

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

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

**- and -**

**IN THE MATTER OF AN APPLICATION by NOW RENT EASY PROPERTY  
MANAGEMENT INC. for a Motor Carrier License**

**BEFORE:** Richard J. Melanson, LL.B., Member

**APPLICANT:** **NOW RENT EASY PROPERTY MANAGEMENT INC.**  
Natalie S. MacDougall, Counsel

**INTERVENORS:** **COACH ATLANTIC TRANSPORTATION GROUP INC.**  
**TRI-MARITIME BUS NETWORK INC.**  
Ryan Cassidy, Operations Analyst

**TRANSOVERLAND LIMITED**  
Jamie Callaghan, Office Manager

**HEARING DATE:** November 3, 2023

**FINAL SUBMISSIONS:** **November 24, 2023**

**DECISION DATE:** **February 21, 2024**

**DECISION:** **The application is not granted at this time. The Board is  
prepared to issue a temporary authority, with terms and  
conditions.**

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## I INTRODUCTION

[1] Now Rent Easy Property Management Inc. (NRE) applied to the Board for a motor carrier license, under the *Motor Carrier Act*, R.S.N.S. 1989, c. 292 (*MC Act*). NRE is a property management company carrying on business in the Halifax Regional Municipality, and Sydney, Nova Scotia. The applicant seeks to transport tenants residing in the rental properties it manages to and from Sydney, Nova Scotia. The service would be restricted to students at Cape Breton University (CBU), the Nova Scotia Community College (NSCC), or other learning institutions in Sydney. NRE proposes to offer this service with one 15-passenger vehicle.

[2] The application was opposed by Coach Atlantic Transportation Group Inc. (Coach Atlantic) and Transoverland Limited (Transoverland). The opposition was primarily based on sustainability of the business model, along with driver hours-of-work issues. In particular, the objectors expressed a concern service could not be safely and reliably provided, on a regular basis, within the restrictions imposed by regulations about the number of hours drivers could be on duty.

[3] NRE says that the need for the service arises because a large number of international students attending educational institutions in Cape Breton could not find housing in that region. As well, there are many international students attending schools in Sydney who could not find work in that municipality. Therefore, many international students are residing in Halifax, in buildings managed by NRE.

[4] The Board finds the applicant proposes to service a niche market, which was generally acknowledged by the objectors. The service will have no meaningful negative impact on the objectors or the motor carrier industry in general. The proposed

vehicle under the license is already used for other company purposes. NRE is not relying solely on the income generated from the licensed activities to upkeep the vehicle. Sustainability concerns are less of an issue. That said, it is clear that if only a small number of passengers use the service regularly, it will not pay for itself.

[5] The concern expressed by the objectors that the number of drivers needed to provide the service, within the prescribed hours on duty, could ordinarily be cost prohibitive, or lead to unreliable service, has some merit. NRE indicates it will hire enough drivers to accommodate the schedule, some of whom will perform other functions with the company. In the end, NRE must operate within the law. That said, the scheduling of drivers and safety and reliability issues remain a concern for the Board.

[6] The Board is further concerned about the sustainability and permanence of the proposed service. It is not at all clear that international student enrollments will continue at the present levels, given the significant challenges students face.

[7] While each factor alone might not have led the Board to deny the application, in combination they raise sufficient concerns that the Board is not prepared to grant the application at this time. The Board is, however, prepared to grant a temporary authority, based on a current special need, should the applicant wish to proceed in this manner. This will provide the applicant with an opportunity to potentially address the Board's concerns.

[8] The Board will provide the applicant with an opportunity to coordinate the timing and final details of a temporary authority. The Board will hold this matter in abeyance, and should the applicant wish further consideration of a permanent license, once operational, the matter can be re-opened without the need for a new application.

As well, to assist in enforcement of the terms of the license, the Board has imposed conditions related to the tenancy and student requirements.

## **II ISSUES**

[9] The issue to be determined is whether NRE should be granted a motor carrier license. The Board must decide if NRE can provide a quality service in a safe, reliable, and sustainable manner, within the prescribed hours drivers are allowed to be on duty.

