

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3126

IN THE MATTER OF:

Served February 26, 1988

Application of O&R MANAGEMENT)
CORPORATION for Special)
Authorization to Perform Charter)
Operations Pursuant to Contract --)
EPA)

Case No. CP-88-01

By application tendered for filing on January 26, 1988, and completed on January 29, 1988, O&R Management Corporation ("O&R" or "applicant") seeks authorization to conduct charter operations pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 under a contract with the United States Environmental Protection Agency ("EPA") transporting EPA employees and persons traveling on official business with EPA, together with mail, express, and baggage in the same vehicle as passengers, between Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va.; Fairchild Building, 499 South Capitol Street, S.W., Washington, D.C.; EPA Headquarters, Makemie and K Streets, S.W., Washington, D.C.; EPA Headquarters East, Wesley and K Streets, S.W., Washington, D.C.; L'Enfant Plaza, Washington, D.C.; and Waterside Mall West Tower, Washington, D.C.

Order No. 3121, served February 2, 1988, generally describes the evidence submitted with the application, and that order is incorporated by reference herein. The Commission required publication of notice and the filing of an affidavit of publication and other specified material. Applicant has complied with these requirements.

The application has been protested by Transcontinental Enterprises, Inc. ("TEI"), on the grounds that O&R is unfit as to compliance. In support of this position TEI's president, Mr. Stanley Carroll, attests that, although O&R currently lacks authority from the Commission to perform the transportation at issue in the instant application, it has been performing charter service for EPA under Contract #68-01-7055 since April 23, 1986. According to Mr. Carroll, the contract required O&R to provide vehicles, drivers, and insurance for use in passenger transportation for hire in addition to certain other services.

As part of the application, Brian E. Smith, Chief, Transportation Management for EPA, submitted a letter in which he attests that O&R has provided a management service to EPA for the past four years during which time EPA provided vehicles, licensed and tagged by EPA. According to Mr. Smith, the instant contract differs from past contracts in that O&R would now be required to provide vehicles

licensed and tagged in its own name, whereas in the past O&R supervised and operated leased vehicles of EPA.

Commission Regulation No. 70 provides that an application of this type will be granted if it is determined that the applicant is fit, willing, and able properly to perform the proposed service and to conform to the provisions of the Compact and the rules, regulations, and orders of the Commission thereunder, and if it is determined that the proposed operations conform to the provisions of Regulation No. 70. The issue of whether the public convenience and necessity requires such service has been determined in Case No. MP-79-04. See Order No. 2004, served June 20, 1979.

Inasmuch as the contract is for a fixed term of at least 181 days and provides for the transportation of employees by their employer and of persons traveling on official business by a government agency, it is found that this application conforms to the requirements of Commission Regulation No. 70. It is further found, based on the evidence of record as described in Order No. 3121, that applicant is financially and operationally fit, willing, and able properly to perform the service described above.

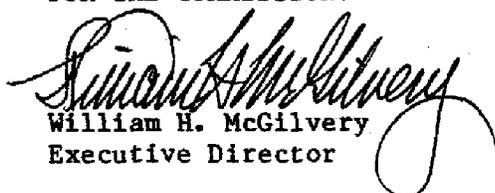
There remains the issue of applicant's compliance fitness. Testimonial evidence adduced by TEI indicates that O&R provided unauthorized passenger transportation for hire in violation of the Compact and certain Commission regulations. Testimonial evidence provided by EPA on behalf of O&R indicates that, although certain service was provided to EPA by O&R, that service did not constitute passenger transportation for hire. The EPA contract submitted by TEI could support either position. However, the balance sheet submitted by O&R shows no equipment. Upon consideration of these matters, it appears that the preponderance of the evidence indicates that O&R is fit as to compliance.

It should be noted that Commission Regulation No. 70-06 requires the Executive Director to make a determination of fitness based on the pleadings. The same issues have been raised in Case No. FC-88-01, Transcontinental Enterprises, Inc., v. O&R Management Corporation. This case is currently pending, and its outcome could affect the authority at issue in this case. In addition, reconsideration by the Commission of this order is available pursuant to Commission Regulation No. 70-08.

Upon filing of two title pages for its WMATC Tariff No. 2 in accordance with Commission Regulation No. 55-04, an appropriate authorization will be issued.

IT IS SO ORDERED.

FOR THE COMMISSION:


William H. McGilvery
Executive Director