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P R O C E E D I N G S

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JUDGE TOREM: Good morning. We are on the

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record. My name is Adam Torem. I'm the administrative

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law judge presiding over this hearing on behalf of the

5

Washington Utilities and Transportation Commission.

6

Today is Wednesday, June 27th, 2007. This morning we

7 are assembled at almost 9:45 a.m. in the Commission's  
8 offices in Olympia, Washington to conduct a hearing in  
9 Docket TV-070647.

10 This is a Complaint filed by the Commission  
11 in April of this year against Boots, Incorporated,  
12 which does business as Brooks A&A Moving, and in  
13 accordance with Revised Code of Washington, Title 81,  
14 the focus of this hearing is whether Boots,  
15 Incorporated, has failed to comply with a final order  
16 issued back on January 26th, 2007, in Docket TV-060855.

17 My review of that order shows it required  
18 them to submit a plan to indicate how the Company would  
19 be refunding improperly collected sales taxes and  
20 demonstrate how they would get those back to their  
21 customers. The Order also required them to promptly  
22 pay the penalties imposed, and while the Order was  
23 detailed as to variety of different penalties and  
24 timing, it was a total of \$93,000, \$65,600 of which  
25 would be repayable to customers for those improper

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1 sales taxes. The Order also suspended the Company's  
2 household goods common carrier operating permit for a  
3 period of 90 days.

4 In April of 2007, Commission staff sought the  
5 issuance of the Complaint in this matter indicating in  
6 a supporting memorandum that Boots had failed to submit  
7 any of the penalty payments or to submit any plan to  
8 issue those required tax refunds. Therefore, after a  
9 finding of probable cause to issue a complaint on April

10 6th, 2007, the Commission issued this complaint and  
11 scheduled this proceeding. Again, our docket number  
12 here is TV-070647.

13           Neither the Commission nor its staff have  
14 apparently received any response to the Complaint from  
15 Boots, Incorporated, so this morning, we will be taking  
16 appearances from the parties present, which is  
17 Commission staff only, and we will address any other  
18 administrative details and begin with the presentation  
19 of the Commission's case, and at the appropriate time,  
20 if no one from Boots appears, I will entertain a motion  
21 for default. So let me have Staff's appearance for the  
22 Commission.

23           MS. CAMERON-RULKOWSKI: Present on behalf of  
24 Commission staff, Jennifer Cameron-Rulkowski, assistant  
25 attorney general. The address is 1400 Evergreen Park  
0006

1 Drive Southwest, PO Box 40128, Olympia, Washington,  
2 98504. Telephone is (360) 664-1186. Fax is  
3 (360) 586-5522, and my e-mail address is  
4 jcameron@wutc.wa.gov.

5           JUDGE TOREM: And again, I'll note that no  
6 one is here for Boots, Incorporated. Our court  
7 reporter today is Kathy Wilson of the Continental  
8 Reporting Service. Ms. Cameron-Rulkowski?

9           MS. CAMERON-RULKOWSKI: At this time, Staff  
10 would like to move for default on the basis that the  
11 Company has failed to appear. May I proceed?

12           JUDGE TOREM: Please do.

13 MS. CAMERON-RULKOWSKI: Staff asks that Your  
14 Honor find Boots, Inc., doing business as Brooks A&A  
15 Moving, in default under RCW 34.05.440, and WAC  
16 480-07-450, for failure to appear at this hearing, and  
17 Staff further requests under these authorities that the  
18 Court proceed with the hearing and dispose of the  
19 substantive issues.

20 JUDGE TOREM: As I said in my preliminary  
21 comments, supporting memo filed indicated that Boots  
22 had no further contact with the Commission since the  
23 issuance of the Order in TV-060855. Is that still the  
24 case, to your knowledge?

25 MS. CAMERON-RULKOWSKI: That still is the

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1 case, Your Honor, and regarding service, I'll go ahead  
2 and cite the Commission's service rule, which is WAC  
3 480-07-120, Subsection 2, Subsection c, and under the  
4 rule, service is complete when a copy of the document  
5 properly addressed and stamped in the U.S. mail.

