

**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 05
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 03 GRANTING REVERSAL OF ORDER 04/02; AMENDING SAFETY RATING; REINSTATING 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) a \$8,000 penalty for violations of the regulations governing the safe operation of household goods carriers.¹ 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
- 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.³ Some of the violations alleged by Staff were repeat critical violations. The matter was set for hearing in August 2023.

¹ *In the Matter of the Penalty Assessment Against Miracle Man Movers, LLC in the amount of \$8,000, Docket TV-220511, Penalty Assessment (September 9, 2022).*

² Docket TV-220511, Order 02 (October 11, 2022).

³ *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 Notice of Intent to Cancel Certificate, Notice of Prehearing (July 13, 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. At a prehearing conference, held on July 27, 2023, the presiding Administrative Law Judge (ALJ) orally granted Staff's Motion to Consolidate. The Company did not object to consolidation of the dockets.
- 4 On August 8, 2023, the presiding ALJ convened an evidentiary hearing on behalf of the Commission.⁴ During the hearing, Staff testified that Miracle Man had not submitted an acceptable Safety Management Plan (SMP). The SMP was necessary as Staff concluded that due to a number of violations, Miracle Man should receive a proposed unsatisfactory safety rating.⁵ Staff also notified the presiding ALJ that the Company's provisional permit would be cancelled on August 15, 2023, and that Staff's scheduling would not allow for review of any further submissions of the SMP prior to the cancellation date. In order to address the administrative roadblock, the presiding ALJ directed Staff to allow the Company an extra week to submit its SMP for Staff to review and to submit an evaluation by August 25, 2023.⁶ On August 22, 2023, Miracle Man filed its SMP⁷ and on August 25, 2023, Staff submitted its evaluation of the Company's SMP (Evaluation).⁸
- 5 In the Evaluation, Staff recommended, among other things, that the Commission accept the Company's SMP, extend the provisional period for Miracle Man's household goods authority with conditions, and impose penalties for a number of violations. On September 11, 2023, the Commission issued Order 04/02 Approving Safety Management Plan; Upgrading Safety Rating to Satisfactory; Assessing and Suspending Penalty (Order 04/02).⁹ In Order 04/02, the presiding ALJ issued several rulings and directives. Specifically, the ALJ agreed with Staff's recommendations to approve the Company's SMP, and to extend the provisional period of the Company's household goods authority, subject to a number of conditions. Another ruling the ALJ made was to upgrade Miracle Man's Safety Rating from "conditional" to "satisfactory." The ALJ also determined that

⁴ *In the Matter of the Penalty Assessment Against Miracle Man Movers, LLC in the amount of \$8,000, Docket TV-220511 and 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 Evidentiary Hearing (August 8, 2023).*

⁵ ALJ Pearson, TR. Vol. 2 at 51:1-25, 52:1-11; Order 04/02 at ¶6.

⁶ Mr. Sharp, TR. Vol. 2 at 49:1-10, 49:16-19.

⁷ Miracle Man's Safety Management Plan, filed August 22, 2023.

⁸ Staff's Evaluation of Miracle Man's Safety Management Plan (Evaluation), filed August 25, 2023.

⁹ Order 04/02 (September 11, 2023).

the Company had committed several violations and assessed Miracle Man a penalty totaling \$48,500 for those violations.¹⁰ Among those violations committed by Miracle Man were three violations of 49 C.F.R. § 391.45(a), which prohibits a household goods operator from using a driver not medically examined and certified.¹¹ Pursuant to 49 C.F.R. § 391.45(a), the Company was to be assessed a total of \$300, \$100 for each violation of this provision. However, the ALJ determined that mitigation of the \$300 penalty was warranted, based on testimony rendered on behalf of the Company.¹² Mitigation of this penalty reduced the total penalty amount from \$48,500 to \$48,200. Additionally, the ALJ suspended \$26,900 of the \$48,200 penalty.¹³

- 6 On September 19, 2023, Staff filed a Petition for Administrative Review (Petition).¹⁴ In the Petition, Staff alleged that Order 04/02 contains two errors that it believes the Commission should reverse. One alleged error concerns the Safety Rating upgrade granted to the Company. The other alleged error is the mitigation of three violations of 49 C.F.R. § 391.45(a), discovered by Staff. Each of the claimed errors Staff raises will be addressed in detail in this Order.

