

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TV-070647
TRANSPORTATION COMMISSION,)	
)	COMPLAINT AND ORDER TO
Complainant,)	SHOW CAUSE WHY PERMIT
)	SHOULD NOT BE CANCELED,
v.)	FOR FAILURE TO COMPLY
)	WITH COMMISSION ORDER NO.
BOOTS, INC., d/b/a)	03 IN TV-060855
BROOKS A & A MOVING,)	
)	NOTICE OF HEARING
Respondent.)	(Set for June 27, 2007, 9:30 a.m.)
)	
.....)	

1 **Synopsis:** *The Commission complains and orders Boots, Inc. d/b/a Brooks A&A Moving to show cause why the Commission should not cancel the company's household goods carrier permit for failing to comply with two requirements of the Commission's Final Order in Docket TV-060855: (1) submit within 30 days to the Commission a plan, agreed to by Staff and approved by the Commission's Executive Secretary, for issuing refunds to customers; and (2) pay penalties totaling \$93,000 to the Commission within 30 days.*

2 **Proceedings:** The Washington Utilities and Transportation Commission (Commission) held a hearing on July 17, 2006, to determine whether Boots, Inc., d/b/a Brooks A&A Moving (Brooks) had violated various provisions of the Commission's household goods carrier rules and tariff. At issue were whether the company had illegally collected sales tax from its customers; whether the company had failed to obtain cargo insurance coverage as required by WAC 480-15-550; whether the company had failed to use a bill of lading format that complied with WAC 480-150-730 and Tariff 15-A; whether the company had failed to properly complete the bill of lading in accordance with WAC 480-15-740 and Tariff 15-A; and whether the company had failed to discontinue charging a credit card processing fee, an unauthorized charge under Tariff 15-A.

3 On January 26, 2007, the Commission issued its Final Order.¹ In the order, the Commission determined that Brooks had assessed illegal sales tax charges on 656 occasions; had used a deficient bill of lading form on 221 occasions; had failed to properly complete the bill of lading on 48 occasions, and had assessed credit card processing fees on five occasions. The Commission concluded that Brooks must refund the illegally collected sales tax to its customers within six months after the date of the order. The Commission further ordered Brooks to develop a procedure to refund the sales tax, agreed to by Staff and approved by the Commission's Executive Secretary, within 30 days of the order date. In addition, the Commission ordered Brooks to pay penalties totaling \$93,000 within 30 days, including a penalty of \$65,600 for the sales tax violations. The Commission also decided to suspend Brooks' operations for 90 days, to begin 30 days after the order issued. Finally, the Commission offered Brooks a payment plan and provided that Brooks could offset the penalty associated with the sales tax violations up to the amounts it had refunded to customers.

4 Brooks has not paid any of the penalties. Brooks has not submitted a proposed refund procedure for approval by the Executive Secretary. Brooks has not sought Staff's consultation on a proposed refund procedure. Brooks has not requested a payment plan. Brooks has not communicated with the Commission or with Staff at all; in fact, Brooks did not even return Staff Counsel's calls or respond to her letter asking to be called regarding the order.²

I. COMPLAINT

5 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

6 The Commission exercises all the powers and performs all the duties prescribed by Titles 80 and 81 RCW. *RCW 80.01.040.*

¹ Docket TV-060855, Order 03, *Final Order Suspending Authority and Assessing Penalties for Violations of Commission Rules and Tariff 15-A*, served January 26, 2007.

² See Docket TV-060855, Letter from Staff to Commission, dated February 26, 2007.

- 7 Common carriers are regulated under RCW 81.80. *See RCW 81.80.010*. The Legislature specifically empowered the Commission to regulate common carriers in RCW 81.80.130, and to enforce RCW 81.80 in RCW 81.80.330.
- 8 Household goods carriers are common carriers. *See RCW 81.80.010; WAC 480-15-020*. Under RCW 81.80, “motor carrier” means a common carrier. *RCW 81.80.010*. For the purposes of Title 81, every common carrier is a public service company. *RCW 81.04.010*.
- 9 Boots, Inc., d/b/a Brooks A & A Moving, is a public service company as defined in RCW 81.04.010. Brooks holds authority to transport household goods in the state of Washington for compensation.
- 10 State law provides that the Commission may issue a complaint alleging a violation of any law, order or rule of the Commission. *RCW 81.04.110*.
- 11 The Commission is empowered to issue rules and regulations governing household goods carriers. *See RCW 81.80.290*.
- 12 The Commission’s household goods carrier rules provide that where it is necessary to ensure compliance with statutes, rules and Commission orders, the Commission will pursue administrative actions, including hearings to show cause and cancellation of permits. *WAC 480-15-130(2)(a)*. These rules further provide that the Commission is authorized to enforce the laws and rules relating to household goods carriers by prosecuting violations of statutes, rules and Commission orders. *WAC 480-15-130(3)(b)*.
- 13 Under the Commission’s rules, the Commission may cancel a household goods carrier’s permit for good cause. *WAC 480-15-450*.
- 14 The Commission’s household goods carrier rules provide that the Commission will take administrative action for violations in a manner that it believes will best assure future compliance by household goods carriers. *WAC 480-15-150*. Accordingly, the Commission may cancel a household goods carrier’s permit when the Commission believes education and penalties have not been effective to secure compliance. *Id.*

15 By failing to remit penalties to the Commission and failing to submit a plan for refunding illegally collected sales tax charges to its customers, Brooks has failed to comply with Commission Order 03. A failure to comply with the order is a violation of the order. Because penalties and past education have not been effective to secure current compliance by Brooks, it is appropriate that the Commission cancel the carrier's permit.

II. PROBABLE CAUSE

16 Based on a review of the Declaration of M. Carlene Hughes Regarding Compliance by Boots, Inc. With Order No. 03 in Docket TV-060855, and of Order No. 03 as well as other relevant documents in Docket TV-060855, and consistent with RCW 80.01.060, the Commission finds probable cause exists to issue this Complaint.

III. NOTICE OF HEARING

17 The Commission, by this notice, sets a hearing in this matter, which will be held pursuant to RCW 34.05 pertaining to adjudicative proceedings, including but not limited to RCW 34.05.413, RCW 34.05.434, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission has jurisdiction in this matter under RCW 80.01, RCW 81.04 and RCW 81.80, including but not limited to RCW 80.01.040, RCW 81.04.110, RCW 81.80.290, and RCW 81.80.330, and under WAC 480-07 and WAC 480-15, including but not limited to WAC 480-07-145, WAC 480-07-150, WAC 480-07-320, WAC 480-07-440, WAC 480-07-450, WAC 480-07-470, WAC 480-07-490, WAC 480-07-495, WAC 480-15-130, WAC 480-15-150, and WAC 480-15-450.

18 **THE COMMISSION GIVES NOTICE That a hearing in this matter will be held on June 27, 2007 at 9:30 a.m. in Room 108, First Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

19 THE COMMISSION GIVES FURTHER NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.

20 If any party or witness needs interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

21 The names and mailing addresses of all parties and their known representatives are as follows:

Complainant: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
PO Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jennifer Cameron-Rulkowski
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1186

Respondent: Richard Brooks
Boots, Inc.
d/b/a Brooks A & A Moving
14931 22nd Avenue West
Lynnwood, WA 98037

22 The Commission appoints Administrative Law Judge Adam Torem from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, to preside at the hearing.

IV. ORDER

THE COMMISSION ORDERS That:

- 23 (1) Boots, Inc. d/b/a Brooks A & A Moving must come before the Commission pursuant to WAC 480-15-130(2)(a) to show cause why the Commission should not cancel the company's household goods carrier permit for failing to comply with Commission Order No. 03 in Docket TV-060855.
- 24 (2) Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective April 6, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

Inquiries may be addressed to:

Executive Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Carole J. Washburn, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.:(____) _____