



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

March 6, 2018

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. ANC Movers, Inc.*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TV-180095

Dear Mr. King:

On January 19, 2018, Motor Carrier Safety Investigator Wayne Gilbert completed a routine safety investigation of ANC Movers, Inc. (ANC Movers). A safety investigation is an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."<sup>1</sup> Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls.

Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Gilbert documented thirteen violations of critical regulations, all of which were first-time violations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy, however, provides that some Commission requirements are so critical to safe operations that it may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.<sup>3</sup>

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<sup>1</sup> Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

<sup>2</sup> *Id.*

<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On February 22, 2018, the Commission issued a penalty assessment against ANC Movers in the amount of \$1,100 for violation of WAC 480-15-555 Criminal Background Checks for Prospective Employees, WAC 480-15-560 – Equipment Safety Requirements and WAC 480-15-570 – Driver Safety Requirements, which adopt Title 49 Code of Federal Regulations (CFR) Part 391 – Qualification of Drivers and Part 396 – Inspection, Repair and Maintenance, as follows:

- **Nine violations of WAC 480-15-555 – Criminal background checks for prospective employees.** ANC Movers failed to conduct and keep evidence of criminal background checks on nine employees: Brian Haack, Cole Young, Elijah Phillips, Erin Lawson, Jennifer Alexander, Joshua Egan, Nathan Stiles, Tyler Stephens, and Tyler Tunnell.
- **Two violations of Title 49 CFR Part 391.51(b) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** ANC Movers failed to retain inquiries into driving records in the driver's qualification files of two employees, Brian Gibbens and Seth Copeland.
- **Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** ANC Movers failed to keep required inspection and maintenance records on its two commercial motor vehicles.

On February 26, 2018, ANC Movers filed with the Commission its application for mitigation of penalties (Mitigation Request). Peter Clarke, owner of ANC Movers, admitted the violations and asked that the penalties be reduced for the reasons set out in staff's response. Staff provides its response below:

- **Mitigation Request: WAC 480-15-555 – Failing to conduct and keep evidence of criminal background checks.** ANC Movers' request for mitigation did not address this violation. However, in the company's 15-day response letter to the Commission, ANC Movers stated that it will comply with FMCSA regulations and will implement Corrective Action and Safety Programs to ensure compliance. When ANC Movers realized the company was out of compliance, it corrected the violations by conducting background checks on all current employees and terminating one employee found to have prohibited criminal conduct within the past five years. ANC Movers also implemented the services of CDS Safety and Compliance LLC as well as hiring specific personnel to work directly with CDS and the UTC to maintain background checks for all personnel and meet the standard needed for household good carriers.

**Staff Response:** It is ANC Movers' responsibility to conduct and maintain evidence of criminal background checks, and not employ drivers found to have prohibited criminal

conduct within the past five years. ANC Movers, however, promptly corrected these violations prior to the investigation being closed. Therefore, staff recommends the Commission reduce the penalty to \$400.

- **Mitigation Request: Title 49 CFR Part 391 – Failing to maintain inquiries into driver’s driving record in the driver’s qualification file.** ANC Movers’ request for mitigation did not address this violation. However, in the company’s 15-day response letter to the Commission, ANC Movers stated that it will comply with FMCSA regulations. ANC Movers will implement Corrective Action and Safety Programs to ensure compliance.

**Staff Response:** It is ANC Movers’ responsibility to maintain inquiries into driver’s driving record in the driver’s qualification file, and ensure the qualification file includes all the required driver documentation. ANC Movers has taken steps to correct these violations. However, because the Commission assessed a penalty of \$100 for one violation of this type, staff recommends no further mitigation.

- **Mitigation Request: Title 49 CFR Part 396 – Failing to keep minimum records of inspection and vehicle maintenance.** ANC Movers’ request for mitigation did not address this violation. However, in the company’s 15-day response letter to the Commission, ANC Movers stated that it will comply with FMCSA regulations. ANC Movers will implement Corrective Action and Safety Programs to ensure compliance.

**Staff Response:** It is ANC Movers’ responsibility to maintain records for each motor vehicle they control for 30 consecutive days, and include all required documentation in the records. ANC Movers has taken steps to correct these violations. However, because the Commission assessed a penalty of \$100 for one violation of this type, staff recommends no further mitigation.

**Staff recommendation:** Staff appreciated ANC Movers’ positive attitude toward safety compliance and willingness to take responsibility for and correct safety violations. ANC Movers is a small company with two drivers and two commercial vehicles. In 2017, the company reported \$430,112 in gross revenue and 22,577 miles traveled.

Staff recommends mitigating the total penalty from \$1,100 to \$600.

If you have any questions, please contact Justin Raub, Compliance Investigator, Consumer Protection, at (360) 664-1108, or by e-mail at [justin.raub@utc.wa.gov](mailto:justin.raub@utc.wa.gov).

Sincerely,



Bridgit Feeser  
Assistant Director, Consumer Protection