

M A N I T O B A) Order No. 9/09
)
THE PUBLIC UTILITIES BOARD ACT) February 5, 2009

BEFORE: Graham Lane, CA, Chairman
Monica Girouard, CGA, Member
Susan Proven, P.H.Ec., Member

PROCEDURAL ORDER
AVION SERVICES CORPORATION
APPLICATION TO OPERATE A SHUTTLE SERVICE:
APPROVAL OF INTERVENERS, ESTABLISHMENT OF
JURISDICTION, DETERMINATION OF HEARING AND
TIMETABLE FOR A PUBLIC HEARING

1.0 SUMMARY

Avion Services Corporation (Avion) applied to the Public Utilities Board (Board) to operate a shuttle service from the Winnipeg Airport to and from downtown hotels.

By this Order, the Board determines that:

- 1) the Board has jurisdiction to hear the application; and
- 2) the application will be heard by way of an oral public hearing.

Also by this Order, the Board:

- a) approves intervener status for Unicity Taxi and Duffy's Taxi, hereinafter referred to as Unicity/Duffy; and
- b) establishes a timetable and procedures for an orderly exchange of information in the Board's review of the application.

2.0 INTRODUCTION

The Board held a Pre-Hearing Conference (PHC) at its offices in Winnipeg, Manitoba on Monday, January 19, 2009, following a public notice dated November 5, 2008. The PHC was held for the purposes of:

- 1) approving the participants in the hearing process;
- 2) addressing preliminary issues; and
- 3) setting a procedural timetable.

The exhibits which were entered into the record of the PHC are listed in Schedule "A" to this Order.

This Procedural Order arises from the PHC.

3.0 INTERVENERS

Two parties, jointly represented by counsel, indicated an intent to intervene, being Unicity/Duffy. As well, the Board received three letters supporting Avion's application.

The Board will approve Unicity/Duffy as the sole intervener in this application.

4.0 JURISDICTION

4.1 UNICITY/DUFFY

Counsel for Unicity/Duffy submitted that an agreement between the City of Winnipeg (City) and Avion is a prerequisite for the Board to have jurisdiction to consider Avion's application pursuant to Section 163(3) of *The City of Winnipeg Charter Act*, which states as follows:

"163(3) Despite subsection (1), where a person wishes to provide a local transportation service that falls under the exclusive authority of the city under subsection (1) and the person is not providing the service for or on behalf of the city, the city may, at the person's request, enter into an agreement with the person under which the person will operate a local passenger transportation service of such kind and in such part of the city as is specified in the agreement; but

(a) before beginning to operate the service the person must obtain from The Public Utilities Board approval of the agreement and be authorized by that

- board to operate a local transportation service in the city; and*
- (b) the operation of the service is, in all respects, subject to the authority and supervision of that board. "*

Unicity/Duffy took the position that there is no agreement between the City and Avion and consequently, the Board does not have jurisdiction to hear Avion's application. In Unicity/Duffy's submission, the Board lacks jurisdiction to hear the application because City Council's resolution of January 24, 2007 (Resolution) indicating that an agreement between the City and Avion exists subject to approval by the Board, is not enough.

The Resolution stated, in part, as follows:

"That in accordance with Section 163(3) of the City of Winnipeg Charter, an agreement with Avion Services Corporation be approved that is renewable at five year intervals, that authorizes Avion Services Corporation to operate its proposed City Connect Shuttle Service and that contains the following conditions:

- A. Avion Services Corporation be required to obtain from the Public Utilities Board approval of its agreement with the City and authorization to operate a local transportation service before beginning to operate the proposed shuttle service."

A number of other conditions were imposed and set out in the Resolution, including the following proviso:

"that such agreement not be executed by the City unless and until the Public Utilities Board provides its approval of the agreement and authorizes the operation of the local transportation service."

According to Unicity/Duffy, the Resolution constitutes an agreement in principle and without a formal agreement specifying the particulars of the proposed service, Section 163(3) of *The City of Winnipeg Charter Act* is not satisfied.

4.2 AVION

Avion's position was that there is an agreement between the City and Avion as the City's intent was made clear through the wording of the Resolution, subject to the Board's approval of the agreement. Avion maintained that Section 163(3) of *The City of Winnipeg Charter Act* does not require an agreement in executed form.

Avion noted that in its minutes, the City set out a number of requirements for Avion to meet, and that those minutes are further indication of an agreement being in place.

4.3 BOARD FINDING

Unicity/Duffy's argument rests on whether an agreement in fact exists sufficient to satisfy the intent of Section 163(3) of the City's governing legislation. The Board finds that the Resolution is indicative of an agreement between Avion and the City, and that prior to the execution of the agreement, the City has requested the Board's approval of the agreement.

