

Service Date: October 15, 2018

**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 NUMBER: TV-171212

DOLLY, INC. PETITION FOR  
RECONSIDERATION OF ORDER 08  
AND PETITION TO STAY THE  
EFFECTIVE DATE OF ORDER 08

**I. BACKGROUND**

1. On March 29, 2018, the Washington Utilities and Transportation Commission (“Commission” or “WUTC”) entered Corrected Order 02. The Commission entered Final Order 04 on May 18, 2018, which denied Dolly, Inc.’s (“Dolly”) Petition for Administrative Review of Corrected Order 02 and affirmed and adopted Corrected Order 02.<sup>1</sup> On August 31, 2018, the Commission entered Order 07 which denied Dolly’s Request for Penalty Mitigation and on October 5, entered Order 08 denying Dolly’s request for Administrative Review of Order 07. Order 08 also provides that Dolly may file a Petition for Reconsideration pursuant to RCW 34.05.470 and WAC 480-07-850.

**II. REQUESTED RELIEF**

2. Pursuant to RCW 34.05.470 and WAC 480-07-850, Dolly files this Petition for Reconsideration (“Petition”) requesting the Commission reconsider its denial of Dolly’s request to mitigate the penalty imposed in Order 04. Additionally, pursuant to RCW 34.05. 467 and WAC 480-07-860, Dolly concurrently files this Petition to Stay the Effective Date of Order 08 until the date the petition for reconsideration is decided.

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<sup>1</sup> Order 04 ¶ 11 and 74.

### III. ARGUMENT

#### A. PETITION FOR RECONSIDERATION OF ORDER 08

##### 1. Orders 07 and 08 Err in Concluding that No Procedural Mechanism Exists to Mitigate the Penalty Imposed in Order 04

3. Order 07 denies Dolly's request to mitigate the penalty imposed in Corrected Order 02 on the grounds that Final 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."<sup>2</sup> Order 07 errs by failing to recognize that Final Order 04 adopted, in whole, Corrected Order 02, which imposed penalties under "RCW 81.04.380 – .405."<sup>3</sup>

4. The "Applicable Law" section of Corrected Order 02 states, "RCW 81.80.360 makes applicable to such activity the penalty provisions in RCW 81.04.380 – .405"<sup>4</sup> and "Violations of RCW Chapter 81.77 are gross misdemeanors and are subject to the penalty provisions in RCW 81.04.380 – .405."<sup>5</sup> Instead of limiting the penalty enforcement mechanisms to only RCW 81.04.380, Corrected Order 02 explicitly intended for RCW 81.04.380 through 81.04.405 to be available procedurally as penalty enforcement mechanisms.

5. Imposing penalties under RCW 81.04.405 is not among the "errors" Corrected Order 02 "corrected" from Order 02. Nor does Order 04 correct Corrected Order 02 to limit penalty enforcement to only RCW 81.04.380. Instead, Order 04 adopts Corrected Order 02 in whole which means Order 07 is incorrect in determining RCW 81.04.380 is the lone procedural mechanism to enforce the penalty imposed in Order 04 because Corrected Order 02 and Order 04 imposed penalties under RCW 81.04.380, .385, .387, .390, .400, and most importantly, .405, which permits penalty mitigation. Accordingly, Order 04 grants the Commission statutory authority to mitigate the penalty under RCW 81.04.405.

##### 2. Order 07 Errs by Misinterpreting Order 04's Cease and Desist Ruling

6. Order 07 states that, "even if there were a procedural basis on which we could accept Dolly's Application for Mitigation [the Application would be denied because] Dolly fails to

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<sup>2</sup> Order 08 ¶ 8.

<sup>3</sup> Corrected Order 02 ¶ 10 and 11.

<sup>4</sup> *Id.* ¶ 10.

<sup>5</sup> *Id.* ¶ 11

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.”<sup>6</sup> Emphasis added. Again, Order 07 misunderstands the rulings contained in Order 04. Nowhere in Order 04 does it state Dolly must “shut down its operations” until its operating permit application is approved. Order 04 plainly states:

Dolly may remove Seattle from its list of cities that it serves and remove its “Moving and Delivery Help in Seattle” page from its website to satisfy the cease and desist requirement.<sup>7</sup>

...

While Dolly is correct that there is no explicit statutory requirement that it publish a disclaimer on its website, the law prohibits, and always has prohibited, Dolly from advertising services it is not authorized to provide. It logically follows that the Company must, in some way, alter its advertisements to ensure it no longer holds itself out as providing unauthorized services in Washington.<sup>8</sup>

...

