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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

5

Complainant,)

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vs.)

NO. TV-060855

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BOOTS, INC., d/b/a BROOKS A & A)
MOVING,)

8

Respondent.)

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VERBATIM REPORT OF PREHEARING CONFERENCE

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BEFORE JUDGE DENNIS MOSS

13

June 12, 2006
Olympia, Washington

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Taken Before:

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APPEARANCES

FOR THE COMPLAINANT:

FOR THE RESPONDENT:

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- June 12, 2006 -

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- 1:30 p.m. -

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JUDGE MOSS: Good afternoon everyone. My name is

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Dennis Moss. I'm an Administrative Law Judge with the

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Washington Utilities and Transportation Commission. We are

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convened this afternoon in the matter styled staff

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investigation of the books, records and documents of Boots,

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Inc., doing business as Brooks A & A Moving; and the

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complaint styled Washington Utilities and Transportation

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Commission against Boots, Inc., docket number TV-060855.

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It is actually, I guess, a two part complaint. One,

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complaining for an order to show cause why a permit should

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not be cancelled and refunds not required for failures to

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comply with commission regulations and tariff provisions.

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The second part is a complaint moving for violation - no,

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no - for violations - I'm sorry - complaint for violations

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of commission regulations and tariff provisions. So in a

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restated form, we're here today for the purposes of

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enforcement of a subpoena duces tecum that was issued over

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Judge Wallis' signature on May 26th and also to consider

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procedural matters in connection with the complaint.

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Our first order of business is to take appearances

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and since staff is the complaining party, I will ask for

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1 your appearance first, Ms. Cameron-Rulkowski.

2 MS. CAMERON-RULKOWSKI: Jennifer
3 Cameron-Rulkowski, representing commission staff. My
4 address is 1400 South Evergreen Park Drive, Southwest,
5 that's Olympia, Washington, 98504. Telephone number is area
6 code (360) 664-1186. Fax is (360) 586-5522. E-mail is
7 jcameron, that's j-c-a-m-e-r-o-n, @wutc.wa.gov.

8 JUDGE MOSS: Okay. Mr. Tri, if you could enter
9 your appearance for your client, please.

10 MR. TRI: My name is Bill Tri, that's T-r-i. My
11 address is 2926 Colby, C-o-l-b-y, Avenue, Everett, 98201.
12 My phone is (425) 258-2688.

13 JUDGE MOSS: And do you have a fax?

14 MR. TRI: I do. (425) 259-9097.

15 JUDGE MOSS: And the last piece we ask for is
16 e-mail, which we frequently use to communicate with counsel.

17 MR. TRI: Let's see. bill@jtwalaw.com.

18 JUDGE MOSS: Thank you. All right. With that,
19 unless there's something preliminary, I would like to
20 inquire first into the subpoena. Okay. Apparently not. It
21 does appear that some documents have been brought.

22 MR. TRI: Yes. Mr. Brooks has brought all of his
23 Bill of Ladings for this year.

24 Right?

25 MR. BROOKS: This year, yeah.

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1 MR. TRI: And he's been unable to locate all the
2 remaining ones requested but is in the - should be able to
3 do that within the next week.

4 JUDGE MOSS: Okay.

5 MR. TRI: We'll get them down here.

6 JUDGE MOSS: All right. Do you wish to take time
7 to examine those now or do you wish to examine those later
8 for satisfaction of the request?

9 MS. CAMERON-RULKOWSKI: We can examine them after
10 we've gone through the procedural information.

11 JUDGE MOSS: Do you want to remain on the record
12 then and have me available if you're dissatisfied?

13 MR. TRI: Yes, please.

14 JUDGE MOSS: All right. That's what we'll do.
15 All right. I assume it's a significant volume judging from
16 the size of the box.

17 MR. BROOKS: It's actually not that full.

18 JUDGE MOSS: Not that full.

19 MR. BROOKS: No.

20 JUDGE MOSS: Okay. We'll get back to that in a
21 minute, as suggested.

22 Now, in terms of the complaint, Staff is the
23 complaining party here. So what process do you envision?

24 MS. CAMERON-RULKOWSKI: Well, at this point in
25 time there is a show cause hearing that's been scheduled.

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1 JUDGE MOSS: Okay.

