

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF THE MOTOR VEHICLE TRANSPORT ACT

- and -

IN THE MATTER OF THE APPLICATIONS of STOCK TRANSPORTATION LTD. to
amend Motor Carrier License No. P00595 and Extra-Provincial Operating License No.
XP01078

BEFORE: Dawna J. Ring, Q.C., Member

APPLICANT: **STOCK TRANSPORTATION LTD.**
Jason T. Cooke, LL.B.
Thomas Blackburn, Summer Student

INTERVENORS: **Coach Atlantic Transportation Group Inc.**
Trius Tours Ltd.
Prince Edward Tours Inc.
WTS Bus Charters
Adam Doiron
Mike Cassidy

Ward Lucius Markie o/a Markie Bus Tours
Ward Markie

Absolute Charters Inc.
Dennis Campbell
Mary Dempster

Transoverland Ltd.
Craig Carabin

Molega Tours Limited

John Furzeland
Marie Malloy

Mac Tours Inc.

Michel Richard

Tri-Star Charters Inc.

Mitchell Bonnar
Wayne Hamilton

Cumberland Transit Limited

Kimble Wood (Unable to attend)

HEARING DATE: July 27, 2015

**LAST EVIDENCE
DATE:** December 1, 2016

DECISION DATE: February 26, 2016

DECISION: The Board approves in part the Applications as further amended, with modified terms and conditions.

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I INTRODUCTION

[1] Stock Transportation Ltd. ("Stock ") made Applications to the Nova Scotia Utility and Review Board ("Board") to amend Motor Carrier License P00595 ("MC License") and Extra-Provincial Operating License XP ("XP License").

[2] The Applications were made pursuant to the *Motor Carrier Act*, R.S.N.S. 1989, c. 292, as amended ("*MC Act*") and the *Motor Vehicle Transport Act*, R.S. 1985 c. 29 (3rd Supp.).

[3] The Applications were received by the Clerk of the Board on April 10, 2015, and after completion and amendments, the Board directed the Notice of Application be published in the Royal Gazette on May 20, 2015, posted on the Board's website, and forwarded to licensed carriers in Nova Scotia (also "licensed carriers") by email, fax or letter. The Notice summarized the proposed amendments as follows:

1. **replace** its authority for two (2) 20 passenger mini coaches and two (2) 39 passenger deluxe semi-coaches in Schedule E(1) of its MC License, the plates for which are currently on hold, with four (4) 55-56 passenger motor coaches, with applicable rates;
2. **replace** its authority for one (1) 28 passenger bus and two (2) 39 passenger deluxe semi-coaches in Schedule E(1) of its XP License, the plates for which are currently on hold, with three (3) 55-56 passenger motor coaches, **and add** one (1) 55-56 passenger motor coach, with applicable rates;
3. adding Halifax, Nova Scotia as an equipment point for its highway motor coaches;
4. add a discount of up to 20% for charter rates;
5. increase all remaining rates in Schedule D(1);
6. clarify Terms and Conditions and Definitions for charter rates; and
7. the rate schedule shall be put into a standard format.

[Exhibit, S-8, pp. 1-2]

[4] The Board received opposition to the Applications from Coach Atlantic Transportation Group Inc., Prince Edward Tours Inc., WTS Bus Charters Inc., Trius Tours Ltd. (collectively "Coach"); Mac Tours Inc. ("Mac Tours"); Ward Lucius Markie o/a Markie

Bus Tours (“Markie”); Absolute Charters Inc. (“Absolute”); Transoverland Limited (“Transoverland”); Molega Tours Limited (“Molega”); and Cumberland Transit Limited (“Cumberland”) by the stated date of May 27, 2015.

[5] Tri-Star Charters Inc. (“Tri-Star”) filed its objection to the Applications on June 11, 2015. After considering the submissions of the parties, the Board permitted Tri-Star to fully participate as an intervenor in the hearing by letter dated June 29, 2015, with written reasons to follow. The Board’s reasons are set out at the end of this Decision.

[6] The Board held a public hearing on Monday, July 27, 2015, with Jason Cooke representing Stock. The following attended at the hearing: Adam Doiron and Mike Cassidy represented Coach; Ward Markie represented Markie; Dennis Campbell and Mary Dempster represented Absolute; Craig Carabin represented Transoverland; John Furzeland and Marie Malloy represented Molega; Michel Richard represented Mac Tours; and Mitchell Bonnar and Wayne Hamilton represented Tri-Star by conference call. Kimble Wood for Cumberland advised the Board he was unable to attend the proceedings on July 27, 2015, but could attend the second day set for the proceedings.

[7] Troy Phinney, Regional Manager; Tina Coldwell, General Manager at the Cambridge Office; and Scott Fairbairn, President of the Cole Harbour Major Midget and Major Bantam Hockey Clubs, testified on Stock’s behalf.

[8] The bulk of the evidence was received from Stock by December 1, 2015. The Board approves the Applications as amended by Agreement, in part, with modified terms and conditions as set out in the Decision. So as not to further delay the proceedings, the outstanding Undertaking must be filed and reviewed by the Board,

before the Licenses will be amended, and the Board retains jurisdiction for this purpose. The Board also retains jurisdiction to correct the contract services on the Licenses.

II PRELIMINARY ISSUES

[9] Mr. Cooke raised a number of preliminary matters at the commencement of the hearing. After reading the Board's *Discount Review Decision* (2015 NSUARB 33 ("*Discount Decision*")), Stock removed the proposed 20% discount for highway motor coaches (also "HMC").

[10] Based on comments received by some carriers objecting to the Applications, Stock was prepared to limit the scope of its Applications and raised the points noted below.

[11] First, Mr. Cooke wanted to point out to the Board that seat for seat, Stock was not increasing the number of seats available in the market. As noted in the Findings section of the Decision, the Board advised all parties at the hearing that "seat for seat" was not the issue in this case.

[12] Second, Mr. Cooke stated Stock was prepared to limit its Licenses for these vehicles to serve Stock's existing customers. The list of its existing customers was provided to the carriers.

[13] Third, Stock's vehicles could assist other carriers, such as for cruise ship services and when their vehicles break down.

[14] The Board advised the issue of a separate equipment point in Halifax for these highway motor coaches would follow the same procedure set for similar applications before the Board. The process would be to suspend this issue until the Board

had released its related decision on the issue of charging deadhead rates, providing parties with an opportunity to consider that decision in their submissions to the Board on this topic. No carrier objected to this process.

III EVIDENCE

1. Stock

[15] Troy Phinney is the Regional Manager of Stock's operations in Canada, having offices in New Brunswick, Nova Scotia, Alberta and four offices in Ontario. In the Maritimes, its offices are in Dartmouth and Cambridge, Nova Scotia, and a New Brunswick office in Moncton. Tina Coldwell is the General Manager of the Cambridge office and oversees the school bus operations for the Annapolis Valley contract.

[16] Mr. Phinney testified Stock is one of the many companies operating around the world under the ownership of the British company, National Express Corporation ("NEC"). In Canada, its operations are under Stock. Its sister company in the United States is Durham Schools. NEC has approximately 600 employees in Nova Scotia, 3,200 in Canada, and 42,000 worldwide. Its annual revenues exceed \$1 billion.

[17] Mr. Phinney stated that in Nova Scotia 98% of Stock's business is providing services to school boards. This includes home to school transportation and fieldtrips, the latter generally being one hour in duration. Stock currently has three school board contracts with the: Halifax Regional School Board which expires in 2016; Annapolis Valley Regional School Board which expires in 2017; and Conseil scolaire acadien provincial which expires in 2018. It operates 500 school buses and 13 mini-coaches, semi-coaches and activity buses.

[18] Mr. Phinney testified Stock purchased Perry Rand in December 2013 which had the authority to do general charter work for the general public. Its location (equipment point) was Cambridge, Nova Scotia. Perry Rand did not have authority to operate highway motor coaches. Under cross-examination by Mr. Campbell, Mr. Phinney stated he knew Perry Rand abandoned its authority to operate HMC because of the lack of return on investments [Transcript, p. 79].

[19] Stock's highway motor coaches consist of two 2006 Prevost and two 1997 MCIs [ibid, p. 69]. Mr. Phinney explained they were already owned by the company. When a bulletin asked if anyone wanted them, he said "yes":

You know, when they were thought about, there were just four available so there wasn't a whole bunch. So when they -- they asked, what regional manager put up his hand, who wants them? I put my hand up without knowing all the ramifications (inaudible) so we brought them in thinking we would be able to do some work for our schoolboards and some promotional things for our current customers.

[ibid, p. 113]

He stated that in the United States there are a number of school boards now using highway motor coaches. Stock has no other HMCs in Canada, except these four in Halifax:

There's no other motor coaches. There's only four in the country and they're here in Halifax.

[ibid, pp. 113-114]

[20] Mr. Phinney stated the vehicles were essentially paid for:

The coaches were available to us. Our company already owned them. They were, essentially, paid for.

[ibid, p. 82]

[21] Stock did not care if these vehicles made money. Mr. Phinney stated Stock did not bring the vehicles here to enhance its bottom line, but to enhance service for its customers [p. 64]. Ultimately, on questions from Mr. Carabin, he stated:

I can't unwind the dynamic of -- like, our company is a publically traded company. The buses arrived; we brought the buses into Halifax. And as far as making conventional

payments as most people make, it's not the same way. You know, the buses are built into our depreciation line. You know, when you put those four buses in amongst our [5]00 school buses, there's a negligible difference.

[ibid, p. 99]

The Board notes the year-end financial statements filed by Stock, were those of its parent company NEC.

