

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of	)	DOCKET TV-150223
	)	
	)	ORDER 02
	)	
Five Stars Moving & Storage, LLC,	)	INITIAL ORDER AFFIRMING THE
	)	COMMISSION’S DENIAL OF THE
	)	APPLICATION OF FIVE STAR
	)	MOVING & STORAGE, LLC, FOR
	)	PROVISIONAL AND PERMANENT
For a Permit to Operate as a Motor	)	AUTHORITY TO OPERATE AS A
Carrier of Household Goods.	)	HOUSEHOLD GOODS MOVING
	)	COMPANY
	)	
.....	)	

**SUMMARY**

1 **NATURE OF PROCEEDING.** On February 10, 2015, Five Stars Moving & Storage, LLC (Five Stars or the Company), filed its application with the Washington Utilities and Transportation Commission (Commission) requesting provisional and permanent authority to operate as a household goods moving company (Application). On March 20, 2015, the Commission issued a Notice of Intent to Deny Application for Permanent Authority and Notice of Opportunity for Hearing (Denial Notice). The Denial Notice stated that the Commission’s regulatory staff (Staff or Commission Staff)<sup>1</sup> had reviewed the Application and recommended that the Commission deny Five Stars’ Application based on the conviction of sexual misconduct of Mr. William Trick, president of the Company, as well as other factors.<sup>2</sup> Five Stars requested a hearing to appeal the denial on March 30, 2015.

2 **PARTY REPRESENTATIVES.** Christopher T. Wall, Gordon Thomas Honeywell LLP, Tacoma, Washington, represents Five Stars. Andrew O’Connell, Assistant Attorney General, Olympia, Washington, represents Staff.

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<sup>1</sup> In adjudications the Commission’s regulatory staff participates like any other party, while the Administrative Law Judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

<sup>2</sup> Denial Notice, ¶¶ 6, 7.

**MEMORANDUM**

3 **PROCEDURAL HISTORY.** On February 10, 2015, Five Stars filed its Application listing Mr. Trick as the president and part owner of the Company. Mr. Trick answered in the negative when asked these two questions on the Application:

- Has any person named in this application, been cited for violation of state laws or Commission rules?
- Do you have, or have you ever had a business related legal proceeding against you in Washington, or in any other state?<sup>3</sup>

Mr. Trick signed the Application on behalf of Five Stars on January 6, 2015, declaring under penalty of perjury that the information provided was true and correct.<sup>4</sup> Staff ran a background check on Mr. Trick, however, and discovered that he had been convicted of two counts of first degree child molestation.

4 Following its review of the Application, Staff recommended that Five Stars' request for a permit be denied. On March 20, 2015, the Commission accepted this recommendation and denied Five Stars' Application under WAC 480-15-302(8)(b), based on its determination that "the nature of [Mr. Trick's child molestation conviction] will likely interfere with the proper operation of a household goods moving company."<sup>5</sup> Citing to the King County Sex Offender Watch website, the Denial Notice indicated that the two victims, 7 year old girls, were acquainted with Mr. Trick through their mother who worked with him.<sup>6</sup> Prior to his release from prison for this conviction, Mr. Trick was evaluated a Level II sex offender.<sup>7</sup> In relevant part, the Commission stated:

Level II sex offenders are considered to be at moderate risk of reoffending, and household goods carriers enter people's homes, where children may be

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* The Denial Notice stated that Staff became familiar with Mr. Trick in a previous proceeding, Docket TV-130259, and are aware of his criminal history and sex offender status. *Id.* ¶ 8.

present and unsupervised. In light of these factors – in addition to the nature of Mr. Trick’s crime, as described on the [King County Sheriff’s Office] Sex Offender Watch website – we conclude that granting the [A]pplication would pose an unreasonable risk to the unsuspecting public.<sup>8</sup>

5 Five Stars requested a hearing to appeal the denial on March 30, 2015. The Commission noticed the matter as a brief adjudicative proceeding and convened an evidentiary hearing on June 24, 2015.<sup>9</sup> Following the hearing, the Company filed a letter on behalf of its witness, Dr. Michael A. O’Connell, regarding recidivism rates of Level I and Level II sex offenders in Washington State on July 6, 2015. Staff filed a reply to Dr. O’Connell’s letter objecting to the letter’s untimeliness, and countering with an October 2014 report on recidivism statistics for child molesters from the U.S. Department of Justice.

6 As unpleasant as the details of Mr. Trick’s convictions are, Staff has argued that the specifics of the crimes are relevant to his ability, as president of Five Stars, to properly operate a household goods moving company. Thus, limited exposition is necessary for the remaining legal discussion.

7 **MR. TRICK’S FELONY CONVICTION.** On April 3, 1999, Mr. Trick attended an evening party at the residence of one of his co-workers.<sup>10</sup> He states that he had been drinking<sup>11</sup> and grew tired as the evening progressed.<sup>12</sup> His co-worker’s husband offered Mr. Trick the opportunity to rest in their home.<sup>13</sup> He laid down in a room and his co-

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<sup>8</sup> *Id.* ¶ 10.