The corrections to Dolly’s advertisements are required *prospectively* as just one aspect of Dolly’s operations (including soliciting, offering, and providing regulated services) that the Company must cease and desist.<sup>9</sup> Emphasis in original.

7. The above statements clearly confirm that “cease and desist” does not mean “shut down operations.” Rather, Order 04 provides several ways in which Dolly may “cease and desist.” To construe Order 04 to mean that Dolly must completely shut down its operations entirely ignores the substance of the Discussion and focuses only on the following single sentence from the Order, “Dolly, Inc. must immediately cease operating as a household goods carrier, common carrier, and solid waste collection company unless it obtains authority from the Commission.”<sup>10</sup> This narrow reading and interpretation of the cease and desist ruling at the expense of ignoring the Discussion is clearly not the result Order 04 intends as evidenced by the Order’s very own words.

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<sup>6</sup> Order 07 ¶ 9 and 10.

<sup>7</sup> Order 04 ¶ 38.

<sup>8</sup> *Id.* ¶ 39.

<sup>9</sup> *Id.* ¶ 41.

<sup>10</sup> *Id.* ¶ 75.

### 3. Dolly is Complying with Order 04's Cease and Desist Ruling

8. Order 07 misconstrues the meaning and intent of Order 04's cease and desist ruling. Moreover, Dolly has complied with the cease and desist order by modifying its Internet presence and "its advertisements to ensure it no longer holds itself out as providing unauthorized services in Washington." Accordingly, since Dolly was never required to, "shut down its operations" it follows that even if Staff believes Dolly has not satisfied Staff's narrow interpretation of the cease and desist order, that at the very least Dolly has not violated the cease and desist order by simply remaining open for business.
9. Order 08 relies on the Declaration of WUTC Staff Investigator Susie Paul's declaration as evidence that Dolly's continued operations violates the cease and desist ruling.<sup>11</sup> This is problematic for several reasons. First, as explained above, Dolly is not in violation of the cease and desist ruling. Second, Dolly's advertisements have never stated it performs regulated services in Washington State. Third, in spite of the foregoing, Dolly altered its Internet presence and advertisements to further clarify that it does not perform regulated services in Washington. Lastly, none of the Attachments included with Ms. Paul's declaration supports the conclusion that Dolly performs regulated services. In fact, Attachment A of Ms. Paul's Declaration clearly states, "Trustworthy Help. All Dolly Helpers are independent contractors who are background checked, reviewed, and backed by a commercial insurance policy."<sup>12</sup> Emphasis added.
10. The statement "All Dolly Helpers are independent contractors" satisfies Order 04's cease and desist ruling which states that Dolly, "must 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, as a common carrier transporting property other than household goods, or as a solid waste hauler unless it obtains authority from the Commission."<sup>13</sup> Here, Dolly "clearly indicates" that "independent

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<sup>11</sup> See Attachment A excerpted from Ms. Paul's Declaration with the statement, "All Dolly Helpers are independent contractors who are background checked, reviewed, and backed by a commercial insurance policy" clearly indicated.

<sup>12</sup> See Docket TV-171212, *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against: Dolly, Inc.*, Declaration of Susie Paul, Attachment A, Page 6, (July 12, 2018).

<sup>13</sup> Order 04 ¶ 76.

contractors”, not “Dolly, Inc.”, perform the regulated services. Ms. Paul’s assertion that Dolly performs regulated services is erroneous, and unsupported by the very exhibits in her own Declaration. The remaining exhibits in Ms. Paul’s Declaration showing Dolly’s advertisements offer further proof that Dolly only connects users to Helpers (i.e. independent contractors) and contain no statements that Dolly performs regulated services or support any such conclusion.<sup>14</sup>

**4. Dolly is Eligible for Penalty Mitigation Under RCW 81.04.405 and Docket No. A-120061**

11. The grounds upon which Order 07 denied Dolly’s Request for Penalty Mitigation were arrived at in error. As stated above, Order 04 applies RCW 81.04.405 to the penalty imposed on Dolly and Dolly has complied with the cease and desist ruling. As a result, Dolly is eligible for penalty mitigation under RCW 81.04.405 and Docket Number A-120061.

