

Attachment A

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint for
Penalties Against:

DOLLY, INC.

DOCKET TV-171212

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE PENALTIES

and

NOTICE OF BRIEF
ADJUDICATIVE PROCEEDING
**(Set for March 13, 2018, at 9:30
a.m.)**

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. PARTIES

2 The Commission is an agency of Washington State authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including motor freight carriers, household goods carriers, and solid waste collection companies under the provisions of Title 81 RCW.

3 Dolly, Inc. (Dolly or Company) is a Delaware corporation conducting business in the state of Washington.

II. BACKGROUND

4 The Commission has information from which it believes and therefore alleges that Dolly on 22 occasions violated provisions in Title 81 RCW that forbid engaging in business as a household goods carrier or advertising for the transport of property without first obtaining the necessary permits from the Commission, and also that Dolly on three occasions violated provisions in Title 81 RCW that forbid operating for the hauling solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission.

5 Upon proof of these allegations, RCW 81.04.510 authorizes the Commission to issue an order requiring Dolly to cease and desist activities subject to regulation under Title 81

RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Dolly that violates any law or any order or rule of the Commission. The Commission may impose financial penalties of up to \$5,000 for each instance that Dolly engaged in business as a household goods carrier without first obtaining the necessary permit and \$1,000 for each instance that Dolly advertised for the transportation of property other than household goods for compensation without a Commission-issued permit and also for each instance that Dolly operated for the hauling of solid waste without a Commission-issued certificate of public convenience and necessity.

- 6 At the hearing in this special proceeding the Commission notices here, the Commission will also consider its Complaint against Dolly alleging violations of law as specified below and whether to penalize Dolly.
- 7 The following facts, set forth in Staff's publicly-docketed Investigation Report, establish probable cause for the Commission to complain against the activities of Dolly and to seek penalties in accordance with applicable law.
- 8 Dolly has never held either a household goods carrier or a common carrier permit from the Commission. Nor has Dolly ever held a certificate of public convenience and necessity from the Commission authorizing it to operate for the hauling of solid waste.
- 9 Pictures displayed on Dolly's website, Facebook, Twitter, LinkedIn, and Yelp show movers wearing shirts bearing the Dolly logo and loading items into vehicles either marked with the Dolly logo or flying a flag bearing that logo. A video on Dolly's webpage similarly shows movers and trucks marked with the Dolly logo. Dolly's Pinterest page shows a truck emblazoned with the Dolly logo.
- 10 Dolly's website homepage page also contains a video explaining how to book transportation or hauling with Dolly.
- 11 Under a heading advertising "Truck & Muscle" services, the homepage advertises for the movement of household goods, the transport of property other than household goods, and the hauling of solid waste. For example, Dolly asks "[n]ew digs?" then promises "[g]et your furniture delivered fast." Dolly also asks "[s]tuff you don't want?" and advises that consumers should "[h]aul it away."
- 12 The "Services" tab of Dolly's website advertises specific types of moves. These include "[a]partment [m]oves" for those "need[ing] help moving large items like beds, dressers, tables, couches[,] and more;" "Craigslist & Offerup [p]ick-[u]p & [d]elivery;" "[r]etail [s]tore [d]elivery," which Dolly claims is "[c]onvenient, faster[,] and often cheaper than traditional store delivery options;" "[s]mall [b]usiness [m]oves," wherein "Dolly is [the]

truck rental, trailer rental[,] and moving company alternative;” “[s]torage [m]oves;” and “[j]unk [r]emoval,” wherein “Dolly helpers will remove and haul away your junk,” a service that “[i]ncludes trash removal and responsible disposal.”

- 13 The “About” tab of Dolly’s Facebook page contains a section titled “Ways to Use Dolly.” This section advises consumers that they may “[m]ove furniture between apartments, storage units, or a friend’s house” and “[p]ick up big items purchased on Craigslist, at a garage sale, or at Ikea, Crate & Barrel, or other retailers.” This tab also contains an explanation of how Dolly’s platform works and a statement that all of its movers “are backed by Dolly’s multi-million dollar insurance policy.”
- 14 Dolly advertises “[t]ruck & [m]uscle [a]nytime [y]ou [n]eed [i]t” on its Twitter page (@getDolly). There Dolly further states “[u]se our app to load, haul, and deliver just about anything, whenever you need it.” To simplify matters, the Twitter page contains a link to Dolly’s website.
- 15 Dolly’s LinkedIn page also advertises “[t]ruck & [m]uscle [a]nytime [y]ou [n]eed [i]t.” The page asks consumers if they “[h]ave moving or delivery needs?” The page then advises “[d]on’t waste your time or money – use Dolly to find help on your schedule at an affordable price.” The page then informs consumers that, after they have booked a move, “[w]e’ll keep the large items off the roof of your of your car, save you a trip to the chiropractor, and help make moving things – big and small –easy and fast.” The page then offers ways to use Dolly, including moving household goods and transporting property.
- 16 Dolly’s iTunes page describes the company as offering “a fast, easy, and affordable way to get help with your apartment move” or transport property or remove junk. The page informs consumers that they can “[u]se Dolly to load, haul, and deliver just about anything. Easy. Affordable. Whenever you need it.”
- 17 Dolly’s Craigslist page provides “[n]eed a truck to move[]? Use the new Dolly app instead.” The page goes on to state “If you’re like most of us, you do not like the idea of moving things. Thankfully, there’s a nice app called Dolly to assist with exactly that. Dolly provides the truck in fact the labor to promptly and affordably move your stuff when you need it.”
- 18 Dolly has posted several videos to YouTube. One of these, posted on October 25, 2016, announces that “Dolly is your go to local moving and delivery service. Book a 30-minute window that works for you and get a guaranteed price upfront.” The video then informs consumers that “A background checked helper will safely move your items to give you the peace of mind that your items will arrive just as they were picked up. Save time, money, and your back. Let Dolly take care of it.”

- 19 Dolly's Pinterest Page states "A helper with a truck will come move your stuff."
- 20 Dolly's Instagram page posts a newspaper article discussing the company. The article summarizes the company's service and cites Dolly's CEO as explaining Dolly as "giv[ing] customers a way of moving items without the awkwardness of asking a friend, or the inconvenience of renting trucks or using a moving company."
- 21 Dolly purchased space on a billboard on 15th Avenue West in Seattle on or around July 28, 2016. The billboard displayed the words "Muck Foving.com."
- 22 The website listed on Dolly's billboard (www.muckfoving.com) hosts a video advertising Dolly's services. The video states that Dolly "will take your stuff from wherever it's at to wherever it needs to be whenever you want it to be there." The page finishes with the words "Muck renting a truck. Muck exorbitant delivery fees. Muck asking a friend. Next time, book a Dolly" placed over a link to Dolly's website.
- 23 Dolly's Yelp page advertises the company as "Movers, Couriers & Delivery Services, [&] Junk Removal & Hauling."

III. JURISDICTION

- 24 The Commission has jurisdiction over the subject matter of this complaint under RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.160, RCW 81.04.460, RCW 81.04.510, chapter 81.77 RCW, chapter 81.80 RCW, and chapter 34.05 RCW.

IV. APPLICABLE LAWS AND REGULATIONS

- 25 Household goods carriers, freight carriers, and solid waste collection companies are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company, RCW 81.04.010, and therefore subject to Commission regulation. *See* RCW 80.01.040(2); RCW 81.01.010.
- 26 Under state law, the definition of "household goods carrier" includes a person who "advertises, solicits, offers, or enters into an agreement to transport household goods" as defined by the Commission within the state of Washington. RCW 81.80.010(5).
- 27 The term "person" encompasses firms as well as individuals. RCW 81.04.010(6). Specifically included in this term are companies, corporations, and partnerships. WAC 480-15-020.

- 28 The Commission defines household goods as “the personal effects and property used, or to be used, in a residence” in the context of transportation from one residence to another, or to a storage facility. WAC 480-15-020.
- 29 No person may engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. RCW 81.80.075(1).
- 30 Any person who engages in business as a household goods carrier in the state of Washington without the required permit is subject to a penalty of up to five thousand dollars per violation. RCW 81.80.075(4). If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. RCW 81.80.075(4)(a).
- 31 When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier’s willingness to comply with the requirements of RCW 81.80.070 and the Commission’s household goods carrier rules; and (2) the carrier’s history of compliance with the provisions of RCW 81.80.075. RCW 81.80.075(4)(b).
- 32 In the context of motor freight carriers, the term “[c]ommon carrier” means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules.” RCW 81.80.010(1).
- 33 The term “person” includes corporations. RCW 1.16.080(1); *see* RCW 81.04.010(6).
- 34 No motor freight common carrier may operate for the transportation of property for compensation in Washington without first obtaining a permit from the Commission. RCW 81.80.070(1).
- 35 No person may display on any building, vehicle, billboard, or in any manner, any advertisement of, or by circular, letter, newspaper, magazine, poster, card, or telephone directory, advertise the transportation of property for compensation without first having obtained a permit authorizing him or her to operate as a common carrier. RCW 81.80.355.
- 36 The general penalty provisions in chapter 81.04 RCW apply to violations of the provisions of chapter 81.80 RCW unless those provisions specify otherwise. RCW 81.80.360. Chapter 81.04 RCW prescribes penalties of up to \$1,000 for each and every violation of the public service laws by a public service company. RCW 81.04.380.

- 37 Under state law, a “[s]olid waste collection company” means every person . . . owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’” RCW 81.77.010.
- 38 The term “common carrier,” in the context of solid waste collection, means “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.” RCW 81.77.010(3).
- 39 The term “person” includes corporations. WAC 480-70-041.
- 40 “Solid waste” includes “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, [and] abandoned vehicles;” solid waste does not include recyclable materials “except for source separated recyclable materials collected from residences.” RCW 70.95.030(22); RCW 81.77.010(9).
- 41 “Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide” such services. RCW 81.77.040.
- 42 No solid waste collection company may operate for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission. RCW 81.77.040.
- 43 Any solid waste collection company operating for the hauling of solid waste for compensation without the necessary permit is subject to a penalty of up to \$1,000 per violation. RCW 81.04.380. Where alleged violation concerns advertising, each advertisement reproduced, broadcast, or displayed by a particular medium constitutes a separate violation. RCW 81.77.090(2).
- 44 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

V. COMPLAINT

- 45 The Commission, through its Staff, realleges the allegations contained in paragraphs 8 through 23 above.
- 46 The Commission alleges that Dolly violated RCW 81.80.075 a total of 11 times by engaging in business as a household goods carrier without first having obtained a permit from the Commission. Specifically, Dolly engaged in business as a household goods carrier 11 times by advertising to do so on its company website, billboards, Facebook, Instagram, Twitter, LinkedIn, iTunes, Craigslist, YouTube, Pinterest, Yelp, and newspaper articles.
- 47 Dolly violated RCW 81.80.355 a total of 11 times by advertising for the transportation of property within this state without first having obtained from the Commission a common carrier permit. Specifically, Dolly advertised for the transport of property for compensation on its company website, billboards, Facebook, Instagram, Twitter, LinkedIn, iTunes, Craigslist, YouTube, Pinterest, Yelp, and newspaper articles.
- 48 Dolly violated RCW 81.77.040 by operating for the hauling of solid waste without first having obtained from the Commission a certificate of public convenience and necessity. Specifically, Dolly operated for the hauling of solid waste a total of three times by advertising to do so on its website, YouTube, and Yelp.

VI. REQUEST FOR RELIEF

- 49 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380 and RCW 81.80.075, assess penalties of up to \$5,000 against Dolly for each violation of RCW 81.80.075.
- 50 Staff also requests that the Commission, pursuant to its authority under RCW 81.04.380 and RCW 81.80.360, assess penalties of up to \$1,000 against Dolly for each violation of RCW 81.80.355.
- 51 In addition, Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 against Dolly for each violation of RCW 81.77.040 and RCW 81.77.090(2).
- 52 Staff further requests that the Commission order Dolly to cease and desist activities subject to regulation under Title 81 RCW until it has obtained the necessary authority from the Commission.
- 53 Finally, Staff requests that the Commission order such other or additional relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

54 Based on a review of the Staff Investigation Report documenting the violations alleged above, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

VIII. ORDER AND NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

55 The Commission has jurisdiction to institute a special proceeding to determine whether Dolly is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.04.020; RCW 81.04.380, RCW 81.77.010, RCW 81.77.040, RCW 81.77.090, RCW 81.80.010, RCW 81.80.070, RCW 81.80.075, RCW 81.80.355, and RCW 81.80.360. This matter also involves the administrative rules set forth in chapters 480-07, 480-14, 480-15, and 480-70 WAC.

56 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate for resolving the issues in this docket.

57 **THE COMMISSION ORDERS Dolly to appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9:30 a.m. on March 13, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to give testimony and evidence under oath as to its operations. The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Dolly as provided by RCW 81.04.510.**

58 **THE COMMISSION GIVES NOTICE THAT it will conduct a brief adjudicative proceeding concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9:30 a.m. on March 13, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

59 Administrative law judge Dennis J. Moss from the Commission's Administrative Law Division will preside at the brief adjudicative proceeding.

60 **THE COMMISSION GIVES NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING OR ANY OTHER STAGE OF THIS PROCEEDING MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

61 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that the Commission may appoint a qualified interpreter at no cost to the party or witness.

62 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Dolly, Inc.
Michael Howell, Chief Executive Officer
901 5th Avenue, Suite 600
Seattle, WA 98164

Representative: Donna Barnett
Perkins Coie LLP
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004
(425) 635-1400

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jeff Roberson
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1188

DATED at Olympia, Washington, and effective January 10, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge
Administrative Law Division

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1116

NOTICE

PLEASE NOTE: Hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Steven King, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION.)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (_____) _____

Attachment B

Service Date: April 9, 2018

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOCKET TV-171212

ORDER 02 (CORRECTED)

DOLLY, INC.

INITIAL ORDER CLASSIFYING
RESPONDENT AS A HOUSEHOLD
GOODS CARRIER; ORDERING
RESPONDENT TO CEASE AND
DESIST; IMPOSING AND SUSPENDING
PENALTIES ON CONDITION OF
FUTURE COMPLIANCE

BACKGROUND

Synopsis. *This is an Administrative Law Judge’s Initial Order that is not effective unless approved or allowed to become effective as described in the notice at the end of this Order. This Initial Order is based upon a record developed during a Washington Utilities and Transportation Commission (Commission) investigation and during a Brief Adjudicative Proceeding held in accordance with RCW 34.05.482-94 and WAC 480-07-610. If this Initial Order becomes final, Dolly, Inc. (Dolly or Company) will be classified as a household goods carrier, as defined by RCW 81.80.010(5), and required to permanently cease and desist from operating as a household goods carrier unless and until the Company obtains a permit from the Commission. Dolly also will be found to have operated as a common carrier of general commodities (a/k/a motor freight common carrier) as defined in RCW 81.80.010(1) and WAC 480-14-040(4) having undertaken “to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules.” No common carrier of general commodities may operate for the transportation of property for compensation in Washington without first obtaining a permit from the Commission. RCW 81.80.070(1). If this Initial Order becomes final, Dolly will be required to permanently cease and desist from operating as a motor freight common carrier unless the Company first obtains a permit from the Commission. Dolly also will be found to have operated as a solid waste collection company as defined in RCW 81.77.010 and .040 without having obtained from the Commission a certificate of public convenience and necessity as required under RCW*

81.77.090(2). If this Initial Order becomes final, Dolly will be required to permanently cease and desist from operating as a solid waste collection company unless and until the Company obtains from the Commission a certificate of public convenience and necessity as required under RCW 81.77.090(2).

Finally, Dolly will be assessed a financial penalty in the amount of \$69,000 for 25 violations of Title 81 RCW. A \$34,500 portion of the penalty will be suspended for a period of two years from the date of this order, then waived without further action by the Commission, subject to the condition that Dolly refrains from further household goods carrier operations, refrains from further motor freight common carrier operations, and refrains from hauling solid waste for compensation without first obtaining the required permit, or permits, from the Commission.

MEMORANDUM

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding under RCW 81.04.510 to determine if Dolly has engaged, and continues to engage, in business as a common carrier for transportation of household goods, for transportation of property other than household goods, or for hauling solid waste for compensation within the state of Washington without possessing the permits or certificate of public convenience and necessity required for such operations. RCW 81.04.510 provides that: “whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission.”
- 2 The Commission’s related Complaint against Dolly, brought by Commission regulatory staff (Commission Staff or Staff) under RCW 81.04.110, is based in significant part on Dolly’s advertising offering regulated transportation services without the necessary authority from the Commission.
- 3 **Procedural History.** On January 18, 2018, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Brief Adjudicative Proceeding, initiating this docket on its own motion. The Order Instituting Special Proceeding alleges that Dolly should be classified as a “household goods carrier” under RCW 81.80.010(5) because it has advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington, despite its failure to seek and obtain a household goods carrier permit from the Commission. In addition, the Order alleges that Dolly has held itself out via advertising as a motor freight common carrier for the transportation of property other than household goods, offering to transport such goods for compensation, by motor vehicle, within the state of Washington, despite its failure to seek and obtain a common carrier permit from the Commission.¹ Finally, Order 01 alleges that Dolly has operated as a solid waste collection company by advertising for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission.²

¹ See RCW 81.80.070.

² See RCW 81.77.040.

4 The Complaint alleges that Dolly:

- Violated RCW 81.80.010(5) at least 11 times since February 2015 by advertising, soliciting, offering, or entering into an agreement, to transport household goods in Washington for compensation without the necessary permit required for such operations;
- Violated RCW 81.80.355 a total of 11 times by advertising for the transportation of property within this state for compensation without first having obtained from the Commission a common carrier permit; and
- Violated RCW 81.77.040 by advertising for the hauling of solid waste without first having obtained from the Commission a certificate of public convenience and necessity.

The Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the Company on January 18, 2018, commanding Dolly to appear before the Commission at a special proceeding scheduled to convene at 9:30 a.m. on March 13, 2018, in the Commission's offices at 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and to bring the documents specified in the *Subpoenas*.

5 On February 22, 2018, Dolly filed its Answer and Affirmative Defenses.

6 **Hearing.** On March 13, 2018, the Commission convened a Brief Adjudicative Proceeding hearing in Olympia, Washington, before Administrative Law Judge Dennis J. Moss. Responding to inquiry from the presiding officer, both parties declined the opportunity to file a brief or to argue orally.³

7 **Appearances.** Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission Staff.⁴ Armika R. Bryant, Attorney for Dolly, Inc., Seattle, Washington, represents the Company.

³ TR. 98:5-21.

⁴ In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

DISCUSSION

Applicable Law

8 RCW 81.80.010(5) defines “household goods carrier” as

[A] person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.

RCW 81.80.075 prohibits household goods carriers from operating for compensation in Washington without first obtaining the required permit from the Commission. Upon proof of unauthorized operations, RCW 81.04.510 authorizes and requires the Commission to order the unpermitted company to cease and desist its activities.⁵ Additionally, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by a company that violates any law, or any order or rule of the Commission.

⁵ RCW 81.04.510 provides:

Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him or her or it books, records, accounts, and other memoranda, and give testimony under oath as to his or her or its operations or acts, and the burden shall rest upon such person or corporation of proving that his or her or its operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this title. *In the event the operations or acts are found to be subject to the provisions of this title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.* (Emphasis added).

- 9 RCW 81.80.075(4) subjects persons who engage in business as a household goods carrier in the state of Washington without the required permit to a penalty of up to \$5,000 for each violation. In deciding the penalty amount to be imposed per violation, RCW 81.80.075(4)(b) requires the Commission to consider two factors: (a) willingness to comply with the provisions of RCW 81.80.070 and the rules governing household goods carriers contained in WAC 480-15 and (b) compliance history.
- 10 RCW 81.80.355 makes it unlawful for persons to advertise to transport property other than household goods for compensation in Washington as a common carrier without a permit from the Commission authorizing such transportation.⁶ RCW 81.80.360 makes applicable to such activity the penalty provisions in RCW 81.04.380 - .405.
- 11 RCW 81.77.040 makes it unlawful to haul solid waste in Washington for compensation without first obtaining from the Commission a certificate of public convenience and necessity. The statute provides that “[o]perating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.” Violations of RCW Chapter 81.77 are gross misdemeanors and are subject to the penalty provisions in RCW 81.04.380 - .405.

Facts and Analysis

- 12 Staff became aware of Dolly’s operations in March 2015 after receiving information concerning the Company from one or more permitted household goods carriers operating in Washington and upon reviewing various publications that included articles describing the Company’s operations.⁷ On March 20, 2015, staff sent Dolly a letter notifying it that the Commission had received information about the Company’s operations and had reviewed the Company’s website, getdolly.com.⁸ The letter informed Dolly that the Commission regulates the moving of household goods items and that only permitted household goods carriers may move these items for compensation. The letter also explained that any person found operating or advertising as a household goods carrier without the required commission-issued permit is subject to a penalty of \$5,000 per violation.

⁶ See RCW 81.80.010(1), (3), and (6).

⁷ Investigation Report, Dolly, Inc., December 2017, at 5. TR. 12:19-13:2.

