

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE MOTOR CARRIER ACT**

- and -

**IN THE MATTER OF THE APPLICATION of CHRISTOPHER REX HIRTLE O/A OCEANVIEW TAXI for the sale of Motor Carrier Licence No. P02837 to NORMAN E. FENN O/A AIRLINE TAXI AND LIMOUSINE SERVICE 2011**

and

**IN THE MATTER OF THE APPLICATION of NORMAN E. FENN O/A AIRLINE TAXI AND LIMOUSINE SERVICE 2011 to amend Motor Carrier Licence No. P02837**

**BEFORE:** Bruce H. Fisher, MPA, CPA, CMA, Member

**APPLICANT:** **OCEANVIEW TAXI**  
Christopher Rex Hirtle, Owner/Operator

**AIRLINE TAXI AND LIMOUSINE SERVICE 2011**  
Norman E. Fenn, Owner/Operator  
Dylan A.F. MacDonald, Counsel

**OBJECTORS:** **COACH ATLANTIC TRANSPORTATION GROUP INC**  
Ryan Cassidy, Director of People and Processes

**MARKIE BUS TOURS**  
Ward Markie, Owner/Operator (Not Appearing)

**A WORLD CLASS LIMOUSINE COMPANY LIMITED**  
Josh Chabinka, President (Not Appearing)

**HEARING DATE:** June 3, 2024

**DECISION DATE:** **August 28, 2024**

**DECISION:** **Application is approved.**

## I SUMMARY

[1] This is a two-part application. The first part is the application of Christopher Rex Hirtle o/a Oceanview Taxi who applied to the Board to sell his licence to Norman E. Fenn O/A Airline Taxi and Limousine Service 2011 (Airline Taxi). The second part is the application of Airline Taxi to amend the licence, if the sale is approved, to adjust the rates, terms and conditions, and to replace Oceanview Taxi's 14-passenger vehicle with a 24-passenger vehicle.

[2] Notices of Application for both the sale application and the amendment application were advertised in *The Royal Gazette* on March 27, 2024, posted on the Board's website, and forwarded to licensed carriers by email, fax or mail.

[3] Objections were received from Coach Atlantic Transportation Group Inc. (Coach Atlantic); Ward Markie o/a Markie Bus Tours (Markie Tours); A World Class Limousine Company Limited; Thariq Ali o/a Prestige Limousine; and Paul McNeil o/a Halifax Titanic Historical Tours. Both Prestige Limousine and Halifax Titanic Historical Tours withdrew their objections. The Board scheduled a hearing to consider the application and the objections. Markie Tours and A World Class Limousine Company Limited did not show up for the hearing. Ryan Cassidy, Director of People and Processes for Coach Atlantic, was the only objector to appear in person.

[4] I have considered the evidence and submissions made during the hearing. I am satisfied that the evidence establishes, on a balance of probabilities, that there is sufficient demand to justify both the sale of the licence, and the changes requested by Airline Taxi, including the replacement of the 14-passenger vehicle with a 24-passenger

vehicle. I am, therefore, approving both the sale and the amendments requested by Airline Taxi.

## **II ISSUE**

[5] The issues in this matter are:

- Considering Section 13 of the *Motor Carrier Act (MCA)*, should the Board exercise its discretion to grant the sale of the Licence?
- In considering the amendments to the licence, including the replacement of the 14-passenger vehicle with a 24-passenger vehicle, is there a need for the amendments and the larger passenger vehicle or will the changes cause an excess of equipment in the industry?

## **III BACKGROUND**

[6] Oceanview Taxi applied to the Board on March 7, 2024, to sell its licence to Airline Taxi. Oceanview Taxi has a conditional sale agreement with Airline Taxi whereby the sale occurs if “the Board approves Oceanview Taxi's request for transfer of the Licence in addition to Airline Taxi's request for amendment to the Licence, either as-is, or with modifications agreeable to Airline Taxi...”.

[7] As part of the agreement, Oceanview Taxi's existing 14-passenger vehicle is not being transferred to Airline Taxi. Rather, Airline Taxi is seeking to amend the terms of the licence. This includes the replacement of the 14-passenger vehicle with a 28-passenger vehicle. Airline Taxi is planning to purchase a luxury passenger vehicle.