<sup>9</sup> The matter was originally set for hearing on June 11, 2015. The evidentiary hearing was postponed due to the Company’s unsolicited filing of a prehearing brief and declarations on June 4, 2015, and the subsequent round of procedural filings it spurred, culminating with the Commission granting Staff’s Motion to Strike the Company’s Declarations, Attached Exhibits, and Prehearing Brief on June 9, 2015. Five Stars filed a Motion for Leave to File Legal Brief (Motion) on June 11, 2015. On June 17, 2015, Staff filed its Response in Opposition to the Motion. The Commission denied the Company’s Motion on the record at the hearing on June 24, 2015. Judge Friedlander, TR 117:19-118:5.

<sup>10</sup> Paul, Exh. No. SP-6 at 3. Trick, TR 91:20-23. According to Dr. O’Connell’s testimony, which Mr. Trick did not contradict, he worked with the victims’ mother at a pizza place. O’Connell, TR 128:13-15.

<sup>11</sup> Trick, TR 111:7-12.

<sup>12</sup> Trick, TR 92:2-3. Mr. Trick testifies that “I don’t necessarily know that I was obliterated drunk, because I was conscious in my decisions, where – where my decisions were impulsive, and obviously, not to, you know, par, yes, of course. The alcohol affected my decisions a little bit.”

<sup>13</sup> Trick, TR 92:6-9.

worker's 7 year old twin daughters, whom he had been introduced to only that night, came in.<sup>14</sup> Mr. Trick states that the girls got in bed with him, and he digitally violated them.<sup>15</sup> The girls told their mother, who then alerted the Bremerton Police Department.<sup>16</sup> In interviews conducted by the department, the minor children described being digitally and orally violated by Mr. Trick.<sup>17</sup> One minor child also disclosed that Mr. Trick had made her touch his penis and "that he had laid on top of her and felt her all over."<sup>18</sup> She stated she had witnessed Mr. Trick violate her sister.<sup>19</sup>

8 When interviewed by the department, Mr. Trick stated that he had been "in the bed alone with the twins and [had] his finger in the vagina of one of the twins."<sup>20</sup> He stated he was aroused while thinking about his girlfriend "and he mistook the twin for his girlfriend."<sup>21</sup> For his conviction, Mr. Trick served 67 months in prison and was evaluated a Level II sex offender.<sup>22</sup> In addition to the moderate risk level of re-offending, Level II sex offenders also:

generally have more than one victim and the abuse may be long term. These offenders usually groom their victims and may use threats to commit their crimes. These crimes may be predatory with the offender using a position of trust to commit their crimes. Typically these individuals do not appreciate the damage they have done to their victims.<sup>23</sup>

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<sup>14</sup> *Id.* TR 92:19-22.

<sup>15</sup> Paul, Exh. No. SP-6 at 3. While the Certificate of Probable Cause states that Mr. Trick *initially* only admitted to digitally raping one of the children, he did plead guilty to two counts of child molestation, one for each girl. *See*, Paul, Exh. No. SP-7 at 5 where Mr. Trick admits "On 4/3/99, in Kitsap County, Washington, I had sexual contact with two 7-year-old children (d.o.b. 06/13/91) & was not married to either." Mr. Trick's testimony at hearing offered no further clarification of the inconsistency between his plea agreement and this initial interview with law enforcement.

<sup>16</sup> Paul, Exh. No. SP-6 at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* This is obviously inconsistent with the two victims' statements. Emphasis added.

<sup>21</sup> *Id.* Mr. Trick denied this during his testimony at the evidentiary hearing but did not indicate why he misled authorities. Trick, TR 93:6-8.

<sup>22</sup> Paul, TR 197:17-23.

<sup>23</sup> Paul, Exh. No. SP-5.

At the time of his release, Mr. Trick was placed under supervision for almost three years, during which he was prohibited from any contact with minors, was required to complete the sexual offender treatment program, was not allowed to use alcohol or controlled substances, was required to receive counseling, and to obey all laws.<sup>24</sup> Mr. Trick, who was a member of the military at the time, was given an other than honorable discharge, was listed as RE-4 which means that he is ineligible to reapply into the Navy, and has been banned for life from entering a military base.<sup>25</sup>

9 **MR. TRICK'S FEDERAL TAX LIEN.** Mr. Trick testifies that he and his previous wife “made a significant amount of money in what we did, and I wasn’t used to making that much money, and therefore, on our ... taxes ... we didn’t have enough taken out.”<sup>26</sup> He explains that, at the end of the tax year, they owed a significant amount and “kind of let that go to the next year.”<sup>27</sup> Mr. Trick states that he first became aware of the lien recently when he was attempting to purchase a house with his current wife.<sup>28</sup> Staff discovered a federal tax lien from April 15, 2011, against Mr. Trick as a “small business owner,” in the amount of \$31,457.04.<sup>29</sup> Mr. Trick denies that the unpaid taxes resulted from a business that he operated.<sup>30</sup>