⁸ Exh. SP-1.

- 13 Dolly's web pages include its "Terms of Service."⁹ Customers who download Dolly's mobile application or otherwise access or use the Dolly Internet-based platform "agree to be bound by all of the terms" set forth in the Dolly Terms of Service.¹⁰ Customers are not required to enter, nor is there evidence that they do, in fact, enter, into a separate agreement with any household goods carrier Dolly may have engaged to conduct the physical move of the customer's household goods. Dolly relies on a "network of Helpers" who perform "services" for Dolly's customers including "loading, unloading, moving, hauling, packing, lifting, assembly or disassembly" of the customers' specified "items."¹¹ In other words, Dolly, using its Helpers, agrees with customers who use the Dolly platform to perform all the functions more typically carried out by traditional moving companies permitted by the Commission. Customers pay Dolly directly, using a credit card.¹²
- 14 Dolly does "not represent or warrant that any Helper will meet [the customer's] expectations or instructions in performing any Services." Dolly's Terms of Service also provide that any dispute regarding performance "is between [the customer] and the applicable Helper." Dolly states it is "not responsible for the replacement or repair of any ... personal property that may be damaged by a Helper while performing the Services" that Dolly offers.¹³ Dolly's Terms of Service "to the extent not prohibited by law" disavow any liability to the customers for loss of their property or "other damages or losses." The Terms also require customers to give up any right they may have to litigate, and instead require mediation and then arbitration of any disputes with Dolly, and limit the manner in which customers can seek relief from Dolly.
- 15 Dolly's website identifies the Company's "Most Common" services as "Mini and Small Moves," "Apartment Moves," and "Craigslist and Offerup Pick-up and Delivery."¹⁴ According to the Company's website, other services offered by Dolly include "Retail Store Delivery," "Storage Moves," and "Junk Removal."¹⁵ The website states that "Dolly

⁹ Exh. SP-6.

¹⁰ *Id.*, page 1.

¹¹ *Id.*, page 2.

¹² *Id.*

¹³ *Id.*, page 5.

¹⁴ Exh. SP-7 at 1. *See also* TR. 31:12-16.

¹⁵ Exh. SP-7 at 2. *See also* TR. 31:17-32:10.

is your go-to source for finding local moving and delivery help” and “is a fast, easy, and affordable way to get help moving furniture between apartments, pick up that exercise gear on Craigslist or to get stuff home from stores like Lowe’s, Crate & Barrel, and IKEA.”¹⁶

- 16 Exhibits SP-8 through SP-17 show additional advertisements of moving services on a billboard near Seattle, and on Facebook, Twitter, LinkedIn, iTunes, Craigslist, YouTube, Pinterest, and Instagram, and a Yelp review in the categories of “Movers, Couriers & Delivery Services, Junk Removal & Hauling.” The Yelp page is “claimed” by Dolly, meaning Dolly can interact with its customers, or anyone else, who posts a review.¹⁷
- 17 Dolly’s witness, Kevin Shawver, sponsored additional exhibits showing relatively current versions of the Company’s website and its advertising on LinkedIn, iTunes, Facebook, Twitter, YouTube, Pinterest, Instagram, and Yelp.¹⁸ These confirm Staff’s evidence that Dolly holds itself out as a household goods mover, a motor freight common carrier, and a hauler of solid waste. For example, Exhibit KS-3 includes in its description of Dolly’s “Moving Services We Provide” as including “Small Apartment Moves,” “Retail Store Delivery,” and “Junk Removal,” including “trash removal and responsible disposal.” In other words, Dolly advertises household goods moves, transportation of property other than household goods, and solid waste pick-up, hauling, and disposal. Additional language in the same exhibit states that Dolly has “over 2,000 Helpers who are ready to help you with your apartment move, IKEA delivery, furniture delivery, furniture donation, dump run, junk removal, storage unit move, mattress removal, office move, and everything in between.”
- 18 Considering the evidence discussed above, none of which is disputed,¹⁹ Dolly unquestionably meets the statutory definitions of “household goods carrier,” “common carrier,” and “solid waste hauler” because it:
- Advertises, solicits, and offers on its website and social media to transport for compensation, by motor carrier, household goods in the state of Washington.

¹⁶ Exh. SP-7 at 5.

¹⁷ Exh. SP-17.

¹⁸ See Exhs. KS-1-9.

¹⁹ Dolly denies the operative allegations in Staff’s Complaint, but as discussed here offered no substantive evidence disputing the allegation. To the contrary, as discussed here, the evidence Dolly offered serves to support, not refute, the Complaint’s allegations.

- Enters into agreements to transport household goods for compensation in the state of Washington as indicated in its Terms of Service.
- 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.
- Advertises, solicits, and offers on its website and social media, and enters into agreements to transport solid waste for compensation.

19 Dolly does not have, nor has it applied for, authority to conduct itself as a household goods carrier in Washington. Dolly’s activities accordingly violate RCW 81.80.010(5) and 81.80.075. Dolly does not have, nor has it applied for, authority to conduct itself as a common carrier of property other than household goods in Washington. Its advertisements for such services accordingly violate RCW 81.80.355. Dolly does not have, nor has it applied for, authority to conduct itself as a hauler of solid waste for compensation in Washington. Its advertisements for such services accordingly violate RCW 81.77.040.

Affirmative Defenses

20 Dolly alleged in its Answer that “staff’s investigation report contains extensive factual errors,”²⁰ but the Company made no specific allegations of error and offered no evidence showing any factual errors in the report. Nor did the Company present or develop through testimony at hearing any evidence that refutes the factual allegations included in Staff’s Investigation Report, the testimony of its witnesses, or the documentary evidence the Commission received during the hearing. Indeed, the record evidence, including the evidence Dolly presented, supports fully the facts stated in Staff’s Investigation Report.

21 Dolly’s additional affirmative defenses likewise are unsupported by any evidence or argument in the record. Indeed, the Company’s first four affirmative defenses—failure to state a claim upon which relief can be granted; full compliance with Washington Law; no violation of any Commission statute or rule; overbreadth in the application of Commission statutes and rules—are belied by the evidence, as discussed in this Order.

22 Dolly’s final “affirmative defense” was that “Commission Staff, after a thorough review of Dolly operations, informed Dolly that it would not approve its application for a

²⁰ Dolly Answer and Affirmative Defenses at 6.

household goods carrier permit.”²¹ Even if this was true, it is simply irrelevant to any issue in this proceeding. Moreover, Ms. Paul testified that Staff “didn’t tell Dolly that we would deny their application” and gave technical assistance in a meeting with the Company including guidance on changes in the Company’s business model that would help if it did apply.²² In fact, Dolly never submitted an application to the Commission. Even if the Company had applied, and was refused, this would not relieve it from being classified as a company doing business that requires a permit or certificate, nor would it relieve the Company from liability for penalties imposed in connection with facts and events that occurred in the past.

Penalties

- 23 Staff recommends that the Commission assess Dolly a penalty of up to \$5,000 for each of the 11 advertisements by the Company offering to transport household goods in violation of RCW 81.80.010(5) and RCW 81.80.075, as evidenced in the record of this proceeding. In addition, Staff recommends that the Commission assess Dolly a penalty of up to \$1,000 for each of the 11 separate violations of RCW 81.80.355. Finally, Staff recommends that the Commission assess Dolly a penalty of up to \$1,000 for each of the three separate violations of RCW 81.77.040. Staff thus recommends a total penalty of up to \$69,000 for all of the alleged violations.
- 24 The Commission recognizes 13 factors that inform its decisions on penalties in individual cases. Eleven of these factors are identified in a policy statement the Commission issued on January 7, 2013, in Docket A-120061. The remaining two factors are identified in statute.²³
- 25 The two statutory factors are stated in RCW 81.80.075, as follows:
- The carrier’s willingness to comply with the requirements of RCW 81.80.070 and the Commission’s administrative rules governing household goods carriers.
 - The carrier’s history of compliance with chapter 81.80 RCW.

²¹ *Id.*

²² TR. 26:1-9.

²³ RCW 81.80.075

- 26 Dolly has not shown an ability or willingness to comply with applicable law and has a three-year long history of non-compliance with the provisions of Title 81 RCW.
- 27 The facts demonstrate that Dolly has been operating and apparently continues to operate in Washington in defiance of applicable law. There is no evidence showing any cessation in Dolly's operations since the Company initially was informed on March 20, 2015, that it was at risk of incurring penalties for conducting operations not in compliance with various statutes and rules.
- 28 It appears from the record that Dolly's business model was never designed to conform to existing laws and regulations governing household goods movers in Washington. Rather, Dolly sought changes to the Commission's rules governing the household goods moving business to conform to Dolly's conception of what it should be, rather than to conform its operations to meet existing laws and regulations the legislature and the Commission have determined are appropriate to protect consumers.²⁴ Following Governor Inslee's affirmance of the Commission's denial of Dolly's rulemaking petition on January 12, 2018,²⁵ the Commission provided Dolly with technical assistance on writing legislation that could support changes in the household goods rules.²⁶
- 29 Our brief analysis of Dolly vis-a-vis the factors affecting penalties that the Commission identifies in its policy statement follows:
- 30 *How serious or harmful the violation is to the public.* There is no evidence in the record to substantiate significant actual harm arising from Dolly's operations. However, Dolly's business operations deny consumers in Washington the protections afforded by RCW Chapter 81.80 and the Commission's rules in WAC Chapter 480-15. Dolly's customers are denied the protections provided by the Commission's rules concerning public liability

²⁴ See TR. 21:7-25:2.

²⁵ See Exh. SP-5.

²⁶ TR.25:3-13. We note in this connection that the Commission did not oppose, and provided testimony concerning, House Bill 2604 and Substitute Senate Bill 6234 during the 2018 session of the Washington legislature. Had this legislation passed into law the Commission's statutory authority over household goods carriers and other common carriers would have changed. These bills did not become law. However, in its Supplemental Operating Budget, ESSB 6032, the legislature directed "the Commission to convene a task force to make recommendations and report to the legislature regarding the most effective method of regulation of digital application-based micro-movers and the small goods movers that utilize their digital application. The report is due to the legislature by December 15, 2018." ESSB 6032, Sec. 141(6).

and property damage insurance (WAC 480-15-530), cargo insurance (WAC 480-15-550), criminal background checks of drivers and helpers (WAC 480-15-555), equipment safety requirements (WAC 480-15-560), and driver safety requirements (WAC 480-15-570).

31 *Whether the violation is intentional.* Dolly was informed by Staff on a number of occasions that it was operating as a household goods carrier without the required permit. The violations thus were intentional.

32 *Whether the Company self-reported the violation.* Dolly did not report any violation under RCW Chapter 81.80, RCW Chapter 81.77, or the Commission's rules.

33 *Whether the Company was cooperative and responsive.* The evidence is mixed, but overall it supports a finding that the Company was reasonably cooperative in terms of interacting with the Commission.

34 *Whether the Company promptly corrected the violations and remedied the impacts.* The short answer is "no." Dolly continues to operate in violation of applicable statutes and rules.

35 *The number of violations.* In addition to the 25 violations shown by the evidence in this case, evidence of the growth in Dolly's revenues over the past three years suggests many more violations have occurred. The Company's revenues increased from \$1,058,465.00 in 2015 to \$4,186,559.99 for the months January – August, 2017.²⁷

36 *The number of customers affected.* Again, this is unclear but the number appears to be substantial considering evidence of the Company's revenues in Washington.

37 *The likelihood of recurrence.* Dolly's business is ongoing, and the violations will likely continue and recur.

38 *The Company's past performance regarding compliance, violations, and penalties.* The Company received effective notification that it should cease and desist operating as a household goods company and has had contacts with Staff informing the Company it is operating as a household goods mover. The Company has not changed its business practices or obtained a permit to legally operate as a household goods carrier, as a transporter of property other than household goods, or as a solid waste hauler in the state of Washington. The Company is charged with knowledge of the law and plainly has continuously operated as a household goods carrier by advertising, soliciting, offering, or

²⁷ Investigation Report, Dolly, Inc., December 2017, at 6.

entering into agreements to transport household goods without the necessary permit required for such operations.

39 *The company's existing compliance program.* There is no evidence of any compliance program.

40 *The size of the company.* Dolly is a relatively small company with few employees, but it has significant and growing revenues.

41 The Commission does not wish to stifle innovation and positive change in any industry it regulates.²⁸ The avenues for affecting such change, however, do not include Commission acquiescence in continuing violations of Washington statutes and Commission rules. The evidence shows that Dolly's efforts to participate in the Washington household goods moving industry following the Company's vision of how the industry should operate and be regulated has resulted in numerous violations of the laws and rules governing how the industry currently is required by law to operate. It is appropriate that the Commission assess penalties for this unlawful behavior and that the Commission require the Company to cease and desist from such behavior, including advertising, soliciting, offering, or entering into agreements to transport household goods unless and until it secures from the Commission the necessary permit for such activities and brings its operations fully into compliance with all applicable laws.

42 All things considered, the Commission determines that it should impose a penalty of \$69,000 reflecting a penalty assessment of \$5,000 for each of 11 violations of the prohibition against entering into agreements to transport household goods in Washington without the required permit, and a penalty assessment of \$1,000 for each of eleven violations of the prohibition against advertising, soliciting, or offering to transport freight other than household goods and three violations of the same prohibition in connection with hauling solid waste in Washington without the required permit or certificate. The Commission concludes that it should, and is required by statute, to order Dolly to cease and desist from these activities.²⁹

43 Viewing compliance as its paramount interest in proceedings such as this one, the Commission will suspend one half, or \$34,500, of the penalty amount conditioned on

²⁸ See *supra*. n.26.

²⁹ See *supra* n.5.

Dolly ceasing and desisting fully from activities such as described in this order that define it under the Commission's governing statutes as a household goods carrier, a common carrier transporting property other than household goods (*i.e.*, a motor freight carrier), and a solid waste hauler. This means, among other things, that Dolly must immediately state clearly 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 transporter of property other than household goods, or as a solid waste hauler. The Commission will investigate whether the Company complies with this condition on, or shortly after, 10 days following the date this Initial Order becomes final by operation of law or following affirmation by the Commission on review. Any failure to comply with this condition at that time, or subsequently within a period of two years, will be duly noticed by the Commission and the suspended penalty amount of \$34,500 will be due and payable within five days following the date of Commission notice without further action by the Commission.

44 The penalty amount of \$34,500 not suspended by this Order is due and payable to the Commission within 10 days following the date this Initial Order becomes final by operation of law or following affirmation by the Commission on review.

FINDINGS AND CONCLUSIONS

- 45 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting household goods, property other than household goods, and solid waste for compensation over public roads in Washington.
- 46 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Dolly, Inc.
- 47 (3) It is unlawful, under RCW 81.80.075(1), to operate as a household goods carrier in Washington without first obtaining the required permit from the Commission. Any person who engages in business as a household goods carrier without the required permit is subject to a penalty of up to five thousand dollars per violation under RCW 81.80.75(4).

- 48 (4) Since March 2015, using at least 11 separate platforms, Dolly, Inc. continuously has advertised, solicited, or offered to transport household goods, for compensation, by motor vehicle, within the state of Washington, without first having obtained a household goods carrier permit from the Commission, thus violating RCW 81.80.075.
- 49 (5) Dolly, Inc. is a “household goods carrier” as that term is defined in RCW 81.80.010(5) because it has continuously since 2015 advertised, solicited, offered, or entered into agreements to transport household goods. RCW 81.80.075(1) provides that “No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.”
- 50 (6) Dolly, Inc. has neither applied for nor obtained a permit from the Commission authorizing it to conduct business as a household goods carrier.
- 51 (7) Dolly violated RCW 81.80.75(1) at least 11 times since 2015.
- 52 (8) RCW 81.04.510 authorizes and requires the Commission to order an unpermitted household goods carrier such as Dolly, Inc. to cease and desist immediately its activities. Any person who engages in business as a household goods carrier in violation of a cease and desist order issued by the Commission under RCW 81.04.510 is subject to a penalty of up to ten thousand dollars per violation under RCW 81.80.75(5).
- 53 (9) Since March 2015, using at least 11 separate platforms, Dolly, Inc. continuously has advertised, solicited, or offered to transport property other than household goods, for compensation, by motor vehicle, within the state of Washington, without first having obtained a household goods carrier permit from the Commission, thus violating RCW 81.80.355 at least 11 times. Dolly is subject to a penalty of up to one thousand dollars per violation. The Commission is authorized and required by RCW 81.04.510 to order Dolly, Inc. to cease and desist immediately from these activities.
- 54 (10) Since March 2015, using at least three separate platforms, Dolly, Inc. continuously has advertised, solicited, or offered to haul solid waste, for compensation, by motor vehicle, within the state of Washington, without first having obtained a certificate of public convenience and necessity from the Commission, thus violating RCW 81.77.040 at least three times. Dolly is subject to a penalty of up to one thousand dollars per violation. The Commission is

authorized and required by RCW 81.04.510 to order Dolly, Inc. to cease and desist immediately from these activities.

ORDER

THE COMMISSION ORDERS:

- 53 (1) Dolly, Inc. is classified as a household goods carrier within the state of Washington, a common carrier transporting property other than household goods in the state of Washington, and a solid waste company offering to pick up, transport, and dispose of solid waste in Washington.
- 54 (2) Dolly, Inc. is required immediately to cease and desist operations as a household goods carrier within the state of Washington, a common carrier transporting property other than household goods in the state of Washington, and a solid waste company offering to pick up, transport, and dispose of solid waste in Washington, and the Company must refrain from all such operations unless and until it first obtains a permit or certificate from the Commission.
- 55 (3) Dolly, Inc. is assessed a penalty of \$69,000, as discussed in the body of this Order. A \$34,500 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter without further action by the Commission, provided Dolly, Inc. timely pays the portion of the penalty that is not suspended and refrains permanently from further operations as a household goods carrier, a common carrier transporting property other than household goods, and a solid waste hauler in the state of Washington without first obtaining the required permits and certificate from the Commission. The remainder of the penalty, \$34,500, is due and payable within 10 days following the date on which this Initial Order becomes final by operation of law, or otherwise.
- 56 (4) Dolly Inc. is required to state clearly 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. The Commission will investigate whether the Company complies with this condition on, or shortly after, 10 calendar days following the date this Initial Order becomes final by operation of law or following affirmation

by the Commission on review. Any failure to comply with this condition will be duly noticed by the Commission and the suspended penalty amount of \$34,500 will be due and payable within five days following the date of Commission notice, without further action by the Commission being required.

- 57 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective ~~March 29, 2018~~ April 9, 2018.

Dennis J. Moss
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).

Attachment C

Service Date: May 18, 2018

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOLLY, INC.

DOCKET TV-171212

ORDER 04

FINAL ORDER DENYING PETITION
FOR ADMINISTRATIVE REVIEW OF
CORRECTED ORDER 02

BACKGROUND

- 1 On January 18, 2018, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing (Order 01) initiating this docket on its own motion. Order 01 alleged that Dolly, Inc. (Dolly) should be classified as a household goods carrier under RCW 81.80.010(5) because it has advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington. Order 01 further alleges that Dolly has advertised as a motor freight carrier for the transportation of property other than household goods without first obtaining a common carrier permit in violation of RCW 81.80.070, and that Dolly has operated as a solid waste collection company by advertising for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity in violation of RCW 81.77.040.
- 2 On March 13, 2018, the Commission convened a brief adjudicative proceeding in Olympia, Washington before Administrative Law Judge (ALJ) Dennis J. Moss.
- 3 On March 29, 2018, the Commission entered Order 02 in this docket, its Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance. Initial Order 02 found that Dolly: 1) engaged in business as a household goods carrier 11 times by advertising moving services on its Company website, billboards, Facebook, Instagram, Twitter, LinkedIn, iTunes, Craigslist, YouTube, Pinterest, Yelp, and in other newspaper articles; 2) advertised the transportation of property for compensation using those same mediums; and 3) operated as a solid waste collection company on three occasions by advertising solid waste hauling services on its website. Initial Order 02

required Dolly to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company; assessed a \$69,000 penalty for violations of state laws; and required Dolly to remove its Internet presence.

4 On April 2, 2018, Commission staff (Staff) filed a Petition for Review seeking to correct Order paragraph 4 in Order 02, which required Dolly “to remove immediately its web-based application from the Internet and its presence from Facebook, Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its services known.” Staff contended this requirement was overbroad and could be construed as violating the extraterritoriality doctrine of the dormant commerce clause of the United States Constitution because it impacted Dolly’s ability to conduct business in other states.

5 The presiding ALJ treated the filing as a motion to correct an obvious error pursuant to WAC 480-07-875(2).¹ On April 9, 2018, the Commission issued a Notice of Correction of Initial Order (Notice) and served Corrected Order 02, which amends paragraph 43 and Order paragraph 4 of the original Order 02.² The Notice confirmed that the period during which parties could file petitions for, or the Commission could initiate, administrative review of the initial order would run from the date that Corrected Order 02 was served on April 9, 2018.

6 On April 12, 2018, Dolly filed an Answer to Staff’s Petition for Administrative Review. Dolly expressed support for Staff’s Petition, and raised additional arguments contesting Order 02.