[22] Mr. Phinney testified that as part of its RFP, Stock would include the HMC vehicles as an added benefit it could offer the school boards.

[23] For its charter services, Mr. Phinney testified Stock provides charters to the general public. It filed a list of the people it has serviced. Mr. Carabin, in questions to Mr. Phinney, conducted a quick count of the list stating there were approximately 550 groups, people and organizations named as Stock's customers.

[24] As support for its Applications, Stock presented four letters from customers: Craft Cruises, King's-Edgehill School, Department of National Defense ("DND"), and Elegant Productions. Mr. Phinney did not know what the Craft Cruises experience entailed. The letter states "... [Stock] meets our needs, at a good price ..." [Exhibit S-38]. Mr. Phinney identified Kings-Edgehill as a private school for which Stock provides transportation services. Its letter states "The ability to utilize Motor Coaches would enhance our operations and would be of a benefit to the School" [Exhibit S-39].

[25] For DND, Mr. Phinney testified it currently uses Stock for its school bus vehicle needs. It uses a different licensed carrier for its highway motor coach needs. The letter from National Defense states it would rent Stock's HMC vehicles "... only if the standing offer agreement (SOA) vendor cannot supply...", meaning its current licensed carrier. If the above occurred, DND would only request a quote from Stock, and states

whichever company had the best quote and meets their terms and conditions would receive its business [Exhibit S-40].

[26] In its letter, Elegant Productions wrote that it uses Stock for shuttling wedding parties and comments “the coaches would provide a comfortable ride”.

[27] Mr. Phinney testified the rates for its highway motor coaches were not discussed with any of these customers. He assumed they would commonly be aware of the rates from using the other licensed carriers.

[28] With respect to its rates, which will be discussed in more detail in the Findings section, Mr. Phinney stated their proposed rates were provided to them by the Motor Carrier Division of the Department of Transportation and Infrastructure Renewal (“MCD”) and they assumed these were the rates used throughout the Industry. Stock adopted for its regular rates, the Minimum Rate set by the Board when a carrier, on occasion, provides a discount.

[29] The Board notes that when Stock emailed its Applications to the MCD, its amended charter rates were not attached. The MCD prepared draft charter rates for Stock which included, amongst other suggestions and questions, the highway motor coach rates requested in this case. Various modifications were made before Stock filed its final proposed charter rates.

[30] Mr. Phinney acknowledged that when highway motor coaches are needed, these customers are currently being satisfactorily serviced by the other licensed carriers in the Province. He also acknowledged Stock’s charter services for the general public would permit anyone to have access to these vehicles. Under cross-examination by Mr.

Markie, Mr. Phinney acknowledged those using Stock's highway motor coaches would also be the customers of the other carriers in the room:

Mr. Markie: And our customers are your customers.

Mr. Phinney: I don't know. I didn't see your guys' customer list so I'm not sure.

Mr. Markie: Anybody you do in Nova Scotia could come to any one of us carriers which have a broad licence ---

Mr. Phinney: Yeah.

Mr. Markie: --- to do ---

Mr. Phinney: You're right, yeah.

Mr. Markie: --- anything in Nova Scotia.

Mr. Phinney: Yes.

Mr. Markie: So these ain't exclusive just Stock's customers.

Mr. Phinney: No, you're right.

[Transcript, pp. 91-92]

[31] Furthermore, Mr. Phinney acknowledged these highway motor coaches could have a significant negative impact on other carriers:

Mr. Furzeland: But the carriers that are here in this room are operating motor coaches to make a living. Don't you think that's going to have a big impact on them?

Mr. Phinney: It very well could be, yes.

[ibid, pp. 81-82]

[32] Under cross-examination by Mr. Markie, he asked whether Stock was charging their deadhead rates from Cambridge to Truro, which is 1.5 hours between the two locations. Mr. Phinney testified he thought Stock was following the rules; however, Ms. Coldwell, who is the General Manager of the Cambridge office from where the charters originate, testified she did not know:

Chair: Ms. Coldwell, do you know if you charge deadhead from either Cambridge or Halifax for those vehicles?

Ms. Coldwell: I do not know that.

[ibid, p. 115]

Stock undertook to provide its charter invoices to the Board for the months of May and June 2015.

[33] Mr. Phinney stated Stock would only provide back-up services to the other carriers, if the HMCs were not otherwise being used by Stock.

[34] Furthermore, in questions from Mr. Richard, Mr. Phinney stated:

Mr. Richard: ... You said if you were granted a licence for motor coach you would assist other carriers when needed. So if you had a call from Dennis Campbell saying, "We need 10 days on cruise ship," you would obviously do the work, right?

Mr. Phinney: If we had capacity, yes.

Mr. Richard: So as me as a local small carrier, you having four coaches here, he's got me booked for, say, 10 or 12 days and now he's going to book you at a cheaper rate because you're right in the city, so that's how you're going to be hurting the smaller carrier, I guess, is my opinion on it.

Do you see that as taking work from an existing carrier?

Mr. Phinney: Again, if Absolute Charters or whoever decides to call us, if they call us that's totally up to them. If they want to use you, they're more than happy to.

[ibid, p. 87]

[35] At the close of Mr. Phinney's evidence, he stated Stock's HMCs could be the last vehicles to be used in the Industry.

[36] The bulk of the facts relating to rates will be presented in that section of the Findings. In summary, Stock did no analysis for its proposed HMC rates, but merely adopted the HMC Minimum Rates ("Minimum Rates") presented by the MCD as its regular rates.

[37] Scott Fairbairn is President of the Cole Harbour Major Midget Hockey Club and the Cole Harbour Major Bantam Hockey Club and testified in support of Stock's Applications to operate the four highway motor coaches. The former Club consists of 20 players ages 15-17, the latter has 19 players ages 13-14. He first became aware of Stock Transportation through his wife who works with the School Board.

[38] Mr. Fairbairn testified the athletes are often driven by their parents, but that the combined bus needs of the two teams is approximately 10 trips per year, plus one tournament in Quebec. Their requirements are dependent upon price, availability, and the budget for the teams. They will often use 30 to 36 passenger buses and not all of their movements would require a highway motor coach.

[39] Mr. Fairbairn stated the Clubs have used other existing licensed carriers for their highway motor coach needs in the past, including Acadian Intercity Coaches, Cabana Charters & Tours Ltd., Ambassatours [Absolute] Line and Maritime Bus. He stated on one occasion he was unable to obtain a bus for the team's needs. On questions by Mr. Campbell as to whether he had contacted Kevin Murphy, Mr. Fairbairn stated he understood that vehicle was owned by Absolute. Mr. Campbell testified that Absolute maintains the vehicle for Kevin Murphy, but he is able to use it anytime he wants to. On questions from other objectors, Mr. Fairbairn further stated he had not contacted Molega for services and did not know the names of the other carriers in the hearing room who also operate highway motor coaches.

[40] Mr. Fairbairn's complaints of past services were that on one occasion a carrier requested out of pocket expenses for road tolls in Boston, when he expected everything to be included in its quoted price. He also was concerned with the wide difference in prices between the various carriers.

2. Objectors

[41] The objectors are the existing licensed carriers in Nova Scotia authorized to operate highway motor coaches, and Mac Tours, which provides charter and cruise ship services with other vehicles.

[42] In filing its opposition to the Applications, Markie stated the following reasons:

Markie Bus Tours is objecting [to] this application. Stock Transportation Ltd. never held a Motor Coach License in Nova Scotia. Perry Rand Ltd. held a Coach License and gave them up [and] never put them on hold. When Stock Transportation bought them out they only acquired the licenses and activity buses and semi-coaches. I believe this will put a huge strain on our industry if this is approved. Their rates are not even sustainable. As far as equipment point that is a gimmick to getting around charging deadhead, that the Board has not yet settled on. Stock Transportation has purchased these 4 Coaches before applying for it license through the Board and on this matter alone, this Application should be refused.

[Exhibit S-10]

[43] Transoverland stated:

Transoverland Ltd. wishes to oppose this application. We feel there is sufficient equipment in the area and we are prepared to show evidence in a hearing.

[Exhibit S-12]

[44] Molega stated:

Molega Tours wishes to object to the application of Stock Transportation as advertised in the Royal Gazette M06816 & M06817.

The addition of three-motor Coaches will create an over capacity in the market and their rates do not conform to the minimum rates that have been set by the Nova Scotia Utility and Review Board on all Highway Coaches. Furthermore the rates for 16-21 passenger mini-buses does not cover the cost to operate those vehicles.

The change of equipment point from Cambridge to Dartmouth is just a way to get around the Deadheading issue. This Motor Carrier License and Extra-Provincial Licenses are registered in Cambridge and thus all rates should be calculated from Cambridge.

[Exhibit S-13]

[45] Tri-Star stated:

Somehow, both Mitch and I missed the notice from Stock Transportation. We would like, if possible, to object to their application on various grounds. More importantly we would like to be included in the hearing via conference call. The fact that they are requesting an additional equipment point and the ability to add more strain on the charter business in Nova Scotia is important to us.

[Exhibit S-16]

[46] In the *Deadhead Charges* Decision, 2015 NSUARB 246 (“*Deadhead Decision*”), discussed in further detail below, it notes the fleets of nine of the objectors in this case (four within Coach) as follows:

[28] At the present time, the participating carriers are permitted to operate the following number of vehicles (inclusive of both active and “on hold” plates) in Nova Scotia from their place of business:

MC License		
Carrier	Place of Business	Vehicles
Absolute	Halifax	70
Coach*	Halifax, Moncton	84
Transoverland	Sydney	17
Tri-Star	Yarmouth	3
Molega	Mount Uniacke	7
Markie	Truro	6
*Subject to the specific Licenses of each carrier		

[47] Tri-Star, Molega and Markie each operate one HMC.

