



## **DECISION**

IN THE MATTER OF an application by Acadian Coach Lines LP for a variance of the New Brunswick Energy and Utilities Board decision on amendments to the routing and scheduling of its inter-city scheduled services within the Province of New Brunswick dated July 16, 2010.

**December 8, 2010**

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD**

**IN THE MATTER OF** an application by Acadian Coach Lines LP for a variance of the New Brunswick Energy and Utilities Board decision on amendments to the routing and scheduling of its inter-city scheduled services within the Province of New Brunswick dated July 16, 2010.

**New Brunswick Energy and Utilities Board:**

Raymond Gorman, Q.C., Chairman  
Cyril Johnston, Vice-Chairman  
Constance Morrison, Member  
Yvon Normandeau, Member

Lorraine R. Légère, Secretary to the Board

Ellen Desmond, Board Counsel

**Applicant:**

Acadian Coach Lines LP

**Solicitor:**

John Stringer, Q.C.  
McInnes Cooper

**Other Parties:**

Lui Greco, Premier's Council on the Status of Disabled Persons

Ian Stewart, St. Stephen Development Board Inc.

Ella Henry, St. Thomas University Students' Union

Larry Lack and Ms. Lee Ann Ward, Saint Andrews

Michael Perry, Transport Action Atlantic, Saint Andrews

John Craig, Mayor, Town of Saint Andrews

Glen Carr, President and Business Agent, Amalgamated Transit Union, Local 1229

## DECISION

### INTRODUCTION

Acadian Coach Lines LP (Acadian or the Applicant) has applied for a variance of a decision of the New Brunswick Energy and Utilities Board (Board) issued on July 16, 2010 *In the Matter of an Application by Acadian Coach Lines LP for approval to amend its routing and scheduling for its inter-city scheduled services within the Province of New Brunswick*, Matter Number 2009-018 (the July 16 decision).

In support of the application for a variance, Acadian provided three supporting documents:

- a letter, dated September 28, 2010, requesting the variance, with reasons;
- a 33-page “performance review” document with ridership and revenue comparisons for 2008, 2009 and 2010; and
- a “confidential” line run income statement comparing year-to-date performance for 2009 and 2010.

At the Board’s direction, Acadian provided a consolidated version of the line run income statement for public review, in accordance with the Board’s ruling on the filing of confidential information in the Acadian rate decision of June 13, 2008.

The issue before the Board is whether it should vary the July 16, 2010 decision. The changes permitted in the July 16 decision have not been implemented.

This decision should be read in conjunction with the July 16 decision.

## LEGISLATION

Section 43 of the *Energy and Utilities Board Act (Act)* provides the Board with the authority to vary its decisions. The section reads as follows.

**43** *The Board may review, rescind or vary any order made by it.*

Section 38 of the Act provides the Board with broad authority over procedural matters. It reads, in part as follows:

**38** *The Board may inquire into, hear or determine any application, matter or thing that under this or any other Act it may inquire into, hear or determine and in doing so the Board*

*(a) Is the master of its own procedure and may give directions about process and procedures that it considers appropriate in the circumstances*

## THE JULY 16<sup>th</sup> DECISION

In March 2010, Acadian requested Board approval of the following changes to its New Brunswick routes and schedules:

1. Reduce service between Rivière-du-Loup QC and Fredericton NB (Route 2) from three return trips per day, to two trips.
2. Discontinue once-daily, return service between Saint John NB and Bangor ME (Route 1).
3. Discontinue once-daily, direct return service between Fredericton NB and Miramichi NB (Route 3).
4. Discontinue Friday and Sunday evening trips between Moncton NB and Charlottetown PE (Route 5). Twice-daily return service between these communities would continue.
5. Implement an enhanced “corridor service” between Fredericton NB, Moncton NB, Saint John NB and Halifax NS. Service would be increased from three return trips per day to four trips between the New Brunswick cities (from two return trips per day to four trips for Fredericton - Saint John) and from three return trips per day to five trips for the Moncton – Halifax service.

