

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of	)	DOCKET TV-150223
	)	
FIVE STARS MOVING & STORAGE, LLC,	)	ORDER 01
	)	
For a Permit to Operate as a Motor Carrier of Household Goods.	)	ORDER GRANTING STAFF’S MOTION TO STRIKE DECLARATIONS, ATTACHED EXHIBITS, AND PREHEARING BRIEF
	)	
.....	)	

1 On February 10, 2015, Five Stars Moving & Storage, LLC (Five Stars Moving or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for authority to operate as a household goods carrier in the state of Washington under Revised Code of Washington (RCW) 81.80 and Washington Administrative Code (WAC) 480-15.

2 On March 20, 2015, the Commission issued a Notice of Intent to Deny Application for Permanent Authority; Notice of Opportunity for Hearing in this matter based on its review and investigation of the application. The Commission alleges that the Applicant’s owner, William Anthony Trick, has a criminal conviction for child molestation in the first degree and was incarcerated for his conviction from November 27, 1999, until May 21, 2004. The Notice provided Five Stars Moving the opportunity to request a hearing to contest the factual allegations in writing by April 3, 2015.

3 On March 30, 2015, Five Stars Moving filed with the Commission a Request for Hearing. The Commission issued a Notice of Brief Adjudicative Proceeding and Setting Time for Oral Statements (BAP Notice) on April 22, 2015. This Notice informed Applicant that the case would be processed as a brief adjudicative proceeding (BAP) and that “[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 480-07-140 and – 145.<sup>1</sup>

---

<sup>1</sup> Underlining emphasis added.

4 On June 4, 2015, Five Stars Moving filed a prehearing brief and the declarations of Christopher Wall, Brandy Cunningham, and William Trick. On June 5, 2015, Staff filed an Objection to and Motion to Strike Supplemental Declarations, Attached Exhibits, and Prehearing Brief (Motion). On June 8, 2015, Five Stars Moving filed its Response in Opposition to Staff’s Motion to Strike (Response).

5 **MOTION.** Staff argues that the BAP Notice clearly states that parties may file a list of documents intended for use at hearing, not declarations and legal briefs, and therefore, these filings should be stricken from the record.<sup>2</sup> Staff asserts that Applicants filings are attempt “to unfairly influence this proceeding” and “have a ‘mini’ hearing ... outside of Staff’s ability to participate.”<sup>3</sup> The 216 pages of testimony, according to Staff, is inappropriate for a proceeding designed to be brief.<sup>4</sup> The brevity of the proceeding is illustrated by the discretion which the presiding officer has to allow oral statements.<sup>5</sup> Instead, Staff argues that testimony is traditionally given orally where other parties are able to cross-examine the witnesses.

6 **RESPONSE.** Applicant asserts that WAC 480-07-145 provides for the filing of pleadings, motions, prefiled testimony and exhibits, and briefs during the BAP process.<sup>6</sup> Five Stars Moving argues that the Administrative Procedure Act anticipates the Applicant’s ability to explain its view of the matter.<sup>7</sup> Five Stars Moving also proposes that Staff will have an opportunity to respond to the 216 pages of documents at hearing and are therefore not prejudiced.<sup>8</sup> The Applicant cites to a prior Commission decision which states that standards for the review of a presiding officer’s initial order in a BAP are more relaxed than those for a traditional petition for administrative review.<sup>9</sup> Finally, Five Stars Moving contends that the documents it filed will narrow the issues by addressing Staff’s allegation that the original application contained errors.<sup>10</sup>

---

<sup>2</sup> Motion, ¶ 5.

<sup>3</sup> *Id.*, ¶ 3.

<sup>4</sup> *Id.*, ¶ 8.

<sup>5</sup> *Id.*, ¶ 9 (citing WAC 480-07-610).

<sup>6</sup> Five Stars Moving’s Response at 2:3-9.

<sup>7</sup> *Id.* at 3:2-6 (citing RCW 34.05.485(2)).

<sup>8</sup> *Id.* at 3:19-4:2.

<sup>9</sup> *Id.* at 4:5-11.

<sup>10</sup> *Id.* at 4:21-5:3.

- 7 **DECISION.** The Commission's BAP Notice provided a clear procedural path which this case would follow. Parties were directed to file a list of any exhibits they planned to offer at hearing by a date certain. Both parties have done so. The case would then proceed to oral statements on June 11, 2015. Applicant's unsolicited declarations, exhibits, and legal brief sought to modify this process without first seeking leave from the Commission to do so. Had the Commission chosen to request prefiled testimony, it could have done so pursuant to WAC 480-07-460. We did not. A party seeking to file briefs or additional testimony, that is, testimony in addition to what will be offered at hearing, must first seek leave to do so under WAC 480-07-375(1)(d). Five Stars Moving failed to do so in a timely manner prior to the hearing, and Staff's Motion to strike the prefiled declarations, exhibits, and legal brief is granted.
- 8 Applicant's insinuation that striking the prefiled documents will deprive it of due process is misplaced. Five Stars Moving has the ability to call the same witnesses, whose declarations it filed, at the June 11, 2015, evidentiary hearing. Likewise, should Applicant, or even Staff, wish to file legal briefs in this proceeding, the Commission would expect a motion requesting leave for such filings.

**ORDER**

- 9 THE COMMISSION ORDERS THAT the Objection to and Motion to Strike Supplemental Declarations, Attached Exhibits, and Prehearing Brief is granted.

DATED at Olympia, Washington, and effective June 9, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**