

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3173

IN THE MATTER OF:

Served May 27, 1988

Application of AMERICAN COACH )  
LINES, INC., for Special )  
Authorization to Perform Charter )  
Operations Pursuant to Contract — )  
NRC )

Case No. CP-88-05

By application filed May 10, 1988, American Coach Lines, Inc. ("ACL"), 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 Nuclear Regulatory Commission ("NRC") transporting employees of NRC and the federal government and persons traveling on official business with NRC and the federal government between 4350 East-West Highway, Bethesda, Md.; 4550 Montgomery Avenue, Bethesda, Md.; 7920 Norfolk Avenue, Bethesda, Md.; 8120 Woodmont Avenue, Bethesda, Md.; Bethesda Metro Station, Bethesda, Md.; 5650 Nicholson Lane, Rockville, Md.; and 11555 Rockville Pike, Rockville, Md.

Order No. 3169, served May 13, 1988, generally describes the evidence submitted with the application, and that order is incorporated herein by reference. The Commission required publication of notice and filing of an affidavit of publication and other specified materials. Applicant complied with these requirements. Gold Line timely protested the application on fitness grounds. Gold Line's protest is supported by reference to the Commission's prior findings of knowing and willful violations of the Compact, Commission rules and regulations, and ACL's Certificate No. 1.

The fitness of ACL, in general, and its adherence to applicable rules, regulations, and orders, in particular, have been previously examined by the Commission. In Case No. AP-85-36, ACL applied for a certificate of public convenience and necessity to conduct charter operations between points in the Metropolitan District. After carefully reviewing the evidence in the case, the Commission denied the application in Order No. 2908, served September 10, 1986, on the grounds of fitness.

ACL's compliance with Commission orders, rules, and regulations is under review once again in Case No. MP-87-08, Investigation of Compliance of American Coach Lines, Inc. In Order No. 3079, served October 9, 1987, the Commission made several findings of knowing and willful violations of the Compact and Commission rules, regulations, and orders. That order suspended ACL's WMATC Certificate No. 1 for a period of 90 days.

In Exhibit J to this application, ACL notes certain adverse findings of this Commission with regard to its fitness, arguing that such findings were in error, but noting that its application for reconsideration was denied and further noting that it has appealed the Commission's orders to the United States Court of Appeals for the District of Columbia Circuit. Applicant fails to note, however, that its petition for stay of the Commission's orders was denied by that same Court.

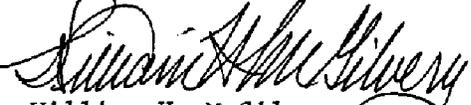
ACL asserts "that all operations complained of in the cited proceedings were conducted in good faith, and pursuant to advice of counsel," and "that the legal basis for the Commission's finding of unlawful operations are in error, as expressed in the November 9 Petition for Reconsideration." Applicant overlooks that these assertions and the application for reconsideration have already been disposed of by final orders of the Commission, and that its petition to the Court for stay of those final orders has been denied.

At the conclusion of the period of suspension of ACL's operating authority, the operations of ACL during the suspension period were audited. The staff of the Commission has reviewed the audit report, concluded that the report showed continued operations between points in the Metropolitan District in violation of the suspension order, and on May 25, 1988, moved the Commission to revoke ACL's WMATC Certificate of Public Convenience and Necessity No. 1 because the holder is unfit as to compliance.

The initial determination of an application filed under Regulation No. 70 is made by the Executive Director. Regulation No. 70-06 specifies that the determination concerns (1) the applicant's fitness and (2) eligibility of the proposed operation for consideration under Regulation No. 70. Applicant and protestant have both alluded to applicant's past and present fitness problems before this Commission. As a direct result of those problems, applicant's WMATC Certificate of Public Convenience and Necessity No. 1 is currently the subject of a motion for revocation on these very same fitness grounds. In these circumstances, the Commission's Executive Director will not find applicant fit to conduct these operations when this very issue is pending before the Commission, itself. Therefore, this application is denied. Applicant is referred to Commission Regulation No. 70-08 if it should choose to petition the Commission for review of this determination.

IT IS SO ORDERED.

FOR THE COMMISSION:

  
William H. McGilvery  
Executive Director 