

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7622

IN THE MATTER OF:

Served December 18, 2003

METRO HEALTH-TECH SERVICES INC., )  
WMATC No. 589, Investigation of )  
Tariff and Lease Violations )

Case No. MP-2003-66

This matter is before the Commission on respondent's response to Order No. 7420, served September 24, 2003, which directed respondent to show cause why the Commission should not assess civil forfeitures for violations of Article XI, Section 14 of the Compact and Regulation Nos. 55 (tariffs), 61 (vehicle markings), and 62 (vehicle leasing).

Under Article XI, Section 14 of the Compact and Regulation No. 55, a carrier may perform a transportation contract only after first filing it as a tariff. Commission Regulation No. 61 requires each WMATC carrier to display on both sides of each revenue vehicle the carrier's name or trade name and the carrier's WMATC number. Commission Regulation No. 62 requires each WMATC carrier to file a lease with the Commission for each non-owned revenue vehicle.

Under Article XIII, Section 6(f), of the Compact, a person who knowingly and willfully violates a provision of the Compact, or a regulation or order issued under it, shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.

**I. BACKGROUND**

On December 16, 2002, the Commission received a list of carriers providing passenger service in the Washington Metropolitan Area under contracts with LogistiCare Solutions, LLC, WMATC Carrier No. 524.<sup>1</sup> Respondent's name was on the list, but the Commission could find no record of respondent having filed the contract as a tariff. Commission staff advised respondent to file a LogistiCare contract tariff, and any applicable lease,<sup>2</sup> no later than January 10, 2003. On January 16, 2003, respondent assured the Commission that the necessary documents would be filed the following day. Nearly six months went by with no filing from respondent. This investigation ensued.

The initial order in this proceeding, Order No. 7279, served June 30, 2003, directed respondent to produce within thirty days any and all records and documents in its possession, custody or control

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<sup>1</sup> LogistiCare has a contract with the Washington Metropolitan Area Transit Authority to operate a transportation service for disabled passengers under the name "MetroAccess." LogistiCare primarily operates a reservation system and subcontracts the bulk of the transportation function to other carriers.

<sup>2</sup> In most cases, LogistiCare furnishes the vehicles.

relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning December 1, 2002, and ending on June 30, 2003.<sup>3</sup> The order also gave respondent thirty days to present its vehicles for inspection.<sup>4</sup>

Respondent filed an acceptable LogistiCare lease on July 9, 2003, and a LogistiCare contract tariff was accepted for filing on July 17, 2003. Respondent presented eleven vehicles for inspection over the course of several days in July, nine LogistiCare vehicles and two non-LogistiCare vehicles. Several were presented for re-inspection in August. Respondent produced responsive documents on August 6, 2003, after requesting a week extension.

Based on the tardy tariff and lease filings, the Commission found in Order No. 7420 that respondent had violated Article XI, Section 14, of the Compact and Regulation Nos. 55 and 62. The Commission further found that four of the eleven vehicles inspected in July did not comply with Regulation No. 61 because they did not display respondent's full name.

Respondent was then given thirty days to show cause why civil forfeitures should not be assessed for those violations.

## II. RESPONSE AND FINDINGS

Respondent hopes to avoid any forfeiture assessment based on its alleged new found "familiarity" with Commission requirements and its "struggling" financial position. We are not persuaded that respondent should avoid the consequences of its violations.

The Compact's tariff-filing requirement is one of its central features. Tariff requirements are spelled out in three Compact sections and two Commission regulations. The tariff filing requirement is emphasized during the application process through the application form's requirement that applicants file proposed rates and through the Commission's approval orders, including the order approving respondent's application in December 2000, requiring the filing of "an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55."<sup>5</sup>

The Commission's lease regulation likewise is highlighted in application approval orders, including respondent's, by requiring "a copy of the vehicle registration card, and a lease as required by

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<sup>3</sup> See Compact, tit. II, art. XIII, § 1(c),(e) (Commission may investigate whether a person has violated the Compact and for the purpose of an investigation may "require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry"); art. XII, § 1(b) (Commission shall have access at all times to accounts, records, and memoranda of any carrier for inspection purposes).

<sup>4</sup> See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

<sup>5</sup> In re Metro Health-Tech Services Inc., No. AP-00-87, Order No. 6070 (Dec. 11, 2000).

Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations."<sup>6</sup>

Finally, respondent was familiar enough with the Regulation No. 61 marking requirements to display its full name on seven of its eleven vehicles but offers no reason why the other four should be excused.

Accordingly, we find respondent has no basis in fact for asserting unfamiliarity with these requirements. Furthermore, while respondent may be "struggling" there is no evidence in the record to support a finding that the assessment of a modest but appropriate forfeiture would put respondent out of business.

We shall assess a forfeiture of \$250 for each of the two calendar years respondent knowingly and willfully performed the LogistiCare contract without having filed it as a tariff in violation of Article XI, Section 14, of the Compact and Commission Regulation No. 55, for a combined forfeiture of \$500.<sup>7</sup>

We also shall assess a forfeiture of \$250 each for knowingly and willfully disregarding Commission Regulation Nos. 61 and 62, for an additional forfeiture of \$500.<sup>8</sup>

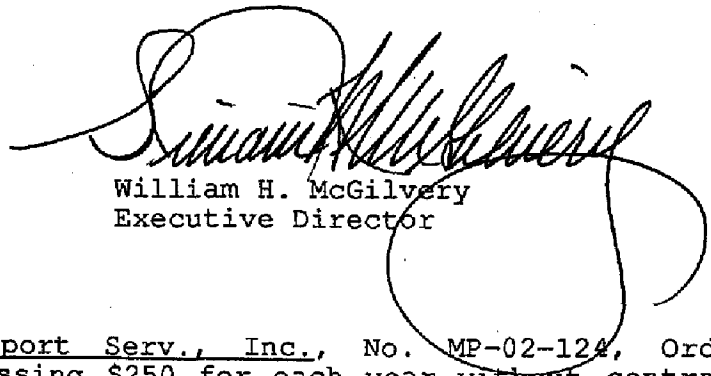
THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against respondent in the amount of \$1,000 for knowingly and willfully violating Article XI, Section 14 of the Compact and Regulation Nos. 55, 61 and 62.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of one thousand dollars (\$1,000).

3. That Certificate of Authority No. 589 shall stand suspended, and be subject to revocation without further notice, upon respondent's failure to timely pay the assessed forfeiture.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND MCDONALD:



William H. McGilvery  
Executive Director

<sup>6</sup> Id.

<sup>7</sup> See In re Chika Transport Serv., Inc., No. MP-02-124, Order No. 7173 (May 7, 2003) (assessing \$250 for each year without contract tariff on file).

<sup>8</sup> See In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc., No. MP-02-97, Order No. 7066 (Mar. 4, 2003) (assessing \$250 each for violating Regulation Nos. 61 and 62).