## **III BACKGROUND**

[10] NRE applied for a Specialty Irregular Restricted Area Public Passenger Charter Service described as:

Transportation of tenants from properties managed by Now Rent Easy Property Management Inc. in Halifax who are students at Cape Breton University, NSCC or other institutions in Sydney to Sydney to attend lectures and return to Halifax.

[Notice of Application]

[11] A Notice of Application was advertised in the Royal Gazette on September 13, 2023, as well as posted on the Board's website and forwarded to licensed motor carriers by email, fax, or mail. Coach Atlantic and Transoverland objected to the application.

[12] A virtual hearing to consider the matter was scheduled and held on the *GoToWebinar* platform on November 3, 2023. The Notice of Hearing set dates for submissions or documentation to be filed before the hearing. During the hearing, NRE undertook to provide additional information, and the Board allowed further submissions

based on this new documentary evidence. Final written submissions were received on November 24, 2023.

[13] NRE was represented by its solicitor, Natalie MacDougall. In addition to submitting pre-filed evidence, Samuel Oluwatosin, the applicant's CEO, testified before the Board. NRE pre-filed confidential business plans for both its property management business and proposed transportation business. The transportation business plan contained information on the target market, start-up costs, a pricing strategy, revenue growth projections, and information often found in pro forma financial statements, such as projected income, projected profit and margin figures, projected cash flow figures, and a projected statement of financial position.

[14] The economic regulation of the competitive charter market creates an unusual situation where sufficient financial information and business strategies that would ordinarily not be available to competitors, must be provided to the Board to justify the granting of a license. Revealing such detailed information to competitors would likely put applicants at an unreasonable competitive disadvantage. For this reason, the Board allows detailed business plans and financial information to be filed on a confidential basis.

[15] NRE also filed an exhibit book that contained some emails showing support for the proposed transportation service. At the request of the Board, as Undertaking U-1, NRE filed a sample schedule for the proposed charter service.

[16] While all the details of NRE's transportation business plan were not made available to objectors, the information detailed in the oral hearing was sufficient for the parties to understand the basis of the applicant's application, business model, and the purported need for the service.

[17] Coach Atlantic was represented by Ryan Cassidy, the company's Operations Analyst. Transoverland was represented by its Office Manager, Jamie Callaghan. The objectors filed no documentary evidence or any material evidence to show that the proposed charter service would have any impact on their business, or the Nova Scotia charter business in general.

[18] In their questioning of Mr. Oluwatosin, and their submissions to the Board, the objectors focussed on the lack of a documented number of potential customers, along with a concern that what amounts to a regular shuttle service could not be operated in a sustainable manner. This was primarily focussed on NRE needing too many drivers to comply with legal requirements for hours on duty to make the service viable.

#### IV LAW

[19] The principles and tests the Board applies in 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.

## **V ANALYSIS AND FINDINGS**

[20] The type of evidence provided by the applicant in advance of the hearing is generally in keeping with the suggestions set out in *Re 3259293 Nova Scotia Limited o/a*



*Grape Escape Wine Tours of Nova Scotia*, 2023 NSUARB 160 (see: paras. [35] to [40]). The objectors presented no material evidence that the proposed license, if granted, would negatively impact their business operations, or the motor carrier industry generally, by creating an excess of equipment. The Board finds the applicant proposes to serve a niche market. The objectors did not seriously challenge this proposition. The Board has granted licenses for carriers proposing a limited service to serve niche markets in the past [see: *Re A Day By the Sea Tour Limited*, 2014 NSUARB 68, *Re Aberdeen Charters Ltd.*, 2013 NSUARB 79, *Re Pengbo's Shuttle*, 2019 NSUARB 56, and *Re Sunshine Atlantic Holdings Limited, et al*, 2014 NSUARB 179].

[21] The Board notes that Coach Atlantic, through Tri-Maritime Bus Network Inc. (Maritime Bus), offers a regular daily line service from Halifax to Sydney. As the applicant is offering a form of regular service between these two points, it could theoretically impact the Maritime Bus regular line service. Coach Atlantic did not advance this position, presumably because of the proposed schedule and the proposed limits on the applicant's ridership. There is no evidence the service would unreasonably impact regular route public passenger service.

