

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOLLY, INC.

DOCKET TV-171212

ORDER 03

ORDER GRANTING STAFF'S MOTION
FOR CONTINUANCE

BACKGROUND

- 1 On March 29, 2018, the Washington Utilities and Transportation Commission (Commission) entered Order 02 in this docket, its Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance.
- 2 On April 2, 2018, Commission staff (Staff) filed a Petition for Review, arguing that Ordering paragraph 4 in Order 02, which required Dolly, Inc. (Dolly or Company) “to remove immediately its web-based application from the Internet and its presence from Facebook, Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its services known,” was overbroad and could be construed as violating the Commerce Clause of the United States Constitution. WAC 480-07-395(4) provides that “[t]he Commission will liberally construe pleadings and motions with a view to effect justice among the parties.” Finding that Staff’s April 2, 2018, filing pointed out an obvious error in Order 02 that required correction, the Commission treated the filing as a motion to correct an obvious error, as provided under WAC 480-07-875(2).
- 3 On April 9, 2018, the Commission issued a Notice of Correction of Initial Order and served Order 02 (Corrected). In its Notice, the Commission explained that:

Although Order 02 clearly is concerned with, and discusses exclusively, Dolly’s activities in the state of Washington, it is true that the quoted language from the order does not recognize that Dolly’s Internet presence is not limited to the state of Washington. Dolly, in fact, operates in states other than Washington and may rely on the same Internet presence and platforms in other states. Overlooking these facts is an obvious error in Order 02 that requires correction, as provided under WAC 480-07-875(2).
- 4 The Notice discussed that Order 02 (Corrected) reflected edits to paragraph 43 and ordering paragraph 4 of the original Order 02. The modified paragraphs were included in

the Notice in legislative format, thus highlighting the changes made to the original Order 02. The Commission also gave notice that the period during which parties could file petitions for, or the Commission could initiate, administrative review would run from the date that Order 02 (Corrected) was served, April 9, 2018.

5 On April 19, 2018, Dolly filed a Petition for Administrative Review (Petition). Dolly stated in its Petition that “[d]ue to procedural and substantive complications, this Petition must address both Initial Order 02 and Corrected Initial Order 02, respectively.” While the Commission cannot be certain exactly what Dolly meant by “procedural and substantive complications,” Order 02 (Corrected) is the Commission’s Initial Order in this docket and the only order to which Dolly’s Petition for Administrative Review pertains. To the extent Dolly’s Petition makes arguments related to the uncorrected versions of paragraph 43 and ordering paragraph 4 of the original Order 02, its arguments need not be addressed by the Commission in its order on Review.¹

6 Pursuant to WAC 480-07-610(7)(c), any response to Dolly’s Petition would fall due seven days after the Petition was filed, April 26, 2018. On April 20, 2018, Staff filed a Motion for a Continuance to Respond to Dolly’s Petition for Review (Motion). Staff’s Motion cites two reasons supporting its request for a continuance to May 8, 2018:

First, its assigned counsel will be at the National Conference of Regulatory Attorneys between April 22 and April 25, 2018, and has a prearranged vacation scheduled for April 27, 2018. Second, Dolly’s petition is lengthy and raises a number of complex issues, necessitating more time for Staff to adequately respond to it.²

7 Staff argues more specifically that Dolly’s Petition asserts “more than two dozen alternative claims for relief [many of which] involve constitutional issues” and points out that the Petition is nearly 50 pages long.³ Staff asserts that good cause exists to continue the deadline for Staff’s response because Staff counsel responsible for this matter will be traveling on official business during four of the seven days and “has a long-scheduled vacation” scheduled on another of the days available for Staff to prepare an answer.⁴

¹ The Commission rejects Dolly’s suggestion that “[r]eview of both Initial Order 02 and Corrected Initial Order 02 in this docket is necessary to preserve Dolly’s procedural rights to appeal to Washington State Superior Court.” Petition ¶ 4.

² Staff Motion for Continuance ¶ 2.

³ *Id.* ¶ 4.

⁴ *Id.* ¶ 5.

Staff argues that neither Dolly nor the Commission will be prejudiced by the requested continuance considering that Dolly had more than three weeks to prepare its Petition and no additional briefing is contemplated under the Commission's procedural rules. Staff argues finally that because of the Petition's unusual length considering the nature and scope of this proceeding, "[a] continuance will allow Staff to prepare a complete and cogent answer to Dolly's petition, assisting the Commission through adversarial testing of Dolly's claims."⁵ Staff argues Dolly's Petition is distinguished both by its unusual length and by the complexity and novelty of the arguments it presents for the first time on review.

8 On April 23, 2018, Dolly filed a Response Opposing Staff's Motion for Continuance. Dolly argues the length and complexity of its filing is not a good reason to give Staff additional time and is not permitted by the Commission's rules.

DISCUSSION

9 We grant Staff's Motion for Continuance. Dolly's Petition for review of the 16 page Initial Order in this brief adjudicative proceeding is 48 pages, making it just 12 pages short of the 60 page briefs the Commission typically allows in major, complex cases conducted as formal evidentiary hearings with voluminous records.

10 Dolly argues it is prejudiced by Staff's Motion because Staff's request "is the simple product of needing more time to respond to a lengthy and complex petition and poor planning."⁶ Putting to one side Dolly's unnecessary and inappropriate assertion of "poor planning," Dolly thus acknowledges the length and complexity of its Petition, which is a key factor supporting Staff's Motion. Dolly says allowing Staff a small amount of additional time "creates an unbalanced playing field . . . simply due to the nature of the facts at issue" and because "Staff should have been reasonably aware of the multiple Constitutional issues in this docket."⁷

11 First, there is no reason that Staff should have anticipated that Dolly would make extensive arguments concerning its rights under the U.S. Constitution or the Washington Constitution because Dolly made no such arguments during the brief adjudicative proceeding, or at any other stage of this proceeding, prior to filing its Petition for Review.

⁵ *Id.* ¶ 10.

⁶ Dolly Response to Motion for Continuance ¶ 3.

⁷ *Id.*

Indeed, although expressly offered the opportunity to file a brief in which it could have made such arguments, Dolly declined the opportunity.⁸

- 12 Second, Dolly's argument here, and throughout the balance of its response, essentially is that it would be prejudiced if Staff is given the time it claims to need to respond fully to Dolly's Petition. We fail to see how giving Staff "more time to research and respond to Dolly's Petition" in any way "procedurally prejudices Dolly." Dolly already has exercised its procedural right to file a petition for review. Dolly seems to suggest that the Commission should determine its Petition without having the benefit of Staff's best effort in response. On the contrary, it is the Commission that would suffer prejudice if it did not afford Staff adequate time to respond fully to Dolly's Petition.
- 13 Finally, we reject Dolly's argument that Staff counsel's conflicting travel for the conduct of official state business, which substantially reduced the time available for Staff to respond to Dolly's Petition, is not a good reason to allow Staff a brief continuance.⁹ Order 10 in Docket UE-152253 on which Dolly relies to support its argument is fully distinguished from the present circumstances by the close proximity of the hearing date in that case and by the fact that the filing date in question was for responses to a motion to strike, an evidentiary matter that could be raised anew during the hearing. In this instance, we are concerned about allowing sufficient time for Staff to prepare the only response allowed to multiple issues raised, many for the first time in this proceeding, by a 48 page petition for review.
- 14 We find that Staff has shown good cause for the brief continuance it requests and that neither Dolly nor the Commission will be prejudiced by allowing this additional time. Accordingly, Staff's Motion is granted.

⁸ TR. 98.

⁹ We note the pejorative tone of Dolly's inappropriate characterization of Staff counsel's 4-day travel on Commission business to a meeting of the National Association of Regulatory Utility Commissioners and one-day of "long-scheduled vacation" as a "lengthy field trip and vacation." Dolly Response to Motion for Continuance ¶ 8.

ORDER

15 THE COMMISSION ORDERS That Staff's Motion for Continuance to May 8, 2018, is GRANTED.

DATED at Olympia, Washington, and effective April 24, 2018.

RAYNE PEARSON
Administrative Law Judge