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DECISION NO. 393-R-2013

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October 16, 2013

**APPLICATION, as amended, filed by Montreal, Maine & Atlantic Railway, Ltd. and Montreal, Maine & Atlantic Canada Co. pursuant to section 32 of the *Canada Transportation Act*, S.C., 1996, c. 10, as amended, to vary Order No. 2013-R-266, as varied by Decision No. LET-R-98-2013 and Decision No. LET-R-107-2013, allowing railway operations to February 1, 2014.**

**File Nos. R8005/M5  
R8005/M6**

## **INTRODUCTION**

- [1] Pursuant to Order No. 2013-R-266, as varied (Order), Montreal, Maine & Atlantic Railway, Ltd. and Montreal, Maine & Atlantic Canada Co.'s (MMAR) Certificate of Fitness No. 02004-3 is suspended effective October 18, 2013.
- [2] In Decision No. LET-R-107-2013, the Agency amended the date of effect of the suspension to October 18, 2013 because it was satisfied that, over a short period, MMAR had adequate third party liability insurance coverage and the financial capacity to cover the self-insured portion of the coverage. In that Decision, the Agency advised that with respect to continued operations after October 18, 2013 to January 15, 2014, this clearly involves operations over a longer period of time and the Agency needs to obtain and consider information prior to making a ruling on the longer period. The Agency indicated that it will require further information from MMAR to allow the Agency to make a final ruling on the request to extend to January 15, 2014. The Agency also noted that a *Companies' Creditors Arrangement Act* (CCAA) hearing was scheduled for October 9, 2013, in Sherbrooke, Quebec to deal with issues that may have an impact on the consideration of the variance request over the longer period.
- [3] On September 26, 2013 Agency staff requested information from MMAR. On October 4, 2013 MMAR provided extensive information.
- [4] On October 10, 2013 the Agency received a request from MMAR to amend its original application to extend the effective date of suspension of the Certificate of Fitness to January 31, 2014.

## **ISSUE**

- [5] Whether the third party liability insurance coverage for MMAR is adequate to allow for the requested continuation of rail operations from October 18, 2013 to February 1, 2014 which warrants a variance of the Order?

## **ANALYSIS AND FINDINGS**

- [6] In considering whether to vary the Order to amend the effective date of the suspension to February 1, 2014, the Agency will address the self-insured retention amount, the insurance coverage, the nature of the operations proposed over the next three and a half months and any matters decided upon at the CCAA hearing on October 9, 2013 that impact on the Agency's consideration.

### **Self-insured retention amount**

- [7] The certificate of insurance filed with the Agency indicates that MMAR continues to have a self-insured retention (SIR) amount of \$250,000 in its liability insurance policy for which it takes financial responsibility, outside of an insurance contract. This is in addition to MMAR's current limit of third party liability insurance coverage of \$25,000,000 for any one occurrence and in the aggregate.
- [8] In Decision No. 328-R-2013, the Agency was satisfied that MMAR secured the funds for the SIR amount. The Agency notes that the order of the Superior Court of Quebec dated August 23, 2013, ordered the securing of funds for the SIR amount while the Certificate of Fitness is in force. There is no change in the status of that order and, therefore, the Agency remains satisfied that MMAR has demonstrated that the SIR amount would continue to be secured for the extended period.

### **Current insurance coverage**

- [9] The current certificate of insurance on file with the Agency, supported by the confirmation from MMAR's insurer, indicates that MMAR continues to have the same per occurrence coverage as on October 1, 2013 and the Agency is satisfied that the coverage will be in effect for the period of the requested extension and that coverage is in compliance with the *Railway Third Party Liability Insurance Coverage Regulations*, SOR/96-337.

### **Continued operations over the period to February 1, 2014**

- [10] The Agency examined the existing information and the new information provided by MMAR to assess MMAR's railway operating risks and risk exposure for the longer period. The Agency compared risks in the period preceding the derailment at Lac-Mégantic, Quebec and following the derailment, including the forecast operations (pre-accident and post-accident).

- [11] Based on the information submitted by MMAR, the Agency found a significant decline in the overall volume of commodities transported by MMAR, including in the volume of dangerous goods. This equates to a forecasted decrease of over 70 percent in total traffic, with a reduction in the transport of dangerous goods of over 80 percent over the same period. The volume of dangerous goods is expected to decline as a percentage of overall volume in the post-accident period, projected to represent approximately 30 percent of MMAR's total traffic, a decrease from the pre-accident level of 50 percent.
- [12] The Agency has also taken into consideration the fact that, as a result of MMAR discontinuing the transportation of crude oil for the period of the extension date, the distance over which dangerous goods are carried has been reduced by 90 percent, which also reduces the overall risk exposure. The reduced volumes combined with shorter distances over which dangerous goods are carried results, in the Agency's opinion, in a significant reduction in MMAR's risk exposure.
- [13] The Agency notes that operations also involve a tourist train over a part of MMAR's railway network. In this regard, the Agency has reviewed the certificate of insurance for Orford Express inc. which indicates that MMAR is an additional insured under Orford Express inc.'s third party liability insurance policy.

#### **CCAA Hearing**

- [14] The Agency has received the orders made by the Court and notes that these have no impact on the Agency's consideration of this matter.

#### **CONCLUSION**

- [15] Based on the circumstances, which involve a significant reduction in MMAR's risk exposure during the period of the extension, the Agency finds that MMAR has demonstrated that there is adequate third party liability insurance coverage, including self-insurance, for MMAR's railway operations to February 1, 2014.
- [16] Accordingly, the Agency, pursuant to section 32 of the *Canada Transportation Act*, varies the Order by amending the date of effect of the suspension of MMAR's Certificate of Fitness to February 1, 2014.

(signed)

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Geoffrey C. Hare  
Member