6 The Complaint was mailed both certified and  
7 regular mail to the Company's address that's on file  
8 with the Commission. The certified mailing was  
9 returned to the records center as unclaimed. The  
10 regular mailing, however, was not returned, and I have  
11 a declaration of service prepared by Lisa Weiss of the  
12 Commission's records center, and I offer that at this  
13 time as Exhibit No. 1.

14 JUDGE TOREM: So I've now looked at a  
15 declaration of Lisa Weiss. It's a one-page document

16 with three numbered paragraphs attesting that the  
17 Complaint was sent to Boots as you've described. I've  
18 marked that as Exhibit 1, and I will admit that into  
19 the record.

20 MS. CAMERON-RULKOWSKI: Your Honor, to  
21 present further evidence as to notice, I would like to  
22 call M. Carlene Hughes to provide further information.

23 JUDGE TOREM: Ms. Hughes, if you will raise  
24 your right hand and I will swear you in.

25

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1 Whereupon,

2 CARLENE HUGHES,

3 having been first duly sworn, was called as a witness  
4 herein and was examined and testified as follows:

5

6 JUDGE TOREM: Ms. Cameron-Rulkowski, you can  
7 proceed with the witness.

8 MS. CAMERON-RULKOWSKI: Thank you, Your  
9 Honor.

10

11 DIRECT EXAMINATION

12 BY MS. CAMERON-RULKOWSKI:

13 Q. Could you please state your name and spell  
14 your first and last name for the record?

15 A. It's Carlene Hughes, C-a-r-l-e-n-e,  
16 H-u-g-h-e-s.

17 Q. Could you please state the name of your  
18 employer?

19 A. The Utilities and Transportation Commission.

20 Q. And what is your position with this employer?

21 A. I am a transportation program coordinator in  
22 the business practices investigation section.

23 Q. And what are your responsibilities under the  
24 position?

25 A. I conduct investigations regarding business

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1 practices of regulated utilities or transportation  
2 companies. As part of those duties, I investigate  
3 regulated household goods carriers that may be  
4 operating in violation of the Commission statutes,  
5 rules, tariffs, or orders.

6 Q. Have you been investigating Brooks A&A  
7 Moving?

8 A. Yes.

9 Q. Have you contacted Brooks A&A Moving since  
10 the final order issued in Docket TV-060855?

11 A. Yes. I called the Company on June 7th.

12 Q. Do you recall with whom you spoke?

13 A. The man that answered the phone was named  
14 Crawford.

15 Q. To your knowledge, who owns the Company?

16 A. Richard Brooks.

17 Q. Were you able to speak with him?

18 A. No. I believe he was out of town.

19 Q. According to Crawford, did the Company know  
20 about this hearing?

21 A. Yes. Crawford said that Richard Brooks was



22 aware of the hearing.

23 Q. Did you learn anything else relevant to  
24 notice in your conversation with Crawford?

25 A. I confirmed with Crawford the Company's

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1 address, and it is the same as the address listed in  
2 the Complaints and that the Commission has on file.

3 MS. CAMERON-RULKOWSKI: Thank you. I have no  
4 further questions regarding notice, and that concludes  
5 my presentation on service and notice.

6 JUDGE TOREM: It appears to me that you've  
7 met the requirements of the Administrative Procedure  
8 Act and demonstrated that the Company did receive  
9 proper notice. The Complaint indicates it was served  
10 on April 6th in the mail, both certified and regular  
11 mail as you've described.

12 I've reviewed Ms. Weiss's declaration and it  
13 supports that, and further, I'll find that the  
14 testimony provided by Ms. Hughes indicates there was  
15 not only mail notice but proper and real actual notice  
16 to the Company by Mr. Crawford's admission on the  
17 telephone. So with all of those facts, I do find  
18 Boots, Incorporated, in default, and we can proceed  
19 with the hearing without them. They've essentially  
20 waived their right to present any mitigating  
21 circumstances or explanation as to why they may have  
22 made attempts but have not yet been able to comply with  
23 the previous order. We will proceed without the  
24 benefit of that today, and I'll allow you to move on to

25 your case in chief.

