



September 23, 2020

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Received
Records Management
09/23/20 13:05
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Application for Permit to Operate as a Common Carrier by Dolly, Inc.
UTC Dkt. No. TV-200758 (September 24, 2020, Open Meeting Agenda Item B1)

By Electronic Filing and Electronic Mail

Dear Mr. Johnson:

We have reviewed the Staff recommendation on our application for a common carrier permit and our accompanying petition for exemptions from various Commission rules.

I appreciate the thoroughness and thoughtfulness of Commission Staff as we moved through this process. I recognize that our relationship has been rocky at times in the past, which I regret, so I look forward to forging a new relationship together and to developing our business in our home state of Washington. Accordingly, I support the Staff recommendation that the Commission grant our petition and issue the permit.

However, I have some concerns about Staff’s recommended condition regarding audits. The second condition on page two of the Staff recommendation reads:

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.

Staff cited as a rationale for this condition its concern that in the past Dolly had without proper permits transported household goods and solid waste. This audit condition is intended to confirm that there is no such unpermitted transportation in the future.

We fully accept that, as a common carrier, Dolly may be subject to certain audits just as other permitted common carriers are subject to audit. Further, given Dolly’s history with Commission Staff, the Staff may wish to go beyond any regular audits to check Dolly’s records to make sure that we do not engage without a permit in any household goods or solid waste transportation.

However, we fear that the proposed Staff audit activity could go well beyond that. The day the Staff recommendation was published, we emailed Staff to ask about the “regular and

unannounced audits” language, asking for clarification and expressing the concern that the audits could be burdensome on our limited central office staff. Commission staff responded with this table showing what is intended in each category of audit:

Regular	Investigators request (or Dolly provides) records/documents on a schedule. One a month, or bi-monthly, or bi-annually, etc.... Records may include but are not limited to: Evidence of background checks conducted on “helpers” or bill of lading showing transactions completed by Dolly for a certain period of time, insurance claim honored or denied, “helper” driver license credentials etc....
Unannounced	UTC investigators request documents without advanced notice to Dolly. Dolly is likely afforded 48 hours to produce documents.

The Staff email continued:

The commission will determine the appropriate frequency of audit or data requests.

Staff believes it’s most appropriate to start with something more frequent and if no issues, could recommend reducing the frequency over time. You’re welcome to express your concerns during your opening statement.

We will express our concerns in our opening statement as Staff suggests, but we think it appropriate to spell them out ahead of time and in writing to facilitate resolution of the issue.

There are four issues with the scope of audit that Staff describes in its email.

First, it goes well beyond the stated concern that gave rise to this proposed condition. Dolly will have records of its points of shipment, points of delivery, and a general description of the materials transported. Those records, as the Staff memorandum suggests, should provide Staff with the information it needs to determine if any of the transportation is of household goods or solid waste. However, the Staff also indicates that among the records it will audit are insurance claims driver background checks and credentials. That information goes far beyond what is necessary to determine if Dolly is transporting household goods or solid waste.

Second, some of the information requested could contain confidential information that if provided to the Commission would be public records and therefore potentially the subject of public records requests. Background checks on drivers could contain medical information or social security numbers; insurance claims could contain medical information; and general records of items delivered could reveal competitively sensitive information for the shippers. The Commission has adopted a rule designed to protect such information from disclosure by putting the burden on the provider of information the obligation to cull out or redact it. *See* WAC 480-07-160. Compliance with that rule could be extremely burdensome, particularly for information which is not necessary to meet the stated concerns of Staff.

Third, even without the hoops Dolly would have to jump through to protect confidential information, being subject to a 48-hour turn-around time to produce such records would be unduly burdensome to a small staff that is tasked with handling administrative matters in 21 other jurisdictions as well as Washington. And assuming the Staff wants to see records regarding pick-ups and deliveries, those records would still be the same after 72 hours or even weeks. So, the tactic of “surprise” with a 48-hour notice would not be advantageous to the audit process. (Indeed, the Commission’s rules state a presumptive ten business day turn-around time for production of records. WAC 480-07-175(2)(b).)

Finally, as stated earlier, Dolly is fine with audits that are similar in kind, degree, and frequency as audits of other holders of common carrier permits. However, what Staff proposes would impose costs on Dolly not imposed on other common carriers. Because Dolly will be in competition with other carriers, Dolly would be at a competitive disadvantage, particularly with those with similar business models that are not subjected to this type of audit.

Accordingly, we recommend the following as alternate language for the auditing condition to be included in the Commission’s Order:

2. Staff may conduct audits consistent with the audits it performs on other common carriers and, in addition, Staff may conduct periodic audits of Dolly’s pick-up and delivery records to ensure that Dolly’s contractors are not transporting household goods or solid waste. The records Dolly offered to retrain should assist staff in performing necessary audits.

I will be happy to respond to questions at the Commission’s Open Meeting on Thursday, September 24.

Sincerely,

/s/ Michael Howell

Michael Howell
CEO, Dolly, Inc.

Cc: Chairman David Danner
Commissioner Ann Rendahl
Commissioner Jay Balasbas
Mathew Perkinson
Suzanne Stillwell
Patrick Remfrey