The Board finds that an agreement exists between the City and Avion, and accepts that the City has referred the matter to the Board, seeking the Board's approval or denial of Avion's application. Accordingly, the Board is assuming jurisdiction of the matter pursuant to Section 107 of *The Public Utilities Board Act*, which states as follows:

"The board may perform duties assigned to it
(a) by Act or resolution of the Legislature;
(b) by order of the Lieutenant Governor in Council; or
(c) as an appellate or arbitrating body under an
agreement between a municipality and the owner of a
public utility; and Part I, in so far as it is
applicable, applies to the carrying out of duties
so assigned."

The Board concludes that the Resolution was based on Section 163(3) of *The City of Winnipeg Charter Act*. Therefore, pursuant to Section 107(a) of *The Public Utilities Board Act*, the Board is prepared to discharge the responsibility assigned to it by the City.

5.0 FORM OF HEARING

5.1 AVION

Avion recommended that as the Board indicated in its Public Notice that it would proceed by way of paper hearing, in order to contain costs, and as no grounds have been established requiring an oral hearing, the Board should proceed with a paper review.

Avion noted that only Unicity/Duffy has expressed opposition to the application, and that the issues raised by Unicity/Duffy provide no new grounds for objection than those previously expressed at a series of public meetings held by the City prior to the City making the Resolution and referring the matter to the Board.

5.2 UNICITY/DUFFY

Unicity/Duffy noted that the Board, following its receipt of Avion's first application in 2006, had indicated that it would proceed with an oral hearing. Unicity/Duffy maintained that in the absence of an oral hearing, the Board would not hear extensive public concerns that Unicity/Duffy believes exist with respect to Avion's application.

Unicity/Duffy took the position that the cross-examination component of an oral hearing would provide the Board an improved opportunity to grasp the issues arising from Avion's application, and put the Board in a better position to reach a conclusion in the public interest.

In Unicity/Duffy's view, whether costs would be lower through a paper-based proceeding should not be a primary consideration as to whether an oral hearing should be held.

Unicity/Duffy also submitted that a paper-based, written review proceeding would preclude effective participation by all affected parties.

5.3 BOARD FINDING

The Board notes that the City, in referring this matter to the Board, recommended that a public hearing be held to review all aspects of the operation of the proposed service.

In its published Notice of Application relative to Avion's application, the Board indicated that, in an effort to restrain costs, it intended to assess the application through a paper hearing process, unless sufficient concerns were expressed to warrant a public oral hearing.

The Board's primary mandate is to determine the public interest in matters brought before it.

After having reviewed the filings from both Avion and Unicity/Duffy, and after careful consideration of each of the positions advanced by Avion and Unicity/Duffy at the PHC, the Board concludes that it is in the public interest to proceed to hear the application by way of a public oral hearing.

The Board recognizes that many individuals and associations may be affected by the outcome of the proceeding, and that the implications for some are likely to be significant. As well, the Board notes that the general public and, potentially, the economy will be affected to some degree.

The Board is also cognizant that the results of the hearing may also affect decisions by the Taxicab Board, and that the decisions of that board affect public access to taxis.

6.0 TIMETABLE

At the request of the Chairman, Board Counsel was directed to work with counsel for Avion and Unicity/Duffy to establish a timetable for the orderly exchange of information and for the oral hearing. Subsequent to the PHC, and to the extent possible, such consultation was held, although access to counsel for Unicity/Duffy was limited. The Board establishes the timetable set out in Schedule "B" to this Order in an effort to accommodate known schedules, and declares it to be in effect.

Also appended to this order as Schedule "C", are the procedures to be followed the application hearing. Parties are advised to review the Board's *Rules of Practice and Procedure* for guidance on Board processes. The Rules are available at www.pub.gov.mb.ca.

Note: Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with section 36 of the Board's *Rules of Practice and Procedure*.

7. **IT IS THEREFORE ORDERED THAT:**

1. Unicity/Duffy's request for a stay of proceedings IS HEREBY DENIED.
2. The hearing of the Avion application for a shuttle service between the Winnipeg Airport and downtown hotels shall proceed by way of an oral hearing.
3. Unicity/Duffy are jointly approved as an intervener in the proceedings.
4. Schedule "B", as attached, is the timetable for the orderly exchange of information and the oral hearing.
5. Schedule "C", as attached, shall apply with respect to the hearing of the application.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."

Chairman

"G. GAUDREAU, C.M.A."