[8] In addition, Airline Taxi also applied to alter the rates and terms of the licence. The current licence allows Oceanview Taxi to carry passengers between Lunenburg County and anywhere in Nova Scotia for a set amount. Oceanview Taxi has not operated since the Summer of 2023 and its vehicle does not currently pass safety inspection. Its owner intends to retire. The licence proposed by Airline Taxi would alter

the existing rates by setting a rate of \$275 per hour plus a \$1/km surcharge on fuel and creating a charter service with the following conditions, limitations and restrictions:

The transportation of groups of persons and baggage associated with university and school functions, amateur and professional organized sports functions, marine industries, and private/personal corporate functions from any point to any point within the Province of Nova Scotia one way or return, with the use of a 24 Passenger Limo Bus.

[9] Unlike Oceanview Taxi, which provides service between Lunenburg and set destinations, Airline Taxi plans to operate a luxury charter service across Nova Scotia for its institutional clients.

#### **IV EVIDENCE**

[10] Dylan A.F. MacDonald, Counsel for Airline Taxi, provided a statement on behalf of his client. He noted the changes requested in the licence and described Airline Taxi as highly distinct and niche oriented. He asserted that the application met the requirements of Section 13 of the *MCA*, saying the application was consistent with the purpose of the *MCA* and would provide high quality, safe and sustainable transportation.

[11] Mr. Fenn, owner of Airline Taxi, provided evidence in favour of his application. He described his background as including an Executive MBA and the completion of most requirements for the then named Certified Management Accounting (CMA) designation. His current business (including Celebrity Transportation which he also owns) operates two luxury SUVs and has four drivers. While he is active in the industry, he does not currently possess a Motor Carrier Licence under the *MCA*.

[12] He explained that clients want comfortable, roomy and quality vehicles that are on-time all the time. Transporting 20 passengers would require four SUVs, hence the need for a bus. In the past, some client trips have required multiple vehicles. He estimated that 20-25% of trips were multiple vehicle trips. He intends to purchase a 27-seat luxury

bus with higher trim and amenities such as USB chargers, reading lights, 110-volt service and monitors, HVAC and panoramic windows. (His offer has been accepted and financing has been approved). Seats will be removed for luggage capacity, allowing 24 seats for passengers. He set his proposed prices after researching prices elsewhere including King Limo of Toronto and Prestige Limo.

[13] His target market is primarily the institutional market. His application included letters of support from four different clients including St. Mary's University, Financial Horizons, the T3 Group Atlantic, and Maritime Travel Inc. He stated that they represented his existing client base and that he planned to continue servicing them with his new vehicle. Advertisement is primarily by word of mouth. The letters of support from each of these clients pointed out that they have used the current services of Airline Taxi, and that if Airline Taxi were able to transport more than six passengers, they would use the 24-passenger vehicle. The first three letters stated they would, amongst other items, use the new Airline Taxi limo for their employees, executives, private corporate functions and for business uses. Maritime Travel Inc. stated they would use it for getting "executives and employees to and from the airport, as well as tour customers on custom designed tours throughout the region".

[14] The application included a Business Plan for Airline Taxi. The intent is to "predominantly" service existing clients with a new luxury bus, rather than using multiple vehicles and drivers. The Business Plan also provides a market and industry analysis discussion, suggesting that the global market for luxury buses is increasing, along with a significant increase in Halifax's population and a 35% increase in cruise ship passengers

to Nova Scotia. A variety of background materials discussing these points are included with the application.

[15] In describing his niche market Mr. Fenn stated:

On the bus shuttle side of things I don't see anybody operating a higher end luxury vehicle, predominantly. Most of the competitors are operating their smaller vehicles, or more of a basic type shuttle. They are catering to a different clientele, but we are specifically zeroing in on the clientele that we have.... So a Fox Harbour expects a certain level of quality. The CEO of Bell expects a certain level. So, we're predominantly zeroing in on those guys.

[Sound file, TRK 1, 1:12:25]

[16] The Business Plan also included projected cash flow statements for years one to five. They show revenues of just over \$100,000 in year one and provide breakdowns for operational expenses (fuel, maintenance, fees, insurance and driver costs) and loan amounts. Cash flow before amortization and income taxes ranges from \$39,800 in year one to \$53,700 in year five. Assumptions were made based on seasonal demand, but specific ridership numbers are not included. Based on the \$2,200 daily rate, it can be surmised the projections assume the equivalent of 45 eight-hour days. Nor does the Business Plan discuss how many projected riders are (1) switching from Airline Taxi's SUV service, (2) customers of other motor carrier services, or (3) the result of growth in the market. The plan also does not discuss the net impact on the business of passengers switching from the unregulated SUV service to the new minibus.

