



April 21, 2018

VIA WEB PORTAL

Mr. Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

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State Of WASH.
UTIL. AND TRANSP.
COMMISSION


RE: *In the Matter of Determining the Proper Carrier Classification of and Complaint for Penalties against Dolly, Inc.*
Docket No. TV-171212

Dear Mr. King:

Enclosed for filing please find the original and one (1) copy of the following documents:

- 1) Dolly Inc.'s Response Opposing Commission Staff's Motion for a Continuance to Respond to Dolly's Petition for Administrative Review, and
- 2) Certificate of Service.

If you have any questions, please contact the undersigned.

Sincerely,

Armikka R. Bryant
Attorney for Dolly, Inc.

AB/ck
Enclosures
cc: Parties w/enc.

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Determining the Proper Carrier Classification
of, and Complaint for Penalties Against:

DOLLY, INC.

DOCKET NO: TV-171212

**DOLLY, INC'.S RESPONSE
OPPOSING COMMISSION STAFF'S
MOTION FOR A CONTINUANCE TO
RESPOND TO DOLLY'S PETITION
FOR ADMINISTRATIVE REVIEW**

I. INTRODUCTION AND REQUESTED RELIEF

1. Dolly, Inc. (“Dolly”) opposes Washington Utilities and Transportation Commission Staff’s (“Staff” or “Commission Staff”) Motion for a Continuance to Respond to Dolly’s Petition for Administrative Review (“Staff’s Motion” or “Motion”). Accordingly, pursuant to WAC 480-07-375 Dolly files this Response Opposing Commission Staff’s Motion and requests the Washington Utilities and Transportation Commission (“Commission”) deny the Motion.

II. DOLLY'S RESPONSE TO STAFF'S MOTION

A. Granting Staff’s Motion Prejudices Dolly

2. WAC 480-07-610 governs this proceeding. As such, Dolly submitted its Petition for Administrative Review in accordance with that rule. Staff conspicuously cites the length and complexity of the issues in Dolly’s Petition as a reason to grant its Motion

without giving regard to the fact that Dolly's Petition was submitted timely under the rule.¹ Commission rules do not permit pleading due dates to vary simply because of their length and complexity.

3. Staff is wrong in asserting the Motion does not prejudices Dolly.² Accordingly, Staff's Motion is not an agreed motion. Dolly believes Staff's Motion is the simple product of needing more time to respond to a lengthy and complex petition and poor planning. Dolly believes this creates an unbalanced playing field because Staff would essentially be allowed to avoid complying with Commission rules simply due to the nature of the facts at issue in this docket. Staff should have been reasonably aware of the multiple Constitutional issues in this docket. Allowing Staff more time to respond to those issues than the Commission grants under its procedural regulations is patently unfair and prejudicial towards Dolly.

B. The Commission Does Not Grant Continuances Based on Travel Plans

4. In Docket Number UE-152253, Order 10, a party requested an extension of time based on their travel schedule.³ The Commission unequivocally denied the request stating, "Other than a vague reference to its counsel's travel schedule interfering with Sierra Club's ability to respond to the Motion to Strike, Sierra Club fails to offer any explicit reasoning why the party cannot provide a written response by the 3:00 p.m. deadline on May 26, 2016." Similarly, here Staff cites no legally recognizable reason other than its travel schedule to justify the need for a continuance. As such, Staff's

¹ Staff's Motion at 1 ¶ 3.

² Staff Motion at 3 ¶ 9.

³ See Docket Number UE-152253, Order 10 at 2 ¶ 5.

Motion should be denied pursuant to the holding in Docket No. UE-152253, Order 10 at 2 ¶ 5.

C. The Length and Complexity of Dolly’s Petition is Irrelevant Under WAC 480-07-375

5. Staff’s Motion argues that, “Dolly’s petition is lengthy and raises a number of complex issues, necessitating more time for Staff to adequately respond to it”, is an excuse for the Commission to grant its Motion.⁴ Unfortunately, there is no “length and complexity” sliding-scale governing the time permitted to respond to pleadings. As stated above, WAC 480-07-610 governs the procedure for this docket. Under that rule responses are due within seven calendar days of the petition being filed. Length and complexity of a petition is not a legitimate reason the Commission should consider in deciding a motion for continuance.

D. Staff Has Already Stated It Would File its Response Either Five or Ten Days of Dolly Filing its Petition for Review

6. Even though Staff cited the wrong rule governing this docket, Staff already created a record stating it would file its response in either five or ten days. On April 13, Staff filed an unsolicited letter in this docket declaring, “Staff will answer all claims in accordance with WAC 480-07-825(4)” and “Staff will respond to the claims for relief not sought by Staff made by Dolly in accordance with WAC 480-07-825(5)(c)”.⁵

7. Under WAC 480-07-825(4), responses are due within ten days of the petition being filed; the deadline shrinks to five days under WAC 480-07-825(5)(c). Staff’s

⁴ Staff’s Motion at 1 ¶ 3.

⁵ See Docket Number TV-171212, Staff Answer to Reconsideration

Motion, dated April 20, admits that the vacation and field trip it believes complies with WAC 480-07-385 were prearranged.⁶ So, clearly Staff knew of those events when it filed the April 13 letter guaranteeing a five or ten-day response. Therefore, the only thing that changed between April 13 and Staff's Motion is that Dolly filed its "lengthy" and "complex" Petition. As such, Staff's excuse for requiring a continuance loses credibility when read in conjunction with their April 13 letter proclaiming they only needed five or ten days to "answer all claims."

8. Clearly, Staff just needs more time to research Dolly's Petition and the Commission should hold Staff to its promise to file a timely response under WAC 480-07-825(5)(c), (or an untimely one under WAC 480-07-825(4)). But, surely Staff's excuse of going on a vacation and field trip should not prevent it from doing what it already stated on the record it would do or from complying with WAC 480-07-610(7).

E. Staff's Motion Seeks to Avoid Compliance with the Commission's Procedural Rule Governing Brief Adjudicative Proceedings

9. Staff filed the Complaint in this docket as a Brief Adjudicative Proceeding under WAC 480-07-610 and the March 13 hearing date was set on January 18. As such, Staff should have known that there would be no procedural schedule in this docket. However, instead of consulting a calendar to determine when the initial order and responsive pleadings would be due under WAC 480-07-820(3) and WAC 480-07-610(7), Staff decided to schedule a lengthy field trip and vacation. Now Staff wants the Commission to reward that lack of foresight by giving it an additional two weeks to file a response it

⁶ Staff Motion at 1 ¶ 3.

already offered to prepare within ten days of receiving Dolly's Petition. Staff has had since January to schedule around the events it now wishes to use as excuses to delay filing its response. This must not be allowed.

F. Staff's Motion is Untimely

10. Staff's motion is filed late, without acknowledgement of the rule, and without any effort to justify the untimely filing. Under WAC 480-07-385(3)(a), the Commission rule governing motions for continuance, "[a] party must file any written motion for continuance at least five business days prior to the deadline as to which the continuance is requested[.]" The deadline for Staff's Motion, therefore, was, April 19, 2018 because the "deadline as to which the continuance is requested" is April 26, seven days after Dolly filed its Petition.⁷ As a result, Staff's Motion was filed late, on April 20 2018 and does not even acknowledge the rule.
11. Moreover, Staff deliberately mischaracterizes Dolly's Petition as being untimely filed 22 days after the Commission filed Initial Order 02, which was filed on March 29. Simply consulting a calendar shows that Dolly timely filed and served its Petition on April 19, 2018, pursuant to the 21-day deadline of WAC 480-07-610.⁸

III. CONCLUSION

12. Staff's Motion is a thinly veiled attempt to buy more time to respond to Dolly's Petition. Staff should have known or reasonably foreseen the need to request its Motion prior to its filing but only chose to do so after seeing the "length" and "complexity" of

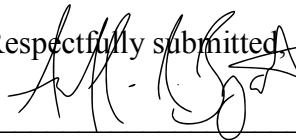
⁷ See WAC 480-07-610(7)(c).

⁸ See WAC 480-07-610(7)(a).

Dolly's Petition. As such, the vacation and field trip staff references are nothing but excuses for more time to research and respond to Dolly's Petition, an act that procedurally prejudices Dolly.

13. Additionally, the conflicts Staff cites could have been easily avoided by simply agreeing to set a procedural schedule in advance. This last-minute attempt to avoid complying with Commission rules should not be tolerated and Staff's Motion should be denied. Indeed, Staff's Response is wholly optional. However, if Staff chooses to file a Response, it should be within the timeframe allowed in WAC 480-07-610(7).

14. Dated this 21st day of April, 2018.

Respectfully submitted


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CERTIFICATE OF SERVICE

DOCKET NO. TV-171212

Determining the Proper Carrier Classification and Complaint for Penalties


I, Casey Klaus, do hereby certify that, pursuant to WAC 480-07-150(6), I have this day served a true and correct copy of *Dolly Inc.'s Response Opposing Commission Staff's Motion for a Continuance to Respond to Dolly's Petition for Administrative Review* to all parties of record listed and by the manner indicated below:

SERVICE LIST

**HC = Receive Highly Confidential; C = Receive Confidential;
NC=Receive Non-Confidential**

<p>COMMISSION STAFF:</p> <p>Jeffrey Roberson Office of the Attorney General Utilities & Transportation Commission 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia, Washington 98504-0128 Phone: (360) 664-1188 Fax: (360) 586-5522 Email: jeff.roberson@utc.wa.gov</p> <p><input type="checkbox"/> via ABC Legal Messenger <input type="checkbox"/> via FedEx Overnight Delivery <input type="checkbox"/> via U.S. First-Class Mail <input type="checkbox"/> via Hand-Delivery <input checked="" type="checkbox"/> via E-Mail</p>	
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Dated at Seattle, Washington, this 21ST day of April 2018.


_____ for Casey Klaus
Casey Klaus
Office Manager & Administrative Assistant