

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against  MIRACLE MAN MOVERS, LLC  In the amount of \$8,000	DOCKET TV-220511  ORDER 04
In the Matter of the Investigation of  MIRACLE MAN MOVERS, LLC  For Compliance with WAC 480-15-555, WAC 480-15-560, WAC 480-15-570, and WAC 480-15-590	DOCKET TV-230503  ORDER 02  APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING TO SATISFACTORY; ASSESSING AND SUSPENDING PENALTY

**BACKGROUND**

- 1 On September 9, 2022, in Docket TV-220511, the Washington Utilities and Transportation Commission (Commission) imposed on Miracle Man Movers, LLC (Miracle Man or Company) an \$8,000 penalty for violations of the regulations governing the safe operation of household goods carriers. The Commission later suspended a \$5,000 portion of that penalty by order dated October 11, 2022, conditioned upon, among other things, Miracle Man's avoidance of repeat critical violations of the Commission's safety rules for a period of two years.
- 2 On July 13, 2023, in Docket TV-230503, the Commission, through its regulatory staff (Staff), complained against Miracle Man for new violations of the Commission's household goods carrier safety rules. Some of the violations alleged by Staff were repeat critical violations. The matter was set for hearing in August 2023.
- 3 On July 25, 2023, Staff filed a Motion to Consolidate (Motion to Consolidate) Dockets TV-220511 and TV-230503, arguing that the dockets shared related facts and that consolidation would serve judicial economy. Staff notes as well that if the Commission finds that the Company committed repeat critical violations that it should impose the portion of the penalty suspended in Docket TV-220511.

4 On July 27, 2023, the Commission held a prehearing conference before administrative law judge Rayne Pearson. In an oral ruling, Judge Pearson granted Staff's Motion to Consolidate. There was no objection from the Company to consolidation. Judge Pearson noted that the issue of whether further penalties should be imposed was reserved for the evidentiary hearing set for August 8, 2023.

5 On August 8, 2023, the Commission convened an evidentiary hearing before administrative law judge Pearson. Staff presented testimony from special investigator Sandra Yeomans recommending that the \$5,000 suspended penalty from TV-220511 be imposed for repeat critical violations. Staff further recommended the Commission impose \$48,500 in new penalties based on the investigative findings as follows:

- Four violations of WAC 480-15-555(1) for failure to complete a criminal background check for every person the carrier intends to hire. Staff recommend a penalty of \$500 for each occurrence of this repeat critical violation, for a total of \$2,000.
- Fifteen violations of WAC 480-15-590 for failure to meet all conditions for leasing vehicles. Staff recommend a penalty of \$100 for each occurrence of this repeat violation for a total of \$1,500.
- One violation of 49 C.F.R. § 391.11(b)(8) for using a driver who has not taken a road test or who has not been issued a certificate of driver's road test or presented an operator's license, or certificate of road test which the motor carrier accepted as equivalent. Staff recommend a \$100 penalty for this repeat violation.
- Four violations of 49 C.F.R. § 391.21(a) for using a driver who had not completed and furnished an employment application. Staff recommend a penalty of \$100 for each occurrence of this violation, for a total of \$400.
- Four violations of 49 C.F.R. § 391.23(a)(2) for failing to investigate driver's performance history with Department of Transportation regulated employers during the preceding three years. Staff recommend a \$100 penalty for this repeat violation.
- Three violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. Staff recommend a penalty of \$100 for each occurrence of this repeat critical-type violation, for a total of \$300.
- Fourteen violations of 49 C.F.R. § 395.3(b)(2) for permitting a property-carrying commercial motor vehicle driver to drive after having been on

duty 70 hours in eight consecutive days. Staff recommend a penalty of \$1,000 for each occurrence of this repeat critical-type violation, for a total of \$14,000.

- Sixty violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to make a record of duty status. Staff recommend a penalty of \$500 for each occurrence of this repeat critical violation, for a total of \$30,000.
- One violation of 49 C.F.R. § 395.8(j)(2) for failure to obtain from driver, used for the first time or intermittently, a signed statement giving the total time on duty during the preceding seven days and time at which last relieved from duty. Staff recommend a \$100 penalty for this repeat violation.<sup>1</sup>

6 Further, Staff testified that the Miracle Man Movers had not submitted an acceptable SMP.<sup>2</sup> Staff notified the presiding administrative law judge that the Company's provisional permit would be cancelled on August 15 and that Staff's scheduling would not allow for review of any further submissions of the SMP prior to the cancellation date. Because of Staff's availability, the administrative law judge directed Staff to allow for an additional week for the Company to submit and have its SMP reviewed and for Staff to submit a final evaluation of the SMP by 5:00 p.m. on August 25. Staff witness Jason Sharp recommended that the Commission impose the \$5,000 portion of the previously suspended penalty in Docket TV-220511 and that the Commission should furthermore assess \$48,500 in additional penalties based on the July 2023 investigation.<sup>3</sup>

7 Company owner Anna Bullock acknowledged that the Company has had a "tough time working to create processes that would allow us to be fully compliant."<sup>4</sup> Bullock noted, however, that the Company attempted to give back to the community, attended various trainings, and requested additional time to provide an acceptable SMP.<sup>5</sup> The Company also provided testimony from Chris Bullock, who largely acknowledged the violations documented in the Compliance Review.<sup>6</sup>

8 On August 22, 2023, the Commission issued a Notice of Substitution of Presiding Officer, assigning this matter to administrative law judge Michael Howard.

9 The same day, August 22, the Company submitted an updated SMP to Staff.

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<sup>1</sup> See generally Yeomans, Exh. SY-1 (Compliance Review).

<sup>2</sup> Sharp, TR 39:3-10.

<sup>3</sup> *Id.* at 39:23-25.

<sup>4</sup> Bullock, TR 45:4-7.

<sup>5</sup> *Id.* at 45:8-48:2.

<sup>6</sup> See Bullock, Chris TR 27:2-10.

10 On August 25, 2023, Staff filed its evaluation of the Company's Safety Management Plan (Evaluation). Staff submits that the Company provided an updated SMP that addressed each of the critical violations found during the earlier safety investigation. Staff submits that the SMP addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.

11 In its Evaluation, Staff recommends the Commission accept Miracle Man Movers SMP. Staff further recommends that the Commission not cancel the Company's provisional permit and extend the provisional period a third time subject to the following conditions:

- Miracle Man Movers sends all employees named in its SMP as responsible for maintaining safety compliance to Commission sponsored household goods industry safety training, either through the Commission's online learning system or the live virtual class provided by Staff, no later than December 31, 2023;
- Staff conduct a follow-up safety investigation at least six months from the date of an Order;
- Miracle Man Movers must obtain a satisfactory safety rating following the investigation;
- Upon reinspection, the Company may not incur any repeat violations of critical regulations; and
- Failing to meet any of these conditions would constitute grounds for cancellation of the Company's provisional permit.

12 Regarding the penalty recommendation, Staff argues that the Company incurred repeat violations despite operating with a previously approved SMP. Staff reaffirms its recommendation that the Commission impose the \$5,000 suspended penalty in Docket TV-220511 and assess a penalty of \$48,500 for discovered violations. Staff further recommends the Commission suspend a \$26,900 portion of the recommended penalty for a period of two years, and then waive it, subject to the following conditions:

- Miracle Man Movers does not incur repeat violations of critical-type regulations within the suspension period; and

- The Company pays the \$21,600 portion of the penalty that is not suspended through a mutually agreeable payment arrangement approved by Staff.

## DISCUSSION

13 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's June 2023 compliance review of Miracle Man found two categories of repeat critical violations, which resulted in a proposed conditional safety rating. We rule on each of the issues presented in these consolidated dockets.

### A. Whether the Company's updated SMP should be approved

14 On August 22, 2023, the Company submitted its updated SMP and requested the Commission upgrade its safety rating. Staff determined that Miracle Man's SMP addresses each violation, identified how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. Staff concludes that Miracle Man's SMP is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.

15 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with 49 C.F.R. § 395.8(a)(1), by correcting the violations that led to the proposed conditional safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to satisfactory. The Commission declines to cancel the Company's permit and operating authority.

16 We also agree with Staff's recommendation to extend the Company's provisional period for its household goods operating authority. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. In this case, Staff recommends that the Commission extend the Company's provisional period a third time subject to conditions. The Commission therefore finds good cause to extend the Company's provisional period subject to the conditions proposed by Staff in paragraph 11 of this Order.

