WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1001

IN THE MATTER OF: Served December 22, 1969

Application of D. C. Transit System, Inc., for Authority to Increase Fares.) Application No. 573

) Docket No. 201

In Order No. 992, issued on November 21, 1969, and Order No. 993, issued on November 24, 1969, we denied the applications of Diana K. Powell, Malaku J. Steen and Joel Yohalem, protestants, for reconsideration of our Order No. 984, in which we granted fare increases to D. C. Transit System, Inc. (Transit). We indicated that we would issue an opinion stating in detail our reasons for rejecting those applications. In addition, we have before us D.C. Transit's application for reconsideration. We will deny that application.

The Application of Diana K. Powell

Miss Powell urges the following grounds for reconsideration of Order No. 984: (1) It was improper to allow a return which permits internal generation of capital; (2) The Commission failed to give consideration to her assertion that low and moderate income residents of the city are deprived of public transportation by a rate which "is more than the traffic will bear."; (3) The Commission failed to show that consideration was given to Transit's status as a wholly owned subsidiary of a holding company, and the bearing of that fact on the need of Transit to attract capital at high rates; and (4) The Commission failed to weigh the interest of the public "as against the claims of the corporate holding company."

In our discussion of the question of level of return, we stated our reasons why we felt it imperative that capital from internal sources be built up by Transit (Order No. 984, p. 20). That discussion provides an adequate explanation of our views and we will not add to it here.

It is apparent, of course, that we did consider the existence of low income residents of the city and the impact of a fare increase on them. We refer to our detailed discussion of Mayor Washington's testimony and the presentation made by the City-Wide Welfare Rights Organization (Order No. 984, p. 24). There is, in addition, the discussion of the suspension of the bus purchase program (Order No. 984, p. 43). In both of those discussions, we attempted to make clear that we are doing all that is legally possible to keep the fare at a level which will have a minimum impact on the low income residents of the city. We suspended the bus purchase program precisely in order to mitigate the need for a fare increase. A continuation of that program would have required a further rate increase to cover the capital costs and depreciation expense generated by the annual purchase of 85 new buses. We believe that the record clearly shows that we have given consideration to the impact of fare increases upon low income residents.

Miss Powell's concern with Transit's status as a wholly owned subsidiary is covered by Order No. 984. We referred therein to our discussion in other very recent rate orders in which we considered the point raised by Miss Powell (Orders No. 684, No. 773, and No. 880). One of those, Order No. 684, has been approved by the Court of Appeals on the question of proper return.

The Application of Malaku J. Steen

Mr. Steen questioned our conclusion that there are no facts of record showing that Transit does not meet the standard of the Compact of honest, efficient and economical management. He says that the management has entered into an "unconscionable" labor agreement which guarantees pay but not work. In particular, he argues that because there are peak-hour requirements of over 1000 vehicles and midday requirements of 370 vehicles, some of the men work only the morning rush hours and then are released from duty. Those "extra" men are paid for eight hours pay under the agreement. He concludes that the net effect is that "some drivers work only two hours each day for 5 days and receive 40 hours pay."

He next asserts: "Although the number of extra drivers actually employed is uncertain, it is felt that a sufficient number of drivers fall in this category" to warrant the reconsideration of whether Transit's management is economical and efficient.

We believe that Mr. Steen's objection reflects a basic misunderstanding of Transit's practices in scheduling drivers. Many of those who drive during the rush hour are used to relieve those drivers who have begun their workday before the morning rush hour and thus are terminating their shifts in the late morning or early afternoon. Some do charter work after performing morning rush hour service. A number nearly equaling the number required during the morning are required during the evening rush. In short, the great majority of drivers are fully or very nearly fully utilized for a full eight-hour shift. There may be some loose ends that must be operated by a driver who cannot, in addition, be scheduled to operate another run or runs. That these men who are called to work for only two or three hours should not be compensated in accordance with the labor agreement is not a conclusion we will endorse.

Mr. Steen asks that the record be reopened to take further evidence on this question. Mr. Steen was a formal party to this proceeding. He has had the Transit exhibits upon which he bases his conclusion since June 1969, a full month before Transit presented its case. Mr. Steen could have elicited information on this point during the hearings. Moreover, his present contention appears to be nothing more than unsupported conjecture. Hence, we do not believe that his argument presents a bona fide issue for our reconsideration and we will not reopen the record at this time.