DISCUSSION

Procedural Matters

- 7 As a preliminary matter, we will clarify the standard review regarding the initial order in this matter. In Staff's Petition they state, "Any party may petition the Commission to seek review of an initial order entered in a brief adjudicative proceeding."¹⁵ Any such petition "must identify the errors the party alleges in the order and must provide an explanation of the reasons why the party contends the initial order is incorrect."¹⁶ In response to a petition, "[t]he [C]ommission may adopt, modify, or reject the initial order or may remand the initial order for further proceedings."¹⁷ The language Staff invokes from WAC 480-07-610(7)(a), WAC 480-07-610(7)(b), and WAC 480-07-610(8) is the standard

¹⁰ Order 04/02 ¶ 21.

¹¹ *Id.* ¶ 26.

¹² Order 04/02 at ¶26.

¹³ *Id.* ¶ 28.

¹⁴ Staff Petition for Administrative Review (Petition) (September 19, 2023).

¹⁵ WAC 480-07-610(7)(a).

¹⁶ WAC 480-07-610(7)(b).

¹⁷ WAC 480-07-610(8).

for seeking review of an initial order from a brief administrative proceeding. However, we construe the initial order in this matter as originating from an evidentiary proceeding or adjudicative proceeding under WAC 480-07-305, not a brief administrative proceeding.¹⁸ A petition for administrative review to the initial order of an evidentiary proceeding is filed pursuant to WAC 480-07-825.¹⁹ Upon review of WAC 480-07-825, we conclude that Staff's petition meets its requirements. Therefore, we will evaluate the petition and render our decision, accordingly.

Applicable Law

- 8 There are several regulatory provisions that will be discussed herein that are pertinent to this matter. The first set of provisions are RCW 81.80.070,²⁰ WAC 480-15-302 and WAC 480-15-305. RCW 81.80.070 states that household carriers shall not operate without first obtaining a permit from the Commission. WAC 480-15-302 sets forth the requirements for obtaining a permit for provisional authority, while WAC 480-15-305 contains the requirements for receiving a permit for permanent authority.²¹ These provisions are important because a company's status as a provisional operator versus a permanent operator is tied to its safety rating. A carrier with a conditional safety rating operates with provisional authority, while a carrier with a satisfactory safety rating qualifies for and operates under permanent authority.
- 9 Lastly, WAC 480-15-560 requires household goods carriers to comply with all federal, state and local laws and Commission orders governing licensing, vehicle safety, and driver safety, which also specifically includes Title 49 Code of Federal Regulations (49 C.F.R.).²² In this instance, the specific provision of Title 49 requiring compliance is 49 C.F.R. Part 391.45, which states that "the following persons must be medically examined and certified in accordance with § 391.43 as physically qualified to operate a commercial

¹⁸ WAC 480-07-305(1).

¹⁹ WAC 480-07-825(2).

²⁰ See RCW 81.80.070. (1) A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.

²¹ See WAC 480-15-302 and WAC 480-15-305.

²² WAC 480-07-560. Carriers must also comply with parts of Title 49 Code of Federal Regulations (49 C.F.R.)

motor vehicle: a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle,”²³ among other requirements.

Discussion

- 10 As was mentioned previously, Staff’s Petition seeks modification of Order 04/02 on two grounds. The first ground is that the Company’s Safety Rating should not have been upgraded from “conditional” to “satisfactory.” The second is that the presiding ALJ erred when they mitigated \$300 penalty for the Company’s violations of Title 49 C.F.R. Part 391.45(a).

