

DECISION

**2017 NSUARB 78
M07875**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF AN APPLICATION by **ABSOLUTE CHARTERS INC.** for a
Temporary Authority for the 2017 cruise ship season

BEFORE: Roland A. Deveau, Q.C., Vice Chair

APPLICANT: **ABSOLUTE CHARTERS INC.**
Dennis J. Campbell, President and CEO

HEARING DATE: April 19, 2017

UNDERTAKINGS: May 3, 2017

DECISION DATE: **May 25, 2017**

DECISION: **Temporary Authority granted.**

I. INTRODUCTION

[1] This Decision relates to an application by Absolute Charters Inc. (“Absolute”) for a Temporary Authority (which may also be referred to as “TA” or “TA Application”, as the context requires) to add and operate up to eight (8) 56 passenger highway motor coaches (“motor coaches”) to its Motor Carrier License No. P02697 (“License”) for charter services and cruise ship passenger tours and excursions throughout Nova Scotia from September 1 to October 31, 2017. The services and rates would be in accordance with Schedules D(1) and F(1) of Absolute’s Motor Carrier License.

[2] The TA Application is made pursuant to s. 9 of the *Motor Carrier Act*, R.S.N.S. 1989, c. 292, as amended (“*MC Act*”). Section 9 of the *MC Act* provides, in part, as follows:

Temporary authority

9 (1) Notwithstanding any other provision of this Act or the regulations, when it is made to appear to the Board that there is an immediate or special need for the provision of a service in the transporting of passengers the Board, in the discretion of the Board, and without advertisement, public hearing or other proceedings, may grant a temporary authority or trip permit to a person to provide the service on such terms and conditions as the Board prescribes. [Emphasis added]

[3] Since 2014, Absolute has filed a similar TA Application annually to help meet the cruise ship demand in Nova Scotia, particularly during the busy fall period.

[4] Absolute’s TA Application was received by the Board on February 15, 2017.

[5] The Board published a Notice of Application in the Royal Gazette on February 22, 2017, advising that any carrier objecting to the TA Application must advise the Board no later than March 8, 2017. This Notice was also circulated to all motor carriers in the Industry by email, fax or mail.

[6] On March 8, 2017, Stock Transportation filed an objection with the Board.

[7] The hearing was held in the Board's hearing room on April 19, 2017. Dennis J. Campbell, President and CEO of Absolute, presented the TA Application and testified on behalf of Absolute. Sean Buckland, of Absolute, also testified by telephone. Stock Transportation was represented at the hearing by Troy Phinney, its President, who also testified.

[8] The Board approved the TA Application at the conclusion of the hearing, with reasons to follow. The reasons are set out in this Decision.

II. EVIDENCE

[9] Under its License, Absolute has a Province-wide charter authority. Absolute is one of the largest motor carriers in the Maritimes and the largest in Nova Scotia. It provides services to various clients, including sports groups, universities, tour groups, general sightseeing and cruise ships.

[10] Absolute has 79 vehicles, including motor coaches, articulated coaches, double-decker buses, executive coaches and mini-coaches.

[11] The Company has been providing cruise ship services for several years and transports passengers for numerous cruise lines. It serves as a primary carrier at the Port of Halifax, and does secondary work in Sydney.

[12] Absolute has applied for a Temporary Authority during the period extending from September 1 to October 31, 2017.

[13] Based on media releases issued by the Port of Halifax, Mr. Campbell noted that 2016 was the most successful cruise ship season for the Port. There was a 7% increase in overall passenger counts over the prior year.

[14] He described how the 2017 cruise ship season is expected to be even busier than the 2016 season. The number of visitors and ships to the Port of Halifax is projected to grow from 238,217 visitors and 136 cruise ships in 2016, to about 275,000 and 179, respectively, in 2017. This represents a 31% increase in cruise ships visiting Halifax.

[15] The Port of Halifax expects the busiest day of 2017 to be October 3rd with over 11,000 passengers, plus crew. September 14th will see five scheduled cruise ships in port.

[16] Mr. Campbell noted that the TA Application is supported by both the Coach Atlantic Group and Markie Bus Tours. Moreover, he noted that other local carriers who have opposed similar applications in prior years have not done so this year. Notably, these other carriers have provided their availability of coaches and dates to Absolute with respect to the 2017 autumn cruise ship season.

[17] He noted that the support provided by the Coach Atlantic Group and Markie Bus Tours, as well as the lack of opposition by other carriers (except for Stock), is a recognition of the Industry's widely held view that extra capacity is needed to accommodate the busy autumn cruise ship season, as well as the flexibility that is required to manage Absolute's additional coaches during that period.

[18] Mr. Campbell added that the increase in cruise ship visits is only partially addressed by the present application. He noted that due to the relatively short autumn cruise ship season, the significant cost of obtaining such vehicles, and the challenge of securing the required volume of business in such a short time to cover the marginal cost, it is difficult for Absolute or other carriers to offer much more capacity for the autumn

season. He indicated that he and other operators are trying to address any gap through the offering of other diversified products, such as walking tours, restaurant outings, biking tours, segway tours, and boat or harbour hopper tours.