**B. PETITION TO STAY THE EFFECTIVE DATE OF THE PENALTY IMPOSED IN ORDER 08**

**1. Dolly Requests the WUTC Stay the Effectiveness of Order 08 While It Considers this Petition for Reconsideration**

12. The penalty due date has been a moving target in this docket. Under Order 06 the due date was August 18. Under Order 07 the due date was September 5. Under Order 08 the due date was October 10. Dolly submitted its request for penalty mitigation on August 20, between the dates the penalty became effective in Orders 06 and 07. RCW 81.04.405, “permits public service companies to apply for mitigation within 15 days of receiving notice that penalties are due...” Due to the penalty due date already being on several dates in this docket, Dolly requests the Commission, under RCW 34.05.467 and WAC 480-07-860, stay the effectiveness of Order 08 while it considers the merits of this petition and also that the Commission find that no harm results from delaying the penalty due date because it has already been moved several times.

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<sup>14</sup> Attachment F of Ms. Paul’s Declaration states, “Dolly connects you with local truck owners” and contains no statements that Dolly performs regulated activities; Attachment G of Ms. Paul’s Declaration contains only Dolly’s business address and contains no statements that Dolly performs regulated activities; Attachment H of Ms. Paul’s Declaration states, “Dolly connects you with local truck owners” and contains no statements that Dolly performs regulated activities; Attachment I of Ms. Paul’s Declaration is simply a picture of two models wearing “Dolly” t-shirt, standing next to a truck with a “Dolly” tailgate cover, and contains no statements that Dolly performs regulated activities; and Attachment J is the same as Attachment I except the truck’s license plate number is visible and contains no statements that Dolly performs regulated activities. All of these Attachments rely heavily on inference and conjecture and ignore the fact that they contain no statements that Dolly performs regulated activities and that Dolly’s website, per Order 04, clearly indicates that Dolly does not perform regulated services.

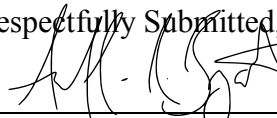
13. When considering requests for stay, the Commission looks to “showings of irreparable harm from the order; showings of patent error of law or fact such that reconsideration and modification are virtual certainties; or of a combination of substantial hardship with a substantial possibility of modification.”<sup>15</sup> Dolly avers that Corrected Order 02 irrefutably imposed penalties under RCW 81.04.405 and that Order 04 adopted Corrected Order 02 in whole. Further, that Order 07 fails to acknowledge that Order 04 adopted Corrected Order 02 and apply RCW 81.04.405 is a patent error of law. As a result, it is a virtual certainty that the Commission will find that penalty mitigation is permissible under Order 04 and reconsider Dolly’s request for penalty mitigation and consequently stay the effectiveness of the penalty due date while it reconsiders Dolly’s mitigation request.

#### IV. CONCLUSION

14. An objective view of the facts shows that Dolly complied with Order 04, by altering its advertisements and applying for operating authority. The facts also show that Ms. Paul’s own declaration supports Dolly’s position that it has complied with the cease and desist order. Those factors weigh in favor of the Commission granting Dolly’s Petition for Reconsideration and mitigating the penalties imposed in Orders 04 and 06.

