

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,798

IN THE MATTER OF:

Served April 8, 2011

EXECUTIVE TECHNOLOGY SOLUTIONS,)
LLC, WMATC No. 985, Investigation)
of Violation of Regulation No. 61)
and Operation of Unsafe Vehicles)

Case No. MP-2010-090

This matter is before the Commission (WMATC) on respondent's response to Order No. 12,601, served October 26, 2010, directing respondent to: (1) submit a vehicle list, and corresponding vehicle registration cards and safety inspection certificates, within 15 days; and (2) present all vehicles for inspection by Commission staff within 30 days.

I. BACKGROUND

Respondent holds WMATC Certificate of Authority No. 985. Respondent's 2010 annual report, dated February 1, 2010, lists 7 vehicles used by respondent in WMATC operations. The vehicle identification number (VIN) reported for one of the vehicles on that list is invalid. While attempting to ascertain the correct VIN, Commission staff discovered several discrepancies between the vehicle information in respondent's annual report and vehicle information on file with the Maryland Motor Vehicle Administration (MVA), the Maryland Public Service Commission (PSC), and respondent's insurance company.¹

On April 7, 2010, staff wrote to respondent concerning the discrepancies and requested that respondent submit a current list of vehicles and copies of the corresponding registration cards and safety inspection certificates on or before April 21, 2010. Staff also requested that respondent present its vehicles for inspection on or before May 5, 2010.

On April 23, 2010, respondent filed a vehicle list containing 12 vehicles. Respondent subsequently filed copies of current registration cards for 10 of the vehicles and asserted that the other 2 vehicles only provided intrastate service within Virginia and thus were exempt from this Commission's jurisdiction under Article XI, Section (3)(g),

¹ Records from the Maryland MVA revealed that respondent had registered a vehicle not reported to this Commission. Also, two vehicles reported on respondent's 2010 annual report were not listed in a schedule of vehicles obtained from respondent's insurance company. Finally, respondent held operating authority from the Maryland PSC at the time and had reported a vehicle to the PSC not listed in respondent's 2010 annual report and not listed in the vehicle schedule from the insurance company.

of the Compact. On May 3, 2010, respondent filed a vehicle lease covering a vehicle that was not registered to respondent, in compliance with Regulation No. 62-02.

Respondent also filed six safety inspection certificates covering 5 of the 12 vehicles on its April 23 vehicle list and one vehicle not included on that list.

On May 5, 2010, respondent presented 4 vehicles for inspection by Commission staff. All 4 failed.²

This investigation followed, and as noted above, respondent was directed to file a vehicle list and corresponding registration cards and safety inspection certificates within 15 days and present all vehicles for inspection within 30 days.

II. RESPONSE

Respondent submitted a list of 11 vehicles on November 15, 2010, but only 10 registrations and only 10 safety inspection certificates, and one of the safety inspection certificates was for a vehicle not on the list, a 2003 Lincoln.

Respondent presented 5 vehicles for inspection on December 22, 2010, and 5 vehicles for inspection on December 23, 2010. All 10 failed. Two vehicles had no markings. One of the vehicles had markings only 1.5 inches high. The other 7 had markings only 0.5 inches high. Eight vehicles subsequently passed inspection, 4 on January 11, 2011, and 4 on January 12, 2011.

Two of the vehicles were not registered in respondent's name, but no lease is on file for those vehicles as required by Regulation No. 62.

On February 25, 2011, respondent presented a vehicle for inspection that was not on the November 15 list, a 2005 Setra. The Setra failed inspection because it displayed required vehicle markings at a height of only 1 inch.

Two of respondent's vehicles, including the Setra, have not been shown to have passed a safety inspection in the 12 months preceding the date presented for staff inspection in response to Order No. 12,601.

III. OUT OF SERVICE ORDER

Respondent shall immediately remove from WMATC service the vehicles that have not passed staff inspection yet, including those for which respondent has not produced all required documents.

² Respondent did not present its other vehicles for inspection. The four that were presented were observed to display markings of less than two and one-half inches in height and thus under Regulation No. 61-02 presumed not to be in compliance with the Commission's vehicle marking requirements.

Respondent shall verify compliance with this requirement within 10 days. Respondent shall not return these vehicles to service unless and until they pass inspection by Commission staff, as confirmed in writing by the Commission's Executive Director.

IV. VEHICLES ADDED AFTER NOVEMBER 15, 2010

Respondent's 2011 annual report, filed January 31, 2011, lists vehicles not on respondent's November 15, 2010, vehicle list. Respondent shall submit copies of the registration cards and safety inspection certificates for those additional vehicles and present those vehicles for inspection.

