

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

FIVE STARS MOVING & STORAGE,  
LLC

For a Permit to Operate as a Motor Carrier  
of Household Goods

DOCKET TV-150223

COMMISSION STAFF'S OBJECTION  
TO AND MOTION TO STRIKE  
SUPPLEMENTAL DECLARATIONS,  
ATTACHED EXHIBITS, AND PRE-  
HEARING BRIEF

**I. INTRODUCTION**

1           A Brief Adjudicative Proceeding was set in this matter for June 11, 2015, at 1:30 p.m. On the afternoon of June 4, 2015, Five Stars Moving & Storage, LLC (Five Stars) electronically distributed three declarations, with attachments, and a prehearing brief. In total, the documents amount to 216 pages.

2           Pursuant to WAC 480-07-375(1)(d), and referring to RCW 34.05.482 through .491 and WAC 480-07-610 and the Notice of Brief Adjudicative Proceeding Setting Time for Oral Statements dated April 22, 2015, issued in this case, the Staff of the Utilities and Transportation Commission files this motion to strike the prehearing brief and three declarations of Brandy Cunningham, Christopher Wall, and William Trick, filed on behalf of Five Stars Moving & Storage, LLC on June 4, 2015, as well as any and all attachments to those filings. The filing of these declarations, attachments, and prehearing brief is wholly inappropriate, prejudicial to Commission Staff, and unprecedented at a brief adjudicative hearing.

## II. ARGUMENT

3 By filing the above-mentioned 216 pages, Five Stars attempts to present its case and  
have a “mini” hearing on this matter before the set proceeding on June 11, 2015, and outside  
of Staff’s ability to participate in the “mini” hearing. Five Stars’ misguided effort frustrates  
the purpose of a brief adjudicative proceeding (BAP).

4 A BAP is intended to “give each party an opportunity to be informed of the agency’s  
view of the matter and to explain the party’s view of the matter.” RCW 34.05.485. Instead of  
using the forum provided by the brief adjudicative proceeding set for June 11, 2015, Five  
Stars has attempted to unfairly influence this proceeding by filing testimonial declarations,  
attachments, and an argumentative prehearing brief seven days prior to the scheduled  
proceeding.<sup>1</sup>

5 The eighth paragraph of the Notice of Brief Adjudicative Proceeding Setting Time for  
Oral Statements, dated April 22, 2015, states:

[p]arties wishing to submit any other documents for consideration at the brief  
adjudicative proceeding must file with the Commission a list enumerating and  
describing any such documents **no later than 5:00 p.m. on Thursday, June 4,  
2015**, and bring an original and three (3) copies to the hearing. Filing shall be  
in accordance with WAC 480-07-450 and -145.

The filing of a prehearing brief and three declarations, with attachments, is wholly  
inappropriate because it exceeds the limits of prehearing filings as established by the  
Commission in this matter. Parties are expected to file a *list* of what documents and exhibits it  
intends to use at the brief adjudicative proceeding, but are not expected to file testimonial  
declarations, attachments, and an argumentative prehearing brief.

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<sup>1</sup> In the interest of full disclosure and efficiency, and due in large part to my experience as a litigator in the  
Superior Courts of this State, I provided to Five Stars Moving & Storage, LLC’s attorney the exhibits that Staff  
planned to offer during the week beginning May 25, 2015. My attempt at full disclosure may have inadvertently  
given rise to the filing by Five Stars Moving & Storage, LLC.

6           The Notice of Brief Adjudicative Proceeding Setting Time for Oral Statements in this matter, dated April 22, 2015, clearly states that any documents are to be brought with the parties to the brief adjudicative proceeding. The presiding officer would then, during the proceeding, make a decision as to the documents' inclusion in the agency record. The filing of purported evidentiary documents for inclusion in the record seven days prior to a brief adjudicative proceeding is inappropriate.

7           Five Stars did not file a list of documents that it intends to offer at the June 11, 2015, hearing. Instead, it has filed a prehearing brief and testimonial declarations with attachments. This is not provided for by statute, rule, or Commission order. *See* Notice of Brief Adjudicative Proceeding, RCW 34.05.482 through .491, WAC 480-07-610.

8           Additionally, the declarations that Five Stars has filed provide substantive testimony. Testimony is appropriately presented at the BAP where the presiding officer can evaluate the credibility of the witnesses and their testimony, and permit cross-examination of the witnesses by Staff.

9           A brief adjudicative proceeding is intended to be brief. *See* RCW 34.05.482 through .491 and WAC 480-07-610. For example, the result of a BAP is a brief written statement including the reasons for decision by the presiding officer. RCW 34.05.485. The brevity of a BAP is illustrated by the procedure that even oral statements are not mandatory at the proceeding. WAC 480-07-610. Instead, it is upon the discretion of the presiding officer whether to ask for oral statements or to grant a request by a party for oral statements "if the presiding officer believes an oral statement will help in reaching a decision." WAC 480-07-610.

10           The filings by Five Stars are not brief. The filings are an attempt to supplement the record with an additional 216 pages of prehearing argument in support of Five Stars' position. Its position, as well as any documents and testimony in support of its position, must be presented at the scheduled BAP, not before.

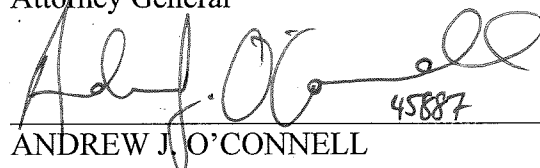
### III. CONCLUSION

11           For the above reasons, the Commission should grant Staff's motion to strike the prehearing brief and three declarations of Brandy Cunningham, Christopher Wall, and William Trick, filed on behalf of Five Stars Moving & Storage, LLC on June 4, 2015, as well as any and all attachments to those filings.

DATED this 5th day of June, 2015.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in black ink, appearing to read "Andrew J. O'Connell", is written over a horizontal line. To the right of the signature, the number "45887" is handwritten.

ANDREW J. O'CONNELL  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff