WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1244

IN THE MATTER OF: Served February 1, 1973

Disposition of Commission-Controlled Funds: D. C. Transit System, Inc.) Docket No. 249

In Order No. 1242, issued December 19, 1972, we provided for the disposition of certain escrowed funds and riders' funds held by D. C. Transit System, Inc. (Transit) but subject to disposition only on the approval of this Commission. On January 2, 1973, Messrs. Bebchick, Sher, Williams, Gottlieb, and Mrs. Camer (Petitioners) filed a petition for reconsideration of Order No. 1242, seeking a different disposition of two of the funds we dealt with in Order No. 1242. The reasons they submit as a basis for reconsideration do not persuade us that we should change the dispositions we made in Order No. 1242 and we will deny their petition.

Petitioners first challenge our disposition of the balance of the riders' fund we established in October 1969, in Order No. 981, the balance being $138,304. In Order No. 1242, we authorized Transit to close out the reserve and charge the balance to retained earnings.[1/] We had provided for that kind of disposition in Order No. 984 if certain conditions were to develop in the year following that order. Those conditions did develop and, in Order No. 1242, we were simply implementing the disposition of this reserve in the manner provided in Order No. 984.[2/] In fact, our policy governing disposition of the fund was clearly established in Order No. 984 and our action in Order No. 1242 was merely to effectuate the disposition we had declared in Order No. 984. Neither the petitioners nor any others challenged the provisions of Order No. 984 which govern the disposition of

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1/ Order No. 1242, ordering paragraph 2.

2/ See Order No. 1242, p. 2 for a full discussion of the reasons for this particular disposition.

this reserve. Under the terms of Section 16 of the Compact, requests for reconsideration of Commission action must be filed within 30 days of the date of the order for which reconsideration is sought. Thus, the time to challenge this Commission action is long past.

Moreover, even if petitioners' request for reconsideration were timely, we could not accept the reasons they offer as a basis for a disposition of the fund other than we have provided. Essentially, their argument is that the Commission is obliged to make the fund available for the benefit of the riders. This obligation, say petitioners, arises from a court directive specifically addressed to the use of this fund, and from a rule of ratemaking prohibiting the retroactive establishment of utility rates. They assert that we have not abided by those directives in the disposition we authorized in Order No. 984 and effectuated in Order No. 1242.

We disagree. Order No. 984 was a rate order in which we increased the basic D. C. bus fare from 30 cents to 32 cents, and increased the Maryland fares commensurately. In the course of the hearings in that proceeding, we had heard various pleas urging that we not increase the bus fare, including testimony from the Mayor-Commissioner of the District of Columbia that a fare increase would be socially destructive and untimely, considering his stated belief in the imminence of public takeover of the bus system.

We took his plea quite seriously and responded in a very tangible way by holding the fare increase to the absolute minimum. We said in that order that we could easily have justified an increase closer to the 35-cent fare requested. Instead we minimized the necessity for increase in every instance where discretion would allow. We set the return at what we considered to be the "minimum defensible level."3/ In doing so, we specifically noted that we were able to take that "minimum" approach partly because we had established a riders' fund a few days earlier in Order No. 981, which we felt we could make available to Transit if the minimal fare we were allowing fell below even the minimal expectation we

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3/ Order No. 984, page 31.

had forecast. Thus the riders' fund was employed in a manner which permitted us to keep the fare at 32 cents. That fare was in effect for only 8 months and we eventually were forced to raise the fare to 40 cents. But for those months the rider surely benefited by the fact that the existence of this reserve made possible a fare lower than would otherwise have been justifiable.

The other aspect of Order No. 1242 for which petitioners seek reconsideration, is our disposition of the $619,998 which had been held for down payments on buses which were never purchased. In Order No. 1242, we authorized the dissolution of the escrow in which this money was held and allowed the money to be transferred to the general cash accounts of the company, on the condition that certain other funds be transferred to the Washington Metropolitan Area Transit Authority.

Petitioners object to our disposition, asserting that money was allowed to be collected through the farebox for interest expense anticipated from the purchase of new buses, and for what protestants have labelled "an extraordinary high return on equity" to accommodate the funding requirement for the purchase of new buses, which expenses were not incurred because buses were not purchased. Those amounts, say petitioners, should be returned to the ratepayer. Petitioners further assert that our declaration in Order No. 1052 that the escrowed down payment money would be used for the benefit of the riding public if not used for buses, precludes us from releasing this fund to the company at this time.4/

Petitioners assertion that our release of the sequestered profits at this time is inconsistent with our commitment in Order No. 1052 to see that this fund was spent for the benefit of the rider if it were not used for bus purchases, overlooks the nature of the funds involved. We have never assumed that

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4/ Petitioners claim that our action is based on a theory that "those funds were not collected from the ratepayers which consequently have no claim on them." Petition, p. 7. We said no such thing in Order No. 1242. Our action was based on the fact that this fund was sequestered profit. Order No. 1242, p. 3.

we could require sequestered profit to be used for any purpose for which the investor, in the regulatory scheme of things, is not responsible. Providing down payments for buses is an investor responsibility. There are numerous other responsibilities that we could require the investor to meet, or to meet partially, with the sequestered profit, if Transit had continued in mass transit operations. But that is true only in the context of an operating company. Once the company is no longer operating, the investor's responsibility to provide capital ceases.

We also reject petitioners' arguments for reimbursement of those amounts which correspond to projected expenses relating to bus purchases. Those amounts were part of our "best judgment" determinations which, when taken together, led to the establishment of the rates effectuated by Order No. 1052. Our findings and conclusions in that order have not been invalidated.

But in further response to petitioners implication that Transit's failure to purchase buses produced a windfall, we have audited the results of Transit's experience under Order No. 1052. We did allow a somewhat higher return in the 1970 rate case than in previous cases, partly because we were restoring the bus-purchase requirement that we had suspended 8 months before. We also included in our projections an expense for anticipated interest on new bus purchases which never materialized. On the other hand, however, the revenues which we projected in Order No. 1052 did not actually materialize either. In Order No. 1052, we forecast that the new fare would produce $2,440,283.67 in net operating income, or a return to equity of $907,145.67 after payment of interest of $1,533,138.00 in the future annual period. However, that level of income did not develop under the new fare structure. Rather, the net operating income for the first 12 months after the fare increase was $1,765,784.16, and after payment of $1,313,958.25 interest, the return to equity was $337,563.31.5/

5/ This reflects a deduction of $114,262.60 representing the transfer of a cash escrow to WMATA as directed by Order No. 1242, ordering paragraph 1b, page 4. This amount represented the unspent portion of the marketing fund established by WMATC Order No. 1052.

Thus while the expenses were projected, the revenues to cover them were not realized and there was no actual windfall.

We found in Order No. 1052 that Transit was entitled to a profit for the period involved, yet we ordered the company to sequester an amount greater than the profit it actually received. To require Transit to give it up now would be tantamount to retroactively asserting that Transit was not entitled to a return for that period, and we see no justification in the circumstances here for doing that.

THEREFORE, IT IS ORDERED that the petition for reconsideration of Order No. 1242 filed January 2, 1973, by Leonard N. Bebchick, Stanley O. Sher, Richard A. Williams, Daniel W. Gottlieb, and Dorothy Camer be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

JEREMIAH C. WATERMAN
Chairman

SULLIVAN, Commissioner, not participating.