In the July 16<sup>th</sup> decision, the Board approved the proposed reductions in service for Routes 2 and 5, and approved the Applicant's proposed "corridor service". The Board also approved the proposed abandonment of direct service on the segment of Route 1 between St. Stephen NB and Bangor ME only. The Board did not, however, approve the other discontinuances of service. Instead the Board directed the Applicant to revise its schedule to incorporate a minimum three-day-per-week service between St. Stephen and Saint John, and between Fredericton and Miramichi. The Board further directed the Applicant to file a final schedule with the Board no later than thirty days prior to the proposed implementation date for the new routes and schedules (on or after October 1, 2010).

## **THE CURRENT APPLICATION**

In the application of September 29, 2010 (the variance application), Acadian has proposed to implement the Board's July 16<sup>th</sup> decision, except for the part that requires it "to increase the number and frequency of runs between the four "corridor" cities in its network (Fredericton, Halifax, Moncton and Saint John)."<sup>1</sup> Accordingly Acadian has requested the Board to vary the July 16<sup>th</sup> decision to remove the "corridor service" requirement. The rationale for the variance is that, for the period January through August 2010, the Applicant has experienced a continued deterioration in its inter-city ridership and revenues are such that "the company finds itself financially unable to implement increased trips on its primary corridors at this time."<sup>2</sup>

Acadian is not seeking any further reductions to service than those permitted by the July decision. It is rather seeking permission not to proceed with the increased service on certain routes it had planned and for which it had obtained permission.

## **PROCESS**

In considering the process to follow on the variance application, the Board considered the nature of the variance sought, the evidence filed in support of the variance application and the recent full public hearing. The process leading to the July 16 decision is described in detail in that document.

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<sup>1</sup> New Brunswick Energy and Utilities Board, "In the matter of an application by Acadian Coach Lines LP for approval to amend its routing and scheduling for its inter-city scheduled services within the Province of New Brunswick.", July 16, 2010, p. 18.

<sup>2</sup> John Stringer letter to NBEUB, September 28, 2010.

Substantial evidence was filed and public sessions and hearings were held over several days in three New Brunswick communities.

The Board concluded that it was appropriate to consider the variance application by way of a written hearing. The Board informed all parties to Matter 2009-018 of the variance application by electronic mail (including the supporting documents) and set a deadline of October 15, 2010 for parties to provide written comments for the Board's consideration on the application. Seven parties provided written submissions to the Board by the deadline.

## **THE EVIDENCE**

In support of the variance application, the Applicant has presented ridership data indicating that the average number of passages (per trip) continues to decline from 2008 levels; in some cases this decline has been significant. On Route 2, for example, the average number of passages for Trips 22 and 24 (Rivière-du-Loup to Halifax) has declined by more than 50% between 2009 and 2010. Overall the data indicates that, year-to-date, ridership declined by 16.8% between 2009 and 2010, and by 31.6% between 2008 and 2010. Equally as significant, there has been no increase in average ridership on any trip in Acadian's New Brunswick route network. The Board notes that none of the submissions by other parties contested the decline in ridership.

The impact of the decline in ridership is clearly expressed in the supporting financial statement. Passenger revenue for 2010 was \$492,000 (13%) below the level for the same period in 2009 (the Board approved an average 2% fare increase in June 2010). The applicant projects that, at current ridership levels, total passenger revenue for 2010 will be \$4,836,381; or \$733,000 below the revenue for 2009. However, the Board also notes that the projected revenues for 2010 are more than \$1 million below the estimates provided to the Board at the March 2010 public hearings.

## **OTHER PARTIES**

As noted above, the Board received seven written submissions in response to the variance application. While most of the responses were from parties that actively participated in the March 2010 proceeding, the Board also received responses from the Town of Saint Andrews and the

Amalgamated Transit Union, Local 1229, groups that did not take an active role in the earlier proceeding.

Although most of the submissions argued separate and distinct points, taken collectively they recommend the Board take one of two positions regarding the variance:

1. Reject the variance and require Acadian to implement the “corridor service” as approved in the July 16<sup>th</sup> decision, or
2. Suspend the July 16<sup>th</sup> decision in its entirety and refer the matter to the Minister of Transportation with a recommendation that the Province implement a new transportation strategy that includes subsidies for motor carriers.

## **ANALYSIS**

In this matter the Board has been presented with three competing recommendations: to implement the July 16<sup>th</sup> decision in its entirety; to implement the decision but for the “corridor service” requirement, or; suspend the decision and make recommendations to the Minister of Transportation for a new motor carrier regime.

