

M.C. 3 (2007)

**IN THE MATTER OF THE MOTOR CARRIER ACT,
CHAPTER M-19, (R.S.N.L.) 1990 (the “Act”),**

AND

**IN THE MATTER OF THE APPLICATION OF
Jamar Transport Ltd.
FOR THE APPROVAL OF A
MOTOR CARRIER CERTIFICATE.**

On January 31, 2006 Jamar Transport Ltd. (the “Applicant”) applied for a motor carrier certificate to provide two public passenger bus services as follows:

1. A regularly scheduled bus service between St. John’s and Corner Brook and the reverse thereof as an express run with no pick ups or drop offs at points between.
2. A regularly scheduled bus service between Grand Falls-Windsor and Buchans and the reverse thereof with pick up and drop off privileges at points enroute.

On November 28, 2006 the Applicant withdrew the application for a motor carrier certificate to provide a regularly scheduled bus service between St. John’s and Corner Brook, after notice of the application was published and the Board received an objection from Dorman Roberts Ltd. The Board accepted this withdrawal and therefore in this Order will only address the application for a regularly scheduled bus service between Grand Falls-Windsor and Buchans.

The Applicant published notice of application in the Newfoundland and Labrador Gazette on August 25, 2006 and the time period for filing objections expired 20 days following on September 14, 2006. On September 13, 2006 Dorman Roberts Limited (the “Objector”) filed an objection to the granting of the application. The objection states at page 2:

“Every passenger another service takes is one less that is available for the present transportation service. Unless the Province wishes to subsidize Trans-Island Passenger Bus Service to keep it at existing levels, the Board must act responsibly by protecting it against further erosion caused by competitive operators who will most assuredly share the present passenger offering over the sections being applied for. No new operator should be allowed pick up and drop off rights in accordance with the legislated protected area.”

In considering this matter the Board must be satisfied under s. 9 of the Act that the Objector has made a presumptive case against the granting of the application. In so doing the Board is guided by the Motor Carrier Regulations and, more specifically, Regulations 23 to 27.

The Applicant proposes a round trip service between named points departing Buchans at 9:00 am arriving in Badger at 10:00 am and in Grand Falls-Windsor at 10:30 am. Return service from Grand Falls-Windsor departs at 10:30 am arriving in Badger at 11:00 am and in Buchans at 12:00 noon. The current schedule of the Objector shows the eastbound trans island bus departing Grand Falls-Windsor at 2:15 pm and arriving in Badger at 2:36 pm, and the westbound trans island bus departing Badger at 2:45 pm and arriving Grand Falls-Windsor at 3:15 pm.

The Board notes that there is no current service offering to Buchans by either the Objector or other licensed motor carriers though the Objector does provide service between Grand Falls-

Windsor and the intermediate point of Badger on the TCH. The proposed service is offered at times not coincident with those of the Objector and represents service between two points serviced by the Trans Island Service that are in relative close proximity. The Objector has not provided any evidence that the approval of this application will be to the detriment of the existing service and users of this service.

In respect to passenger erosion, s. 24.(b), (ii) of the Regulations clearly states that in considering an application and more particularly an objection thereto, the Board must always give primary emphasis to the interests of users of transportation services and may also consider the effect of the (proposed) operations on the operations of other persons who object to the issue of the certificate sought, except that the mere diversion of traffic or revenue shall not be considered to be in and of itself detrimental to the public interest. There is no evidence to support a claim that the Applicant is "cherry picking" as suggested by the Objector.

The Board does not concur with the Objector's assertion that the Trans Canada Corridor is a "legislated protected area". The Trans Canada Corridor is defined in the Motor Carrier Act for purposes of clearly delineating that area of the Province within which bus transportation services are intended to be regulated under the Act. It does not provide a "protection" or other preferential position to any carrier currently licensed by this Board and operating in the corridor.

On October 3, 2006 the Board having considered the matter determined that the Objector did not establish a presumptive case against granting the Certificate. In accordance with ss. 9(2) of the Act, the Board, on October 12, 2006, advised the Applicant and the Objector of this determination. A Certificate was issued on November 20, 2006, upon the satisfaction of the usual prerequisites to the issuance of a certificate. The Board now issues this Order formally setting out the basis for the approval of this application for a Certificate.

IT IS THEREFORE ORDERED THAT:

The application of Jamar Transport Ltd. for a Motor Carrier Certificate to provide a regularly scheduled public passenger bus service between Grand Falls-Windsor and Buchans with pick up and drop off privileges at points between is hereby approved with effect from November 20, 2006.

DATED at St. John's, Newfoundland and Labrador, this 27th day of February, 2007.

Robert Noseworthy
Chairperson & Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chairperson

G. Cheryl Blundon,
Board Secretary