

Docket Nos. TV-190593 and TV-190594
(Consolidated) - Vol. I

In re Application of Dolly, Inc.

November 18, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of) DOCKETS TV-190593 and
) TV-190594 (Consolidated)
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)*Caption Continued*

PREHEARING CONFERENCE, VOLUME I
Pages 1-17
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

November 18, 2019

1:00 p.m.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

GREGORY J. KOPTA

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* * * * *

1 LACEY, WASHINGTON; NOVEMBER 18, 2019

2 1:00 P.M.

3 --o0o--

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

5
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

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?

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

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

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

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 --

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

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

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.

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

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

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

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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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill, and ability.

Tayler Garlinghouse, CCR 3358