

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

In re Application of Dolly, Inc.

November 18, 2019



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Page 1

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION
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 4 In re Application of) DOCKETS TV-190593 and
 5 DOLLY, INC.) TV-190594 (Consolidated)
 6)
 7 for a permit to operate)
 8 as a motor carrier of)
 9 household goods and a)
 10 permit to operate as a)
 11 motor freight common)
 12 carrier) *Caption Continued*
 13 _____
 14 PREHEARING CONFERENCE, VOLUME I
 15 Pages 1-17
 16 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA
 17 _____
 18 November 18, 2019
 19 1:00 p.m.
 20 Washington Utilities and Transportation Commission
 21 621 Woodland Square Loop Southeast
 22 Lacey, Washington 98503
 23 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358
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Page 2

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Page 3

1 A P P E A R A N C E S
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 5
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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

Page 5	<p>1 on that for your full contact information.</p> <p>2 Commission Staff?</p> <p>3 MR. TEIMOURI: Thank you, Your Honor.</p> <p>4 Daniel Teimouri, AAG, on behalf of Commission Staff.</p> <p>5 JUDGE KOPTA: And for Public Counsel?</p> <p>6 MS. BROWN: We're not through here.</p> <p>7 JUDGE KOPTA: Oh, we're not through, okay.</p> <p>8 MS. BROWN: Sally Brown, Senior Assistant</p> <p>9 Attorney General, appearing on behalf of Commission</p> <p>10 Staff.</p> <p>11 JUDGE KOPTA: My apologies, Ms. Brown. I</p> <p>12 didn't mean to cut you off.</p> <p>13 MS. BROWN: Thank you.</p> <p>14 JUDGE KOPTA: Public Counsel?</p> <p>15 MS. SUETAKE: Thank you, Your Honor. This</p> <p>16 is Nina Suetake on behalf of Public Counsel.</p> <p>17 JUDGE KOPTA: Okay. Is there anyone else</p> <p>18 who wishes to make an appearance?</p> <p>19 Hearing none, ordinarily, we would deal with</p> <p>20 scheduling and other procedural issues in this</p> <p>21 prehearing conference, but my understanding in</p> <p>22 conversations with Ms. Barnett in an email exchange that</p> <p>23 I had with her, the Company intends to request</p> <p>24 Commission authority to withdraw its application.</p> <p>25 Is that correct, Ms. Barnett?</p>	Page 7	<p>1 permit and a household goods permit for several years</p> <p>2 with the Commission. And the last -- or this -- this</p> <p>3 consolidated proceeding represents the most recent</p> <p>4 attempt, and there -- the reason we filed or issued</p> <p>5 notice of intent to deny the application and the</p> <p>6 exemptions identified -- identified -- I think there's</p> <p>7 only one exemption that Dolly would not be able to</p> <p>8 comply with without getting that exemption, but it</p> <p>9 seemed that it was futile to pursue -- pursue, you know,</p> <p>10 the exemption or the permit with that one particular</p> <p>11 exemption going to be denied.</p> <p>12 So Dolly essentially just did a cost benefit</p> <p>13 analysis of whether it -- whether they could go back and</p> <p>14 look at their operations to see if they can make any</p> <p>15 change or were there other options to try and get a</p> <p>16 common carrier permit or a household goods permit</p> <p>17 without the exemption or whether they should pursue the</p> <p>18 exemption. But regardless, it didn't seem possible or</p> <p>19 cost effective to pursue it through the evidentiary</p> <p>20 litigious proceeding that we set up this way through --</p> <p>21 with -- through an evidentiary hearing.</p> <p>22 So they don't intend to just completely stop</p> <p>23 pursuing any type of permit, they are just unclear right</p> <p>24 now about how they're going to proceed and didn't see</p> <p>25 that it was fruitful to proceed it along this -- this</p>
Page 6	<p>1 MS. BARNETT: That's correct. I just filed</p> <p>2 that letter along with the notice of appearance that I</p> <p>3 just mentioned, so it has been filed. I don't think</p> <p>4 it's been served yet, but momentarily.</p> <p>5 JUDGE KOPTA: All right. While we are here,</p> <p>6 and as I indicated to you when I spoke with you, I would</p> <p>7 like some more information about the reasons behind the</p> <p>8 Company's decision to withdraw its application. As I</p> <p>9 mentioned, Commission rules and the APA, once an</p> <p>10 adjudication has started, require a company that has</p> <p>11 applied for any Commission action to get permission from</p> <p>12 the Commission to withdraw, which the Commission will</p> <p>13 grant if it is in the public interest. But we obviously</p> <p>14 want to make sure that it is in the public interest.</p> <p>15 And this company has a rather long history</p> <p>16 of proceedings of a similar nature before the</p> <p>17 Commission, so I would like to kind of get an idea of</p> <p>18 what the lay of the land is from the Company's position</p> <p>19 and then ask other parties for their views.</p> <p>20 So, Ms. Barnett, would give me a -- an</p> <p>21 explanation of why the Company is seeking to withdraw</p> <p>22 its application and petition?</p> <p>23 MS. BARNETT: Yes, Your Honor. This --</p> <p>24 you're correct that there's been a long history with</p> <p>25 Dolly. It's been trying to obtain a common carrier</p>	Page 8	<p>1 consolidated docket.</p> <p>2 JUDGE KOPTA: What does the Company</p> <p>3 anticipate that would happen in the future that would</p> <p>4 make it a more viable option for them to reapply?</p> <p>5 MS. BARNETT: They don't know at this time.</p> <p>6 Looking at all the exemptions that they requested, it --</p> <p>7 it's clear that -- that some of them they don't need</p> <p>8 probably and some they can change their operations to</p> <p>9 where they don't need it, but it's unclear on whether</p> <p>10 they can change their op- -- op- -- operations</p> <p>11 significantly enough to where they don't need them. And</p> <p>12 so there would just have to be some more looking in at</p> <p>13 the -- the business's operations and the Commission's</p> <p>14 rules to see whether they're going to -- essentially to</p> <p>15 see how to proceed. It -- it's just unclear yet.</p> <p>16 JUDGE KOPTA: Well, my concern at this point</p> <p>17 is that, as we've discussed, there have been several</p> <p>18 proceedings involving this company, and it requires a</p> <p>19 substantial amount of Commission resources both on the</p> <p>20 Staff side and on the Commission administrative law</p> <p>21 division and the Commissioners. And I am loathe to stop</p> <p>22 this now when it's just going to restart in the near</p> <p>23 future.</p> <p>24 So I'm -- I'm just trying to get a sense of</p> <p>25 whether the Company is only going to proceed if it can</p>

