

1 **BEFORE THE STATE OF WASHINGTON**
2 **UTILITIES AND TRANSPORTATION COMMISSION**

3 In Re:

DOCKET NO. TV-161206

4
5 CHERYL BALL D/BA/ACME MOVING LABOR,

RESPONDENT'S (UPDATED) NOTICE OF
APPEARANCE OF COUNSEL, REQUEST FOR
HEARING, AND REQUEST TO CONTINUE
APPEARANCE BEFORE ALJ SCHEDULED
FOR JANUARY 25, 2016

6
7 Respondent.

8 **I. SUMMARY**

9 Respondent Cheryl Ball (hereinafter "Respondent") hereby submits this UPDATED Request for
10 Continuance, Request for Hearing, and Notice of Appearance of Counsel in the above named matter with
11 the Utilities and Transportation Commission (hereinafter "Commission") pursuant to WAC 480-07-035
12 and WAC 480-07-300 through WAC 480-07-305. Respondent respectfully suggests the special
13 proceeding be converted into a telephonic prehearing conference allowing all parties to schedule dates for
14 a hearing.

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16 **II. PROCEDURAL HISTORY AND APPLICABLE LAW**

17 Respondent was issued a subpoena for a special proceeding under RCW 81.04.110. See Order 01
18 Paragraph 3, Page 1. Respondent therefore has an administrative proceeding with the Commission. WAC
19 480-07-300(2)(a). The undersigned Counsel appears in this matter under RCW 34.05.428. This request is
20 submitted prior to five business days before the special proceeding set by Order O1 for January 25, 2017
21 and so is timely under WAC 480-07-385. Respondent's counsel attempted to meet and confer with the
22 Commission's representative via telephone on January 11, 2017. Respondent's counsel was told that the
23 special proceeding would be converted into a request for hearing if notice was provided via email.

24 **III. REQUEST FOR RELIEF**

25 **A. THE RESPONDENT DISPUTES THE COMMISSION'S CHARGE**

26 The Respondent disputes the Commission's claim that an employee of Acme Moving Labor

1 attempted to transport household goods by making the statements, “I can save you money” and “I can
2 help you get moved.” Acme Moving Labor packs, loads, and unloads household goods for consumers
3 who rent and drive a moving truck. The company’s website and Yelp page both prominently feature
4 several variations of the phrase “I can save you money,” referring to a move (and all moves necessarily
5 require the transport of goods). The company’s purpose is to “help people get moved.” The company,
6 however, advertises only services incidental to the transport of household goods including loading,
7 unloading, and packing. The company does not transport household goods.

8 The employee was not promising to transport household goods when he repeated the company’s
9 often-used promise to “save you money” when speaking with a customer who planned to move (again all
10 customers of Acme plan to move because Acme provides moving services that do not include the
11 transport of household goods). Further, this statement was made in a conversation with a potential
12 customer who had purportedly seen both the webpage and the Yelp page, on which the company’s
13 services are described in great detail. Acme’s web page and Yelp page both inform customers that the
14 company does not transport goods.

15 The employee had no reason to believe the customer would expect the phrase ‘I can save you money’
16 or “I can help you get moved” to mean “I will rent a truck and transport your household goods.” The
17 employee reasonably expected the customer to understand Acme could offer only the packaging, loading,
18 and unloading services that the company explicitly advertises as a cost-saving measure for consumers
19 who are moving. Further, the employee had already previously told the customer that he could not
20 transport her household goods in an earlier conversation.

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22 1. *RESPONDENT REQUESTS A HEARING UNDER WAC 480-07-300.*

23 B. THE RESPONDENT HAS GOOD CAUSE TO DELAY THE SPECIAL PROCEEDING OR
24 CONVERT IT INTO A PREHEARING CONFERENCE.

25 Respondent has good cause that will not prejudice the Commission and is consistent with the
26 public interest. Respondent hereby requests a continuance pursuant to RCW 34.05.431 and WAC 480-08-

1 385, which states, “The commission will grant a continuance if the requesting party demonstrates good
2 cause for the continuance and the continuance will not prejudice any party or the commission. The
3 commission will grant a timely request to which all parties expressly agree unless it is inconsistent with
4 the public interest or the commission's administrative needs.” A request is timely if it is made more than
5 five days before the scheduled hearing. WAC 480-07-385(3)(a).

6 Respondent sought counsel on receiving the Commission’s Order 01 shortly after Christmas in
7 2016. Respondent signed an agreement with counsel on January 9, 2017. Respondent’s counsel has
8 conferred with the Commission’s representative, and was told the special proceeding could be forgone if
9 the Respondent requested a hearing. The Commission submitted a hearing packet that is more than one
10 inch thick. Respondent’s counsel has not had time to review this packet in detail, interview witnesses,
11 prepare exhibits, or otherwise prepare to defend the Respondent’s interests.

12 In Washington, Continuances may be had upon a showing of good cause. *Bramall v. Wales*, 29
13 Wash. App. 390, 628 P.2d 511 (1981). Generally, a presiding officer may order a continuance at a party's
14 request if the party shows good cause. WAC 10–08–090. *Dodge City Saloon, Inc. v. Washington State*
15 *Liquor Control Bd.*, 168 Wash. App. 388, 288 P.3d 343 (2012). A hearing before the Commission may be
16 continued if a party can show good cause. WAC 480-07-385.

17 The presiding officer may set a prehearing conference to schedule dates for a hearing. WAC 480-
18 07-430.

19 Respondent therefore asks that the special proceeding be continued or converted to a prehearing
20 conference under Commission rules.

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22 C. RESPONDENT’S COUNSEL HEREBY PROVIDES WRITTEN NOTICE OF APPEARANCE

23 Respondent’s counsel satisfies all requirements of WAC 480-07-345 and hereby appears in this
24 matter. Please serve all documents, filings, briefs, discovery materials and requests, and any other matter
25 relevant to this hearing on the undersigned attorney at the following address:

26 **Washington Business Advocates**
27 **Elizabeth Steen**

RESPONDENT’S REQUEST FOR HEARING - 3

WASHINGTON BUSINESS ADVOCATES
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2 **CERTIFICATE OF SERVICE**

3 Pursuant to WAC 408-07-140(b) and WAC 480-07-150 these documents have been provided to
4 the Commission via email. A copy was also faxed and placed in the U.S. Mail on this date. This copy was
5 properly addressed, stamped, and deposited in the U.S. Mail on this date thereby effecting service on
6 today's date even without waiver of statute pursuant to WAC 408-07-150(6).

7 Washington Utilities and Transportation Commission
8 Administrative Law Division
9 Administrative Law Judge Rayne Pearson
10 1300 S. Evergreen Park Drive S.W.
11 PO Box 47250
12 Olympia, WA 98504
13 Fax: 1-360-586-1150
14 Email: Records@utc.wa.gov

15 Rachel Jones
16 Compliance Investigator and Commission Representative
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Dated this 11th day of January 2017

WASHINGTON BUSINESS ADVOCATES



Elizabeth de Bagara Steen, WSBA 46460,

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