

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of	DOCKET TV-200758
DOLLY, INC.,	ORDER 01
For a Permit to Operate as a Common Carrier of Property	GRANTING EXEMPTION; GRANTING APPLICATION FOR COMMON CARRIER PERMIT

BACKGROUND

- 1 On August 24, 2020, Dolly, Inc., (Dolly or Company) filed with the Washington Utilities and Transportation Commission (Commission) an application for a permit as a common carrier of property (excluding household goods, hazardous materials and armored car service) (Application).
- 2 On August 24, 2020, in conjunction with its Application, Dolly filed a Petition for Exemption from Washington Administrative Code (WAC) 480-14-250(1), WAC 480-14-250(1)(e), and WAC 480-14-110 (Petition).
- 3 Dolly is a Seattle-based “transportation network company” (TNC). Customers use Dolly’s service to procure the transport of goods locally.
- 4 Under WAC 480-14-250(1), each applicant for common carrier authority must file with the Commission evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington. The Commission rule requires a minimum coverage of \$300,000 for vehicles weighing 10,000 pounds or less and \$750,000 for vehicles weighing 10,001 pounds or more.
- 5 Dolly carries three insurance policies from surplus lines insurers that are not authorized to write insurance in Washington. Surplus lines insurance is used when licensed insurers in the standard market will not provide coverage because the risk is too high, too unfamiliar, or does not otherwise meet the insurers’ guidelines. Surplus lines insurers have more flexibility to design and price their policies and generally charge higher premiums because they ensure risks that are usually more costly to cover.

6 Under RCW 81.80.190, the Commission requires common carriers to “either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the Commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle.” Because this is a statutory requirement, the Commission cannot grant the Company an exemption from the obligation to purchase its insurance from a company licensed in Washington. The Office of the Insurance Commissioner (OIC) authorizes insurance companies to write insurance in Washington. RCW 48.15.040 allows surplus lines coverage, under certain conditions, if insurance from authorized insurers cannot be procured. The licensing requirements for surplus line brokers are found in RCW 48.15.070.

7 Dolly purchased three surplus lines policies through its broker, CRC Insurance Services, Inc., (CRC) which is an active member and in good standing with the Surplus Lines Association of Washington. CRC is authorized to write surplus lines insurance on behalf of the three surplus lines carriers secured by Dolly.

8 Dolly’s first insurance policy is a general liability insurance policy from First Mercury Insurance Company covering up to \$1,000,000 per occurrence and \$2,000,000 in aggregate. It possesses an AM Best Rating Services credit rating of “A” and is a member of the Surplus Lines Association of Washington.

9 Dolly’s second insurance policy is an excess liability policy from James River Insurance that extends liability coverage up to \$4,000,000 per occurrence and \$5,000,000 in aggregate. It possesses an AM Best Rating Services credit rating of “A” and is a member of the Surplus Lines Association of Washington.

10 Dolly’s third insurance policy is an auto liability insurance policy from Fair American Select Insurance Company with a combined single limit of \$1,000,000. It possesses an AM Best Rating Services credit rating of “A+” and is a member of the Surplus Lines Association of Washington.

11 The Company also represents that it requires all independent contractors with vehicles that are part of its network to demonstrate that they have their own auto liability insurance that meets or exceeds Washington state standards.

12 Commission staff (Staff) does not oppose the Company’s Petition for Exemption from WAC-480-14-250(1) with conditions. Staff recommends the use of surplus lines

insurance subject to the condition that the Company purchases insurance from highly-rated surplus lines companies (AM Best A- or above rating) that meet the surplus lines company requirements set out in RCW 48.15.070 and at the levels listed above.

- 13 WAC 480-14-250(1)(e) defines acceptable evidence of active insurance as a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E), a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G), or a written binder evidencing the required coverage. The rule also states that a binder may not be effective for longer than 60 days, during which time the carrier must file the Form E or Form G.
- 14 Dolly does not own the vehicles that the Company's contractors drive. Therefore, Dolly has not obtained either the Form E or Form G as required by WAC 480-14-250(1)(e), though the Company can obtain binders for the policies it has purchased.
- 15 Staff does not oppose the Company's Petition for Exemption from WAC-480-14-250(1)(e) with conditions. Staff is willing to recommend granting an exemption from the requirement that the Company file a Form E or Form G subject to the condition that the Company provides a written binder evidencing policy numbers, coverage limits, and lists the Commission as the certificate holder.
- 16 WAC 480-14-110 provides that no person or firm may use a permit or registration receipt except the carrier to whom it was issued.
- 17 Dolly's TNC-based business model uses independent contractors. Dolly proposes that the Commission allow the Company to use independent contractors under the same conditions that apply to auto transportation companies under WAC 480-30-022.
- 18 Under these conditions, Dolly would be: (1) legally accountable for the regulatory violations of its independent contractors as if it had committed the violations itself; (2) required to implement a system to detect and prevent violations by its independent contractors; and (3) required to maintain the records necessary for Staff to determine the Company's compliance.
- 19 Staff does not oppose the Company's Petition for Exemption from WAC 480-14-110 with conditions. First, Staff is willing to recommend allowing Dolly's independent contractors to operate under the Company's authority provided Dolly is responsible for any violation of federal, state, or local laws or regulations, or any Commission order, committed by independent contractors transporting property under Dolly's permit.