[17] Coach Atlantic objected to the application, stating that there "are enough mini buses in the marketplace to service the demand". They provided a daily listing of bookings in 2023 for their 11 minibuses. They had 1,276 bookings, an average of 116 per bus. Coach Atlantic was represented at the hearing by Mr. Cassidy. Mr. Cassidy specified at the hearing that two of the clients mentioned by Airline Taxi are also clients of Coach Atlantic. While Airline Taxi suggested that Coach Atlantic's Minibuses were older and

more basic vehicles, Mr. Cassidy stated that a 2017 Turtle Top minibus operated by Coach Atlantic was very similar to Airline Taxi's proposed vehicle. That specific vehicle had 125 bookings in 2023, was heavily used in the summer months, and was "very popular for single day tour groups, with a tour guide, whether it be a trip to the Valley for a winery tour, or a trip to a tourist destination such as Peggy's Cove".

[18] Mr. Cassidy also discussed the price differential between Coach Atlantic and Airline Taxi. He stated the day rate for Coach Atlantic was significantly lower than Airline Taxi. Coach Atlantic, however, had a four-hour minimum price. Hence, Airline Taxi was significantly lower for trips under four hours while Coach Atlantic was significantly lower for trips over four hours.

[19] In summarizing the impact of Airline Taxi's proposal on Coach Atlantic, Mr. Cassidy stated:

Based on the financial projections, as illustrated, by the applicant, I believe that it is a market that we currently do service and can service. As an impact to the business as a whole, I think it would steal a portion of our minibus market share but we do have a diverse group of vehicles, diverse range of customers across three provinces, four provinces actually. So, it ah, it ah. Yeh, it would. We would still be able to continue to operate, but it would likely take a couple of those pieces of business away from what we could have serviced.

[Sound file TRK 1, 1:23:19]

[20] Mr. Markie provided written objections stating that there were "enough mini buses in the market now". He also provided booking numbers and utilization for his four smaller buses. He did not appear at the hearing.

## **V LAW**

[21] As is often the case with lay litigants appearing before the Board, the distinction between submissions and evidence is not fully appreciated. The Board has considerable experience assessing the weight to be placed on these types of

presentations. As well, s. 19 of the *Utility and Review Board Act*, R.S.N.S. 1992, c. 11, provides that the Board is not bound by the strict rules of evidence. Not surprisingly, therefore, no objection was taken to hearsay evidence, which was presented, to some extent by all the parties. All the participants were affirmed at the start of the hearing. Statements made by the participants were considered as evidence, subject to considerations related to weight, no matter at what stage in the proceeding these were made.

[22] As well, the state of the motor carrier industry arises in many cases before the Board. The Board has also initiated its own generic proceedings where this issue has been canvassed (see: *Discount Review Decision*, 2015 NSUARB 33 and *Generic Public Hearing Decision*, 2020 NSUARB 69).

[23] Oceanview Taxi and Airline Taxi, in relation to their respective applications, have the burden of proof to show, on a balance of probabilities, that the Board should grant their requests for the sale and amendments. The Board must consider the factors set out in s. 13 of the *MCA*, which are applicable to both applications.

[24] The principles and tests the Board applies to this type of application are well known in the provincial motor carrier industry. They have been reiterated on many occasions and are well summarized in *Re Pengbo Fu o/a Pengbo's Shuttle*, 2020 NSUARB 87, affirmed 2020 NSCA 83, at paras. [44] to [47] and [51]:

[44] In Nova Scotia, motor carrier transportation services are regulated under the *Motor Carrier Act (MC Act)*. In general, the *MC Act* regulates motor carrier operators in Nova Scotia to ensure there is a quality, safe, sustainable industry in the Province. To accomplish this, the Board has been given the jurisdiction to regulate virtually all aspects of the industry.

[45] The *MC Act* provides the following guidance to the Board on matters it may consider:



### 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.

These apply equally to amendment applications, ss. 12 and 19.

[46] Thus, in assessing an application, the Board considers, among other factors in s. 13, the public interest; the quality and permanence of service to be offered; general effect on other transportation services; and the sustainability of the industry including whether there is need for additional equipment in the area. In addressing whether there would be an excess of equipment under s. 13(a) above, the Board must consider whether there are vehicles currently licensed which could provide the services applied for. In other words, is there a need for the services and/or equipment sought by the Applicant?

[47] The *MC Act* requires the Board to balance, in each case, the various relevant issues and interests which may overlap and, at times, conflict. In the *Trius Inc.* Decision, dated September 22, 1993, the Board described the 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.

...

[51] 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

[25] Sustainability of the motor carrier industry is a key component of the economic regulation of a competitive business sector under the *MCA*. This was discussed in the *General Public Hearing Decision, 2020 NSUARB 69*, where the Board stated:

[15] In the Interim Discount Review Decision, 2013 NSUARB 21, the Board reviewed the objects of the *MC Act*:

...