7 On April 13, 2018, Staff filed a letter responding to Dolly’s Answer. Staff asserted that Dolly’s Answer, which requested the Commission to either rescind Order 02, stay its effectiveness, or modify the penalty, went well beyond the limits of a response to Staff’s Petition. In essence, Staff argued, Dolly filed its own petition for review. Staff requested

¹ WAC 480-07-395(4) provides that “[t]he Commission will liberally construe pleadings and motions with a view to effect justice among the parties.”

² In its Notice, the Commission explained that “Although Order 02 clearly is concerned with, and discusses exclusively, Dolly’s activities in the state of Washington, it is true that the quoted language from the order does not recognize that Dolly’s Internet presence is not limited to the state of Washington. Dolly, in fact, operates in states other than Washington and may rely on the same Internet presence and platforms in other states. Overlooking these facts is an obvious error in Order 02 that requires correction, as provided under WAC 480-07-875(2).”

the Commission notify the parties whether the Commission would accept a second petition for review from Dolly and how Staff should respond.

- 8 On April 13, 2018, by email to the parties, the Administrative Law Director provided the following clarification:

WAC 480-07-395(4) provides for liberal construction of pleadings and motions to effect justice among the parties. Corrected Order 02, entered on April 9, treated Staff's petition as a *motion* for correction of an obvious error under WAC 480-07-875 and not as a petition for review under WAC 480-07-825. Although unnecessary under the circumstances, the Commission considers Dolly's answer to be one supporting Staff's motion.

Staff's motion and Dolly's answer to that motion were fully resolved by the entry of Corrected Order 02 and require no further action in this proceeding. It is not necessary to rescind Order 02; it is effectively and completely replaced by Corrected Order 02. Please note that Corrected Order 02 differs substantively from the original order only to the extent corrected. Also note that Corrected Order 02 is the only effective initial order in this docket. Corrected Order 02 is subject to a petition for review within the time-frame allowed for such petitions following the service date of the order. Any petition for review filed with respect to Corrected Order 02 should address only the terms and requirements of Corrected Order 02.

- 9 On April 19, 2018, Dolly filed a Petition for Administrative Review (Petition).³ In its Petition, Dolly contends that Staff's Petition was improperly filed, that the Commission erred in construing Staff's Petition as motion to correct Initial Order 02, and that Corrected Order 02 improperly addressed and changed substantive legal rulings without identifying the clerical errors it corrected.⁴ Dolly further contends that Initial Order 02 is the only effective order in this docket. In the alternative, Dolly argues that Corrected

³ On April 20, 2018, Staff filed a Motion for a Continuance to Respond to Dolly's Petition for Review. On April 23, Dolly filed a Response Opposing Staff's Motion for Continuance. On April 24, the Commission entered Order 03, Granting Staff's Motion for Continuance.

⁴ The Commission's Notice explained that Corrected Order 02 includes several copy edits that correct scrivener's errors in the original order, but did not identify the errors individually. But for the need to correct the substantive error in Order 02, the Commission would not have elected to issue an errata to address the clerical errors, which were minor.

Order 02 violates numerous provisions of the United States Constitution. Dolly requests the Commission rescind Corrected Order 02 in its entirety.

10 On May 8, 2018, Staff filed an Answer to Dolly's Petition (Answer). Staff urges the Commission to affirm Corrected Order 02 because: 1) the record evidence supports a finding that Dolly enters into agreements to transport household goods, property, or solid waste, and also holds itself out as a carrier through advertisements; 2) the ALJ properly imposed a penalty for each of Dolly's advertisements; 3) Corrected Order 02 does not infringe on Dolly's constitutional rights; 4) the entry of Corrected Order 02 comported with the Commission's rules, and, in any event, did not prejudice Dolly.

DISCUSSION

11 We deny Dolly's Petition for Administrative Review. Corrected Order 02 appropriately resolves the disputed matters in this proceeding and imposes a reasonable penalty relative to the violations at issue. We adopt Corrected Order 02 as our own, as expanded by the discussion below.

12 As Staff notes in its Answer, Dolly's Petition presents two alternative requests for relief, alleging a total of 25 legal errors, in the following general categories:

- Classification of Dolly as a household goods carrier, a common carrier, and a solid waste collection company;
- Correction of Order 02;
- Constitutional challenges;
- Penalty calculation;
- The relationship between the Commission's classification proceeding and a legislative budget proviso.

13 We address each of Dolly's claims, by topic, in turn.

1. Classification of Dolly as Commission-regulated Carrier

14 We affirm the ALJ's finding that Dolly should be classified as a household goods carrier, a common carrier, and a solid waste collection company.

15 RCW 81.80.010(5) defines "household goods carrier" as "a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods."

- 16 Similarly, RCW 81.80.355 makes it unlawful for persons to advertise to transport property other than household goods for compensation in Washington as a common carrier without a permit from the Commission authorizing such transportation. In addition, RCW 81.77.040 makes it unlawful to operate for the hauling of solid waste in Washington for compensation — including advertising, soliciting, offering, or entering into an agreement to provide that service — without first obtaining from the Commission a certificate of public convenience and necessity.
- 17 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.
- 18 Based on this business model, Corrected Order 02 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 Dolly first argues that it does not provide regulated services because it does not own any moving trucks and does not employ the individuals who perform its moving services. We disagree. The Commission has addressed whether companies who engage third parties to perform regulated activities are subject to Commission jurisdiction several times in the context of both household goods and passenger transportation, and has consistently reached the same conclusion: such companies are subject to the Commission’s jurisdiction.⁵

⁵ In Docket TC-143691 *et al*, the Commission specifically addressed the use of independent contractors to provide regulated service. In that case, an auto transportation carrier, Shuttle Express, Inc. (Shuttle Express) entered into agreements with its customers to provide auto transportation service, then subcontracted that service to limousine operators. Shuttle Express

- 20 Most recently, in Dockets TV-170747 and TV-161308, we have classified as household goods carriers “persons alleged to be household goods movers subject to the Commission’s jurisdiction by virtue of their activities that typically involve the use of third party independent contractors to physically move a customer’s household goods from one location to another.”⁶ Like Dolly, those persons focused their operations on soliciting, offering, advertising, or entering into agreements to transport household goods rather than physically moving household goods using company employees and vehicles. In both of those dockets, we recognized that companies “need not physically transport goods to be classified as a household goods carrier.”⁷
- 21 The same is true of Dolly’s operations. Consumers contact Dolly to arrange transportation. Dolly then provides the consumer with a guaranteed price quote, and the consumer pays Dolly for services rendered. Dolly’s “terms of service” establish the rates, terms, and conditions under which the customer’s goods or solid waste will be transported. As Staff correctly observes, “the fact that Dolly then enters into a second agreement or subcontract to delegate its performance does not nullify the first agreement.”⁸ Dolly – not its Helpers – is the party ultimately responsible for complying with its customer agreements. Accordingly, Dolly’s “attempt to distinguish its activities from ‘conducting’ the move is a distinction without a legally significant difference.”⁹ The existence of a contractual relationship, regardless of who actually performs the service that Dolly agrees to provide, subjects Dolly to Commission regulation under RCW 81.80.075, RCW 81.80.070, and RCW 81.77.040.

collected payment from its customers, then remitted a portion thereof to the contracted driver. Shuttle Express unsuccessfully argued that the service was not subject to Commission regulation because it was provided in vehicles the company did not own, which were driven by drivers the company did not employ. Similarly, in the Commission’s final order in Docket TE-151667, a proceeding that classified Blessed Limousine, Inc. (Blessed Limousine) as a charter and excursion service carrier, we found that Blessed Limousine practice of subcontracting party bus services violated the public service laws.

⁶ *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Transit Systems, Inc. d/b/a Moves for Seniors*, Docket TV-170747, Final Order 04 ¶ 10 (March 21, 2018).

⁷ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Ghostruck, Inc.*, Docket TV-161308, Order 05 ¶ 13 (May 31, 2017).

⁸ Staff’s Answer ¶ 21.

⁹ *Ghostruck Inc.*, Order 05 ¶ 13.

- 22 Next, Dolly argues that its terms of service do not create a contractual agreement because those terms do not conform to RCW 19.36 or Washington’s statutory framework governing contract formation. We disagree. RCW 19.36 and Title 62A RCW do not apply to contracts for services.¹⁰ More to the point, public service laws forbid an “agreement.” We agree with Staff that Dolly and its customers unquestionably enter into agreements.
- 23 We also find unconvincing Dolly’s argument that the Commission is precluded from finding that the Company enters into agreements with its customers because Staff failed to produce written copies of any agreement. Staff correctly observes that the record contains sufficient circumstantial evidence that Dolly enters into such agreements. For instance, Dolly advertises that its services are available in Seattle, allows users to book a move in Seattle, and discloses its terms of service on its website. Moreover, Staff presented evidence that Dolly reported revenue for its operations in Washington. Overall, we find that the record amply demonstrates that Dolly enters into agreements with its customers to transport goods or solid waste.¹¹
- 24 Next, Dolly argues that it does not advertise regulated services. According to Dolly, it ensures that it “does not advertise that it performs regulated services” in Washington.¹² The record evidence shows, however, that Dolly advertises its services in a number of

¹⁰ RCW 19.36.010 is Washington’s Statute of Frauds, which requires certain contractual agreements be reduced to writing. The primary purpose of the Statute of Frauds is to provide reliable evidence of the existence and terms of a contract. (*See* Restat 2d of Contracts, § Scope (2nd 1981)). The remainder of Chapter 19.36 RCW deals exclusively with the scope and enforceability of credit agreements. To the extent that the Uniform Commercial Code (UCC) affects basic contract law, those provisions are contained in Article 2, which governs the sale of goods in Washington. “Goods generally include all things which are moveable at the time of identification to the contract for sale.” 25 David K. DeWolf *et al.*, *Washington Practice: Contract Law and Practice* §1:13, at 21. (2d ed. 2007).

¹¹ On September 25, 2017, Dolly filed a Petition to Amend Motor Carrier Rules or in the Alternative to Initiate Rulemaking in Docket TV-170999 that stated “Dolly is engaged in the business of arranging small goods transportation and labor services for customers in the state of Washington and in five other states,” and “while there are hundreds of providers of traditional moving services in the state of Washington, Dolly is currently the ONLY provider of on demand micro-moving.” It is disingenuous for Dolly to argue that there is insufficient evidence to support a finding that it enters into agreements to provide service in Washington when it has admitted in other proceedings that it has and does.

¹² Dolly Petition ¶ 30.

ways, including on its own website and on numerous social media platforms. Dolly's advertisements include the following language:

- “Request a truck and Helper with the tap of a button, then relax. We’ll keep the large items off the roof of your car, save you a trip to the chiropractor, and help make moving things – big and small – easy and fast.”¹³
- “Dolly – Truck and Muscle Any Time you Need it. Use our app to load, haul, and deliver just about anything, whenever you need it!”¹⁴
- “Dolly provides the truck in fact the labor to promptly and affordably move your stuff when you need it.”¹⁵
- “Dolly Helpers will remove and haul away your junk. Includes trash removal and responsible disposal.”¹⁶
- “Retail Store Delivery. Convenient, faster and often cheaper than traditional store delivery options.”¹⁷

25 We find that these statements amount to advertising to transport household goods, other property, and solid waste despite the existence of other statements describing Dolly's Helpers as “independent contractors.” In fact, none of Dolly's advertisements state directly that Dolly *does not* transport or haul items for its customers. Rather, the above-quoted language could lead a reasonable consumer to believe that Dolly owns trucks and employs its Helpers. As such, Corrected Order 02 properly concluded that Dolly holds itself out as a household goods carrier, common carrier, and solid waste collection company in its advertisements.

26 Dolly contends that its business model is unique, and that its operations fall outside the Commission's current statutory authority. We disagree. So long as the Commission is charged by the legislature with regulating companies that solicit, offer, advertise, and enter into agreements to transport goods or haul solid waste, companies who subcontract the services they agree to provide have two choices: obtain a permit from the

¹³ Paul, Exh. No. SP-9.

¹⁴ Paul, Exh. No. SP-10.

¹⁵ Paul, Exh. No. SP-13.

¹⁶ Paul, Exh. No. SP-7.

¹⁷ *Id.*

Commission, or cease and desist operations in Washington. As we noted in Docket TV-170999, this presents a unique problem for Dolly because both Dolly and its Helpers meet the statutory definition of a household good carrier. As such, Dolly and each of its Helpers must be permitted by the Commission.

27 Although we are cognizant of the challenges this presents, we are, first and foremost, obligated to regulate in the public interest. We reaffirm our position that, “although the digital marketplace may alter how customers obtain service, provisioning [household goods] moving service remains the same as it has been for centuries – using vehicles to move items from one household to another. We will not sacrifice safety and consumer protection for convenience, nor will we authorize entities purporting to be ‘brokers’ to do so.”¹⁸ Accordingly, we uphold the ALJ’s finding in Corrected Order 02 that Dolly must cease and desist its operations unless and until it obtains a permit from the Commission.

2. Correction of Order 02

28 Dolly asserts three claims related to the ALJ’s Notice of Correction: 1) Dolly lost its ability to appeal the corrected provision of the cease and desist order, 2) the correction prejudices Dolly, and 3) Dolly would not have supported Staff’s Petition for Review if it knew how the ALJ would treat Staff’s Petition.

29 Staff contends that the Commission should decline to adjudicate Dolly’s claims related to the ALJ’s correction of Order 02.¹⁹ We agree. Dolly cannot reasonably argue that it was deprived of its right to complain against a possible or arguable constitutional infirmity

¹⁸ *In the Matter of the Petition of Dolly, Inc. to Amend Motor Carrier Rules or in the Alternative to Initiate a Rulemaking*, Docket TV-170999, Order 01 ¶ 11 (October 31, 2017).

¹⁹ Dolly makes a number of claims related to Staff’s Petition for Administrative Review, which the Commission construed as a Motion to Correct an Obvious Error. Among them: 1) Staff’s April 2, 2018, Petition for Administrative Review was incorrectly filed under WAC 480-07-825, and should have been filed pursuant to WAC 480-07-610; 2) the presiding administrative law judge should have applied WAC 480-07-395(4) to correct Staff’s error and construe that Staff’s Petition was properly filed under 48-07-610, then apply the 10-day deadline to file answers rather than the 7-day deadline afforded under 480-07-610 or 480-07-375; and 3) its answer supporting Staff’s Petition was timely filed on April 12 pursuant to WAC 480-07-610. We find each of Dolly’s contentions meritless. First, any issue related to the way in which Staff styled its Petition was rendered moot by the ALJ’s decision to construe Staff’s Petition as a Motion to Correct. Moreover, Staff’s reference to WAC 480-07-825 was a clerical error that has no bearing on the substance of Staff’s request. Finally, Dolly provides no basis for its assertions that the Commission should have allowed the Company 10 days, rather than 7, to respond to Staff’s Motion, or that its response – filed 10 days after Staff filed its Motion – was timely.

that has since been cured, and thus rendered moot. Whether we affirm the ALJ's correction to the initial order or independently adopt that correction on review, the result is the same. Additionally, Dolly's answer to Staff's Petition contained the same arguments it later set forth in its own Petition; the Company is therefore unable to establish that it was somehow prejudiced or deprived of its right to be heard.

30 We find that the ALJ properly exercised his discretion to enter Corrected Order 02 for the reasons discussed below. As such, Corrected Order 02 replaced the original order in its entirety, and is the only effective order in this docket. WAC 480-07-875(2) provides that "the time available for any post-hearing review begins with the service of the correction, as to the matter corrected." Adjusting the timeframe for post-hearing review demonstrates that the rule contemplates the possibility that matters in need of correction may be substantive in nature. There would be no need for a party to challenge an error that had no potentially substantive affect, let alone be afforded an extension of time for doing so.

31 Dolly cites WAC 480-07-395(4) as a basis for its claim, which, it argues, expressly permits only correction of "errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties." Dolly removes this language from the context of the rule, which provides as follows:

The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

32 Dolly's interpretation of WAC 480-07-395(4) is facially incorrect, and its argument thus fails. The relief Staff requested was to narrow language in Order 02 that was overbroad, unintentionally implicating as it did Dolly's advertising in other states. Dolly supported Staff on this issue. Corrected Order 02 provided the relief Staff requested.

3. Constitutional Challenges to Corrected Order 02

33 **Dormant Commerce Clause.** Dolly claims Corrected Order 02 violates the dormant commerce clause of the US Constitution because Congress has not authorized state regulation of its Internet activities. According to Dolly, Washington cannot regulate foreign and interstate commerce without Congress's express authority. Because Dolly uses its Internet presence to engage in commerce outside Washington, Dolly claims that any attempt to regulate its activities runs afoul of the commerce clause. Dolly's approach,

however, is inappropriate because it fails to undertake a complete commerce clause analysis. Although Dolly failed to meet its burden, we nevertheless address the Company's claim of error and dispose of it on the merits.

34 The commerce clause provides Congress with the power to regulate commerce "among the several states," which implicitly limits state power to burden interstate commerce.²⁰ This limitation is referred to as the "dormant commerce clause."²¹ Where Congress has not expressly granted regulatory authority to the states, courts review a dormant commerce clause challenge to state action using a two-part test. In other words, whether or not Congress has authorized state regulation is a threshold question that determines whether the dormant commerce clause applies, not an aspect of the dormant commerce clause analysis itself. Staff correctly observes that, "[e]ven where Congress did not authorize state regulation, the regulation may survive a dormant commerce clause challenge in multiple ways."²²

35 In *Rouso v. The State of Washington*, the Washington Supreme Court addressed whether a statutory prohibition on Internet gambling violated the dormant commerce clause. As a threshold matter, the Court examined whether Congress delegated its authority to regulate Internet gambling and found that it did not. Similarly, Congress has not delegated to the states its authority to regulate Internet advertising. Thus, we "must determine (a) whether the language of the statute openly discriminates against out-of-state entities in favor of in-state ones or (b) whether the direct effect of the statute evenhandedly applies to in-state and out-of-state entities."²³ If the statute does not openly discriminate and applies evenhandedly, it does not violate the dormant commerce clause if there is a legitimate state purpose and the burden imposed on interstate commerce is not "clearly excessive" in relation to the local benefit.²⁴ We address each inquiry in turn.

36 First, we find that the language in the Commission's public service laws that prohibits persons from operating as a household goods carrier, common carrier, or solid waste collection company without first obtaining a permit from the Commission is not

²⁰ *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 717, 153 P.3d 846 (2013).

²¹ *Id.* at 717-18.

²² Staff's Answer ¶ 45.

²³ *Rouso v. State*, 170 Wn.2d 70, 76, 239 P.3d 1084 (2010), citing *Ne. Bancorp, Inc. v. Bd. of Governors*, 472 U.S. 159, 174 (1985).

²⁴ *Id.*, citing *State v. Heckel*, 143 Wn.2d 824, 832, 24 P.3d 404 (2001).

discriminatory.²⁵ The laws prohibit offering, soliciting, or advertising unauthorized services regardless of whether the individual or entity offering, soliciting, or advertising those services is located in Washington, in another state, or in another country. Second, the statute applies evenhandedly to in-state and out-of-state entities. As Staff notes, the Commission's public service laws are facially neutral with regard to the physical location of the persons to whom they apply. The public service laws thus pass muster under the first two prongs of the dormant commerce clause analysis.

37 Third, the public service laws, which require carriers to obtain permits so the Commission may carry out its legislatively-mandated duties to protect consumers and the public safety, serve a legitimate state purpose.

38 Finally, the burden imposed on interstate commerce is not "clearly excessive" in relation to the local benefit. Any burden to Dolly would arise only from requiring the Company to add a disclaimer to its advertisements informing consumers that its services are not available in Washington. As a point of clarification, 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.²⁶ The Company need not affirmatively state that it does not provide services in Washington; rather, it must ensure that consumers in Washington are not able to engage its services. The burden of undertaking such action is minimal, and cannot be characterized as "clearly excessive" in relation to the local benefit of ensuring the public safety is protected by Commission regulation.

39 **Ex Post Facto.** Dolly argues that Corrected Order 02 violates the Article I, Section 10 of the Constitution by imposing an *ex post facto* law. Dolly claims that Corrected Order 02 imposes a legal requirement that did not exist prior to the entry of that order. We disagree. As Staff notes in its Answer, Corrected Order 02 did not retroactively create liability; its cease and desist provisions simply create the possibility that Dolly will incur future liability should it choose to ignore the Commission's directive to stop advertising the availability of its unauthorized services to Washington consumers. In other words, Dolly was always required to obtain a permit before operating in Washington, and the public service laws make clear that "operating" includes advertising. While Dolly is

²⁵ RCW 81.80.75, RCW 81.77.040 and RCW 81.80.355.

²⁶ Presently, Dolly's website represents that it provides service in Seattle, Portland, San Diego, Denver, Chicago, Philadelphia, and Boston.

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. As discussed above, this can be accomplished in more than one way. Even if Corrected Order 02 had been silent with respect to Dolly's advertisements, failure to discontinue its services in Washington (including its advertisements) would subject the Company to further enforcement action.

