

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1824

IN THE MATTER OF:

Served March 29, 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 Order No. 1810, served March 6, 1978, the Commission denied the application of Edwards Trucking Company, Inc. (Edwards), for 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 (NRC) at 1717 H Street, N. W., Washington, D. C., and the facilities of the NRC at 7915 Eastern Avenue, Silver Spring, Md. Said order recited, inter alia, that:

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.

On March 10, 1978, Edwards filed an application for reconsideration of Order No. 1810. On March 17, 1978, Edward's president filed an affidavit in response to our directive that good cause be shown why a proceeding should not be instituted to revoke Edwards' Certificate of Public Convenience and Necessity No. 40.

As pertinent, these pleadings amplify the position taken by Edwards at the public hearing on this application: that it was unaware that additional authority was required. Edwards explains that it was requested by NRC only to provide temporary service between the sought termini. Applicant believed "that temporary route or schedule changes of minor or emergency nature" did not require separate authority. Edwards distinguishes this situation from that in Application No. 971 inasmuch as Application No. 1016 involves modification of existing authority.

Edwards asserts that it has attempted to comply with all requirements of this Commission, and that it will endeavor so to do in the future. Applicant also states that it has ceased the operation in question as directed.

On reconsideration, we conclude that Order No. 1810 should be modified in part. While there can be no doubt that Edwards did operate without appropriate authority, the additional matters raised in the latest pleadings tend to indicate that Edwards violations were not the result of a willful intent to flout the provisions of the Compact.

This is not to say that Edwards is entirely free from blame. Every certificated carrier and every applicant for authority is expected to be fully aware of the duties and responsibilities imposed by the Compact. The feasibility of any regulatory scheme depends, in large measure, upon the good faith cooperation of the regulated industry. Edwards has certainly been remiss in its failure to seek competent advice prior to instituting new services. Applicant's habit of acting and then inquiring of its counsel or the staff of the Commission as to the consequences of its action must be abandoned. To encourage this behavior modification, the directive of Order No. 1810 "[t]hat 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" shall continue in full force and effect. Edwards is cautioned that its failure to abide by this order may generate substantial penalties under Title II, Article XII, Section 18 of the Compact in addition to jeopardizing its status as a certificated carrier.

As concerns Application No. 1016, however, we are of the opinion that Edwards negligence should not stand as a bar to granting the authority sought. As the Commission has stated on many occasions, the requirement of compliance fitness is not designed to be a vehicle of punishment for

past transgressions. It's purpose, rather, is to ensure an applicant's willingness and ability to conduct present and future operations in a lawful manner consistent with the public interest. We trust that Edwards will heed our admonition and comport itself in the future with all regulatory requirements. Accordingly, Application No. 1016 shall be granted.

THEREFORE, IT IS ORDERED:

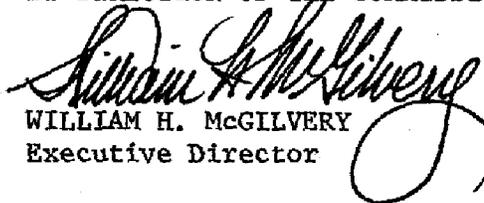
1. That Application No. 1016 of Edwards Trucking Company, Inc., be, and it is hereby, granted.

2. That upon the filing of an appropriate WMATC Tariff, including a copy of the underlying contract, within 30 days from the date of service hereof, an appropriately revised Certificate of Public Convenience and Necessity No. 40 shall be reissued.

3. That unless said tariff is filed within 30 days, or such further time as the Commission may order, the grant of authority made herein shall be null and void and Application No. 1016 shall stand denied in its entirety effective upon the expiration of said compliance time.

4. That, except to the extent modified herein, the directives of Order No. 1810 be, and they are hereby, continued in full force and effect.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

