

- 2 **Proceedings:** The staff of the Washington Utilities and Transportation Commission (Staff) identified Boots, Inc. d/b/a Brooks A & A Moving (Brooks) as an audit candidate when it reviewed consumer complaints for 2004 and found that a complaint filed against Brooks in December 2004 indicated the company was out of compliance with Commission rules as well as charging rates and charges not authorized by the household goods tariff. Staff subsequently conducted an audit and identified several areas of noncompliance in which Brooks had received previous technical assistance from Staff.
- 3 Staff determined that Brooks had violated various provisions of Chapter 480-15 WAC and of Household Goods Tariff No. 15-A by failing to: 1) Obtain cargo insurance coverage as required by WAC 480-15-550; 2) Use a bill of lading format that complies with WAC 480-150-730 and Tariff 15-A; 3) Properly complete the bill of lading in accordance with WAC 480-15-740 and Tariff 15-A, and; 4) Charge only those rates and charges that are authorized by Tariff 15-A.
- 4 Staff asks the Commission to issue a complaint against Brooks for these alleged violations and requests that, if proved, the Commission order the company to pay a penalty of \$100 for each of the cargo insurance violations, the bill of lading format and completion violations, and the violations associated with charging a credit card processing fee, not authorized in Tariff 15-A, for a total of 255 violations and a penalty of \$25,500.
- 5 In addition, Staff alleges Brooks improperly and repeatedly charged its customers sales tax for moving services, which Tariff 15-A does not authorize, and retained these funds rather than remitting them to Department of Revenue. Because Staff previously had provided the company with technical assistance on this issue, Staff asks that the Commission issue a complaint and order Brooks to come before it and show cause why the Commission should not cancel the company's household goods carrier permit. Staff also 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 seeks cancellation because education has been ineffective in the past to secure compliance and because the sales

tax overcharges represent serious actions the company persisted in taking against consumers despite Staff's technical assistance.

I. COMPLAINT

- 6 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:
- 7 The Commission exercises all the powers and performs all the duties prescribed by Titles 80 and 81 RCW. *RCW 80.01.040.*
- 8 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.
- 9 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.*
- 10 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.
- 11 The Commission is empowered to issue rules and regulations governing household goods carriers. *See RCW 81.80.290.*
- 12 Under the Commission's rules, every public service company that violates any provision of RCW Title 81 or any Commission rule, and every person or entity found in violation pursuant to a complaint under RCW 81.04.110 shall incur a penalty of one hundred dollars for every such violation. *RCW 81.04.405.*
- 13 State law provides that the Commission may cancel or suspend a household goods carrier permit for repeated violations of applicable laws and rules pertaining to operations of household goods carriers. *See RCW 81.80.280.* The Commission's

rules provide that the Commission may cancel a household goods carrier's permit for good cause, which includes repeated failure or refusal to comply with applicable laws and rules pertaining to operations of household goods carriers. *WAC 480-15-450.*

The Commission may suspend a household goods carrier's permit for good cause, which includes failure to comply with the rates and rules contained in the tariff. *WAC 480-15-430.*

- 14 The Commission may assess penalties as a tool of enforcement and remediation, or it may cancel a household goods carrier permit for serious actions including fraud or misrepresentation and for willful violation of legal requirements. *WAC 480-15-150.*
- 15 Brooks violated WAC 480-15-550 by failing to obtain cargo insurance coverage for its moving operations for one hundred and ten days after the company received operating authority on June 21, 2004.
- 16 Brooks violated WAC 480-15-730 and Tariff 15-A, Item 95, on seventy moves by failing to use a bill of lading format that complies with WAC 480-15-730 and Tariff 15-A during June 2005.
- 17 Brooks violated WAC 480-15-740 and Tariff 15-A, Item 95, by failing to properly complete the bill of lading for seventy moves to ensure that it shows all information necessary to determine the proper tariff rates and charges in compliance with WAC 480-15-740 and Tariff 15-A during June 2005.
- 18 Brooks violated WAC 480-15-490 by charging a credit card processing fee in violation of Tariff 15-A on five bills of lading in June 2005.
- 19 Brooks violated WAC 480-15-490 by charging sales tax in violation of Tariff 15-A on forty-five bills of lading in January 2005, forty-one bills of lading in February 2005, forty-two bills of lading in March 2005, thirty-nine bills of lading in April 2005, and sixty-nine bills of lading in June 2005.
- 20 Based on the Commission's files and records, and on Staff's 2005 audit, Brooks has committed 255 violations of Commission rules and tariff provisions and is subject to a \$100 penalty for each violation for a total of \$25,500.

21 Based on the Commission's files and records, and on Staff's 2005 audit, Brooks repeatedly violated Commission rules and Tariff 15-A by charging customers sales tax for moving services, even though the company knew the charges are not authorized in Tariff 15-A. Brooks' customers paid sales tax on moving services, but the company kept the money it collected as sales tax and did not remit it to the state. This conduct is a willful violation of law and/or includes fraud or misrepresentation.

II. NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING

22 The Commission, by this notice, sets a prehearing conference and 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 81.04.405, RCW 81.80.130, RCW 81.80.280, 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, WAC 480-15-430, and WAC 480-15-450.

23 **THE COMMISSION GIVES NOTICE That a prehearing conference in this matter will be held on Monday, June 12, 2006, 1:30 p.m., in Room 108, First Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** The purpose of the prehearing conference is to obtain all bills of lading, with the exception of those from the months of January, February, March, April, and June 2005, for intrastate residential moves conducted by Boots, Inc. d/b/a Brooks A & A Moving since June 21, 2004, and to discuss procedural issues.

24 **THE COMMISSION GIVES FURTHER NOTICE That a hearing in this matter will be held on Wednesday, July 12, 2006, 1:30 p.m., in Room 108, First Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. If you are unable to attend the hearing in person, you may attend**

via the Commission's teleconference bridge line, 360-664-3846. Please appear on the teleconference bridge five minutes before the hearing is scheduled to begin.

25 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.

26 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.

27 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

28 Dennis J. Moss is appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, and will preside at the hearing.

III. ORDER

THE COMMISSION ORDERS That

- 29 (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 repeatedly and improperly charging sales tax on moving services during January, February, March, April, and June 2005 or for collecting sales tax improperly charged during those months and retaining the funds.
- 30 (2) 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 require Brooks to refund to its customers the sales tax improperly charged for all moves performed in January, February, March, April, and June of 2005.
- 31 (3) In addition, Boots, Inc. d/b/a Brooks A & A Moving must come before the Commission pursuant to WAC 480-15-130(2)(a) and answer the Commission's complaint regarding the company's failure to comply with Commission regulations and tariff provisions covering cargo insurance coverage, the required bill of lading format, proper completion of the bill of lading, and charges for items, such as credit card processing fees, not listed in the tariff, for which Commission Staff recommends penalties totaling \$25,500.
- 32 (4) Under WAC 480-15-130(2)(a), the burden is on the company to prove that its carrier permit should not be suspended or cancelled, and that it should not refund the improper charges for sales tax to its customers; the burden is on the Commission to prove that the violations regarding cargo insurance, the format and completion of the bill of lading, and charges for credit card processing occurred.

33 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 May 26, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

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.: (____) _____