40 **Due Process.** Dolly argues that Corrected Initial Order 02 violates the procedural and substantive due process clauses of the Constitution. We disagree.

41 The procedural due process clause requires "notice and an opportunity to be heard."²⁷ Dolly claims that it was not given notice that it was required to publish a disclaimer on its website to make it known that its services are not available in Washington. However, the ALJ did not impose a cease and desist order and require Dolly to obtain permits because it failed to publish a disclaimer on its website. Dolly simply misunderstands Corrected Order 02. 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.

42 Dolly's procedural due process claim ultimately fails because the Company received notice in Order 01 that the special proceeding may result in a cease and desist order. The Complaint referenced statutory authority and requested relief in the form of a cease and desist order. The ALJ opened the hearing by noting the legislature's directive that the Commission order companies to cease and desist upon a finding that they provide regulated services without a permit. Dolly was also given an opportunity to be heard. Dolly presented witness testimony, evidence, and oral argument at hearing, and declined the ALJ's offer to brief its legal arguments.

43 Dolly's substantive due process claim is similarly without merit. Substantive due process protections forbid "arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures."²⁸ Substantive due

²⁷ *State v. Rogers*, 127 Wn.2d 270, 275, 898 P.2d 294 (1995).

²⁸ *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 218-19, 898 P.2d 294 (1995).

process is reviewed under the rational basis standard.²⁹ A governmental action survives if it is rationally related to a legitimate state interest.³⁰ RCW 81.80.075 serves several legitimate state interests, as do RCW 81.77.040 and 81.80.070. Corrected Order 02 rationally serves the interests identified by the legislature in the manner it intended – protecting consumers and the public safety – and therefore does not deprive Dolly of substantive due process.

44 **First Amendment.** Dolly argues that Corrected Initial Order 02 violates the First Amendment of the Constitution, and that it must be rescinded in its entirety on that basis. We disagree.

45 Courts evaluate whether commercial speech may be restricted using a four-part test set out in *Central Hudson Gas & Elec. v. Public Serv. Comm’n*.³¹ The first prong of that test provides that for such speech to be protected, “it at least must concern lawful activity and not be misleading.”³² Dolly’s advertisements promote the unauthorized provision of regulated services. As such, Dolly’s advertisements are unlawful and receive no constitutional protection. Corrected Order 02 does not infringe on the Company’s commercial speech rights.³³

4. Penalty Calculation

46 RCW 81.80.075 provides that any person who engages in business as a household goods carrier is subject to a penalty of up to \$5,000 per violation. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. RCW 81.04.380 provides that any public service company that fails to comply with any provision of Title 81 RCW is subject to a penalty

²⁹ Staff’s Answer ¶ 53, citing *Amunrud v. Bd. of Appeals* at 220-222.

³⁰ *Id.* at 222.

³¹ *Central Hudson Gas & Elec. v. Public Serv. Comm’n* 447 U.S. 557 (1980).

³² *Id.* at 566. The remaining *Central Hudson* factors consider whether the government’s interest in restricting the speech is substantial, whether the restriction directly and materially serves the asserted interest, and whether the restriction is no more extensive than necessary. See *Kitsap County v. Mattress Outlet/Gould*, 153 Wn.2d 506 at 512 (2005).

³³ Dolly also argues that Corrected Order 02 imposes prior restraints on Dolly’s right to free speech by requiring Dolly to acquire a permit or license before speaking and by prohibiting certain speech. Dolly’s advertisements, however, receive no protection under the prior restraint doctrine because they are not protected speech. Dolly’s complaint related to the original order’s requirement that it remove its Internet presence is rendered moot by Corrected Order 02, which is the only effective order in this docket.

of up to \$1,000 per violation. Every violation is a separate and distinct offense, as is every day's continuance. Corrected Order 02 imposed a \$69,000 penalty, calculated as follows:

- \$5,000 for each of the 11 violations RCW 81.80.075
- \$1,000 for each of the 11 violations of RCW 81.80.355
- \$1,000 for each of the 3 violations of RCW 81.77.040

47 Dolly argues that Order 02 incorrectly interprets and applies the Commission's penalty-imposing statutes, pointing specifically to the fact that the RCW 81.80.075 does not define the term "medium."³⁴ According to Dolly, both Staff and the presiding ALJ erred by treating "different internet websites as multiple mediums" and imposing "penalties based on each website, instead of on the singular medium."³⁵ We disagree.

48 In a colloquy with the ALJ, Dolly's counsel confirmed the Company's belief that different advertisements published in multiple newspapers – for example, in both the Olympian and the Seattle Times – constitute one advertisement because newsprint is the same medium. The statutory language, however, is not susceptible to Dolly's interpretation, and the Company failed to cite any authority to support its claim.³⁶ "Each" means "being one of two or more distinct individuals having a similar relation and often constituting an aggregate."³⁷ Moreover, a plain reading of the statute reveals that "each" modifies the word "advertisement," not the word "medium." Accordingly, we reject Dolly's argument as it relates to how penalties must be calculated.

49 We also affirm the penalty amount assessed by Corrected Order 02. The presiding ALJ undertook a thorough 13-factor analysis, which includes two factors identified in statute and 11 factors identified in a policy statement the Commission issued on January 7, 2013, in Docket A-120061.³⁸ Corrected Order 02 appropriately assessed a \$69,000 penalty, a \$34,500 portion of which is suspended for a period of two years, and then waived, conditioned on Dolly ceasing and desisting unauthorized operations as a household goods carrier, common carrier, and solid waste collection company. The penalty amount is

³⁴ Dolly's Petition ¶ 49.

³⁵ *Id.*

³⁶ At hearing, the presiding ALJ specifically requested that Dolly cite authority to substantiate its interpretation of the laws related to advertising penalties.

³⁷ See Merriam-Webster.com.

³⁸ The statutory factors are set out in RCW 81.80.075.

supported by the evidence in the record and is proportionately punitive in light of the Company's past conduct. In addition, the suspended penalty significantly deters future violations.

5. Applicability of Budget Proviso

50 Dolly argues that the Washington state legislature passed a budget proviso that recognizes that current Commission statutes and regulations do not apply to Dolly's business model and thus Corrected Order 02 errs by concluding to the contrary. We disagree with Dolly's characterization. While the budget proviso is a clear indication of legislative interest in the regulation of companies like Dolly,³⁹ it does not effect a change in the law or affect our responsibility to enforce it. The legislature did not, by passing the proviso, order the Commission to cease enforcing the public service laws that do not allow for Dolly to operate as it does without a permit. The legislature also declined to amend the definition of household goods carrier, common carrier, and solid waste collection company to exclude companies like Dolly from those definitions.

51 Therefore, we find no merit in the legal arguments contained in the Company's Petition. Nonetheless, in light of the 2018 legislative deliberations on regulation of companies like Dolly, the enacted budget proviso with a report due by December 15, 2018, and likely consideration of legislation in the 2019 session, we will establish a due date for the penalty assessed in Corrected Order 02 that will allow for work on the study directed in the budget proviso to continue and to provide an opportunity for the 2019 legislature to amend current Commission statutes in this area if it so chooses. This postponement of the due date for the penalty assessed is contingent on the Company's full compliance with the terms of this Order, including those requiring it to cease and desist from operations described in and found unlawful in Corrected Order 02. Should the Commission find going forward that Dolly has failed to cease and desist from such operations, the full penalty assessed will become due immediately.

FINDINGS AND CONCLUSIONS

52 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting household

³⁹ The 2018 legislature also considered Senate Bill No. 6234 and House Bill No. 2604 which would have authorized the Commission to regulate carrier network companies and operators.

goods, property other than household goods, and solid waste for compensation over public roads in Washington.

- 53 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Dolly, Inc.
- 54 (3) It is unlawful, under RCW 81.80.075(1), to operate as a household goods carrier in Washington without first obtaining the required permit from the Commission. Any person who engages in business as a household goods carrier without the required permit is subject to a penalty of up to five thousand dollars per violation under RCW 81.80.75(4).
- 55 (4) Since March 2015, using at least 11 separate platforms, Dolly, Inc. continuously has advertised, solicited, or offered to transport household goods, for compensation, by motor vehicle, within the state of Washington, without first having obtained a household goods carrier permit from the Commission, thus violating RCW 81.80.075.
- 56 (5) Dolly, Inc. is a “household goods carrier” as that term is defined in RCW 81.80.010(5) because it has continuously since 2015 advertised, solicited, offered, or entered into agreements to transport household goods. RCW 81.80.075(1) provides that “No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.”
- 57 (6) Dolly, Inc. has neither applied for nor obtained a permit from the Commission authorizing it to conduct business as a household goods carrier.
- 58 (7) Dolly, Inc. violated RCW 81.80.75(1) at least 11 times since 2015.
- 59 (8) RCW 81.04.510 authorizes and requires the Commission to order an unpermitted household goods carrier such as Dolly, Inc. to cease and desist immediately its activities. Any person who engages in business as a household goods carrier in violation of a cease and desist order issued by the Commission under RCW 81.04.510 is subject to a penalty of up to \$10,000 per violation under RCW 81.80.75(5).
- 60 (9) Since March 2015, using at least 11 separate platforms, Dolly, Inc. continuously has advertised, solicited, or offered to transport property other than household goods, for compensation, by motor vehicle, within the state of Washington, without first having obtained a household goods carrier permit from the Commission, thus violating RCW 81.80.355 at least 11 times. Dolly is subject to

a penalty of up to \$1,000 per violation. The Commission is authorized and required by RCW 81.04.510 to order Dolly, Inc. to cease and desist immediately from these activities.

- 61 (10) Since March 2015, using at least three separate platforms, Dolly, Inc. continuously has advertised, solicited, or offered to haul solid waste, for compensation, by motor vehicle, within the state of Washington, without first having obtained a certificate of public convenience and necessity from the Commission, thus violating RCW 81.77.040 at least three times. Dolly is subject to a penalty of up to \$1,000 per violation. The Commission is authorized and required by RCW 81.04.510 to order Dolly, Inc. to cease and desist immediately from these activities.
- 62 (11) The Commission's public service laws are not discriminatory, and apply even-handedly to in-state and out-of-state entities.
- 63 (12) The Commission's public service laws serve a legitimate state purpose because they protect consumers and the public safety.
- 64 (13) The Commission's public service laws withstand a dormant clause challenge.
- 65 (14) The Commission's public service laws prohibit persons from advertising, offering, or soliciting services they are not authorized to provide.
- 66 (15) Corrected Order 02 does not impose an *ex post facto* law.
- 67 (16) Dolly, Inc. received adequate notice that the Commission may enter a cease and desist order, and Dolly, Inc. was given an opportunity to be heard.
- 68 (17) Corrected Order 02 does not violate Dolly, Inc.'s procedural due process rights.
- 69 (18) The Commission's public service laws serve the legitimate state interests of protecting consumers and the public safety.
- 70 (19) Corrected Order 02 does not violated Dolly, Inc.'s substantive due process rights.
- 71 (20) Dolly, Inc.'s advertisements promote the unauthorized provision of regulated services, and thus are not protected commercial speech.
- 72 (21) Corrected Order 02 does not violate Dolly, Inc.'s First Amendment rights.

ORDER

73 THE COMMISSION ORDERS:

- 74 (1) The Commission denies Dolly, Inc.'s Petition for Administrative Review of Corrected Order 02 and affirms and adopts that order, which is attached as Appendix A.
- 75 (2) 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.
- 76 (3) Dolly, Inc. 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.
- 77 (4) The Commission assesses a penalty of \$69,000 against Dolly, Inc., the entire amount of which is suspended until June 30, 2019, subject to the requirement that Dolly, Inc. immediately cease and desist from the operations described, and found unlawful, in Corrected Order 02. If Dolly, Inc. is found to have continued such operations in Washington after the date of this Order at any time before June 30, 2019, the full penalty will be due upon notice of that finding to Dolly, Inc.
- 78 (5) If Dolly, Inc. continues to comply with the terms of this Order until June 30, 2019, Dolly must pay a \$34,500 portion of the penalty by July 10, 2019. The remaining \$34,500 portion will be suspended until June 30, 2020, and waived thereafter, subject to Dolly, Inc.'s continued compliance with the terms of this Order. If Dolly, Inc. fails to comply after June 30, 2019, the \$34,500 suspended portion of the penalty will be due and payable immediately upon notice of that finding to Dolly, Inc.
- 79 (6) The Commission retains jurisdiction over this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective May 18, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a Commission final order. 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 81.04.200 and WAC 480-07-870.

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOLLY, INC.

DOCKET TV-171212

ORDER 05

DENYING MOTION FOR STAY OF
EFFECTIVENESS OF FINAL ORDER 04

BACKGROUND

- 1 On May 18, 2018, the Washington Utilities and Transportation Commission (Commission) entered Order 04 (Final Order) in this docket. Among other provisions, the Final Order required Dolly, Inc. (Dolly or Company) to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company.
- 2 On May 29, 2018, Dolly filed with the Commission a Motion for Stay of Effectiveness of Final Order 04 (Motion). Dolly states that it contacted Commission staff (Staff) following receipt of the Final Order and inquired about applying for household goods carrier, common carrier, and solid waste collection company permits to obtain authority from the Commission to provide those services. Dolly seeks additional time to file petitions for exemptions from certain Commission rules applicable to the permit process that the Company believes do not apply to its operations. The Company alleges that the Final Order's effectiveness will cause Dolly irreparable harm because the cease and desist provisions require Dolly to permanently refrain from advertising and providing service.
- 3 On May 31, 2018, Staff filed an Answer to Dolly's Motion (Answer). Staff argues that the Commission lacks the discretion to grant the particular relief that Dolly seeks because the Commission's enabling statutes: 1) require any person wishing to engage in jurisdictional activity to obtain a permit from the Commission, and 2) direct the Commission to order any person who engages in such activity to cease and desist its unauthorized operations. Because Dolly engages in regulated activity without Commission authority, Staff asserts that Dolly's Motion amounts to a request that the Commission waive RCW 81.04.510, thereby authorizing the Company to operate without a permit. Staff notes that the Commission lacks the discretion to approve violations of public service laws, and that it should deny the Motion on that basis.

4 Staff further argues that Dolly’s claim of “irreparable harm” fails because the financial hardship it alleges does not rise to that level of injury. Finally, Staff urges the Commission to reject Dolly’s argument that a stay will allow the Company and licensing staff to process its various carrier applications because it is not the Commission’s practice to allow companies to violate Commission laws and rules while their applications are pending.

DISCUSSION

5 We deny Dolly’s Motion. As a threshold matter, the Commission is not authorized to grant Dolly’s request to stay the effectiveness of the cease and desist portions of the Final Order. RCW 81.04.510 provides that, upon a finding that a carrier is engaging in regulated activity, the Commission is “authorized and *directed* to issue cease and desist orders to all parties involved in the operations or acts.”¹ The Commission has no discretion to waive this statutory requirement. Although our analysis ends here, we nevertheless dispose of Dolly’s claims for the purpose of discussion.

6 The Commission generally will not stay the effectiveness of a final order absent a showing of irreparable harm or a substantial possibility that the order will be reversed on appeal.² Dolly argues that it will suffer financial hardship that will result in irreparable harm if it is required to cease operations because the Final Order prohibits Dolly from advertising and providing service.³ As we noted in Docket TG-900657, however, a stay is appropriate only “in those extremely rare circumstances where the risk of damage from interim application of the order is great and when a substantial question of modification of the order exists.”⁴ No such circumstances exist here. All companies classified by the Commission as a household goods carrier, common carrier, or solid waste collection company must cease and desist jurisdictional operations unless and until they obtain the required permit or certificate from the Commission. As such, the circumstances in which

¹ Emphasis added.

² See *WUTC v. Sno-King Garbage Co., Inc.*, Docket TG-900657, Fifth Supplemental Order at 3 (December 19, 1991). See also *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Docket TC-143691 et. al, Order 21/14/11 at ¶4 (December 1, 2017).

³ The Company did not make any argument that the Final Order will likely be overturned on appeal.

⁴ Docket TG-900657, Fifth Supplemental Order at 3.

Dolly finds itself are not unique. Nor are we sympathetic to Dolly's claim that complying with the law will harm its ability to generate income from its unauthorized operations.

7 We also reject Dolly's argument that imposing a stay is reasonable because it will allow Staff time to process its applications and allow Dolly time to petition the Commission for exemption from certain rules. Sanctioning a carrier's illegal operations would invite motions to stay in every proceeding involving a cease and desist order, and is patently contrary to the public interest.

8 Our denial of Dolly's Motion to Stay today does not preclude the Company from filing with the Commission applications for permits or petitioning for exemption from certain rules consistent with the requirements of state law. The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process.

ORDER

9 THE COMMISSION ORDERS That Dolly, Inc.'s Motion to Stay is DENIED.

DATED at Olympia, Washington, and effective June 8, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

Attachment E

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Determining the Proper Carrier Classification
of, and Complaint for Penalties Against:

DOLLY, INC.

Docket No. TV-171212

MOTION TO STAY EFFECTIVENESS
OF FINAL ORDER 04

1 Pursuant to RCW 34.05.467 and WAC 480-07-860, Dolly, Inc. (“Dolly”) respectfully files this motion to stay the effectiveness of Final Order Denying Petition for Administrative Review of Corrected Order 02 (“Order 04”).

2 Order 04 found that Dolly is classified as a household goods carrier, common carrier, and solid waste collection company; must immediately cease operating as a household goods carrier, common carrier, and solid waste collection company unless it obtains authority from the Commission; 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; and assessed a penalty of \$69,000.00 which is suspended until June 19, 2019.

3 After receiving service of Order 04 Dolly contacted the Washington Utilities and Transportation Commission Staff (“Staff” or “Commission Staff”) to inquire about applying for

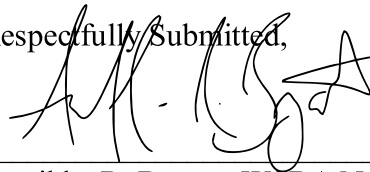
household goods carrier, common carrier, and solid waste collection company permits to obtain the above-referenced authority from the Commission.

4 Dolly files this motion to stay to allow Dolly and Commission Staff time to determine the appropriate process to complete the applications and for Commission Staff to determine a final disposition of those applications. For example, several Commission rules applicable to the permit process do not apply to Dolly but Dolly nevertheless must request an exemption from those rules in order to qualify for the applicable permit. Exemption from Commission rules is not automatically granted and requires Dolly to petition the Commission for exemption.

5 Order 04 becoming effective will cause Dolly irreparable harm as the cease and desist provisions requires Dolly to permanently refrain from making its services known to consumers and refrain from providing those services. Additionally, Dolly's applications to obtain Commission authority to operate comply with the terms of the cease and desist orders. Both Commission Staff and Dolly should be permitted time to process those applications and for the Commission to rule on Dolly's petitions for exemption from relevant and applicable Commission permitting rules.

DATED this 29th day of May, 2018.

Respectfully Submitted,



Armikka R. Bryant, WSBA No. 35765
Director, Legal and Government Affairs
Dolly, Inc.
901 5th Avenue, Suite 600
Seattle, WA 98164-2086
(206) 413-6581
armikka@dolly.com

Attachment F

1 EXPEDITE
2 No hearing is set.
3 X Hearing is set:
4 Date: June 29, 2018
5 Time: 9:00 am
6 Judge/Calendar: Honorable Christopher Lanese
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11 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
12 IN AND FOR THE COUNTY OF THURSTON
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16 DOLLY, INC.

No. 18-2-03006-34

17
18 Petitioner,

PETITIONER’S MOTION TO STAY
ENFORCEMENT OF ORDERS PENDING
JUDICIAL REVIEW

19 vs.

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21 WASHINGTON STATE UTILITIES AND
22 TRANSPORTATION COMMISSION, a
23 Washington state agency.