[22] The application really turns on whether there is a public need for the proposed service; the projected quality and permanence of the proposed service; and whether it can be safely provided as prescribed by the applicable regulations. These factors are addressed in s.13(c) of the *MC Act*, along with public interest considerations, which the Board can consider under s.13(d) of this legislation. The Board notes these factors can be considered by the Board quite apart from any objections raised by other motor carriers.

[23] NRE provided data from the Association of Atlantic Universities, in the form of Preliminary Surveys of Enrollments, comparing the survey years 2017-2018 and 2022-2023. The preliminary survey data shows a dramatic increase in the international student enrollment at CBU. This data indicates CBU had 6939 full-time international students for the 2023-2024 academic year. This reflects a 75.6% increase from the previous year and an increase of 869% since 2017.

[24] NRE also presented information from a study by BDO for the Cape Breton Partnership related to housing needs. This study was published in 2020. The authors indicate that the rental market in Sydney has not kept up with demand in general, and the housing needs of international students in particular [see: *A Study of the Housing Needs to Support the Growth and Sustainability of Seasonal Industries in Cape Breton*, Cape Breton Partnership, November 13, 2020, p.31].

[25] The Board accepts the evidence presented by the applicant that there is currently a serious housing shortage in Sydney. The Board further accepts the evidence that some students reside in Halifax while attending CBU. Aside from the housing shortage, the Board accepts the evidence that a lack of employment opportunities has led some students to work in Halifax and commute. The objectors did not dispute this evidence.

[26] The service proposed by NRE would be based on the needs of the student residents in the apartment buildings the company manages. The schedule provided in response to Undertaking U-1 is different then what was proposed in the Notice of Application. Undertaking U-1 does not propose weekend service. There is also only provision for return service on the same day once per week. In essence, except for

Fridays, students will have to stay overnight in either Sydney or Halifax for at least one day.

[27] The evidence raises some concerns about the proposed service. At the time of the hearing, Mr. Oluwatosin testified that there were five confirmed customers who wanted to use the proposed service. This is consistent with the materials filed with the Board. Mr. Oluwatosin further testified that there were potentially 36 passengers who would use the service. The proposed schedule filed as Undertaking U-1 is based on this potential client base. This additional confirmed ridership is not documented, although as part of the undertaking filings, Ms. MacDougall submitted there had been additional interest shown since the oral hearing. These numbers may be lower than the number of customers projected in the business plan for the first year.

[28] While the proposed service would have no material impact on the motor carrier industry in general under s. 13(b) of the *MC Act*, in the context of s.13(c), the sustainability of the business proposed by NRE is important. This is because, in the usual case, enough revenue must be generated from the motor carrier business to cover its operating costs and provide a reasonable profit. This helps promote the regular upkeep and maintenance of vehicles. It also promotes hiring qualified drivers, and generally providing a quality service. It helps avoid cost cutting measures which can lead to quality and safety issues.

[29] In most circumstances, the Board would not grant a permanent license based on this type of evidence showing these levels of ridership. While this case has many similarities with the *Pengbo* matter cited by the applicant, the number of potential clients is substantially lower. The Board notes that since the granting of a license with a

limited scope to Pengbo's Shuttle, that carrier has continually applied to expand the scope of the license because of difficulties in sustaining the business with a limited clientele.

[30] There is another type of license issued by the Board that is appropriate where prospective ridership is limited. As raised by the objectors, a Commercial Vehicle license is available for public passenger vehicles with a seating capacity of eight or fewer persons, excluding the driver. These licenses are not subject to economic regulation by the Board, and it has recently issued several for services between Sydney and Halifax. The applicant already has a 15-passenger vehicle, making this option less attractive.

[31] The Board is also concerned about the transportation business plan when compared with the scope of the requested license. The specific contents of the transportation business plan are confidential. That said, at least after the initial startup, there are types of transportation services described in this plan, other than the Halifax to Sydney run, which require a motor carrier license. Others do not. Therefore, while some of the additional services described in the transportation business plan are also restricted in scope, others are less so. The financial information and projections provided may not align with the actual service requested in this application.

