

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1810

IN THE MATTER OF:

Served March 6, 1978

Application of EDWARDS TRUCKING )  
COMPANY, INC., for Temporary )  
Authority and Certificate of )  
Public Convenience and Necessity )  
to Perform Charter Operations )  
Pursuant to Contract-Nuclear )  
Regulatory Commission )

Application No. 1016

Docket No. 394

By Application No. 1016, filed October 27, 1977, Edwards Trucking Company, Inc. (Edwards), seeks temporary authority and a certificate of public convenience and necessity pursuant to Title II, Article XII, Sections 4(d)(3) and 4(b) of the Compact, respectively, to transport passengers in charter operations between the facilities of the Nuclear Regulatory Commission at 1717 H Street, N. W., Washington, D. C., and the facilities of the Nuclear Regulatory Commission at 7915 Eastern Avenue, Silver Spring, Md. Edwards has entered into a bilateral contract extension with the Nuclear Regulatory Commission, to provide regularly scheduled shuttle bus service between the above-mentioned Nuclear Regulatory Commission offices.

By Order No. 1770, served November 25, 1977, and incorporated by reference herein, a public hearing on this application was scheduled. No protests were filed.

At the hearing, Edward's introduced a statement of projected revenue and revenue deductions for a one-year period for its contract with the Nuclear Regulatory Commission. This statement reflects total anticipated revenue of \$72,525.60, and total anticipated expenses of \$51,045.60. Applicant's financial statement as of August 31, 1977, reflects current assets of \$268,083, total assets of \$466,162, current and long-term liabilities of \$165,215.51 and \$66,099.16, respectively, and stockholders equity of \$234,847.63.

A representative of the Nuclear Regulatory Commission testified at the hearing that there is a present need for the service and that Edward's service to date has been satisfactory.

Edwards asserts in its application that it has been providing the service proposed herein since January 10, 1977, and was unaware that it needed additional authority. Edwards' vice-president testified at the hearing that Edwards has been providing the service for which authority is sought herein for about one year. She further testified that Edwards was advised by a letter from this Commission dated November 1, 1977, that Edwards should not render the service in question until appropriate authority was obtained therefor. Edwards nevertheless continued to provide the service.

Edwards presently holds WMATC Certificate of Public Convenience and Necessity No. 40, which authorizes, in part, the following operations:

CHARTER OPERATIONS, PURSUANT TO CONTRACT to transport employees of the United States Government and persons traveling on official government business, together with mail, pursuant to a contract or contracts with United States Nuclear Regulatory Commission:

Between the facilities of Nuclear Regulatory Commission at 1717 H Street, N. W., Washington, D. C., and the facilities of Nuclear Regulatory Commission at 7290 Norfolk Avenue, Bethesda, Md.

The Commission takes official notice of the record in Application No. 971, Docket No. 357, wherein said authority was granted. There, as here, the record reflects that Edwards had been providing the service for which authority was sought prior to the time it applied for authority.

The findings to be made by the Commission, after hearing, with respect to an application for a certificate of public convenience and necessity are set forth in Title II, Article XII, Section 4(b) of the Compact. Essentially, the Commission must make two separate findings. First, an applicant must be fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder. Second, the proposed transportation must be or will be required by the public convenience and necessity.

The Commission initially finds that the proposed service is required by the public convenience and necessity and that Edwards is operationally and financially able to provide the proposed services. The Commission further finds, however, that Edwards has failed to establish that it is fit, willing and able to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder.

A finding of compliance fitness is a prerequisite under the Compact to the grant of the authority sought herein. This requirement is not designed to punish an applicant for its past behavior. Instead, its purpose is to ensure an applicant's willingness and ability to conduct its operations in a lawful manner consistent with the public interest. In determining an applicant's fitness to comply, the Commission considers the following factors: (1) the nature and extent of past violations; (2) the mitigating circumstances, if any, shown to exist or to have existed; (3) whether applicant's conduct represents a flagrant and persistent disregard of the provisions of the Compact; (4) whether the applicant has made a sincere effort to correct its past mistakes; and (5) whether the applicant has demonstrated its willingness and ability to comport in the future with the applicable rules and regulations.

The testimony at the hearing reveals that Edwards continued to provide the proposed services even after it had been advised to cease operations until it had obtained authority from the Commission. Edwards argument that it did not know that it needed authority from this Commission to provide the proposed service is unpersuasive. This same argument was raised by Edwards in Application No. 971, Docket No. 357, and accepted by the Commission. It will not be accepted a second time. Edwards should have known from its past experience with the Commission that it needed authority to provide the proposed service. Even assuming, arguendo, that Edwards actually did not know it needed authority from this Commission at the time it commenced the proposed operations, its continued provision of service after it had been advised to cease operations constitutes a blatant and willful disregard of the Compact and warrants a finding of compliance unfitness.

Edwards has failed to demonstrate its willingness and ability to comply in the future with the provisions of the Compact and the Commission's applicable rules and regulations. Edwards record to date consists of knowing, willful and flagrant violations of the Compact without any justifiable excuse therefor. Such behavior cannot be rewarded with a grant of new authority. Accordingly, Edwards' application shall be denied, and Edwards shall be ordered to cease and desist its illegal operations within the Metropolitan District.

Title II, Article XII, Section 4(g) of the Compact states in pertinent part that

Any . . . certificate, may, . . . in the discretion of the Commission be amended or revoked, in whole or in part, or may, . . . on the Commission's own initiative, after notice and hearing, be suspended, changed or revoked, in whole or in part, for willful failure to comply with any lawful order, rule, or regulation of the Commission, or with any term, condition, or limitation of such certificate . . .

The finding of unfitness made herein obviously extends beyond the parameters of this application. In light of Edwards persistent habit of operating first and seeking authority later, we have serious doubts about allowing that carrier to conduct any operations subject to the regulatory jurisdiction of this Commission. Therefore, Edwards shall be directed to show cause, in writing and under oath, why the Commission should not institute a proceeding to revoke its WMATC Certificate of Public Convenience and Necessity No. 40, pursuant to the above-quoted provision of the Compact, for lack of compliance fitness as described hereinabove.

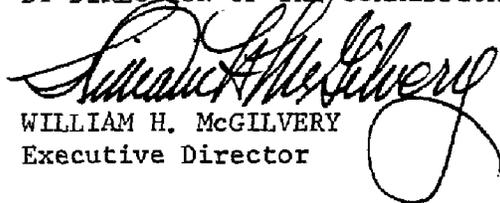
THEREFORE, IT IS ORDERED:

1. That Application No. 1016 of Edwards Trucking Company, Inc., for temporary authority and a certificate of public convenience and necessity be, and it is hereby, denied.

2. That Edwards Trucking Company, Inc., be, and it is hereby, directed to cease and desist from engaging in the transportation for hire of passengers between any points in the Metropolitan District unless and until there is in force appropriate authority therefor issued by this Commission.

3. That Edwards Trucking Company, Inc., be, and it is hereby, directed to show cause, in writing and under oath, within 30 days from the date of service hereof why the Commission should not institute a proceeding to revoke WMATC Certificate of Public Convenience and Necessity No. 40 issued to Edwards Trucking Company, Inc.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director