

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

WASHINGTON UTILITIES AND)	DOCKET TV-060855
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER O2
)	
v.)	
)	INITIAL ORDER ASSESSING
BOOTS, INC., d/b/a)	PENALTIES FOR VIOLATIONS
BROOKS A & A MOVING,)	OF COMMISSION RULES AND
)	TARIFF 15-A
Respondent.)	
.....)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final, Boots, Inc., d/b/a Brooks A&A Moving, must pay penalties of \$65,600 for unlawfully charging sales tax to customers and pay \$26,900 in penalties for other violations of Commission regulations and tariff provisions.*

SUMMARY

2 **PROCEEDINGS.** The Commission, on due and proper notice, conducted a hearing in this complaint proceeding at the Commission’s offices in Olympia, Washington on July 17, 2006, before Administrative Law Judge Dennis J. Moss.

3 This proceeding concerns two complaints against Boots, Inc., d/b/a Brooks A & A Moving (Brooks) brought by the Commission on May 26, 2006. One complaint alleges numerous violations of statute and rule, as specified in Appendix A to this Order. Staff’s audit report identified 324 violations with potential penalties of \$32,400 at the maximum rate of \$100 per violation under RCW 81.04.405. Staff recommended penalties of \$25,500. Brooks contests the allegations and argues that no penalties should be assessed.

4 The second complaint alleges repeated failures by Brooks to comply with Commission regulations and tariff provisions. Considering the basis of this complaint, the Commission ordered Brooks to come before it and show cause why the Commission should not cancel the company's household goods carrier permit. The basis for the show cause order is the allegation that Brooks improperly and repeatedly levied a separate charge to customers for sales tax for moving services, which Tariff 15-A does not allow.

5 Staff asks that Brooks be required to refund to its customers the sales tax improperly charged for all intrastate residential moves performed in January, February, March, April, and June 2005, and for any other months for which the evidence shows improper sales tax collections. Staff, having initially recommended cancellation of Brooks' authority to provide service, now recommends suspension of Brooks' authority for up to 90 days. Staff does not recommend that the Commission, in addition, assess penalties in connection with these violations.

6 Brooks does not dispute that it charged sales tax to its customers over a protracted period but argues cancellation or suspension of its authority to operate is unwarranted and would not be in the public interest.

7 **PARTY REPRESENTATIVES.** Assistant Attorney General Jennifer Cameron-Rulkowski, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff). William F. Tri, Attorney at Law, Everett, Washington, represents Brooks.

8 **COMMISSION DETERMINATIONS.** The Commission determines that Brooks should be penalized for its repeated, willful violations of Commission regulations and tariff provisions. Based in part on the showing that Brooks has ceased assessing and collecting unauthorized charges when billing customers, and has corrected other practices that violated Commission rules, the Commission determines that the public interest does not require that Brooks' authority be suspended or cancelled at this time. The Commission cautions Brooks, however, that any future violations of rules or tariff provisions may result in suspension or cancellation of the company's authority to conduct business in Washington.

- 9 The Commission determines further that it is impractical to require Brooks to refund to customers the charges identified on bills of lading as “sales tax.” Individual sales tax charges were modest, but there are a large number of them. Customers did not pay more than they anticipated as a result of the charges. The unlawful charges were levied for moves conducted a year or more ago. Some customers may have moved again and the state of Brooks’ records indicating many incomplete bills of lading, may mean it would not be possible to ensure that all, or even most refunds reached their intended recipients.

MEMORANDUM

I. Background and Procedural History.

- 10 The Commission granted Brooks provisional operating authority to move household goods in Washington on June 21, 2004, under Docket TV-040671. On January 13, 2005, the Commission granted Brooks permanent authority under HG-61386. Brooks is a small household goods moving company with one terminal located in Lynnwood, Washington. The company’s Washington intrastate revenue for 2004 was \$313,748.30.
- 11 Commission Motor Carrier Safety Staff Investigator Leon Macomber made technical assistance visits to Brooks on August 5, 2004, and on October 14, 2004. This was during the time the company was operating under its provisional permit authority. During his visits Mr. Macomber found a number of violations of statutes, the applicable tariff, and Commission rules. He informed the key personnel at Brooks, co-owners Mr. Richard Brooks and Mrs. Michelle Brooks, of these violations. Among other things, Mr. Macomber informed Brooks’ key personnel on both August 5 and October 14 that the company could not charge sales tax.¹ The purpose of Mr. Macomber’s visits, however, was not enforcement. Mr. Macomber’s task was to provide educational assistance so that the company could more easily come into compliance with all legal requirements.²

¹ TR. 100:25-101:5; TR. 101:22-24 (Macomber direct examination). Washington state sales tax is not collected for household goods moving transactions and, hence, is not authorized for recovery in the applicable Commission tariff.

² TR. 106:21-107:3 (Macomber cross-examination).

- 12 The Commission's Business Practices Investigations Section identified Brooks as a possible audit candidate in March 2005, when reviewing consumer complaints for 2004. Staff found a complaint lodged against Brooks in December 2004 indicated the company was not completing all of its bills of lading as required under WAC 480-15, and was charging customers rates and charges not allowed under the governing tariff, Commission Tariff 15-A.
- 13 On March 25, 2005, the Commission's Executive Secretary, Carole Washburn, sent a letter to the company outlining in detail the deficiencies in Brooks' bill of lading form reviewed in connection with the December 2004 customer complaint.³ The Commission's letter provided additional technical assistance to Brooks, advising the company of the requirements in the rules and stating exactly what Brooks needed to do to revise its bill of lading form and bring it into compliance. In addition, the Commission's letter stated that Brooks' bill of lading form, at least as of December 2004, included unauthorized charges in the form of sales tax at 8.9% and a credit card processing fee of 4%.
- 14 The Commission informed Brooks by its letter of March 25, 2005, that the company

must revise the bill of lading form immediately to include the correct information as required in the tariff regarding non-binding estimates and valuation options. Brooks must also remove the 4% credit card processing fee and the 8.9% tax spaces from the bill of lading and must charge only the authorized charges listed in the tariff.⁴
- 15 Finally, the Commission requested that Brooks respond to the Executive Secretary's letter in writing by April 8, 2005, to explain what actions the company would take to come into compliance. The letter offered the option of a response via e-mail directed to Commission Compliance Specialist Betty Young.
- 16 Mrs. Michelle Brooks, Vice-President and co-owner of Brooks, responded by e-mail on March 28, 2005. Mrs. Brooks represented to the Commission that the issues raised in the Executive Secretary's letter "were resolved in our temporary licensing last year by Leon [Macomber]." Mrs. Brooks e-mail continued, in part, as follows:

³ Exhibit No. 5.

⁴ *Id.* at 3.

We drafted new Bills and Estimates last year with the appropriate language and charges. It sounds funny to us that someone is complaining about old bills and estimates that were changed over a year ago and maybe used for 10 customers if that. . . . We would be happy to accommodate any other changes needed however the ones mentioned were done a year ago.⁵

The record shows that these representations to the Commission were completely false. Exhibit No. 10 includes one hundred and seventy of the company's bills of lading dated January through April 2005. Each of these one hundred and seventy bills of lading includes the deficiencies identified by the Commission's letter of March 25, 2005. Significantly, at least sixty-five of the bills of lading in Exhibit No. 10 are dated on or after March 25, 2005. Exhibit No. 4 includes another seventy bills of lading from June 2005. These are identical in all material ways to the bills of lading in Exhibit No. 10, including all the deficiencies discussed in the Commission's letter of March 25, 2005, and showing that Brooks continued to charge sales tax despite being expressly informed on multiple occasions from the inception of its business that such charges were not allowed under the applicable tariff.

17 Staff initiated its audit of Brooks during April 2005. Staff's audit disclosed numerous violations of statute, rule and tariff:

1. Staff found one hundred and ten violations of WAC 480-15-550 for failure to obtain cargo insurance coverage for its moving operations for one hundred and ten days after it received operating authority, subject to a penalty of \$11,000.00.
2. Staff found seventy violations of WAC 480-15-730 and Tariff 15-A, Item 95 during June 2005, for failure to use a bill of lading format in compliance with WAC 480-15-730 and Tariff 15-A, subject to a penalty of \$7,000.00.
3. Staff found seventy violations of WAC 480-15-740 and Tariff 15-A, Item 95 during June 2005, for failure to properly complete the bill of lading to ensure that it shows all information necessary to determine the

⁵ Exhibit No. 6.

proper tariff rates and charges in compliance with WAC 480-15-740 and Tariff 15-A, subject to a penalty of \$7,000.00.

4. Staff found sixty-nine violations of WAC 480-15-490, for charging sales tax in violation of Tariff 15-A during June 2005, subject to a penalty of \$6,900.00.
 5. Staff found 5 violations of WAC 480-15-490, for charging a credit card processing fee in violation of Tariff 15-A during June 2005, subject to a penalty of \$500.00.
- 18 The total penalties under RCW 81.04.405 for violations noted by Staff that occurred during the first one hundred and ten days of Brooks' operation, and during June 2005, thus amount to \$32,400 for three hundred and twenty-four alleged violations in those periods.
- 19 Staff recommends total penalties of \$25,500, applying the maximum \$100 per violation penalty under RCW 81.04.405 to all violations except those concerning the illegal charging of sales tax. In connection with the sixty-nine violations resulting from Brooks having charged sales tax as a separate charge in violation of Tariff 15-A during June 2005, Staff initially recommended cancellation and now recommends suspension of Brooks' authority to operate for up to ninety days.
- 20 The record, including bills of lading from January – April 2005 shows that Brooks charged sales tax on many additional occasions to those Staff brought forward as violations for purposes of its penalty recommendation. In addition, it is clear from the record that additional instances occurred in 2004 and in July and August 2005. Brooks was on notice that it was violating the law during all of these periods.
- 21 The Commission heard testimony and received exhibits during hearing proceedings on July 17, 2006. The Commission heard oral argument at hearing in lieu of briefing. On August 4, 2006, following examination of the transcript and review of the documentary record, the Commission reopened the record on its own motion. The Commission, without objection, received additional evidence concerning Brooks' practice of charging sales tax during 2004 and 2005.