2 MS. CAMERON-RULKOWSKI: The procedural
3 complication is that there are two issues as you yourself
4 had mentioned.

5 JUDGE MOSS: Mm-hmm.

6 MS. CAMERON-RULKOWSKI: There's the penalties
7 issue and then there's the show cause for cancellation of
8 the permit.

9 JUDGE MOSS: And that is when?

10 MS. CAMERON-RULKOWSKI: That is on July 12th.

11 JUDGE MOSS: About a month from today.

12 MS. CAMERON-RULKOWSKI: Correct.

13 JUDGE MOSS: Okay.

14 MS. CAMERON-RULKOWSKI: And the procedural issue
15 that we may need to address that Staff bears the burden of
16 showing of that the alleged penalties or that the alleged
17 violations indeed took place and then because of the show
18 cause hearing the burden is on Brooks A & A Moving to show
19 cause why the permit should not be cancelled.

20 JUDGE MOSS: All right. So what is your
21 suggestion?

22 MS. CAMERON-RULKOWSKI: So I think we can do it
23 all in one afternoon without - without splitting it up. It
24 may also depend on how much - how much evidence we - we end
25 up with. So I simply wanted to bring that to your

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1 attention.

2 JUDGE MOSS: No. I want - that's fine. And,
3 Mr. Tri, let me turn to you and ask if your client could be
4 ready for hearing, with respect to the show cause piece, in
5 a month?

6 MR. TRI: I think so.

7 JUDGE MOSS: Okay. Well, I think we should do
8 them together. There's no point having you come back
9 repeatedly.

10 MR. TRI: But if there's any chance - I don't know
11 if you can do these hearings in the morning, but in the
12 event an afternoon isn't enough --

13 JUDGE MOSS: We can schedule for the morning
14 session.

15 MR. TRI: That would be --

16 JUDGE MOSS: Yeah. If we have time - need to
17 spill over, we'll have that - actually, I see I have
18 forgotten my calendar. Let me get my calendar and let me
19 make sure I'm available on that day.

20

21 (Brief recess.)

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23 JUDGE MOSS: Well, it is perhaps not ideal in that
24 I'm out of town on the 11th, but I'll be back on the 12th,
25 so we can do it. And we can schedule for the morning. It

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1 is an opening meeting day, but I don't need to be there. So
2 we can leave it as scheduled if that's giving everyone
3 sufficient time. Does the staff anticipate anything for
4 discovery beyond satisfaction of the subpoena?

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

6 JUDGE MOSS: Okay.

7 MS. CAMERON-RULKOWSKI: I will note it's scheduled
8 in the afternoon, so if we were to start in the morning --

9 JUDGE MOSS: Change it. That would be good. And
10 we'll probably have it in this room, but that would be in
11 the notice. We'll send another notice revising the schedule
12 that will have the room.

13 All right. I can't think of any other process we
14 need to plan for. Sounds like a pretty short and sweet
15 straightforward matter, going to have a hearing in a month.

16 MS. CAMERON-RULKOWSKI: I believe we probably
17 should enter a protective order, if we're at that stage
18 right now.

19 JUDGE MOSS: Does Staff anticipate having
20 sensitive information?

21 MS. CAMERON-RULKOWSKI: Well, there are credit
22 cards on some of the Bills of Lading so I would - I would
23 think that would be in order.

24 JUDGE MOSS: I don't know that we need a
25 protective order to protect those because the customers'

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1 proprietary information are protected under the statute so I
2 don't know that we need a protective order. I can enter one
3 easily enough. But - so if you feel like you would be more
4 comfortable with that, it takes me five minutes.

5 MS. HUGHES: Would it do anything we don't
6 already have covered?

7 JUDGE MOSS: Well, it does create some additional
8 process because our standard form if protective order
9 requires various affidavits or - or statements be executed
10 and - and submitted to the commission and so forth. So it's
11 not a big burden, but there is a little additional process
12 involved. So I don't - like I say, I'm - I can - I would be
13 happy to do it but if you don't think you need it, let's
14 don't do it.

15 Then I guess I have to ask you, of course, too, Mr.
16 Tri, whether you think your client's information that's
17 going to come forth in this hearing which would be a matter
18 of public record, will be such a sensitive nature that you
19 require a protective order?

20 MR. TRI: I don't - I don't think so.

21 MR. BROOKS: No.

22 JUDGE MOSS: Such information as customer names
23 and credit card information, so forth, I believe there's
24 probably a whole list of things like that that we do not
25 disclose as a matter of course under the statute, so that

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1 would need to be masked and anything that's submitted for
2 the record, consistent with the statute, which I do not have
3 committed to memory so someone will have to look. You know,
4 let's proceed that way and if the need for a protective
5 order arises, you all let me know and we'll get one out
6 posthaste.

7 MS. CAMERON-RULKOWSKI: That should be fine, Your
8 Honor.

9 JUDGE MOSS: Is that all right? That will keep
10 the process to a minimum, which I think is in everyone's
11 best interest.

12 Is there any prospect for informal or alternative
13 dispute resolution in this case?

14 MR. TRI: I certainly hope so.

15 MS. CAMERON-RULKOWSKI: Staff is always amenable
16 to discussing settlement options.

17 JUDGE MOSS: Okay. Well, then I think we should
18 set a date on which you all will have at least your first
19 and formal meeting, so that we know that process is in the
20 works and you can decide after that where to go in keeping
21 me informed along the way so that we can know what to do
22 with our schedule and - and have a sense of what's going on
23 just on a procedural basis.

24 It's fairly - it's standard procedure, Mr. Tri, for
25 us to set a date for a first informal conference when the

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1 parties desire to discuss the possibility of settlement, so
2 if we could arrange that at a mutually convenient time.

3 MR. TRI: Oh. Well, you mentioned the word ADR and
4 I - is there a prospect for a mediation to be scheduled with
5 a mediator?

6 JUDGE MOSS: There's some prospect for that. If
7 you want a commissioned appointed mediator, I'll have to
8 check with the director of my division to see if we have
9 someone available who could do that.

10 MR. TRI: It would make - it would be my
11 preference that if we were going to come down here for a
12 meeting to discuss settlement that we actually have a
13 mediator present.

14 JUDGE MOSS: Sure.

15 MR. TRI: I just think the - prospects for getting
16 the case resolved at that level would be better with a
17 mediator.

18 JUDGE MOSS: Okay. Well, I happen to know that my
19 director is presently occupied elsewhere so I can't go check
20 with him as we sit here right now.

21 MR. TRI: But I'm concerned though of the timing.

22 JUDGE MOSS: Mm-hmm. Sure.

23 MR. TRI: If we only have a month off to a
24 hearing, perhaps we - I don't know what the scheduling
25 abilities --

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1 JUDGE MOSS: Our procedural rules do allow for
2 continuances and indeed if a continuance is an agreed
3 matter, then it's almost a matter of course, unless the
4 commission has some compelling reason not to allow it. Or
5 not necessarily compelling, but if it's in the public
6 interest to allow it, we will. So schedules can be changed
7 if necessary. And I would say that probably the single most
8 frequently cited reason for a continuance is that the
9 parties are on go - have ongoing settlement discussions and
10 are proceeding in good faith. And we want to promote that,
11 so that's not a problem.

12 MR. TRI: Okay.

13 JUDGE MOSS: Okay.

14 MR. TRI: Well, the only other issue that comes to
15 mind for me is that Mr. Brooks says he doesn't have all the
16 documents that he requested and that he says he'll have them
17 to you in a week. But - but that really means you have
18 to --

19 MR. BROOKS: My house is in shambles right now so
20 - but I'll do the best I can to get them out to you.

21 JUDGE MOSS: Well, let's - we'll give an
22 opportunity here off the record for --

23 MR. TRI: Discussion.

24 JUDGE MOSS: -- Ms. Cameron-Rulkowski and
25 Ms. Hughes, who is with her today, and Mr. King, if he

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1 wishes, who just joined us, to examine the records that have
2 been produced today and then you all can have some informal
3 discussion. If we need to come back and put something on
4 the record, we will.

5 MR. TRI: All right.

6 JUDGE MOSS: Is that an agreeable procedure?

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

8 JUDGE MOSS: All right. Before I go off the
9 record, is there anything else?

10 MR. TRI: I have just question.

11 JUDGE MOSS: Sure.

12 MR. TRI: Procedural question, if we actually do
13 have a hearing. There is one of the staff members I know is
14 involved in working with my client, Mr. McCumber (phonetic),
15 and I don't know what the procedure is for issuing subpoenas
16 or compelling witness testimony in a hearing if they're - if
17 we're actually going to have a hearing. Is - that's a
18 question I have.

19 JUDGE MOSS: You can - you can - why don't you
20 talk to Ms. Cameron-Rulkowski about that.

21 MR. TRI: Yeah. All right.

22 JUDGE MOSS: And perhaps something informal can be
23 done. I think as an attorney you have the usual rights of
24 subpoena available to you.

