

Agenda Date: September 24, 2020
Item Number: B1

Docket: TV-200758
Company Name: Dolly, Inc.

Staff: Mathew Perkinson, Assistant Director, Transportation Safety
Suzanne Stillwell, Licensing Services Manager
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Recommendation

Commission staff (staff) recommends the commission grant the petition of Dolly, Inc. (Dolly or company), waive the requirements of [WAC 480-14-250\(1\)](#), [WAC 480-14-250\(1\)\(e\)](#), and [WAC 480-14-110](#) and authorize a common carrier permit for the company with these exemptions. Staff believes the exemptions are consistent with the public interest and the purposes underlying the applicable statutes and the commission's regulations implementing those statutes.

Discussion

On August 24, 2020, the Washington Utilities and Transportation Commission (commission) received Dolly's Petition for Exemption from Washington Administrative Code (WAC) sections [480-14-250\(1\)](#), [480-14-250\(1\)\(e\)](#) and [480-14-110](#). The company also filed a common carrier of property application. A common carrier permit excludes transporting household goods, hazardous materials, and armored car services.

Dolly is a Seattle-based "transportation network company" (TNC). Customers use Dolly's service to procure the transport of goods locally. Due to Dolly's business model, three WAC rule exemptions are required for its application to proceed.

WAC 480-14-250(1) - Insurance

[WAC 480-14-250\(1\)](#) requires each applicant for common carrier authority and each common carrier to file with the commission evidence of currently effective liability and property damage insurance written by a company authorized to write insurance in Washington. The insurance must cover each motor vehicle as defined in [RCW 81.80.010](#) used or to be used under the permit. [WAC 480-14-250\(1\)](#) requires minimum coverage of \$750,000 for vehicles with gross vehicle weight (GVW) ratings of 10,000 pounds and greater and \$300,000 for vehicles less than 10,000 pounds.

Dolly carries a commercial general liability insurance policy from First Mercury Insurance Company covering up to \$1,000,000 per occurrence and \$2,000,000 in total, as well as an excess liability policy from James River Insurance that extends its liability coverage to \$4,000,000 per occurrence and \$5,000,000 in total. Dolly also carries an auto liability policy from Fair American Select Insurance Company with a combined single limit of \$1,000,000. These insurance policies function as contingent liability insurance in excess of Dolly's "Helpers" policies. Dolly indicates

that its insurance policies combined with those of its “Helpers” provide over ten times the insurance coverage required by [WAC 480-14-250\(1\)](#).

First Mercury Insurance, James River, and Fair American Select Insurance Company are not on the admitted list with the Office of the Insurance Commissioner. All three companies are members of the Surplus Lines Association of Washington and possess A.M. Best Rating Services credit ratings of “A” or higher. A.M. Best Rating is a credit rating agency that provides comprehensive information for anyone interested in the creditworthiness of insurance companies. Dolly’s surplus lines broker is CRC Insurance Services, Inc. which is an active member of the Surplus Lines Association of Washington. For Dolly to be permitted as a common carrier of property in the state of Washington while being underwritten by these surplus line insurers, a WAC rule exemption must be granted.

Staff believes granting this exemption is consistent with the purposes underlying regulation and applicable statutes, which is to ensure that carriers have sufficient insurance to cover any injuries or property damage caused by their operations. Dolly’s coverage meets the commission’s requirements and it is underwritten by highly rated entities which should ensure they are able to pay any claim arising against Dolly.

Dolly’s second exemption request pertains to acceptable proof of active insurance. Washington Administrative Code [480-14-250\(1\)\(e\)](#) requires companies to submit evidence of insurance by filing a:

1. Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E); or
2. Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G); or
3. Written binder evidencing the required coverage not in effect longer than 60 days.

Dolly’s position is its business model does not allow it to satisfy this rule because it does not own the vehicles its “Helpers” use to make deliveries arranged on its platform. Therefore, the company cannot obtain a Form E or Form G. Dolly does not believe the proof of insurance requirement adds protection to the public. Dolly asserts that its three previously mentioned surplus lines insurance policies, combined with those of its “Helpers” protects the public from loss or damage while goods are being transported by providing coverage that exceeds the levels required in the rule.

