WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 894

IN THE MATTER OF: Served December 13, 1968

Application of D. C. Transit System, Inc., for Authority to Increase Fares.) Application No. 505

) Docket No. 186

On October 18, 1968, we issued Order No. 880, in which we set forth our findings and conclusions on most of the major issues in this proceeding. We found therein that to cover all its expenses and earn a fair return D. C. Transit would require revenues totalling $40,079,851. We also determined that the fares then existing, when coupled with other revenues available to the company, would produce revenues of $36,517,368. Thus, additional revenues of $3,562,483 appeared to be necessary. However, we found that the recently enacted schoolfare subsidy legislation would produce payments of about $1,100,000. We also took into account two decisions of the Court of Appeals issued on October 8, 1968. One of these decisions set aside certain rate orders of this Commission and directed us to consider whether a riders' fund was necessary after certain questions were resolved by us. Because of this court decision, we felt that it was appropriate to eliminate the return on equity of $750,000 which we otherwise would have found to be appropriate. Thus, we ultimately concluded that the company should receive interim fare adjustments sufficient to produce total revenues of $38,233,169 if they continued for the entire future annual period. $35,762,970 of this amount would have to be produced through the farebox. We directed the parties to present evidence on the most appropriate means of raising these additional revenues.

A hearing was held at which the principal presentation was made by the Commission staff. Essentially, that presentation started with the data presented by the company in its

own case in which it sought to show the revenues which would be produced by the fare adjustments it advocated, i.e., a straight 30¢ fare in the District of Columbia and certain adjustments in other fare categories. The staff began with the ridership figures used by the company and demonstrated the effect of reducing the amount of the fare in various categories. Very little cross-examination or other evidence was presented by the other parties.

Having considered all this evidence, the Commission, on October 29, 1968, issued Order No. 882, authorizing an interim fare in the District of Columbia of 30¢ cash, or four tokens for $1.05, with certain other adjustments in other fare categories. These increases had the objective of meeting the company's operating expenses and interest on debt but would not provide any return on equity.

We are now approaching December 13, 1968, the date on which the suspension period authorized by the statute expires, and a final order must be entered in this proceeding. We must consider and decide, therefore, what rate structure is just, reasonable and non-discriminatory on the basis of the facts of record in this proceeding. The first question to which we will address ourselves is whether any change should be made in the treatment we accorded the return on equity.

We noted in Order No. 880 that D. C. Transit had indicated that it would seek review in the United States Supreme Court of the recent opinions of the Circuit Court of Appeals. If D. C. Transit did seek review, the Court of Appeals' ruling would, under procedures dictated by law, be stayed and no mandate issued pending Supreme Court determination. D. C. Transit did, in fact, file a petition for certiorari on Friday, November 29, 1968. That petition sought review only of the opinion concerning the Commission's 1963 and 1965 orders. This was the opinion which created the possibility of a riders' fund. Thus, the mandate of the Court of Appeals will not become final unless and until the petition for certiorari is denied, or, if granted, until the Supreme Court's ruling on the merits.

We note, however, that the principal thrust of Transit's appeal is directed toward the accuracy of the return allowable to it and the method of determining that return. Some of the

subsidiary findings of the Court of Appeals are not specifically reached by the review sought by Transit. It appears that regardless of the outcome of the appeal, the accounting adjustment issues raised by the Court of Appeals will have to be resolved. These accounting issues also create the possibility of a riders' fund and no further appeal concerning them is in prospect.

Under these circumstances, the Commission considers that it has two options open to it.

First, we could grant further increases in fares to provide the return on equity we have found to be appropriate, leaving all consideration of any possible riders' fund to the future. Second, we could leave the existing fare structure in effect until further light is cast upon the ultimate disposition of the court opinion. Pursuing this second course would depend on whether or not the existing fare structure, under all the circumstances described above, is fair and reasonable for the immediate future. If so, that would not preclude re-evaluation of the fare structure if and when we have information on the riders' fund issues and can determine what return is appropriate.

We have weighed these options carefully. The decision of the Supreme Court as to whether it will grant review of the Court of Appeals decision will be made in the near future. An interim period of short duration will also enable the parties, and the Commission, to make a further evaluation of the accounting adjustments suggested by the Court of Appeals and which have not been subjected to Supreme Court review. We will thus be in a position to make a more pragmatic and equitable decision at that time. We have previously noted that the fares now in effect are designed only to cover Transit's operating expenses and provide service on its debt requirements. Faced with the possibility that the company has received excess profits in the past, we feel that we have no alternative but to hold the fares at their lowest possible level. Our ultimate responsibility is to insure the rider a complete, permanent, and effective bond of protection from excessive rates. Under these circumstances we find the existing fare structure, at least for the near future, to be fair and reasonable.

It may be argued that until a definite riders' fund is established, the company should be entitled to earn a return for the stockholders, and if a riders' fund does develop, adjustments can be made on the company's books accordingly. It cannot be denied, however, that while those monies may be subject to refund, the rider of today is not necessarily the rider of tomorrow. This is particularly true in view of the transient nature of the population of the Washington Metropolitan area. It is therefore our duty to look at the background of all these consequences and, where a choice must be made between the ratepayer and the stockholder, find for the ratepayer. We will, of course, in creating the initial level of the riders' fund take into account the period of time in which we cause the company to operate without a return on equity.

The second opinion of the Court of Appeals instructed the Commission to make an evaluation in depth of the design of the fare structure, in order to insure that there is no undue discrimination in fares between riders or sectors served by the company. That opinion has not been appealed. We have previously embarked upon the course of action indicated by the court. See Order No. 880, p. 43. The staff has reported that it is in the process of engaging an independent consultant to conduct such a study.

The timing of the Court of Appeals decision, coming so near the end of the suspension period, precludes a completion of the cost allocation study and re-evaluation of the fare structure in this proceeding. We have previously weighed the possiblity of discrimination in the existing fare structure against the need of the applicant for increased revenues. See Order No. 880, supra, pp. 43-44. Those considerations remained unchanged and our previous findings in this matter are affirmed.

With this determination, we had hoped that our disposition of the major issues in this proceeding would be complete. However, certain vexing and difficult problems have come to our attention during the interim period between Order No. 882 and this order, and we must, in good conscience, face up to these problems.

In Order No. 882, we reviewed and commented upon the company's operating costs, both as experienced in the historical year, and as projected for the future annual period. Upon

careful review, we found that these operating costs would amount to $37,951,924 in the future annual period and that an additional $1,346,000 would be required to meet interest expense. We found that the fares then existing would fall far short of covering these expenses. We expressed our grave concern with the serious and deleterious effects of operating at a loss on the company's ability, not only to provide the good quality of service sought by the riding public and required by this Commission, but to provide any service whatever. Because of this concern, we directed that fares be increased to provide the revenues necessary to cover operating expenses and debt.

Essentially, there was little dispute at the hearing as to the amount of expenses which would be experienced by the company in the future annual period. In summary, we found that operating revenue deductions would amount to $37,951,924, and that interest expense would be $1,346,000. We also found that the company would receive non-farebox revenue of $2,470,199 and a schoolfare subsidy payment of $1,161,152. It was necessary, therefore, to produce $35,695,256 through the farebox. The staff, basing its analysis on the very data presented by the company in support of its own case, proposed fare adjustments which it felt would produce the aforementioned $35,695,256 in farebox revenues. The staff's projections of ridership were not called into serious question by the company at the hearing on rate structure. On the basis of the data presented by the staff, we made rate adjustments in Order No. 882 designed to produce the amount required through the farebox, i.e., $35,695,256. The fares authorized in Order No. 882 have now been in effect for five weeks and we have three weeks' data available as to the revenues being produced by these fares. That data follows:

Week Ended	Total Passengers	Total Farebox Revenue
11/9/68	2,381,231	$662,115
11/16/68	2,167,202	604,979
11/23/68	2,400,946	668,977

These results, we are frank to say, are giving us serious concern. The annual farebox revenue target toward which we are aiming is, as previously noted, $35,695,256. That figure,

when divided by 52, gives a weekly farebox revenue target of $686,447. The actual weekly farebox revenues being obtained are falling short of that goal, averaging about $645,000. In other words, the question arises whether we are achieving what we consider the very vital objective of permitting the company to recover its operating expenses and interest cost.

