

**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 ORDER 01 DENYING APPLICATION
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BACKGROUND

- 1 On July 6, 2018, Dolly, Inc. (Dolly or Company) filed an application with the Washington Utilities and Transportation Commission (Commission) for authority to operate in Washington as a household goods carrier and motor freight common carrier (Application). On August 10, 2018, Dolly filed a petition requesting exemption from several provisions in chapter 480-15 WAC, the Commission rules governing household goods carriers, which Dolly contends are inapplicable to Dolly's business model and operations.¹
- 2 On September 21, 2018, the Commission issued a Notice of Intent to Deny Application for Permanent Authority and Notice of Opportunity for Hearing (Notice of Intent to Deny). The Commission agreed with the recommendation of Commission staff (Staff) to deny the Application based on evidence that Dolly is continuing to operate as a household goods carrier in violation of applicable statutes and Commission orders in Docket TV-171212 and thus is unfit:

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

¹ Dolly made this request in a letter. The Commission's procedural rules require a request for exemption from a Commission rule to be made in a petition. WAC 480-07-110(2)(a). Pursuant to WAC 480-07-395(4), the Commission construes the document Dolly submitted as a petition.

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 these objective manifestations of its unfitness.²

The Commission postponed consideration of Dolly's petition for exemption pending a final determination on the Application.³

- 3 On October 5, 2018, Dolly filed with the Commission a Request for Adjudicative Proceeding to contest the Commission's intent to deny the Company's Application.
- 4 On October 11, 2018, Staff filed a motion for summary determination (Motion). Staff contends that Dolly's repeated refusal to comply with Commission orders and applicable statutes and rules renders the Company unfit to provide household goods moving services as a matter of law, and the Commission should deny the Application.
- 5 The Commission issued a Notice of Hearing on October 15, 2018. The notice established a procedural schedule, including a hearing date and the date by which Dolly was required to respond to Staff's Motion.
- 6 On November 2, 2018, Dolly filed its Response Opposing the Motion. The Company argues that it is entitled to a hearing to respond to the Notice of Intent to Deny, has raised genuine issues of material fact, and disputes the contentions in the Motion.⁴
- 7 On November 13, 2018, the Commission issued a Notice of Adherence to Procedural Schedule. The Commission informed the parties that it would take the Motion under advisement and would not rule on it prior to the scheduled hearing.⁵
- 8 On November 30, 2018, Staff and the Company each filed testimony and exhibits in support of their positions. The Commission conducted a hearing on December 19, 2018.

² Notice of Intent to Deny ¶ 20.

³ *Id.* ¶ 1, n.1.

⁴ Staff subsequently sought leave to reply to Dolly's response, which the Company opposed.

⁵ Although we grant the relief Staff requested in the Motion, we do so based on the evidence admitted into the record during the evidentiary hearing and thus as a technical matter do not grant the Motion.

9 At the hearing, Staff provided the testimony of Susie Paul and Michael Dotson. Ms. Paul summarized the proceedings in Docket TV-171212 that resulted in the Commission order classifying Dolly as a household goods carrier and requiring the Company to cease and desist from such operations. She described and documented her investigation of Dolly after the Company filed its Application. She detailed multiple instances in which Dolly advertised and offered household goods moving services in Washington long after the Commission entered its order prohibiting such activities, including advertising on the Company's webpage and other websites and agreeing to perform household goods moves in response to her undercover requests. She concluded that "Dolly has shown itself to be unwilling and/or unable to comply with the public service laws and the Commission's rules and orders, and therefore unfit to hold a permit."⁶

10 Mr. Dotson explained that the Commission does not grant even provisional household goods operating authority to an applicant that is unfit.

11 Michel Howell, Rachel Lazar, and Kevin Shawver testified on behalf of Dolly. Mr. Howell is the Company's Chief Executive Officer. He described Dolly's operations and provided Dolly's perspective on its history with the Commission. According to Mr. Howell, Dolly merely arranges "micro-moves"⁷ that are performed by independent contractors ("Helpers"), and "all services are completed under the terms and conditions and the discretion and direction established by the Helper and the customer. Dolly is not a party to that agreement nor does Dolly control the terms of that agreement."⁸ Mr. Howell testified that compliance with state laws and regulations is very important to Dolly and that the Company has taken several actions to comply with Commission directives, including applying for a permit, changing its Internet marketing, paying the penalty the Commission assessed, and working cooperatively with policy Staff on legislative issues. Mr. Howell opined that Dolly's business model is consistent with the Commission's role of ensuring public safety and that Commission rules do not preclude the Company's use of independent contractors.

12 Rachel Lazar is a marketing consultant. She described the different ways that companies advertise on the Internet, as well as the most popular advertising mediums, their

⁶ Paul, Exh. SP-1T at 3:2-4.

⁷ "A micro-move is the on-demand transport of an item from one location to another location that fits in a consumer-sized pick-up truck that generally happens within 24 hours of the customer's request, and cost less than \$100." Howell, Exh. MH-1T at 5:22 – 6:2.

⁸ *Id.* at 7:17-19.

capabilities, and their limitations. Specifically with respect to Dolly, she explained that the service Dolly advertises on various websites “is unrelated to whether Dolly, in fact, provides it where the person is located. This means it is impossible for Dolly to limit who, how, where, or when a person can access those websites.”⁹

13 Kevin Shawver is Dolly’s Senior Director of Marketing. He described how Dolly modified its marketing activities after the Commission entered its cease and desist order. He testified that the Company “made changes to our messaging to make it even clearer that Dolly doesn’t do the moving, but rather connects people to willing independent contractors for moving and delivery help.”¹⁰ He further explained that “[t]he websites Dolly uses to market the business – www.dolly.com, Facebook, Twitter, and Yelp – are accessible to everyone, regardless of which market they are in or if Dolly provides services in their market.”¹¹ He also testified that Dolly has removed all references to the city of Seattle and the state of Washington from its webpages, subject in some cases to the hosting entity’s pending approval.

14 Following the evidentiary portion of the hearing, counsel for each party gave closing arguments in support of the party’s position.

15 Armikka Bryant, Director of Legal and Government Affairs, Dolly, Seattle, Washington, represents the Company. Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Staff.

DISCUSSION AND DECISION

16 Household goods carriers include any person “who advertises, solicits, offers, or enters into an agreement to transport household goods.”¹² The statute provides that “[n]o person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.”¹³ The Commission must issue such a permit if it finds “[t]he applicant is fit, willing, and able to perform the services proposed and conform to this chapter and the requirements, rules, and regulations of the commission

⁹ Lazar, Exh. RL-1T at 4:4-6.

¹⁰ Shawver, Exh. KS-1T at 5:3-5.

¹¹ *Id.* at 6:4-6.

¹² RCW 81.80.010(5).

¹³ RCW 81.80.075(1).

. . . ; otherwise, the application must be denied.”¹⁴ Commission rules also provide that an applicant must demonstrate that it has satisfied all Commission “regulatory requirements, including any requirements set by statute, rule, tariff, or order.”¹⁵ We find that Dolly is not fit, willing, and able to comply with applicable statutes and the Commission’s requirements, rules, and regulations and therefore deny the Application.

17 In Order 04 in Docket TV-171212 (Order 04), the Commission classified Dolly as a household goods carrier, common carrier, and solid waste collection company and ordered the Company to cease and desist from those operations in Washington unless and until it obtains the requisite authority from the Commission.¹⁶ Dolly has yet to comply with that order. The Commission suspended a portion of the penalty it assessed against the Company on condition of future compliance with Order 04 but subsequently lifted that suspension based on undisputed evidence that Dolly continued to engage in business operations the Commission prohibited.¹⁷ The record in this docket is replete with evidence that Dolly is still advertising, soliciting, offering, and entering into agreements to transport household goods in Washington in violation of Commission orders and applicable statutes and rules.¹⁸ The legislature has directed the Commission to deny an application for authority upon finding such ongoing noncompliance.

18 Dolly contends that the “operations” the Commission prohibited were the Company’s advertising. In response, according to Dolly, the Company has modified its website and social media postings to remove references to Seattle and to clarify that the Helpers who conduct the moves are independent contractors, not Dolly employees. The Commission’s cease and desist order is not so limited.

19 Order 04 describes Dolly’s operations and the basis on which the Commission determined that the Company is a household goods carrier, common carrier, and solid waste collection company:

¹⁴ RCW 81.80.075(3).