### (b) Sustainability

[86] The sustainability of the industry is another key component of the Legislation. The *MC Act* directs the Board to consider each carrier's ability to sustain itself by considering whether it will be able to provide the services on a permanent basis (s. 13(c)). It also requires the Board to consider the sustainability of the industry as a whole by considering the impact on the other transportation services in the province (s. 13(b)) and, in particular, whether there will be an excess of equipment (s. 13(a)). Although this may involve consideration of any transportation services, including rail and air, it is normally limited to the other licensed carriers operating in the province.

[26] Section 13 of the *MCA* provides guidance about what matters should be addressed in making an application to the Board for a new licence, including evidence about the "fitness, willingness and ability" of the applicant to provide service of "quality and permanence"; the impact on other transport services; and whether approving the application would result in an excess of motor carrier equipment in the market.

[27] While it is up to an applicant to decide how the application is presented to the Board, it is reasonable to expect that an applicant would provide evidence about how it intends to operate and the potential clientele. Preferably this should be a written business plan, but at a minimum at least some documentation is required to support the application. This might include:

- financial projections of forecasted revenues and expenses, including operating expenses such as salaries, fuel, insurance, repairs and maintenance, as well as

expenses to purchase, lease, or finance the motor coach, bus, minibus, van or limousine to be used in the business;

- any financial analysis undertaken including projected ridership and breakeven points based on a few assumptions;
- the qualifications, training and experience of the applicant and key employees to manage and operate a safe and sustainable motor carrier business; and,
- a marketing or sales plan about the target market, how the applicant intends to attract its clients, and more importantly, to demonstrate to the Board that this clientele is not already being served by the existing motor carrier industry. This type of evidence would generally include:

1. letters and emails from potential clients who tried to hire existing carriers but were refused because the carriers were not available,
2. letters or emails of support from potential clients that show there is a “niche” market that is not adequately served by existing carriers, and
3. survey or market research that demonstrates the size of the market and demand for any increased service.

[28] The documentation should be filed in advance of the hearing. Depending on the sophistication of the business, the documentation should normally include, at the very least, a *pro forma* income statement supported by estimates or quotes from potential suppliers; diplomas, training certificates and résumés of the owner/operator and key employees; and letters of support and testimonials from potential clients, groups and associations describing why the new service is needed and cannot be served by existing

motor carriers. Where the application is opposed, those who wrote letters of support may be required to appear at the hearing if required by the objectors and the Board.

[29] In this application, Airline Taxi presented evidence to support its application. Mr. Fenn has considerable experience and training in both the transportation industry and in business. He has owned and operated his own firm for a number of years, possesses a Class 4 driver's licence, and has training as a management accountant. He is well placed to understand the industry and to successfully operate a motor carrier business. He has provided a Business Plan with financial projections and has a sophisticated understanding of the industry. While he did not provide any market surveys or the underlying ridership numbers used for his projections, he provided letters of support from his expected clients. I am satisfied that there is sufficient demand to sustain his proposed service.

[30] Airline Taxi has presented itself as operating in a niche market, an argument that I accept. His target market is clearly aimed at the local corporate and sporting world, not tourists and cruise ship passengers.

[31] The objectors did not provide any evidence showing a meaningful impact on their operations. While I appreciate the concerns of the objectors, I believe the switch from the 14-passenger bus to the 24-passenger bus will have a modest impact on other carriers. Based on the *pro forma*, the addition of that one vehicle means only a small amount of additional capacity is introduced into the market. To a certain extent that new capacity will simply absorb a portion of Airline Taxi's existing clients from his two SUVs, lowering his cost structure and potentially making his business more efficient. It may also be that it will attract some new clients or attract clients away from the objectors. However,

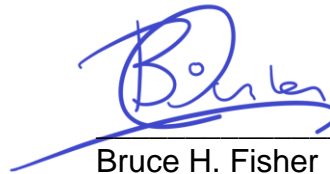
as Mr. Cassidy acknowledged, I do not believe this will affect the sustainability of their operations. The small amount of capacity being added, along with the price differential between Airline Taxi and Coach, should mean no more than a modest impact.

## VII CONCLUSION

[32] I have reviewed and considered all the evidence and submissions in this matter. Applying the applicable law, and the tests developed by the Board under the *MCA*, I find that, on a balance of probabilities, the applicant has shown that the facts support the sale of Motor Carrier Licence P02837, as well as the amendment of that licence. The application is approved.

[33] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 28<sup>th</sup> day of August 2024.



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Bruce H. Fisher