10 **MR. TRICK'S MISDEMEANOR CONVICTION.** On February 10, 2012, Mr. Trick was out bowling with some friends and drinking alcohol.<sup>31</sup> In what he acknowledges was an unwise decision, Mr. Trick drove his car onto the highway while still inebriated.<sup>32</sup> Law enforcement pulled him over for driving while talking on his cell phone.<sup>33</sup> The police officer conducted a field sobriety test and administered a breathalyzer test.<sup>34</sup> Mr. Trick admits that he scored higher than the legal limit on the breathalyzer test.<sup>35</sup> Mr.

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<sup>24</sup> Paul, TR 203:15-18.

<sup>25</sup> *Id.* TR 192:19-23.

<sup>26</sup> Trick, TR 246:8-13.

<sup>27</sup> *Id.* TR 246:13-16.

<sup>28</sup> *Id.* TR 247:3-9.

<sup>29</sup> Paul, TR 173:9-12.

<sup>30</sup> Trick, TR 246:24-25.

<sup>31</sup> *Id.* TR 70:11-14. Paul, Exh. No. SP-3 at 1.

<sup>32</sup> Trick, TR 114:5-11, 115:5-6.

<sup>33</sup> *Id.* 114:13-15.

<sup>34</sup> *Id.* TR 114:20-25.

<sup>35</sup> *Id.* 115:5-6.

Trick was originally charged with driving while under the influence, which was later amended to reckless driving.<sup>36</sup> Mr. Trick was sentenced to 364 days jail time with 360 days suspended, a \$5,000 fine with \$4,650 suspended, and 24 months supervision.<sup>37</sup>

### ARGUMENTS

- 11 **FIVE STARS.** Mr. Trick asks for “a more nuanced, a more individualized exercise of discretion [looking] specifically at [him] and his specific circumstances”<sup>38</sup> than he received from Commission Staff. He asserts that he made a horrible mistake in 1999, but that is not all he is.<sup>39</sup>
- 12 Testifying on behalf of Five Stars, Dr. Michael O’Connell, a psychologist, stated that there are two main predictors of sexual recidivism: deviant sexual interest and a history of anti-sociology.<sup>40</sup> He describes a person possessing a deviant sexual interest more specifically as “somebody who is sexually interested and aroused to kids or fetishistic behavior or coercive sex.”<sup>41</sup> Dr. O’Connell testifies that psychologists use the polygraph and the plethysmograph, a physiological test of sexual arousal, to either confirm or eliminate suspicion of deviant sexual interest.<sup>42</sup> Further, he states he didn’t see any “red flags” about Mr. Trick being predatory or having any deviant sexual interest.<sup>43</sup> Dr. O’Connell cautions that he would need to conduct a more thorough evaluation and risk assessment including getting official records, conducting tests, and interviewing collateral contacts of Mr. Trick prior to reaching a full conclusion on his recidivism risk, which would require six to eight weeks.<sup>44</sup>

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<sup>36</sup> Paul, TR 177:15-17.

<sup>37</sup> *Id.* TR 177:21-24. Paul, Exh. No. SP-3 at 2.

<sup>38</sup> Wall, TR 254:18-23.

<sup>39</sup> *Id.* TR 255:17-18.

<sup>40</sup> M. O’Connell, TR 16:20-17:12. Dr. O’Connell states that these predictors are based on the analysis of two studies, conducted in 1999 and 2004, by Karl Hanson with the Correctional Service of Canada. *Id.*

<sup>41</sup> *Id.* TR 17:7-9.

<sup>42</sup> *Id.* TR 148:7-14 and 148:18-149:2.

<sup>43</sup> *Id.* TR 32:8-10.

<sup>44</sup> *Id.* TR 33:2-5. *Id.* TR 141:2-6. The basic leveling categories of Level I, Level II, and Level III, with Level I offenders being low risk and Level III offenders being high risk, is still used by the state of Washington. *Id.* TR 35:19-21.

- 13 The second recidivism predictive factor is anti-sociology or anti-social behavior which includes an unstable lifestyle and a history of rule violation.<sup>45</sup> Mr. Trick contends that his wife and two children, his parents in Ohio, and his uncle/business mentor, Tom Cook, form his support network and the basis of his stability.<sup>46</sup>
- 14 Dr. O’Connell states that recidivism rates for sexual offenses decrease subsequent to the first year following release from prison, then decrease even further after the offender has been out of prison for five years.<sup>47</sup> According to Dr. O’Connell, residing in the community for a period of time without re-offending also mitigates Mr. Trick’s risk of recidivism since “[being in the community] provides more opportunities for mischief than being in prison.”<sup>48</sup> Dr. O’Connell argues that employment opportunities for sex offenders do provide some “connections to the community and promot[e] that process.”<sup>49</sup> However, he explains that “there are certain perfectly reasonable restrictions on people who abuse children [from] being in positions of authority.”<sup>50</sup> Further, he added that no one can be considered at no risk of committing a sexual offense and that “even somebody who has never committed a sex[ual] offense or has never been convicted of a sex[ual] offense is at some risk.”<sup>51</sup>
- 15 Dr. O’Connell points to studies that have found “state-of-the-art treatment programs basically reduce the likelihood of recidivism in half, all things being equal.”<sup>52</sup> He characterizes Washington’s in-prison treatment program through the Department of Corrections as “fairly good” and explains that the treatment program focuses on cognitive behavior or “the justifications and rationalizations and the excuses people use, and the behavioral interests [the inmates bring into treatment].”<sup>53</sup>

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<sup>45</sup> M. O’Connell, TR 29:16-18.

<sup>46</sup> Trick, TR 85:11-19 and 87:24-88:6. Mr. Trick states that Tim Cook is his business mentor, a financial backer, and would take care of the administrative aspect of Five Stars. *Id.* TR 89:4-90:11.

<sup>47</sup> *Id.* TR 18:20-19:2.

<sup>48</sup> *Id.* TR 140:2-8.

<sup>49</sup> M. O’Connell, TR 124:5-8.

<sup>50</sup> *Id.* TR 124:12-14.

<sup>51</sup> *Id.* TR 20:8-11.

<sup>52</sup> *Id.* TR 22:16-20.

<sup>53</sup> *Id.* TR 23:2-16.

16 Mr. Trick argues that his designation as a Level II sex offender was based on a system, the Washington State Sex Offender Risk Level Classification, used in 2004 at the time of his release, but that has since been revamped to better predict recidivism risk.<sup>54</sup> Dr. O’Connell re-evaluated Mr. Trick’s risk based on this scoring tool,<sup>55</sup> and believes that the End of Sentence Review Committee may have mistakenly scored Mr. Trick too high.<sup>56</sup> Dr. O’Connell testifies that Mr. Trick:

looks like he ought to be a [Level I] guy [instead of his current Level II designation], and that the – his connections to the community and the things that he is doing to keep himself busy would seem to – you know, he looks like a low risk guy who, you know, needs not to get drunk and – and, you know, put himself in a situation like where he was in [at the time he molested the children].<sup>57</sup>

17 Dr. O’Connell acknowledges that his conversation with Mr. Trick was “a kind of a quick and dirty” evaluation, stating that he only took background information from Mr. Trick.<sup>58</sup> He admits that there was not an opportunity to interview Mr. Trick’s collateral contacts to investigate the veracity of Mr. Trick’s statement or his adjustment to the community since he left prison.<sup>59</sup>

18 With regard to recidivism rates for the various levels, Dr. O’Connell stated that Level II sex offenders are at an 18 percent risk of reoffending and Level I sex offenders are at less than 10 percent risk.<sup>60</sup> He later corrected these figures to 2 percent for Level II sex offenders and 4 percent for Level I sex offenders, based on the Washington State Institute for Public Policy’s 2006 report.<sup>61</sup> Dr. O’Connell acknowledges that the recidivism tools and percentages “do not give a precise risk factor for any particular person...[a]ll it can do is...compare somebody to a pool of people who ... have similar characteristics.”<sup>62</sup>

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<sup>54</sup> Wall, TR 7:13-8:1.

<sup>55</sup> M. O’Connell, TR 26:16-19. Dr. O’Connell states that Washington currently uses a revised STATIC 99 leveling tool. *Id.* TR 36:6-17.

<sup>56</sup> *Id.* TR 26:24-27:7. *Id.* TR 27:14-16. *Id.* TR 38:15-22 and 38:25-39:4.

<sup>57</sup> *Id.* TR 31:23-32:5.

<sup>58</sup> *Id.* TR 24:12-15.

<sup>59</sup> *Id.* TR 24:21-24.

<sup>60</sup> *Id.* TR 143:5-8, 24.

<sup>61</sup> Letter from Dr. Michael A. O’Connell to the Commission, dated July 1, 2015, at 1.

<sup>62</sup> M. O’Connell, TR 137:25-138:4.



- 19 Mr. Trick also faults the Commission’s denial because it was based, at least in part, on allegedly inaccurate information Staff obtained from the King County Sheriff’s Office website.<sup>63</sup> Contrary to his sex offender listing on the King County Sheriff’s Office website, Mr. Trick states that he was never a soccer coach,<sup>64</sup> he only informally coached a junior high school wrestling team,<sup>65</sup> he never volunteered at a day care center,<sup>66</sup> and he did not volunteer with any overseas children’s services.<sup>67</sup> Mr. Trick asserts that he has notified the King County Sheriff’s Office of the incorrect information, and it is currently under investigation.<sup>68</sup>
- 20 Mr. Trick disputes Staff’s characterization of Five Stars’ Application as misleading. He states that, while he may have indicated in the negative that he had never been cited for a violation of law, he did alert Staff verbally of his convictions when he called the Commission in December 2014 to ask if disclosure was absolutely necessary.<sup>69</sup> He argues that the Commission’s form application specifically asks whether any person named in the application has ever been “cited” for violation of state laws,<sup>70</sup> and his sexual molestation convictions did not result in a “citation” as such.<sup>71</sup>
- 21 **STAFF.** Staff states that it investigates each household goods mover application to:
- see if they’re willing and able to conform to the proposed services, and that they can follow the applicable laws and rules, whether the company is in the interest of the public, whether a background check has been conducted, and whether the application is complete, and that the answers are truthful.<sup>72</sup>

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<sup>63</sup> Wall, TR 8:2-7.

<sup>64</sup> *Id.* TR 80:6-8.

<sup>65</sup> *Id.* TR 81:6-9.

<sup>66</sup> *Id.* TR 81:22-23.

<sup>67</sup> *Id.* TR 81:24-82:5.

<sup>68</sup> *Id.* TR 85:3-5.

<sup>69</sup> Paul, TR 236:3-14.

<sup>70</sup> *Id.* TR 239:7-10.

<sup>71</sup> *Id.* TR 239:2-6.

<sup>72</sup> *Id.* TR 163:13-19.

Movers have to be trustworthy because they are going into people's homes and handling customer property, often with very little supervision.<sup>73</sup> They interact with customers and any other family and friends that may be present, including children.<sup>74</sup> They are responsible for ensuring compliance with the Commission rules and regulations.<sup>75</sup>

22 Staff argues that Mr. Trick's child molestation conviction interferes with his ability to operate a household goods business.<sup>76</sup> Mr. Trick encountered the children he molested through a work relationship he had with their mother.<sup>77</sup> The girls' parents trusted him in their home, and the girls entered his room trusting him.<sup>78</sup> Staff asserts Mr. Trick took advantage of that trust, and he used a work relationship to do so.<sup>79</sup>

23 Commission Staff contends that Mr. Trick lacks the trustworthiness to properly operate a jurisdictional moving company. One example is Mr. Trick's inconsistent testimony at hearing. In his statement to officers in 1999, Mr. Trick asserted that he "mistook [one of] the twin[s] for his girlfriend, yet at hearing, he stated that this was not true."<sup>80</sup> Staff asserts Mr. Trick attempted to mislead Staff by failing to disclose his prior child molestation and reckless driving convictions, as well as his federal tax lien.<sup>81</sup> Further, Staff found the federal tax lien particularly problematic because it relates to Mr. Trick's small business.<sup>82</sup> Ms. Susie Paul, on behalf of Staff, testifies that she confirmed this information through the King County Auditor's Office.<sup>83</sup> As for Mr. Trick's contention that he never received a citation for his child molestation conviction and thus didn't need to disclose it on Five Stars' Application, Commission Staff explains that the Black's Law Dictionary entry for "cite," includes "a notification of a violation and/or legal proceeding requesting the

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<sup>73</sup> *Id.* TR 205:11-14.

<sup>74</sup> *Id.* TR 205:24-206:3.

<sup>75</sup> *Id.* TR 209:2-5.

<sup>76</sup> A. O'Connell, TR 260:2-3.

<sup>77</sup> *Id.* TR 260:3-5.

<sup>78</sup> *Id.* TR 260:5-10.

<sup>79</sup> *Id.* TR 260:10-12.

<sup>80</sup> Trick, TR 93:6-8.

<sup>81</sup> Paul, TR 166:15-18, 21-23. Staff discovered Mr. Trick's convictions as a routine part of its investigation when it conducted two background checks upon him. Paul, TR 170:3-6. The second background check was performed because the Commission received a new background information system in June of 2015.

<sup>82</sup> Paul, TR 173:21-24.

<sup>83</sup> *Id.*

person's presence."<sup>84</sup> While Mr. Trick may not have received a "citation" for his various offenses, each of his convictions are encompassed within the definition of the term in the Black's Law Dictionary.<sup>85</sup> Staff notes that, when he called the Commission in December 2014 and asked about his filling out the application, he was told to provide as much information as he could.<sup>86</sup> Specifically, Staff told Mr. Trick "that he should be as complete as possible, and it is usually better to give more information."<sup>87</sup>

