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July 9, 2015

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

RE: *In re Application of Five Stars Moving & Storage, LLC for a Permit to Operate as a Motor Carrier of Household Goods*
Docket TV-150223

Dear Mr. King:

A Brief Adjudicative Proceeding was held in this matter on June 24, 2015. Dr. Michael O'Connell testified as a witness for Five Stars Moving & Storage LLC during that hearing. He testified that he believed the recidivism rate relevant to this case was 18%. The presiding officer requested that Dr. O'Connell confirm the current rate of recidivism and relay it to the presiding officer by the end of the week.

On July 6, 2015, Five Stars' attorney made the untimely filing of a letter from Dr. O'Connell containing his report to the presiding officer. Dr. O'Connell stated in his letter that "the recidivism rate for felony sex offenses for Level 1s was 4%. For Level 2s, it was 2%," relying upon the Washington State Institute for Public Policy report from 2006 given to him by Five Stars' attorney and admitted into the record at the June 24, 2015, hearing.

Had Dr. O'Connell's report to the presiding officer not differed so greatly from his testimony at the hearing, Staff would believe it unnecessary to respond to Five Stars' untimely filing. However, Staff believes it is necessary to respond to Dr. O'Connell's letter.

Pursuant to WAC 480-07-375(4), and considering Staff's lack of opportunity to cross-examine Dr. O'Connell about the discrepancy between his testimony and the information in Five Stars' untimely filing, as well as his representations regarding the opinions of some unidentified colleagues, Staff files this response letter opposing Dr. O'Connell's untimely letter. Staff only very reluctantly responds to counsel's letter and

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has no desire to unleash a torrent of paper in the form of unwelcome pleadings in this open docket.

By any calculation of the deadline for Dr. O'Connell's letter, the letter is untimely. During the June 24, 2015, hearing the presiding officer requested the recidivism rate statistic from Dr. O'Connell by the end of the week. June 24, 2015, was a Wednesday. Dr. O'Connell was instructed to respond to the presiding officer by the end of the week: Friday, June 26, 2015.¹

Dr. O'Connell states in his letter that he "discussed this issue with colleagues who are familiar with this field." But he does not identify who these individuals are. Staff and the presiding officer had a chance to hear and evaluate Dr. O'Connell's testimony at the June 24, 2015, hearing. All parties had the opportunity to ask Dr. O'Connell questions. Now, Staff has no ability to cross-examine these "other colleagues who are familiar with this field." Dr. O'Connell offered testimony based upon his knowledge and experience and the Commission should consider his opinions and his testimony and accord it its due weight, but should not consider the unsworn opinions of unidentified others who have not appeared as witnesses in this proceeding.

Dr. O'Connell's reliance on the 2006 report is repetitive, duplicative, and unresponsive. The 2006 report that he references is included in the record, and was at the time of the presiding officer's request. The clear intention of the presiding officer's request was to receive additional and clarifying information from Dr. O'Connell regarding recidivism rates and to support and/or verify Dr. O'Connell's testimony regarding a rate of 18%. In his letter, Dr. O'Connell provides no clarity and no independent, additional information regarding the risk of recidivism that Mr. Trick presents.

Staff did not offer testimony or evidence on recidivism rates at the hearing because Staff's position is that recidivism is not relevant and is immaterial to what Staff considers the core issues: the nature and extent of the crime; the deficiencies in the application; and Staff's experiences with Mr. Trick that are consistent with those deficiencies.

Dr. O'Connell offered testimony on recidivism rates at the June 24, 2015, hearing based upon his own education and experience. It is concerning that he controverts his testimony that the relevant recidivism rate is around 18% and adopts the report proffered by Five Stars that indicates a substantially different – and lower – recidivism rate. The difference between 18% and 4% is not small and shows either a significant miscalculation by Dr. O'Connell or a lack of support for his testimony at the hearing.

¹ A more expanded understanding of the presiding officer's order would be to extend the time period to a week from the time of her request: July 1, 2015. The most liberal understanding would assume that Dr. O'Connell had until the end of the week following the week of the hearing: July 2, 2015. Dr. O'Connell's letter meets none of these deadlines as it was untimely filed on July 6, 2015, by Five Stars.

Dr. O'Connell states in his letter that he "conducted a review of the research" on the relevant recidivism rates. He makes no mention of any other report or resource to which he referred. Dr. O'Connell simply rubber-stamps the 2006 report presented by Five Stars. Such "research" surely should have included a review of other studies, initiatives, or government reports on the topic of recidivism rates for sex offenders and child molesters. The U.S. Department of Justice and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)² sponsored a full report in October of 2014 entitled "Sex Offender Management Assessment and Planning Initiative" (SOMAPI) with updated and relevant data and analysis about sex offender recidivism rates.³ It addresses the recidivism rates for sex offenders and child molesters using a national scope, broad research, and multiple studies. It presents significantly more concerning results than those proffered by Five Stars: (1) official records underestimate the recidivism of sex offenders; (2) they underestimate the recidivism rates for child molesters even more than other types of sex offenders; and (3) the sexual recidivism rate for child molesters is 13% after 5 years and 23% after 15 years.⁴ This information is timely and relevant to any consideration of sex offender recidivism as well as Five Stars' and Dr. O'Connell's discounting of the risk of re-offending that Mr. Trick, as a registered sex offender convicted of child molestation, poses. It also provides information that aligns with and confirms Dr. O'Connell's testimony at the June 24, 2015, hearing that the recidivism rate is roughly 18%. This report surely should have been included in any review or research that Dr. O'Connell performed, but he makes no mention of this report or whether he even considered it. In any event, he should not be permitted to change his expert opinion testimony on a critical issue in the case by letter, post-hearing.

Staff feels compelled to respond to the untimely filing on behalf of Dr. O'Connell due to the precariously large discrepancy between his live testimony and the letter filed on July 6, 2015. Staff further believes this response will benefit the record. Although denied an opportunity to cross-examine Dr. O'Connell regarding the discrepancy between his testimony at the June 24, 2015, hearing and the information he submitted in the letter filed on July 6, 2015, Staff requests only that the presiding officer consider the letter filed on his behalf in light of the concerns Staff has raised and accord it the weight to which it is entitled and no more.

² "The SMART Office was authorized in the Adam Walsh Child Protection and Safety Act of 2006, which was signed into law on July 27, 2006. The responsibilities of the SMART Office include providing jurisdictions with guidance regarding the implementation of the Adam Walsh Act, and providing technical assistance to the states, territories, Indian tribes, local governments, and to public and private organizations. The SMART Office also tracks important legislative and legal developments related to sex offenders and administers grant programs related to the registration, notification, and management of sex offenders." SMART Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, Department of Justice: Office of Justice Programs, www.smart.gov (last visited July 7, 2015).

³ Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, in *Sex Offender Management Assessment and Planning Initiative* 89, 89 (National Criminal Justice Association, U.S. Department of Justice, Office of Sex Offender SMART, 2014), available at www.smart.gov/SOMAPI/.

⁴ *Id.* at 98-103.

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Staff submits an addendum to this response letter containing the relevant chapter on Adult Sex Offender Recidivism from the October 2014 SMART report on sex offenders. However, Staff would not like to create unnecessary and additional filings that could burden and delay the resolution of this matter. For this reason, Staff would submit to the discretion of the presiding officer whether the addendum attached to this response letter is helpful and informative for the presiding officer's determination in this matter or would instead unnecessarily provoke additional filings and delay the resolution of this matter. In either case, Staff would defer to the decision and judgment of the presiding officer.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. O'Connell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

ANDREW J. O'CONNELL
Assistant Attorney General

AJO/emd
Enclosure

cc: Marguerite Friedlander, Administrative Law Judge w/enc.
Five Stars Moving w/enc.