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1 Ms. Cameron-Rulkowski, did you want to  
2 provide any quick opening statement about that case in  
3 chief or simply proceed with witness testimony and a  
4 closing statement today?

5 MS. CAMERON-RULKOWSKI: I have a very brief  
6 opening statement, Your Honor.

7 JUDGE TOREM: Let's hear that.

8 MS. CAMERON-RULKOWSKI: Staff will present  
9 evidence and legal argument. Staff will present  
10 evidence that Boots, Inc., doing business as Brooks A&A  
11 Moving, failed to comply with Order No. 3, the  
12 Commission's final order in Docket No. TV-060855. The  
13 final order required Brooks A&A Moving to take various  
14 actions, and I will run through them; although I  
15 realize this is somewhat repetitive of the opening that  
16 you made, Your Honor.

17 First, the Company was to develop a procedure  
18 within 30 days for refunding the illegally collected  
19 sales tax to its customers. This plan was to be agreed  
20 to by Staff, which meant essentially that the Company  
21 and Staff needed to be in communication to coordinate  
22 this requirement. This plan was to be approved by the  
23 Commission's executive secretary.

24 Second, the Company was to refund the  
25 illegally collected sales tax to its customers within

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1 six months of the order date. Third, the Company was

2 to pay \$93,000 in penalties within 30 days to the  
3 Commission. The Commission offered a payment plan,  
4 however, and stated that the Company could offset those  
5 penalties associated with the sales tax violations with  
6 refunds made to its customers, and finally, the Company  
7 was ordered to suspend its operations for 90 days.

8 At this time, Your Honor, I would like to  
9 proceed with direct examination of Ms. Hughes.

10 JUDGE TOREM: Ms. Hughes, as you've certainly  
11 not forgotten, you've already been sworn, and that oath  
12 will apply to this testimony as well.

13 Q. (By Ms. Cameron-Rulkowski) What will your  
14 testimony cover this morning?

15 A. Brooks A&A Moving's compliance with  
16 Commission Order No. 3 in Docket TV-060855.

17 Q. What led you to investigate Brooks A&A  
18 Moving's compliance with this order?

19 A. I had conducted the investigation that led to  
20 the Complaint in Docket TV-060855. My investigation  
21 into the Company's compliance with the final order in  
22 that docket was conducted as a follow-up to that  
23 assignment.

24 Q. Regarding your prior investigation of Brooks  
25 A&A Moving in Docket TV-060855, did you prepare an

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1 investigation report with your findings?

2 A. Yes, I did.

3 Q. Could you briefly describe the subjects  
4 covered in that report?

5 A. The report identifies violations and provides  
6 technical assistance to correct those violations.

7 Q. Now, regarding the final order in Docket  
8 TV-060855, did the Commission receive any payment of  
9 the penalty assessed in that order from Brooks A&A  
10 Moving?

11 A. No, not to my knowledge.

12 Q. Did you receive from Brooks A&A Moving any  
13 proposal for refunding sales tax to the Company's  
14 customers?

15 A. No, I didn't.

16 Q. To your knowledge, did any person at the  
17 Commission receive any such proposal from Brooks A&A  
18 Moving?

19 A. No, not to my knowledge.

20 Q. Has Brooks A&A Moving contacted you for any  
21 reason since Order No. 3 in Docket TV-060855?

22 A. No, it hasn't.

23 Q. To your knowledge, has Brooks A&A Moving  
24 contacted anyone at the Commission for any reason since  
25 the final order in Docket TV-060855 issued?

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1 A. No, not to my knowledge.