20 Second, Dolly must be responsible for maintaining measures designed to prevent and detect a violation of statutes or rules within the Commission’s authority to enforce by independent contractors.

21 Third and finally, Dolly must make available records regarding its use of all contractors on request by the Commission that fully enables the Commission to audit, investigate, and determine the Company’s compliance with applicable law while using independent contractors.

22 Staff does not oppose Dolly’s application for a permit as a common carrier of property (excluding household goods, hazardous materials, and armored car service) with conditions. Staff has concerns that should these exemption requests be granted, and a common carrier permit be issued to Dolly, the Company’s contractors may illegally engage in the transportation of household goods or the disposal of solid waste. Staff proposes the following measures to address its concerns.

23 First, Staff proposes using strengthened authority language on the face of the permit to include the definition of “household goods” under WAC 480-15-20, and the definitions of “solid waste,” “solid waste collection,” “garbage,” and “refuse” under WAC 480-70-041 to ensure clarity as to the extent of the Company’s authority.

24 Second, Staff proposes regular and unannounced audits to ensure that Dolly’s contractors are not transporting household goods or solid waste. The records Dolly has offered to retain should assist Staff in performing these audits.

25 Third, Staff proposes that should the Company violation and/or fail to satisfy any of the conditions upon which the exemptions in this matter are being granted, the Commission may initiate a proceeding seeking to rescind the Company’s common carrier authority. The granting of a common carrier permit is contingent on the Company’s complete and continued compliance with each and every condition contained in this Order.

DISCUSSION

26 We grant the Dolly’s Petition and thus grant the Application, for the reasons discussed below.

27 Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Additionally, WAC 480-14-020(2) provides that the rules in Chapter 480-14 “are for general application only and are subject to such changes and

modifications as the commission may deem advisable from time to time.”

- 28 We find that the Company’s Petition for Exemption from WAC 480-14-250(1) meets the standard under WAC 480-07-110(1) subject to the condition that the Company buy insurance from a highly-rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070 and at the levels provided within the Company’s Petition. The purpose of the insurance rule is to protect the public from loss or damage caused by the Company while providing service. Surplus lines insurance responds to that need and is a viable option for high-risk or unique lines of business where risk is less certain. Accordingly, we find that the Petition is consistent with the public interest, the purposes underlying regulation, and applicable statutes, and conclude that it should be granted.
- 29 We find that the Company’s Petition for exemption from WAC 480-14-250(1)(e) meets the standard under WAC 480-07-110(1) subject to the condition that the Company provides a written binder evidencing policy numbers, coverage limits, and that lists the Washington Utilities and Transportation Commission as the certificate holder. The purpose of this rule is to ensure that the Company has suitable liability coverage. The document witnessing proof of this coverage need not be limited to a Form E or Form G. Accordingly, we find that the Petition is consistent with the public interest, the purposes underlying regulation, and applicable statutes, and conclude that it should be granted.
- 30 We find that the Company’s Petition for exemption from WAC 480-14-110 meets the standard under WAC 480-07-110(1) subject to the following three conditions: (1) that Dolly is responsible for all independent contractors that operate under Dolly’s authority for any violation of federal, state, or local laws or regulations, or any Commission Order, committed by independent contractors transporting property under Dolly’s permit; (2) that Dolly shall be responsible for maintaining measures designed to prevent and detect any violations of statutes or rules within the Commission’s jurisdiction by the Company’s independent contractors; and (3) that Dolly shall make available records regarding its use of all independent contractors on request by the Commission that fully enable the Commission to audit, investigate, and determine the Company’s compliance with all applicable law. Subject to these conditions, we find that the Petition is consistent with the public interest, the purposes underlying regulation, and applicable statutes, and conclude that it should be granted.
- 31 We find Staff’s proposal to include strengthened authority language on the face of the permit to include the definition of “household goods” under WAC 480-15-20, and the definitions of “solid waste,” “solid waste collection,” “garbage,” and “refuse” under WAC 480-70-041 (clarifying Dolly’s authority) is consistent with the public interest, the

purposes underlying regulation, and applicable statutes.

32 We also find Staff’s proposal that the Company be subject to regular and unannounced audits (to ensure Dolly’s independent contractors are not transporting household goods or solid waste) is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Because Dolly has a negative history of transporting both household goods and solid waste without first obtaining authority from the Commission to conduct such operations,¹ Staff’s proposal provides a necessary additional incentive for compliance.

FINDINGS AND CONCLUSIONS

33 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rules, regulations, and practices, accounts, and affiliated interests of public service companies, including common carrier companies.

34 (2) Dolly is an applicant for operating authority as a common carrier of property (excluding household goods, hazardous materials, and armored car service), and, once approved, will be a common carrier company and a public service company subject to Commission jurisdiction.

35 (3) On August 24, 2020, in conjunction with its application, Dolly filed a Petition for Exemption from WAC 480-14-250(1), WAC 480-14-250(1)(e), and WAC 480-14-110.

