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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In re Application of ) DOCKETS TV-190593 and

) TV-190594 (Consolidated)

5 DOLLY, INC. )

)

6 for a permit to operate )

as a motor carrier of )

7 household goods and a )

permit to operate as a )

8 motor freight common )

carrier )\*Caption Continued\*

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10 PREHEARING CONFERENCE, VOLUME I

11 Pages 1-17

12 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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14 November 18, 2019

15 1:00 p.m.

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Washington Utilities and Transportation Commission

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1 A P P E A R A N C E S

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1 LACEY, WASHINGTON; NOVEMBER 18, 2019

2 1:00 P.M.

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4 P R O C E E D I N G S

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6 JUDGE KOPTA: Let's be on the record in

7 Dockets TV-190593 and TV-190594, which have been

8 consolidated are -- and are in regard to the application

9 of Dolly, Inc.

10 My name is Gregory J. Kopta. I am the

11 administrative law judge that the Commission has

12 assigned to preside in this proceeding, and we are here

13 for a prehearing conference.

14 Let's begin by taking appearances beginning

15 with the Company.

16 MS. BARNETT: Thank you, Judge Kopta. This

17 is Donna Barnett representing Dolly. I'm at Perkins

18 Coie, and is that all you need for appearance or do you

19 want longer form?

20 JUDGE KOPTA: I think that's fine for these

21 purposes.

22 MS. BARNETT: Thanks. I also did just file

23 a notice of appearance in -- a hard copy by the web

24 portal.

25 JUDGE KOPTA: All right. Then we will rely

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1 on that for your full contact information.

2 Commission Staff?

3 MR. TEIMOURI: Thank you, Your Honor.

4 Daniel Teimouri, AAG, on behalf of Commission Staff.

5 JUDGE KOPTA: And for Public Counsel?

6 MS. BROWN: We're not through here.

7 JUDGE KOPTA: Oh, we're not through, okay.

8 MS. BROWN: Sally Brown, Senior Assistant

9 Attorney General, appearing on behalf of Commission

10 Staff.

11 JUDGE KOPTA: My apologies, Ms. Brown. I

12 didn't mean to cut you off.

13 MS. BROWN: Thank you.

14 JUDGE KOPTA: Public Counsel?

15 MS. SUETAKE: Thank you, Your Honor. This

16 is Nina Suetake on behalf of Public Counsel.

17 JUDGE KOPTA: Okay. Is there anyone else

18 who wishes to make an appearance?

19 Hearing none, ordinarily, we would deal with

20 scheduling and other procedural issues in this

21 prehearing conference, but my understanding in

22 conversations with Ms. Barnett in an email exchange that

23 I had with her, the Company intends to request

24 Commission authority to withdraw its application.

25 Is that correct, Ms. Barnett?

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1 MS. BARNETT: That's correct. I just filed

2 that letter along with the notice of appearance that I

3 just mentioned, so it has been filed. I don't think

4 it's been served yet, but momentarily.

5 JUDGE KOPTA: All right. While we are here,

6 and as I indicated to you when I spoke with you, I would

7 like some more information about the reasons behind the

8 Company's decision to withdraw its application. As I

9 mentioned, Commission rules and the APA, once an

10 adjudication has started, require a company that has

11 applied for any Commission action to get permission from

12 the Commission to withdraw, which the Commission will

13 grant if it is in the public interest. But we obviously

14 want to make sure that it is in the public interest.

15 And this company has a rather long history

16 of proceedings of a similar nature before the

17 Commission, so I would like to kind of get an idea of

18 what the lay of the land is from the Company's position

19 and then ask other parties for their views.

20 So, Ms. Barnett, would give me a -- an

21 explanation of why the Company is seeking to withdraw

22 its application and petition?

23 MS. BARNETT: Yes, Your Honor. This --

24 you're correct that there's been a long history with

25 Dolly. It's been trying to obtain a common carrier

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1 permit and a household goods permit for several years

2 with the Commission. And the last -- or this -- this

3 consolidated proceeding represents the most recent

4 attempt, and there -- the reason we filed or issued

5 notice of intent to deny the application and the

6 exemptions identified -- identified -- I think there's

7 only one exemption that Dolly would not be able to

8 comply with without getting that exemption, but it

9 seemed that it was futile to pursue -- pursue, you know,

10 the exemption or the permit with that one particular

11 exemption going to be denied.

12 So Dolly essentially just did a cost benefit

13 analysis of whether it -- whether they could go back and

14 look at their operations to see if they can make any

15 change or were there other options to try and get a

16 common carrier permit or a household goods permit

17 without the exemption or whether they should pursue the

18 exemption. But regardless, it didn't seem possible or

19 cost effective to pursue it through the evidentiary

20 litigious proceeding that we set up this way through --

21 with -- through an evidentiary hearing.

22 So they don't intend to just completely stop

23 pursuing any type of permit, they are just unclear right

24 now about how they're going to proceed and didn't see

25 that it was fruitful to proceed it along this -- this

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1 consolidated docket.