Mr. Steen also suggests some consideration should be given to a reduced fare for non-peak hours, at least for older patrons and those on welfare. He asserts that this would encourage more patronage, thus making more efficient use of "extra" drivers. As we have said, the record does not show that there is any substantial number of "extra" drivers. Moreover, we discussed the possibilities of an

off-peak fare differential in Order No. 984 as well as in Orders Nos. 880 and 882. We concluded that at present there is no clear indication that a preferential fare would be desirable or have any substantial practical effectiveness.

The Application of Joel Yohalem

Mr. Yohalem questioned the use of ridership figures for the first quarter of 1969 as a proper basis for projecting ridership for the future annual period. The staff witness had concluded that the first quarter figures were depressed. We agreed that projections based on the first quarter alone would produce a distorted projection. Therefore, we used the actual result in the first two quarters of 1969 to project ridership for the future annual period.

Statistically, the use of two quarters is better than one. If one quarter tends to be unrepresentative, the use of a longer period will serve to give a more accurate projection inasmuch as it will tend to smooth out the exaggeration. Furthermore, there are seasonal trends which cause each quarter to differ from the others and the more actual quarters available, the more accurate will be the projection.

When we are projecting ridership for the future annual period, we are attempting to apply our best judgment to the evidence, which consists largely of claims from various parties as to what the future will be. In this case, the staff objected to the use of first quarter figures and recommended the use of the second quarter as a better basis for projection. The staff's criticism of the first quarter was disputed by the company. In a period of declining public transit use, it is extremely difficult to judge whether the first quarter result in 1969 does, in fact, indicate the results to be expected in 1970.

Mr. Yohalem has characterized the second quarter as "an altogether normal period." There is no basis for that characterization. Indeed, for several months, going back to April 1968, ridership fluctuations have been such that no period can be characterized as "altogether normal."

Taking all of the claims and circumstances into account, it was our best judgment that the most accurate projection could be had from basing the projection on the first two quarters of 1969 rather than any single quarter. We stand by that judgment.

Yohalem's application also alleges that the Commission erred in not considering whether Transit operators' wages were "prudently incurred," and that Transit had failed to explain why it pays its drivers more than the wages paid by other comparable transit companies. The labor contract involved was negotiated more than three years ago. We have had no information, either on this record or reaching us informally, that this agreement was not reached in arms-length bargaining. Much of the wage increase which has taken place has been caused by the cost-of-living clause in the contract. Increases under that clause are tied to the cost-of-living index. The unprecedented increase in that index during the last three years was probably largely unforeseen at the time the contract was signed. We find no basis for reconsideration in the unsupported charge that a labor agreement obligation may not have been "prudently incurred," or that the contract is "unconscionable" as Mr. Steen's application alleges.

Yohalem next asserts that the Commission erred in failing to reduce Transit's revenues in the future annual period by the amounts which were due to employee health and pension funds in past periods but were not paid on time. The suggestion here is that the amounts Transit is in arrears to the health and pension funds should be deducted from the revenue requirements projected for the future, apparently on a restitution theory. On November 10, 1969, Transit filed an application, which we are approving today, to issue a deed of trust covering certain real property to secure a note to the Trustee of the pension and health and welfare funds in the amount of the company's arrearages to those funds. Under this arrangement, the company is obligated to make the payments according to the schedule provided in the note. Otherwise, it could face the forced sale of the property securing the note. Thus, the obligation to these

funds has not disappeared; it is being reduced to the form of a note payable. We cannot assume that the obligation will not be met.

Yohalem next takes issue with our ruling that depreciation on buses will continue to be computed on a 14-year schedule. That schedule has been in effect since when it was established by Order No. 773, served January 26, 1968. Our reasons for leaving the depreciation schedule at 14 years despite the temporary suspension of the bus purchase program are fully discussed in Order No. 984. We see no need to add anything further.

Next Yohalem asserts that the Commission erred in the amount of return allowed. In Order No. 984, there is an extensive discussion of the level of return. Mr. Yohalem has apparently misread that discussion. First, he has concluded that the Commission allowed an "admittedly high" return. What we said was: "This figure, looked at in isolation, appears high." (Order No. 984, p. 20.) That statement falls far short of providing any basis for an honest contention that the level of return is "admittedly high." Further, if one reads the quoted sentence in the context of the full discussion of return, it is absolutely clear that we regard the return being allowed as low. We characterize the return allowed as the "minimum defensible level." (Order No. 984, p. 31.)

Second, Mr. Yohalem has missed the point of our temporary suspension of the bus purchase program. We took this step in response to the need to keep the fare as low as possible, a result which we have many times indicated as a primary Commission goal. Mr. Yohalem says in his application: "The Commission cannot have it both ways; it should either reduce the return or require the purchase of a number of buses." By suspending the bus purchase program requirements, we were able to reduce greatly the return which would otherwise have to be paid by the ratepayer, and Order No. 984 tells how and in what amount. (Order No. 984, pp. 43-44.)

Finally, Yohalem charges that we erred in concluding that the rates authorized are not unduly preferential nor discriminatory. Again, in Order No. 984, we discussed the

record in this proceeding and the status of other proceedings in which we are engaged. We indicated that the evidence of record in this proceeding does not indicate that "undue" discrimination or preference appears to exist. Moreover, a study contracted by the Commission as a result of Payne v. WMATC, 415 F2d 901 (1968), will provide a definitive basis upon which to consider whether any undue discrimination or preference exists.[1/] In the Payne case, we were instructed by the court of appeals to undertake a study of the discrimination question, but the court refused to stay the new rates there in question pending completion of that study. Using that decision as a guide, we will continue to allow the use of the current fare structure until we have considered the rate structure study and the record of the public hearings we intend to hold on that study.

The Application of D. C. Transit System, Inc.

D. C. Transit's application for reconsideration alleged several errors with respect to our disallowance of projected increased wage costs due to the cost-of-living provision in the labor agreement. We said in Order No. 984 that we would not allow those costs because of the difficulty in anticipating with any degree of certainty that those costs would actually be incurred. Our policy in the past has been to disallow those costs on that ground, and we feel, as we indicated, that in present circumstances, it is more difficult now than in the past to anticipate what course the cost-of-living index will take. We did not rely on Mr. McCracken's or Mr. Burns' statement in the sense that we believed they constituted evidence. They were merely mentioned in connection with our general observation that the Administration counts the attack on inflation among its highest priorites. Our refusal to allow future cost-of-living increases is based upon our total inability to predict what will materialize. We are not relying specifically upon the views of any public or private person as to what will take place.

Transit also alleges that we erred in failing to allow additional revenue of $44,808. The company estimates that

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[1/] The study which was done by Alan M. Voorhees & Associates is now complete and is in the hands of the parties to the Payne case. We will hold public hearings on it soon.

it would lose this amount through the exchange of 30-cent tokens for rides given after the 32-cent fare went into effect. We gave no credit for the use of 30-cent tokens for 32-cent rides. Transit's figure of $44,808 assumes that there are 2,240,400 tokens which have been sold for 30 cents but would be used for a 32-cent ride. Transit did not explain how it arrived at the 2,240,400 figure. It seems to us to be an extremely large number of tokens for the limited category in issue. We do not believe that we have in this record a proper basis for charging the rate-payer for this item.

Transit also claims that it should be permitted to debit the special court-ordered reserve in a fashion other than that provided in Order No. 984. There we said that at the end of a period of one year, the company may report to the Commission its net operating income for the year. If net operating income is less than $1,700,000, the company may apply to remove from the riders reserve created in Order No. 981 an amount sufficient to bring its net operating income up to that level. No reason has been stated by Transit as to why that plan is error as against an undisclosed plan that Transit may have in mind. Therefore, we reject Transit's contention on this point.

Transit alleged other error concerning matters which are fully discussed in Order No. 984. We will not add to that discussion here.

THEREFORE, IT IS ORDERED that the application for reconsideration of Order No. 984 filed by D. C. Transit System, Inc., on November 24, 1969, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director