2 Q. Did Brooks A&A Moving file an annual report  
3 by May 1st, 2007, for its 2006 operations?

4 A. No.

5 Q. Has the Company filed its 2006 annual report  
6 since then?

7 A. No, it hasn't.

8 Q. What relief do you recommend that the  
9 Commission order in this proceeding?

10 A. I recommend the Commission cancel Brooks A&A  
11 Moving's household goods carrier permit.

12 MS. CAMERON-RULKOWSKI: Thank you. I have no  
13 further questions for you. Your Honor, at this time I  
14 have a brief closing statement.

15 JUDGE TOREM: Let me clarify one other  
16 question from Ms. Hughes about the contact with Brooks,  
17 and Ms. Cameron-Rulkowski, if I understood your  
18 questions, they were asked to whether Brooks had made  
19 any contact with the Commission, and Ms. Hughes, the  
20 answer to that is no; is that correct?

21 MS. HUGHES: Yes.

22 JUDGE TOREM: In your earlier testimony about  
23 notice of the hearing, you described a phone call you  
24 made on June 7th of this year. Was that simply to  
25 insure that they had received notice of the hearing?

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1 MS. HUGHES: That's correct.

2 JUDGE TOREM: Was there any other topic  
3 discussed during that phone call?

4 MS. HUGHES: The only other topics were I  
5 asked for Mr. Brooks when Crawford answered the phone,  
6 and Crawford said that Mr. Brooks was out of town, and  
7 I also verified the Company's mailing address.

8 JUDGE TOREM: And was "Crawford" his first  
9 name?

10 MS. HUGHES: It was his first name.

11 JUDGE TOREM: Do you have any reason to  
12 believe based on that telephone call with the Company  
13 that the Company is continuing its operations?

14 MS. HUGHES: I believe they are.

15 JUDGE TOREM: Is that particular telephone  
16 call on June 7th indicative of any further violations  
17 of the suspension period? I wasn't sure when that 90  
18 days would fall on their suspension from the previous  
19 order, if that would involve an extension to the June  
20 7th date. My recollection is the Order was served on  
21 January 26th, 2007, and the 90-day suspension was to  
22 take place, I think, effective 30 days thereafter. So  
23 was the telephone call at all to investigate compliance  
24 with the suspension?

25 MS. HUGHES: No, it was not.

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1 JUDGE TOREM: Ms. Cameron-Rulkowski, based on  
2 what I've asked, do you have further questions?

3 MS. CAMERON-RULKOWSKI: No, Your Honor.

4 JUDGE TOREM: Then if you have nothing  
5 further, we will close the record on evidence and move  
6 on to your closing statement.

7 MS. CAMERON-RULKOWSKI: Thank you, Your  
8 Honor. At this time, I would ask the Court to take  
9 official notice under WAC 480-07-495 of a letter dated  
10 February 26th, 2007, that the Commission received  
11 regarding Docket No. TV-060855. I sent this letter to  
12 the Commission as a status report on compliance with  
13 Order No. 3, and I've just passed to you a copy of the

14 letter if you would like to review it.

15 JUDGE TOREM: I have a letter on attorney  
16 general letterhead dated February 26th of this year.  
17 It appears to be a total of two pages, and attached to  
18 it is another letter from you, Ms. Cameron-Rulkowski,  
19 to Richard Brooks. It's dated February 9th, 2007, and  
20 you are describing your understanding of the final part  
21 of the public records and the need to cooperate with  
22 Mr. Brooks and make Staff available to work out the  
23 refund process and procedure, and the attached letter  
24 indicates a request to speak with Mr. Brooks about  
25 compliance with the Order, and indicating that the

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1 number of telephone calls and messages you've left with  
2 the Company to that effect. Is that a fair summary of  
3 the letter?

4 MS. CAMERON-RULKOWSKI: It is, Your Honor.

5 JUDGE TOREM: To take official notice of this  
6 is that you've simply sent this and otherwise could be  
7 become a witness to supply it yourself. Was this put  
8 on file in any of the Commission's records management  
9 system?

