

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

Dolly, Inc.

for a permit to operate as a motor carrier
of household goods and a permit to operate
as a motor freight common carrier

DOCKET TV-180605

COMMISSION STAFF’S REPLY
IN SUPPORT OF ITS MOTION FOR
SUMMARY DETERMINATION

I. INTRODUCTION

1 Staff moved for summary determination in this docket based on Dolly, Inc.’s
(Dolly) lengthy history of violating Commission orders. Dolly, in response, offers no
evidence to create a material issue of fact about its non-compliance. Dolly, by failing
to create a material issue of fact, has failed to discharge its burden in response to
Staff’s motion, and none of the company’s arguments should persuade the
Commission that summary determination is inappropriate here.

II. ARGUMENT

A. Staff Properly Described the Standard for Summary Determination

2 Dolly first contends that the Commission should deny Staff’s motion for
summary determination “as a matter of law” because Staff “fails to articulate” the
correct standard for summary determination.¹ Dolly incorrectly describes Staff’s
summary of the relevant law, which “articulated” the correct standard.

3 As Staff wrote in its motion:

The Commission authorizes motions for summary determination when “the
pleadings filed in the proceeding, together with any properly admissible
evidentiary support show that there is no genuine issue as to any material fact

¹ *In re Application of Dolly, Inc.*, Docket TV-180605, Dolly, Inc. Response Opposing Staff’s Motion for Summary Determination, at 5 ¶ 17 (Nov. 2, 2018) (hereinafter “Dolly’s Response”).

and that the moving party is entitled to judgment as a matter of law.” The Commission authorizes those motions to avoid a needless expenditure of resources where a hearing is unnecessary because no material factual issues exist. The Commission considers all evidence, and any reasonable inferences arising therefrom, in the light most favorable to the non-moving party when considering whether a material issue of fact exists. However, where reasonable minds can reach only one conclusion, issues of fact become immaterial because the Commission may resolve them as questions of law.

The party moving for summary determination bears the burden of showing the absence of a material issue of fact. If the moving party satisfies its burden, then the non-moving party must present evidence demonstrating that material facts are in dispute. The non-moving party must do so by “set[ting] forth specific facts showing that there is a genuine issue for trial” and may not rest on mere allegations in its pleadings. If the non-moving party fails to make a sufficient showing to establish a material issue of fact as to an element for which it bears the burden of proof, the tribunal should grant the motion for summary determination.²

4 There is a difference between a standard and a purpose. A standard sets out the way to measure something,³ such as when a tribunal should grant summary determination. A purpose explains why something is done,⁴ such as why a tribunal should grant summary determination at all.

5 Staff’s motion followed a typical legal practice: in setting out the applicable legal rules, it stated the standard for, and purpose of, summary determination.⁵ The first sentence of the first paragraph quoted above sets out the standard for granting summary judgment, a standard that Dolly agrees is correct.⁶ The second sentence of

² *In re Application of Dolly, Inc.*, Docket TV-180605, Commission Staff’s Motion for Summary Determination, 6 ¶¶ 15-16 (Oct. 11, 2018) (hereinafter Staff’s Motion”).

³ BLACK’S LAW DICTIONARY at 1412-13 (7th ed.) (defining standard).

⁴ *Id.* at 1250 (defining purpose).

⁵ *E.g.*, *Washburn v. City of Federal Way*, 178 Wn.2d 732, 746, 310 P.3d 1275 (2013) (quoting the text of CR 51(f) and then explaining the purposes of the rule); *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 306-07, 96 P.3d 957 (2004) (explaining the legal standards for collateral estoppel and why courts employ it).

⁶ Compare Staff’s Motion at 6 ¶ 15 with Dolly’s Response at 5 ¶ 17 (both noting that summary determination is appropriate where no material issue of fact exists and the moving party is entitled to judgment as a matter of law).

the first paragraph explains the purpose of a grant of summary determination. That purpose is hornbook law.⁷ Every other sentence in the two paragraphs quoted above sets out the law governing whether a material issue of fact exists and the burdens at each stage of summary determination.

6 Further, Staff applied the appropriate standard, the one Dolly agrees is correct, throughout its motion. Every paragraph of the argument section applying the summary determination standard discusses whether or not a material issue of fact existed. Not a single one of those paragraphs discusses whether a hearing would waste resources or time.⁸ Indeed, at no point does Staff contend that the Commission should grant it summary determination because the hearing would require the dedication of resources or effort.

7 Staff did not misstate the standard for summary determination, nor did it ask the Commission to apply an incorrect one. The Commission should reject Dolly's argument.

B. Dolly Fails to Carry its Burden of Showing a Material Issue of Fact Exists

8 Dolly next contends that “[g]enuine [i]ssues of [m]aterial [f]act [t]hat [m]ust [b]e [e]xplored at a [h]earing [e]xist”⁹ with regard to both its compliance and its payment histories, and that it will somehow produce evidence to that effect later.¹⁰

Dolly misunderstands the import of Staff's motion for summary determination, which was supported by a declaration setting out the evidence used by Staff to show that no

⁷ KARL B. TEGLAND, 4 WASHINGTON PRACTICE: RULES PRACTICE, at 371 (5th ed. 2006) (“Summary judgment is a procedural device designed to avoid the time and expense of a trial when no trial is necessary.”); *accord LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975).

⁸ Staff's Motion at 8 ¶ 21 (“no material issue of fact”), 9 ¶ 22 (same), 10-11 ¶ 26, 11 ¶ 27, 11 ¶ 28.

⁹ Dolly's Response at 5.

¹⁰ *E.g.*, Dolly's Response at 1 ¶ 2, 2 ¶ 5, 3 ¶ 8, 5-6 ¶¶ 18-19.

material issue of fact exists. In the face of that showing by Staff, Dolly needed to produce specific evidence showing that material issues of fact exist to avoid summary determination. Because it did not do so, no such questions exist and the Commission can, and should, summarily determine that Dolly is unfit and deny its application.

1. Dolly fails to create a material issue of fact as to its compliance with the Commission’s cease and desist order.

9 Dolly contends that material issues of fact exist regarding its compliance history because it will “explore [certain] topics and cross-examine Staff’s witnesses at hearing.”¹¹ Dolly cannot rely on the promise of producing evidence creating a material issue of fact at some point in the future to prevent summary determination. It needed to produce that evidence in response to Staff’s motion. Its failure to do so entitles Staff to summary determination in its favor.

10 The Commission considers the standards applicable to Civil Rule (CR) 56 when ruling on a motion for summary determination.¹² CR 56(e) provides that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

11 Staff supported its motion for summary determination with a declaration from Susie Paul. Ms. Paul made her declaration under penalty of perjury, about matters to which she is competent to testify, and on the basis of personal knowledge.¹³ Her

¹¹ Dolly’s Response at 6 ¶ 18.

¹² WAC 480-07-380(2)(a).

¹³ See generally Decl. of Susie Paul.

declaration largely concerns¹⁴ Dolly's own statements¹⁵ or her own actions, and, in any event, is about evidence admissible at hearing.¹⁶ Her declaration is therefore the kind of supporting evidence described in CR 56(e).¹⁷

12 Ms. Paul's declaration shows that Dolly failed to comply with the provisions in the Commission's cease and desist order concerning advertising. Ms. Paul described seeing a number of jurisdictional advertisements, and the exhibits to her declaration are largely screenshots of those advertisements.¹⁸ Ms. Paul's declaration thus leaves no material issue of fact about Dolly's non-compliance with the cease and desist order's advertising provisions.

13 Dolly did not contest Ms. Paul's factual assertions about its advertising at all. It, for example, offered no affidavit or declaration from any employee with knowledge stating that Dolly had modified its website or social media in specific ways.¹⁹ Dolly simply "adamantly disagrees with Staff's statement of issues and facts to be decided."²⁰ That type of generalized disagreement fails to discharge Dolly's burden at this stage of summary determination.²¹

14 Ms. Paul's declaration also shows that Dolly failed to comply with the provisions in the cease and desist order concerning its operations. She obtained a

¹⁴ See generally *id.*

¹⁵ ER 801(d)(2).

¹⁶ WAC 480-07-495(1).

¹⁷ *Nat. Union Ins. Co. of Pittsburg v. Puget Sound Power & Light*, 94 Wn. App. 163, 178, 972 P.2d 481 (1999).

¹⁸ Decl. of Susie Paul at 3-6 ¶¶ 14-31.