36 (4) This matter came before the Commission at its regularly scheduled meeting on September 24, 2020.

37 (5) Pursuant to WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Additionally, WAC 480-14-020(2) provides that the rules in Chapter 480-14 “are for general application only and are subject to such changes and modifications as the

¹ See *In the Matter of the Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 02 (March 29, 2018) (finding that Dolly operated on at least 25 occasions as household goods carrier, motor carrier, or solid waste carrier without first obtaining from the Commission authority to conduct such operations); and Order 06 (Aug. 3, 2018) (finding that Dolly violated Order 02 by continuing to advertise and perform regulated services without operating authority from the Commission).

commission may deem advisable from time to time.”

- 38 (6) After reviewing Dolly’s Petition and giving due consideration to all relevant matters and for good cause shown, the Commission finds that granting an exemption from WAC 480-14-250(1) meets the standard under WAC 480-07-110(1) subject to the condition that the Company buy insurance from a highly-rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070 and at the levels listed within the Company’s petition.
- 39 (7) After reviewing Dolly’s Petition and giving due consideration to all relevant matters and for good cause shown, the Commission finds that granting exemption from WAC 480-14-250(1)(e) also meets the standard under WAC 480-07-110(1) subject to the condition that the Company provides a written binder evidencing policy numbers, coverage limits, and which lists the Washington Utilities and Transportation Commission as the certificate holder.
- 40 (8) After reviewing Dolly’s Petition and giving due consideration to all relevant matters and for good cause shown, the Commission finds that granting exemption from WAC 480-14-110 also meets the standard under WAC 480-07-110(1) subject to the conditions: (1) that Dolly is responsible for all independent contractors that operate under Dolly’s authority for any violation of federal, state, or local laws or regulations, or any Commission Order, committed by independent contractors transporting property under Dolly’s permit; (2) that Dolly shall be responsible for maintaining measures designed to prevent and detect any violations of statutes or rules within the Commission’s jurisdiction by the Company’s independent contractors; and (3) that Dolly shall make available records regarding its use of all independent contractors on request by the Commission that fully enable the Commission to audit, investigate, and determine the Company’s compliance with all applicable law.
- 41 (9) After reviewing Staff’s proposal and giving due consideration to all relevant matters and for good cause shown, the Commission finds that strengthened authority language on the face of the permit to include the definition of “household goods” under WAC 480-15-20, and the definitions of “solid waste,” “solid waste collection,” “garbage,” and “refuse” under WAC 480-70-041 (clarifying Dolly’s authority) is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

- 42 (10) After reviewing Staff's proposal and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the Company be subject to regular and unannounced audits (in order to ensure that Dolly's independent contractors are not transporting household goods or solid waste) is consistent with the public interest, the purposes underlying regulation, and applicable statutes.
- 43 (11) Granting the Company's Petition for Exemption from WAC 480-14-250(1), WAC 480-14-250(1)(e), and WAC 480-14-110 as well as implementing Staff's proposals is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

ORDER

THE COMMISSION ORDERS:

- 44 (1) Dolly, Inc.'s Petition for Exemption from WAC 480-14-250(1) is granted subject to the condition that Dolly, Inc., buy insurance from a highly-rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070 and at the levels listed within the Dolly, Inc.'s petition.
- 45 (2) Dolly, Inc.'s Petition for Exemption from WAC 480-14-250(1)(e) is granted subject to the condition that Dolly, Inc., provides a written binder evidencing policy numbers, coverage limits, and which lists the Washington Utilities and Transportation Commission as the certificate holder.
- 46 (3) Dolly, Inc.'s Petition for Exemption from WAC 480-14-110 is granted subject to the conditions (1) that Dolly Inc., is responsible for all independent contractors that operate under Dolly, Inc.'s authority for any violation of federal, state, or local laws or transporting property under Dolly, Inc.'s permit; (2) that Dolly, Inc., shall be responsible for maintaining measures designed to prevent and detect any violations of statutes or rules within the Commission's jurisdiction by the Dolly, Inc.'s independent contractors; and (3) that Dolly, Inc., shall make available records regarding its use of all independent contractors on request by the Commission that fully enable the Commission to audit, investigate, and determine the Company's compliance with all applicable laws.
- 47 (4) Upon providing a written binder evidencing policy numbers, coverage limits,

and listing the Commission as the certificate holder, Dolly, Inc.'s Application for operating authority as a common carrier of property (excluding household goods, hazardous materials and armored car service) permit is granted with strengthened authority language on the face of the permit to include the definition of "household goods" under WAC 480-15-20, and the definitions of "solid waste," "solid waste collection," "garbage," and "refuse" under WAC 480-70-041 (clarifying Dolly's authority) is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

- 48 (5) Dolly, Inc., shall be subject to regular and unannounced audits performed by Staff to ensure that Dolly, Inc.'s contractors are not transporting household goods or solid waste.
- 49 (6) The Commission retains jurisdiction over Dolly, Inc., and over the subject matter at issue in this proceeding in order to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective September 24, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner