

**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

COMMISSION STAFF'S RESPONSE IN  
OPPOSITION TO DOLLY'S MOTION TO  
STAY EFFECTIVENESS OF FINAL  
ORDER 04

**I. INTRODUCTION**

1           On May 29, 2018, Dolly, Inc. (Dolly) filed a motion for a stay of Order 04 in this docket. Commission Staff (Staff) requests that the Washington Utilities and Transportation Commission (Commission) deny the motion because a stay would violate the public service laws under these facts or, alternatively, because Dolly fails to show that a stay is justified.

**II. STATEMENT OF FACTS**

2           After presiding over a hearing instituted pursuant to RCW 81.04.510, a Commission administrative law judge entered Order 02 in this docket, classifying Dolly as a household goods carrier, a common carrier of general commodities, and a solid waste collection company.<sup>1</sup> As required by RCW 81.04.510, the ALJ ordered Dolly to cease and desist from regulated activities until it first obtained operating authority from the Commission.<sup>2</sup>

3           On May 18, 2018, the Commission denied Dolly's petition for administrative review of Order 02 by entering Order 04 in this docket.<sup>3</sup> Order 04 adopted, with modifications not relevant here, a corrected version of Order 02.<sup>4</sup> Accordingly, just as Corrected Order 02 did,

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<sup>1</sup> *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 02, at 15 ¶ 1 (Mar. 29, 2018).

<sup>2</sup> *Id.* at 16 ¶ 2.

<sup>3</sup> *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 04, at 4 ¶ 11 (May 18, 2018) (hereinafter Order 04).

<sup>4</sup> *Id.*

Order 04 classified Dolly as a household goods carrier, a common carrier of general commodities, and a solid waste collection company.<sup>5</sup> And, just as Corrected Order 02 did, Order 04 required Dolly to cease and desist from regulated activities until it obtained operating authority from the Commission.<sup>6</sup>

4           On May 29, 2018, Dolly filed a motion to stay the effectiveness of Order 04. In its motion, Dolly claimed that “Order 04 becoming effective will cause Dolly irreparable harm as the cease and desist provisions require[] Dolly to permanently refrain from making its services known to consumers and refrain from providing those services.”<sup>7</sup> Dolly also notes that its “applications to obtain Commission authority to operate comply with the terms of the cease and desist orders” and further claims that the stay will allow “Commission Staff and Dolly . . . to process those applications and for the Commission to rule on Dolly’s petitions for exemption from relevant and applicable Commission permitting rules.”<sup>8</sup>

### III. STATEMENT OF ISSUES

5           Should the Commission deny Dolly’s motion for a stay either because a stay under these circumstances would violate the public service laws or because Dolly fails to show that a stay is warranted?

### IV. ARGUMENT

6           Both statute and rule provide the Commission with the discretion to stay a final order.<sup>9</sup> When considering a request for a stay, the Commission looks to “showings of irreparable harm from the order; of patent error of law or fact such that reconsideration and

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<sup>5</sup> *Id.* at 17-18 ¶¶ 56, 60-61.

<sup>6</sup> *Id.* at 19 ¶ 75.

<sup>7</sup> *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Motion to Stay Effectiveness of Final Order 04, at 2 ¶ 5 (May 29, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> RCW 34.05.467; WAC 480-07-860.

modification are virtual certainties; or of a combination of substantial hardship with a substantial possibility of modification.”<sup>10</sup> Dolly makes none of these showings, and the Commission should reject its request.

7           The Commission should deny Dolly’s motion outright because it lacks the discretion to grant the particular relief that Dolly seeks. The Commission must exercise its discretion within the limits set by its enabling statutes.<sup>11</sup> Those statutes require any person wishing to engage in jurisdictional activity to first obtain operating authority from the Commission.<sup>12</sup> The legislature directed the Commission to order any person who engages in jurisdictional activity without that Commission-issued authority to cease and desist.<sup>13</sup> Dolly engages in jurisdictional activity: it engages in business as a household goods carrier, as a common carrier of general commodities, and as a solid waste collection company.<sup>14</sup> Dolly does not have Commission-issued operating authority that allows it to engage in business in any of those capacities.<sup>15</sup> In essence then, Dolly’s motion for a stay amounts to a request that the Commission waive RCW 81.04.510 and authorize it to operate without first obtaining a permit. The Commission lacks the discretion to approve violations of the public service laws and should deny the stay on that basis.<sup>16</sup>

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<sup>10</sup> *Wash. Utils. & Transp. Comm’n v. Sno-King Garbage Co., Inc.*, Docket TG-900657, 1991 Wash. UTC Lexis 110, Fifth Supp. Order, at \*3 (Dec. 19, 1991).

<sup>11</sup> *State v. Munson*, 23 Wn. App. 522, 525-26, 597 P.2d 440 (1979) (citing *Winslow v. Fleischer*, 112 Or. 23, 228 P. 101 (1924); *State v. Thompson*, 111 Wash. 525, 191 P. 620 (1920)) (agency can neither suspend a statute by order nor make lawful by order conduct that the legislature has deemed unlawful); accord RCW 80.01.040(2) (requiring the Commission to regulate as provided by the public service laws); RCW 81.01.010 (same).

<sup>12</sup> *E.g.*, RCW 81.77.040; RCW 81.80.070, .075.

<sup>13</sup> RCW 81.04.510.

<sup>14</sup> Order 04 at 17-18 ¶¶ 56, 60-61.

<sup>15</sup> *Id.* at 17-18 ¶¶ 57, 60-61.

<sup>16</sup> RCW 81.80.070 (permit required before engaging in business as a common carrier of general commodities); RCW 81.80.075 (permit required before engaging in business as a household goods carrier); RCW 81.77.040 (certificate of public convenience and necessity necessary before operating as a solid waste collection company); RCW 81.04.510.

8 Dolly nevertheless contends that the Commission should stay Order 04 for two reasons, specifically, that Dolly: (1) would suffer irreparable harm if forced to comply with the order and (2) has applied for operating authority. Neither reason is persuasive.

9 Dolly first argues that, if forced to comply with Order 04, it will suffer financial hardship due to the order's cease and desist provisions. The Commission should reject this proposed justification for a stay for two reasons.

10 Initially, Dolly cannot successfully invoke the Commission's equitable discretion to grant a stay based on any alleged financial hardship. Basic rules of equity require any person coming into equity to do so with clean hands, and Dolly's hands are unquestionably unclean.<sup>17</sup> Dolly built a business that violates the public service laws despite years of warnings from Staff about the Commission's regulatory jurisdiction as it applied to Dolly's operations.<sup>18</sup> Dolly cannot now claim that forcing it to comply with the law, which it should have done from the start, inflicts on it some kind of injury.<sup>19</sup>

11 Additionally, the Commission has already determined that the type of financial hardship Dolly alleges<sup>20</sup> does not justify a stay.<sup>21</sup> Put simply, a claim of financial hardship, without more, does not rise to the level of an irreparable harm, and therefore provides no basis for the grant of a stay.<sup>22</sup> The Commission should reject Dolly's request on that basis.

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<sup>17</sup> *Income Investors v. Shelton*, 3 Wn.2d 599, 602, 101 P.2d 973 (1940); *accord Retail Clerks Health & Welfare Trust Funds v. Shoplands Supermarket, Inc.*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982).

<sup>18</sup> Paul, TR. at 12:19-14:21, 19:5-22:19; Paul, Exh. SP-1; Paul, Exh. SP-2.

<sup>19</sup> Here Staff notes that Dolly essentially claims that it would suffer irreparable injury if required not to engage in what the legislature has defined as criminal conduct.

<sup>20</sup> Dolly provides no actual evidence of financial hardship, or of the magnitude or severity of the hardship. This means that Dolly asks the Commission to act on its motion for stay without an evidentiary basis for doing so.

<sup>21</sup> While the doctrine of *stare decisis* does not apply with full force in the administrative context, agencies must strive to treat similarly situated persons similarly. *Stericycle of Wash., Inc. v. Wash. Utils. & Transp. Comm'n*, 190 Wn. App. 74, 93, 359 P.3d 894 (2015). This principle requires that the Commission treat Dolly's request for a stay based on financial hardship as it has treated similar claims in the past.

<sup>22</sup> *In re the Application of Speedishuttle Wash., LLC d/b/a Speedishuttle Seattle, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*; Docket TC-143691, Order 21, at 2 ¶ 4 (Dec. 1, 2017).

12 Dolly next argues that a stay will allow it and Staff to process its applications. The Commission should also reject this proposed justification for a stay, for three reasons.

13 First, despite Dolly's representations in its motion, the company has not submitted any applications or filed any petitions for exemptions from the licensing rules.<sup>23</sup> Nor has Dolly committed to filing any such application or petition within a specified timeframe.<sup>24</sup> The Commission should not stay Order 04 to allow for the processing of applications or petitions that it does not have and, indeed, may never have.

14 Further, and relatedly, the Commission should recognize that granting the stay as requested by Dolly cedes control over Dolly's compliance with the terms of Order 04 to the company. Dolly will determine when and how it files applications for operating authority or petitions for exemptions from the applicable rules. The requested stay would therefore have the perverse effect of allowing Dolly to determine when the stay terminates, if ever.

15 Finally, the Commission should consider the effect of granting a stay to allow for the processing of a license application after a classification hearing. If the Commission grants Dolly a stay to allow for an application, it will invite a request for a stay from every person ordered classified after a hearing held pursuant to RCW 81.04.510. And, given that the Commission must strive to treat similarly situated persons similarly, it would theoretically have to grant a stay in response to every such request if it grants one to Dolly. The Commission has wisely signaled that it does not want to invite a flood of unwarranted stay requests in the past,<sup>25</sup> and it should state as much here by denying the request.

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<sup>23</sup> Staff invites the Commission to take judicial notice of the fact that Dolly has made no application or exemption filings. *See State v. Brooks*, 2014 WL 4219562, noted at 182 Wn. App. 1024, \*5 (Wash. Ct. App. July 15, 2014) (unpublished opinion cited as persuasive authority per GR 14.1).

<sup>24</sup> *See generally In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Motion to Stay Effectiveness of Final Order 04, at 1-2 ¶¶ 1-5.

<sup>25</sup> *Sno-King Garbage Co., Inc.*, Docket TG-900657, 1991 Wash. UTC Lexis 110, Fifth Supp. Order, at \*3.

Dolly's requested stay would conflict with the public service laws and, regardless, lacks any sufficient justification. The Commission should deny it.

**V. CONCLUSION**

Staff requests that the Commission deny Dolly's motion for a stay of Order 04.

DATED this 31st day of May 2018.

Respectfully submitted,

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