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26 Respondent.
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28
29 **INTRODUCTION AND RELIEF REQUESTED**

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31 Petitioner Dolly, Inc. (“Dolly”) has petitioned this court for judicial review of Initial Order 02,
32 Initial Order 02 (Corrected), and Order 04 issued by the Washington Utilities and Transportation
33 Commission (“WUTC” or “Commission”) in WUTC Docket TV-171212. The orders, among other
34 things, found that Dolly is operating as a household goods carrier without a household goods permit,
35 imposed a \$69,000 penalty, and ordered Dolly to cease and desist operations in Washington. Now,
36 Dolly seeks to stay enforcement of these orders pending judicial review. A copy of each order is
37 attached to Dolly’s Petition for Judicial Review. The Court should grant this motion because:
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44 First, there are serious legal questions warranting judicial review, including whether: (1) an
45 app-based software company that owns no vehicles and performs no moving services engages in
46 business as a household goods carrier, and (2) major procedural errors violated Dolly’s due process.
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PETITIONER’S MOTION TO STAY ENFORCEMENT OF
ORDERS PENDING JUDICIAL REVIEW – 1

PERKINS COIE LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

1 These issues have significance beyond the contours of this case because they provide critical guidance
2 to e-commerce vendors operating in Washington.
3

4 Second, Dolly will suffer irreparable injury absent a stay because it will be forced to effectively
5 shut down all operations in Washington while the judicial review is pending.
6

7 Third, the balance of hardships sharply tips in favor of a stay because the order is not based on
8 public safety, health or welfare and there is no risk of harm if the status quo is maintained during
9 judicial review. In addition, Dolly is currently in the process of obtaining a supersedeas bond, so the
10 Commission will not be financially harmed if the Court grants a stay.
11

12 Finally, although it is Dolly's position that the Commission erred when it ordered Dolly to
13 either cease and desist operations or obtain certain permits to conduct business in Washington, Dolly is
14 nonetheless in the process of obtaining such permits from the Commission. Accordingly, the public
15 interest favors a stay because a stay will save both the parties and the Court substantial time and money
16 on litigation that might be mooted on judicial review.
17

18 **FACTUAL BACKGROUND**

19 Over 80 years ago the Washington State Legislature passed RCW 81.80 for the purpose of
20 regulating the business of operating a motor carrier of freight for compensation along the highways of
21 this state. The legislature was concerned with "motor carrier freight traffic," the hazards of "motor
22 trucks" to the public, and the physical impact of such trucks on the highways. RCW 81.80.020. Fast-
23 forward to 2018: Dolly is an emerging technology company operating in seven states throughout the
24 U.S. Dolly uses a digital platform to connect individuals needing on-demand micro-moving services
25 with small-scale movers. Dolly owns no vehicles, employs no drivers, and is solely a mobile app-
26 based company. Order 04 at ¶ 19.
27

28 WUTC Staff became aware of Dolly's business in March 2015 and began considering Dolly's
29 operations in light of the Commission's household goods carrier regulations. Initial Order 02 at ¶ 12.
30 Several meetings occurred between WUTC Staff and Dolly over the several years, and last year the
31 Commission considered initiating a rulemaking to amend the household goods carrier regulations to
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1 expressly allow for digital, app-based household goods “brokers” such as Dolly. *Id.* at ¶ 22.

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3 Ultimately, the Commission declined to open the rulemaking.

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5 Although we are denying Dolly’s petition today, we nevertheless believe
6 the changing market warrants further Commission exploration of the
7 business model and operations of companies like Dolly that wish to
8 engage only in household goods brokerage services or arrangement of so
9 called “micro moves.” The Commission intends to schedule at a future
10 date a forum where all interested parties can better understand the impact
11 existing statutes and Commission rules have on these proposed business
12 models.
13

14
15 Order 01 in WUTC Docket TV-170999 at ¶ 13 (Oct. 31, 2017).

16
17 In December 2017, Dolly met with Commissioner David Danner, then-WUTC Executive
18 Director Steven King, and other WUTC Staff regarding drafting legislation to expressly allow for app-
19 based enterprises such as Dolly. The fruits of that labor resulted in House Bill 2604 (2018) and
20 Substitute Senate Bill 6234 (2108). Although the bills passed through their respective legislative
21 committees they ultimately failed to pass out of their respective chambers. Nevertheless, Dolly and
22 Commission Policy Staff built a working relationship that helped the Legislature pass Supplemental
23 Operating Budget, ESSB 6032, which directs “the Commission to convene a task force to make
24 recommendations and report to the legislature regarding the most effective method of regulation of
25 digital application-based micro-movers and the small goods movers that utilize their digital
26 application. The report is due to the legislature by December 15, 2018.” ESSB 6032, Sec. 141(6),
27 Order 02 at note 27.
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38 On January 18, 2018, while the bills were still working their way through the legislature, the
39 Commission issued Order 01 in Docket TV-171212, seeking to impose penalties against Dolly for
40 violations of the Commission’s household goods carrier regulations. The Commission held a Brief
41 Adjudicative Proceeding, and presiding Administrative Law Judge (“ALJ”) Dennis Moss entered
42 Order 02, which: 1) Classified Dolly as a household goods carrier, a common carrier, and a solid waste
43 company; 2) Ordered Dolly to cease and desist operating unless and until it obtained a permit from the
44 Commission; 3) Imposed a \$69,000 penalty, and 4) Required Dolly to immediately remove its web-
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1 based application from the internet and remove all presence from Facebook, Twitter, Pinterest, and any
2 other social media sites or other platforms it uses or has ever used. Initial Order 02 at pp. 15-16.
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4 On April 2, 2018, Senior Assistant Attorney General Sally Brown filed a Petition for
5 Administrative Review of Order 02 on behalf of WUTC Staff. One week later, before Dolly had an
6 opportunity to file either its own challenge to Initial Order 02 or an answer to WUTC Staff's petition
7 challenging Initial Order 02, ALJ Moss issued a "Corrected" Order 02. Initial Order 02 (Corrected)
8 contains several significant and substantive modifications to Order 02. One of these modifications
9 removed an order requiring Dolly to shut down its app and replaced it with an order requiring Dolly to
10 "clearly indicate in its web-based application on the Internet and in its advertising on Facebook,
11 Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its
12 services known that it does not offer or perform services in the state of Washington as a household
13 goods carrier, as a common carrier transporting property other than household goods, or as a solid
14 waste hauler unless" Initial Order 02 (Corrected) at ¶ 56. ALJ Moss referred to these and other
15 substantive edits as corrections of obvious errors, ministerial errors, and scrivener's errors. See Notice
16 of Correction of Initial Order (April 9, 2018).
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29 Dolly requested that ALJ Moss clarify the deadline to respond to WUTC Staff's petition
30 because it was incorrectly filed under WAC 480-07-825 rather than WAC 480-07-610, which governs
31 the Brief Adjudicative Proceeding process and procedure. However, instead of ALJ Moss, ALJ Rayne
32 Pearson (who previously led the division that investigated Dolly) responded to Dolly's request for
33 clarification. ALJ Pearson was not the presiding ALJ in the docket, gave no notice to the parties that
34 she was substituted for ALJ Moss, and was not present at the Brief Adjudicated Proceeding.
35 Regardless, ALJ Pearson apparently replaced ALJ Moss as presiding ALJ in the proceeding.
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43 Dolly filed a Petition for Administrative Review of Initial Order 02, and In the Alternative,
44 Corrected Initial Order 02. By Order 04 the Commission denied Dolly's Petition and affirmed and
45 adopted Initial Order 02 (Corrected). Dolly is now in the process of obtaining the WUTC permits
46 necessary to operate as a household goods carrier, common carrier, and solid waste hauler.
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AUTHORITY AND ARGUMENT

The Washington Administrative Procedures Act (“APA”) expressly provides for judicial review of an agency’s final order. RCW 34.05.514. Once a party has filed a petition for judicial review, the reviewing court may then stay enforcement of the agency’s order pursuant to RCW 34.05.550(2). Dolly has filed a Petition for Judicial Review and files this motion pursuant to RCW 34.05.550(2).

A court has discretion to grant a stay or other temporary relief, but specific findings are necessary if the agency order is based on public health, safety, or welfare grounds. In that case, the court must find that (1) that the moving party is likely to succeed on the merits; (2) the applicant will suffer irreparable injury without relief; (3) issuance of the stay will not substantially harm the other parties in the proceeding; and (4) the threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances. RCW 34.05.550.

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A. A Stay is Appropriate Because the Orders are not Based on Public Health, Safety or Welfare.

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Here, the agency action of applying penalties and requiring Dolly to cease and desist operations is not based on public health, safety or welfare grounds. While the public service laws in general protect overall public safety, these specific orders against Dolly are not based on public safety. The ALJ and the Commission itself acknowledges that, “[t]here is no evidence in the record, to substantiate significant actual harm arising from Dolly’s operations.” Second Initial Order 02 at ¶ 30. Further, the fact that the Commission was aware of Dolly’s business operations for three years before initiating an enforcement action indicates that the orders are not based on a threat to the public health, safety, or welfare. The legislative purpose behind the household goods carrier regulations is to minimize the effect of large, motor carrier freight traffic. Ironically, by requiring Dolly to cease and desist operations, consumers desiring small, micro-moves will be forced to hire large, traditional moving vans that actually increase large, motor carrier freight traffic. Accordingly, the Court should grant Dolly’s request for a stay of enforcement pending judicial review without further analysis.

1 **B. A Stay is Appropriate Even if the Orders are Based on Public Health, Safety or Welfare.**

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3 But even if this Court finds that the orders were issued on public health, safety or welfare
4 grounds, this Court should stay the litigation pending judicial review because: (1) Dolly is likely to
5 succeed on the merits of an appeal; (2) Dolly will suffer irreparable injury without a stay; (3) the
6 Commission will not be substantially harmed if the Court grants a stay, and (4) the threat to the public
7 health, safety, or welfare is not sufficiently serious to justify the agency action under the
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9 circumstances.
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14 **1. Dolly Is Likely to Succeed on the Merits of an Appeal**

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16 For the reasons set forth in Dolly’s Petition for Judicial Review, Dolly is likely to succeed on
17 the merits of a review. Even if the Commission’s orders were based on public health, safety, or
18 welfare grounds, which they are not, Dolly would need to show that it is likely to prevail on only one
19 claim of error. Dolly is likely to prevail on several claims of error; among them, (1) there is
20 insufficient evidence to support a finding that an app-based software company that owns no vehicles
21 and performs no moving services engages in business as a household goods carrier, and (2) significant
22 procedural errors violated Dolly’s due process.
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31 **a. There is insufficient evidence to find that Dolly is a household goods carrier,
32 common carrier, or solid waste hauler.**

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34 A household goods carrier is defined a person who transports for compensation, by motor
35 vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport
36 household goods. RCW 81.80.010. As Dolly will demonstrate, it does not conduct household moves,
37 nor does it advertise, solicit, offer, or enter into contracts to conduct household goods moves. Dolly
38 does not own or operate vehicles; therefore, it has no reason to advertise, solicit or enter into contracts
39 to conduct household goods moves. Instead, Dolly maintains and manages a web-based application
40 that connects consumers to individuals who are available to perform micro-moves. Such a business
41 model could not have been contemplated when the household goods carrier regulations were adopted
42 in 1935. Dolly will demonstrate that its advertisements, web presence, and terms and conditions
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1 clearly inform the consumer that Dolly does not transport household or any other goods and there was
2 insufficient evidence to find that Dolly is a household goods carrier, common carrier, or solid waste
3 hauler.
4

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6 The Commission simply isolated portions of Dolly’s social media platforms out of context to
7 conclude that Dolly was advertising to transport goods. For example, Dolly’s website advertises,
8 “Retail Store Delivery. Convenient, faster and often cheaper than traditional store delivery options.”
9 This statement, the Commission finds, amounts to advertising to transport household goods, other
10 property, and solid waste. Order 04 at ¶¶ 24-25. First, the Commission’s order as written would apply
11 to an enormous number of companies such as Amazon Flex, Uber, Postmates, and essentially any
12 company whose social media mentions delivery or transportation of any good to any person in
13 Washington. Second, the Commission isolated certain statements out of context and ignored other
14 internet statements, sworn testimony, and even Dolly’s terms of service, which clearly describe Dolly’s
15 service as connecting, facilitating, arranging, or brokering, but not transporting. The Commission
16 nonetheless states that a reasonable consumer could be led to believe that Dolly owns trucks and
17 employs its Helpers. Order 04 at ¶ 25. Despite Dolly’s several years of operation and over 100,000
18 transactions, WUTC Staff could show no evidence that any consumer has ever been misled to believe
19 that Dolly owns trucks or employs its Helpers. Dolly will show that the evidence contradicts, rather
20 than supports the Commission’s orders.
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35 **b. Multiple and substantial procedural errors violated Dolly’s due process.**
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38 In addition to the substantive errors described above and in Dolly’s Petition for Judicial
39 Review, Dolly will show that the Commission made numerous procedural errors that ultimately
40 violated Dolly’s due process. For example, WUTC Staff filed a Petition for Administrative Review of
41 Order 02, raising the constitutional overreach by ALJ Moss in Order 02 when he ordered Dolly to shut
42 down all internet presence anywhere in the world. Instead of allowing the Commission to
43 appropriately grant administrative review,¹ and instead of allowing Dolly an opportunity to answer
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51 ¹ Note that administrative review would have been conducted by the full Commission, rather than the ALJ.

1 WUTC Staff’s petition and additionally challenge Initial Order 02, ALJ Moss re-invents Staff’s
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3 Petition as creating a tacit request for a post-hearing “motion ... to correct [an] obvious error” of Initial
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5 Order 02’s fatal constitutional issue. ALJ Moss then re-writes Initial Order 02, making several
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7 unrelated substantive changes and modifying the principles applied, the analysis, and the outcome.
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9 ALJ Moss justifies his autonomous decision by stating that Commission rule permits him to “correct
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11 ministerial errors.” Then, without explanation or notice, ALJ Pearson suddenly replaced ALJ Moss as
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13 presiding judge in the proceeding.

14 ALJ Moss had to interpret WUTC Staff’s Petition for Administrative Review as a Motion to
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16 Correct an Obvious error because the Commission has no authority to alter, amend, or rescind any
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18 order that it has entered without prior notice and an opportunity to be heard – unless it is to correct for
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20 obvious or ministerial errors in orders. WAC 480-07-875. Requiring Dolly to shut down its app, its
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22 website, and all internet advertising was not an “obvious error”, however, because it is exactly what
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24 this Commission has demanded of other app-based software companies. *See WUTC v. Ghostruck*,
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26 Order 05, Denying Petition for Administrative Review at ¶ 34 WUTC Docket TV-160308 (June 1,
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28 2017), “Ghostruck Inc. must immediately cease operating as a household goods carrier, including but
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30 not limited to taking down or otherwise deactivating its electronic app, its website, and any online
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32 advertising of the Company.” In fact, following the final order in that docket, WUTC Staff
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34 recommended that the Commission impose that company’s suspended penalty, stating, “Staff went to
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36 the website and there was no indication that it was disabled.” *See* WUTC Staff Letter to Steven V.
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38 King in WUTC Docket TV-160308, (July 6, 2017). Demanding that Dolly take down all internet
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40 presence is certainly not an “obvious error” if it is precisely what ALJ Moss intended to do and what
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42 the Commission has ordered in the past.

43 Dolly was entitled to challenge ALJ Moss’s Initial Order 02 pursuant to WAC 480-07-825. By
44
45 substantively altering Initial Order 02 without providing notice or an opportunity to be heard, ALJ
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47 Moss sidestepped Dolly’s rights in violation of WAC 480-07-875. The Commission disregards
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49 Dolly’s right to be heard, stating, “Whether we affirm the ALJ’s correction to the initial order or
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51 independently adopt that correction on review, the result is the same.” Order 04 at ¶ 29. The

1 Commission misses the crucial point behind a right to be heard: the three commissioners may not have
2 adopted the ALJ's correction if Dolly had been able to speak.
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6 **2. Without a Stay, Dolly will Doubtless Suffer Irreparable Injury.**
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8 Enforcement of Order 04 means Dolly must effectively shut down all operations in its home
9 state. Even if Dolly is eventually successful in obtaining the required permits from the Commission, a
10 temporary shutdown of operations will be devastating and irreparable. Additionally, despite direction
11 from the legislature to engage a task force and submit a report on potential regulations in the digital
12 marketplace, the Commission clearly intends to enforce Order 04 and require Dolly to cease
13 operations. See Order Denying Dolly's Motion to Stay Enforcement of Order in Docket TV-171212.
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21 **3. The Balance of Hardships Sharply Favors a Stay**
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23 While enforcement of Order 04 will certainly cause Dolly irreparable harm, the Commission
24 will not be harmed if the Court grants Dolly's motion for stay because Dolly is willing to obtain a
25 supersedeas bond to insure full payment of Dolly's penalty in the event Dolly is unsuccessful in this
26 appeal. Dolly is currently in the process of obtaining such bond.
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32 **4. The Threat to the Public Health, Safety, or Welfare is Not Sufficiently Serious to**
33 **Justify the Agency Action Under the Circumstances**
34

35 As the Commission acknowledges and as described above, there is no threat to the public
36 health, safety or welfare by allowing Dolly to continue to operate pending judicial review. As Dolly
37 will show from the administrative record, Dolly's Helpers and Hands are licensed contractors who
38 undergo background checks and who carry insurance. Further, Dolly carries additional insurance to
39 cover any gaps in coverage. There is no evidence of any safety issue related to Dolly's operations, and
40 there is no evidence that any consumer has even ever complained to the WUTC about Dolly's services.
41 Granting a stay of enforcement of the Commission's orders maintains the status quo during this appeal,
42 and there is no public health, safety, or welfare concern that would justify changing the status quo.
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1 Finally, the public interest favors a stay in this case because Dolly is currently in in the process
2 of obtaining all permits necessary to operate as a household goods carrier, common carrier, and solid
3 waste carrier. Therefore, a stay will save both the parties and the Court substantial time and money on
4 litigation that might be mooted on judicial review.
5
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8 **CONCLUSION**
9

10 For these reasons, Dolly respectfully requests that the Court enter a stay of Initial Order 02,
11 Initial Order 02 (Corrected), and Order 04 pending their judicial review.
12
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15
16 DATED: June 18, 2018
17

18
19 **PERKINS COIE LLP**
20

21 
22
23 By: Donna L. Barnett
24 Donna L. Barnett, WSBA No. 36794
25 Ryan C. Thomas, WSBA No. 49739
26 The PSE Building
27 10885 N.E. Fourth Street, Suite 700
28 Bellevue, WA 98004-5579
29 Telephone: 425.635.1400
30 Facsimile: 425.635.2400
31 dbarnett@perkinscoie.com
32 rthomas@perkinscoie.com
33 Attorneys for Petitioner Dolly, Inc.
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Attachment G

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of, and Complaint for
Penalties against:

DOLLY, INC.

DOCKET TV-171212

COMMISSION STAFF'S MOTION FOR
IMPOSITION OF SUSPENDED
PENALTY FOR VIOLATION OF
COMMISSION ORDER

I. INTRODUCTION

1 This is Commission Staff's motion requesting that the Commission impose \$69,000
in suspended penalties against Dolly, Inc. for violation of the Commission's Order 04 in this
docket.

II. RELIEF REQUESTED

2 Commission Staff requests that the Commission lift the suspension it placed on the
\$69,000 penalty it imposed against Dolly, Inc. in Order 04 and demand that Dolly, Inc. pay
the \$69,000 penalty immediately.

III. STATEMENT OF FACTS

3 The Commission imposed—and suspended—a \$69,000 penalty against Dolly, Inc.
on May 18, 2018.¹ This penalty followed a lengthy administrative process that culminated in
Order 04 in this docket, which classified Dolly, Inc. as a household goods carrier, a motor
freight carrier, and a solid waste collection company operating in contravention of law, and
ordered Dolly, Inc. to cease and desist its operations in Washington.² In Order 04, the
Commission stated that it would impose the \$69,000 suspended penalty against Dolly, Inc.,

¹ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*,
Docket TV-171212, Order 04, at 19 ¶¶ 77-78 (May 18, 2018) (“Order 04”).

² *See generally*, TR. at 4-98.

if the Commission found that the company had continued its operations in Washington in violation of Order 04.³ The Commission's regulatory Staff conducted an investigation of Dolly, Inc. after the issuance of Order 04 and has determined that not only has Dolly not ceased its Washington operations, it has in fact continued to actively promote and market those operations. Decl. of Susie Paul.

IV. ISSUE STATEMENT

4 The issue is whether the Commission should enter an order lifting its suspension of the \$69,000 penalty imposed against Dolly, Inc. in Order 04 in this matter and require Dolly, Inc. to pay the \$69,000 penalty immediately.

V. EVIDENCE RELIED UPON

5 Commission Staff relies on the records on file in Docket UT-171212 and the attached Declaration of Susie Paul.

VI. ARGUMENT

6 The Commission suspended the penalty it imposed against Dolly, Inc. to incent the company's compliance with Order 04, including the order's cease and desist provisions. That incentive has failed. Dolly, Inc. has continued to perform regulated services without operating authority from the Commission, and it has continued to advertise that it provides those services. The Commission should lift the suspension of penalties and require Dolly, Inc. to pay the full \$69,000 penalty imposed in Order 04 in this docket.

VII. CONCLUSION

7 For the above reasons, the Commission should lift its suspension of the \$69,000 penalty against Dolly, Inc. The company continues to violate the Commission's Order 04.

³ Order 04 at 19 ¶ 77.

The Commission should not permit Dolly, Inc. to flout the law and the Commission's Order with impunity.

DATED July 12, 2018.

ROBERT W. FERGUSON
Attorney General

/s/ Jeff Roberson, WSBA No. 45550
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1188
jeff.roberson@utc.wa.gov

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against:

DOLLY, INC.