- 24 According to Staff, Mr. Trick has made a habit of intentionally withholding vital information from the Commission.<sup>88</sup> In 2013, he failed to include his identity as part owner of B&Z Moving LLC (B&Z) or any information about his convictions on B&Z's application.<sup>89</sup> The Commission denied B&Z's application based on the company's attempt to mislead Staff regarding Mr. Trick's involvement.<sup>90</sup>
- 25 Staff raises several additional concerns it has with Mr. Trick performing jurisdictional moves. Dr. O'Connell acknowledges child molesters are good manipulators and children are more vulnerable to manipulation than an adult.<sup>91</sup> Further, he states that "being in contact and having, you know, control over children is a risk factor that needs to be taken seriously."<sup>92</sup> As a permitted mover, Mr. Trick would be in close proximity to children during familial moves, a hectic time for a family when there may be little supervision.<sup>93</sup>
- 26 Commission Staff questions Mr. Trick's ability to exercise good judgment. At the time of his release from prison, Mr. Trick was directed to have no contact with minor children during his supervision period.<sup>94</sup> During this time, he met his first wife, a woman with two minor children, whom he married within months after his supervision ended.<sup>95</sup> Staff

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<sup>84</sup> Paul, TR 241:20-23.

<sup>85</sup> *Id.* TR 241:25-242:16.

<sup>86</sup> Paul, TR 179:14-20.

<sup>87</sup> *Id.* TR 184:25-185:2.

<sup>88</sup> A. O'Connell, TR 9:11.

<sup>89</sup> Paul, TR 212:3-8.

<sup>90</sup> *Id.* TR 214:23-24.

<sup>91</sup> *Id.* TR 130:7-8, 12-13, and 18.

<sup>92</sup> M. O'Connell, TR 131:20-22.

<sup>93</sup> Paul, TR 210:23-211:5.

<sup>94</sup> A. O'Connell, TR 131:4, 9-12.

<sup>95</sup> *Id.* TR 131:12-13. Trick, TR 99:25-100:14.

argues that this shows that “Mr. Trick has continued to place himself in a risky position.”<sup>96</sup>

27 With regard to Dr. O’Connell’s contentions that Mr. Trick is more likely a low, rather than moderate risk, sex offender, Commission Staff stresses that Dr. O’Connell’s preliminary findings are based on one, brief conversation with Mr. Trick during a 60 to 90 minute telephone call the day prior to the evidentiary hearing.<sup>97</sup> Dr. O’Connell did not evaluate the pre-sentence investigation report or the Certificate of Probable Cause for Mr. Trick’s conviction<sup>98</sup> or conduct any interviews with Mr. Trick’s family and friends “who could confirm what he’s told me about his – his involvement in the community and with his family.”<sup>99</sup> Mr. Trick has been a Level II sex offender for 11 years, and while he argues that his risk level should be lowered to a Level I sex offender, he admits that he has not pursued modification of his status until just recently.<sup>100</sup> Staff states that Mr. Trick’s risk level was set prior to his being released from prison<sup>101</sup> by the End of Sentence Review Committee which had access to all relevant records including Mr. Trick’s pre-sentence investigation report.<sup>102</sup>

28 Dr. O’Connell acknowledges that the risk assessment performed in 2004 on Mr. Trick “was a reasonably good attempt at... a fair and ... accurate risk assessment.”<sup>103</sup> He explains Mr. Trick’s prognosis as such:

the model that’s more useful [than a curable illness] for thinking about how to respond to somebody who has acted out sexually, so think in terms of, like, substance abuse<sup>104</sup> ... There are other people who have misused alcohol and who have, you know, caused problems for themselves or others, and a person who has, you know engaged in that behavior can’t say, I’m cured, I can – you know, I never have to think twice about use of

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<sup>96</sup> Paul, TR 233:13-14.

<sup>97</sup> M. O’Connell, TR 125:11-12, 125:14-19, 25:25-126:4, and 127:16-18.

<sup>98</sup> *Id.* TR 127:7-13.

<sup>99</sup> M. O’Connell, TR 33:5-8.

<sup>100</sup> Trick, TR 98:5-7, 98:15-99:5.

<sup>101</sup> Paul, TR 200:2-6 (citing RCW 72.09.345), 17-18.

<sup>102</sup> *Id.* TR 200:19-23.

<sup>103</sup> M. O’Connell, TR 134:22-24. Dr. O’Connell also explains that the treatment Mr. Trick received, while “pretty good back then,” has improved with time. *Id.* TR 135:14-15.

<sup>104</sup> *Id.* TR 146:2-5.

alcohol again. It's more useful to think about them managing their life better. If they have a physiological addiction, to structure their life so they don't put themselves into contact with alcohol, build social structures so that they avoid the social occasions where someone is going to hand them a drink and they're going to feel social pressure to do that.<sup>105</sup>

He confirms that, while sexual offenders are not irredeemable and need not remain in prison indefinitely, it is a chronic issue that requires lifelong maintenance by the sex offender.<sup>106</sup>

- 29 Recidivism rates cited by Staff are much higher rates for both Level I and Level II sex offenders, as detailed in an October 2014 report by the U.S. Department of Justice and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) entitled "Sex Offender Management Assessment and Planning Initiative"<sup>107</sup> (SMART report). Using "a national scope, broad research, and multiple studies," the report presents recidivism rates for child molesters at 13 percent after 5 years and 23 percent after 15 years.<sup>108</sup> The report also states that "[s]everal studies of victims have shown that the likelihood that a sexual assault will be reported to law enforcement decreases with the victim's age."<sup>109</sup> At least in part for this reason, "researchers widely agree that observed recidivism rates are underestimates of the true re-offense rates of sex offenders."<sup>110</sup>

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<sup>105</sup> *Id.* TR 146:9-22.