[48] Cumberland operates two vehicles (one HMC) from its equipment point in Amherst [Ex. S-33 and S-34]. Mac Tours of Westville operates four vehicles with seating capacities of 41-48 passengers [Ex. S-35 and S-36].

[49] The Board has also reviewed the financial statements of all parties.

[50] Mr. Cassidy testified that there are very, very few days when there are not enough vehicles, and it is insufficient to support even one motor coach:

I would just like to make a comment on Mr. Cooke and your discussion over what I'd call last in line. I call that subcontracting and when you review, as a motor coach operator, and we call other licensed operators here in Nova Scotia, when we cannot do the work we have the friendly competitive relationship to call one another to see if they could provide a motor coach.

When we looked at our 2014 calendar year subcontracting expense items, and looked at the carriers that we used, (a) the work has always been able to get done if not by ourselves by a subcontractor. There were very, very few days in the Nova Scotia market in the run of a calendar year where we cannot look after one another in subcontracting.

When I review my line items of the motor coach operators and how much we have expensed to each line operator, there wouldn't be enough monies here from Coach Atlantic to support one or four motor coaches when we look at our accounting formation.

[Transcript, pp. 119-120]

[51] As the parties entered into discussions after the close of Stock's case, which resulted in an agreement on a number of issues described below, the remaining evidence and arguments of the objectors will be referenced in the Findings section under the related issues.

3. Agreement

[52] All participating parties reached verbal agreements on a number of issues which were stated into the record at the hearing and shall be referred to as the "Agreement". The Agreement reached would permit Stock to operate these four highway motor coaches under the following restrictions:

1. They may only be used for cruise ship services;
2. Restricted to use during the months of May to November;
3. Used as a last resort, when there are no other licensed vehicles in Nova Scotia available with a seating capacity of 36 seats or greater, pursuant to an agreed process;
4. May be used for cruise ship services from any port in the Province;
5. May only be subcontracted to another licensed carrier, and as such Stock may not contact or contract with the cruise ship companies directly; and

6. May not be used for any other services including, but not limited to, schools, charters and tours.

[53] The last resort concept was described by Mr. Cassidy as follows:

And the concept of policing last resort, our recommendation is as follows: Many operators in this room, it is difficult in the month of April to know where your buses will be from April -- or May 1st through till November. So the solution is on April the 1st, someone looking for cruise ship buses has to provide a list of the dates in question for the months of May and June, licensed carriers in this jurisdiction have until the April 15th, the 15th of the month preceding the two-month interval, to put down how they could meet those needs.

On the 16th day of the month preceding the two-month interval of May and June, in my example, Stock can be notified to see if they can fulfill the needs.

We will do the same thing by June the 15th for the months of July and August. We will do the same thing by August the 15th for the months of September, October, and we're saying November because sometimes you have cruise ship dates now lending themselves into the first couple of weeks of November.

[Transcript, pp. 151-152]

[54] For ease of reference, from the above information the Board prepared the following notification chart:

Operator of Last Resort for Cruise Ship Services		
Charter Period	Notification Date	Subcontract Date
May 1 – June 30	Apr. 1	Apr. 16
July 1 – Aug. 31	June 1	June 16
Sept. 1 – Oct. 31	Aug. 1	Aug. 16
Nov. 1	Oct 1	Oct. 16

[55] The parties also agreed the last resort request must be for vehicles with a seating capacity of 36 seats or more, acknowledging that carriers like Mac Tours do work for Ambassatours [Transcript, p. 157]. Specifically, in confirmation of this point, Mr. Campbell stated:

Chair: No, no, but what Mr. Cassidy is saying is that when the response comes in for there not being availability, that one is not limited to highway motor coaches, but limited to vehicles that are 36 seats and over.

Mr. Campbell: That's right.

[ibid, pp. 158-159]

[56] Tri-Star stated it did not see how this Agreement would work, if Tri-Star had substantial deadhead charges for its vehicle to be used, where Stock would have none.

Mr. Campbell described the Agreement on this point as follows:

Just a comment on that. We, as a motor carrier operator and a tour operator, the way I understand it to be -- this proposal to be set up is that we won't have a choice. We will go out to Tri-Star and go out to Carabin and everyone in between, and Tri-Star, Carabin and everyone in between will have the option as to whether or not they want to come to Halifax at the appropriate rate, and the tour operator, ourselves and others, will have to pay the deadhead.

[ibid, p. 174]

The rate Mr. Campbell referenced was the Lump Sum Cruise Ship Rate for 2015 of \$1,950. The Board confirmed this rate was for the 2015 season only, as noted in the Board's Discount Review Order and the carriers' licenses.

[57] As to the extra days vehicles may be required, Mr. Cassidy stated, as above:

... There were very, very few days in the Nova Scotia market in the run of a calendar year where we cannot look after one another in subcontracting.

When I review my line items of the motor coach operators and how much we have expensed to each line operator, there wouldn't be enough monies here from Coach Atlantic to support one or four motor coaches when we look at our accounting formation. [Emphasis added]

[ibid, pp. 119-120]

[58] Mr. Campbell stated the number of days Stock's vehicles would be used for cruise ship work would be fairly limited:

Okay, thank you.

I guess the best way to put it is just that they [Stock] are last in and the number of dates that they will be able to put this gear to work is fairly limited, ...

[ibid, p. 184]

[59] An Agreement was reached on some, but not all rates proposed. Other facts, information and arguments will be noted under the various issues in the Findings section of the Decision.

[60] At the close of the public hearing, Mr. Furzeland offered to contact Cumberland, which confirmed the Agreement in principle by email on August 24, 2015.

[61] Stock was also granted an opportunity to consider the daily rates for its semi-coaches and mini-coaches. Upon providing those to the Board, carriers would be given an opportunity to comment on the revised rates. Stock presented its proposed daily rates on October 21, 2015. Markie requested Stock identify the vehicles included in its proposed rate categories. The Board concurred with this request and sent a letter to Stock on November 6, 2015. On December 1, 2015, the Board advised Stock that if it did not respond by Tuesday, December 8, 2015, the Board would reconvene the hearing on December 16, 2015, at 10:00 a.m. The information was filed with the Board later that day.

IV ISSUES

[62] The issues are:

1. After taking into consideration the provisions of the *MC Act*, should the Board exercise its discretion and grant the amendment requests, specifically:
 - (a) Licensing the vehicles;
 - (b) Equipment point; and
 - (c) Rates.

V LAW

[63] Pursuant to the *MC Act*, the Board regulates motor carriers to ensure there is a quality, safe, sustainable motor carrier industry operating throughout the Province of Nova Scotia (“Industry”), *Discount* and *Deadhead* Decisions.

[64] In any licensing proceeding, the Board may consider any issue relevant or material to the matter. The *MC Act* lists some of these, such as public interest, the sustainability of the Industry, including whether there is a need for additional equipment in the geographical area, and the general effect on other transportation services. "Need" is referenced by asking whether there would be an excess of equipment in the area if the license application or amendment were granted. Some of these issues are outlined in s.13 which reads:

Factors Considered

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[65] In each case, the Board may consider these various relevant factors and interests, which, at times, may overlap and/or conflict. In the *Trius Inc.* Decision, dated September 22, 1993, the Board described s.13 considerations as follows:

The Board has noted in previous decisions that the various considerations are not mutually exclusive. They tend to overlap and it is difficult at times to isolate one from another. The considerations will not be of equal importance in every application. The weight to be put on various considerations will depend on the facts of each application.

[66] Generally, the legislation provides that no one is permitted to transport people on the highways of Nova Scotia without a license issued by the Board (s.7(1)(a)). No one has the right to be issued a license. It is considered a privilege (ss.14 & 16). If a license is granted, it provides no perpetual or exclusive right (s.10(1)).

[67] The Board has the authority to refuse to grant an application, in whole or in part (s.14), to attach terms or conditions (s.16), specify routes or geographical areas for the services (s.27(1)(a)), and to set rates, fares, or charges, or minimum and/or maximum charges (s.27(1)(c)). Pursuant to s.30 of the *MC Act*, the Board has the same powers to set rates as it has under the *Public Utilities Act*, R.S.N.S. 1989, c.380 ("*PUA*"). The Board does not use the *PUA* provisions for rate base or return on rate base, but does take into consideration other sections, in particular, those requiring just, non-predatory, or discriminatory rates, *Kings Transit Authority*, 2008 NSUARB 125, paras. 24 to 32.

[68] If a carrier is granted a license, it is only permitted to operate in accordance with all of the terms and specifications of its license (s.7(1)(b) and (2), and s.22). If a carrier does not provide service in accordance with its license, the Board has the power to amend, suspend and/or cancel the license in its entirety after due process (s.19).

[69] The Board has the power to give effect to its Decisions, *Rules* and *Regulations* (s.29). The Board also has the authority, amongst others, to do any acts or things necessary or advisable for the effective exercise of its powers (s.27(1)(e)), and as noted above, it may, on its own motion, hold a public hearing on any matter it considers necessary to better carry out the intent and purpose of the *MC Act* (s.27(A)).

[70] The *MC Act* and *Regulations* provide numerous powers to the Motor Carrier Division of the Department of Transportation and Infrastructure Renewal (“MCD”) inspectors to ensure vehicles are safe for both passengers and the public.

[71] Even when no carrier opposes an application, the Board must be satisfied the application meets the requirements of the *MC Act*, s. 12(3). Furthermore, the Board has the jurisdiction to dismiss an application without a hearing, if the Board is of the opinion the application is not in the public interest (s. 12(3A)).

