

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 955

IN THE MATTER OF:

Served June 17, 1969

Application of D. C. Transit)
System, Inc., for Authority)
to Increase Fares.)

Application No. 226

Docket No. 32

Application of D. C. Transit)
System, Inc., for Authority)
to Increase Fares.)

Application No. 344

Docket No. 101

On October 8, 1968, the United States Court of Appeals for the District of Columbia Circuit issued its opinions in Williams v. WMATC, Docket No. 20,200; Democratic Central Committee v. WMATC, Docket No. 20,201; and D. C. Transit v. WMATC, Docket No. 20,202. The Commission proceedings reviewed in that opinion were remanded to the Commission for certain further actions directed by the court. The court's mandate remanding the cases was handed down on March 4, 1969, following the Supreme Court's denial of a petition for writ of certiorari.

Following receipt of the remand, the Commission's staff and the other parties to the proceedings embarked on efforts needed in order to proceed with the hearings on remand. Pre-hearing conferences were held concerning the remand hearings on May 7 and on June 11, 1969. This order grows out of those pre-hearing conferences and is issued in accordance with the provisions of Commission Rule 17-03.

The parties have stipulated as to the issues which are involved on remand. Those issues are as follows:

I

ACQUISITION ADJUSTMENT

With regard to this issue, the court said:

"The issue concerning the acquisition adjustment account is remanded to the Commission for a redetermination of the schedule for amortization of the balance thereof on the changeover date, and a relating of that schedule to the remaining lives of the properties in service on the changeover date. Any amounts heretofore charged against the account in excess of the amounts found to be proper shall be deposited in the court-ordered reserve." Williams v. WMATC, etc., CCADC Slip Opinion, October 8, 1968, p. 98.

The issues with regard to this directive are as follows:

1. Does the period of amortization commence on January 1, 1963, the date on which accruals to the track removal and street paving accruals were suspended; or does the period commence on January 1, 1964, the effective date of the Commission's original rescheduling of the acquisition adjustment account?

2. What is the balance to be amortized as of the date reamortization commences? More specifically, what adjustments, if any, shall be made in the balance (according to Transit, \$2,344,990; according to the Commission, \$2,519,484) in view of the fact that this balance represents 24.4% of the original account, while only 22.7% of the depreciable properties acquired in 1956 were in service on January 1, 1964?

3. What method of amortization shall be chosen -- depreciable life, retirement, or some combination of both?

4. When does the period of reamortization end?

5. How should the acquisition adjustment be amortized in respect to properties whose depreciable lives or remaining useful lives extend beyond the amortization period? Should the unamortized balances as of that date be disregarded or should they be spread through the period in question on some pro rata basis for the years involved?

6. For what period of time, as of what dates, in what amounts, and in what manner should restitution, if any, be made?

II

DEPRECIATION RESERVE DEFICIENCIES

With regard to this issue, the court said:

"The issue concerning the deficiency in the depreciation reserve is likewise remanded to the Commission for findings as to the extent, if any, to which Transit's investors have already been reimbursed for the diminution in value of their investment in operating properties devoted to public use over and above accruals to the reserve. The Commission may permit Transit to retain any portion of the total amount of underaccruals for which its investors have not been compensated in the form of past earnings in excess of fair returns. Any amounts permitted by Order No. 564 to be withdrawn from the court-ordered reserve for which Transit's investors have already been so compensated shall be restored to the reserve." Williams v. WMATC, etc., CCADC Slip Opinion, October 8, 1968, p. 98.

The issues with regard to this directive are as follows:

1. Have Transit's investors been compensated for the diminution in value of their investment in the amount of \$1,058,856?

(a) What period of time should be taken into account in determining if there was such compensation? The company contends that the beginning date should be August 1956, the date of acquisition of the company by the present owners. Protestants may argue that the beginning date should be January 1, 1940. Will the ending date be December 31, 1963, the date the Commission ordered new depreciation rates to correct the deficiencies from then on, or will the ending date be October 8, 1968, the date of the remand order, or some other date?

(b) What are the appropriate elements which may be considered as constituting compensation to Transit's investors?

2. Should all or a portion of the unreimbursed depreciation reserve deficiency, if any, be compensated for at this time?

3. If such compensation is now to be accomplished, shall all or a portion of such compensation be accomplished by resort to the court-ordered reserve? If so, as of what date or dates?

III

INVESTMENT TAX CREDIT

With regard to this issue, the court said:

"The Commission on remand is further directed to make findings and conclusions as to the treatment proper for Transit's investment tax credits, and the amounts, if any, by which Transit's federal income tax expense should be reduced as a consequence of any such credits. To the extent the Commission may find that Transit was permitted to accrue excessive income tax expenses for 1966, the amount thereof should be placed in the court-ordered reserve." Williams v. WMATC, etc., CCADC Slip Opinion, October 8, 1968, p. 99.

All parties are in agreement that since the Commission allowed no federal income tax expenses for 1966, there is no amount attributable to the Riders' Fund directly as a result of treatment of investment tax credit in 1966. The issue with regard to this directive is as follows:

What policy should the Commission adopt in the treatment of the investment tax credit for rate making purposes?

IV

EXCESSIVE EARNINGS

The court directive regarding excessive earnings treated both the period covered by Orders No. 245 and 563 and the period covered by Order No. 564.

With regard to the first period, the court said:

"Orders Nos. 245 and 563 are set aside. Transit is directed to make restitution for all amounts collected as a consequence of the fare increase initially authorized by Order No. 245, during the period that order was effective, except that it may retain any portion of the excess fares necessary to preserve its earnings at the level conceded by the protestants to represent a fair return. Restitution in the appropriate amount is to be effected by placing funds in or making non-cash credits to the court-ordered reserve. The parties are requested to seek agreement as to the precise amount of restitution and the details for its accomplishment. Should the parties formulate a plan, they shall make application to the Commission for its approval, and in that event, or if no agreement is reached, the Commission shall supervise the execution of our mandate." Williams v. WMATC, etc., CCADC Slip Opinion, October 8, 1968, pp. 97, 98.

With regard to the second period, the court said:

"The Commission's authorization of a margin of return of approximately \$2,000,000 is set aside, as is its action, in consequence thereof, permitting \$1,350,000 to be transferred to Transit from the court-ordered reserve. The funds so transferred shall be restored to the reserve, except that Transit may retain any portion thereof necessary to preserve its net income at the level recommended by the protestants as a fair return. As in the case of Orders Nos. 245 and 563, the parties are requested to seek agreement and apply to the Commission for its approval, and the Commission shall supervise the execution of our mandate. Williams v. WMATC, etc., CCADC Slip Opinion, October 8, 1968, p. 99.

The issues with regard to this directive are as follows:

1. What is the amount of net operating income and of net income realized by D. C. Transit during the respective periods covered by Orders No. 245 and 563 and Order No. 564? The range

of difference between the parties is set forth in Exhibit 14, Schedule 1 and Exhibit 15, Schedule 1 submitted by the company in formal case, Application No. 573.

2. Is Transit entitled only to the dollar amount of fair return recommended by protestants' expert in each of the two proceedings or is it entitled to a return calculated on some other basis?

3. In considering whether adjustments shall be made to the court-ordered reserve, as to what periods of time and as of what dates should the Commission make adjustments to the court-ordered reserve, if any? Specifically, should the Commission make the adjustment for the period 4/14/63 to 1/26/66? Should the Commission make the adjustment for the period 1/27/66 to 3/14/67? Should the Commission make the adjustment as to the period from 3/15/67 to some date later than 3/15/67 and, if so, to what date? Should the Commission make the adjustment as to any combination of the above periods?

4. If it is found that the company in fact had excess net income in one of the rate periods and net income less than that authorized in the other, shall the results of the latter period be used to offset those of the former period, or does each period stand on its own? NOTE: Protestant would use the word "return" in lieu of "net income" and would use "insufficient return" in lieu of "net income less than that authorized."

5. In determining whether and in what amount adjustments are to be made to the court-ordered reserve for any given period, shall the Commission adjust the actual net operating income for that period to give effect to adjustments resulting from the court of appeals opinion of October 8, 1968 and from Commission-directed accounting entries relating to the periods involved?

V

OTHER ISSUES

1. If adjustments are to be made to the court-ordered reserve (a) if they create a credit balance should they be

funded in the form of cash deposits; (b) what provision, if any, should be made for charging Transit interest on such amounts for all or any portion of the period between 4/14/63 and the date upon which such adjustments are effectuated; and (c) what other accounting entries would be required?

2. If adjustments to be made in the court-ordered reserve result in a debit balance, (a) what provisions, if any, should be made to allow Transit to recover that balance; (b) should Transit be allowed to charge interest on any such debit balance; and (c) what other accounting entries would be required?

In addition to the foregoing statement of issues, the parties agreed on hearing dates and certain procedural matters.

THEREFORE, IT IS ORDERED:

1. That the hearing on remand in this proceeding shall begin at 10:00 A.M., July 17, 1969, in Room 314, 1625 I Street, N. W., Washington, D. C.

2. That the presentation of the parties at the hearing shall be limited to the issues set forth above.

3. That all parties shall file their direct testimony and exhibits no later than the close of business on July 3, 1969, serving copies of same on all other parties.

4. That any party wishing to file testimony of exhibits in rebuttal to the direct case of any other party shall file such testimony and exhibits no later than 12:00 noon on July 14, 1969, serving such exhibits or testimony on all other parties.

5. That the parties shall present their direct case and their cross examination in the following order: protestants, company, Commission staff.

BY DIRECTION OF THE COMMISSION:



GEORGE A. AVERY
Chairman