[19] Mr. Phinney testified at the hearing on behalf of Stock Transportation Ltd (“Stock” or “Stock Transportation”). He did not object to the availability of the additional motor coaches for cruise ship work. However, he objected to the proposed use of the motor coaches for regular charter work.

[20] He noted that Stock Transportation has been unsuccessful in entering the Nova Scotia charter market, as an earlier application was denied. In his view, the availability of Absolute’s coaches should be restricted to cruise ships.

[21] In response, Mr. Campbell noted that, in December 2015, Absolute inquired about coach availability from other local carriers for the 2016 autumn cruise ship season. Stock Transportation advised Absolute immediately that it could provide Absolute with motor coaches for the autumn cruise ship season. Mr. Campbell stated that about two weeks before the vehicles were needed in the autumn, Stock Transportation advised they could no longer supply the coaches for cruise work. Absolute was unable to secure alternative vehicles and had to advise the cruise lines that there was less capacity than planned for on a number of the cruise landing dates. Mr. Campbell described how this is not welcome news for the cruise lines. He noted that many shore excursions are sold by the cruise ship up to the prior evening. This reduced capacity resulted in Absolute, and the cruise line, turning away business. Mr. Campbell stated that such incidents are upsetting for the cruise lines. Mr. Buckland noted a specific incident on September 29

and 30, 2016, when a cruise line was upset with the reduced fleet capacity on the days Stock did not provide their motor coaches as promised.

III. THE LAW

[22] There are no stated objects in the *MC Act*. In reviewing the Legislation as a whole and giving it a broad, liberal and purposive interpretation, the Board has found that the objects of the *MC Act* are to ensure there are safe, quality and sustainable motor carrier public passenger services which best meet the interests of the traveling public within, to, and from Nova Scotia. To accomplish this, the *MC Act* requires the Board to regulate virtually all aspects of the Industry (See Absolute 2010 NSUARB 171, para. 42.).

[23] The sustainability of this Industry for the public is one of the Legislation's overriding directives. Before the Board can expand the capacity in the Industry, it must ensure, among other factors, including the public interest, that there are insufficient vehicles available to provide the services.

[24] Section 13 of the *MC Act* 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.

[25] To receive a Temporary Authority, the Applicant must further show there is an immediate or special need: see s. 9 of the *MC Act* above.

[26] In this TA Application, Absolute has the burden of proof.

IV. FINDINGS

[27] The Board has considered this Application under ss. 9 and 13 of the *MC Act*. It accepts the evidence of Mr. Campbell respecting the special need for these additional motor coaches during the busy autumn season for cruise ships in this Province. It is a tourism activity which is continuing to show strong growth.

[28] The Board also notes that the TA Application is supported by the Coach Atlantic Group and Markie Bus Tours. Further, Absolute has sought the availability of coaches from the other carriers.

[29] Taking into account all of the evidence, the Board is satisfied that the TA Application should be granted.

[30] With respect to Mr. Phinney's view that the use of such motor coaches be limited to cruise ship work, the Board has previously considered the point and finds there is nothing in Mr. Phinney's comments that would give it reason to depart from its earlier finding as it relates to the scope of the TA for the autumn cruise ship season:

In such circumstances, we consider it reasonable and appropriate that Absolute be permitted to utilize the vehicles under the TA for both cruise ship service and regular charter service. In our view, to do otherwise would mean imposing too onerous a logistical burden on Absolute in the management of its fleet. To restrict the Temporary Authority in this fashion would unduly hinder Absolute's ability to dispatch its vehicles to meet the fluid circumstances which this carrier must address on a daily basis during the peak season. We believe this could, potentially, have a negative impact on its customers, including cruise lines and charter clients.

[*Generic Cruise Ship TA Hearing*, 2014 NSUARB 88, para. 120]

[31] The Board grants the Application for a Temporary Authority. Absolute is authorized to provide the TA service between September 1, 2017, and October 31, 2017, inclusive, operating up to eight (8) 56 passenger motor coaches. The services and rates

that shall apply to the TA are in accordance with Schedules D(1) and F(1) of Absolute's

Motor Carrier License No. P02697:

SERVICES

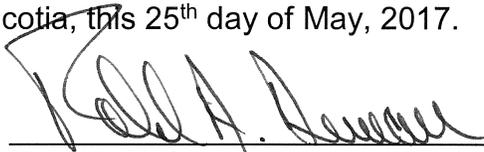
All services to be provided under the Temporary Authority shall be in accordance with Schedule F(1) of Absolute's Motor Carrier License No. P02697.

RATES

All Rates to be charged under the Temporary Authority shall be in accordance with Schedule D(1) of Absolute's Motor Carrier License No. P02697.

[32] An Order shall issue accordingly.

DATED at Halifax, Nova Scotia, this 25th day of May, 2017.



Roland A. Deveau