Staff believes granting this exemption is consistent with the purposes underlying regulation and applicable statutes, provided that Dolly’s insurers file sufficient insurance binders showing policy numbers, coverage limits, and list the Washington Utilities and Transportation Commission as the certificate holder. This will allow staff to ensure that Dolly maintains the current coverages outlined in its petition.

WAC 480-14-110 - Permit Use by Contracts

Dolly's final exemption request pertains to [WAC 480-14-110](#), which provides that no person or firm use a permit or registration receipt except the carrier to whom it was issued. Dolly contends that this provision either does not bar its use of independent contractors or, alternatively, requests an exemption from it so that it may employ independent contractors.

Dolly filed a declaration from its Chief Executive Officer, Michael Howell, proposing that the commission allow the company to use independent contractors under the same conditions applicable by [WAC 480-30-022](#) to auto transportation companies. Under those conditions, Dolly is legally accountable for the regulatory violations of its contractors as if it had committed the violations itself, required to implement a system to detect and prevent violations by its contractors, and required to maintain the records necessary for staff to determine its compliance.

Staff believes granting this exemption is consistent with the purposes underlying regulation and applicable statutes, provided that the commission accepts Dolly's proposed conditions. [WAC 480-14-110](#) is intended to create clear lines of authority and accountability. Under the conditions Dolly proposes, it would be:

1. Responsible for any violation of federal, state, or local laws or regulations, or any commission order, committed by a contractor transporting property under Dolly's permit.
2. Responsible for maintaining measures designed to prevent and detect a violation of statutes or rules within the commission's authority by a contractor as well as make available records regarding its use of the contractor on request by the commission that fully enable the commission to audit, investigate, and determine the company's compliance with applicable law while using a contractor.
3. Subject to commission enforcement actions as if it engaged in that conduct.

Staff notes, however, that it has concerns that should the exemption requests be granted and a common carrier permit be issued to Dolly, the company's "Helpers" may illegally engage in the transportation of household goods or disposal of solid waste. In Docket TV-171212, the commission required Dolly to cease and desist from operating as a common carrier, a household goods carrier, and a solid waste collection company. Although granting a common carrier permit here would authorize it to operate as a motor freight carrier, it would not authorize the company to transport household goods or solid waste. Staff proposes two measures to address its concerns.

1. Modify the standard authority language on the face of the permit. That language typically states that the permit holder may transport "General commodities in the state of Washington excluding household goods, hazardous materials and armored car service." Staff proposes strengthened authority language on the permit to include [WAC 480-15-20](#) definition of "household goods," and [WAC 480-70-041](#) definition of "solid waste," "solid waste collection," "garbage," and "refuse" to ensure Dolly is clear as to

the extent of its authority.

2. Staff conduct regular and unannounced audits to ensure that Dolly's contractors are not transporting household goods or solid waste. The records Dolly offered to retain should assist staff in performing necessary audits.

In summary, staff does not oppose the petitions for exemption and recommends the commission issue a common carrier permit with the following exemptions.

1. An exemption from [WAC 480-14-250\(1\)](#) to allow the use of surplus lines insurers.
2. A partial exemption from [WAC 480-14-250\(1\)\(e\)](#) regarding Form E and Form G filings while requiring an insurance binder.
3. An exemption from [WAC 480-14-110](#) to allow the use of independent contractors.

Conclusion

Staff recommends the commission authorize Dolly to operate using a common carrier permit with exemptions from WAC [480-14-250\(1\)](#), [480-14-250\(1\)\(e\)](#), and [480-14-110](#). With conditions, the exemptions are consistent with the public interest, the purposes underlying regulation, and applicable statutes.

[WAC 480-07-110](#) and [WAC 480-14-020](#) governs exemptions from the rules of Chapter 480-14. It provides that the commission may grant an exemption from any rule in Chapter 480-14 when doing so is consistent with the public interest and the underlying purpose of the rule is not lost.

Staff recommends that the commission place conditions on Dolly so it is held responsible for any violation of federal, state, or local laws or regulations or any commission order, while performing tasks under its common carrier permit using independent contractors and be subject to commission enforcement as if the company itself is engaged in the conduct.

The permitted operation of Dolly in the state of Washington provides consumers options in the transport of commercial goods through technology. While Dolly's business model is unconventional, staff believes it has the mechanisms needed to properly regulate the company as a common carrier while ensuring consumer protection and safety.