



DECISION

IN THE MATTER OF an Application for
a Motor Carrier License by 100921
P.E.I. Inc. doing business as Advanced
Shuttle Services

April 5, 2012

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an Application for a Motor Carrier License by 100921 P.E.I. Inc.
doing business as Advanced Shuttle Services

New Brunswick Energy and Utilities Board:

Raymond Gorman, Q.C., Chairman

Cyril Johnston, Vice-Chairman

Wanita McGraw, Member

Terry Totten, Member

Ellen Desmond, Board Counsel

Applicant:

100921 P.E.I. Inc. doing business as
Advanced Shuttle Services

Mr. David Anderson

Registered Parties:

Acadian Coach Lines LP

Mr. Steven Zatzman, Q.C.

Amalgamated Transit Union Local 1229

Mr. Glenn Carr

Department of Transportation

Mr. Keith Mullin/ Solicitor
Ms. Kelly Rodgers-Sturgeon
Mr. Ahmed Dassouki

Isabelle Hains & Ana Acevedo (Van Angels)

Self Represented

New Brunswick Disability Executives Network

Mr. Lui Greco

NB Council of School District Unions / CUPE Local 1253

Ms. Delalene Harris Foran
Mr. Richard MacMillan

Robert Mann, P. Phys University of Waterloo

Self Represented

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

Introduction:

100921 P.E.I. Inc. doing business as Advanced Shuttle Services (the “Applicant”) applied to the New Brunswick Energy and Utilities Board (the “Board”) on December 13, 2011 for a motor carrier license. Mr. David Anderson is the owner and operator of 100921 P.E.I. Inc.

The Applicant applied for the following:

For the carriage of passengers and their baggage in 10 to 14 passenger seating capacity shuttle buses from points on Prince Edward Island to New Brunswick with the right to pick-up and drop off passengers in the New Brunswick communities of Port Elgin, Sackville, Moncton, Salisbury, Sussex, Saint John, Fredericton and Oromocto. Service to be provided on a reservation basis only; and

For the carriage of passengers and their baggage as a charter operation to, from and between all points in the province of New Brunswick, with the right to extend into other jurisdictions authorized thereby and the reverse thereof.

This application was published in *The Royal Gazette* on January 11, 2012. Following publication, the Board received Notices of Objection from various parties, including Acadian Coach Lines L.P, the Amalgamated Transit Union Local 1229, the New Brunswick Council of School District Unions CUPE Local 1253, Professor Robert Mann and Isabelle Hains and Ana Acevedo (the “Van Angels”).

The Board also received Notice from the Department of Transportation and the New Brunswick Disability Executives Network, indicating their interest in following the proceeding.

A meeting of the Board was held on February 7th, 2012. At that time, the Board carefully considered the Application, together with the written Statements of Objection.

Section 4 of the Motor Carrier Act (*Act*) provides the factors to be considered during this meeting and states as follows:

4(4) A written statement of objection filed with the Board under paragraph (3)(c) shall be considered by the Board at the time set under paragraph (2)(a) and, if the Board determines that the objection does not establish a *prima facie* case that the granting of the application would likely be detrimental to the interests of the users of public transportation services, to provincial economic or social development, or to intraprovincial, interprovincial or international commerce, it shall immediately dismiss the objection and immediately notify in writing the person who filed the objection of such dismissal.

4(5) The Board shall grant an application at the meeting referred to in paragraph (2) (a), if

(a) no objection has been filed with the Board and served on the applicant in accordance with subsection (3),

(b) all objections under subsection (3) have been dismissed pursuant to subsection (4), or

(c) all objections under subsection (3) have been withdrawn

and, in the opinion of the Board, there are no sufficient and probable grounds to believe that the granting of the application would likely be detrimental to the interests of the users of public transportation services, to provincial economic or social development, or to intraprovincial, interprovincial or international commerce.

4(6) Where the Board does not grant an application under subsection (5), it shall immediately

(a) set a time and place for the hearing of the application, such time to be not later than forty days after the date of the meeting, unless a later date is requested by the applicant, and

(b) notify in writing all parties to the hearing of such time and place.

Having considered all of the filed documentation, the Board determined that the objections had met the *prima facie* test as set out in the legislation, and that a hearing would be required. A hearing date was set for March 12, 2012.

The granting of Motor Carrier Licenses

It is important, at the outset, to describe the type of licenses that may be issued by the Board and to whom these licences are granted.

In general terms, the Board is responsible for the licensing of motor carriers in the Province of New Brunswick. The *Act* defines a “motor carrier” to mean a person that operates or causes to be operated a public motor bus.

A public motor bus is defined as:

...a motor vehicle operated upon a highway by or on behalf of a person who carries on the business of transporting passengers, or passengers and freight for gain.

A number of exemptions exist in the legislation and there are a range of situations where a motor carrier licence is not required. For example, the *Act* does not apply to a motor vehicle that is used as a taxicab.

A taxicab is defined to mean:

... a motor vehicle having a seating capacity of not more than six persons, exclusive of the driver, used in the transportation of individuals for gain.

In those situations where a motor carrier license is required, the Board has two options as set out in Section 3(1) of the *Act*.

Section 3(1) states:

3(1)The Board may grant to any person a licence to operate or cause to be operated public motor buses over specified routes or in respect of specified points or geographic areas or generally throughout the Province, either as a **regular service** or an **irregular service**.

While “regular” and “irregular” are not defined in the *Act*, the Board has indicated in previous decisions, including the *Joe Gale and Lisa Gale* decision dated October 29, 1996 and the *Advance Shuttle Service* decision dated January 30, 2004, that a “regular” service is one where a carrier is required to run the bus on a set schedule, between approved points, whether or not there are any passengers on that bus.

In contrast, an “irregular” service has been considered a “charter” service, requiring one party to rent or book the entire motor bus. The charter service does not run on any schedule. The charter carrier is normally granted the privilege of operating within a defined geographical area, running between any points within that area.

The *Gale decision* and the *Advance Shuttle Service* decision can be found on the Board’s website.

The Applicant’s request for a “reservation-only service”

In this case, in addition to a charter license, the Applicant requested the opportunity to provide a “door-to-door” service, on a reservation basis. The proposed service did not meet the characteristics that would be indicative of a regular route. In most instances, a scheduled service would include a fixed route, fixed terminals and fixed times for pick-up and drop-off.

Given his target clientele, the Applicant intends to travel directly to a passenger’s home when necessary. His schedule would be flexible, depending on how many passengers were travelling on any given day. If the Applicant had only one client on any given day,

many of the stops on his schedule could be eliminated. Similarly, if the Applicant had a client travelling to Sussex, but no reservations thereafter, the Applicant would return home and would not travel to Saint John or Fredericton.

In many ways the service, as proposed, is more similar to what would be offered by a taxi. The proposal does not meet the requirements of a “scheduled service” as it has been defined by the Board.

It should be noted that Advance Shuttle Service made a similar application in 2004. At that time, the business had been owned and operated by Joseph and Karen Sullivan who intended to offer their service on the basis of “pre-booked tickets”. In that case, the Board found that the service did not fall within the confines of the legislation.

During this hearing, the Applicant was specifically asked what, in his view, had changed from 2004 so to permit the Board to now provide this type of license. The Applicant indicated that the market had grown and there was increased interest in this service. The Applicant also submitted that, to his knowledge, another motor carrier known as Eastlink Door to Door ShuttleExpress Inc., had been granted a similar authority.

As indicated above, the *Act* only permits the granting of a license for a scheduled or charter service. East Link Door to Door ShuttleExpress Inc. was not granted a “reservation only” permit but rather, is obligated to provide fixed terminal locations, routes and fares.

There may be a market for the type of service proposed by the Applicant. Mr. Greco of the Disability Executives Network, in his submission, indicated that members of his community and those dealing with mobility issues would benefit from having more travel options available. Nonetheless, the *Act* does not, in its present form, allow for this type of hybrid license.

The request for a license, providing service on a “reservation basis only” is denied. It is

accordingly not necessary to determine if the granting of such a license would be detrimental to the interests enumerated in the *Act*.

Safety of Equipment:

The issue of safety is a serious consideration for this Board. The Board requires from any Applicant proof of ownership, proof of insurance, together with a form of safety rating. The Board acts in cooperation with, and relies upon, other agencies and departments that also have a role in ensuring the safe operation of vehicles on New Brunswick highways.

At the outset of the hearing, the Board heard *viva voce* evidence from Mr. Charles O'Donnell, Registrar of Motor Vehicles, Department of Public Safety. It is this Department which has the specific responsibility for determining which vehicles are to be permitted to be used on the roads of the province.

Mr. O'Donnell indicated that a number of mechanisms are in place to ensure that vehicles, both personal and commercial, are safe for operation in the province. Motor buses are required to undergo frequent inspections. Drivers are required to be properly licensed. Inspectors may conduct roadside or spot audits to ensure that a vehicle has been well maintained.

To determine whether a vehicle has been safely manufactured, Mr. O'Donnell relies on the federal Department of Transportation, except where a vehicle has been modified, at which time a professional engineer must inspect and approve the modifications.

In this case, Mr. O'Donnell clearly indicated that the government of New Brunswick does not prohibit the use of 15 passengers vans at the present time. While the Department of Education has made a policy decision about using these vehicles for the

transportation of students, no other legislative or regulatory ban exists.

This evidence was important to the proceeding, as many objections filed with the Board raised an issue as to the safety of the vans the Applicant intends to use for his service. The Van Angels, in particular, provided a detailed and comprehensive submission dealing with the safety of these vehicles. The Van Angels also provided *viva voce* evidence confirming that the use of these vehicles was currently under review by the federal Department of Transportation and that the results of this study should be released in the coming months.

While the Board is sensitive to the issues raised by the Van Angels, it is the Department of Public Safety which has the specific responsibility for determining which vehicles are sufficiently safe to be permitted on New Brunswick's roads. The Board relies upon the information and evidence of Mr. O'Donnell, who is well positioned to advise the Board as to the government's position on these issues.

Given that the Department of Public Safety, relying upon the federal Department of Transportation, permits the use of these vehicles in New Brunswick, the Board will not refuse a license to the Applicant on this ground.

The Applicant's request for a Charter License

As part of its application, the Applicant also requested a charter licence.

When considering this request, the Board is guided by section 4 of the *Act*, which provides, in part, as follows:

4(9) After consideration of the evidence and submissions presented at a hearing, the Board shall grant the application unless it appears, on a balance of probabilities, that the granting of the application would likely be detrimental to the interests of the users of public transportation services, to provincial economic or

social development, or to intraprovincial, interprovincial, or international commerce.

As indicated above, the onus is on the objectors to demonstrate that, on a balance of probabilities, granting this license would be detrimental.

In this case, the Board was not provided with any persuasive evidence as to why the issuance of a charter license would be detrimental to the interests set out in section 4(9) of the *Act*.

The Board is not convinced that granting a charter license would be detrimental to either the users of public transport or to economic or social development. Accordingly, the Applicant will be granted a charter license, effective April 5, 2012.


Conclusion

In summary the request for a license for a “scheduled” service on a reservation basis is denied as being outside the scope of the *Act* and the request for a charter license is granted.

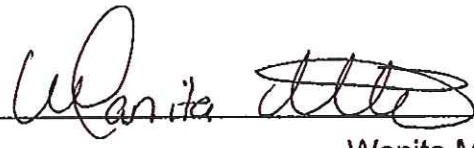
Dated at the City of Saint John, New Brunswick, this 5th day of April, 2012.



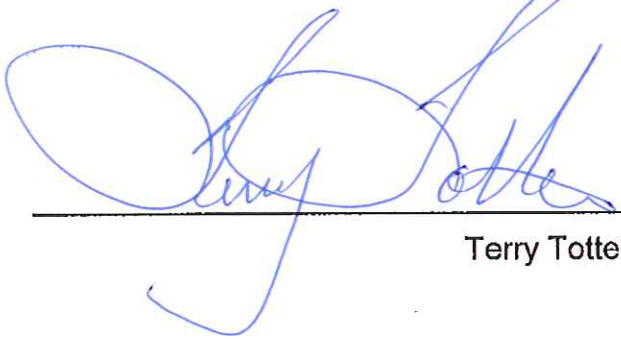
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



Wanita McGraw, Member



Terry Totten, Member