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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.

NO. TV-150223

FIVE STARS MOVING & STORAGE LLC's
RESPONSE IN OPPOSITION TO UTC
STAFF'S MOTION TO STRIKE

I. INTRODUCTION

As the UTC Staff concedes in its motion to strike, the purpose of this brief adjudicative proceeding ("BAP") is 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 (emphasis added). Yet, the Staff's motion argues that Five Stars brief, declarations and exhibits, which present Five Stars' view of the matter, should not be considered. The Staff's motion runs contrary to the plain language of the rules governing BAPs and the purpose of this adjudication. Five Stars' submissions are intended to streamline the issues, enhance the efficiency of the proceeding and assist the Presiding Officer in reaching a decision. Five Stars respectfully requests that its submissions be considered and the Staff's motion be denied.

1 II. ARGUMENT AND AUTHORITY

2 A. Parties may file briefs, declarations and exhibits in adjudicative proceedings
3 before the UTC.

4 The rules governing brief adjudicative proceedings contemplate filing written
5 documents, including briefs, prefiled testimony and exhibits. Washington Administrative
6 Code 480-07-145, which is entitled "Filing documents in adjudicative proceedings,"
7 provides: "Parties filing pleadings, motions, prefiled testimony and exhibits, and briefs
8 must supplement their filing by submitting the document in electronic form" WAC
9 480-07-145(2)(d) (emphasis added).

10 On June 4, 2015, Five Stars filed its prehearing brief along with supporting
11 declarations and exhibits in accordance with the filing rules and schedule provided in this
12 matter.¹ The Staff now takes the position that filing written submissions in this
13 adjudicative proceeding was "wholly inappropriate, prejudicial to Commission Staff, and
14 unprecedented at a brief adjudicative hearing."² Staff Br. at 1 (emphasis added).
15 Notably, the Staff is unable to cite any order, WAC or RCW which prohibits the filing of
16 written submissions in a BAP. The Staff's motion to strike runs contrary to the rules,
17 which authorize the filings of pleadings, briefs, prefiled testimony and exhibits. The
18 Staff's motion should be denied.

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21 ¹ The Staff cites the April 22 Notice, arguing that Five Stars should have brought three copies of its
22 documents to the hearing rather than filing the documents. Staff Br. at 2-3, ¶¶ 5-7. Nowhere does the
23 Staff explain why this is a sufficient basis to strike Five Stars' documents. Further, WAC 480-07-
24 145(6)(a)(ii) provides that "[t]he commission must physically receive the original and required number of
25 copies by 12:00 noon on the first business day following the filing deadline established under the
26 procedural schedule." To the extent that rule appeared to conflict with the procedure laid out in the April
27 Notice, Five Stars' counsel contacted Your Honor's assistant for clarification. Five Stars counsel
28 understood it was your Honor's preference for the documents to be submitted in accordance with the
29 WACs.

30
31 ² A brief search of UTC dockets reveals multiple cases in which written submissions were used to
32 help the Presiding Officer decide the issues. For example, in a Complaint filed by World Wide Movers, Inc.
33 against Emery Inc. Worldwide Moving, the parties filed written submissions. Docket No. TV-991491. The
34 Staff's argument that the filing of written submissions is "unprecedented" is ill-founded. *See also In the*
35 *Matter of Dan Busby d/b/a Careful Movers, Careful and Courteous Movers*, Docket No. TV-000418, Penalty
36 Assessment No. 100034 (accepting written submissions).

1 **B. The purpose of a brief adjudicative proceeding is for the Staff's and Party's views**
2 **to be heard.**

3 The Administrative Procedure Act provides: "Before taking action, the presiding
4 officer shall give each party an opportunity to be informed of the agency's view of the
5 matter and to explain the party's view of the matter." RCW 34.05.485(2) (emphasis
6 added). The intent to allow a full and fair opportunity to be heard is borne out by the WAC
7 provisions governing BAPs. For example, after an initial order is made, "[t]he commission
8 encourages written petitions for review so parties will have the greatest opportunity to
9 state reasons for their views." WAC 480-07-610(7)(b) (emphasis added). Adopting the
10 Staff's position would lead to the absurd result that the parties could file written
11 submissions only after the matter is decided in an initial order.³ The Staff's attempt to
12 prevent Five Stars from presenting its case runs contrary to the purpose of this
13 proceeding and the very nature of the adjudicative process.

14 **C. Five Stars' briefing in no way prejudices the Staff.**

15 The Staff argues that Five Stars briefing is prejudicial because it creates a " 'mini'
16 hearing." Staff Mot. at 3, ¶ 3. The Staff claims that this is "outside of Staff's ability to
17 participate in the 'mini' hearing." *Id.* This argument misses the reality that the Staff has
18 a full opportunity to respond to Five Stars' arguments at the hearing. Five Stars is not
19 requesting a decision based solely on its filings without an opportunity for the Staff to
20 respond. Because the Staff has a full opportunity to respond to Five Stars' submissions
21

22
23
24 ³ The Staff insinuates that the record is closed and cannot be "supplemented." Staff Mot. at 4 ¶ 10
25 ("The filings are an attempt to supplement the record."). First, "[t]he agency record need not constitute the
26 exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief
adjudicative proceedings." RCW 34.05.494(2). Second, the record is not closed in this matter as there has
not even been an initial order. Third, in the alternative, to the extent the record needs to be supplemented,
Five Stars respectfully requests in accordance with WAC 480-07-830, that the record be supplemented
with the documents Five Stars submitted.

1 at the hearing, and because nothing prevents the Staff from filing its own submissions,
2 the Staff is not prejudiced.

3 **D. Five Stars' declarations are appropriate.**

4 BAPs are intended to be efficient and less formal than court proceedings.⁴ See
5 *Washington Utilities & Transp. Comm'n v. Best Moving And Delivery, LLC*, Docket No. TV-
6 132030, Order 03, 2015 WL 2251517 (May 8, 2015) (slip op.) ("The standards for
7 [petitions for review] are more relaxed than petitions for administrative review under WAC
8 480-07-825(3). See WAC 480-07-610(7)(b). Accordingly, we overrule Staff's procedural
9 objection and will consider the Petition."). In such circumstances, not all testimony must
10 be given in-person.
11

12 Ms. Cunningham lives in Texas. This is an informal adjudicative proceeding. The
13 rules of evidence are relaxed. Her testimony by declaration should be allowed.

14 Five Stars intends to offer Mr. Trick's in-person testimony at the hearing. His
15 declaration supports Five Stars' brief and helps to identify and authenticate exhibits.
16 Similarly, Five Stars' counsel's declaration identifies and authenticates exhibits and helps
17 to resolve issues that are unnecessary to this proceeding. The declarations are
18 appropriate and should be allowed.
19

20 **E. Five Stars' submissions are intended to narrow the issues.**

21 The parties agree that a BAP should be brief. Five Stars' submissions attempt to
22 further this goal by narrowing the issues that need to be resolved in this proceeding. For
23 example, the Staff's February 26, 2015 memorandum alleges (as an alternative basis for
24 denying Five Stars' application) that the application contains erroneous information. Ex.
25

26 ⁴ The Staff tacitly acknowledges this, pointing out that BAPs are brief and do not necessarily even
involve oral statements. Staff Mot. at 3, ¶ 9.

1 A to Wall Decl. at 2. Five Stars brief and the attendant declarations attempt to resolve
2 this issue by explaining why Mr. Trick checked the wrong box and explaining why that
3 mistake was reasonable under the circumstances.
4

5 Additionally, the Staff's February 26, 2015 memorandum insinuates that Mr. Trick
6 is advertising full-service moves without a permit. Ex. A to Wall Decl. at 2-3. This is
7 based on a non-existent website and a Google.Plus listing that Mr. Trick has no control
8 over. Again, Five Stars submitted information to help resolve this issue and narrow the
9 issues for the BAP. Considering Five Stars' briefing, declarations and exhibits will
10 streamline the issues and aid the efficiency of this proceeding.

11 **F. Any deficiency in Five Stars' Exhibit List has been cured.**

12 The Staff complains that Five Stars failed to file an exhibit list. This is not a basis
13 to strike Five Stars' submissions. But to the extent an Exhibit List is required, Five Stars
14 filed and served its Exhibit List on June 5, 2015, as soon as the issue was brought to its
15 attention.
16

17 **III. CONCLUSION**

18 The purpose of adjudicative proceedings is to afford the parties an opportunity to
19 be heard. The Staff's motion overreaches. Considering Five Stars filings will help to
20 focus and streamline the issues for hearing. Five Stars respectfully requests that its
21 submissions be considered and the Staff's motion be denied.
22

23 Respectfully submitted this 6th day of June, 2015.

24 GORDON THOMAS HONEYWELL LLP

25 By 
26 Christopher T. Wall, WSBA No. 45873
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Attorneys for Applicant

CERTIFICATE OF SERVICE

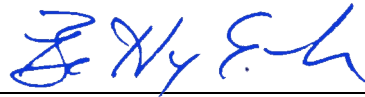
I hereby certify, under penalty of perjury, that on the 8th day of June, 2015, I placed with ABC/Legal Messengers, Inc. a copy of the document to which this certification is attached for delivery to all parties of record as noted below:

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