



Bob Ferguson

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Utilities and Transportation Division

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June 17, 2015

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, Washington 98504-7250

RE: *In re Application of Five Stars Moving & Storage, LLC for a Permit to Operate as a  
Motor Carrier of Household Goods*  
Docket TV-150223

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and three copies of  
Commission Staff's Response in Opposition to Motion for Leave to File Legal Brief,  
Supporting Declarations and Exhibits, and Certificate of Service.

Sincerely,

ANDREW J. O'CONNELL  
Assistant Attorney General

AJO/emd

Enclosures

cc: Five Stars Moving w/enc.

**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 RESPONSE  
IN OPPOSITION TO MOTION FOR  
LEAVE TO FILE LEGAL BRIEF,  
SUPPORTING DECLARATIONS  
AND EXHIBITS

**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. On June 5, 2015, Commission Staff (Staff) filed an Objection to and Motion to Strike. Staff's motion was granted on June 9, 2015, striking Five Stars' Legal Brief, Declarations, and Exhibits.

2           On June 10, 2015, Five Stars filed a Motion for Leave to File Legal Brief, Supporting Declarations and Exhibits. It is unclear from Five Stars' motion whether these declarations, exhibits, and prehearing brief are the same that Five Stars attempted to introduce to the record on June 4, 2015.

3           Pursuant to WAC 480-07-375(4), 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 (Commission's BAP Notice), issued in this case, the Staff of

the Utilities and Transportation Commission files this motion in opposition to Five Stars' motion for leave to file legal brief, supporting declarations and exhibits.

## II. ARGUMENT

4           A brief adjudicative proceeding (BAP) is intended to be brief. *See* RCW 34.05.482 through 34.05.491 and WAC 480-07-610. This distinguishes a BAP from a full adjudicative proceeding. Five Stars requests leave to make filings that are not brief. No reason exists to justify the filing of prehearing argumentative briefs, exhibits, or testimony because all of these may be presented at the BAP within the procedural rules of the BAP. Five Stars' misguided effort frustrates the purpose of a BAP.

5           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 within 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. Its brevity is also illustrated by a BAP's ruling: the presiding officer is to issue a *brief* written statement including the reasons for decision by the presiding officer. RCW 34.05.485.

6           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 BAP set for June 24, 2015, Five Stars' request attempts to unfairly influence this proceeding by supplementing the record with prehearing argument in support of its position. Five Stars will have an opportunity to explain its position and present any documents and testimony in support of its position at the scheduled BAP. But its arguments, documents, and testimony must be presented at the BAP, not before.

7 Five Stars' request falls outside the clearly provided procedural path which this case was to follow. The eighth paragraph of the Commission's BAP Notice 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. (Emphasis added.)

The filing of a prehearing brief, declarations, and exhibits 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 they intend to use at the brief adjudicative proceeding, but are not expected to file testimonial declarations, exhibits, and an argumentative prehearing brief. Instead, parties are expected to present exhibits, testimony, and argument at the BAP.

8 A prehearing brief would present legal argument that is appropriately presented at the BAP. The presiding officer in this case has instructed that the sides will each have no more than five minutes for opening and closing arguments. The filing of a prehearing argumentative brief and testimonial declarations is an attempt to unfairly circumvent these procedural limitations. With its request, Five Stars attempts to augment its limited time for oral argument at the BAP with pre-filed argumentation supporting its position. This is inappropriate and outside the bounds of the procedural path designated for this proceeding.

9 Five Stars' request to file prehearing testimonial declarations and exhibits is duplicative and repetitive and raises concerns for the best evidence available. Five Stars has already indicated the witnesses it will make available at the proceeding to give testimony. Permitting Five Stars to file additional, uncross-examined, prehearing testimonial declarations would create substantive, written testimony from witnesses whom Five Stars has already identified will testify orally at the proceeding. This would only add greater complexity to a

proceeding that is intended to be *brief*. 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. This also permits Staff the opportunity to object to the exhibits and testimony presented based upon evidentiary grounds. Five Stars should be instructed to present all its testimony and evidence at one time: during the scheduled BAP on June 24, 2015.

10           The Commission could have chosen to request prehearing testimony if it had deemed it necessary in this case. WAC 480-07-460. It did not. Prehearing testimony is unnecessary and unwarranted at a BAP because it frustrates the purpose of brevity. Five Stars' request for leave to file a prehearing argumentative legal brief, testimonial declarations, and exhibits is unnecessary and ill-conceived.

11           Washington's Administrative Procedure Act draws a clear distinction between adjudicative proceedings and brief adjudicative proceedings: adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476, a range which excludes the rules for BAPs that are found in RCW 34.05.482 through 34.05.491. *See* RCW 34.05.410(1) and 34.05.482 through 34.05.494. The Commission is permitted to use BAPs "under RCW 34.05.482." WAC 480-07-610(1). The Commission has laid a clear procedural path for this BAP consistent with the rules governing BAPs. Five Stars' motion for leave seeks to inappropriately extend beyond those procedural limits and frustrate the purpose of a BAP.

12           Five Stars did not indicate in its motion for leave whether the filings it requests permission to make with the Commission are the same as those it previously attempted to introduce into the record on June 4, 2015. As a result, Staff has not had a chance to review what declarations, exhibits, and prehearing brief Five Stars intends to offer and would reserve

the ability to object to the filings based upon evidentiary grounds after the filings are made, if such filings are permitted by the Commission.<sup>1</sup>

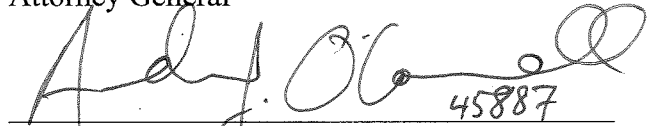
### III. CONCLUSION

13 For the above reasons, the Commission should deny Five Stars' motion for leave to file its proposed legal brief, supporting declarations and exhibits.

DATED this 17th 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

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<sup>1</sup> Not only is the filing of a prehearing brief unprecedented in the context of a BAP, counsel for Staff will be out of state and unavailable to respond to such a brief for a significant portion of the time prior to the scheduled BAP.

Docket TV-150223  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Response in Opposition to Motion for Leave upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 17th day of June, 2015.



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ELIZABETH M. DeMARCO

***For Five Stars Moving & Storage LLC***

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