II. Discussion and Decision.

A. Sales Tax.

22 The most troubling among the many violations shown in the record is Brooks' practice of charging sales tax to customers despite being on notice from the Commission that this violated the tariff that governed the company's rates. This was a knowing violation Brooks repeated many times over more than two years and one that appears to have been undertaken with the intent to deceive the public. As discussed in more detail below, Brooks' practice of charging sales tax that it did not remit to the state allowed the company, in effect, to boost its labor charges while giving the appearance that the company's rates were lower and more competitive than they were in fact. In short, it appears Brooks used sales tax charges as a marketing ploy. In light of having willfully misrepresented the nature of the company's charges to the public, the full range of possible enforcement and remediation options under WAC 480-15-150 are open to consideration.⁶

23 Mr. Brooks, on direct examination, said that his involvement in developing the company's bill of lading was limited. It was, however, central insofar as the company's decision to levy unlawful charges. Mr. Brooks testified in colloquy with his counsel as follows:

Q. Did you have anything to do with the formation of the bill of lading form?

A. A little bit. A sales tax was actually my idea, and same with the four percent credit card fee.

Q. Why is that?

⁶ WAC 480-15-150 provides:

The commission will take administrative action for violations in a manner that it believes will best assure future compliance by the violating household goods carrier and other household goods carriers. The commission may:

(1) Assess monetary penalties under the provisions in chapter [81.04 RCW](#) as a tool of enforcement and remediation; or

(2) Suspend or cancel the permit of a household goods carrier under circumstances in which the commission believes education and penalties have not been, or will not be, effective to secure compliance; for serious actions including fraud or misrepresentation; and for willful violation of legal requirements.

- A. Because I learned it from another moving company when I worked there before.

Tr. 145:19-25.

24 Mr. Brooks admitted that he was informed that the sales tax charge was not authorized under the tariff at least from the time of Mr. Macomber's first visit to the company during August 2004. Mr. Brooks testified that after Mr. Macomber's visit he discussed with Mrs. Brooks whether the company should continue to include the charge on its bills of lading. Mr. Brooks said the position he took on this issue was based on the fact that the company charged "a low rate . . . \$75 an hour, and \$75 an hour with tax comes out to like \$82 dollars or so." Finally, on this topic, Mr. Brooks had the following colloquy with his counsel (emphasis supplied):

Q. Did you eventually decide to stop charging sales tax and credit card fees?

A. Yes.

Q. Why?

A. Because the Commission asked us to. We had to raise our rate and stop charging tax.

It is telling in this connection that when Brooks finally stopped showing on its bills of lading a rate of \$75 per hour plus sales tax at 8.9%, or \$6.67, for a total charge to customers of \$81.67 per hour, its new rate, with no sales tax, was \$81.67 per hour.⁷

25 Asked by the presiding officer whether the tax that was charged was ever remitted to the state, Mr. Brooks testified: "We didn't pay sales tax." Again, it is apparent that the company knew it was neither authorized to charge sales tax nor required to remit sales tax to the Department of Revenue for services provided. Brooks simply used the sales tax charge as a subterfuge to effectively boost its labor rates by 8.9%.

26 Brooks' customers were led to believe that the company's hourly rate was \$75. The additional \$6.67 per hour the customers actually paid was, from their perspective, a legitimate add-on for sales tax—a charge beyond the company's control. In fact, the

⁷ This is seen from a comparison of the bills of lading from 2005 in Exhibit No. 10 to those from 2006 in Exhibit No.11.

company was collecting from its customers and retaining for itself the equivalent of an hourly labor rate of \$81.67.

- 27 Brooks argues in its defense that the company had “a legitimate dispute with the Commission about whether [sales tax] was a charge they could charge to the customer.”⁸ This is based on Mrs. Brooks’ testimony that she had been advised by the company accountant that Brooks could charge its customers sales tax. In addition, she testified someone at the Department of Revenue told her during a telephone conversation that it was O.K. to itemize such charges on bills.
- 28 There is no way to test the credibility and reliability of this testimony. Brooks did not make its accountant available to respond to questions concerning precisely what Mrs. Brooks asked and what advice the accountant gave to the company. Mrs. Brooks produced no evidence of her contact with the Department of Revenue nor did she testify concerning the exact colloquy she had with a person there. The Department of Revenue contact was not even identified for the record by name or title.
- 29 Even were Mrs. Brooks’ testimony shown to be credible and reliable, however, the key operative consideration is that her testimony raises points of little or no significance. Brooks received direction at various times from Commission Staff and from the Executive Secretary of the Commission that it could not lawfully charge sales tax under the tariff that governed its rates. Brooks had no reason to believe the company’s accountant or personnel at the Department of Revenue had any expertise in, or even knowledge of this Commission’s regulatory requirements. It was simply not reasonable for Brooks to ignore direction from the responsible regulatory agency in favor of advice from a private accountant or a state agency not responsible for regulating the company’s rates and charges.
- 30 If Brooks had a legitimate dispute with the Commission over this issue there were avenues it could have pursued to resolve its dispute. Brooks did not pursue those avenues. Instead, having received a letter from the Executive Secretary informing Brooks that it must cease charging sales tax and make other specific changes to its bills of lading, the company’s response was to state falsely that these things had been changed early on in the company’s history. Mrs. Brooks represented to the