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<p>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.</p> <p>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.</p> <p>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.</p> <p>22 JUDGE KOPTA: Okay.</p> <p>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 --</p>	<p>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.</p> <p>8 JUDGE KOPTA: Okay. All right. Thank you, 9 Ms. Barnett.</p> <p>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.</p> <p>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.</p> <p>25 And so like you, we would like to know what</p>
Page 10	Page 12
<p>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.</p> <p>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?</p> <p>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.</p> <p>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.</p> <p>24 MS. BARNETT: Well, I don't think that would 25 be possible even if -- even if Dolly had to -- were</p>	<p>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.</p> <p>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?</p> <p>12 MR. TEIMOURI: No, not at this time.</p> <p>13 JUDGE KOPTA: Okay. And do you take a 14 position on the request to withdraw their application 15 and petition?</p> <p>16 MR. TEIMOURI: We would not oppose that -- 17 that request.</p> <p>18 JUDGE KOPTA: Okay. Anything further?</p> <p>19 MS. BROWN: Oh, well, speaking of work for 20 nothing --</p> <p>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.</p>

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<p>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.</p>	<p>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.</p>
<p>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</p>	<p>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</p>
Page 14	Page 16
<p>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</p>	<p>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.) 17 18 19 20 21 22 23 24 25</p>

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CERTIFICATE

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