



DECISION NO. 29-R-2014

January 30, 2014

APPLICATION 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 Nos. LET-R-98-2013, LET-R-107-2013 and 393-R-2013, allowing railway operations to April 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 was suspended effective October 18, 2013.
- [2] In Decision No. 393-R-2013, the Canadian Transportation Agency (Agency) varied the Order by amending the effective date of the suspension of MMAR's Certificate of Fitness to February 1, 2014 because MMAR demonstrated that it had adequate third party liability insurance coverage, including self-insurance, to continue operations until that date.
- [3] On January 16, 2014, the Agency received a request from MMAR to extend the effective date of suspension of the Certificate of Fitness to April 1, 2014, allowing MMAR's continued operations until the completion of the sale of its assets and the transfer to a new owner. On January 22, 2014, MMAR filed additional information in support of its application. As part of this additional information, MMAR advised the Agency that the sale of its assets has been approved on January 23, 2014. If the new owner continues to operate a railway that falls under the legislative authority of Parliament, that owner would need to apply to the Agency to obtain a certificate of fitness.

ISSUE

- [4] Is the third party liability insurance coverage for MMAR adequate to allow for the requested continuation of rail operations from February 1, 2014 to April 1, 2014, which warrants a variance of the Order?

ANALYSIS AND FINDINGS

- [5] In considering whether to vary the Order to amend the effective date of the suspension to April 1, 2014, the Agency will address the self-insured retention amount, the insurance coverage, and the nature of the operations proposed over the period of February 1, 2014 to April 1, 2014.

Self-insured retention amount

- [6] 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.
- [7] 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

- [8] MMAR's certificate of insurance, on file with the Agency, expires April 1, 2014. MMAR and its broker have provided confirmation evidencing that the policy remains in place and the insurance coverage remains in force until that date. The Agency is satisfied that the coverage will be in effect for the period of the requested extension and that the coverage is in compliance with the *Railway Third Party Liability Insurance Coverage Regulations*, SOR/96-337 (Regulations).
- [9] MMAR and its broker have also confirmed that they are not aware of any incidents since the Lac Mégantic claim, which would have or could have an impact on MMAR's current limit of third party liability insurance coverage, which means that if another incident were to occur, the existing \$25,000,000 would be available to cover MMAR's liability to the third parties as required by the Regulations.

Continued operations over the period to April 1, 2014

- [10] The Agency examined the information provided by MMAR to assess MMAR's railway operating risks and risk exposure for the extension period. MMAR anticipates resuming its international service between Quebec and Maine, U.S.A. on February 15, 2014. Based on the information provided by MMAR, the Agency finds that from February 1, 2014 to April 1, 2014, when compared to the pre-accident period, there will be a significant decline in the overall volume of commodities transported by MMAR, including in the volume of dangerous goods. In addition, this period of extension is relatively short and, during this time, MMAR will not transport any crude oil.

- [11] MMAR asserts that its primary goal is the operation of the railway on a completely safe basis. MMAR points out that there have been a number of safety directives of a more general, industry-wide nature which have been promulgated in both Canada and the United States. According to MMAR, it is complying with each, and where there is a conflict between the orders of the two countries, MMAR operates to the most restrictive standard of the two.
- [12] Further, MMAR states that Transport Canada has issued a series of notices and orders which, according to MMAR, it has responded fully to with either corrective action eliminating the problem or with operating restrictions as agreed with Transport Canada.
- [13] Transport Canada has informed the Agency that MMAR has been subject to several inspections since July 6, 2013 and, while it has been subject to a number of notices and orders as a result, to Transport Canada's knowledge, MMAR is operating in compliance with the conditions set out in those notices and orders.
- [14] With respect to the operation of a tourist train over a part of MMAR's railway network, MMAR advised that Orford Express inc. will not be operating during this extension period.

CONCLUSION

- [15] Based on the circumstances, 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 April 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 April 1, 2014.

(signed)

Geoffrey C. Hare
Member