Commission that these illegal charges had been levied only 10 or so times when, in fact, the company had charged sales tax to hundreds of customers during the period August 2004 through March 2005. Brooks continued to include sales tax charges on its bills of lading for several months after representing to the Commission that the practice had ceased. Indeed, it continued to do so until August 2005. Mrs. Brooks' misrepresentations to the Commission, meant to conceal the company's continuing practices that were in defiance of express direction from the Commission, belie any claim of a "legitimate" dispute.

31 Brooks argues by way of legal defense that the Commission Staff has the burden of proof, which Brooks asserts is "clear, cogent and convincing evidence" of knowing or intentional violation, or violation in conscious disregard of knowledge of their wrongdoing, to support cancellation or suspension. Although it is clear that Brooks bears the burden of proof in this show cause proceeding, we need not address the company's argument in detail. Even if the standard Brooks advocates were found to apply, the record includes such evidence, as already discussed. At the very least, it is clear beyond doubt that Brooks acted in conscious disregard of the Commission's direction that it was not authorized to charge sales tax. Brooks' active effort to conceal its practices from the Commission in March 2005 evinces knowing and intentional violation.

32 Finally, Brooks argues cancellation or suspension is not necessary to serve the public interest because the company has ceased charging sales tax for approximately one year and is committed not to do so in the future. Moreover, Brooks argues, it does not serve the public interest to suspend the company's authority at the risk it would go out of business. These arguments are not strongly persuasive but, on balance, we determine the public interest does not require suspension, for the reasons discussed below.

33 Although there is an element of misrepresentation to the public in this case, deceiving customers into the belief that a portion of the \$81.67 per hour they would be required to pay was sales tax did not lead the customers to believe they would pay less in total than they would, in fact, be charged. Brooks' practice of charging customers sales tax for services to which sales taxes do not apply appears to have been a marketing ploy

⁸ TR. 176:22-24 (Closing argument by counsel).

and did not result in Brooks collecting the equivalent of rates higher than what the applicable tariff would allow.⁹ While the ploy may have resulted in Brooks securing business it might otherwise not have secured, the record shows only one or two customer complaints throughout the company's history. Thus, most of Brooks' customers, fully expecting to pay a total of \$81.67 per hour, apparently were satisfied with the service provided.

34 It is speculative to consider whether suspension of Brooks' authority would result in the company going out of business. Nevertheless, it certainly is true that Brooks' drivers and movers would suffer diminished opportunity for gainful employment during any period of suspension. If the company did not resume operations that loss could be amplified. Such results do not serve the public interest.

35 Another factor considered here is that Brooks has a contract with the Washington State Department of Social and Human Services (DSHS) to provide moving services for vulnerable adults who are in the adult protective services program.¹⁰ Brooks' provision of this service provides significant benefits to the public.

36 We are mindful, too, that a key goal in taking administrative action pursuant to WAC 480-15-150 is to assure future compliance by the violating household goods carrier and other household goods carriers.¹¹ In addition, WAC 480-15-440 states in relevant part: "[The Commission] will lift the suspension of your permit after you correct all conditions leading to the suspension." In the same vein, WAC 480-15-460 provides: "If you correct all conditions that led to the cancellation of your permit, you may apply for reinstatement of your permit."

37 Brooks has complied with the governing tariff since August 2005 and its actions during the past year, including close coordination with the Commission to ensure its bill of lading form is fully compliant, evidence that the company is committed to continued compliance.¹² The financial penalties assessed below are significant and should be sufficient to persuade Brooks and other household goods movers that the

⁹ We note that \$81.67 falls within the range of rates allowed under the applicable tariff.

¹⁰ TR. 135:10-12 (Michelle Brooks direct examination).

¹¹ See *supra* fn. 6.

¹² TR. 64:6-14 (Hughes direct examination); TR. 142:20-24 (Michelle Brooks cross-examination).

Commission will vigorously enforce the applicable statutes and rules when it finds violations.

38 Although it is a close balance, the Commission determines that the public interest does not require suspension or cancellation of Brooks' operating authority at this time. We caution, however, that any future violations by the company may tilt the balance in favor of suspension or cancellation.

39 We do not ignore that Brooks' continuing violation of Tariff-15A over a protracted period was willful and in knowing violation of the law. Nor do we ignore that the company misrepresented the facts concerning its practice of including sales tax charges on its bills of lading when responding to the Executive Secretary's letter of March 25, 2005. Instead of suspending Brooks' authority though, the Commission determines that it should assess a substantial monetary penalty against Brooks.

40 The record includes evidence that Brooks illegally charged sales tax six hundred and fifty-six times during the period from August 2004 through August 2005.¹³ The table below provides a summary of these illegal charges based on the invoices in our record. The maximum penalty under RCW 81.04.405 is \$65,600 at \$100 per violation. In light of the showing that Brooks' violations of Tariff 15-A were willful violations that involved misrepresentation to the public and misrepresentation to the Commission, the Commission determines that it should assess the maximum penalty of \$65,600 for the company's violations of Tariff 15-A shown by the record to have occurred during the period August 2004 through August 2005.¹⁴

Summary of Illegal Charges

Month/Year	Number of Bills	Tax Charged
August 2004	49	\$2,322.70
September 2004	63	2,860.70
October 2004	80	3,204.27
November 2004	57	2,100.93
December 2004	58	2,302.58

¹³ Exhibit Nos. 4, 8, 10, 19, 27.

¹⁴ We note that this is approximately twenty percent of Brooks' gross annual revenue or roughly equivalent to the revenue Brooks would lose during a 75 day suspension of its permit.

January 2005	45	1,737.73
February 2005	40	1,521.68
March 2005	43	1,573.47
April 2005	41	1,697.56
May 2005 (Not all bills received)	3	111.13
June 2005	71	2,966.57
July 2005	105	4,876.49
August 2005	1	32.04
Total	656	\$27,307.85

41 The Commission determines further that it would not be practical to require Brooks to refund the sales tax charges it illegally collected from customers during the period August 2004 through August 2005. There are literally hundreds of transactions involved, with the amount of sales tax in each individual transaction small in both an absolute and relative sense. It could be difficult or impossible to track down some customers when a year or more has passed since Brooks last charged sales tax. Administration and oversight of such a program would be time-consuming and expensive for the company and for the Commission.

B. Deficient Form of Bill of Lading.

42 Brooks' bill of lading form suffered from various deficiencies when Mr. Macomber reviewed it during his first visit in August 2004. In fact, the company was using an invoice form and not a bill of lading form in the early part of August 2004. Mr. Macomber pointed out to Brooks what the Commission's rules require in terms of a bill of lading form.

43 The company appears to have developed a more acceptable form by the time of Mr. Macomber's follow-up visit to the company on October 14, 2004. This is evident from the fact that the Household Goods Technical Assistance Records Review Checklist that Mr. Macomber completed during this visit to Brooks indicates among other things that the carrier was "using a Uniform Household Goods Bill of Lading that meets the requirement of Tariff 15-A" and that "each Bill of Lading contain[ed] all required information."¹⁵

¹⁵ Exhibit No. 24 at 2.

- 44 Despite Mr. Macomber's belief that Brooks had developed a proper form during his technical assistance review at Brooks' offices, it is apparent from reviewing a sample of the bills of lading actually used during October 2004, and subsequently, that the forms did not in fact include all of the information they are required to include. In addition, the forms included a 4 percent credit card processing fee and sales tax that the company previously had been told were charges not allowed under the tariff and should not appear on the bill of lading form.
- 45 Nevertheless, having received technical assistance from Mr. Macomber on this issue in August and having developed a form by August 28 that passed Mr. Macomber's scrutiny during his follow-up visit in October 2004, Brooks reasonably believed at that time that its bill of lading form met the Commission's requirements in terms of what information it was required to include. A review of a sample of the bills of lading Brooks used during October, November and December 2004 shows that the company used a similar form throughout the period, apparently without further review or follow-up by Commission personnel except as discussed below.
- 46 Mrs. Brooks testified that during December 2004 other Commission personnel reviewed the company's bill of lading form and informed her that it was not in compliance with what the Commission's rules require.¹⁶ Her colloquy with her counsel on direct examination went as follows:
- A. [Mr. Macomber] came out and checked the trucks, and after that time, he had taken a look at the bill of lading again, and by the third meeting, they were absolutely correct, I thought.
 - Q. Then who started telling you that there were problems with your bill of lading?
 - A. Another Commission staff. It was December of '04 we had our one and only complaint, and at that time, our bill of lading was looked at by somebody else.
 - Q. Betty Young?
 - A. Betty Young or Meeks or one of those people, and they said there was something wrong with it at that time. It was looked at again and torn apart, and each time we were told that we had to fix it. We

¹⁶ TR. 118:7-119:20.

fixed it again, and now since then from the audit, it was torn apart again, and we've remodified it totally.

Q. How many times would you say you have changed your bill of ladings?

A. I would say four to six times, a lot. It seems like every time somebody picks it up, they have a problem with it. Everyone from the Commission that looks at our forms, from Mr. Macomber, who had helped us originally develop the form and okayed it, and then whoever did the complaint in December of '04, I think Betty, and then from -- I don't know their names now, but to the audit, it was torn apart again.

Q. But each time you were contacted by someone from the Commission, you made the requested changes to your form?

A. Yes. It was reprinted several times from Costco, and that's why when we got to the audit I was so upset, because it costs \$350 every time we have to reprint the form, and not to mention all the time I have to redo the whole form and then have to throw away thousands of forms that we have reprinted.

47 Despite Mrs. Brooks' testimony to the contrary, it appears from examination of a sample of bills of lading from January 2005 that the company did not change the form after its contact with Commission staff in December 2004. The January 2005 bills of lading examined are identical in all material respects to those sampled from December 2004.¹⁷ Brooks continued to use these same forms in February and March 2005. Indeed, Brooks used these forms until sometime in August 2005 despite the company's interaction with the Commission during March 2005.

48 Although discussed earlier, it bears repeating that the Commission gave additional, more formal notice to Brooks on March 25, 2005, that its bill of lading form did not satisfy all requirements under the Commission's rules. A letter from the Commission's Executive Secretary gave explicit and detailed instructions about what the company needed to do to bring its forms into compliance. Brooks claimed in response to the Commission on March 28, 2005, that it had made all the referenced changes to its bill of lading form many months earlier and professed surprise at an inquiry concerning forms that had been used only a few times early in the company's

¹⁷ It appears there are some insignificant differences among the sampled bills of lading in use from time to time in terms of typefaces and organization. Substantively, the bills of lading from all periods are the same.

history. Not only was this statement false, Brooks then continued to use the deficient bill of lading form for several more months, until sometime in August 2005.¹⁸

49 Given these facts, the Commission finds that Brooks knowingly and willfully violated the Commission's rules concerning the required contents for its bill of lading form at least during the period April 2005 through a portion of August 2005. The record includes two hundred and twenty-one deficient bills of lading from that period.

50 In light of the willful nature of Brooks' violations and the company's misrepresentations to the Commission, the Commission concludes that it should assess the maximum penalty of \$22,100 under RCW 81.04.405.

C. Failure to Complete Bills of Lading.

51 It is undoubtedly true that many of Brooks' bills of lading that are part of the Commission's record in this proceeding are incomplete to one degree or another. Staff provided a summary indicating the specific failures to complete bills of lading during June 2005.¹⁹ The summary indicates that all seventy bills of lading from that period are incomplete in one way or another. A significant number of these are incomplete due to the deficiencies in the bill of lading form discussed in the preceding section of this Order. That is, while all seventy bills of lading are incomplete in terms of name, address, and telephone information required under the Commission's rules, that is in part at least due to their being no place on the form for the information to be provided.²⁰

52 Forty-eight of the seventy bills of lading, however, are incomplete for other reasons as well. These include failures to secure customer initials on the payment choice portion of the form, failures to obtain customer signatures on the form acknowledging receipt of goods, and failures to record, or properly record employee hours.

¹⁸ Examination of a sample of the company's bills of lading from August 2005 shows the company did begin to use a new, corrected form during that month. However, Brooks continued to use the older form as well during August 2005.

¹⁹ Exhibit No. 18.

- 53 Mrs. Brooks testified that these failures are a matter of “human error” committed by people who, by and large, are not college educated and who are tired at the end of a long work day.²¹ Mrs. Brooks also testified that the company has made efforts to educate its workforce concerning how to fill out the bills of lading.
- 54 The bill of lading is a one page form calling, in several places for no more than a check mark on one of several choices or a customer’s initials or signature. The other information required on the form is reasonably straightforward. Arguably, the most challenging part of these forms is the requirement to perform simple addition and multiplication to arrive at moving and packing charges, and, somewhat ironically, simple multiplication to determine the amount of sales tax to assess. Checking a sample of the many bills of lading in our record, it appears Brooks’ employees have had no difficulty accurately performing these calculations. The lack of a college degree does not appear to be an impediment to Brooks’ employees when completing these forms.
- 55 While some bills of lading do reflect the end of a long day, a significant number of the incomplete bills of lading are for moves that required only three to five hours in the early part of a day. These facts considered together with the high proportion of incomplete bills of lading—nearly seventy percent during June 2005—suggest the company’s efforts to educate its workforce have not been undertaken with sufficient attention to success.
- 56 Occasional errors of the type discussed here may be overlooked or excused but a level of compliance as low as evidenced here, at about thirty percent, suggests the company does not take seriously its obligation to ensure that its employees complete the bills of lading as required. We take Staff’s recommendation to focus on a single month as exemplifying this problem and further we find there should be no penalty for those violations that occurred due to deficiencies in the bill of lading form. Those deficiencies give rise to penalties discussed above and there is no need for additional penalties in connection with that class of violation. The Commission determines that it should assess a penalty of \$4,800 for these violations.

²⁰ We note that the sample bill of lading published at Original Page No. 36 of Tariff 15-A is also deficient in this regard and so, if used, would be incomplete with respect to the requirements in the Commission’s rules concerning name, address and phone contact information.

D. Failure to Secure Cargo Insurance.

57 Brooks does not dispute that it moved household goods without cargo insurance during the first one hundred and ten days of its operations. Brooks argues that it should not be penalized for these violations at this relatively late date because Brooks was making a good faith effort to secure cargo insurance during the first few months of its operation. The delay in securing cargo insurance, Mrs. Brooks testified, was because the company is small and could not find an insurance company willing to write a policy.

58 Mr. Macomber told Brooks that cargo insurance was required and emphasized it was important for Brooks to obtain such insurance. Mr. Macomber did not inform Brooks that it had to stop operating until it obtained cargo insurance.²² Mr. Macomber testified:

I was there to assist her. I wasn't there to tell her to stop. I wasn't there in an enforcement mode. I was there in a technical assistance mode. I wasn't there to shut her down. I basically reported what I found, and that was my job during this technical assistance was to report all the pluses and minuses with regards to their operation so that they could make corrections.²³

Thus, the Commission was aware that Brooks' was operating without cargo insurance as a result of Mr. Macomber's interactions with the company in August and October 2004. WAC 480-15-140 provides that "[t]he commission will institute appropriate enforcement action against violators based on information collected by its staff." Yet, as Brooks points out, the Commission took no enforcement action against Brooks at the time.

59 WAC 480-15-550 provides that transportation of household goods without the required cargo insurance coverage means the carrier "will be subject to immediate compliance action as described in WAC 480-15-430." (emphasis supplied). The

²¹ TR. 132:10-133:8.

²² TR. 106:8-10; 106:18-107:3 (Macomber cross-examination).

²³ TR. 106:21-107:3 (Macomber cross-examination).

Commission did not immediately initiate a compliance action on either occasion when it became aware the company was providing transportation of household goods without the required insurance. Brooks contends these circumstances suggested the Commission's tolerance, if not its tacit approval of the company's lack of insurance as long as Brooks continued to make a conscientious effort to obtain the insurance.

60 Eventually, using a list of possible insurers provided by Mr. Macomber, Brooks did secure the required insurance. There is no evidence in the record that suggests the company has not maintained the required coverage since it was first obtained.

61 Given that the Commission was aware of this violation at the time of its occurrence, yet took no action; given that Brooks appears to have been making a good faith, ultimately successful effort to secure coverage during the first 110 days of its operations, and considering that Brooks subsequently has maintained the required insurance, the Commission finds that it should not assess penalties for this violation.

FINDINGS OF FACT

62 Having discussed above all matters material to the Commission's decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the Commission's ultimate decisions are incorporated by this reference.

63 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of intrastate household goods carriers.

64 (2) Boots, Inc., d/b/a Brooks A & A Moving conducts business as a motor carrier of freight transporting household goods for compensation over the highways of this state and thus conducts a business affected with a public interest that is subject to regulation by the Commission.

65 (3) During the period August 2004 through August 2005 Brooks assessed charges for sales tax on bills of lading memorializing moves of household goods in Washington on six hundred and fifty-six occasions. Brooks was on notice

from the Commission during this period that such charges were not allowed under the governing tariff, Commission Tariff 15-A.

- 66 (4) During the period April 2005 through July 2005 Brooks used a deficient bill of lading form when memorializing moves of household goods in Washington on two hundred and twenty-one occasions. Brooks had express guidance from the Commission, including a detailed letter from the Commission's Executive Secretary dated March 25, 2005, specifying precisely what the company needed to do to comply with all required contents for a bill of lading used in connection with household goods moves conducted in Washington.
- 67 (5) On forty-eight occasions during the month of June 2005 Brooks failed to complete the bill of lading form required for each of the household goods moves it performed in Washington.

CONCLUSIONS OF LAW

68 Having discussed above in detail all matters material to the Commission's decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the Commission's ultimate decisions are incorporated by this reference.

- 69 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 70 (2) Brooks willfully violated Tariff 15-A on six hundred and fifty-six occasions during the period August 2004 through August 2005 by charging customers for sales tax, charges the Commission informed Brooks were not lawful charges. Brooks is subject to penalties of \$65,600 under RCW 81.04.405 for these violations. The Commission concludes it should assess penalties in that amount.
- 71 (3) Brooks willfully violated the Commission's rules that set forth the required contents for bills of lading used in connection with household goods moves in

Washington during the period April 2005 through July 2005 on two hundred and twenty-one occasions. Brooks is subject to penalties of \$22,100 under RCW 81.04.405 for these violations. The Commission concludes it should assess penalties in that amount.

- 72 (4) Brooks violated the Commission's rules by failing to complete the bill of lading form required for household goods moves it performed in Washington on forty-eight occasions during the month of June 2005. Brooks is subject to, and the Commission concludes it should assess, penalties in the amount of \$4,800 for these violations.
- 73 (5) The Commission should retain jurisdiction to effectuate the terms of this order.

ORDER

THE COMMISSION ORDERS That

- 74 (1) Boots, Inc. d/b/a Brooks A & A Moving must pay a penalty of \$65,600 within 30 days after the date on which this Initial Order becomes a Final Order of the Commission for repeatedly and improperly charging sales tax on moving services from August 2004 through August 2005.
- 75 (2) Boots, Inc. d/b/a Brooks A & A Moving must pay a penalty of \$22,100 within 30 days after the date on which this Initial Order becomes a Final Order of the Commission for violations of Commission regulations and tariff provisions establishing the required bill of lading format to be used for household good moves in Washington.
- 76 (3) Boots, Inc. d/b/a Brooks A & A Moving must pay a penalty of \$4,800 within 30 days after the date on which this Initial Order becomes a Final Order of the Commission for violations of Commission regulations requiring complete bills of lading for household good moves performed in Washington.
- 77 (4) The Commission's Executive Secretary is authorized to approve a payment plan for Brooks to satisfy its obligations to pay penalties, if the company

demonstrates to the Executive Secretary's satisfaction an inability to pay the required amounts within the time specified in this order.

- 78 (5) The Commission retains jurisdiction to effectuate the terms of this order.

DATED at Olympia, Washington, and effective August 30, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX A

The Commission's audit of Brooks Moving economic records and business practices found the company in violation of the following state statutes, Commission rules, and Household Goods Tariff 15-A Items:

1. RCW 81.80.357 and WAC 480-15-610, which requires household goods carriers to list their permit numbers in every means of advertisement and correspondence showing the carrier's name and address.
2. WAC 480-15-490(5), which requires that household goods carriers charge the rates and charges contained in Tariff 15-A, unless the Commission has approved deviations from the tariff.
3. WAC 480-15-650(2)(b), which requires the name, company affiliation, title, and telephone number of the person preparing a written estimate.
4. WAC 480-15-650(2)(d), which requires the complete physical address of the origin, destination, and any intermediate stops of the proposed shipment be listed on the written estimate.
5. WAC 480-15-660, which requires a supplemental estimate to be issued if the circumstances surrounding the move changes to cause the estimated charges to increase.
6. WAC 480-15-670(1)(b), which, if the actual charges exceed the estimated charges, requires the household goods carrier to release the shipment of goods upon payment of one hundred and ten percent of the estimated charges.
7. WAC 480-15-670(2), which, if the actual charges exceed the estimated charges and the shipper pays one hundred and ten percent of the estimated charges, requires the household goods carrier to allow the shipper at least thirty days to pay the remaining balance.
8. WAC 480-15-680, which requires household goods carriers to provide an accurate estimate.
9. WAC 480-15-690, which states household goods carriers may not charge more than twenty-five percent above the written non-binding estimate for an hourly-rated move, or more than fifteen percent above the non-binding estimate for a mileage-rated move.
10. WAC 480-15-730, which requires household goods carriers to use the bill of lading format shown in the published tariff.
11. WAC 480-15-740, which requires household goods carriers to list specific information on the bills of lading.
12. Tariff 15-A, Item 80, Payment of Charges, which requires a household goods company to release a shipment upon payment of one hundred and ten percent of the original estimate.
13. Tariff 15-A, Item 80, Payment of Charges, which limits the amount the customer may be billed above the amount shown on the non-binding estimate.

14. Tariff 15-A, Item 80, Payment of Charges, which requires the household goods carrier to allow a customer 30 additional days to pay any amounts in excess of the original estimate.
15. Tariff 15-A, Item 85, Estimates, which requires that a supplemental estimate be issued if the cost of the move increased from the original estimate.
16. Tariff 15-A, Item 85, Estimates, which requires specific information on the estimate and supplemental estimate forms.
17. Tariff 15-A, Item 90(5), which requires that a carrier not load the customer's goods until the customer selects a valuation option and makes the appropriate notation on the bill of lading.
18. Tariff 15-A, Item 95(1)(b), which requires that carriers use a bill of lading that contains all of the information required in Item 95.
19. Tariff 15-A, Item 95(1)(o), which requires a notation that the customer was provided a copy of the Rights and Responsibilities brochure or that the customer refused a copy when it was offered.
20. Tariff 15-A, Item 95(2)(c), which requires the exact name, address, and telephone number of the consignee.
21. Tariff 15-A, Item 95(2)(d), which requires the exact location of the origin pickup point, any split pickups, stops to partially load or unload, and the final destination point of the shipment, be listed on the bill of lading.
22. Tariff 15-A, Item 95(2)(g), which requires a declaration of the type of estimate (binding or non-binding) under which the shipment is moving on the bill of lading.
23. Tariff 15-A, Item 95(2)(h), which requires a section on the bill of lading where a customer must select the type of valuation coverage under which the shipment is moving.
24. Tariff 15-A, Item 95(3), which requires that specific terms and conditions that govern the transportation of household goods be printed on the back of the bill of lading.

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition To Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250