

**Exh. SP-23
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 08, Docket TV-171212

November 30, 2018

Attachment J

Service Date: October 5, 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 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.

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- 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

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- 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).

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- 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.