

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,422

IN THE MATTER OF:

Served March 3, 2015

Application of WHITES TRANSIT ) Case No. AP-2014-153  
SERVICE for a Certificate of )  
Authority -- Irregular Route )  
Operations )

This matter is before the Commission on applicant's request for a refund of the \$250 application filing fee paid in this proceeding.

**I. BACKGROUND**

Applicant initially applied for a certificate of authority in this proceeding on May 19, 2014. The application was accompanied by a \$250 filing fee. The application form instructs all applicants to include an Attachment A. As is explained on page four of the application form, limited liability company applicants must submit a certificate of good standing from the state where the applicant was formed, dated within the previous six months, as the Attachment A.

Applicant included with its application a document issued to Whites Transit Service from the District of Columbia Office of Tax and Revenue entitled, "Certificate of Clean Hands (Formerly Certificate Good Standing)." However, to form an LLC pursuant to the laws of the District of Columbia, articles of organization must be filed at the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). DCRA issues certificates of good standing to LLCs formed in the District of Columbia.

Applicant's application was accepted for filing and an email was sent to applicant on May 21, 2014. The email stated "[t]he wrong document was included with the application as applicant's mandatory Attachment A. File with the Commission a current certificate of good standing from the District of Columbia Department of Consumer and Regulatory Affairs." The email gave applicant 14 days to respond and cautioned applicant that failure to timely furnish the information would result in delay or dismissal of the application. Applicant failed to respond, and the application was dismissed in Order No. 14,834, served June 9, 2014.

On July 1, 2014, a second application was filed, accompanied by a \$250 filing fee. The application included a certificate of good standing from DCRA as attachment A, showing that Whites Transit Service LLC is a "domestic filing entity . . . formed under the law of the District on 6/19/2014." That application was approved, but the issuance of a certificate of authority was expressly made contingent

on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff within 180 days.<sup>1</sup> Whites Transit Service LLC failed to satisfy the conditions and the application was deemed denied on January 27, 2015, without a certificate of authority having been issued.

At the same time as the second application was submitted, applicant requested a refund of the \$250 application filing fee in this proceeding. The request states that applicant had many questions about the application and the application process. According to the statement, applicant visited the WMATC office with a partially completed application form and asked the receptionist questions and was provided inaccurate information, which applicant relied upon in submitting the initial application.

## II. ANALYSIS

Regulation No. 67-01 provides that a \$250 fee "shall be paid as indicated at the time of filing" an application to obtain a certificate of authority authorizing irregular route operations. Regulation No. 54-04 provides that "[t]he Commission shall notify applicant by written or electronic means that the application has been accepted for filing. The notice may require applicant to . . . furnish additional information necessary to a full and fair determination of the application." Commission Rule No. 29 provides that the Commission may waive its rules "upon the filing of a motion showing good cause."

Applicant cites the receipt of inaccurate information provided by WMATC staff in support of its request for a filing fee refund, although it does not specify the specific misinformation that it relied upon. Presumably, however, because applicant submitted the wrong document as its attachment A and the application was ultimately dismissed for failure to provide the correct document, the alleged misinformation provided by WMATC staff related to the proper form of an Attachment A. However, even if we accept applicant's version of events, applicant had ample opportunity to submit the correct document in support of its application.

As detailed above, the Commission's May 21, 2014 e-mail gave applicant 14 days to provide a certificate of good standing from DCRA to move forward with the application process. Although applicant describes the 14 day period to respond as a "short time frame," we find two weeks is a sufficient time to visit a government office and make the necessary filings to obtain a certificate of good standing, a task that can normally be completed within a few hours. Moreover, if applicant felt that two weeks was not enough time to produce a certificate of good standing, the appropriate course of action was not to simply ignore the Commission's acceptance e-mail, as applicant did. A search of the Commission's orders, available on the Commission's

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<sup>1</sup> See *In re Whites Transit Serv. LLC*, No. AP-14-199, Order No. 14,954 (July 30, 2014) (conditionally granting Certificate No. 2578).

website, would have revealed that the Commission's practice is to routinely extend the deadline for responding to an application acceptance communication upon a first written request.<sup>2</sup>

Although the application form in this proceeding indicates the applicant was a limited liability company, a careful review of the record in the second application proceeding shows that Whites Transit Service LLC had not yet been formed as of the date the first application was dismissed. This Commission cannot issue authority to an entity that does not yet exist, and so dismissal of this application was proper.

It has been the consistent policy of this Commission to deny requests for refunds of application fees once an application is accepted for filing, even if the application is later withdrawn or dismissed.<sup>3</sup> Although inaccurate information provided by Commission staff would be of concern, we find that applicant was clearly instructed in writing as to the steps necessary to advance its application and given an adequate opportunity to respond. Accordingly, we find that applicant has not shown good cause sufficient to waive the application filing fee.

Accordingly, applicant's request for a refund of the \$250 application filing fee paid in this proceeding shall be denied.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director

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<sup>2</sup> See, e.g., *Corp. Comm'n*, No. AP-13-283, Order No. 14,349 (Nov. 18, 2013) (noting extension of time to respond to application acceptance letter).

<sup>3</sup> See *In re G & M Limos and Bus Servs. Inc., t/a G & M Limo Servs.*, No. AP-09-124, Order No. 12,283 (Jan. 14, 2010) (denying request for refund of application filing fee); *In re Barney Neighborhood House and Social and Indus. Settlement, t/a Barney Neighborhood House*, No. AP-08-151, Order No. 11,679 (Nov. 12, 2008) (same); *In re Napoleon Woldeyohannes, t/a Napoleon Transp. Serv.*, No. AP-08-002, Order No. 11,241 (Mar. 31, 2008) (same).