission's authority. Staff further contends that Dolly disregarded another Commission order by failing or refusing to pay the penalty the Commission imposed after initially suspending it. Staff argues that Dolly cannot overcome this evidence of its unfitness for a permit because it has exhibited no objective manifestations of any intent to comply with the law and, regardless, has offered no credible assurances that it will comply with the Commission's rules in the future.

#### DISCUSSION

- 20 Based on the information Staff presented, the Commission agrees with Staff's recommendation and intends to deny the Application. The information Staff has discovered renders Dolly unfit to operate as a household goods moving company. Dolly has a recorded history of unlawful operations, a history that began before the special proceeding that produced Order 04 in Docket TV-171212 and which continues into the present given that Staff has information showing that Dolly is currently operating. Dolly has, since Order 04's service date, operated in violation of a Commission order, and it has refused to pay the penalty a subsequent Commission order required it to pay. All objective evidence suggests that Dolly either cannot or will not comply with the Commission's rules, and Dolly has offered no credible assurances of future compliance to overcome those objective manifestations of its unfitness.

#### NOTICE

- 21 The Commission hereby provides notice of its intention to deny Dolly's Application for permanent authority for failure to meet the application requirements in RCW 81.80 and WAC 480-15.
- 22 **NOTICE OF OPPORTUNITY FOR HEARING.** Dolly may request a hearing to contest the factual allegations set out in this notice. Dolly may request such a hearing by filing an electronic request for a hearing with the Commission's records center by **5 p.m.**,

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<sup>5</sup> *Id.*

**October 5, 2018.** The request must be directed to the attention of Mark L. Johnson, Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, and must reference Docket TV-180605.

- 23 If Dolly requests a hearing by **5 p.m., October 5, 2018**, the Commission will schedule an adjudicative proceeding under chapter 34.05 RCW and chapter 480-07 WAC. If Dolly does not request a hearing by that date, the Commission will enter an order rejecting the Application.

DATED at Olympia, Washington, and effective September 21, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON  
Executive Director and Secretary