¹⁹ *Thompson v. Everett Clinic*, 71 Wn. App. 548, 555, 860 P.2d 1054 (1993) (party opposing summary judgment must "set[] forth specific facts, as opposed to general conclusions to demonstrate a genuine issue of material fact . . . Broad generalizations and vague conclusions are insufficient to resist a motion for summary judgment").

²⁰ Dolly Response at 5 ¶ 15.

²¹ CR 56(e); *Thompson*, 71 Wn. App. at 555.

number of quotes from Dolly after the Commission entered the cease and desist order.²² That order forbade the company from doing things such as providing those quotes or entering into any agreements to transport household goods. Ms. Paul's declaration therefore leaves no material issue of fact as to whether Dolly ceased and desisted from its unlawful operations.

15 Again, Dolly did nothing to contest Ms. Paul's factual assertions about its continued operations. It offered no affidavit or declaration stating that Dolly had changed its business operations to comply with the Commission's cease and desist order.²³ Again, Dolly appears to rest on a generalized disagreement with Staff's factual assertions.²⁴ Again, that does nothing to discharge Dolly's burden at this stage of the proceeding.²⁵

16 Dolly appears to suggest that a hearing is necessary to determine whether Ms. Paul's evidence shows that it is not compliant with the Commission's cease and desist order.²⁶ Dolly is incorrect. The Commission has repeatedly stated that her evidence shows that Dolly has violated the order.²⁷ If nothing else, the Commission finally laid Dolly's argument to rest less than a week ago when it stated that it had concluded that Dolly had "feign[ed] confusion"²⁸ about the Commission's cease and desist order "to

²² Decl. of Susie Paul at 4-5 ¶¶ 18, 19, 22, 27.

²³ *Thompson*, 71 Wn. App. at 555.

²⁴ Dolly Response at 5 ¶ 15.

²⁵ CR 56(e); *Thompson*, 71 Wn. App. at 555.

²⁶ Dolly's Response at 3 ¶ 8.

²⁷ *E.g.*, *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 08, at 3-4 ¶¶ 12-16 (Oct. 5, 2018); *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 07, at 3 ¶¶ 9-10 (Aug. 31, 2018); *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 06, at 5-6 ¶¶ 11-13 (Aug. 3, 2018).

²⁸ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 09, at 4 ¶ 14 (Oct. 31, 2018).

justify its noncompliance”²⁹ with “the public service laws and the Commission’s final order”³⁰ in Docket TV-171212. A hearing is not necessary to determine that Dolly is not compliant with the Commission’s order given the Commission’s repeated pronouncements.³¹

17 Dolly’s collective response to Staff’s motion for summary determination and the Commission’s latest order in Docket TV-171212, in fact, shows its non-compliance. As discussed next, Dolly finally (and tardily) paid the penalty imposed by Order 06 in Docket TV-171212 after the Commission entered its most recent order in that docket, and it claims to have complied with that order by doing so.³² But Dolly in its response said nothing about compliance with the Commission’s cease and desist order despite the clear signals from the Commission that it was not in compliance. Dolly did not, for example, submit with its response a declaration providing that the company has modified its operations or otherwise promising future compliance. The Commission should treat Dolly’s action as to the penalty but silence on the cease and desist order as a concession that it is, and will remain, noncompliant.³³

18 Under WAC 480-07-380(2) and CR 56(e), Dolly’s failure to contest Ms. Paul’s declaration leaves the Commission needing only to determine whether Staff is entitled to judgment as a matter of law.³⁴ Staff set out the reasons why it is in its initial motion and will largely not repeat them here. Staff does, however, note that the Commission has determined that the violation of a cease and desist order justifies a

²⁹ *Id.*

³⁰ *Id.* at 4 ¶ 16.

³¹ *Christensen*, 152 Wn.2d at 306-07 (collateral estoppel).

³² *See* Dolly’s Response at 6 ¶ 20.

³³ *In re J.J.*, 96 Wn. App. 452, 454 n.1, 980 P.2d 262 (1999).

³⁴ CR 56(e).

finding of unfitness and the subsequent denial of a permit. There exists no material issue of fact as to whether Dolly has violated such an order. The Commission should summarily determine that it is unfit and deny its application on that basis, if on no other.

2. Dolly fails to create a material issue of fact about its fitness through its belated payment of the penalty assessed in Docket TV-171212.

19 Dolly next contends a genuine material issue of fact remains as to its fitness because it paid the penalty imposed by the Commission “the very next day after the Commission filed Order 09 making the penalty due immediately.”³⁵ It castigates Staff for “misrepresent[ing] the facts.”³⁶ Staff did no such thing, and Dolly’s late payment does nothing to create a material issue of fact as to the company’s fitness.

20 The Commission suspended the penalty imposed on Dolly in Order 04 in Docket TV-171212. In doing so, the Commission provided that if Dolly failed to comply with the terms of the suspension, the “suspended portion of the penalty will be due and payable immediately upon notice of that finding to Dolly.”³⁷

21 The Commission gave notice that it found Dolly non-compliant with the terms of suspension in Order 06 in Docket TV-171212. There, a Commission ALJ determined that “the full penalty amount assessed against Dolly, \$69,000, is now due and payable within five business days following the date of this Order.”³⁸ The full

³⁵ Dolly’s Response at 6 ¶ 20.

³⁶ *Id.*

³⁷ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 04, at 19 ¶ 78 (May 18, 2018).

³⁸ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 06, at 6 ¶ 12 (Aug. 3, 2018); *see also id.* at 6 ¶ 14.

penalty was therefore due and payable on August 8, 2018.³⁹ Dolly's application for mitigation, and the review processes that followed denial of that application, did nothing to change the fact that the penalty was due and owing as of August 8, and every order entered by the Commission in response to Dolly's pleadings provided as much.⁴⁰

22 Dolly did not comply with Order 06 (or Order 07, or Order 08) until after the close of business on November 1, 2018.⁴¹ The invoice that Dolly claims shows its compliance, in fact, shows that the payment was due on August 20, 2018, and that the Commission gave the company until October 25, 2018 to pay to avoid collections.⁴² Dolly cannot point to a tardy payment as evidence that it is fit to operate; the tardiness

³⁹ See Dolly's Response at Attachment C ("Payment Due August 20, 2018" with a "Due Date" of "Due Upon Receipt"). Dolly contends that invoice gave it 15 days to pay. That is utterly incorrect. The invoice informed Dolly that the payment was past due and would be referred to the Attorney General's Office if Dolly did not pay it within 15 days.

⁴⁰ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 09, at 5 ¶ 18 (Oct. 31, 2018) ("[t]he full \$69,000 in penalties assessed against Dolly, Inc. remains due, and must be paid immediately) (emphasis added); *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 08, at 5 ¶ 18 (Oct. 5, 2018, 2018) ("[t]he full \$69,000 in penalties assessed against Dolly, Inc., remains due, and must be paid within five days after the date of this Order") (emphasis added); *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Order 07, at 4 ¶ 13 (Aug. 31, 2018) (same) (ALJ order).

⁴¹ Dolly contends that "testimony and evidence regarding the penalty would be helpful for the Commission in determining Dolly's fitness." Dolly's Response at 7 ¶ 22. Nothing prevented Dolly from offering that evidence here in response to Staff's motion.

⁴² Dolly's Response at Attachment C.

speaks to either the company's unwillingness or inability to comply with its obligations. Either way, it is unfit.⁴³

C. Summary Determination is Appropriate for Dolly's Application for Provisional Authority Given Its Unfitness

23 Dolly next claims that Staff misstated the issue presented for hearing because it applied for provisional, rather than permanent, authority.⁴⁴ Staff properly stated the issue, as readily seen from the notice that initiated this adjudication.

24 The Commission's Notice of Intent to Deny Application for Permanent Authority sets out fitness as the central issue at any hearing. It first summarizes Staff's recommendation that the Commission find Dolly unfit to hold a permit.⁴⁵ It then provides that the Commission "agrees with Staff's recommendation and intends to deny the Application" because the "information Staff has discovered renders Dolly unfit to operate as a household goods moving company."⁴⁶ The Commission offered Dolly a chance to request a hearing to contest Staff's factual allegations,⁴⁷ and Dolly did so. Staff's motion for summary determination addresses solely the issue of Dolly's fitness,⁴⁸ which, as just discussed, was the central if not the only factual issue described in the Commission's notice. Staff in no way misrepresented the issues.