DOCKET TV-171212

DECLARATION OF
SUSIE PAUL

Susie Paul, under penalty of perjury under the laws of the State of Washington, declares as follows:

1. I am employed by the Washington Utilities and Transportation Commission (commission) as a Compliance Investigator in the Consumer Protection Section. As a Compliance Investigator, my responsibilities include conducting investigations regarding the business practices of regulated utility and transportation companies. As part of those duties, I investigate transportation companies that may be operating without the required commission-issued permit or certificate.
2. I am familiar with Dolly, Inc., as I was the assigned investigator in Docket TV-171212 in which the Commission issued Order 04 on May 18, 2018. Order 04 required Dolly, Inc., to immediately cease operating as a household goods carrier, common carrier, and solid waste collection company until it first obtains authority from the Commission.
3. In Order 04, the Commission ordered Dolly, Inc., to 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 until it first obtains authority from the Commission.
4. The Commission assessed a penalty of \$69,000 against Dolly, Inc., with the entire amount suspended until June 30, 2019, subject to the requirement that Dolly, Inc., immediately cease and desist from the operations described, and found unlawful, in Corrected Order 02. In the event that Dolly is found to have continued such operations after the date of the May 18, 2018, Order 04, at any time before June 30, 2019, the full penalty will be due upon notice of that finding to Dolly, Inc.

5. On June 15, 2018, and July 10, 2018, I conducted an Internet search on www.Dolly.com and found that Dolly, Inc., continues to advertise as a household goods carrier, common carrier, and solid waste hauler.¹ Dolly's website says the Company's most common "Dollies" are mini and small moves, apartment moves, Craigslist & Offerup Pick-Up and Delivery, Storage Moves, and Junk Removal.
6. On June 15, 2018, and July 10, 2018, I reviewed the "Cities" tab on Dolly's website. The webpage states "Cities With Dolly. More coming soon!" Included on this webpage is a map of the United States with Seattle, Washington, as a city in which Dolly operates.²
7. On June, 15, 2018, I conducted an Internet search for the Seattle, Washington area on Yelp for Dolly, Inc. I found recent reviews for Dolly, Inc. The most current review was from a consumer in Seattle, Washington, and the review was dated the same day as my search, June 15, 2018. The review stated:

Sent out 2 guys and I am helping them. I am lifting a heavy object (undisclosed to protect the innocent), and the first guy is just standing there while the driver is wasting time putting on his gloves. I told the first guy to help out and then had to tell the second guy to help out. Next time, I won't help. So lazy and unhelpful. Last time my client used them, they showed up an hour late and their extra fellow didn't show, even after waiting a extra half hour so he never showed up in an hour and a half late. Finally helped the driver myself. They could use some quality control and some real movers, not a bunch of lazy deadbeats. What ever you do, don't help them out.

8. On June 15, 2018, I sent an email through Yelp to the consumer who wrote the review. On June 18, 2018, the consumer responded to me by email and wrote that he runs a non-profit business. This consumer had recommended Dolly to the buyer of a hospital bed. The buyer is the one who paid Dolly for the service. The Dolly service was conducted on June 10, 2018, around noon.³
9. On June 15, 2018, I reviewed a second review on Yelp from a consumer from Redmond, Washington. The review was posted on May 31, 2018. The review stated:
 - a. I am very disappointed in the service I received from Dolly and cannot recommend them. Their customer service has been very unresponsive. The movers managed to drop my armoire down a flight of stairs. Not only did this damage the armoire but also the wood floors where it landed. Additionally, the walls around the stairs and the banisters were damaged. Accidents happen. However, Dolly has been very slow to process my claim, and now will not provide an update on status of those various insurance claims, having

¹ See Attachment A for a screen capture of Dolly, Inc.'s website, printed on June 15, 2018.

² See Attachment B for screen captures of Dolly, Inc.'s website specific to "Cities," printed on June 15, 2018.

³ See Attachment C for a copies of Dolly's Yelp reviews, printed on June 15, 2018.

not answered messages for over two weeks. I would like them to actually respond in a timely fashion and actually settle as I am currently out of pocket by a significant amount of money.

- b. Clare K., of Dolly's business customer service, responded to the consumer on June 1, 2018, and stated that she was sorry to hear about this experience. She further stated:

Although damage claims to this magnitude are rare, we do take them very seriously when they happen and oftentimes this process takes a little longer than most due to having to reach out to multiple people. We truly appreciate your patience and understanding whilst we process this claim and I have personally followed up with an update today. We hope that we can get this resolved very soon and to your satisfaction.

- c. On July 5, 2018, this consumer filed an informal complaint with the Commission.⁴ As of the date of this declaration, the informal complaint is still open.

10. On June 18, 2018, I purchased a SoundTransit train ticket from Lakewood, Washington to Sumner.⁵ I boarded the first car of the train on the same date and went through to the lower level of the second car. The car had a Dolly advertisement. I continued through the lower levels of the remaining cars (seven total) and found six advertisements for Dolly.⁶ The advertisements were located in cars 111B, 206B, 209B, 236B, 107B, and 228B.
11. On June 18, 2018, and July 10, 2018, I conducted searches using the key words "Dolly movers" and found Dolly's Facebook page. Dolly lists its location as 901 5th Ave., Seattle, WA and depicts a map with Dolly's location pinpointed.⁷ There was no language on Dolly's Facebook page that indicates Dolly 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.
12. On June 19, 2018, and July 10, 2018, I conducted searches of Dolly's Twitter page.⁸ An article provides a link for Dolly's service area which directs the reader to a page that is titled "Book A Dolly," which includes how to book a Dolly, a map of the service area, a list of Seattle neighborhoods Dolly serves, and a solicitation for hiring Helpers. There was no language visible on Dolly's Twitter account that indicates Dolly 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.

⁴ See Attachment D for a redacted summary of informal complaint CAS-232697-F6H5C3, filed July 5, 2018.

⁵ See Attachment E for a copy of a SoundTransit train ticket, purchased for June 18, 2018.

⁶ See Attachment F for copies of Dolly's advertisements found on SoundTransit train on June 18, 2018.

⁷ See Attachment G for a screen capture of Dolly's Facebook page, printed June 18, 2018.

⁸ See Attachment H for a screen capture of Dolly's Twitter page, printed June 19, 2018.

13. On July 10, 2018, I again reviewed Dolly's Facebook page and found a photograph that was posted by Dolly on June 22, 2018. The photograph shows two people wearing shirts with the Dolly Logo behind a truck with a Dolly advertisement that says "Truck and Muscle Anytime You Need It." The article has a link: <http://bit.ly/2liQguT>.⁹ The link routed me to Dolly's Instagram page.

The Instagram page has the same photograph, but shows more detail, including the truck's Washington State license plate.¹⁰

DATED this 12th day of July, 2018, at Olympia, Washington.

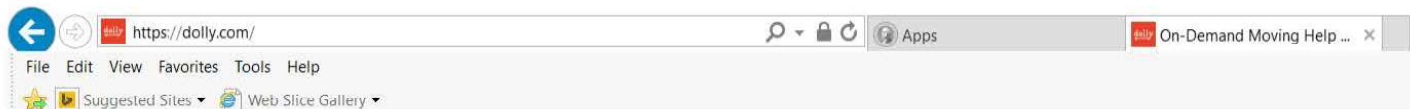


SUSIE PAUL

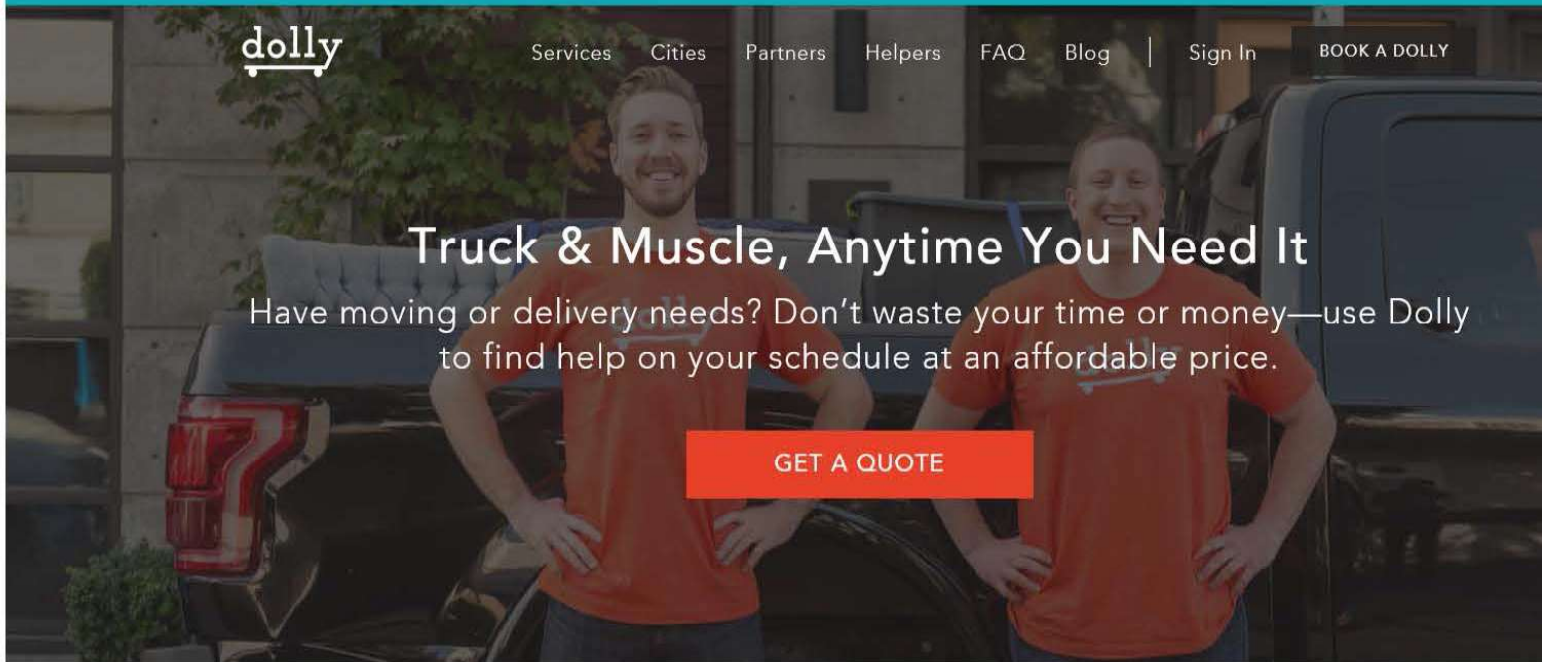
⁹ See Attachment I for a screen capture of Dolly's Facebook page, printed July 10, 2018.

¹⁰ See Attachment J for a screen capture of Dolly's Instagram page, printed July 10, 2018.

Attachment A



Buy new boxes or find used ones nearby. Check out the Seattle Box Exchange and get packing. →



When You Need More Than a Moving Truck...

Truck & Muscle

- ✓ New digs? Get your furniture delivered fast.
- ✓ Sweet find on Craigslist? Bring it home.
- ✓ Office moving last minute? No problem.
- ✓ Stuff you don't want? Haul it away.
- ✓ House remodel? Transport materials quickly.

OR

Just Muscle

- ✓ Apartment move? Find help to load and unload the moving truck.
- ✓ Rearranging your living room? Get help with the heavy lifting.
- ✓ Scheduled carpet cleaning? Book Dollys to move furniture back and forth.

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

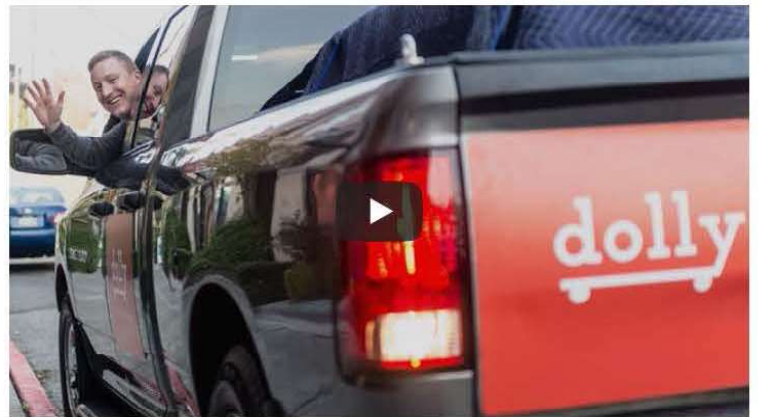
Get Your Price

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
★★★★★

READ MORE



★★★★★ Check us out on **yelp**

APP STORE ★★★★★ | GOOGLE PLAY ★★★★★

Had a five-star Dolly experience? Share your Dolly story [here](#).

Cities With Dolly

More coming soon!





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[BOOK A DOLLY](#)



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Attachment B

https://dolly.com/cities/

File Edit View Favorites Tools Help

Suggested Sites Web Slice Gallery

dolly Services Cities Partners Helpers FAQ Blog | Sign In **BOOK A DOLLY**

Cities With Dolly

More coming soon!

SEATTLE
PORTLAND
SAN DIEGO
DENVER
CHICAGO
PHILADELPHIA
BOSTON

Tell us where to go next!

Your ZIP Code

Email Address

SUBMIT

About Services
Blog Cities
Careers Partners
Contact Us Helpers
FAQ

BOOK A DOLLY
Download on the App Store
GET IT ON Google Play

©2018 Dolly Terms Privacy

f t i p

Screen capture of Dolly website "Cities" tab, printed on June 15, 2018.

Attachment C


Browser address bar: https://www.yelp.com/biz/dolly-seattle?sort_by=date_desc

Recommended Reviews for Dolly

Your trust is our top concern, so businesses can't pay to alter or remove their reviews. [Learn more.](#)

Search within the reviews Sort by Newest First - Language English (108) -

[Start your review of Dolly.](#)




Uncle W.
Seattle, WA
0 friends
37 reviews
17 photos


6/15/2016


Sent out 2 guys and I am helping them. I am lifting a heavy object (undisclosed to protect the innocent), and the first guy is just standing there while the driver is wasting time putting on his gloves. I told the first guy to help out and then had to tell the second guy to help out. Next time, I won't help out. So lazy and unhelpful. Last time my client used them, they showed up an hour late and their extra fellow didn't show, even after waiting a extra half hour, so he never showed up in an hour and a half late. Finally helped the driver myself. They could use some quality control and some real movers, not a bunch of lazy deadbeats. What ever you do, don't help them out.


Was this review ...?


People also viewed

- 

Eco Movers Moving
3.9 Miles
298 reviews
Lisa R. said "I never thought that I would write a review for a moving..." [read more](#)
- 

All Service Moving
3.2 Miles
83 reviews
Charles S. said "Update as of 4.18.18: Their customer service had..." [read more](#)
- 

All Service Moving
44 reviews
Aaron and Wilder were extremely helpful and efficient with our move!
- 

Spectrum Local Movers
11 reviews
- 

Bigfoot Moving Service
43 reviews
Anthony and his team (Amber and Danny) were awesome.



Ashish M.
Ithaca, NY
132 friends
2 reviews

★★★★★ 6/6/2018

Excellent, no hassle service. Dolly picked up my craigslist item from the seller and brought to my home, without me being there. Great app.

Was this review ...?

Useful Funny Cool



Liam F.
Redmond, WA
0 friends
3 reviews

★☆☆☆☆ 5/31/2018

I am very disappointed in the service I received from Dolly and cannot recommend them. Their customer service has been very unresponsive. The movers managed to drop my armoire down a flight of stairs. Not only did this damage the armoire but also the wood floors where it landed. Additionally, the walls around the stairs and the banisters were damaged. Accidents happen. However, Dolly has been very slow to process my claim, and now will not provide an update on status of those various insurance claims, having not answered messages for over 2 weeks. I would like them to actually respond in a timely fashion and actually settle as I am currently out of pocket by a significant amount of money.

Was this review ...?

Useful Funny Cool



Comment from Clare K. of Dolly
Business Customer Service

6/1/2018 - Hello Liam, I am so sorry to hear about this experience.

Although damage claims to this magnitude are rare, we do take them very seriously when they happen and oftentimes this process takes a little longer than most due to having to reach out to multiple people. We truly appreciate your patience and understanding whilst we process this claim and I have personally followed up with an update today.

We hope that we can get this resolved very soon and to your satisfaction.

Clare-Dolly Support [Read less](#)

- [Assembling services](#)
- [Large and heavy item moving](#)
- [Local moving](#)

People found Dolly by searching for...

- [Moving Company Seattle](#)
- [Furniture Mover Seattle](#)
- [Furniture Delivery Service Seattle](#)

Near Me

- [Large & Heavy Item Moving Near Me](#)
- [Movers Near Me](#)
- [Residential Junk Removal Near Me](#)



L.J.T.
Mercer Island, WA
0 friends
2 reviews

5/3/2018

I won't use again because you can't send them a message. They can only send you a message. I asked for service and since I still had no one assigned by a certain time I wanted to change the time. I wasn't sure they would find someone at the time I had requested and I needed to schedule my time. There is no way to ask them a question. Not customer friendly.

Was this review ...?

Useful Funny Cool



Ann F.
Everett, WA
9 friends
10 reviews

4/20/2018

Awesome!! I was so thankful they were able to pick up my furniture. Very thorough and prompt!!

Was this review ...?

Useful Funny Cool



Michael C.
Lynnwood, WA
41 friends
4 reviews

2/11/2018

Used this service a few times! I don't think anyone realizes the value of on demand movers.

Dolly Yelp reviews, printed June 15, 2018

Washington State Complaint: CAS-23297-F6H5C3

Company: Dolly, Inc.

Industry:

Customer: [REDACTED]

Alt Contact: [REDACTED]

Account Number:

Service Phone:

E-mail Address: [REDACTED]@hotmail.com

Service Address: [REDACTED] Seattle King County Washington
98119

Complaint: CAS-23297-F6H5C3

Type: Complaint

Serviced By: Sheri Hoyt

Grouped By: Customer Service

Opened On: 7/5/2018, 2:28:00 PM

Closed On:

Disposition: In Progress

Violations Total: 0

TA Total: 0

Amount Customer Saved:

Description:

The customer has an unresolved damage claim with Dolly, Inc. (Dolly), an unpermitted household goods carrier that performed an intrastate household goods move (an armoire and filing cabinets) for him on April 7, 2018. The customer said he purchased damage protection from Dolly for \$15. The purchase gave him up to \$1,800 of protection.

During the move, Dolly dropped the armoire down a flight of stairs, damaging not only the armoire but the banister, the wall, and the hardwood floors. The customer was a tenant, not the home owner, and had to pay for the damage himself to a cost of approximately \$5,000.

Although Dolly has acknowledged its responsibility, it has not mailed him the \$1,800 check it offered, and he said to send, nor will it address reimbursing him the \$5,000 for the repairs to the home he moved out of; Dolly calls those damages "environmental damages." The customer said Dolly has been completely non-responsive for two weeks now.

*Please provide a response to the complaint and all documentation for this customer's move, including but not limited to: the written estimate, inventory form, bill of lading, the customer's claim form, and all correspondence with the customer. Please provide both sides of all two-sided documents.

7/6/2018, 10:18 a.m.) passed to Dolly, Inc. via email. Response due 7/13/2018 by 5 p.m.

Result:

Violations

There are no violations for this case.

Activities

Activity Type: Activity

Activity Date: 7/5/2018, 3:45:00 PM

Contact:

Subject: [Email from customer](#)

Attachments: 1

Description:

-SEE ATTACHMENT-

Activity Type: Activity

Activity Date: 7/5/2018, 3:51:00 PM

Contact:

Subject: [Email from customer](#)

Attachments: 2

Description:

-SEE ATTACHMENT-

Activity Type: Activity

Activity Date: 7/5/2018, 3:53:00 PM

Contact:

Subject: [Email from customer](#)

Attachments: 1

Description:

-SEE ATTACHMENT-

Activity Type: Activity

Activity Date: 7/5/2018, 3:53:00 PM

Contact:

Subject: [Email from customer](#)

Attachments: 2

Description:

-SEE ATTACHMENT-

Activity Type: Email

Activity Date: 7/5/2018, 4:15:35 PM

To: [REDACTED]@hotmail.com;

From: sheri.hoyt@utc.wa.gov

Subject: [WA UTC Complaint CAS-23297-F6H5C3 for Liam Foley CRM:0023896](#)

Attachments: 0

Body:

Hi [REDACTED]

Thank you for the additional information. I'll get back to you as soon as I have information to provide.

Regards,
Sheri

Activity Type: Email

Activity Date: 7/5/2018, 8:58:44 PM

To: sheri.hoyt@utc.wa.gov;

From: [REDACTED]@hotmail.com

Subject: [Re: WA UTC Complaint CAS-23297-F6H5C3 for \[REDACTED\]](#)
[CRM:0023896](#)

Attachments: 0

Body:

Much appreciated!

> On Jul 5, 2018, at 4:15 PM, Hoyt, Sheri (UTC) <sheri.hoyt@utc.wa.gov> wrote:

>

> Hi [REDACTED].

>

> Thank you for the additional information. I'll get back to you as soon as I have information to provide.

>

> Regards,

> Sheri

Activity Type: Email

Activity Date: 7/6/2018, 10:18:29 AM

To: mike@dolly.com;

From: sheri.hoyt@utc.wa.gov

Subject: [WA UTC Complaint CAS-23297-F6H5C3 for \[REDACTED\]](#)
[CRM:0023902](#)

Attachments: 0

Body:

New complaint

Please let me know if you have any questions.

Regards,

Sheri

Sheri Hoyt

Investigator 3

(360) 664-1102 Office

(360) 664-4291 Fax

Email: sheri.hoyt@utc.wa.gov

Utilities and Transportation Commission

Respect. Professionalism. Integrity. Accountability.

www.utc.wa.gov

+++++

Washington UTC Complaint CAS-23297-F6H5C3

Company: Dolly, Inc.

Customer: [REDACTED]

Account #:

Contact:

Service Address:

[REDACTED]
Seattle Washington 98119

Primary Phone:

Secondary Phone:

Email Address: [REDACTED]@hotmail.com

Complaint Information:

Complaint ID: CAS-23297-F6H5C3

Serviced By: Sheri Hoyt

Opened On: 7/5/2018 2:28 PM

Grouped By: Customer Service

Description:

The customer has an unresolved damage claim with Dolly, Inc. (Dolly), an unpermitted household goods carrier that performed an intrastate household goods move (an armoire and filing cabinets) for him on April 7, 2018. The customer said he purchased damage protection from Dolly for \$15. The purchase gave him up to \$1,800 of protection.

During the move, Dolly dropped the armoire down a flight of stairs, damaging not only the armoire but the banister, the wall, and the hardwood floors. The customer was a tenant, not the home owner, and had to pay for the damage himself to a cost of approximately \$5,000.

Although Dolly has acknowledged its responsibility, it has not mailed him the \$1,800 check it offered, and he said to send, nor will it address reimbursing him the \$5,000 for the repairs to the home he moved out of; Dolly calls those damages "environmental damages." The customer said Dolly has been completely non-responsive for two weeks now.

*Please provide a response to the complaint and all documentation for this customer's move, including but not limited to: the written estimate, inventory form, bill of lading, the customer's claim form, and all correspondence with the customer. Please provide both sides of all two-sided documents.

7/6/2018, 10:18 a.m.) passed to Dolly, Inc. via email. Response due 7/13/2018 by 5 p.m.

Activity Type: Phone Call

Activity Date: 7/6/2018, 10:21:00 AM

Direction: Outgoing

Customer:

UTC POC: Sheri Hoyt

Subject: [Called Michael Howell](#)

Description:

I called Mike Howell and identified myself and the purpose of my call. I briefly explained that I've passed to his email address, mike@dolly.com, an informal complaint to which he will need to respond within five business days. I said that the email provided the complaint detail and requests specific information be provided. I told him my contact information is included so he can contact me should he have any questions. I also advised him the response should be in line with that email or, at the very least, I would appreciate it if he copied/pasted the subject line to a fresh email so the email has no trouble returning to my complaint database. He said he understood and that he's not at work right now but he'll take a look when he can and get back to me as soon as he can. I told him that's fine, he has five business days to respond and all that information is in the email I just sent a minute ago. He said okay and the call ended.

Activity Type: Phone Call

Activity Date: 7/9/2018, 1:07:00 PM

Direction: Incoming

Customer: Armikka Bryant

UTC POC: Sheri Hoyt

Subject: [Armikka Bryant called](#)

Description:

Mr. Bryant called and left a message that he was calling about the Dolly complaint. He was calling to give me "an update where we are on the complaint." Mr. Bryant said they hope to resolve it in the next couple of weeks, they've been waiting on information from the customer for Dolly's insurance company. He will explain further in his response and will also send an email within the week.

Activity Type: Email

Activity Date: 7/9/2018, 5:41:03 PM

To: sheri.hoyt@utc.wa.gov;

From: armikka@dolly.com

Subject: [Re: WA UTC Complaint CAS-23297-F6H5C3 for \[REDACTED\] CRM:0023902](#)

Attachments: 0

Body:

Hi Sheri,

I am following-up the voicemail I left earlier today informing you that I will forward you our initial response by the end of the week.

Cheers,
Armikka

Armikka Bryant

Dolly | Director of Legal and Government Affairs

901 Fifth Avenue

Suite 600

Seattle, WA 98104-3188

[646.303.3533](tel:646.303.3533)

armikka@dolly.com

dolly.com

CONFIDENTIAL MATERIALS: This e-mail message and any attachments hereto are intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient(s) or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any use, dissemination, distribution, or copying of this e-mail message, and/or any attachments hereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify us by reply e-mail and permanently delete the original and any copy of this message, its attachment(s), and any printout thereof.

On Fri, Jul 6, 2018 at 10:24 AM, Mike Howell <mike@dolly.com> wrote:

A — Please take the lead in responding.

Michael Howell (from my phone)

Dolly | CEO
[425.443.0554](tel:425.443.0554)
mike@dolly.com
dolly.com

Begin forwarded message:

From: "Hoyt, Sheri (UTC)" <sheri.hoyt@utc.wa.gov>

Date: July 6, 2018 at 10:18:33 AM PDT

To: "Dolly, Inc." <mike@dolly.com>

Subject: WA UTC Complaint CAS-23297-F6H5C3 for [REDACTED]
CRM:0023902

New complaint

Please let me know if you have any questions.

Regards,

Sheri

Sheri Hoyt

Investigator 3

(360) 664-1102 Office

(360) 664-4291 Fax

Email: sheri.hoyt@utc.wa.gov

Utilities and Transportation Commission

Respect. Professionalism. Integrity. Accountability.

www.utc.wa.gov

+++++

Washington UTC Complaint CAS-23297-F6H5C3

Company: Dolly, Inc.

Customer: [REDACTED]

Account #:

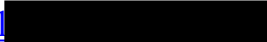
Contact:

Service Address:


[Seattle Washington 98119](#)

Primary Phone:

Secondary Phone:

Email Address: @hotmail.com

Complaint Information:

Complaint ID: CAS-23297-F6H5C3

Serviced By: Sheri Hoyt

Opened On: 7/5/2018 2:28 PM

Grouped By: Customer Service

Description:

The customer has an unresolved damage claim with Dolly, Inc. (Dolly), an unpermitted household goods carrier that performed an intrastate household goods move (an armoire and filing cabinets) for him on April 7, 2018. The customer said he purchased damage protection from Dolly for \$15. The purchase gave him up to \$1,800 of protection.

During the move, Dolly dropped the armoire down a flight of stairs, damaging not only the armoire but the banister, the wall, and the hardwood floors. The customer was a tenant, not the home owner, and had to pay for the damage himself to a cost of approximately \$5,000.

Although Dolly has acknowledged its responsibility, it has not mailed him the \$1,800 check it offered, and he said to send, nor will it address reimbursing him the \$5,000 for the repairs to the home he moved out of; Dolly calls those damages "environmental damages." The customer said Dolly has been completely non-responsive for two weeks now.


*Please provide a response to the complaint and all documentation for this customer's move, including but not limited to: the written estimate, inventory form, bill of lading, the customer's claim form, and all correspondence with the customer. Please provide both sides of all two-sided documents.

7/6/2018, 10:18 a.m.) passed to Dolly, Inc. via email. Response due 7/13/2018 by 5 p.m.

[Export as .doc](#)

Jun-18-18 **4.00**

Adult **ONE WAY**

From: Lakewood   \$ 4.00

To: Sumner

Direction: NORTH

658611 - 12





WARNING
Use caution
when passing
between cars.

EMERGENCY
To unlock door

1. Lift cover
2. Press lever down
3. Door should open



- Find your new apartment.
- ~~Rent a moving truck.~~ Book a Dolly.
- Back to the trails.

dolly

Truck & Muscle, Anytime You Need It

TEXT "DOLLY" TO (206) 207-0224
FOR \$10 OFF YOUR FIRST BOOKING

DOLLY.COM |  

Please



WARNING!
Use caution
when passing
between cars

EMERGENCY
To unlock door
1. Lift cover
2. Press lever down
3. Kick door open



LET SOMEONE ELSE DO THE HEAVY LIFTING.

Dolly connects you with local truck owners who are ready to help.

dolly

Truck & Muscle, Anytime You Need It

**TEXT "DOLLY" TO (206) 207-0224
FOR \$10 OFF YOUR FIRST BOOKING**

DOLLY.COM  

Attachment G

This screenshot shows a Facebook search results page for 'dolly movers'. The search bar at the top contains 'dolly movers'. The left sidebar has a 'Filter Results' section with 'VERIFIED' and 'CATEGORY' filters. The main content area lists several pages:

- Dolly**: 4.9 stars (1,549 reviews), 6.9K likes. Location: Seattle, Washington. Description: 'Truck & Muscle, Anytime You Need It.'
- Dolly Movers**: 20 likes. Location: Sudbury, Ontario. Description: 'Dolly Movers is a locally owned & operated moving company serving S...'
- Portland Movers Ready**: 4.7 stars (48 reviews), 774 likes. Location: Portland, Oregon. Description: 'a custom moving labor service in portland oregon'
- One Man and His Dolly**: 4.3 stars (22 reviews), 325 likes. Location: Springfield, Missouri. Description: 'Whether you need to move across the creek or across town, no worries.'
- Two Dudes and A Dolly**: 5.0 stars (83 reviews), 613 likes. Location: Pasco, Florida. Description: 'Moving and packing services. Small moves, assisted living home moves...'
- Man And Dolly**: 5.0 stars (13 reviews), 142 likes. Location: Austin, Texas. Description: 'Need a hand? We specialize in helping people just like yourself Move In.'

The right sidebar shows language options (English, Spanish, Portuguese, French, German) and a 'Chat (Off)' button.

This screenshot shows the 'About' page for the Dolly Facebook page. The header features the Dolly logo and a photo of two employees in orange shirts standing in front of a Dolly truck. The page includes a 'Book Now' button and a 'Send Message' button.

About

FIND US

- Address: 901 5th Ave, Seattle, Washington
- Phone: @dolly
- Buttons: Get Directions, Send Message

A map of Seattle is shown with a red pin at the location. The page also has a 'Suggest Edits' link and a 'Chat (Off)' button.

This screenshot shows the 'Business Info' section of the Dolly Facebook page. It includes the following details:

- BUSINESS INFO**
- Milestones**: 2013 - Founded on December 22, 2013
- ADDITIONAL CONTACT INFO**:
 - social@dolly.com
 - https://dolly.com
- MORE INFO**:
 - About: Truck & Muscle, Anytime You Need It.
 - Internet Company · Moving & Storage Service · Transportation Service

The footer contains navigation links (About, Create Ad, Create Page, Developers, Careers, Privacy, Cookies, Ad Choices, Terms, Help) and a language selector (English, Spanish, French, Chinese, Arabic, Portuguese, Italian, Korean, German, Japanese).

Dolly Facebook search and Facebook About Page, printed on June 18, 2018

Attachment H

Dolly
@getDolly

Dolly—Truck & Muscle Anytime You Need It. Use our app to load, haul, and deliver just about anything, whenever you need it! Need help? Tweet at @dolly_support.

https://dolly.com/cities
dolly.com

Joined January 2014

Tweets **Tweets & replies** **Media**

Pinned Tweet

Dolly @getDolly · Jun 5
Introducing the Seattle Box Exchange 📦 Get new moving boxes delivered straight to your door or find used ones in your neighborhood 🙌

Finding Moving Boxes is About to Get Easier: Introducing the Seattle...
When it comes time to move, your to-do list can feel impossibly long: formally inform
dolly.com

Dolly @getDolly · 6h
Friendly box dog is here to remind you to get boxes for your move (and get some extra ones for your pet to play in)! Get your moving boxes: bit.ly/2HFVJR7

Who to follow · Refresh · View all

- د.عبدالله الكمالی** @D_alk...
Follow
- Atiq ur Rehman** @AtiqRe...
Follow
- A. ORWELL** @sensualidad...
Follow

Find people you know
Import your contacts from Outlook

Connect other address books

Trends for you · Change

- #Juneteenth**
80.5K Tweets
- #NationalMartiniDay**
8,085 Tweets
- #EgyptVsRussia**
7,128 1 tweets
- #futurestores**
- UN Human Rights Council**
US plans to withdraw from UN Human Rights Council
- #KeepFamiliesTogether**
128K Tweets
- #RUSEGY**
Was Alex Droganov's injury a blessing in disguise?

Dolly's Twitter Page, printed June 19, 2018



BOOK A DOLLY

Moving and Delivery Help in Seattle

Have moving or delivery needs? Don't waste your time or money—use Dolly to connect with local truck owners who can help on your time at an affordable price.

BOOK A DOLLY

The Perfect Alternative to Traditional Moving Companies & Delivery Services in Seattle



Affordable

Find out the cost of your Dolly upfront before you book—no surprises!



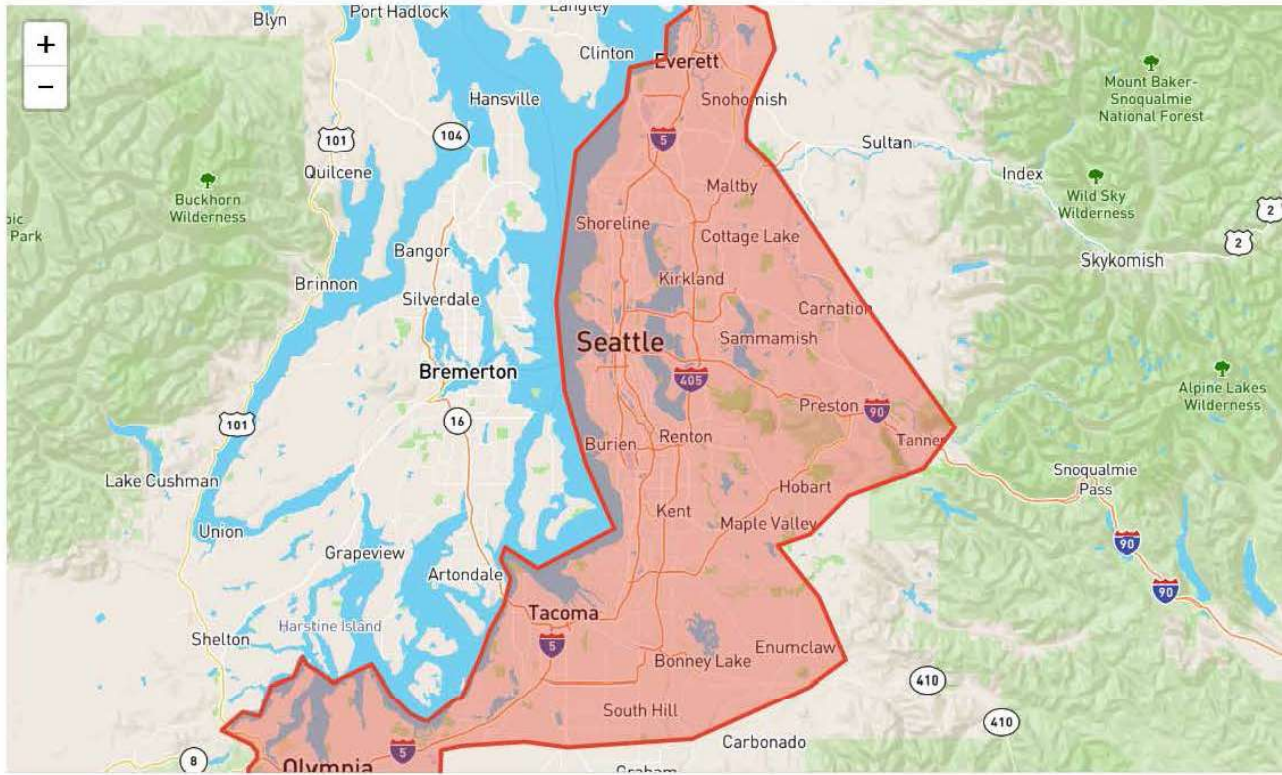
Convenient

You set the time, and your Helper will be there. Book for today, or next month. It's up to you.



Safe

All Dollys are backed by our [Damage Protection](#) program and commercial liability insurance.



Estimate Your Moving Costs

Simply enter your pickup and drop-off location and the number of items you plan to move. This is an estimated price and is subject to change when adding more items, details, and options.

Pick-up Location

Drop-off Location

Number of Items

GET ESTIMATE

BOOK A DOLLY

Find Moving Services Around the Seattle Metro Area



New patio table from Costco, but not sure how to get it to Capitol Hill? Connect with a Helper.



Live in Tacoma but need to pick up that Craigslist find in Shoreline? Use Dolly, find help.




Lease ending in Bellevue and need help moving stuff? Reach out to Dolly.



Is the closest Goodwill too far from Issaquah? Helpers will get your donations there.

A Few of the Neighborhoods We Serve:

 Ballard

 Bellevue

 Belltown

 Capitol Hill

 Downtown


 Queen Anne

 Tacoma

 West Seattle

 Kirkland

 Overlake

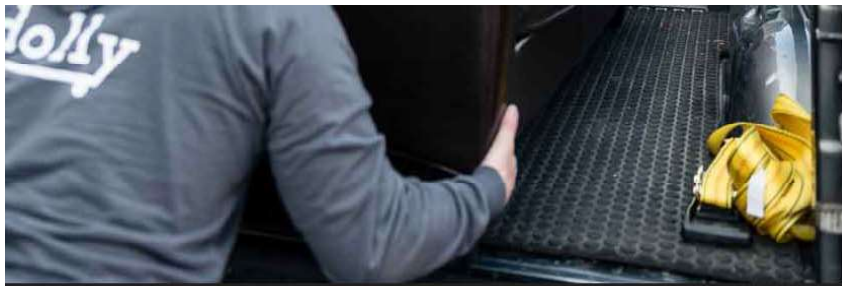
 Redmond

 South Lake Union



Want a side gig? Earn up to \$1,000 a week with Dolly!

Help Seattleites haul their stuff in and around the city. Work with Dolly as an independent contractor. Our service is about people helping people. Feel good knowing that you're helping your neighbors with work they couldn't do on their



own.

BECOME A HELPER

[About](#)

[Services](#)

[Blog](#)

[Cities](#)

[Careers](#)

[Partners](#)

[Contact Us](#)

[Helpers](#)

[FAQ](#)

BOOK A DOLLY

Download on the
App Store

GET IT ON
Google Play

©2018 Dolly [Terms](#) [Privacy](#)



Pinned tweet on Twitter for Seattle Box Exchange, Seattle service area, printed on June 19, 2018

Attachment I

https://www.facebook.com/dolly/

File Edit View Favorites Tools Help

Suggested Sites Web Slice Gallery

f Dolly

Katie Home Find Friends

See All

Posts

Dolly
June 22 at 1:49 PM

Make a Helper's day. See a Dolly out and about? Snap a picture and post it on Instagram with #DollySpotting, and we'll surprise the Helper with \$10! Get the deets on Instagram: <http://bit.ly/2liQguT>

Spot a Dolly. Post a picture. Help a Helper.

Like Comment Share

7 Most Relevant

Pages Liked by This Page

- Found Interiors - Con... Like
- goHappy Like
- Seattle's Doorhouse Like

English (US) · Español · Português (Brasil) · Français (France) · Deutsch

Privacy · Terms · Advertising · Ad Choices · Cookies · More

Facebook © 2018

Chat (Off)

Attachment J

https://www.instagram.com/p/BkV0ed5jYyv/?taken-by=getdolly

Home (15) Dolly - Home Dolly (@getd... x

File Edit View Favorites Tools Help

Suggested Sites Web Slice Gallery

Log In Sign Up

getdolly • Follow

getdolly Introducing #DollySpotting: see a Dolly in the wild, snap a picture, post it on Instagram with #DollySpotting, and we'll surprise the Helper with \$10! Help your favorite Helpers now

-
-
-

Details: Pictures may be posted to Instagram via your profile or your Instagram story. Submissions to the #DollySpotting contest made by any Dolly Helpers, Hands, and Assistants are disqualified from receiving the \$10 return. For further details or questions, contact social@dolly.com.

11 likes

JUNE 22

Log in to like or comment.

Spot a Dolly. Post a picture. Help a Helper.

dolly

https://www.instagram.com/p/BkDcjbDD7JG/?taken-by=getdolly

Attachment H

Service Date: August 3, 2018

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOLLY, INC.

DOCKET TV-171212

ORDER 06

GRANTING STAFF'S MOTION FOR
IMPOSITION OF SUSPENDED
PENALTY FOR VIOLATION OF
COMMISSION ORDER

BACKGROUND

- 1 The Washington Utilities and Transportation Commission (Commission), on January 18, 2018, entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing initiating this docket on its own motion. Order 01 alleged that Dolly, Inc. (Dolly) should be classified as a household goods carrier under RCW 81.80.010(5) because it advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington. Order 01 further alleged that Dolly advertised as a motor freight carrier for the transportation of property other than household goods without first obtaining a common carrier permit in violation of RCW 81.80.070, and that Dolly operated as a solid waste collection company by advertising for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity in violation of RCW 81.77.040.
- 2 The Commission entered Order 02, on March 29, 2018, and Corrected Order 02, on April 9, 2018. Corrected Order 02 is the Commission's Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance.¹ Order 02 required Dolly to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company in Washington and assessed a \$69,000 penalty for violations of state laws. Order 02, however, provided that one-half of the penalty amount, \$34,500, would be suspended:

¹ We subsequently refer to "Corrected Order 02" in this Order as "Order 02" for the sake of brevity.