We have attacked the problem raised by these facts from all angles. First, we have considered whether the projected expense figures are subject to adjustment. A careful review of the record reveals that they are not. Indeed, as we noted in Order No. 880, there was a remarkable degree of agreement at the hearings that these expense projections were both conservative and accurate. The company will incur the expenses in question.[1]

The next obvious question which arises is whether the limited experience garnered to date under the new fare structure is an accurate indication of what will occur as the future annual period progresses. Perhaps, in other words, the results to date are on the low side and improvement will occur as time goes by. In the hope that this was the case, we have examined this premise. The controlling question is whether the November weeks in question are reliable indicators of a year's experience. We have examined the November results for the past four years and we find that the results experienced in that month are indeed typical of the year for those years. We would hope, of course, that there would be grounds for expecting a growth trend in ridership which would bring improvement in future months. No such trend can be discerned in the weekly ridership figures, however. Ridership is down several precentage points from the corresponding week of 1967 and this trend is consistent.

We are faced, then, with the serious prospect that the fare adjustments made in Order No. 882 have not made it possible for the company even to meet its operating expenses and interest cost. The question is what should be done about it.

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[1] Since the murder of a D. C. Transit driver in April, 1968, the company has experienced a reduction in the number of drivers on its working force. This has produced an undesirable deterioration in service, and the Commission has directed the company to step up its recruitment activity with a view toward attaining a full complement of drivers no later than January 31, 1969.

Answering this question first calls for an inquiry into how and why this occurred. Essentially, it has happened because the ridership figures used in projecting the results of possible fare adjustments at the hearing on rate structure did not take into account the serious decline in ridership which has occurred in the past year as the company had forecast a level trend. The company's weekly report of passengers and revenues, which is attached as an appendix to this order, shows that both ridership and revenues have consistently been several percentage points lower than the corresponding week of 1967.

What, then, is to be done? We think that on the basis of the evidence actually produced in this record, we can say that the existing fare schedule, as established by Order No. 882, is just, reasonable and not unduly discriminatory. For the reasons previously discussed we believe that the company can and should operate without a return on equity for a further limited period. The evidence of record, not objected to or supplemented in pertinent part by the company, provides an adequate basis for a conclusion that we have made sufficient adjustments for the company's financial health.

On the other hand, we think that it would be foolish in the extreme to ignore the facts, not yet produced in a formal record, concerning the inadequacy of farebox revenues to cover expenses, including interest. The company's cash working capital position is already a cause for concern. Its ability to meet current and long-term financial obligations is subject to deterioration. Its power to make the capital investments in new equipment required by this Commission is jeopardized. We are extremely concerned about the prospects of further rate increases. However, we could not be more remiss in our obligations to the public interest than if we remained inactive in the face of the very real prospect that the company would be unable to provide service at all.

In Order No. 880, served October 18, 1968, we suggested legislation to stabilize transit fares, providing for the resulting deficit out of public funds. We have pursued this matter, and will continue to press for a solution of this nature.

Having considered the quandary in which we are thus placed, we have concluded that the wisest course is to conclude this proceeding with a final order approving the existing fare structure as being just, reasonable and non-discriminatory on the basis of this record. Simultaneously, we will exercise our power pursuant to § 6(b) of the Compact to institute a further investigation of D. C. Transit's rates.

We will use as our starting point in that investigation the facts developed in this record concerning the operating revenue deductions and interest expense which the company will experience in the future annual period. The first principal subject of inquiry will be the fare adjustments, if any, required to produce farebox revenues sufficient to cover the aforesaid operating revenue deductions and interest expense. That same proceeding will act as a vehicle in which we can consider the further actions which may be required as a result of the Court of Appeals decisions in Williams v. WMATC, D. C. Cir. No. 20,200 (Oct. 8, 1968) and Payne v. WMATC, D.C. Cir. No. 20,714 (Oct. 8, 1968), and the Supreme Court's handling of the appeal of the former.

THEREFORE, IT IS ORDERED:

1. That D. C. Transit System, Inc., be, and it is hereby, directed to file appropriate supplements to its tariffs, removing the termination date of December 13, 1968, therefrom.

2. That the existing fares of D. C. Transit System, Inc., continue in effect.

3. That in all other respects, the application of D. C. Transit System, Inc., for increases in fares be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

DOUB, Vice Chairman, concurring in part, and dissenting with respect to that portion initiating an investigation into D. C. Transit rates at this time.