¹⁵ WAC 480-15-305(1)(h).

¹⁶ Paul, Exh. SP-8 (*In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 04 (May 18, 2018) (Order 04)).

¹⁷ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 06 (Aug. 3, 2018).

¹⁸ E.g., Paul, Exhs. SP-1T at 8-11 & 13-19; SP-13-SP-20; and SP-25-SP-35.

Dolly operates a digital application and website used by consumers who wish to purchase the transportation of household goods, other property, or solid waste. Consumers arrange this transportation by providing Dolly with information such as the type of goods the consumer wants transported, the origin and destination addresses, and the date and time for transportation. Dolly provides a guaranteed price quote, and the consumer pays Dolly for the transportation services. Dolly uses independent contractors, or “Helpers,” to perform the physical transportation of goods.

Based on this business model, [the Commission] found that Dolly unquestionably met the statutory definitions of “household goods carrier,” “common carrier,” and “solid waste hauler” because it: 1) advertises, solicits, and offers on its website and social media to transport for compensation, by motor carrier, household goods in the state of Washington; 2) enters into agreements to transport household goods for compensation in the state of Washington as indicated in its terms of service; 3) advertises, solicits, and offers on its website and social media, and enters into agreements, to transport for compensation, by motor carrier, property other than household goods in the state of Washington; and 4) advertises, solicits, and offers on its website and social media, and enters into agreements, to transport solid waste for compensation.¹⁹

20 We thus found that Dolly is not only advertising to transport household goods but is also soliciting, offering, and entering into agreements for such moves. Order 04 is not susceptible to the Company’s more narrow interpretation. Nor has Dolly ceased the prohibited advertising. Staff demonstrated that the Company continues to promote its household goods moving services in Washington by identifying Seattle and the surrounding area on the Company’s website as a location where Dolly provides those services²⁰ and by advertising on various social media platforms with links to this website.²¹ In addition, Dolly is advertising its moving services on buses and commuter trains in the Seattle area.²² Dolly, therefore, is advertising, soliciting, offering, and

¹⁹ Paul, Exh. SP-8 (Order 04) ¶¶ 17-18.

²⁰ *E.g.*, TR 73-76 (Shawver); Paul, Exhs. SP-25 & SP-31.

²¹ TR 80-88 (Shawver).

²² TR 88:15 – 89:17 (Shawver); Paul, Exhs. SP-17 & SP-18.

entering into agreements to transport household goods in violation of Order 04, RCW 81.80.075, and Commission rules.

- 21 Dolly nevertheless contends that the Company’s independent contractors, which it refers to as “Helpers,” are actually the persons who perform the move, not Dolly. Dolly thus characterizes itself as merely a broker of household goods moving services. The Commission, however, has previously rejected that argument. As we explained in Order 04, the Commission has consistently concluded that “companies who engage third parties to perform regulated activities are subject to Commission jurisdiction” as household goods movers.²³ “Dolly’s attempt to distinguish its activities from ‘conducting’ the move is a distinction without a legally significant difference.”²⁴
- 22 Dolly suggests that the Commission’s conclusion was based on an incorrect finding that Dolly establishes the terms and conditions for the moves when, according to the Company, the Helper makes those arrangements with the customer. By clarifying on its website and in its promotional materials that the Helpers are responsible for the moves, including establishing the terms and conditions, Dolly maintains that it is complying with the Commission’s cease and desist order. We continue to disagree.
- 23 Dolly advertises household goods moves. In response, interested persons inform the Company of the items they want moved, where, and when. Dolly offers a guaranteed price quote to move those items. Persons who accept that offer schedule the move and pay Dolly for it. Whether the customer and the Helper agree on *additional* terms and conditions is irrelevant. By offering price quotes and accepting payment for household goods moves, Dolly is entering into agreements for the transportation of household goods in violation of Order 04.
- 24 Dolly is also engaging in unlawful activity by assisting unpermitted Helpers to conduct household goods moves. Dolly concedes that its Helpers may not have Commission authority to transport household goods.²⁵ Indeed, the Company is unaware of whether *any* of its Helpers have such authority.²⁶ Each household goods move conducted by an unpermitted Helper is a violation of RCW 81.80.075(1). By arranging or otherwise participating in such moves, Dolly, at a minimum, is encouraging, assisting, and enabling

²³ Paul, Exh. SP-8 (Order 04) ¶ 19.