V. INVALID CONTRACT TARIFF

After this investigation began, respondent filed a contract tariff with the Commission in accordance with Commission Regulation No. 55. Under Regulation No. 55, a carrier must file a general tariff if it offers standardized service at universally applicable rates.³ A carrier must file a contract tariff if it offers tailored service on a continuing basis at negotiated rates.⁴

The contract tariff respondent filed with the Commission calls for respondent to provide sedan, van, and shuttle bus service at negotiated rates. The other party to the contract is Alex-Alternative Experts, LLC. Alex was awarded a passenger transportation contract by U.S. Immigration and Customs Enforcement (ICE) in 2010. Alex was recently approved for a WMATC certificate of authority that would enable Alex to perform the ICE contract in the Metropolitan District,⁵ but Alex may not commence operating until such time as Alex has satisfied the conditions of approval and a certificate of authority has been issued in Alex's name. In the meantime, respondent is providing transportation service to ICE under a subcontract with Alex, hence the contract tariff filing from respondent.

Commission staff rejected respondent's tariff shortly after it was filed on January 31, 2011, and again shortly after it was re-filed on February 25, 2011. The principal cause for rejection both times was that the contract submitted as part of the filing contained no rates and no fares. Under Regulation No. 55-02: "No carrier shall demand, receive, or collect any compensation for any transportation or transportation-related service, except such compensation as is specified in its currently effective tariff for the transportation or transportation-related service provided." Under Regulation No. 55-08(e), a contract tariff must contain "fixed rates and fixed fares".

³ Regulation No. 55-07; *In re Transcom, Inc.*, No. MP-09-034, Order No. 11,865 at 2 (Feb. 27, 2009); *In re Washington, D.C. Jitney Ass'n, Inc.*, No. AP-95-26, Order No. 4795 at 4 (Mar. 15, 1996).

⁴ Regulation No. 55-08; Order No. 11,865 at 2; Order No. 4795 at 4.

⁵ *In re Alex-Alternative Experts, LLC*, No. AP-10-179, Order No. 12,754 (Mar. 8, 2011).

Section 3 of the Alex contract, titled "Compensation and Payment Terms", states in subsection (a) that respondent shall submit monthly invoices that "must include hours expended by labor category with associated hourly rates on a line item basis for the current period, and provide line item cumulative totals from contract inception to date." Section 3 also states that "Alex shall not be obligated to pay any amount in excess of the Allotted Funds allotted in [respondent's] price proposal." Section 3, however, neither specifies the associated hourly rates nor recites the terms of respondent's price proposal.

Because the rates and fares to be charged under the Alex contract do not appear in the contract filed with the Commission but only in respondent's monthly invoices as constrained by respondent's price proposal, respondent's filing does not satisfy the fixed-rate, fixed-fare tariff requirement under Regulation No. 55.

Respondent shall file a contract tariff with fixed rates and/or fixed fares within 15 days or cease operations under its contract with Alex-Alternative Experts, LLC.

THEREFORE, IT IS ORDERED:

1. That respondent shall: (a) immediately remove from WMATC service the following vehicles; (b) verify compliance with this requirement in writing within 10 days; and (c) not return the following vehicles to service unless and until they pass inspection by Commission staff, as confirmed in writing by the Commission's Executive Director.

No. 0000, 2003 Lincoln, VIN ending 643365 - list/inspection
No. 1401, 2004 Dodge, VIN ending 670157 - reinspection
No. 1601, 2006 Lincoln, VIN ending 601511 - lease
No. 1701, 2007 Chevy, VIN ending 192855 - lease
No. 2801, 2008 Ford, VIN ending 80894 - registration/safety cert.
No. 5501, 2005 Setra, VIN ending 000166 - reinspection/safety cert.

2. That respondent is hereby directed to submit within 15 days copies of the registration cards and current safety inspection certificates for all vehicles added to respondent's fleet since November 15, 2010, as follows:

Vehicle No. 1001
Vehicle No. 1002
Vehicle No. 1003
Vehicle No. 1606
Vehicle No. 1904
Vehicle No. 1801
Vehicle No. 2001
Vehicle No. 2802
Vehicle No. 2803
Vehicle No. 5501

3. That respondent is hereby directed to present for inspection by Commission staff within 30 days all vehicles added to respondent's fleet since November 15, 2010.

4. That respondent shall file a contract tariff with fixed rates and/or fixed fares within 15 days or cease operations under respondent's contract with Alex-Alternative Experts, LLC.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND KUBLY:

A handwritten signature in black ink, appearing to read "W. Morrow, Jr.", written in a cursive style.

William S. Morrow, Jr.
Executive Director