

**Exh. SP-7
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**

Corrected Order 02, Docket TV-171212

November 30, 2018

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*

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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.

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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.

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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).

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- 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.

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- 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.

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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.

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- 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.

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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

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- 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).

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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.

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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.

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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).

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- 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

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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

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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

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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).