25 Dolly, nevertheless, contends that the issue at hearing is whether it qualifies for provisional operating authority. But as Dolly notes, the Commission may deny an application for provisional operating authority under WAC 480-15-302(13) when

⁴³ See *In re Application GA-75154 of Ryder Distrib. Res., Inc.*, Order M.V.G. No. 1761, Hearing GA-75154 & Hearing GA-77539, 1995 Wash. UTC Lexis 35, at *11 (Aug. 9, 1995).

⁴⁴ Dolly's Response at 7 ¶ 23.

⁴⁵ *In re Application of Dolly, Inc.*, Docket TV-180605, Notice of Intent to Deny Application for Permanent Authority, Notice of Opportunity for Hearing, at 4 ¶ 19 (Sept. 21, 2018).

⁴⁶ *Id.* at 4 ¶ 20.

⁴⁷ *Id.* at 4-5 ¶ 22.

⁴⁸ See generally Staff's Motion.

“other circumstances exist that cause the commission to deny the application.”

Dolly’s unfitness is exactly the type of “other circumstances” contemplated by the Commission in promulgating the provisional authority rule. The Commission should state as much.

26 Dolly also contends that the Commission should not invoke the catch-all provision in WAC 480-15-302(13) because it has only ever done so in published decisions in the context of applicants with criminal histories. But the Commission has employed WAC 480-15-302(13) to deny an application where Staff discovered there outstanding consumer protection claims against the Applicant,⁴⁹ meaning that it is not simply employed where the applicant has a criminal history. The Commission’s use of WAC 480-07-302(13) in that context shows both the broad sweep of the rule and the dangers of limiting its application to cases involving criminal histories.

D. Commission Precedent does not Foreclose Summary Determination here

27 Dolly finally contends that Staff “fails to analyze relevant Commission precedent” concerning cases where “an applicant sought operating authority after the Commission issued a Notice [of its intent to deny an application] in lieu of an outstanding cease and desist order.”⁵⁰ Dolly claims that these show that “Dolly

⁴⁹ *In re Application of S.T.S.K. Enterprises, Inc.*, Docket TV-131028, Order 01, at 1-2 ¶¶ 2-5 (Aug. 22, 2013) (Initial Order); *In re Application of S.T.S.K. Enterprises, Inc.*, Docket TV-131028, Notice of Intend to Deny Application for Permanent Authority; Notice of Opportunity for Hearing, at 2 ¶ 6, 3-4 ¶¶10-14 (Aug. 5, 2013).

⁵⁰ Dolly’s Response at 9 ¶ 26.

qualifies for provisional operating authority while the Commission determines its fitness for permanent operating authority.”⁵¹ They show no such thing.

28 Initially, the Commission did not provide that its summary determination rules do not apply in licensing cases in WAC 480-07-380(2). Nor has it ever determined that those rules do not apply in licensing cases in any of its orders.⁵² Where there is no material issue of fact in a licensing case, summary determination is as appropriate as it is in any other case where there is no material issue of fact. As discussed above, there is no material issue of fact here. The Commission should grant Staff summary determination.

29 Further, Dolly incorrectly reasons that its case is analogous to cases where the Commission issued a notice of intent to deny an application “in lieu of” a cease and desist order. Dolly’s case involves both: the Commission justified the notice of its intent to deny Dolly’s application with Dolly’s lengthy history of non-compliance with its cease and desist order. As set out in Staff’s motion, there is no reason to hold a hearing here because no reasonable factfinder could find Dolly fit given that history of non-compliance, which has spanned a number of Commission orders and which the Commission has effectively labeled contumacious.

30 With those points in mind, Staff turns to the specific cases cited by Dolly.

31 Dolly first cites the application of B & Z Moving, where the Commission held a hearing to determine the applicant’s fitness. That case is readily distinguishable.

First, Staff did not there move for summary determination,⁵³ so it says nothing on the

⁵¹ *Id.* at 9-10 ¶ 30.

⁵² *See* WAC 480-07-380(2).