[72] In each case, the applicant must prove to the Board that, after taking all factors into consideration, the Board should grant the application, *Molega Tours Limited*, 2013 NSUARB 243, para. 23.

VI FINDINGS

[73] Before addressing each of the specific issues, the Board will provide some general comments and background information on the Industry.

1. Sustainability

[74] The sustainability of this Industry for the public of Nova Scotia is one of the legislation’s overriding directives. There are a number of factors unique to Nova Scotia which affect sustainability.

[75] Nova Scotia has a relatively small population scattered throughout the Province, with the exception of Halifax and Sydney. The costs of investing in the Industry are high, *Trius Tours Ltd.*, 2003 NSUARB 71, at para. 62. The charter season is short, being less than six months, from approximately mid-May to the end of October, with a

peak in September/October. The capital expenditures must be paid throughout the year, whether the vehicle operates the full 12 months. In addition, a carrier has other fixed costs such as rent, insurance, fixed labour and administration costs. Unlike some other provinces, motor carriers providing charter services in Nova Scotia receive no subsidization or tax relief (for example, gas rebates), except for those few carriers operating under a community program in rural areas.

[76] Considering the above factors, in particular the requirement of a large capital investment, it is not financially prudent for an operator to make an investment in the Industry if there is no reasonable prospect of recovering the investment with a profit. In the absence of the ability to earn a reasonable return, a predictable outcome would be that people and corporations will eventually stop investing in the Industry. As current motor carriers leave the Industry, there may be no one to take their place.

[77] The public's interest (s.13(b) consideration) in charter services includes transportation services, local business contributions, and growth of the tourism industry. Carriers in areas around the Province not only provide important transportation services to their local, and often, rural communities, but they also operate a business in those areas, providing employment, paying taxes, participating in community activities and providing other community and economic benefits. Tourism is significant to Nova Scotia's economy. As to growth in the tourism industry, the Ivany Report (*"The Report of the Nova Scotia Commission on Building Our New Economy, February 2014"*) stated at p. 19, amongst other references, the following:

Geographic and economic realities dictate that Nova Scotia's rural communities, like rural areas everywhere, will continue to rely heavily on sectors like tourism, forestry, fisheries and agriculture, and on production from renewable and non-renewable natural resources.

One of the Report's recommended economic goals for Nova Scotia, is a doubling of tourism revenue by 2024:

GOAL 14: TOURISM EXPANSION

As Nova Scotia's leading source of service sector exports, gross business revenues from tourism will reach \$4 billion (approximately double the current level).

[Ivany Report, p. 49]

[78] Key components to achieving the objectives of the *MC Act*, including sustainability, are the Board's regulation of the number and types/sizes of vehicles operating in the Province, the location of the carriers, the areas in which the services are provided and the rates they charge. The interrelationship of these issues is briefly summarized below.

[79] Regulating the number of vehicles permitted to operate in the Province ensures the supply is not greater than the demand so that there is sufficient work available for licensed carriers to recover the costs of providing the transportation services, including their capital investment, and to make a profit. This is the first issue the Board is to consider under s.13(a) of the *MC Act*; that is, whether there would be an excess of equipment if the license is granted.

[80] As to the types and sizes of vehicles, the highway motor coaches had been the preferred vehicle type for multi-day tours or trips. They were also the most expensive vehicles, and potentially, the most lucrative. Other carriers developed their niche market businesses by providing services with smaller vehicles, such as mini-coaches and semi-buses.

[81] The location of the carrier and the areas of its various services can be intermixed. The carrier's location of its place of business/equipment point determines its main marketplace as its rates are most affordable around its equipment point. The area

a carrier is authorized to operate in is akin to a franchise or selling district, *Deadhead Decision*. Others are not permitted to operate in the area if it will negatively affect a current licensed carrier that has already invested in the Industry (s.13(b) consideration). Population size is a factor.

[82] In a number of its prior Decisions, the Board has highlighted the importance of ensuring the sustainability of carriers in rural parts of the Province to achieve the availability of motor carrier charter services in those regions: see, for example, *Cumberland Transit Limited*, 2014 NSUARB 55, *Transoverland Limited*, 2013 NSUARB 137, *Tri-Star*, 2015 NSUARB 2, and *Pictou Weeks*, 2015 NSUARB 32.

[83] Rates need to be sufficient to recover the cost of providing the service with a profit and are essential for the repair and replacement of vehicles; important for safe, quality services; sustainability; and permanence of the service; as noted in s.13(c) of the *MC Act*. Insufficient rates can be predatory, result in an unhealthy Industry, a loss of carriers, and, ultimately, a loss of services for the public, *Deadhead Decision*.

2. Board's Discount and Deadhead Decisions

[84] To provide further context, on November 4, 2015, and February 24, 2015, the Board released two pivotal Decisions in the regulation of the Industry, being *Deadhead* and *Discount* respectively. In the latter decision, amongst other findings, the Board set a maximum discount at 20%, the use of which could not go below the Minimum Rates. In the former, it determined deadhead rates would be charged as licensed. These will be reviewed further in the Rate section below.

[85] These Decisions also provided an overview of the state of the Industry, key factors affecting it, and some requirements to regain a healthy, sustainable Industry. The facts and findings of those decisions have relevance to the issues before the Board in this case, as in *KSM Freedom Solutions Incorporated*, 2015 NSUARB 258 (“KSM”), released by the Board on December 10, 2015.

[86] As briefly noted above, the regulation of the Motor Carrier Industry under ss.13(a) of the *MC Act*, is similar to a company investing in a franchise or a seller’s territory. Under this subsection, the Board is to determine whether additional busses are needed in an area. Licenses are not granted, or the authority is not expanded, if extra busses are not needed. This is described in ss.13(a) as the Board inquiring whether the amendment will cause there to be an excess of equipment in the area. Critical to whether there is an excess of equipment are the utilization of the vehicles presently licensed to service an area [*Deadhead Decision*, para. 101 and 102].

[87] The last eight years have been very difficult for licensed carriers in Nova Scotia. The Board has found in its decisions (in particular, *Discount*; *Pictou Weeks*; *Deadhead and KSM*) that the Industry has experienced negative economic effects of the Great Recession beginning in 2008 (the Ivany Report). Based upon Board Counsel’s economic expert’s opinion, outlined in the *Discount and Deadhead Decisions*, numerous other factors compounded this recession including discounts, a carrier not charging its deadhead kilometre rates, and parking excess vehicles away from its place of business/equipment point, in particular, in rural areas. Carriers left the Industry. Others have had little or no profits.

[88] As to the state of the Industry, the Board noted the following:

[39] The Board engaged the services of an economist, Michael Gardner of Gardner Pinfold Consultants Inc., to prepare a report to address a number of issues, including the impacts of these discounting methods on the sustainability of the Industry. As described later in this Decision, its Report dated September 21, 2012 (“Gardner Pinfold Report”), confirmed the poor financial position of the carriers and problems with the sustainability of individual carriers and the Industry. Since 2000, the Industry lost half of its highway motor coach charter carriers as they lacked the financial resources to continue:

In 2000, there were some 17 independent companies of various sizes supplying motor carrier services. By 2012, half these companies had ceased to operate because they lacked the financial resources to continue. Some were absorbed by one of two carriers who now operate most of the capacity in the industry (shown in Figure 1). Others went out of business and abandoned their licenses. One of the remaining companies (Acadian) has filed an application to cease service. Another faces challenges maintaining the roadworthiness of its vehicles.

[Gardner Pinfold Report, Exhibit D-5, p. 1]

It further noted that overall discounts were “a zero sum game”, meaning any business attracted by one carrier using a discount method was merely taking work away from another carrier in the Industry [ibid, p. 16].

[2015 NSUARB 33]

[89] Mr. Gardner also opined that for carriers to be sustainable, they need 5% to 7% net income as a percentage of gross revenues. He stated only one carrier had achieved this level (*Discount Decision* para. 75). Absolute stated 5% or higher was needed for a carrier to be healthy (ibid, para. 76).

[90] In its Decision, the Board accepted Mr. Gardner’s evidence on various points, including those noted below; of particular concern in this case is his opinion that allowing additional coaches into a market has the same impact on the sustainability of the carriers as does the various discounting methods:

- The Industry was not healthy, was under-revenued, and with all things remaining equal, discounting would result in the financial position of the Industry worsening.
- Competition becomes a zero-sum game, where one carrier's gain is another's loss. Revenue is lost with limited redistribution of market share.
- The public interest, in the long term, is not served by the demonstrated unsustainability of participants in the industry. It indicates a poor investment

opportunity; a sector where carriers face a challenging operating environment. Not only does this cause companies to question the wisdom of investing in new equipment (considered essential by segments of the tourism industry), but it also creates obstacles in accessing capital.

- The effect of price competition is the same: industry revenues are lower than they would be had approved tariffs been charged. This weakens sustainability. The effect is little different from that which would obtain by allowing additional coaches into a stable market: average capacity utilization would fall with available revenue spread over higher capital costs. [Emphasis added]
- Discounting (including waiving deadhead charges) in the Nova Scotia market place is generally a product of the competitive behaviour of the carriers in the highly seasonal nature of demand and its structure to meet those peaks.
- The various pricing strategies come to the same result - reducing the amount of revenue generated by the motor carrier industry.
- In the short-term, this could be expected to result in financial weakness of firms characterized by difficulties in several areas including maintaining assets, attracting and retaining good drivers, and generating sufficient retained earnings to attract capital to replace equipment.
- Poor revenue performance in the long-term would be expected to lead to an inability of companies to meet their debt servicing costs. This would lead to the eventual insolvency of weaker companies and consolidation of the industry (including a reduction in capacity). [Emphasis added]

[91] In November 2015, the Board noted Mr. Gardner's conclusion that the Industry in Nova Scotia was financially unhealthy and under-revenued [*Deadhead Decision*, para. 98]. Vehicle utilization for all carriers remained low, [*Deadhead Decision*, para. 39]. Allowing additional vehicles into various market areas would result in an even greater excess of equipment [*Deadhead Decision*, para. 102].

[92] Due to this unhealthy state of the Industry, the Board has repeatedly turned down amendment applications of existing licensed carriers in Nova Scotia who have sought to add vehicles or expand their licenses [KSM, para. 59].

[93] Mr. Gardner and the carriers stated the months of May to October are the main months of Nova Scotia's short tourism charter season. As noted by Coach, it

receives 41% of its revenues in the three months of June, September and October, with the last two representing 30% of its annual revenues [*Discount Decision* at para. 96]. All carriers have to make their money or “get it done”, in those months of the year [*Discount Decision*, Transcript, pp. 542-543].

[94] The impact of additional vehicles in an area during these critical months, as an example, is as described by Transoverland where its vehicles sat idle, when Absolute had six units in Sydney:

Transoverland witnessed during last year's [cruise] season that 6 Absolute carrier units operated on the Sydney dock at the same time as some of my units remained idle. These units are very expensive to operate and maintain. Not being able to maximize each unit's potential to earn revenue in the May to September tourism season has a very negative impact on my bottom line. ...

[*Deadhead Decision*, para. 61]

[95] As opined by Mr. Gardner, additional vehicles in a market will result in poor revenue performance which weakens sustainability and impacts all facets of the carrier's business as noted above. In Transoverland's case, the Board found in its November 2015 *Deadhead Decision*, that the additional vehicles in the Sydney market had a significant negative financial impact on Transoverland, resulting in losses of hundreds of thousands of dollars of revenue per year for a total of approximately a million dollars, not including lost charter services. This impacted Transoverland's ability to upgrade its fleet [*Deadhead Decision*, paras. 69-71, 105, 106].

3. Agreement

[96] When the Board is considering an agreement reached by participants in a hearing, the Board must consider each issue and determine if the agreement meets the broader objectives in the regulation of the Industry as a whole, and s.13 of the *MC Act*.

The Board advised the parties of this. Stock's counsel agreed and no one else expressed a different argument.

4. Seat for Seat

[97] Mr. Cooke wanted to point out to the Board that "seat for seat", Stock was not increasing the number of seats available in the market. At the hearing, the Board advised all parties that "seat for seat" was not relevant in this case. The issue in this case is that Stock is seeking a different type of vehicle which takes it into a different market in the Industry. As noted above, licensing is similar to a seller's market and area. School buses, mini-coaches and semi-coaches are not the same vehicles nor in the same market as highway motor coaches. Seats from one market are irrelevant to seats in another market.

[98] Consequently, the Board confirmed, these Applications are not a replacement for vehicles that have plates on hold, but rather a deletion from Stock's vehicle fleet of some mini-coaches and semi-coaches and the addition of four highway motor coaches.

5. Discounts for Other Vehicle Categories

[99] At the hearing Stock requested an amendment to its Application by removing the 20% discount for the highway motor coaches. It requested the ability to continue to use the discount for its other vehicles, being semi-coaches, mini-coaches and activity vehicles.

[100] At the hearing, the Board explained the *Discount* Decision determined the highway motor coach Minimum Rates applied to discounts for all other vehicle categories.

The *Discount* Decision states:

[114] In addition, the 20% discount may be applied to all other vehicles types provided the charges for these vehicles do not fall below the minimum rates set out in this Decision. This is because a key element of the Board's acceptance of the discount recommendation was the setting of minimum rates for highway motor coaches. No evidence was presented to the Board to set minimum rates for the other vehicles. [Emphasis added]

[101] As the Minimum Rates for highway motor coaches are higher than the requested rates for the other vehicle categories, a discount is meaningless. Therefore, there will be no discount for any other vehicles.

6. Licensing of Vehicles

[102] At the time the Agreement was reached between the parties, Stock had presented all of its evidence to the Board and had closed its case. To fully appreciate this Decision, it is important to note, the Board finds Stock failed to prove the provisions of s.13 of the *MC Act* for its initial Applications seeking unrestricted use of these highway motor coaches for all charters. In particular, Stock had failed to prove there was a need for four (4) additional HMCs in the Province, and as such, these vehicles would result in an excess of equipment if its initial proposal of unrestricted amendments to the licenses were granted.

[103] Even in relation to the cruise ship services, the evidence did not support unrestricted approval, as there are very few days in the year when extra vehicles are required. On a few peak cruise ship days a year, the potential demand for motor coach services is virtually limitless when there can be 10,000 passengers in Port. The Board has repeatedly noted there is not a sufficient number of these peak days to sustain a

highway motor coach. As such, they do not create a sufficient need under the *MC Act* for the Board to license additional highway motor coaches. The evidence in this case was the same. As Mr. Cassidy stated in general, for both charter and cruise ship services, there are “very, very few days” of the year when additional vehicles are required [Transcript, p. 119]. Mr. Campbell noted, the number of days Stock will be able to use its equipment, as the last in for cruise ship services only, is “fairly limited” [Transcript, p. 184]. In other words, the Board finds the number of days extra vehicles are actually required for cruise ship services is very few.

[104] One of the most important facts in this case is, that after reviewing the most recent year-end financial statements of the carriers, the Board finds the Industry in Nova Scotia is very unhealthy and under-revenued. Two, of only a few, carriers showing a profit at the end of 2013 as referenced in the *Discount Decision*, are in a loss position at the end of 2014.

[105] As noted by Mr. Gardner, the addition of vehicles into a market area will impact the revenues of licensed carriers and their sustainability.

[106] Consequently, the Board would reject Stock’s initial Applications for unrestricted charter operation of these highway motor coaches.

[107] The parties encouraged the Board to permit the licensing of these four highway motor coaches under very strict terms and conditions that they only be used for cruise ship services between May and November, and solely as a last resort, when no other vehicles of 36 passengers or greater are available from the licensed carriers in the Province. They may only be used through a subcontract with another licensed carrier. This means that before Stock’s vehicles may be utilized, a carrier must use any other

available licensed vehicle of the above passenger capacity regardless of its equipment point and must pay its full rates, including the deadhead kilometre charges. As Mr. Campbell stated, Absolute must utilize and pay for any available vehicle from Transoverland in Sydney to Tri-Star in Yarmouth and every other licensed carrier in between.

[108] The restrictions agreed to by the parties are very important for the sustainability of the licensed carriers in the Province and, therefore, are critical to the Board's approval of the use of these highway motor coaches for the reasons noted below.

[109] The sustainability of the existing licensed carriers who have already made the investment of funds, time and energy into vehicles currently servicing the cruise ship industry in the Province, is pivotal to this case. To achieve their sustainability, the Board will remain diligent in its regulation of the types and number of vehicles, and their rates, as the Industry moves forward from the prior poor economic years until their financial health improves. This will require, for example, seeing an increase in the utilization of the existing carrier's licensed fleets and/or approving license expansion requests, before the Board approves adding other vehicles into various market areas. This is particularly important for those existing licensed carriers who have experienced the most significant financial difficulties due to the negative effects of the various factors noted above, including discounts and not charging deadhead rates. Many are smaller carriers and/or in rural communities.

[110] May to November are the main months for the licensed carriers' short tourism season in Nova Scotia. As noted above, 30% of Coach's annual revenues are generated from September and October alone. This is when all carriers have to make

their money or “get it done”. Consequently, the licensed carriers require both the charter and cruise ship work during those months to be sustainable.

[111] The most critical components of these agreed restrictions are that they are designed not to impact this existing charter or cruise ship work which all licensed carriers rely on.

[112] Stock is prohibited from doing any charter work for anyone, including for its contracted School Boards, as they are currently using the existing licensed carriers for their HMC needs.

[113] Stock is also not permitted to do any cruise ship work if any of the licensed carriers have equipment available. Under this restriction, it includes vehicles beyond the HMC to those with a seating capacity of 36 passengers or more, to address the other vehicles of carriers, like Mac Tours, that are used by Absolute for cruise ship services.

[114] The significance of these two restrictions is realized when comparing these four HMC to the licensed fleets of the carriers noted above. Four highway motor coaches represents the same number of highway motor coaches as four of the smaller licensed carriers in this hearing combined.

[115] Even for Transoverland these four vehicles represent almost 25% of its fleet size. Their use in the market just in the months of September and October alone, when carriers make 30% of their annual revenues, can mean a loss of gross revenues of as much as 7.5%. Considering a minimum 5% net income to gross revenues is required to sustain a carrier, even with the corresponding decrease in some operational expenses such as fuel, this loss of 7.5% of its gross revenues can take a carrier from a sustainable business to an unsustainable one, contrary to the objects of the *MC Act*.

[116] However, the Board finds licensing the highway motor coaches with these very specific restrictions meets the criteria of s. 13(b) of the *MC Act* as being in the public interest. These restrictions reach a balance between expanding cruise ship services without negatively impacting existing carriers. In this way, an endless number of vehicles may be added for the cruise ship Industry. One hundred (100) vehicles could be available to service the cruise ships, from those prepared to operate the vehicles as a last resort. When the vehicles are not permitted to also do charters, and are not permitted to do any cruise ship work when licensed carriers have vehicles available, the HMCs are not interfering with the work needed by, or negatively interfering with, the existing licensed carriers in the Province.

[117] In addition to the notification requirements, the Board directs every carrier operating vehicles with a seating capacity of 36 passengers or more must receive the notification and must receive the same list of dates when vehicles are required for cruise ship services. In past cases, there have been occasions where carriers were asked for different dates and/or not all applicable carriers were contacted. Furthermore, the Board directs the list of dates and responses be provided to the MCD simultaneously.

[118] The Board, therefore, approves the licensing of the four highway motor coaches with the following restrictions:

- (a) Use for cruise ship services only and may not be used for any other service, including but not restricted to schools, charters and tours;
- (b) Between the months from May to November;
- (c) From any port in the Province;
- (d) Only under subcontract to another licensed carrier for the cruise ship work, such that Stock may not contact and/or contract with a cruise ship company; and

- (e) Used as a last resort, when there are no other vehicles available with a seating capacity of 36 seats or greater, after compliance with the Notification Chart below:

Operator of Last Resort for Cruise Ship Services		
Charter Period	Notification Date	Subcontract Date
May 1 – June 30	Apr. 1	Apr. 16
July 1 – Aug. 31	June 1	June 16
Sept. 1 – Oct. 31	Aug. 1	Aug. 16
Nov. 1	Oct 1	Oct. 16

- (f) Notification must be:
- (i) Provided to all licensed carriers which operate vehicles with 36 seats or greater;
 - (ii) The same dates must be provided to all applicable carriers; and
 - (iii) A copy of the notification and responses are to be filed with the MCD.

[119] Strict adherence to the above by Stock, and other carrier's subcontracting its services, will be very important to the success of this model agreed to by the carriers.

[120] The Board also finds, however, as noted by both Mr. Campbell and Mr. Cassidy, that these vehicles will only be needed for a very few days of the year in Nova Scotia. The Board concurs with Mr. Cassidy and finds the number of days these vehicles may be used under these restrictions are not sufficient to generate enough revenue to sustain these vehicles.

[121] As Stock is one of the largest school bus companies in the world, with revenues exceeding \$1 billion, the issues under s.13 relating to its ability to provide safe, quality, permanent service are not at issue in this case, the latter being subject to its desire to offer the service.

[122] Stock knows these highway motor coaches are not sustainable with their authority in Nova Scotia alone, has agreed to these restrictive terms and, therefore, has

assumed the risks of embarking on this venture. As noted above, Stock has also used these vehicles in New Brunswick.

[123] If Stock determines it no longer wants to provide the services with these restrictions, then Stock may request the abandonment of its authority to operate these highway motor coaches. As noted above, without these restrictions, s.13 of the *Act* is not met, there is an excess of equipment, and the sustainability of the Industry is impacted.

7. Equipment Point

[124] In Stock's Applications it had not requested a different equipment point from Cambridge, Nova Scotia. From questions posed by the MCD, Stock amended its Applications requesting Halifax as the equipment point for these highway motor coaches. Stock argued it has an office in Dartmouth which serves the Halifax Regional Municipality School Board contract and is, presently, the location where the vehicles are parked. The Board advised the parties, at the hearing, that it must consider the broader issues impacting the Industry. Stock agreed and no other carrier argued to the contrary.

[125] Generally, the other carriers were in Agreement with the equipment point. Only Tri-Star expressed a concern querying how the Agreement would work when Stock did not have to charge its deadhead rates, as referenced above.

[126] At first glance and with such restricted terms, this separate and additional equipment point appears innocuous. However, on a careful consideration of the broader issues and the regulation of the Industry as a whole, the Board finds a separate equipment point for these vehicles should not be granted for the reasons noted below.

[127] As noted above, an equipment point determines the main service area for a carrier, similar in concept to a franchise or seller's area.

[128] Charter rates are based on the total kilometre charges or daily/hourly rates. Kilometre charges cover all of the capital and operating costs of the vehicle as well as a margin for profit. The Board permits a slight variation between the deadhead and live kilometre rates to distinguish between the cost incurred, in particular, the fuel required to operate a vehicle when it does not have the weight of passengers (deadhead kilometres) and when it does (live kilometres). Consequently, the farther away a carrier is from its equipment point to where it will pick up its charter group, the less marketable are its rates.

[129] For most companies the place of the carrier's business is also its equipment point. Stock purchased Perry Rand's licenses which operated from Cambridge. Like purchasing a franchise or seller's territory, the equipment point for Stock remains at Cambridge. In regulating the motor carrier Industry throughout Nova Scotia, a company is not able to arbitrarily change its equipment point, similar to changing one's selling area, by choosing to have an office in a different location.

[130] Another example within the Province is Cumberland Transit Limited. Its equipment point is Amherst, Nova Scotia. The fact that another group purchased it and has an office in another location, does not change its equipment point from Amherst.

[131] Consequently, Stock having an office in Dartmouth for its HRM school bus contract, does not justify it having an equipment point for the charter services at a location other than Cambridge.

[132] Furthermore, Stock proposes it charges the Minimum Rates for HMC set by the Board in its *Discount Review Order*. If the Board permitted a different equipment point

in Halifax for these highway motor coaches, it permits Stock not to charge its regular deadhead rates from its equipment point in Cambridge. Not charging deadhead rates is a form of discount. The effect of this discount in this case reduces Stock's rates below the Minimum Rates for HMC, contrary to the *Discount Review Order*. The Order does permit the Board to approve rates below the Minimum Rates, if the circumstances of a specific case justify lowering them. The Board finds there are no circumstances in this case which justifies rates below the Minimum Rates.

[133] For all of the above reasons, the Board will not permit these highway motor coaches to have a separate equipment point. The equipment point remains at Cambridge. All rates must be charged from Cambridge for the cruise ship services.

8. Rates

[134] Stock requested to amend its charter rates for its current vehicle categories and add rates for the highway motor coaches as follows:

Seating Capacity	Live per km	Deadhead per km	Daily Rate (10 hours)	Hourly Rate	Minimum Rate (4 hours or less)	Wait Time per hour (after 2 hrs)	Layover Rate per day
44-52 pax Activity Bus	2.25	2.00	525.00	80.00	375.00	50.00	375.00
45 pax Semi Coach	2.25	2.00	575.00	80.00	425.00	60.00	425.00
16-21 pax Mini Coach	2.25	2.00	575.00	80.00	425.00	60.00	425.00
47-58 pax Motor Coach	2.60	2.35	1,150.00 to 1,250.00 (min – max)	115.00			700.00

[135] For the highway motor coach rates, Stock stated it used the rates provided to it by the MCD and, therefore, thought these were the rates all carriers were bound by.

On questions from Mr. Doiron, he stated Stock would adhere to the same rules as everyone else [Transcript p.73].

[136] Stock's Applications requested minimum and maximum rates. On questions from the Board, Stock confirmed it would never use the maximum rates. When questioned as to why it applied for maximum rates, Mr. Phinney stated:

Chair: Do you know why you applied for it then?

Mr. Phinney: In all honesty, (inaudible) rates that were provided to us [from the MCD], so we just took it as this was the current rates going on in the industry so we used them in our application.

[Transcript, pp. 115-116]

[137] For its minimum rates, Stock adopted the Minimum Rates for highway motor coaches set by the Board in its *Discount Decision and Order*. In general, these Minimum Rates are not the regular rates of a carrier. Rather, at the discretion of a carrier, it could offer a customer a discount of varying percentages up to 20%. However, no discount could result in a customer being charged less than these Minimum Rates. Carriers indicated discounted rates are principally used for volume customers and not for every charter. In this case, Stock was using these as its regular rates. As Mr. Bonnar stated:

But I think what most of the other companies are doing is they're going to a higher -- higher live rate and the ability to discount it down to [\$2.60].

[Ibid, p. 168]

[138] Unlike its other vehicle categories, Mr. Phinney advised the HMC rates were not based on a business model or study. However, no business models or studies were offered for any of the other rate categories either. Stock closed its case having provided virtually no other information regarding its rates.

[139] In general, the licensed carriers had concerns that the various rates were too low, including Mr. Bonnar at p.161. As to the highway motor coach rates, Mr. Richard queried and stated of the general public seeking to charter a vehicle:

But they're going to look at the dollar price too. I mean, your rate is a 58-passenger you've got here is a live rate of \$2.60. I don't see any other carrier at that rate in the province.

[ibid, p. 88]

[140] During the hearing, Stock requested a half day rate for the cruise ship services of \$875. With the restrictions on the use of the highway motor coaches, the parties were generally in agreement with their amended proposed rates. Tri-Star's concerns regarding the deadhead rates, licensing of the HMCs, and Halifax equipment point, also apply to this section. As noted above, although in theory the Agreement is supposed to work as Mr. Campbell described; however, from a practical perspective, Tri-Star remained concerned that somebody would not hire its coach when Stock's are sitting in Halifax and does not have to charge deadhead rates [p. 173].

[141] Molega, Coach and Absolute also stated the proposed rates for the other vehicle classifications were too low. Specifically, Mr. Furzeland testified Molega's daily rates for mini-coaches of various seating capacities ranged from \$750 to \$850, while Mr. Doiron stated Coach's range from \$850 to \$1,000. Mr. Furzeland stated it costs Molega \$513 per day just for the vehicle's operating expenses. Both he and Mr. Doiron noted they cannot make any money at Stock's proposed daily rate of \$575.

[142] Mr. Bonnar stated that if carriers were having concerns with the mini-coaches, then the semi-coach rates would also be too low. Mr. Doiron agreed with this as well. Although some carriers stated they did not operate vehicles in all categories, Mr.

Bonnar encouraged the Board to review all rates and compare them to others in the Industry.

[143] As noted above, at the close of the hearing, Stock was granted an opportunity to reconsider the daily rates for its semi-coaches and mini-coaches, and three months later proposed an \$800 daily rate for both vehicles. There were no further objections.

[144] Rates are a very important component of the Board's regulation of the Industry. As also referenced above, for any agreement reached between the parties, the Board has to consider the broader implications on the Industry as a whole. The Board has given the rates very careful consideration. In summary, based on the very limited information from Stock, the Board finds its rates are too low and can negatively impact the Industry.

[145] As noted above, in the Board's review of the financial statements filed by the carriers, the Industry in Nova Scotia has not sufficiently recovered from the recession and discounts. It remains very unhealthy and under-revenued.

[146] As further background, in the *Discount* Decision the Board noted some carriers had not increased their rates in a number of years due to the various discounting methods occurring in the Industry [para. 46]. Furthermore, the Board expressed its concern that even the Minimum Rates may be too low.

[147] The Board concurs with the carriers that the Minimum Rates were not generally intended to be the regular rates of a carrier. Rather, as the carriers had previously noted, they usually obtain their regular rates. For their volume clients, they

may provide a discount. Both the granting of the discount and the percentage is at their discretion. There are exceptions as discussed below.

[148] In its analysis, the Board has done the rate comparisons recommended by Tri-Star. The seating capacity of Stock's HMCs are 55 and 56 passengers. Therefore, the rate classification for its highway motor coaches will reflect this and not the seating capacity requested in the Applications. Its revised proposed rates and those of the objectors are:

Industry Rates						
	Live	Deadhead	Daily	Half Day	Hourly	Layover
Stock	\$2.60	\$2.35	\$1,150	\$875	\$115	\$700
Absolute	\$3.40	\$3.00	\$1,425	-	\$155	\$725
Coach	\$3.35	\$2.95	\$1,400	--	\$150	\$700
Transoverland	\$3.25	\$3.00	\$1,250	\$800	\$150	\$750
Markie	\$3.00	\$2.60	\$1,200	--	\$125	\$750
Molega	\$2.75	\$2.75	\$1,200	--	\$125	\$700
Cumberland	\$2.60	\$2.55	\$1,200	--	\$125	\$750
Tri-Star	\$2.85	\$2.60	\$1,150	--	\$125	\$700

[149] Absolute and Coach are the largest charter carriers in the Province, followed by Transoverland with 17 vehicles. The others operating highway motor coaches have one each. These are mainly smaller carriers, where owners often drive the vehicles. There was an acknowledgement at the *Discount Review* hearing that there are differences between the operating expenses of these carriers as a result of their reduced overhead expenses, for example, owner drivers versus unionized employees in a larger operation.

[150] Recently, Absolute has sought amendments to its Licenses to increase most of its rates, which was published in the Royal Gazette on Wednesday, February 10, 2016. A comparison of Stock's use of the HMC Minimum Rates, which must be increased as of January 1, 2016, and the proposed rates of Absolute are as follows:

2016 HMC Minimum Rates & Absolute's Proposed Rates						
	Live	Deadhead	Daily	Half Day	Hourly	Layover
Stock	\$2.70	\$2.45	\$1,200	\$875	\$120	\$725
Absolute(proposed)	\$3.40	\$3.00	\$1,495	-	\$165	\$800

It is important to note that Absolute has not sought an increase in its live and deadhead kilometre rates. Absolute's proposed rates are currently before the Board and have not yet been determined; therefore, they have formed no part of the Board's decision in this case. They are provided to show where the regular rates for highway motor coaches may be heading as carriers emerge from the recession and past problems outlined above.

[151] For the remaining three rate categories, not all carriers operate vehicles within each classification. Furthermore, carriers' current licenses have called different vehicles by the same names. Although the Board has adopted standardized definitions, the implementation has not begun. Stock confirmed its Mini-coaches and Semi-coaches are two axle vehicles. The former classification consists of three Ford and GMC vehicles with adult seating capacities of 16 to 21 seats. It operates one Semi-coach, being a 45 passenger Freightliner vehicle. Due to the use of different names for vehicles in the licenses, the rate comparisons for each category below are as accurate as possible at this time:

Semi-Coach Rate Comparison							
	Live	Deadhead	Daily	Hourly	Min.	Wait Time	Layover
Stock	\$2.25	\$2.00	\$800	\$80	\$425	\$60	\$425
Absolute	\$3.00	\$2.75	\$1,225	\$135	\$550		\$675
Absolute (Pro.*)	\$3.00	\$2.75	\$1,250	\$140	\$575		\$700
Coach	\$2.75	\$2.35	\$1,000	\$125	\$500		\$600
Molega	\$2.00	\$2.00	\$950	\$100	\$300	\$65	\$550
Mac Tours	\$2.30	\$1.90	\$750	\$80	\$230		\$300
(Pro. refers to proposed rates)							

Mini-Coach Rate Comparison							
	Live	Deadhead	Daily	Hourly	Min.	Wait Time	Layover
Stock	\$2.25	\$2.00	\$800	\$80	\$425	\$60	\$425
Absolute	\$2.60	\$2.30	\$875	\$100	\$400		\$525
Absolute (Pro.*)	\$2.60	\$2.30	\$950	\$105	\$500		\$725
Coach	\$2.55	\$2.25	\$850	\$100	\$400		\$500
Molega	\$2.00	\$2.00	\$850	\$90	\$300	\$60	\$500
Tri-Star	\$2.00	\$1.50	\$650	\$75	\$200		\$250
(Pro. refers to proposed rates)							

Activity Bus Rate Comparison							
	Live	Deadhead	Daily	Hourly	Min.	Wait Time	Layover
Stock	\$2.25	\$2.00	\$525	\$80	\$375	\$50	\$375
Coach (WTS)	\$2.25	\$2.00	\$650	\$65	\$350		\$300
Cumberland	\$2.00	\$1.60	\$500	\$75	\$150	\$75	\$200
Markie	\$1.80	\$1.40	\$575	\$50	\$200		\$300
Mac Tours	\$2.20	\$1.80	\$575	\$55	\$190		\$300

[152] As noted above, after the Board’s careful review of all of the evidence, the Board finds Stock failed to provide sufficient evidence for the Board to adopt all proposed rates. In particular, for the highway motor coach rates, Stock merely adopted the HMC Minimum Rates sent by the MCD.

[153] Stock is, potentially, a major carrier in the charter industry in Nova Scotia. Although it operates 500 school buses in the Province which represents 98% of its business, its charter work also includes 13 semi-coaches, mini-coaches, and activity buses. With the four highway motor coaches, Stock has provided 17 vehicles. This makes it tied for the third largest company in the Province. Consequently, the rates it charges for charter services in these various classifications can have a significant impact on the Industry in Nova Scotia. As noted above, rates must be set to ensure that it covers all of the capital and operating expenses of a carrier along with a profit margin. Rates below these can be predatory in the Industry and have a negative impact on other carriers and, ultimately, the Industry as a whole.

[154] The rates proposed by Stock are, in a number of categories, the lowest rates in the Province.

[155] There are carriers with lower rates than the major carriers in the Province. A number of these are smaller carriers that operate from their homes and, have reduced office and overhead expenses. The owners provide multiple tasks for operating the business, including being the drivers. These reduced operating expenses have led to reduced rates. Some use the Minimum Rates.

[156] The Board finds that Stock has failed to present evidence to show that its expenses are in a lower operating bracket equivalent or comparable to a home office, owner operator and driver. With two offices in Nova Scotia, 600 employees and 500 vehicles, the Board finds on a balance of probability that it is more likely than not that Stock's expenses are more similar to those of Absolute and Coach. This is supported by Stock's activity bus rates which are more similar to Coach than the smaller carriers. Activity buses are school buses that are not painted yellow. This is the vehicle Stock is most familiar with. All of Stock's rates in this category are equal to or greater than the rates of Coach, except one. As the Board understands many of the charters for these vehicles are for a few or one hour, the Board approves these rates, except one. The Board finds Stock's daily rate, however, is low and inconsistent with its hourly or minimum rates for this vehicle. The Board sets the daily rate for the activity bus at \$650.

[157] As Stock and Coach have similar rates for the activity buses, and for all of the above reasons, the Board sets the rates for Stock for the other three rate categories at the rates previously approved by the Board for Coach. The Board finds these are more just and reasonable rates. Not all carriers, including Coach, offer a wait time when the

vehicle is not operating on a single day charter. Stock's wait time hourly rate for its activity buses is 62.5% of its regular hourly rate. The Board has maintained a 60% ratio for this rate in the other applicable vehicle classifications.

[158] The Board sets Stock's rates as follows:

Seating Capacity	Per Km Live	Per Km Dead	Daily Rate (10 hours)	Cruise Half Day (5 hrs)	Hourly Rate	Minimum Rate (4 hours or less)	Wait Time hourly (after 2 hrs)	Layover Rate
55-56 pax Highway Motor Coach	\$3.35	\$2.95	\$1,400.00	\$875.00	\$150.00			\$725.00
44-48 pax Activity Bus	\$2.25	\$2.00	\$650.00		\$80.00	\$375.00	\$50.00	\$375.00
45 pax Semi-Coach	\$2.75	\$2.35	\$1,000.00		\$125.00	\$500.00	\$75.00	\$600.00
16-21 pax Mini-Coach	\$2.55	\$2.25	\$850.00		\$100.00	\$400.00	\$60.00	\$500.00

[159] The Board notes, however, the proposed rates of Absolute may be the more accurate current rates.

[160] During the discount review process the Board also standardized the rate structure and many definitions. The rates approved by the Board also incorporate these standardized structure, charges, and definitions.

[161] Stock has withdrawn its discount rate of 20% and, therefore, it is no longer before the Board. Even though the Board has increased Stock's rates, Stock may think it should be entitled to provide a 20% discount for its highway motor coaches. From the information before the Board in this case, the Board does not find a discount should be permitted. It does not because Stock testified it would always quote the Minimum Rates. This is very different from the general practice of other licensed carriers in Nova Scotia, which seek their regular rates. A discount is provided to large volume customers. The

Minimum Rates are not intended to be their regular rates. The Board finds that to provide a 20% discount to Stock in this case would render the above rates meaningless.

[162] Furthermore, the Board notes the \$1,400 daily rate set by the Board for Stock's HMC, is the cruise ship rate Coach charges for a six to 10 hour cruise ship service. Consequently, the rates approved for Stock's cruise ship services are comparable to Coach.

[163] As noted above, Stock undertook to provide its charter invoices to the Board for the months of May and June 2015. This Undertaking remains outstanding. The licenses will not be amended to include the HMCs until the Undertaking is filed and reviewed by the Board. The Board will retain jurisdiction until this is completed.

9. Contracts

[164] The Board notes that in its review of Stock's rates and services in Schedule F, that it has an open contract service for schools within the Atlantic Conference of Independent Schools. In its interim decision of the Discount Review process, 2013 NSUARB 21, the Board found it did not have jurisdiction to grant open contract authority. Furthermore, each contract and renewal has to proceed through the application process. Upon completion, the contract authority is to be removed from the license. The Board's interim Order includes the following:

IT IS ORDERED THAT:

...

2. All open contract services on the licenses of any carriers are removed, effective January 21, 2013.
3. Existing contracts filed with the Board are added as a separate service to the respective licenses of carriers, as specifically noted below.

4. For any renewals of the specific contracts below, of any contract not currently filed with the Board, and for all new contracts, carriers must apply to the Board to service an individual contract in accordance with the *Motor Carrier Act and Regulations*.

...

[165] It would also appear the recent contract filed by Stock with DND did not follow the process.

[166] The Board will retain jurisdiction to correct and resolve this portion of Stock's License.

10. Intervenor Standing

[167] The Board permitted Tri-Star to fully participate as an intervenor with written reasons to follow. These are those reasons.

[168] After the Notice of Applications was published, anyone wishing to object was to file their opposition with the Board by May 27, 2015. Based on availability, the Board set the hearing dates of July 27 and continuing on August 7, 2015, if necessary. On June 9, 2015, the Hearing Notice was issued.

[169] On June 11, 2015, Tri-Star requested to participate in the hearing. They had missed the Notice, objected on various grounds, and stated:

... The fact that they are requesting an additional equipment point and the ability to add more strain on the charter business in Nova Scotia is important to us.

[Exhibit S-16]

[170] On June 12, 2015, the Board forwarded Tri-Star's request to all parties for comment. If the Board did not hear from anyone by Friday, June 19, 2015 at noon, then the Board would assume the carrier did not object.

[171] Other than Stock, no one else objected to Tri-Star's participation. Coach, Molega and Markie advised the Board they did not object.

[172] Stock objected to the request outlining the Board's process of providing Notice to all motor carriers and questioned how it was missed by Tri-Star. Ultimately, it stated:

... In our view permitting the late objection should only be granted where there is a reasonable excuse provided. That is not the case here.

[Email, June 17, 2015]

[173] On June 18, 2015, Markie added additional comments addressing the dates of the hearing and stating as follows:

... I would like to point out that they [Tri-Star] are a licensed Carrier already, sometimes we all get mixed up and busy this time of the year. Tri-Star is very important in our industry. I would like them involved in this Hearing as all Carriers should be because this affects all Carriers and the Busing Industry.

[Email, June 18, 2015]

[174] In summary, in deciding whether a person should be permitted to intervene in a case under the *MC Act*, and at what level of participation, the Board will review all of the circumstances and determine what is just. The Board has the authority under the *MC Act* and the *Utility and Review Board Act*, to set its procedures. The Board's Rules provide a broad skeleton for the procedures and permits the Board to modify these when it is just to do so.

[175] In this case, as noted by Markie, Tri-Star is a licensed carrier in the Province. It is the only one in its area in Southwestern Nova Scotia. It operates one highway motor coach. Stock is seeking four times that authorization. Stock's vehicles, therefore, can have a significant impact on the Industry.

[176] As noted above, the Board's economic expert indicated that adding vehicles into a market can have a significant impact on the Industry. The *MC Act's* objective is to be able to provide quality, safe transportation services throughout the Province, including

the Southwestern area. As the only carrier in Southwestern Nova Scotia, having the right to participate provides a perspective to the Board from that area of the Province.

[177] When Tri-Star made its request to participate, it was 1.5 months before the hearing was to commence. Tri-Star's participation would not delay the hearing from starting on July 27, 2015, nor cause the hearing to last longer than the two days set aside for the proceedings.

[178] Stock did not identify any prejudice that it would encounter if Tri-Star participated and, most importantly, did not address a prejudice that could not be compensated for by costs.

[179] Furthermore, there is no indication the delay in filing its objection was done purposely nor too late in the process.

[180] For all of the above reasons, in particular that there is no prejudice to Stock and Tri-Star has an interest in the proceedings that will affect it and transportation services in Southwestern Nova Scotia, the Board found that, in the interest of justice, Tri-Star was permitted to participate in the proceedings with full party status.

VII CONCLUSION

[181] Stock initially applied to amend its Licenses to operate four highway motor coaches for any type of charter, add HMC rates, and revise charter rates in its three other vehicle classifications.

[182] The parties agreed to very strict use of the highway motor coaches. Without the Agreement, the Board would not have granted any authorization for the use of these highway motor coaches. The Board finds that in relation to its initial Applications, Stock

failed to prove the requirements of s.13, in particular, it failed to show there was an unrestricted need for these vehicles.

[183] The goal of the *MC Act* is to provide safe, quality transportation services throughout the Province. The Board finds that the Industry, coming from a recession and discounting methods, remains unhealthy and under-revenued. There is an excess of vehicles in the Province. Further unrestricted licensed vehicles for all charters would have a negative impact on the licensed carriers, which in turn encumbers achieving the objects of the *MC Act*.

[184] With the restrictions and modifications, the Board approves the addition of four highway motor coaches and the deletion of the two 20 passenger mini-coaches and two 39 passenger deluxe semi-coaches on its MC License and the deletion of the latter two vehicles and one 28 passenger mini-coach on its XP License. The highway motor coaches are restricted to:

- (a) Use for cruise ship services only and may not be used for any other service, including but not restricted to schools, charters and tours;
- (b) Between the months from May to November;
- (c) From any port in the Province;
- (d) Only under subcontract to another licensed carrier for the cruise ship work, such that Stock may not contact and/or contract with a cruise ship company; and
- (e) Used as a last resort, when there are no other vehicles available with a seating capacity of 36 seats or greater, after compliance with the Notification Chart below:

Operator of Last Resort for Cruise Ship Services		
Charter Period	Notification Date	Subcontract Date
May 1 – June 30	Apr. 1	Apr. 16
July 1 – Aug. 31	June 1	June 16
Sept. 1 – Oct. 31	Aug. 1	Aug. 16
Nov. 1	Oct 1	Oct. 16

- (f) Notification must be:
- (i) Provided to all licensed carriers which operate vehicles with 36 seats or greater;
 - (ii) The same dates must be provided to all applicable carriers; and
 - (iii) A copy of the notification and responses are to be filed with the MCD.

[185] After careful consideration, and with the limited evidence provided by Stock in this case, the Board finds its proposed rates, in general, are too low and potentially predatory. Furthermore, the Board finds Stock failed to show the proposed rates were fair and reasonable for the services it was providing. The Board, therefore, set the rates as outlined in the Decision.

[186] With the various restrictions on the use of the HMCs, in particular to not operate charters other than for cruise ship services as the last carrier, and their rates as set by the Board, the Board finds s.13 is satisfied by enabling the servicing of cruise ship passengers without negatively impacting the Motor Carrier Industry.

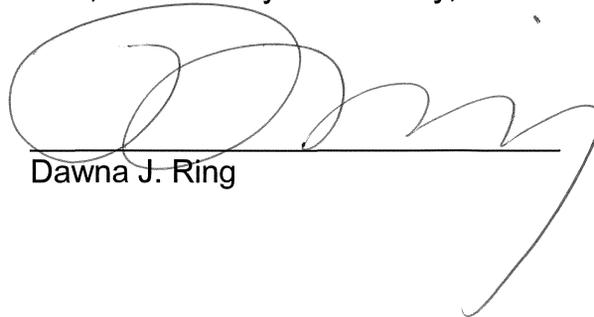
[187] The Board also finds the amount of work available to these highway motor coaches in Nova Scotia alone, is not sufficient to sustain them. The Board notes Stock has also used these vehicles in New Brunswick. However, if Stock determines it does not wish to operate these vehicles under the terms set by this Decision, then Stock should

seek to abandon their use. As there is no need for these HMC vehicles in an unrestricted charter market in Nova Scotia, and considering the negative impact they would have on the Industry, an expansion of the HMC authority beyond the above restrictions would not be permitted.

[188] The rates for Stock's activity buses, semi-coaches and mini-coaches are effective immediately. Upon Stock complying with its Undertaking and the Board's subsequent review, Stock's Schedule E(1) in its Licenses shall remove the requisite mini-coaches and semi-coaches and add four highway motor coaches pursuant to the service authorization and rates as outlined in this Decision. The Board retains jurisdiction to complete this and to correct and resolve the contract services in Stock's Licenses.

[189] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 26th day of February, 2016.



Dawna J. Ring