<sup>106</sup> *Id.* TR 147:7-10.

Friedlander: Right. But if I'm understanding you correctly, it's kind of a maintenance is a lifelong issue?

Dr. O'Connell: That's correct.

<sup>107</sup> Letter from Andrew J. O'Connell, Assistant Attorney General, to the Commission, at 3 (July 9, 2015).

<sup>108</sup> *Id.* (citing 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/](http://www.smart.gov/SOMAPI/)).

<sup>109</sup> SMART report at 90 (citing Kilpatrick, Saunders, & Smith, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, "Youth Victimization: Prevalence and Implications" and Sorenson and Snow, Child Welfare, "How children tell: The process of disclosure in child sexual abuse," 70, 3-15).

<sup>110</sup> *Id.* at 91.

**DISCUSSION/DECISION**

30 WAC 480-15-302(8)(b) provides that:

[i]f a person named in the application has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance more than five years prior to the date of the application and the commission determines that the nature or extent of the crime(s) will likely interfere with the proper operation of a household goods moving company, the commission will deny operating authority to the applicant.

31 Commission Staff have highlighted the importance of both honesty and trustworthiness in those the agency bestows with a household goods moving company permit. These companies and their employees enter strangers' homes (albeit with permission), handle valuable goods, obtain personal identification information, and, of particular importance here, come into contact with minor children in the chaos of a family's "moving day."

32 Mr. Trick's history with the Commission raises questions about his honesty. First, he admits to applying to the Commission for a permit in Docket TV-130259 and does not deny that he was part owner of B&Z or his prior conviction. In this docket, Mr. Trick intentionally omitted from Five Stars' Application information of his prior child molestation and reckless driving convictions, as well as the federal tax lien. The Commission has only had these two experiences with Mr. Trick, and in both instances, he has been less than forthcoming, if not outright dishonest.

33 Mr. Trick blames his child molestation conviction on bad judgment which he appears to continue to exercise time and again. Around 2008, Mr. Trick and his then wife ignored their federal tax liability and a lien was imposed. This, in and of itself, isn't a valid rationale under the Commission's rules for denying Five Stars' Application. Yet his actions, or in this case inactions, demonstrate a disregard for responsibilities imposed by a governmental entity. As recently as two years ago, Mr. Trick was charged with driving while under the influence and pled to the lesser charge of reckless driving.

34 Dr. O'Connell appears to be a certificated psychologist; however, his analysis of Mr. Trick was preliminary and representative of little more than Mr. Trick's own testimony. Dr. O'Connell was not able to verify Mr. Trick's assertions, did not review all pertinent records relating to Mr. Trick's convictions, and did not observe Mr. Trick in person during their conversation. It is doubtful that many conclusions can be drawn from such limited interaction. That said and knowing Mr. Trick's molestation conviction, even Dr.

O'Connell cautioned against Mr. Trick placing himself in situations similar to those surrounding his child molestation conviction.

35 Further, while Dr. O'Connell suspects that Mr. Trick's risk assessment level was set too high, this assumption is, again, based upon one telephone conversation with Mr. Trick himself. Mr. Trick failed to present evidence that he was incorrectly or unlawfully evaluated a moderate risk for re-offending. Even if he had, the Commission does not have the ability to modify an individual's assessed risk level, and we must rely on the risk assessment arrived at by the End of Sentencing Review Committee. Mr. Trick admits that law enforcement officials are the entity with authority to re-evaluate his level. Yet, he's not made a documented effort to have his assessment re-evaluated.

36 Recidivism rates, as shown by the inconsistent study results presented by both sides, offer little in the way of predicting an individual's likelihood of committing another sex offense. The rates are notoriously low due to underreporting of sexual offenses to authorities, especially when children are the victims. Dr. O'Connell's preferred study indicates that two factors, deviant sexual interest and anti-social behavior, are fair predictors of re-offense. We have no evidence to indicate a lack of deviant sexual interest by Mr. Trick and, while Dr. O'Connell didn't see any 'red flags' to indicate Mr. Trick might have a deviant sexual interest, his only contact with Mr. Trick was a brief 60 to 90 minute telephone call. Compared with the six to eight weeks Dr. O'Connell said would be necessary for a full evaluation, this telephone conversation appears woefully inadequate. As for the anti-sociology, Mr. Trick's support system consists of his wife and children, his parents, and his uncle, Tom Cook. While it is true that Mr. Trick is married with a young step-son and daughter, this is his second marriage in 7 years. His parents, while supportive, reside in the Midwest. The influence of Mr. Cook, Mr. Trick's uncle, appears to be business-related as opposed to offering social or emotional support to his nephew.