Safety Rating Upgrade

- 11 With regard to the matter of the upgrade of Miracle Man’s Safety Rating, Staff’s Petition details the licensing process and discusses the difference between conditional versus satisfactory safety ratings.²⁴ To start, Staff asserts that the upgrade was unrequested, unrecommended, contrary to precedent, and contrary to the manner in which the regulatory scheme in chapter 480-15 WAC is intended to function.²⁵ Staff points out that “a proposed rating for a household goods carrier becomes permanent 60 days after the carrier receives it,²⁶ unless the carrier successfully requests a change in the proposed rating and submits documentary evidence showing that it has taken corrective action regarding the circumstances that produced the rating.”²⁷
- 12 Staff adds that “while the safety fitness review process is generally aimed at ensuring the safe operation of motor carriers, it has implications for the licensing of new carriers in Washington.”²⁸
- 13 The Commission requires new applicants for household goods carrier operating authority to pass through a provisional period before it will grant the carrier permanent authority. Staff states that obtaining a satisfactory safety rating after their review is a key milestone in that process.²⁹ A carrier that does so within 18 months of obtaining a provisional

²³ See 49 C.F.R. Part 391.45 a).

²⁴ Petition ¶¶ 13-17.

²⁵ *Id.* ¶ 13.

²⁶ 49 C.F.R. § 385.11(c)(2).

²⁷ Petition ¶ 14 citing 49 C.F.R. § 385.17.

²⁸ *Id.* ¶ 15.

²⁹ *Id.* ¶ 15.

permit may graduate on to permanent authority.³⁰ But a carrier that does not faces the likelihood that “the [C]ommission will cancel the provisional permit and dismiss the application for permanent authority unless” it “determines that for good cause the provisional period should be extended.”³¹

- 14 Staff observes the precedent that the Commission has frequently relied on a provisional carrier’s receipt of a proposed conditional safety rating as a basis for extending the provisional period rather than cancelling the carrier’s permit and dismissing the application for permanent authority.³² Under this approach, the Commission has used the submission of an acceptable SMP as the predicate “good cause” and refrained from upgrading an operator’s safety rating from conditional to satisfactory. Staff asserts that it has taken this same approach with Miracle Man, and has already twice extended the provisional period rather than cancelling its permit.³³
- 15 The Company holds a provisional permit and its most recent safety review in 2022 resulted in a provisional safety rating of unsatisfactory. According to Staff, Miracle Man submitted a safety management plan, but it did not request an upgrade to its safety rating. Further, Staff contends that it found the SMP acceptable, recommended that the Commission accept the SMP, but did not recommend an upgrade to the Company’s safety rating.³⁴ Staff also recommended extending the provisional period a third time with conditions, the violation of which would constitute grounds for cancelling the Company’s permit.³⁵ In light of these events, Staff opines that the ALJ erred by concluding that the Commission should upgrade the Company’s safety rating without Miracle Man’s urging and without Staff’s recommendation.
- 16 Upon review of the record, Staff is correct and there was an error in upgrading the Company’s safety rating from “conditional” to “satisfactory.” Nowhere in the testimony for the August 8, 2023, hearing did anyone testifying on behalf of Miracle Man request an upgrade of the Company’s safety rating. Also, we note that Staff’s Evaluation of the

³⁰ *Id.* ¶ 15 citing WAC 480-15-305(1)(e).

³¹ *Id.* ¶ 15 citing WAC 480-15-305(3).

³² *Id.* ¶ 16.

³³ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Order 02, 4 ¶ 12, 8 ¶ 37; *In re Investigation of Miracle Man Movers, LLC*, Docket TV-210128, Order 01, 2-3 ¶¶ 8-10, 3 ¶ 13.

³⁴ Petition ¶ 17.

³⁵ Docket TV-220511 and Docket TV-230503 Petition ¶17 referencing Staff Letter re: Safety Management Plan, 4-5 (Aug. 25, 2023) (“Staff Letter”).

Company's SMP recommended not cancelling the Company's provisional authority and instead extending provisional period a third time. The Evaluation does not indicate that Miracle Man requested a change of its safety rating from "conditional" to "satisfactory."³⁶ Moreover, in the Evaluation, one of the requirements of that report was that the Company had to obtain a satisfactory safety rating, but it did not recommend changing Miracle Man's safety rating from "conditional" to "satisfactory."

