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DECISION NO. 113-R-2014

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March 28, 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, 393-R-2013 and 29-R-2014, allowing railway operations until June 1, 2014.**

**File No. 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 April 1, 2014.
- [2] In Decision No. 29-R-2014, the Canadian Transportation Agency (Agency) varied the Order by amending the effective date of the suspension of MMAR's Certificate of Fitness to April 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 March 14, 2014, the Agency received a request from MMAR to extend the effective date of suspension of the Certificate of Fitness to June 1, 2014, allowing MMAR's continued operations until the completion of the sale of its assets and the transfer to a new owner. On March 17 and 24, 2014, MMAR, in response to Agency requests, filed additional information in support of its application and on March 20, MMAR filed a revised application. MMAR advised that it was necessary to request the extension of the operating authority until June 1, 2014 to allow for continued service to the rail customers pending the completion of the sale and transfer to the new owner.

## **ISSUE**

- [4] Is the third party liability insurance coverage for MMAR adequate to allow for the requested continuation of rail operations from April 1, 2014 until June 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 June 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 April 1, 2014 until June 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 June 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. This 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 until June 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. The Agency notes that while MMAR did not resume international service between Quebec and Maine, U.S.A. on February 15, 2014, as it had informed the Agency it was intending to do, it still intends to do so before June 1, 2014. At the same time, based on the information provided by MMAR, the Agency finds that there will be a decline in the overall volume of commodities transported by MMAR from April 1, 2014 until June 1, 2014,, including in the volume of dangerous goods when compared to the period of February 1, 2014 until April 1, 2014, In addition, the extension for two months is relatively short and, during this time, MMAR reaffirms that it will not transport any crude oil. The decline in the

overall volume, including in the volume of dangerous goods, combined with the short extension period, contribute to lowering MMAR's risk exposure during the April 1, 2014 until June 1, 2014 period.

- [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 to which, according to MMAR, it has fully responded 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, specifically, since January 30, 2014. MMAR remains subject to a number of notices and orders. 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 be operating in May and will only operate for a few days during this extension period. 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.

#### 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 until June 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 June 1, 2014.

(signed)

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Geoffrey C. Hare  
Member