

**Exh. SP-24
Docket TV-180605
Witness: Susie Paul**

**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

**EXHIBIT TO
TESTIMONY OF**

Susie Paul

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Order 09, Docket TV-171212

November 30, 2018

Service Date: October 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 09

DENYING PETITION FOR
RECONSIDERATION

BACKGROUND

- 1 Following an evidentiary hearing, the Washington Utilities and Transportation Commission (Commission) entered Order 02 on March 29, 2018, and Corrected Order 02 on April 9, 2018.¹ Order 02 required Dolly, Inc. (Dolly or Company) 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
- 2 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.
- 3 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.

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.

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- 4 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.
- 5 On August 3, 2018, the Commission entered Order 06, Granting Staff's Motion and imposing the \$69,000 penalty for violating a Commission order.
- 6 On August 20, 2018, Dolly filed an Application for Penalty Mitigation. On August 31, the Commission entered Order 07, Denying Application for Mitigation of Penalties.
- 7 On September 21, 2018, Dolly filed a Petition for Administrative Review of Order 07. On October 5, the Commission entered Order 08, Denying Petition for Administrative Review.
- 8 On October 15, 2018, Dolly filed a Petition for Reconsideration of Order 08 (Petition) and Petition to Stay the Effective Date of Order 08 pending resolution of the Petition for Reconsideration.³ In its Petition, Dolly contends that Order 08 errs by concluding that no procedural mechanism exists to mitigate the penalty imposed by Order 04. Dolly argues that Order 02, and by extension, Order 04, assessed penalties pursuant to RCW 81.04.380 - .405. As such, Dolly claims that Order 04 grants the Commission statutory authority to mitigate the penalty under RCW 81.04.405. Dolly further argues that Order 07 misunderstands the rulings in Order 04 by requiring Dolly to "shut down its operations," which Dolly contends is inconsistent with the cease and desist requirements set out in Order 04. Finally, Dolly insists it has not violated the Commission's cease and desist order "by simply remaining open for business," and claims it has complied with Order 02 by modifying its advertising.
- 9 On October 17, 2018, the Commission issued a Notice of Opportunity to Respond to Petition for Reconsideration.
- 10 On October 22, 2018, Commission staff (Staff) filed a response opposing Dolly's Petition. Staff disagrees with Dolly's argument that it may seek mitigation of the penalty under RCW 81.04.405 for several reasons. First, Staff did not request in its original complaint that the Commission impose penalties under RCW 81.04.405. The

³ Dolly's Petition to Stay requested the Commission stay the requirement that Dolly pay the \$69,000 penalty by October 10, 2018, until the Commission resolves Dolly's Petition for Reconsideration. Because the Commission resolves the Petition for Reconsideration by this Order, the Petition to Stay is now moot, and we need not address it here.

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Administrative Law Judge granted Staff the relief it sought, imposing the penalties under RCW 81.80.075 and RCW 81.04.380. Second, Staff observes that the amount of the penalties imposed – \$5,000 per violation related to household goods operations, and \$1,000 per violation related to motor carrier and solid waste operations – are consistent with penalties authorized under RCW 81.80.075 and RCW 81.04.380, but inconsistent with the \$100 per violation penalties authorized by RCW 81.04.405. Finally, penalties were not imposed in the manner set out in RCW 81.04.405; thus, Staff argues, the procedural mechanism for requesting mitigation does not apply.

- 11 Staff also disagrees with Dolly’s contention that it has complied with the cease and desist provisions of Order 04, as well as Dolly’s argument that Order 04 did not require the Company to shut down its operations. Rather, Staff argues, the provision of Order 04 that requires Dolly to cease operating as a jurisdictional carrier is an order to shut down its unlawful operations.

DISCUSSION

- 12 We deny Dolly’s Petition for Reconsideration. Orders 07 and 08 correctly conclude that no procedural mechanism permits Dolly to request mitigation of the penalty imposed by Order 04. We also find that Order 04’s cease and desist ruling is clear and unambiguous. Finally, we conclude that Dolly continues to violate Order 04’s requirement to cease and desist from offering, advertising, and providing regulated services. We address Dolly’s arguments in turn.
- 13 Dolly first contends that Order 02 “explicitly intended for RCW 81.04.380 through 81.04.405 to be available procedurally as penalty enforcement mechanisms.”⁴ We disagree. The “Applicable Law” section of Order 02 defines prohibited carrier operations, and cites each of the statutes that authorizes the Commission to impose various penalties for such conduct.⁵ Summarizing the range of enforcement tools available to the Commission under the governing statutes, however, does not alter the reality that the Commission chose to assess penalties consistent with the processes set out in RCW 81.80.075 and RCW 81.04.380 rather than issuing a penalty assessment under RCW 81.04.405 or pursuing criminal prosecution. As Staff notes in its response, Dolly’s major premise — that the Commission imposed penalties under RCW 81.04.405 — is simply

⁴ Dolly’s Petition at ¶4 (Emphasis in original).

⁵ For example, Order 02 cites RCW 81.77, which states that hauling solid waste for compensation without a certificate of public convenience and necessity is a gross misdemeanor.

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incorrect, as demonstrated by Staff's complaint, the amount of the penalty, and the process by which the penalty was imposed. Both Order 07 and Order 08 thoroughly address why Dolly's argument related to mitigation fails, and we decline to repeat our discussion here.⁶

- 14 Dolly next argues that Order 07 misinterprets Order 04's cease and desist requirement by stating that Order 04 requires Dolly to "shut down its operations." Again, we disagree. Order 04 requires Dolly to cease and desist soliciting, offering, advertising, and providing regulated household goods, solid waste, and common carrier services until it obtains operating authority from the Commission. In other words, Dolly must shut down its operations in Washington. The language in Order 04 is not reasonably susceptible to any other interpretation, and we are not persuaded by Dolly's claim that it finds the Commission's cease and desist order ambiguous. Rather, it appears that Dolly feigns confusion in an attempt to justify its ongoing noncompliance.
- 15 Finally, Dolly continues to insist that it is complying with the Commission's cease and desist order by using "helpers" to perform moves. The Company's argument, however, stems from the faulty premise that its operations are not jurisdictional to the Commission, a position that was expressly rejected by Order 02, and again by each subsequent order. We decline to allow the Company to re-litigate the issue of whether its conduct, as a matter of law, violates Commission statutes and rules.
- 16 Dolly remains in violation of public service laws and the Commission's final order in this docket. As such, the Company is subject to further enforcement action, including additional penalties of up to \$1,000 per day from the effective date of Order 04,⁷ and up to \$10,000 per violation for continuing to operate as a household goods carrier in violation of the Commission's cease and desist order.⁸

⁶ See Order 07 at ¶ 8-9; Order 08 at FN 5.

⁷ Under RCW 81.04.380, any public service company that violates any order of the Commission is subject to a penalty of up to \$1,000 per day. Every violation is a separate and distinct offense, and in the case of a continuing violation, every day's continuance thereof is deemed a separate and distinct offense.

⁸ Under RCW 81.80.075(5), 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 up to \$10,000 per violation.

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ORDER

THE COMMISSION ORDERS THAT:

- 17 (1) Dolly, Inc.'s Petition for Reconsideration is DENIED.
- 18 (2) The full \$69,000 in penalties assessed against Dolly, Inc., remains due, and must
be paid immediately.
- 19 (3) Dolly, Inc. remains in violation of Commission Orders 04 and 08, which require
the Company to cease and desist its unlawful operations.
- 20 (4) The Commission retains jurisdiction over the subject matter and the parties to this
proceeding.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner