

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,612

IN THE MATTER OF:

Served November 29, 2012

Application of CAROL ANN BARNER for)
a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2012-185

Pursuant to Commission Rule No. 26-04, the Commission hereby reopens the record in this proceeding to determine whether Certificate of Authority No. 2023 was conditionally granted in error in Order No. 13,464, served September 7, 2012.

Commission Rule No. 26-04 provides that:

If, after the hearing in a proceeding, the Commission shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding, the Commission will issue an order reopening.

The Commission has used this rule to reopen the pre-conditional grant record in an application proceeding at a time when, as here, the issuance of operating authority was still pending and where, as here, the decision to reopen was based on the receipt of new evidence bearing on the decision to approve the application.¹

Under Title II of the Compact, Article XIII, Section 3(a), the Commission may later rectify an error committed during the course of granting or issuing a certificate of authority.² The possible error in this case concerns the Commission's finding in Order No. 13,464 that applicant is a fit candidate for WMATC operating authority.

Licensing proceedings such as this involve predictive judgments.³ In particular, "[a] determination of compliance fitness is

¹ *In re Ready Eager Drivers Inc*, No. AP-12-003, Order No. 13,287 (May 25, 2012); *See In re P&T Transp. Co., Inc.*, No. AP-87-28, Order No. 3131 (Mar. 8, 1988) (reopening pre-decision record under then Rule No. 27-02).

² Order No. 13,287; *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 5963 (Aug. 15, 2000); *In re V.I.P. Tours*, No. MP-94-02, Order No. 4266 (Mar. 28, 1994).

³ Order No. 13,287; *In re A & J Limo Servs., Inc.*, No. AP-09-048, Order No. 12,104 at 4 (July 27, 2009) (citing *Old Town Trolley Tours v. WMATC*, 129 F.3d 201, 205 (D.C. Cir. 1997)).

prospective in nature.”⁴ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁵

Applicant was conditionally granted operating authority in Order No. 13,464 based on the following holding:

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

As is customary when approving an application for a WMATC certificate of authority, the issuance of a certificate was expressly made contingent on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff. It was during the course of applicant’s efforts to satisfy those conditions that certain facts came to the Commission’s attention and placed previously known facts in a different light.

Among the conditions stipulated in Order No. 13,464 was the requirement that applicant produce a lease for any WMATC vehicle not registered in applicant’s name. The sole vehicle that applicant proposes operating under WMATC authority is not registered to applicant. Applicant filed a lease for said vehicle on September 24, 2012. What purports to be applicant’s signature on the lease, however, does not match what purports to be applicant’s signature on page 4 of the application filed in this proceeding on August 15, 2012. In addition, what purports to be applicant’s signature on a pleading seeking to expedite the application process and filed in this proceeding on November 9, 2012, matches neither of the other two. Applicant’s Exhibit A, a copy of applicant’s driver’s license, is not sufficiently legible to determine whether any of the three signatures is genuine. In any event, it appears that at least two are not.

Under the circumstances, we believe that it would be in the public interest to stay the execution of Order No. 13,464 until such time as applicant has had an opportunity to comment on this evidence.⁶

⁴ Order No. 13,287; *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012).

⁵ Order No. 13,287; Order No. 13,250.

⁶ See Order No. 13,287 (staying execution of conditional grant order); *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 4658 (Sept. 6, 1995) (same).

THEREFORE, IT IS ORDERED:

1. That the pre-decision record in this proceeding is hereby re-opened under Rule No. 26-04.

2. That the execution of Order No. 13,464 is stayed until further order.

3. That applicant shall have 30 days to show cause why Certificate No. 2023 should be issued to applicant notwithstanding the signature discrepancies in the record.

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

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

William S. Morrow, Jr.
Executive Director