**B. Whether the Company committed the violations alleged by Staff**

- 17 We have carefully considered the written submissions in this docket as well as the testimony at the August 8, 2023, evidentiary hearing. After considering all of this evidence, we find that the Company incurred each of the violations noted by Staff in paragraph 5 of this Order and documented in Yeomans, Exh. SY-1.
- 18 Indeed, the Company largely admitted the violations at issue or declined to dispute Staff's findings.<sup>7</sup> The Company specifically admitted several violations including its failures to maintain records of duty status.<sup>8</sup> We therefore adopt Staff's recitation of violations, as noted in paragraph 5 of this Order, as the Commission's own findings.
- 19 To the limited extent the Company disputed the violations documented in the Compliance Review, we do not find these arguments persuasive. Anna Bullock testified, for instance, that the background check for one driver, Dayton, was delayed and that the Company later provided this to Staff.<sup>9</sup> But Yeomans documented that the Company acquired Dayton's background check only after he was hired.<sup>10</sup> This was not sufficient under the plain terms of WAC 480-15-555.
- 20 Bullock also testified that the Company only leased from Penske and suggested that special investigator Yeomans did not have access to the electronic records of leases.<sup>11</sup> However, the pertinent regulation, WAC 480-15-590, requires a physical or digital copy of the lease agreement to be kept in the motor vehicle, and Yeomans documented that this was not provided for the driver and vehicle she checked.<sup>12</sup>

**C. Whether a penalty should be imposed**

- 21 The remaining issue is whether the Company should be penalized and, if so, in what amount. Staff recommends that the Commission impose the \$5,000 suspended penalty in Docket TV-220511 and assess a penalty of \$48,500 for discovered violations, suspending a \$26,900 portion of the recommended penalty for a period of two years, and then waiving it, subject to the conditions noted above in paragraph 12. Although the Company admitted its struggles with compliance and emphasized its sense of responsibility, the Company did not directly respond to this penalty recommendation at the evidentiary hearing.

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<sup>7</sup> See, e.g., Bullock, TR 28:5-8.

<sup>8</sup> Bullock, TR 29:24-25 ("The second one, number two, record duty of status, I agree with that 100 percent.").

<sup>9</sup> Bullock, TR 29:12-21.

<sup>10</sup> See Yeomans, Exh. SY-1 at 15.

<sup>11</sup> Bullock, TR 30:9-15.

<sup>12</sup> See Yeomans, Exh. SY-1 at 3.

- 22 The Commission considers several factors when deciding the level of penalty to impose, including, *inter alia*, how harmful or serious the violation is to the public, whether the violation was intentional, whether the company promptly corrected the violation, the likelihood of recurrence, the company's past performance, and the size of the company.<sup>13</sup>
- 23 Similarly, the Commission considers various factors when entertaining a request for suspending all or part of a penalty. The Commission considers whether it was a first-time violation, whether the company agreed to a compliance plan, and whether other circumstances warrant suspending the penalty.<sup>14</sup>
- 24 In this case, we find that several factors weigh against mitigation. Many of these violations are serious or potentially harmful to the public. Indeed, the majority of Staff's recommended penalty is attributable to two critical violation categories: (1) a penalty of \$14,000 for fourteen violations of 49 C.F.R. § 395.3(b)(2) for permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in eight consecutive days and (2) a penalty of \$30,000 for sixty violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to make a record of duty status. The Company's persistent failure to maintain records of duty status make it difficult to determine whether the Company is complying with limitations on driver duty hours, which is particularly troublesome given the violations of 49 C.F.R. § 395.3(b)(2) based on the information available to Yeomans.
- 25 We find that these violations were intentional. Previous violations of the same or similar regulations may support a finding of intentionality.<sup>15</sup> As Sharp and Yeomans both testified, the most recent investigation identified several areas of repeat violations.<sup>16</sup> For example, Sharp noted that the Company incurred 14 violations of 49 C.F.R. 395.3(b)(2) by allowing a driver to operate a commercial motor vehicle after having been on duty for 70 hours in eight consecutive days.<sup>17</sup> This was the third consecutive investigation to document violations of this regulation.<sup>18</sup> The numerous areas of repeat violations are perhaps the most concerning and significant factor as we consider the evidence in this case.

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<sup>13</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 15. (January 7, 2013).

<sup>14</sup> Enforcement Policy ¶ 20.

<sup>15</sup> Enforcement Policy ¶ 15.

<sup>16</sup> *E.g.*, Sharp, TR 38:16-21.

<sup>17</sup> *Id.* at 41:9-19.

<sup>18</sup> *Id.*

26 However, the evidence does indicate that a limited number of violations were *not* willful or intentional. Anna Bullock testified that she would review drivers' license abstracts each July consistent with an earlier SMP.<sup>19</sup> Because the recent compliance review was conducted in June, she had not yet performed this review.<sup>20</sup> Bullock's testimony on this issue was not undermined by any cross-examination or any contrary, persuasive testimony from Commission investigators. Bullock's testimony on this issue is credible and weighs in favor of fully mitigating the \$300 penalty proposed for three violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.

27 The remaining factors under the Enforcement Policy generally weigh against mitigation. Although the Company appears cooperative and responsive, the evidence also indicates that the Company's history of violations across three compliance reviews suggests that the likelihood of recurrence is quite high. This factor also weighs against suspending a greater portion of the penalty than what has been recommended by Staff.

28 After considering all of these factors, we find that some mitigation is warranted given our finding in paragraph 27 of this Order. The Commission therefore imposes the \$5,000 suspended penalty in Docket TV-220511. The Commission also assesses a penalty of \$48,200 for discovered violations, which reflects Staff's recommended amount minus the \$300 mitigated above in paragraph 26. The Commission suspends a \$26,900 portion of the \$48,200 penalty for a period of two years, and then waives it, subject to the conditions noted above in paragraph 12.

### FINDINGS AND CONCLUSIONS

- 29 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 30 (2) Miracle Man is a household goods carrier subject to Commission regulation.
- 31 (3) Miracle Man committed four violations of WAC 480-15-555(1) for failure to complete a criminal background check for every person the carrier intends to hire.
- 32 (4) Miracle Man committed fifteen violations of WAC 480-15-590 for failure to meet all conditions for leasing vehicles.

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<sup>19</sup> Bullock, TR 31:6-14.

<sup>20</sup> *Id.*



- 33 (5) Miracle Man committed one violation of 49 C.F.R. § 391.11(b)(8) for using a driver who has not taken a road test or who has not been issued a certificate of driver's road test or presented an operator's license, or certificate of road test which the motor carrier accepted as equivalent.
- 34 (6) Miracle Man committed four violations of 49 C.F.R. § 391.21(a) for using a driver who had not completed and furnished an employment application.
- 35 (7) Miracle Man committed four violations of 49 C.F.R. § 391.23(a)(2) for failing to investigate driver's performance history with Department of Transportation regulated employers during the preceding three years.
- 36 (8) Miracle Man committed three violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- 37 (9) Miracle Man committed fourteen violations of 49 C.F.R. § 395.3(b)(2) for permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in eight consecutive days.
- 38 (10) Miracle Man committed sixty violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to make a record of duty status.
- 39 (11) Miracle Man committed one violation of 49 C.F.R. § 395.8(j)(2) for failure to obtain from driver, used for the first time or intermittently, a signed statement giving the total time on duty during the preceding seven days and time at which last relieved from duty.
- 40 (12) Miracle Man cured the deficiencies that led to the proposed conditional safety rating.
- 41 (13) Miracle Man's updated SMP submitted on August 22, 2023, should be approved subject to the conditions proposed by Staff, as noted in paragraph 11 of this Order, and the Company's provisional period should be extended a third time.
- 42 (14) The Commission should impose the \$5,000 suspended penalty in Docket TV-220511.
- 43 (15) The Commission should assess a penalty of \$48,200 for discovered violations, suspending a \$26,900 portion of the \$48,200 penalty for a period of two years, and then waiving it, subject to the conditions noted above in paragraph 12.

**ORDER**

**THE COMMISSION ORDERS:**

- 44 (1) The Commission approves Miracle Man Movers, LLC's safety management plan  
subject to the conditions noted in paragraph 11 of this Order.
- 45 (2) Miracle Man Movers, LLC's provisional period is extended a third time.
- 46 (3) The \$5,000 suspended penalty in Docket TV-220511 is immediately due and  
payable by Miracle Man Movers, LLC, following the effective date of this Order.
- 47 (4) Miracle Man Movers, LLC is assessed a penalty of \$48,200, of which \$26,900 is  
suspended, subject to the conditions noted in paragraph 12 of this Order.

DATED at Lacey, Washington, and effective September 11, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Michael Howard*

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MICHAEL HOWARD

Administrative Law Judge

### NOTICE TO 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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) 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) 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 fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).