⁵³ *See generally In re Application of B & Z Moving, L.L.C.*, Docket TV-130259.

propriety of a grant of summary determination.⁵⁴ Second, that case turned on whether the applicant could credibly distance himself from a person ineligible for a permit.⁵⁵ Summary determination is generally inappropriate where the factfinder must make credibility determinations.⁵⁶ Here, the only potential credibility determination would have involved a promise of future compliance by Dolly. Commission precedent, however, requires that objective evidence of intent to comply with the requirements of law accompany any such promise for it to matter.⁵⁷ No objective evidence of any such intent is present here. The Commission may therefore assume without deciding that Dolly could offer credible assurances of future compliance (despite the fact that it did not) and still grant Staff's motion. Finally, the Commission denied B & Z Moving operating authority, including provisional operating authority, undercutting Dolly's argument that it is entitled to such authority while the Commission sorts out its fitness for permanent authority.⁵⁸

32 Dolly next cites the application of Movers4U, where the Commission again held a hearing to determine an applicant's fitness. Again, Staff did not move for summary determination in that docket,⁵⁹ making it inapposite.⁶⁰ Again, the case turned on credibility determinations,⁶¹ and the Commission need not make any such

⁵⁴ *Cazzanigi v. Gen. Elec. Credit Corp.*, 132 Wn.2d 433, 443, 938 P.2d 819 (1997).

⁵⁵ *In re Application of B & Z Moving, L.L.C.*, Docket TV-130259, Order 01, at 1 ¶ 2, 4-5 ¶¶ 18-22 (May 13, 2013).

⁵⁶ *Hartley v. State*, 103 Wn.2d 768, 775-77, 698 P.2d 77 (1985).

⁵⁷ *In re Application of Redline Courier, Inc.*, Order M. V. No. 148367, Hearing No. P-77664, 1994 Wash. UTC Lexis 86, Commission Decision and Order Denying Review; Affirming Initial Order Granting Application in Part, at ¶ 14 (Dec. 13, 1994).

⁵⁸ *In re Application of B & Z Moving, L.L.C.*, Docket TV-130259, Order 01, at 7-10 ¶¶ 35-43.

⁵⁹ See generally *In re Application of Annavilla L. Heath d/b/a MOVERS4U*, Docket TV-151116.

⁶⁰ *Cazzanigi*, 132 Wn.2d at 443.

⁶¹ *In re Application of Annavilla L. Heath d/b/a MOVERS4U*, Docket TV-151116, Order 01, at 1 ¶ 2 (Oct. 22, 2015).

determination here. Further, the Commission denied the applicant any operating authority, again undercutting Dolly's contention that it is somehow entitled to provisional authority.⁶²

33 Finally, Dolly cites the application of Acme Moving Labor. That case is readily distinguishable as it did not involve a contested hearing at all. The Commission held a settlement hearing to truncate a special proceeding.⁶³ As with the other cases cited by Dolly, Staff did not move for summary determination,⁶⁴ making it inapposite for that reason as well.⁶⁵ Further, in that case, the applicant accepted responsibility for its unlawful actions, agreed to pay a penalty, and then provided significant evidence of its fitness.⁶⁶ Dolly, as mentioned above, failed to produce any such evidence, leaving only its long-history of non-compliance to speak for it.

III. CONCLUSION

34 The Commission's rules provide for motions for summary determination where no material issue of fact exists and the moving party is entitled to judgment as a matter of law. Dolly failed to create a material issue of fact in response to Staff's motion for summary determination and supporting evidence. Staff's motion sets out the reasons it is entitled to judgment as a matter of law, and Dolly, for whatever

⁶² *Id.* at 7-8 ¶¶ 28-35.

⁶³ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Cheryl Ball d/b/a Acme Moving Labor & In re Application of Cheryl Ball d/b/a Acme Moving Labor*, Dockets TV-161206 & TV-170103, Order 05 and Order 01, at 8 ¶ 31 (Apr. 10, 2017).

⁶⁴ *See generally In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Cheryl Ball d/b/a Acme Moving Labor & In re Application of Cheryl Ball d/b/a Acme Moving Labor*, Dockets TV-161206 & TV-170103.

⁶⁵ *Cazzanigi*, 132 Wn.2d at 443.

⁶⁶ *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Cheryl Ball d/b/a Acme Moving Labor & In re Application of Cheryl Ball d/b/a Acme Moving Labor*, Dockets TV-161206 & TV-170103, Order 05 and Order 01, at 3 ¶¶ 9-10, 12-14, 4-5 ¶¶ 18-20.

reason, does not specifically contest any of them. The Commission should grant Staff's motion, summarily determine that Dolly is unfit, and deny its application.

Dated this 6th day of November 2018.

Respectfully submitted,

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