²⁴ *Id.* ¶ 21 (internal quotation and citation omitted).

²⁵ TR 31:17-22 (Howell).

²⁶ TR 31:9-16 (Howell).

illegal moves. Such an applicant is not fit, willing, and able to perform the responsibilities of a regulated household goods carrier.

- 25 Dolly professes a willingness to comply with Commission requirements but claims to need direction from the Commission on what to do to operate legally in Washington. We have repeatedly provided such guidance, which the Company has consistently ignored. Dolly must first comply with Order 04. To do so, the Company must cease and desist any and all activities related to the transportation of household goods in Washington, including but not necessarily limited to (1) removing all advertising of household goods moving services from buses, commuter trains, or other physical locations in Washington; (2) removing all maps, links, or other references in its website and social media postings to household goods moving services in Seattle or any other location in Washington; (3) modifying its website so that it does not solicit or accept requests, and does not offer estimates or price quotes, to transport household goods in Washington by either the Company or any of its Helpers; and (4) terminating all connections or other arrangements with Helpers to transport household goods in Washington. Once Dolly is in compliance with Order 04, the Company should work with Staff to determine how Dolly can operate within the requirements established by the legislature and the Commission. Only then should Dolly refile an application for a household goods carrier permit.
- 26 Because Dolly is not in compliance with applicable law, the Commission denies the Company's application for a permit without prejudice to refile at a later time when the Company can demonstrate compliance with applicable law. This decision renders moot Dolly's petition for exemption from certain Commission rules. Accordingly, the Commission dismisses that petition.

FINDINGS OF FACT

- 27 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including household goods carriers.
- 28 (2) Dolly is advertising, soliciting, and offering to transport household goods in Washington by identifying Seattle and the surrounding area on the Company's website as locations where Dolly provides those services.

- 29 (3) Dolly is advertising, soliciting, and offering to transport household goods in Washington by advertising on various social media platforms with links to the Company's website.
- 30 (4) Dolly is advertising to transport household goods in Washington on buses and commuter trains in the Seattle area.
- 31 (5) Dolly is entering into agreements to transport household goods in Washington by offering persons guaranteed price quotes for moving specified items and receiving payment for those moves.
- 32 (6) Dolly is advertising, soliciting, offering, and entering into agreements to transport household goods in Washington without authority from the Commission.
- 33 (7) Dolly is enabling and assisting Helpers to transport household goods in Washington without authority from the Commission.

CONCLUSIONS OF LAW

- 34 (1) The Commission has jurisdiction over the subject matter of this proceeding and personal jurisdiction over Dolly.
- 35 (2) An applicant for a household goods carrier permit is not fit, willing, and able to provide the proposed services if the applicant cannot or will not conform to Chapter RCW 81.80 and Commission requirements, rules, and regulations.
- 36 (3) Dolly has not complied with the requirements in Order 04 to cease and desist from advertising, soliciting, offering, or entering into agreements to transport household goods in Washington unless and until the Commission grants the Company a permit to provide such services.
- 37 (4) Dolly is unlawfully assisting its Helpers to transport household goods in Washington without a permit from the Commission.
- 38 (5) Dolly has not demonstrated that it is fit, willing, and able to conform to Chapter 81.80 RCW and Commission requirements, rules, and regulations.
- 39 (6) The Commission should deny Dolly's Application for failure to demonstrate that it is fit, willing, and able to comply with applicable law.

- 40 (7) Upon Commission denial of Dolly's Application, the Company's petition for exemption from provisions of chapter 480-15 WAC is moot.

ORDER

41 **THE COMMISSION ORDERS:**

- 42 (1) The Commission denies the Household Goods Moving Company Permit Application of Dolly, Inc., without prejudice to refile an application at a later date if Dolly, Inc., can demonstrate that it can and will comply with all applicable statutes, rules, and Commission orders.
- 43 (2) The Commission dismisses as moot the petition of Dolly, Inc., for exemption from provisions of chapter 480-15 WAC.

DATED at Olympia, Washington, and effective February 14, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.