2 JUDGE KOPTA: What does the Company

3 anticipate that would happen in the future that would

4 make it a more viable option for them to reapply?

5 MS. BARNETT: They don't know at this time.

6 Looking at all the exemptions that they requested, it --

7 it's clear that -- that some of them they don't need

8 probably and some they can change their operations to

9 where they don't need it, but it's unclear on whether

10 they can change their op- -- op- -- operations

11 significantly enough to where they don't need them. And

12 so there would just have to be some more looking in at

13 the -- the business's operations and the Commission's

14 rules to see whether they're going to -- essentially to

15 see how to proceed. It -- it's just unclear yet.

16 JUDGE KOPTA: Well, my concern at this point

17 is that, as we've discussed, there have been several

18 proceedings involving this company, and it requires a

19 substantial amount of Commission resources both on the

20 Staff side and on the Commission administrative law

21 division and the Commissioners. And I am loathe to stop

22 this now when it's just going to restart in the near

23 future.

24 So I'm -- I'm just trying to get a sense of

25 whether the Company is only going to proceed if it can

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1 reach agreement with Staff on a joint proposal to the

2 Commission or are we going to be looking at yet again

3 another litigated proceeding in which case it would not

4 make much sense to dismiss this one if we're just going

5 to take it up again in the near future.

6 MS. BARNETT: Understood. It's not Dolly's

7 intent just to file it again later. If they -- it --

8 it's not their intent to simply file for a household

9 goods carrier or household goods permit without doing

10 any changes in their operations to make it substantially

11 different, a different application. But I don't think

12 right now they even have any intent to file, to refile

13 again at all.

14 They do hope to work with Staff and Public

15 Counsel on finding solutions to having them operate that

16 would make either filing it a joint and an -- a joint

17 application or at least with -- with some stipulation

18 and understanding. So Dolly has no intent on just

19 refiling again. If they do, it's going to be a

20 different -- it -- it's going to be substantially

21 different.

22 JUDGE KOPTA: Okay.

23 MS. BARNETT: I understand -- I -- I totally

24 hear that the administrative burden has been significant

25 and it certainly has to Dolly as well. And I don't --

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1 and that's one of the reasons why they're stopping now,

2 or hoping to stop now, because they don't want to pursue

3 it when it's going to be just denied and -- and -- and

4 they can -- they can stop that, change their operations,

5 or get on board with Staff and Public Counsel and -- and

6 make it more of a joint and not an adversarial filing.

7 JUDGE KOPTA: All right. And one other

8 question for me at this point, I believe there is still

9 a pending appeal of Commission's prior action with

10 regard to this company. Will -- would this withdrawal

11 of the application have any impact on those judicial

12 proceedings?

13 MS. BARNETT: No, that's a totally separate

14 issue, and I don't have any insight on that. Well, I

15 have insight, but I don't have any -- it's completely

16 unrelated as far as Dolly and as far as I'm concerned.

17 JUDGE KOPTA: Well, my -- my concern, I

18 suppose, is a hypothetical one, which is I wouldn't want

19 any representations by the Company that by withdrawing

20 this application they are somehow saying that the

21 Commission is unwilling to entertain requests for

22 authority and somehow have that color the appeal in any

23 way, shape, or form.

24 MS. BARNETT: Well, I don't think that would

25 be possible even if -- even if Dolly had to -- were

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1 going to pur- -- we're going to make that

2 representation, we wouldn't make that representation,

3 but also the -- the -- the filing is closed and the

4 record is closed and that all we're doing now is waiting

5 for oral argument in that. So nothing can be added to

6 that case and we wouldn't even try. That's certainly

7 not Dolly's intent.

8 JUDGE KOPTA: Okay. All right. Thank you,

9 Ms. Barnett.

10 Do we have a response from Staff?

11 MR. TEIMOURI: Thank you, Your Honor.

12 Daniel Teimouri here. You mentioned some of these

13 points earlier, but I would like to just express that

14 Staff has concern that this is the second time in six

15 months that the Company has applied for a permit causing

16 Staff and the Commission to do a lot of work, the

17 necessary work to respond and issue the appropriate

18 notices only to voluntarily withdraw at the 11th hour.

19 This pattern is obviously burdensome with

20 little or no benefit to the public interest. These

21 applications were made after the Commission and even the

22 Governor's Office made it clear to the Company that it

23 cannot be exempted from statutory licensing

24 requirements.

25 And so like you, we would like to know what

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1 Dolly's intent is here, and Staff ask -- asks these

2 questions because now that the Company has withdrawn all

3 of its pending applications and petitions for legal

4 operating authority, one of Staff's additional chief

5 concerns is that the Company will again begin to operate

6 illegally as either a common carrier or a carrier of

7 household goods.

8 JUDGE KOPTA: All right. Do you have

9 questions for Ms. Barnett specifically beyond the

10 ones -- I mean, just sort of the general concerns that

11 you've expressed?