10 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

11 This letter was received by the Commission and is on  
12 file in Docket TV-060855.

13 JUDGE TOREM: So as long as it's a part of  
14 the system of records here at the UTC, I don't see any  
15 problem with using the WAC 480-07-495 to take official  
16 notice, and I will do so now. I'm trying to decide how

17 I want to mark this. It won't become an exhibit in  
18 this case, but we've sufficiently described the letter  
19 so anyone reviewing this transcript can locate it.  
20 It's part of the public records. I'll keep a copy as a  
21 working copy for me, but it won't be marked as an  
22 exhibit. Is that your desire?

23 MS. CAMERON-RULKOWSKI: That sounds perfectly  
24 fine, Your Honor.

25 JUDGE TOREM: We still have just the one

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1 exhibit, the declaration from Ms. Weiss here in this  
2 case. Any other documents that I should be taking  
3 official notice of today?

4 MS. CAMERON-RULKOWSKI: I do have a copy of  
5 the final order; that is Order No. 3 in Docket  
6 TV-060855.

7 JUDGE TOREM: I have a copy of that already.

8 MS. CAMERON-RULKOWSKI: I had assumed that  
9 you did. Then I will go ahead and proceed.

10 JUDGE TOREM: I will take official notice of  
11 that order as well. It's essentially the foundation of  
12 why we are here today.

13 MS. CAMERON-RULKOWSKI: Thank you, Your  
14 Honor. Pursuant to the Commission's household goods  
15 rule at WAC 480-15-130, Subsection 3, the Commission is  
16 authorized to enforce the laws and rules relating to  
17 household goods carriers by prosecuting violations of  
18 Commission orders. Under WAC 480-15-450, the  
19 Commission is authorized to cancel a household goods



20 carrier's permit for good cause.

21           The Commission's rules at WAC 480-15-150 set  
22 out the Commission's policy on suspension and  
23 cancellation. This rule provides that suspension or  
24 cancellation is appropriate when the Commission  
25 believes education and penalties have not been or will

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1 not be effective to secure compliance.

2           The Company has not responded to the final  
3 order in Docket No. TV-060855 in any way, not even to  
4 request a payment plan, let alone pay penalties. The  
5 Company has not filed its annual report or paid  
6 regulatory fees, and finally, the Company did not  
7 return calls from Staff counsel about coordinating  
8 compliance with the Commission's Order.

9           In short, the Company has not responded at  
10 all to Commission requirements or contacts regarding  
11 this order. Thus, it appears that education and  
12 penalties have not been and will not be effective to  
13 secure compliance. Consequently, Staff asks that the  
14 Commission cancel the household goods carrier permit of  
15 Brooks A&A Moving for good cause. Your Honor, that  
16 concludes my closing statement.

17           JUDGE TOREM: Thank you very much,  
18 Ms. Cameron-Rulkowski. I will write up an order, and  
19 that I believe there is no reason not to grant the  
20 relief sought, so you can expect that that will be  
21 done, hopefully in rather short order, and we will have  
22 a final order or perhaps an initial order. At this

23 stage, I'm still sorting those things out as I get  
24 comfortable here at the Commission, and get this matter  
25 written up and go from there.

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1           If I do find anything else in the record that  
2 is a surprise to me that wasn't covered today, I will  
3 see what I can write up in the order, but again, while  
4 I will take it under advisement at this time, you can  
5 expect that the relief sought will be granted. The  
6 default has been already granted today, and that makes  
7 it much more difficult for me to find any other relief  
8 for Boots available in the record. They haven't  
9 provided me with anything to work with.

10           I will include a statement of any appeal  
11 rights and deadlines to seek Commission review if you  
12 find that I've left something out, or if at that point  
13 Boots wishes to challenge the default for some issue  
14 today, and I think we are ready to adjourn the hearing.  
15 It's now seven minutes after ten o'clock. Seeing no  
16 other issues, are we then okay to close the proceeding  
17 and go off the record?

18           MS. CAMERON-RULKOWSKI: Yes, Your Honor.

19           JUDGE TOREM: Then we are adjourned.

20           (Hearing adjourned at 10:07 a.m.)

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