Secretary

Certified a true copy of
Order No. 9/09 issued by The
Public Utilities Board

Secretary

Schedule "A"

EXHIBIT LIST

Pre-Hearing Conference

THE PUBLIC UTILITIES BOARD'S EXHIBITS

Ex. # PUB-1	Notice of Pre-hearing Conference dated December 22, 2008
Ex. # PUB-2	Notice of Application dated November 5, 2008
Ex. #PUB -3	Rules of Practice and Procedures

AVION SERVICES CORP.'S EXHIBITS

Ex. #AVION-1	Application dated October 21, 2008
Ex. #AVION-2	Letter to PUB dated November 24, 2008

UNICITY/ DUFFY EXHIBITS

Ex. #U/D-1	Letter dated November 17, 2008
Ex. #U/D-2	Letter dated November 20, 2008
Ex. #U/D-3	Letter and submission of December 11, 2008 from Sidney Soronow
Ex. #U/D-4	Supplemental letter dated December 11, 2008 from Sidney Soronow

SCHEDULE "B"

AVION SERVICE CORPORATION

TIMETABLE

October 21, 2008	Receipt of Application
November 5, 2008	Notice of Pre-Hearing Conference
January 19, 2009	Pre-Hearing Conference
February 5, 2009	Order from Pre-Hearing Conference and Timetable
February 13, 2009	Information requests of Avion
February 27, 2009	Responses by Avion
March 13, 2009	Unicity/Duffy evidence
March 20, 2009	Information requests of Unicity/Duffy
April 3, 2009	Responses by Unicity/Duffy
April 17, 2009	Rebuttal by Avion, if any
April 27, 2009	Board to hear all motions
April 29, 2009	Board decision on motions
May 25, 26, 2009 (and May 27 if necessary)	Public Hearing
May 29, 2009	Closing Arguments

SCHEDULE "C"

**PROCEDURES TO BE FOLLOWED AT THE
AVION SERVICES CORPORATION
AIRPORT SHUTTLE SERVICE HEARING**

1. Hearing: The hearing will be held at the Board's office, 4th floor, 330 Portage Avenue, Winnipeg, commencing on May 25, 2009 at 9:00 a.m. and continuing thereafter as necessary.
2. Hearing Times Each Day: 9:00 a.m. to 12:00 Noon
1:15 p.m. to 4:00 p.m.
(amendments may be made by the Board at the hearing)
3. Assigned Sittings: Presenters will be heard commencing at 1:15 p.m., Monday, May 25, 2009, and at 7:00 p.m. that day if necessary.
4. Opening statements will be made by Board Counsel, and by Counsel for Avion and Unicity/ Duffy.
5.
 - (a) Avion has filed its application and supporting evidence. Further submissions to be served on all parties.
 - (b) Avion to introduce witnesses. Board Counsel and intervener to cross-examine Avion's witnesses.
6.
 - (a) Leading of testimony by witnesses for intervener.
 - (b) Witnesses to be available for cross-examination by all parties following each presentation.

7. All interrogatories are to be filed and responded to using the prefixes as assigned by the Board when interveners are registered (set out in the body of the Order). The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. PUB(AVION), etc. Interrogatories are to be numbered sequentially through 1st and 2nd rounds, e.g. PUB(AVION) 1-3, PUB(AVION) 2-7.
8. All pre-filed evidentiary material to be filed at the commencement of the hearing by Board Counsel using assigned prefixes.
9. All witnesses to be sworn or affirmed.
10. All presenters are to register with the Board's Secretary on or before April 27, 2009, and file a written copy of their presentation. (Presenters are not subject to cross-examination, nor is their presentation considered evidence. The Board may ask for clarifications of statements made.)
11. Daily transcripts will be available. Parties to make arrangements with the Reporter. Transcripts can be found at www.pub.gov.mb.ca at no charge.
12. It is the Board's request that all motions be dealt with pursuant to the Board's Timetable.
13. The Board's Rules of Practice and Procedure (available on the Board's website) dealing with the Awarding of Costs will apply to all matters before the Board.
14. The Board indicates its willingness to be available for any problems that may arise during the exchange of information at any time, such time to be arranged through Board Counsel.
15. Seven (7) copies of material are to be submitted to the Board's offices and three (3) copies are to be submitted to Board Counsel at the following address: Attention: Walter Saranchuk, Q.C. and Nicole Wray, Pitblado LLP, 2500 - 360 Main Street, Winnipeg, MB R3C 4H6.

16. Electronic copies of all material including the evidence of parties, are required to be submitted to the Board's e-mail address: publicutilities@gov.mb.ca. Where schedules or other attachments accompany an electronic file, that filing must be discrete and include only the item and schedules to which each refers. The electronic files shall be named in accordance with their parties prefix as per #7. All electronic filings shall be in Adobe Acrobat format, with protection securities which will allow them to be included in one Multiple-Files Document and which will allow extracts to be copied from the documents.