

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

| | |
|--|---|
| <p>In the Matter of the Investigation of MIRACLE MAN MOVERS, LLC, For Compliance with WAC 480-15-555, and WAC 480-15-570</p> | <p>DOCKET TV-220511 ORDER 02</p> |
| <p>In the Matter of the Penalty Assessment Against MIRACLE MAN MOVERS, LLC, In the amount of \$8,000</p> | <p>APPROVING SAFETY MANAGEMENT PLAN; MAINTAINING SAFETY RATING; EXTENDING PROVISIONAL PERIOD; IMPOSING AND SUSPENDING PENALTIES</p> |

BACKGROUND

- 1 On September 13, 2022, the Washington Utilities and Transportation Commission (Commission) issued a Revised Notice of Intent to Cancel Certificate as a Household Goods Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Miracle Man Movers, LLC, (Miracle Man Movers or Company) For Compliance with Washington Administrative Code (WAC) 480-15-555 and WAC 480-15-570 in Docket TV-220511 (Notice of Intent to Cancel). The Notice of Intent to Cancel set a Brief Adjudicative Proceeding for October 5, 2022, at 2:30 p.m.
- 2 On September 9, 2022, the Commission assessed a revised \$8,000 penalty (Penalty Assessment) in Docket TV-220511 against Miracle Man Movers for 92 violations of Washington Administrative Code (WAC) Chapter 480-15, which adopts by reference Title 49 of the Code of Federal Regulations (49 C.F.R.) Part 391, Part 395, and Part 396.¹

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

3 The Commission conducted a virtual brief adjudicative proceeding on October 5, 2022, before Administrative Law Judge Samantha Doyle. At the hearing, the Company stated it submitted its proposed safety management plan earlier that day and requested mitigation of the penalty.

4 Commission staff (Staff) presented testimony from Jason Sharp, transportation planning specialist. Staff witness Sharp provided documentation about the critical safety violations that resulted in Staff's proposed "conditional" safety rating for Miracle Man Movers. Staff documented multiple violations during its August 2022 follow-up safety investigation and made the following penalty recommendations:

- A \$1,400 penalty for 14 violations of WAC 480-15-555 for failing to acquire a criminal background check for a prospective employee.
- A \$100 penalty for two violations of WAC 480-15-590 for failing to keep copies of all leases in permanent files for at least one year after the lease expires.
- A \$100 penalty for two violations of 49 C.F.R. § 391.21(a) for using a driver who has not completed and furnished an employment application.
- A \$100 penalty for one violation of 49 C.F.R. § 391.25(a) for failing to make an inquiry into the driving record of each driver to the appropriate state agencies at least every 12 months.
- A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver.
- A \$100 penalty for 10 violations of 49 C.F.R. § 395.3(b)(2) for requiring or permitting property carrying CMV driver to drive after being on duty 70 hours in eight consecutive days.
- A \$6,000 penalty for 60 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method.
- A \$100 penalty for two violations of 49 C.F.R. § 396.17(g) for failing to promptly repair parts and accessories in accordance with Appendix G of 49 C.F.R. Part 396.

5 Staff witness Sharp presented testimony and evidence related to the Commission's enforcement policy. At the hearing, Sharp stated the Company's proposed safety management plan was filed earlier that day, and that Staff had not yet reviewed it. Accordingly, Staff recommended canceling the Company's permit if Miracle Man Movers failed to file an appropriate plan prior to the October 11, 2022, deadline.

6 Miracle Man Movers presented testimony from Ann Bullock, Company compliance specialist, who admitted the violations but requested the penalty be mitigated. Bullock explained that the Company has since worked with Staff to develop a compliance plan to

prevent recurring violations.