12 MR. TEIMOURI: No, not at this time.

13 JUDGE KOPTA: Okay. And do you take a

14 position on the request to withdraw their application

15 and petition?

16 MR. TEIMOURI: We would not oppose that --

17 that request.

18 JUDGE KOPTA: Okay. Anything further?

19 MS. BROWN: Oh, well, speaking of work for

20 nothing --

21 MS. SUETAKE: Your Honor, this is Nina

22 Suetake from Public Counsel. Public Counsel does not

23 have any objection to the Company's request to withdraw

24 their application and permit -- request for permit

25 exemption.

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1 JUDGE KOPTA: All right. Thank you,

2 Ms. Suetake. Did you have anything further that you

3 wanted to say on the issues that we've been discussing?

4 MS. SUETAKE: Your Honor, Public Counsel

5 understands Staff's concerns, but to be honest, if the

6 Company is not operating as a regulated entity and is

7 not operating in this state at all, I am concerned about

8 the Commission's actual ability to require them to stay

9 in this proceeding. But other than that, I -- I don't

10 have any additional concerns at this moment.

11 JUDGE KOPTA: All right. Thank you,

12 Ms. Suetake.

13 Ms. Brown, did you want to say something?

14 MS. BROWN: Yes, I just want to follow up on

15 some points that you made earlier and that Mr. Teimouri

16 just referenced himself. In terms of Staff's valid

17 concerns about Dolly going forward, we have questions

18 about Dolly's future plans and whether or not Dolly --

19 it's Dolly's intention to wait until there's some

20 material legislative change, for example, or change in

21 the business -- in its business plan or model.

22 Does Dolly plan to shut down its Washington

23 operations to pursue legislation, reapply with the same

24 or different exemption request, change its business

25 model to one that complies with applicable laws and

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1 statutes and rules. Does it agree not to operate as

2 either a common carrier or carrier of household goods

3 given that it now does not have and is not seeking

4 operating authority from the Commission. So I don't --

5 I think that Ms. Barnett's doing her best here this

6 afternoon, but she's not responding to these questions

7 directly.

8 Having said that, I'm -- I have nothing

9 further to add. I'm -- I had questions about the appeal

10 itself. I wondered whether or not the Company planned

11 to seek dismissal of its appeal. Evidently the answer

12 to that question is no. That's pending in Division II.

13 So I -- I feel as though there are several questions

14 that remain unanswered at this point.

15 JUDGE KOPTA: Do you have any

16 recommendations as far as process from this point

17 forward?

18 MS. BROWN: Well, I would ask that the Bench

19 consider conditioning withdrawal of the pending dockets

20 and the pending application and request for exemption on

21 specific -- either specific answers or plans or

22 something that would address some of these -- some of

23 the chief concerns that Staff has concerning Dolly. As

24 you pointed out, this has been a lengthy ordeal, and

25 we've been here before with applications, made

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1 applications, withdrawn, much work ensuing as a result

2 of these filings. And so like you, Commission Staff is

3 not at all interested in sitting here a month from now

4 doing the same thing.

5 So finally, Your Honor, I would just suggest

6 that you consider conditioning a grant of withdrawal on

7 specific answers and perhaps some actions taken by

8 Dolly.

9 JUDGE KOPTA: All right. Ms. Barnett, did

10 you have any responses to what Staff has raised?

11 MS. BARNETT: Oh, sure. I -- I didn't

12 realize it was as unclear and murky as -- as all that,

13 because I think it's -- it is clear, at least Dolly has

14 attempted to make it very clear that it is not operating

15 as a common carrier or household goods carrier in

16 Washington State. Therefore, we are not regulated by

17 the Commission. They -- all the future plans are -- are

18 unclear, but I think they would have the opportunity to

19 apply as any other Company would if they think that they

20 can meet the regulations that the Commission requires.

21 So -- so but as -- as far as Dolly's

22 operations right now, I don't see where -- how -- where

23 it's unclear that -- or whether it should be required

24 that Dolly change its business model or provide any

25 plans for the future when they are not operating at all

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1 in Washington State.

2 JUDGE KOPTA: Mr. Teimouri, did you have

3 something?

4 MR. TEIMOURI: Not at this time, Your Honor.

5 Thank you.

6 JUDGE KOPTA: Okay. Anything further from

7 any parties on this issue? All right. Is there

8 anything else that we need to address while we're here?

9 Hearing nothing, I will take this under

10 advisement, and we'll make a determination and then

11 proceed from that point. If I need any further

12 information, I will request it, otherwise I will enter

13 an order. And I believe, unless there's anything

14 further, which there is not, then we are adjourned.

15 Thank you.

16 (Adjourned at 1:20 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Garlinghouse, a Certified Shorthand

7 Reporter in and for the State of Washington, do hereby

8 certify that the foregoing transcript is true and

9 accurate to the best of my knowledge, skill, and

10 ability.

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14 Tayler Garlinghouse, CCR 3358

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