15. DATED this 5<sup>TH</sup> day of October, 2018

Respectfully Submitted,



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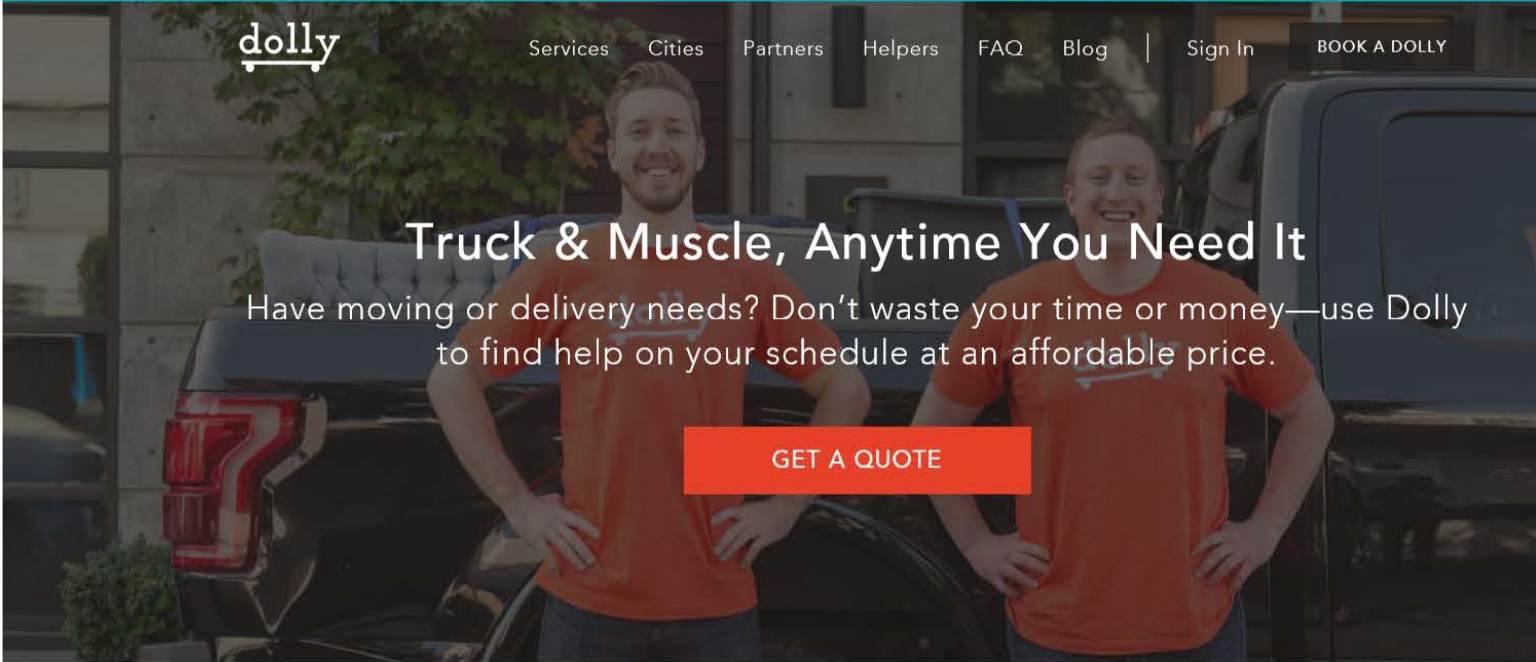
Armikka Bryant, WSBA No. 35765  
Director of Legal and Government Affairs  
Dolly, Inc.  
901 Fifth Avenue, Suite 600  
Seattle, Washington 98164-2086  
(206) 494-3198  
E-mail: [armikka@dolly.com](mailto:armikka@dolly.com)

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<sup>15</sup> *Wash. Utils. & Transp. Comm’n v. Sno-King Garbage Co., Inc.*, Docket TG-900657, 1991 Wash. UTC Lexis 110, Fifth Supp. Order, at 3 (Dec. 19, 1991).



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Chicago Tribune

THE WALL STREET JOURNAL

TE

The New York Times



The Dolly Difference





### Trustworthy Help

All Dolly Helpers are independent contractors who are background checked, reviewed, and backed by a commercial insurance policy.

### On Your Schedule

We think 4-hour delivery windows suck, too. So we don't have them. You set the time—your Helper will be there.

### Guaranteed Pricing

Find out the cost of your Dolly upfront before you book—no surprises! Pay, tip, and review in the app or [online](#).

### Save Time & Your Back

No need to rent a truck from U-Haul where you haul everything on your own. Dolly Helpers do the driving and heavy lifting for you.

## How to Book a Dolly

STEP #1

### Enter Your Details

Tell us when, where, and what you need help with.

STEP #2

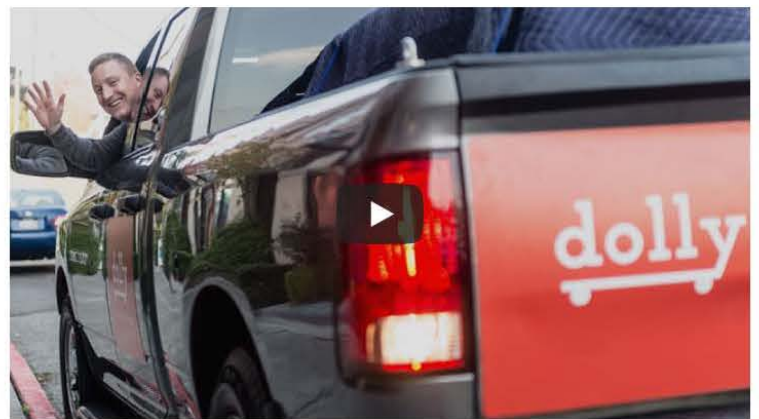
### Get Your Price

Select one or two Helpers and get an instant, guaranteed price.

STEP #3

### Book Your Dolly

Get connected to and scheduled with a Helper in minutes.







“ If you need help, especially in lifting or moving something that’s too heavy for you, just call Dolly! ”

- Brittney, Seattle



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