- 7 Sharp testified for Staff in response to the Company's request for mitigation and proposed safety management plan. With respect to the penalty assessed, Staff recommends the Commission assess the full penalty of \$8,000 because Staff discovered repeat violations. However, Staff stated it would potentially recommend suspending a portion of the penalty if the Company's safety management plan was acceptable.
- 8 On October 7, 2022, Staff filed its evaluation of the Company's plan. Staff recommends the Commission (1) maintain the Company's safety rating as conditional and allow Miracle Man Movers to continue operating as a household goods carrier, and (2) extend the Company's provisional period until such time that the Company achieves a satisfactory safety rating. Because the Company corrected each violation and took steps to prevent future occurrences, Staff recommends the Commission suspend a \$5,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order; (2) the Company must not incur any repeat critical violations upon re-inspection; and (3) the Company must pay the \$3,000 portion of the penalty that is not suspended within 10 days of the Order or enter into a mutually agreeable payment arrangement with Staff.
- 9 Jeff Roberson, Assistant Attorney General, Lacey, Washington, represents Staff. Chris Bullock, Company Owner, Vancouver, Washington, represents Miracle Man Movers, *pro se*.

DISCUSSION AND DECISION

1. Safety Rating

- 10 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's June 2022 follow-up inspection and subsequent revised investigation report found that Miracle Man Movers committed 92 violations of regulations that would be considered critical if more than one employee had violated them, which resulted in a proposed "conditional" safety rating. Critical regulations relate to management and/or operational issues, and violations of these regulations typically indicate a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

- 11 On October 5, 2022, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Miracle Man Movers' safety management plan addresses each violation, identifies 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 Movers' safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.
- 12 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that resulted in Staff's recommendation to cancel the Company's household goods permit. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to maintain its safety rating as "conditional."
- 13 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. 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. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

2. Penalty Assessment

- 14 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 Critical violations meet this standard.⁴
- 15 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been

² See RCW 80.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

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 The Penalty Assessment cited 92 critical violations. We address each violation category in turn.

WAC 480-15-555

- 16 The Penalty Assessment cited 14 violations of WAC 480-15-555, which requires household goods carriers complete a criminal background check for every person the carrier intends to hire. The Commission assessed a \$100 penalty for each of these 14 violations because Miracle Man Movers failed to conduct a criminal background check for 14 prospective employees.
- 17 Anna Bullock explained that the Company's previous process did not consistently include this step. Bullock testified that she has since corrected the violation and will perform background checks as required going forward.
- 18 We decline to mitigate this portion of the penalty. As noted in the Penalty Assessment, an employee with an unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Although the Company has since corrected the violations, it failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty.

WAC 480-15-590

- 19 The Penalty Assessment cited two violations of WAC 480-15-590 for failing to keep copies of all leases in permanent files for at least one year after the lease expires. Bullock testified that the Company misunderstood the requirement and has rectified its practice going forward.
- 20 The Commission could have assessed penalties of \$100 per violation, but, because these are first-time violations, assessed a \$100 "per category" rather than "per violation" penalty. Additionally, the Company failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

⁵ Enforcement Policy ¶19.

49 C.F.R. § 391.21(a)

21 The Penalty Assessment cited two violations of 49 C.F.R. § 391.21(a), which prohibits using a driver who has not completed and furnished an employment application because Miracle Man Movers failed to complete or furnish an employment application for two drivers. Bullock testified the Company previously allowed applicants to submit incomplete applications. Miracle Man Movers has modified its procedures to ensure that applications are thoroughly filled out.

22 Here, the Commission assessed a \$100 “per category” rather than “per violation” penalty for two violations. Additionally, the Company failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

49 C.F.R. § 391.25(a)

23 The Penalty Assessment cited one violation of 49 C.F.R. § 391.25(a) for failing to make an inquiry into the driving record of each driver to the appropriate state agencies in which the driver held a CMV operator’s license at least once every 12 months. Bullock testified that she inadvertently exceeded the required 12-month inquiry deadline for one driver. The Company created a calendar to avoid this mistake again.

24 The Commission assessed a \$100 penalty for this repeat violation. The Company failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

49 C.F.R. § 391.51(a)

25 The Penalty Assessment cited one violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file on each driver employed. The Company testified the file was incomplete because the driver had no previous driving employment. However, Staff assisted the Company with how to address this in future situations.