- 17 We agree with Staff's assertion that the presiding ALJ's upgrade of the Company's safety rating does cause tension with the Commission's regulatory scheme. Allowing Miracle Man to mistakenly obtain a satisfactory safety rating creates an implied grant of permanent authority, despite the fact that it is the Commission's intent to maintain Miracle Man's provisional status, as it has in similar instances.³⁷ It seems the presiding ALJ in addressing the extension of the provisional status thought it necessary to specifically address the Company's safety rating, without perhaps realizing that the conditional safety rating automatically attaches or follows with the provisional status. In other words, once the SMP was approved and the provisional authority and period were extended, the proposed unsatisfactory safety rating would then be restored to "conditional" status pending further investigation before conclusion of the provisional period. No further action by the ALJ was needed.
- 18 Therefore, to remove any ambiguity and to provide clarification, we reverse Order 04/02 with regard to the upgrade of the Company's safety rating. The Company's safety rating should be declared conditional. The Company is at all times subject to the requirements of RCW 81.80.070, is granted provisional authority, pursuant to WAC 480-15-302, and the other conditions and directives set forth in Order 04/02.

Mitigation

- 19 Turning now to the second ground that Staff raises for modification of Order 04/02, that being the mitigation of the penalty Miracle Man's violation of 49 C.F.R. Part 391.45. As was discussed previously, 49 C.F.R. Part 391.45 requires that drivers for household goods operators be medically examined and certified. Failure to comply with this provision carries a penalty of \$100 for each violation. According to Staff, Miracle Man committed three violations of 49 C.F.R. Part 391.45, totaling \$300 when the Company allowed its driver to operate without a medical examination or certification on three separate

³⁶ Docket TV-220511 and Docket TV-230503 Evaluation.

³⁷ *Stericycle of Wash., Inc. v. Wash. Utils. & Transp. Comm'n*, 190 Wn. App. 74, 93, 359 P.3d 894 (2015) ("[a]gencies should not treat similar situations differently and should strive for equal treatment.").

occasions.³⁸ In Order 04/02, the presiding ALJ mitigated the \$300 penalty for those violations.³⁹ Staff contends that the presiding ALJ erred mitigating the penalty for two reasons.

- 20 The first reason is that the Company's Witness's (Bullock) testimony was incorrect about the provisions in the SMPs from 2021 and 2022 containing any measures for violations related to medical certifications.⁴⁰ The reason for this, according to Staff, is that these violations were not at issue for the Company to have addressed them in the prior SMPs of 2021 and 2022, so the witness would have been testifying about SMP process provisions that did not exist. Consequently, Staff concluded that Miracle Man's witness testified incorrectly.⁴¹ More importantly, it is Staff's contention that the presiding ALJ relied on Bullock's testimony when deciding to mitigate the penalty for Miracle Man's violations of 49 C.F.R. Part 391.45.⁴²
- 21 The second reason that Staff is concerned is that 49 C.F.R. Part 391.45 is a regulation that is intended to minimize risk to the public.⁴³ Staff points out that the driver in question operated for a ten-month period, September 2022 through July 2023, without medical certification.⁴⁴ Because its driver operated without a medical certification, it is Staff's position that this circumvention of the law sets a precedent where household goods companies would ignore the law, for sustained periods of time, without sanction. Staff concludes that, for these reasons, the Commission should not accept that kind of safe harbor for violations of safety regulations.⁴⁵
- 22 After consideration of the record, Staff's position is correct on the issue of mitigation. Review of the Evaluations of the SMPs for 2021 and 2022 reveals that medical examinations and certifications were never raised as issues in prior safety investigations

³⁸ Petition ¶ 21 citing Yeomans, TR. at 21:3-23.

³⁹ Order 04/02 at 8 ¶ 26.

⁴⁰ Petition ¶ 23 citing Bullock, TR. at 31:3-23.

⁴¹ *Id.* ¶ 23.

⁴² *Id.* ¶ 21.

⁴³ *Id.* ¶ 24.

⁴⁴ *Id.* ¶ 24; See also Bullock, TR. at 31:3-23 where Bullock testifies that a review would be performed in July 2023. Staff discovered the violation in June 2023.