[32] Another concern relates to the permanence of the proposed service. The evidence reveals a recent dramatic increase in attendance of international students in Sydney. There is little evidence to establish this level of foreign students is sustainable in the long term, given the magnitude of challenges international students now face. Leaving aside the less-than-ideal student housing circumstances in Sydney itself, described in the Cape Breton Partnership Report, it is not apparent that 4.5-hour return

trips to and from Sydney would be a sustainable marketing strategy for recruiting and retaining students.

[33] The Board is also concerned about the applicant's ability to provide a reliable service, given the number of drivers that will be required to meet the obligations in the *Commercial Vehicle Drivers' Hours of Service Regulations*. These regulations apply to a bus with a seating capacity of more than 10 persons. The Board understands that NRE plans to use as many drivers as are required to ensure the requirements are met. That is a licensee's obligation. The Board's concern is mitigated, to some extent, by NRE's indication that it will use its own employees, who will have other duties with the company. The use of spare drivers is not uncommon in the motor carrier industry. Shifting employees to meet needs is not uncommon in business. That said, where an applicant has no demonstrated experience in dispatching drivers, the Board's concern is not completely alleviated.

[34] While each individual concern might not warrant a denial of this application, it is the combination of these factors which leads the Board to conclude that the applicant has not shown, on a balance of probabilities, that the Board should grant a permanent license at this time. That said, it is the Board's opinion that given the unusual circumstances surrounding international students and learning institutions in Sydney, some flexibility is required.

[35] Rather than denying the application outright, the Board is, therefore, prepared to grant a temporary authority to NRE pursuant to s. 9 of the *MC Act*. This provision allows the Board to issue a temporary authority where there is an "immediate or special need" without the need for further advertising or another public hearing. The

international student housing situation can aptly be described as creating such a need. A temporary authority can be granted for a period of 90 days and extended for a further 90 days. As this was not the remedy sought by the applicant, the Board requires NRE's confirmation that it wishes to proceed with the temporary authority the Board is prepared to grant.

[36] A temporary authority would provide a means for NRE to establish the extent of the ridership market; its projected sustainability over time; the applicant's ability to manage the schedule in a reliable manner, and the sustainability of the business model.

[37] The university year is well under way. As well, the proposed vehicle will have to be inspected by the Motor Carrier Division. If the applicant wishes to avail itself of this option, the Board is prepared to work with NRE to establish an appropriate time for the temporary authority to be activated. Finally, if further refinements are required to scheduling, or the terms of license, provided the modifications are not significantly different than the proposal before the Board, these can be addressed in an order implementing this decision.

[38] The Board is further prepared to hold this matter open for one year, so that if the experience and information gained through the temporary authority gives rise to a further request for a permanent license, that request can be addressed in this proceeding, with the current parties, without the need for further advertising.

[39] To assist with enforcement, the terms of license will require that NRE drivers be able to show proof to an inspector that the passengers on board meet the requirements of being students at an educational institution in Cape Breton, and that they are tenants of NRE.

[40] Finally, if the applicant wishes to extend the temporary authority, or seeks to have it replaced with a permanent license, the Board will expect detailed reporting on the number of trips generated, the number of passengers per trip, and the log sheets for the drivers showing compliance with the prescribed hours on duty. In addition, should the applicant seek a permanent license, the Board will expect additional financial data and projections about the business model's sustainability into the future, based on the more current and concrete data.

[41] The applicant shall have until March 4, 2024, to advise the Board if it wishes to avail itself of the option of a temporary authority. If not, the application will be denied.


## **VI SUMMARY**

[42] The Board is not prepared to grant the applicant a permanent motor carrier license based on the evidence presented to date. The Board is prepared to grant the applicant a temporary authority to provide the proposed service, should the applicant wish to pursue this option. The Board is further prepared to work with the applicant to determine an appropriate date to activate the temporary authority and finalize terms of license for the temporary authority. The Board will retain jurisdiction for one year to re-open the matter should the applicant wish further consideration of a permanent license. The Board reminds the applicant that any application for an extension of the temporary authority, or request that the license become permanent, should be done in a timely manner.

**VII CONCLUSION**

[43] An Order will issue once the Board has heard from the applicant.

**DATED** at Halifax, Nova Scotia, this 21st day of February, 2024.



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Richard J. Melanson