ORDER 06

conditioned on Dolly ceasing and desisting fully from activities such as described in this order that define it under the Commission's governing statutes as a household goods carrier, a common carrier transporting property other than household goods (*i.e.*, a motor freight carrier), and a solid waste hauler. This means, among other things, that Dolly must state clearly 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 transporter of property other than household goods, or as a solid waste hauler.²

Order 02 also informed Dolly that the Commission would investigate whether the Company was complying with these conditions on, or shortly after, 10 days following the date the Initial Order became final by operation of law or following affirmation by the Commission on review. Order 02 put Dolly on notice that any failure to comply with the conditions at that time, or subsequently within a period of two years would be duly noticed by the Commission and the suspended penalty amount of \$34,500 would be due and payable within five days following the date of Commission notice without further action by the Commission.

3 Dolly filed its Petition for Administrative Review on April 19, 2018, and Staff filed its Answer to Dolly's Petition on May 8, 2018. The Commission entered Order 04, its Final Order Denying Petition for Administrative Review on May 18, 2018.

4 The Commission stated in Order 04 that it found "no merit in the legal arguments contained in the Company's petition."³ The Commission expressly recognized, however, Dolly's argument that the Washington state legislature passed a budget proviso during the pendency of this matter that clearly indicated legislative interest in the regulation of companies like Dolly. Order 04 made clear that the budget proviso did not "effect a change in the law or affect our responsibility to enforce it."⁴ Order 04 stated further that:

The legislature did not, by passing the proviso, order the Commission to cease enforcing the public service laws that do not allow for Dolly to

² Order 02 ¶ 43.

³ Order 04 ¶ 51.

⁴ *Id.* ¶ 50.

operate as it does without a permit. The legislature also declined to amend the definition of household goods carrier, common carrier, and solid waste collection company to exclude companies like Dolly from those definitions.⁵

- 5 Nonetheless, in light of the 2018 legislative deliberations on regulation of companies like Dolly, the enacted budget proviso with a report due by December 15, 2018, and likely consideration of legislation in the 2019 session, Order 04 established a due date for the penalty assessed in Order 02 that would allow for ongoing work on the study directed in the budget proviso to continue and to provide an opportunity for the 2019 legislature to amend current Commission statutes in this area if it so chooses. The Commission conditioned this postponement in the due date for the penalty assessment, making it “contingent on the Company’s full compliance with the terms of [Order 04], including those requiring it to cease and desist from operations described in and found unlawful in Corrected Order 02.”⁶ The Commission put Dolly on notice in Order 04 that if it found going forward that Dolly failed to cease and desist from its unlawful operations, the full \$69,000 penalty assessed would become due immediately.
- 6 Dolly filed a Motion to Stay Effectiveness of Final Order 04 on May 29, 2018. Dolly stated that it contacted Staff following service of Order 04 and inquired about applying for household goods carrier, common carrier, and solid waste collection company permits to obtain authority from the Commission to provide those services. Dolly said it needed additional time to file petitions for exemptions from certain Commission rules applicable to the permit process that the Company believes do not apply to its operations. The Company argued that the Final Order’s effectiveness would cause Dolly irreparable harm because the cease and desist provisions require Dolly to permanently refrain from advertising and providing service.⁷ Dolly also stated that the Company’s “applications to

⁵ *Id.*

⁶ *Id.* ¶ 51.

⁷ We note that this mischaracterizes what Order 04 provided. Order 04 required Dolly to “immediately cease operating as a household goods carrier, common carrier, and solid waste collection company *unless it obtains authority from the Commission.*” Order 04 ¶ 75 (emphasis added). Order 04 also required Dolly:

[T]o 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,

obtain Commission authority to operate comply with the terms of the cease and desist orders” and further claimed that the stay would allow “Commission Staff and Dolly . . . to process those applications and for the Commission to rule on Dolly’s petitions for exemption from relevant and applicable Commission permitting rules.”⁸

7 Staff responded to Dolly’s Motion for Stay stating that it essentially “amounts to a request that the Commission waive RCW 81.04.510 and authorize it to operate without first obtaining a permit.”⁹ Staff argued, among other things, that the Commission does not have discretion to approve violations of the public service laws and should deny Dolly’s Motion for Stay on that basis.

8 The Commission, on June 8, 2018, entered Order 05 Denying [Dolly’s] Motion for Stay, saying that:

As a threshold matter, the Commission is not authorized to grant Dolly’s request to stay the effectiveness of the cease and desist portions of the Final Order. RCW 81.04.510 provides that, upon a finding that a carrier is engaging in regulated activity, the Commission is “authorized and *directed* to issue cease and desist orders to all parties involved in the operations or acts.” The Commission has no discretion to waive this statutory requirement. Although our analysis ends here, we nevertheless dispose of Dolly’s claims for the purpose of discussion.¹⁰

9 It would serve no purpose to repeat here the balance of the Commission’s discussion rejecting Dolly’s arguments, but it is important relate the guidance given Dolly in Order 05, as follows:

Our denial of Dolly’s Motion to Stay today does not preclude the Company from filing with the Commission applications for permits or

as a common carrier transporting property other than household goods, or as a solid waste hauler *unless it obtains authority from the Commission.*

Id. ¶ 76 (emphasis added). Thus, the Commission did not “require Dolly to permanently refrain from advertising and providing service;” it required Dolly to immediately cease its operations that would continue to violate Washington statutes and Commission rules unless and until the Company obtained necessary permits from the Commission.

⁸ Dolly Motion for Stay ¶ 5.

⁹ Staff Response to Motion for Stay ¶ 7.

¹⁰ Order 05 ¶ 5.

petitioning for exemption from certain rules consistent with the requirements of state law. *The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process.*¹¹

DISCUSSION

10 The Commission’s regulatory Staff conducted an investigation of Dolly, Inc., after the Commission entered Order 04 and determined that Dolly had not ceased its Washington operations as required by the Order and, moreover, had in fact continued to actively promote and market its illegal activities.¹² Staff, relying on the records on file in this docket and an attached Declaration by Commission Investigator Susie Paul, requested that the Commission “enter an order lifting its suspension of the \$69,000 penalty imposed against Dolly, Inc., in Order 04 in this matter and require Dolly, Inc., to pay the \$69,000 penalty immediately,” as provided in Order 04.¹³ Staff argued in its motion that:

The Commission suspended the penalty it imposed against Dolly, Inc. to incent the company’s compliance with Order 04, including the order’s cease and desist provisions. That incentive has failed. Dolly, Inc. has continued to perform regulated services without operating authority from the Commission, and it has continued to advertise that it provides those services. The Commission should lift the suspension of penalties and require Dolly, Inc. to pay the full \$69,000 penalty imposed in Order 04 in this docket.¹⁴

11 Dolly responded, opposing Staff’s Motion, on July 19, 2018. Dolly requested that the Commission maintain the suspension of penalties imposed by Order 04. Dolly did not dispute the operative allegations in Ms. Paul’s Declaration and admitted in its response that it has not ceased and desisted from its illegal operations.¹⁵ Dolly argues, in effect, that because it now has filed for operating authority and various exemptions from

¹¹ Order 05 ¶ 8 (emphasis added).

¹² Staff Motion for Imposition of Suspended Penalty ¶ 3 (citing Decl. of Susie Paul).

¹³ *Id.* ¶ 4.

¹⁴ *Id.* ¶ 6.

¹⁵ Declaration of Susie Paul ¶¶ 5 – 13; Dolly Response, first page, line 19 – second page, line 1. Dolly’s Response includes neither page numbers nor paragraph numbers.

Commission rules, it should be excused from the consequences that follow logically, and necessarily, from its refusal to obey the Commission's orders that plainly require it to cease and desist immediately from its illegal operations.¹⁶

- 12 Order 04 and Order 02, which the Commission adopted in, and expanded on, in Order 04, are self-executing insofar as their penalty provisions are concerned.¹⁷ The evidence is undisputed that Dolly has engaged in the business operations that trigger these provisions. It follows that the full penalty amount assessed against Dolly, \$69,000, is now due and payable within five days following the date of this Order giving notice of Dolly's failure to comply with the conditions imposed by the Commission's prior orders in this docket.

ORDER

THE COMMISSION ORDERS THAT:

- 13 (1) Dolly, Inc., has failed to comply with the Commission's orders in this docket, including provisions in those order that impose penalties and suspend penalties, in part, subject to conditions.
- 14 (2) The full \$69,000 in penalties assessed against Dolly, Inc., is now due and payable.

DATED at Olympia, Washington, and effective August 3, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Chief Review Judge

¹⁶ Order 05 ¶ 8 ("The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process"); Order 04 ¶ 51 (making postponement in the due date for the penalty assessment "contingent on the Company's full compliance with the terms of [Order 04], including those requiring it to cease and desist from operations described in and found unlawful in Corrected Order 02).

¹⁷ Order 02 ¶¶ 55, 56; Order 04 ¶¶ 4, 5.

Attachment I

Service Date: August 31, 2018

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOLLY, INC.

DOCKET TV-171212

ORDER 07

DENYING APPLICATION FOR
MITIGATION OF PENALTIES

BACKGROUND

- 1 On January 18, 2018, the Washington Utilities and Transportation Commission (Commission), entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, initiating this docket on its own motion. Order 01 alleged that Dolly, Inc. (Dolly) should be classified as a household goods carrier under RCW 81.80.010(5) because it advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington. Order 01 further alleged that Dolly advertised as a motor freight carrier for the transportation of property other than household goods without first obtaining a common carrier permit in violation of RCW 81.80.070, and that Dolly operated as a solid waste collection company by advertising for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity in violation of RCW 81.77.040.
- 2 On March 29, 2018, the Commission entered Order 02, and on April 9, entered Corrected Order 02.¹ Order 02 required Dolly to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company in Washington, and assessed a \$69,000 penalty for violations of state laws. Order 02 also suspended a \$34,500 portion of the penalty conditioned on Dolly ceasing and desisting its Washington operations as a household goods carrier, as a common carrier of property other than household goods, and as a solid waste hauler.²

¹ Corrected Order 02 is the Commission's Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance. We refer to "Corrected Order 02" in this Order as "Order 02."

² Order 02 ¶ 43.

- 3 Dolly filed its Petition for Administrative Review on April 19, 2018, and Staff filed its Answer to Dolly's Petition on May 8, 2018. The Commission entered Order 04, its Final Order Denying Petition for Administrative Review, on May 18, 2018. Order 04 postponed payment of the \$34,500 portion of the penalty that was not suspended until July 10, 2019, and suspended the remaining \$34,500 portion until June 30, 2020. Order 04 put Dolly on notice that if it failed to cease and desist its unlawful operations, the full \$69,000 penalty would become due immediately.
- 4 On May 29, 2018, Dolly filed a Motion to Stay Effectiveness of Final Order 04. On June 8, 2018, the Commission entered Order 05 Denying Dolly's Motion for Stay.
- 5 On July 12, 2018, Staff filed a Motion to Impose Penalties. In its Motion, Staff requested the Commission impose the \$69,000 suspended penalty based on Dolly continuing to operate and advertise regulated services in violation of Order 04.
- 6 On August 3, 2018, the Commission entered Order 06, Granting Staff's Motion and imposing the \$69,000 penalty for violating a Commission order.
- 7 On August 20, 2018, Dolly filed an Application for Penalty Mitigation (Application for Mitigation). In its Application for Mitigation, Dolly argues that a penalty is not necessary to compel compliance with Order 04 because Dolly was not granted sufficient time to obtain operating permits before penalties were imposed. Because the Commission's licensing services division has not yet made a final determination regarding the disposition of Dolly's permit application, Dolly argues that imposing penalties without mitigation would be contrary to the Commission's objective of obtaining compliance with the law.

DISCUSSION

- 8 We deny Dolly's Application for Mitigation. As a threshold matter, we find that neither applicable laws nor Commission rules permit the Company to submit an application for mitigation. 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.³ As discussed above, Dolly previously exercised its right to administrative review, and thus has exhausted its administrative remedies related to the

³ Unlike RCW 81.04.405, which permits public service companies to apply for mitigation within 15 days of receiving notice that penalties are due, RCW 81.04.380 provides no such process.

penalty assessed in Order 02 and affirmed by Order 04. Likewise, WAC 480-07, the Commission's procedural rules, contemplate applications for mitigation only when penalties are assessed without a prior hearing.⁴

9 Even if there were a procedural basis on which we could accept Dolly's Application for Mitigation, the Company failed to introduce new information not previously considered or explain other circumstances that demonstrate a lesser penalty would be equally or more effective in ensuring compliance with applicable statutory and regulatory requirements.⁵

10 Instead, Dolly argues that the Commission has "controlled the timeline for Dolly's compliance with Order 04" because it has not yet approved the Company's application. By doing so, Dolly fails to 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. As we observed in Order 06:

Dolly argues, in effect, that because it now has filed for operating authority and various exemptions from Commission rules, it should be excused from the consequences that follow logically, and necessarily, from its refusal to obey the Commission's orders that plainly require it to cease and desist immediately from its illegal operations.⁶

11 Because Dolly reiterates those same arguments in its Application for Mitigation, it failed to present any new information or changed circumstances that would warrant further suspension or reduction of the penalty.

⁴ See WAC 480-07-300(2)(g), WAC 480-07-305(3)(d), and WAC 480-07-610(2)(e).

⁵ See Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission, ¶ 19 (January 7, 2013), which sets out the criteria the Commission considers when deciding whether to grant a request for mitigation.

⁶ Order 05 ¶ 8 ("The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process"); Order 04 ¶ 51 (making postponement in the due date for the penalty assessment "contingent on the Company's full compliance with the terms of [Order 04], including those requiring it to cease and desist from operations described in and found unlawful in Corrected Order 02").

ORDER

THE COMMISSION ORDERS THAT:

- 12 (1) Dolly, Inc.'s Application for Mitigation of Penalties is DENIED.
- 13 (2) The full \$69,000 in penalties assessed against Dolly, Inc., remains due, and must be paid within five days of the date of this Order.

DATED at Olympia, Washington, and effective August 31, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Director, Administrative Law Division

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOLLY, INC.

DOCKET TV-171212

ORDER 08

DENYING PETITION FOR
ADMINISTRATIVE REVIEW

BACKGROUND

- 1 On January 18, 2018, the Washington Utilities and Transportation Commission (Commission), entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, initiating this docket on its own motion. Order 01 alleged that Dolly, Inc. (Dolly or Company) should be classified as a household goods carrier under RCW 81.80.010(5) because it advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington. Order 01 further alleged that Dolly advertised as a motor freight carrier for the transportation of property other than household goods without first obtaining a common carrier permit in violation of RCW 81.80.070, and that Dolly operated as a solid waste collection company by advertising for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity, in violation of RCW 81.77.040.
- 2 On March 29, 2018, the Commission entered Order 02, and on April 9, entered Corrected Order 02.¹ Order 02 required Dolly to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company in Washington, and assessed a \$69,000 penalty for violations of state laws. Order 02 also suspended a \$34,500 portion of the penalty conditioned on Dolly ceasing and desisting its Washington operations as a household goods carrier, as a common carrier of property other than household goods, and as a solid waste hauler.²

¹ Corrected Order 02 is the Commission’s Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance. We refer to “Corrected Order 02” in this Order as “Order 02.”

² Order 02 ¶ 43.

- 3 Dolly filed its Petition for Administrative Review of Order 02 on April 19, 2018, and Staff filed its Answer to Dolly's Petition on May 8, 2018. The Commission entered Order 04, its Final Order Denying Petition for Administrative Review, on May 18, 2018. Order 04 postponed payment of the \$34,500 portion of the penalty that was not suspended until July 10, 2019, and suspended the remaining \$34,500 portion until June 30, 2020. Order 04 put Dolly on notice that if it failed to cease and desist its unlawful operations, the full \$69,000 penalty would become due immediately.
- 4 On May 29, 2018, Dolly filed a Motion to Stay Effectiveness of Final Order 04. On June 8, 2018, the Commission entered Order 05 Denying Dolly's Motion for Stay.
- 5 On July 12, 2018, Staff filed a Motion to Impose Penalties. In its Motion, Staff requested the Commission impose the \$69,000 suspended penalty based on Dolly continuing to operate and advertise regulated services in violation of Order 04.
- 6 On August 3, 2018, the Commission entered Order 06, Granting Staff's Motion and imposing the \$69,000 penalty for violating a Commission order.
- 7 On August 20, 2018, Dolly filed an Application for Penalty Mitigation. In its Application, Dolly argued that a penalty is not necessary to compel compliance with Order 04 because Dolly was not granted sufficient time to obtain operating permits before the Commission imposed penalties.
- 8 On August 31, 2018, the Commission entered Order 07, Denying Application for Mitigation of Penalties.
- 9 On September 21, 2018, Dolly filed a Petition for Administrative Review of Order 07. In its Petition, Dolly requests the Commission exercise its discretion to find that Dolly is eligible for penalty mitigation consistent with the Commission's enforcement policy. Dolly argues that, by applying for operating authority and changing its advertisements, it has complied with its interpretation of Order 04. Dolly contends that the use of penalties to force compliance makes no sense under the circumstances presented, and argues that the Commission has reasonable grounds to determine that Dolly is eligible for mitigation based on the Company's attempts to comply with Order 04.
- 10 On September 24, 2018, Staff filed an Answer to Dolly's Petition. In its Answer, Staff argues that: 1) Dolly's Petition is a collateral attack on the penalty imposed by Order 04; 2) Dolly remains out of compliance with Order 04 because the Company has not ceased its unlawful operations; 3) no procedural rule permits Dolly to apply for mitigation at this

stage of the proceeding; and 4) granting Dolly's Petition would reward its decision to flout the law and the Commission's authority.

DISCUSSION

- 11 We deny Dolly's Petition for Administrative Review. Order 07 properly denied Dolly's Application for Mitigation, and we adopt it as our own. We address Dolly's arguments in turn.
- 12 Dolly first claims that it has changed its advertising and otherwise complied with Order 04 to the best of its ability. We disagree. Staff investigator Susie Paul's declaration filed in support of Staff's Motion to Impose Suspended Penalty documents Dolly's ongoing advertisements for household goods moving services in Washington on its website, its Facebook, Twitter, and Instagram pages, and on local commuter trains. Staff's undisputed evidence served as the basis for both Staff's Motion and our order granting it.
- 13 Despite continuing to operate, Dolly points to its permit application as proof of its good faith effort to comply with Commission rules and Order 04. The status of the Company's application, however, has no bearing on its obligation to comply with RCW 81.80.075, which provides that "no person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the Commission." Nor does the status of Dolly's application have any bearing on its obligation to comply with the cease and desist provision of Order 04.
- 14 Concurrent with its permit application, Dolly also filed a petition for exemption from numerous Commission rules, and notes in its Petition that, "[a]s of this filing, the Commission has neither granted or [sic] denied Dolly's permit applications or determined a final disposition of the Petition for Rule Exemption."³ The same day Dolly filed its Petition, the Commission issued a Notice of Intent to Deny Application for Permanent Authority; Notice of Opportunity for Hearing (Notice) in Docket TV-180605. The Notice explained that the Commission will postpone consideration of Dolly's petition for exemption pending a final determination of whether to grant Dolly's permit application because that determination may moot the exemption request.⁴ The pending resolution of these issues, however, does not excuse Dolly's ongoing violations.

³ Dolly's Petition at 2:1-2.

⁴ *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, Notice of Intent

15 In light of these circumstances, we decline Dolly’s invitation to find that the Company is eligible for penalty mitigation. As the Administrative Law Judge explained in Order 07, no procedural rule permits Dolly to apply for mitigation in the context of this proceeding.⁵ In addition, we agree with Staff that exercising our discretion to allow such application would serve only to ratify Dolly’s violations of applicable laws and rules.

16 Finally, Dolly’s argument that using penalties to force compliance “makes no sense under the circumstances presented” is misplaced. Penalties both punish past conduct and serve to deter future violations. The Commission suspended a portion of the penalty in Order 04 conditioned on Dolly ceasing and desisting its unlawful operations; in that instance, the suspended penalty was meant to provide Dolly with a financial incentive to discontinue violating applicable laws and rules. Dolly, however, failed to adhere to those conditions. The Commission imposed the suspended penalty in Order 06 precisely because the mere possibility of a penalty was insufficient incentive for the Company to comply with its legal obligations. Circumstances have not changed, and Dolly remains in violation of Order 04. Accordingly, we deny Dolly’s Petition.

ORDER

THE COMMISSION ORDERS THAT:

17 (1) Dolly, Inc.’s Petition for Administrative Review is DENIED.

to Deny Application for Permanent Authority; Notice of Opportunity for Hearing, n. 1 (Sept. 21, 2018).

⁵ Dolly cites the Commission’s Enforcement Policy as a basis for the Commission to find that the Company is eligible for mitigation. The Enforcement Policy, however, only envisions requests for mitigation when the Commission administratively issues a penalty assessment without a hearing, and explains that “the company seeking mitigation must file a written statement providing the grounds for mitigation and must request either a hearing or a Commission determination based solely on the written statement.” Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 19 (Jan. 7, 2013) (Enforcement Policy).

- 18 (2) The full \$69,000 in penalties assessed against Dolly, Inc., remains due, and must be paid within five days after the date of this Order.

DATED at Olympia, Washington, and effective October 5, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a Commission final order. 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 81.04.200 and WAC 480-07-870.