⁴⁵ Petition ¶ 24.

conducted by Staff.⁴⁶ Accordingly, there would not have been a process in place, pursuant to an SMP, to review drivers' medical records in July of 2023 to ensure they were medically examined and certified pursuant to 49 C.F.R. Part 391.45. Yet, Bullock testifying on behalf of the Company, stated that review of the drivers' medical examination and certification was to be conducted in July of 2023, pursuant to a "safety plan" or SMP.⁴⁷ The record does not support this testimony. As a result, it seems the presiding ALJ may have erred in relying on Bullock's testimony on that issue.

- 23 Additionally, Staff raises a very valid point on the precedent that would be set with the mitigation of the penalty for violation of 49 C.F.R. Part 391.45. A driver that is not medically examined and certified poses a risk to the safety of the public. Changes in health and medical conditions of a driver could result in the hampered operation of heavy and dangerous vehicles with dire consequences for pedestrians as well as other drivers, a matter of the public interest. It is also important to preserve the precedent for how the Commission has treated and regulated operators who came before the Commission in similar circumstances. Therefore, in the interest of the public and for safety of the drivers themselves, both of which should also be protected and considered, we reverse the presiding ALJ's decision to mitigate the penalty for the violations of 49 C.F.R. Part 391.45 and reinstate the \$300 penalty. The total penalty amount is now reset to \$48,500 with \$26,900 remaining suspended, pursuant to Order 04/02.

FINDINGS AND CONCLUSIONS

- 24 (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 telecommunications companies.
- 25 (2) Miracle Man is a household goods carrier subject to Commission regulation.
- 26 (3) Commission Staff conducted a safety review and concluded that Miracle Man warranted a proposed, conditional safety rating of unsatisfactory.

⁴⁶ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Order 02, 4 ¶ 12, 8 ¶ 37; *In re Investigation of Miracle Man Movers, LLC*, Docket TV-210128, Order 01, 2-3 ¶¶ 8-10, 3 ¶ 13.

⁴⁷ Bullock, TR. at 31:3-23.

- 27 (4) Miracle Man's submitted Safety Management Plan and Order 04/02 concluded that the Company cured the deficiencies that led to the proposed conditional safety rating.
- 28 (5) Order 04/02 approved Miracle Man's Safety Management Plan and extended the Company's provisional period.
- 29 (6) Order 04/02 inadvertently upgraded Miracle Man's safety rating to satisfactory.
- 30 (7) The inadvertent upgrade of Miracle Man's safety rating to satisfactory did not grant the Company permanent authority as a household goods carrier.
- 31 (8) The Commission should grant Staff's petition, modify Order 04/02 and downgrade the Company's safety rating to conditional so it is consistent with its provisional authority.
- 32 (9) Order 04/02 concluded that Miracle Man committed three violations of 49 C.F.R. §391.45(a), \$100 for each violation for a total penalty of \$300, for using a driver that was not medically examined and certified.
- 33 (10) Order 04/02 incorrectly mitigated the \$300 penalty for Miracle Man's violations of 49 C.F.R. § 391.45(a) and the Commission should grant Staff's petition to reverse its decision and modify Order 04/02 to reinstate the penalty.
- 34 (11) The Commission should modify Order 04/02 and assess a penalty of \$48,500, instead of \$48,200, for discovered violations, suspending a \$26,900 portion of the \$48,500 penalty for a period of two years, and then waiving it.

ORDER

THE COMMISSION ORDERS:

- 35 (1) The Commission grants Staff's petition, reverses Order 04/02 and downgrades Miracle Man's safety rating to conditional.
- 36 (2) The Commission grants Staff's petition, reverses Order 04/02 and reinstates the \$300 penalty for Miracle Man's violations of 49 C.F.R. § 391.45(a).

- 37 (3) The Commission modifies Order 04/02 and assesses Miracle Man a penalty of \$48,500 of which \$26,900 remains suspended, pursuant to the conditions set forth in paragraph 12 of Order 04/02.
- 38 (4) Miracle Man is still subject to all other directives and conditions required by Order 04/02.

Dated at Lacey, Washington, and effective December 7, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner