

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against ANC MOVERS, INC. in the amount of \$1,100	DOCKET TV-180095 ORDER 01 GRANTING MITIGATION TO \$600
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BACKGROUND

- 1 On February 22, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,100 penalty (Penalty Assessment) against ANC Movers, Inc. (ANC Movers or Company) for 13 critical violations of Washington Administrative Code (WAC) 480-15-555, and WAC 480-15-560 through 570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes a \$900 penalty for nine violations of WAC 480-15-555 related to criminal background checks for prospective employees; a \$100 penalty for two violations of 49 C.F.R. Part 391.51(b) related to related to driver qualification files; and a \$100 penalty for two violations of 49 C.F.R. Part 396.3(b) related to vehicle inspection and maintenance records.
- 2 On February 26, 2018, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained the violations were not intentional and that it misunderstood the rules. The Company further explained that it took corrective action, including working with a safety consultant and hiring a safety trainer.
- 3 On March 6, 2018, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends the Commission reduce the assessed penalty from \$1,100 to \$600 because the Company promptly corrected the first time violations prior to the closure of the investigation.

¹ WAC 480-15-560 and -570 adopt by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

DISCUSSION AND DECISION

- 4 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as “critical” meet this standard.⁴
- 5 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.⁵ We address each violation category in turn.
- 6 **WAC 480-15-555.** The Penalty Assessment includes a \$900 penalty for nine violations of WAC 480-15-555 because the Company failed to conduct and keep evidence of criminal background checks for nine employees. The Company admitted the violation and explained generally that it took corrective action.
- 7 Staff recommends that the Commission reduce the penalty from \$900 to \$400 because the Company promptly corrected these violations prior to the closure of the investigation. The Company conducted background checks on all current employees and terminated one employee who was convicted of prohibited criminal conduct within the last five years. Staff also notes that the Company stated in its 15-day response letter to the Commission that it will comply with FMCSA regulations and implement corrective action and safety programs to ensure compliance. We agree with Staff’s recommendation and assess a reduced penalty of \$400. Mitigation of this penalty is appropriate because this is a first-time violation and the Company promptly corrected the violation.
- 8 **49 C.F.R. Part 391.51(b).** The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. 391.51(b) because the Company failed to retain inquiries into

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

driving records in the driver qualification files of two employees. The Company's request for mitigation did not specifically address this violation.

9 Staff recommends no mitigation of this portion of the penalty. We agree. Because these were first-time violations, the Commission assessed a penalty per type of violation rather than per occurrence. We conclude no further penalty reduction is warranted.

10 **49 C.F.R. Part 396.3(b).** The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. Part 396.3(b) because the Company failed to keep required inspection and maintenance records for its two commercial motor vehicles.

11 Staff recommends no mitigation of this portion of the penalty. We agree. Because these were first time violations, the Commission assessed a penalty per type of violation rather than per occurrence. We conclude no further penalty reduction is warranted.

FINDINGS AND CONCLUSIONS

12 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.

13 (2) ANC Movers is a household goods carrier subject to Commission regulation.

14 (3) ANC Movers violated WAC 480-15-555 when it failed to conduct and keep evidence of criminal background checks for nine employees.

15 (4) The Commission should penalize ANC Movers \$400 for nine violations of WAC 480-15-555.

16 (5) ANC Movers violated 49 C.F.R. Part 391.51(b), when it failed to retain inquiries into driving records in the driver qualification files of two employees.

17 (6) The Commission should penalize ANC Movers \$100 for two violations of 49 C.F.R. 391.51(b).

18 (7) ANC Movers violated 49 C.F.R. Part 396.3(b) when it failed to keep required inspection and maintenance records on its two commercial vehicles.

19 (8) The Commission should penalize ANC Movers \$100 for two violations of 49C.F.R. Part 396.3(b).

- 20 (9) The Commission should assess a total penalty of \$600 for 13 violations of
WAC480-15 and Title 49 C.F.R.

ORDER

THE COMMISSION ORDERS:

- 21 (1) ANC Movers, Inc.'s request for mitigation of the \$1,100 penalty is GRANTED,
in part, and the penalty is reduced to \$600.
- 22 (2) ANC Movers must pay the \$600 penalty within 10 days of the effective date of
this order.
- 23 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective March 21, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for
decision. As authorized in WAC 480-07-904(3), you must file any request for
Commission review of this order no later than 14 days after the date the decision is
posted on the Commission's website.**