37 His recent reckless driving conviction and his federal tax lien show Mr. Trick re-offending after his release from prison, which Dr. O'Connell testified can be indicative of the anti-social behavior predictor. Taken with Mr. Trick's lack of honesty with the Commission on two occasions, his limited social support network, and his repeated violations of the law since his release from prison in 2004, we find the Commission's prior denial of Five Stars' Application to be in the public interest.

38 The Commission's denial of Five Stars' Application is affirmed.

**FINDINGS OF FACT**

39 Having discussed above in detail the evidence received in this proceeding concerning all  
material matters, and having stated findings and conclusions upon issues in dispute  
among the parties and the reasons therefore, the Commission now makes and enters the  
following summary of those facts, incorporating by reference pertinent portions of the  
preceding detailed findings:

- 40 (1) The Washington Utilities and Transportation Commission is an agency of the  
State of Washington, vested by statute with authority to regulate rates, rules,  
regulations, and practices of public service companies, including household goods  
companies, and has jurisdiction over the parties and subject matter of this  
proceeding.
- 41 (2) On February 10, 2015, Five Stars Moving & Storage, LLC (Five Stars or the  
Company), filed its application with the Washington Utilities and Transportation  
Commission (Commission) requesting provisional and permanent authority to  
operate as a household goods moving company (Application).
- 42 (3) Following its review of the Application, the Commission's regulatory staff (Staff)  
recommended the denial of Five Stars' request for a permit.
- 43 (4) On March 20, 2015, the Commission accepted that recommendation, and pursuant  
to WAC 480-15-302(8)(b), denied Five Stars' Application as "the nature of [Mr.  
Trick's child molestation conviction] will likely interfere with the proper  
operation of a household goods moving company."
- 44 (5) Five Stars requested a hearing to appeal the denial on March 30, 2015.
- 45 (6) The Commission noticed the matter as a brief adjudicative proceeding and  
convened an evidentiary hearing on June 24, 2015.
- 46 (7) In 1999, Mr. Trick pled guilty to sexually molesting the two 7 year old daughters  
of his co-worker, resulting in the End of Sentence Review Committee designating  
him a Level II sex offender upon his release from prison in 2004.
- 47 (8) In approximately 2008 and 2009, Mr. Trick and his then wife failed to pay federal  
income taxes and a tax lien was entered.
- 48 (9) In 2012, Mr. Trick pled guilty to reckless driving.



- 49 (10) Mr. Trick failed to disclose any of these offenses on Five Stars' Application despite being advised by Staff to disclose as much information as possible.
- 50 (11) The Commission had previously denied an application for B&Z Moving LLC because Mr. Trick, co-owner of the company, failed to disclose to the Commission his interest in the company as well as his child molestation conviction.
- 51 (12) Two main predictors of sexual recidivism are a deviant sexual interest and anti-sociology. Deviant sexual interest can manifest as sexual arousal in children or coercion. Anti-sociology manifests with an unstable lifestyle and repeat offenses.
- 52 (13) Dr. Michael O'Connell, a psychologist, conversed with Mr. Trick over the telephone for 60 to 90 minutes the day prior to the evidentiary hearing.
- 53 (14) Dr. O'Connell did not conduct a full evaluation of Mr. Trick including interviewing his collateral contacts or obtaining important documentation relating to Mr. Trick's child molestation conviction, which would take six to eight weeks.
- 54 (15) This limited interaction was insufficient to establish Mr. Trick's lack of deviant sexual interest.
- 55 (16) Mr. Trick's subsequent offenses and lack of honesty with the Commission are factors to be considered in the anti-sociology predictor and show continued bad judgment.
- 56 (17) Recidivism rates are underestimated, especially for child molestation, due in part to the likelihood of sexual assault being reported to law enforcement decreasing with the victim's age.

### **CONCLUSIONS OF LAW**

57 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 58 (1) WAC 480-15-302(8)(b) provides that the Commission will deny an application for authority to operate as a household goods moving company if:

a person named in the application has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance more than five years prior to the date of the application and the commission determines that the nature or extent of the crime(s) will likely interfere with the proper operation of a household goods moving company.

- 59 (2) The violation of trust involved in Mr. Trick's molestation of two children, as well as the lack of honesty with which Mr. Trick has shown the Commission, and his subsequent offenses, interfere with his ability to properly operate a household goods moving company.
- 60 (3) The Commission should affirm its prior denial of Five Stars' Application for provisional and permanent authority to operate as a household goods moving company.

**ORDER**

THE COMMISSION ORDERS THAT:

- 61 (1) The denial of Five Stars' Application for provisional and permanent authority to operate as a household goods moving company is affirmed.
- 62 (2) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective July 23, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250