25 MR. TRI: Well, at times - and sometimes

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1 administrative you have to go through the ALJ to issue them
2 for you.

3 JUDGE MOSS: Yeah. We might have to do that in
4 this instance as well, but perhaps that can be avoided.

5 MR. TRI: All right.

6 JUDGE MOSS: It may be that if you need to talk to
7 someone on the staff, Mr. McCumber or someone else, perhaps
8 some sort of deposition or something will be satisfactory.
9 You all talk about that a little bit, too, and see if you
10 can work something out.

11 Okay. Anything else? All right. Well, I'm going to
12 go off the record then and I'll be right in my office just
13 two doors down. So when you all are ready, please call me
14 back so I can at least close the record formally even if
15 there's nothing for me to put on and we'll take it from
16 there. I'm available all afternoon.

17 MS. CAMERON-RULKOWSKI: Thank you.

18 JUDGE MOSS: So we can take a break.

19

20 (Brief recess.)

21

22 JUDGE MOSS: The parties have had some opportunity
23 off the record to review documents produced today in
24 response to the subpoena and discuss other matters. You
25 have something?

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

2 Mr. Brooks is going to find all of the other Bills of Lading
3 and get them to his attorney.

4 JUDGE MOSS: Okay.

5 MS. CAMERON-RULKOWSKI: And then field staff from
6 the commission will pick them up at Mr. Tri's office and
7 that will be on Tuesday, the 20th.

8 MR. TRI: Yeah. So Mr. Brooks has committed to
9 getting them to my office by Monday the 19th. Correct.

10 MR. BROOKS: Yes, sir.

11 MR. TRI: Okay.

12 JUDGE MOSS: Okay. Very good.

13 MR. TRI: We would like to set a mediation, if it
14 can be done, for either the 6th or 7th with our preference
15 being the 6th.

16 JUDGE MOSS: Okay. Let me see what we can do
17 here. Let's make sure there's - let's see. Okay. I don't
18 see any conflicts on the general calendar. It won't affect
19 you, but I'll be out. All right. I will do - I will see
20 what I can do when Judge Wallis gets back. He makes those
21 assignments.

22 And I will just say as a word of caution, we are
23 short-handed right now, so we'll do our best.

24 MR. TRI: Okay.

25 JUDGE MOSS: And if we can't provide someone to

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1 assist you, then we may have some alternative suggestions to
2 make but there are just a few of us who are qualified to do
3 this and, of course, you can't use me so that cuts it down
4 even further.

5 So - all right. Anything else for the record?

6 MR. TRI: Yes. I had a conflict on the 12th, the
7 13th worked though for both of us. I don't know if it will
8 work for you.

9 JUDGE MOSS: I can do the 13th. Would you rather
10 do that then?

11 MR. TRI: Yes.

12 JUDGE MOSS: Okay. We'll reset for the 13th.

13 And, of course --

14 MR. TRI: Morning.

15 JUDGE MOSS: -- in the morning, so we'll have
16 plenty of time.

17 MR. TRI: Okay.

18 JUDGE MOSS: All right. Anything else?

19 MS. CAMERON-RULKOWSKI: That's it, Your Honor.

20 JUDGE MOSS: Let's be off the record.

21

22 (Brief recess.)

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24 JUDGE MOSS: Judge Wallis is not available. I'll
25 have to check with him and let you all know. I'll just send

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1 you an e-mail.

2 MR. TRI: Okay.

3 JUDGE MOSS: And if we need to do something more
4 formal, I'll do something more formal.

5 MR. TRI: All right.

6 JUDGE MOSS: But I'll target those two days that
7 you identified, Mr. Tri. And we have all the other dates we
8 need, I believe.

9 MR. TRI: Yes.

10 MS. CAMERON-RULKOWSKI: Yes, we do.

11 JUDGE MOSS: Anything else from the parties?

12 MR. TRI: No.

13 JUDGE MOSS: All right. Thank you all for being
14 here today. Look forward to working with you to bring this
15 matter to resolution.

16 MR. TRI: Thank you.

17 MS. CAMERON-RULKOWSKI: Thank you.

18 JUDGE MOSS: We're off the record.

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20 (End of proceedings at 2:09 p.m.)

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C E R T I F I C A T E

I, CARMAN PRANTE, a duly authorized Notary Public in and for the State of Washington, residing at Elma, do hereby certify:

That the foregoing proceedings were taken before me on the 12th day of June, 2006, and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of said proceedings;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 13th day of June 2006.

CARMAN PRANTE
CR#2513