26 The Commission assessed a \$100 penalty for this repeat violation. The Company failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

49 C.F.R. § 395.3(b)(2)

27 The Penalty Assessment cited 10 violations of 49 C.F.R. § 395.3(b)(2) for requiring or permitting property carrying CMV driver to drive after having been on duty 70 hours in eight consecutive days. The Company admitted to these violations and Bullock testified that the Company has created a plan to avoid violations going forward.

28 We decline to mitigate this portion of the penalty. An exhausted or fatigued driver raises serious concerns about personal safety and puts the traveling public at risk. Although the Company has since corrected the violations, it failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty.

49 C.F.R. § 395.8(a)(1)

29 The Penalty Assessment cited 60 violations of 49 C.F.R. § 395.8(a)(1) because the Company did not previously require its drivers to maintain a record of duty status. Bullock testified that the Company now maintains a record of duty status.

30 The Commission assessed a \$6,000 penalty for 60 violations of 49 C.F.R. Part 395.8(a)(1). We find that a “per violation” penalty is appropriate here because these are repeat violations. Additionally, the Company failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that no penalty reduction is warranted, and decline to mitigate this portion of the penalty.

49 C.F.R. § 396.17(g)

31 The Penalty Assessment cited two violations of 49 C.F.R. § 396.17(g) because the Company failed to promptly repair parts and accessories in accordance with Appendix G of 49 C.F.R. Part 396. Bullock testified it failed to promptly make repairs on two occasions that would have required truck to be placed out of service. The Company stated that it instituted a new procedure to avoid this violation from reoccurring.

32 Here, the Commission assessed a \$100 “per category” rather than “per violation” penalty for two violations. Additionally, the Company failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

3. Penalty Suspension

33 Because the Company has submitted a satisfactory proposed safety management plan that details the controls it put in place to prevent repeat violations of Commission safety rules, we agree with Staff's recommendation to suspend a \$5,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) Miracle Man Movers must maintain a conditional safety rating;
- b) Staff must conduct a follow-up investigation at least six months from the date of this Order;
- c) the Company may not incur any repeat critical violations of WAC 480-15 upon re-inspection;
- d) the Company must pay the remaining \$3,000 penalty within 10 days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the portion of the penalty that is not suspended.

34 If Miracle Man Movers fails to comply with any of these conditions, the entire \$5,000 suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

35 (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 companies, and has jurisdiction over the parties and subject matter of this proceeding.

36 (2) Miracle Man Movers is a household goods company subject to Commission regulation.

37 (3) Miracle Man Movers cured the deficiencies that led to its "conditional" safety rating within 45 days, as required. Accordingly, Miracle Man Movers' safety rating should be maintained as "conditional."

- 38 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good
cause to extend Miracle Man Movers' provisional period until such time as the
Company achieves a satisfactory safety rating.
- 39 (5) Miracle Man Movers committed 92 critical violations of WAC 480-15 and Title
49 C.F.R.
- 40 (6) Miracle Man Movers does not dispute that the violations occurred.
- 41 (7) Miracle Man Movers should be penalized \$8,000 for 92 violations of WAC 480-
15 and Title 49 C.F.R. The Commission should suspend a \$5,000 portion of the
penalty for two years, and then waive it, subject to the conditions set out in
paragraph 33, above.

ORDER

THE COMMISSION ORDERS THAT:

- 42 (1) The Commission approves Miracle Man Movers, LLC's safety
management plan.
- 43 (2) Miracle Man Movers, LLC's safety rating is conditional.
- 44 (3) The Commission assesses a \$8,000 penalty against Miracle Man Movers, LLC.
The Commission suspends a \$5,000 portion of the penalty for a period of
two years, and then waives it, subject to the conditions set out in paragraph 33,
above.
- 45 (4) Within 10 days of the effective date of this Order, Miracle Man Movers, LLC,
must either pay the \$3,000 portion of the penalty that is not suspended or file
jointly with Staff a proposed payment arrangement.
- 46 (5) Miracle Man Movers, LLC's provisional period is extended until such
time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective October 11, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
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 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) 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.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).