In its evidence Acadian presented the Board with its 2010 financial results to the end of August. As was noted above, Acadian’s financial position has continued to deteriorate since the hearings in March 2010. In March the company projected that, without any changes to its New Brunswick routes, 2010 passenger revenues would be approximately \$5.9 million, and the company would sustain a year-end loss of \$867,000. In its most recent projections for 2010 (based on the year-to-date ending in August), the company anticipates its year-end passenger revenues will be \$4.8 million, \$733,000 less than in 2009, while operating and other expenses will remain substantially unchanged from the year before. (In 2009 Acadian posted a loss of more than \$1.4 million, after the depreciation and interest charges. Year-to-date - August 2010 – Acadian shows a loss of \$1.25 million, after depreciation and interest charges.) The Applicant’s financial position was not challenged in any of the submissions, nor was it challenged during the March proceeding.

The Board discussed the financial losses facing Acadian in the **ANALYSIS** section of the July 16 decision. The Board expressed its concern that continued losses in New Brunswick might put the

company's operations in this province in doubt. The documentation filed in support of the variance application has deepened the Board's concerns in this regard.

While the enhanced corridor service permitted in the July 16 decision would no doubt have been a benefit to the users of public transportation in New Brunswick, it would not be in the interests of those users to compel Acadian to provide such service if Acadian is financially unable to do so.

Several submissions argued that the Board should suspend the July 16<sup>th</sup> decision, requiring Acadian to service its current routes and schedule until a new provincial transportation strategy is implemented. The Board notes that this same argument was put forward in the March proceeding but was rejected by the Board in the July 16<sup>th</sup> decision:

*“On the question of subsidies, several parties urged the Board to maintain the status quo and to recommend that the provincial government subsidize the intercity bus system. There was no evidence at the hearing that such subsidies would be forthcoming and the Board must decide the application on the evidence before it. This decision cannot be postponed in expectation of a possible change in government policy.”*

The Board finds Acadian's continued financial losses and significant drop-off in passenger revenue to be compelling reasons for the company not to take on additional expenses that can be avoided.

In the current variance application, Acadian indicates that it can reduce annual expenditures by \$833,600 if it is not required to implement the “corridor service” when it implements the other elements of the July 16<sup>th</sup> decision. Moreover, the Board notes that in the company's financial filings for the 2010 rate increase proceeding (Board Matter 2010-004), Acadian projected a year-end loss of \$1,257,000 for 2011, after depreciation and interest charges. Accordingly, were the Board to approve the variance, even with the projected line-run savings, Acadian is still anticipating a year-end loss in excess of \$400,000 next year.

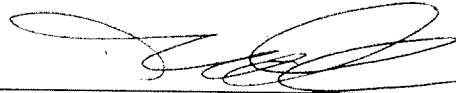
## **CONCLUSION**

The Board approves the applied-for variance that Acadian not be required to increase the number and frequency of runs between the four corridor cities in its New Brunswick network (Fredericton, Halifax, Moncton and Saint John) as specified in the Board's July 16<sup>th</sup> decision. In all other respects,



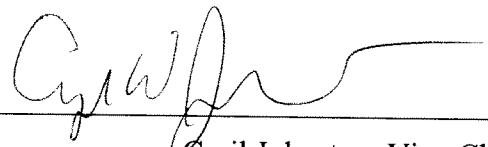
the July 16 decision continues in force. The Applicant is directed to file its final schedule with the Board, incorporating the changes approved above, no later than thirty (30) days before it takes effect.

Dated at the City of Saint John, New Brunswick this 8<sup>th</sup> day of December, 2010.



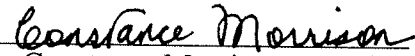
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Raymond Gorman, Q.C., Chairman



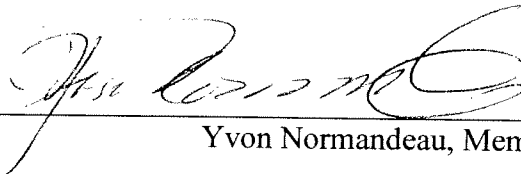
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Cyril Johnston, Vice-Chairman



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Constance Morrison, Member



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Yvon Normandeau, Member