

HIGHWAY TRAFFIC BOARD DECISION

File Number: B.16.09

Engelheim Charter Inc. of White City, Saskatchewan

IN THE MATTER of an application for an Operating Authority Certificate filed by **Engelheim Chart Inc.** of White City, Saskatchewan.

Introduction

Gladys Engel, of Engelheim Charter Inc. made an application, in accordance with Section 77(1) of *The Traffic Safety Act* and Section 4 of *“The Operating Authority Regulations, 2011”*, for an Operating Authority Certificate to provide passenger charter services in Saskatchewan.

In accordance with Section 4(4) of *“The Operating Authority Regulations, 2011”*, a notice was published in The Saskatchewan Gazette on May 5th, 2017 & May 26th, 2017.

Notice of Opposition to this application was filed with the Highway Traffic Board on or before June 2nd, 2017 from the following:

Cindy Hanson	Saskatoon, Saskatchewan
Mary R. Kube	Nipawin, Saskatchewan

The following exhibits were presented for the hearing:

Youtube video of Zonar tracking system; Bus Driver Sask Job Posting 2011; Heavy Duty Mechanic Sask Job Posting 2016; Engelheim Annual Report 2017; Social Media Review screenshot from Engelheim Charter Facebook Profile of broken AC & heater; The STAR Article *“Engelheim Charters opens new location in RM”*; SGI Carrier Profile Summary; 2015/16 Annual STC report; *Canada Transportation Act*; Intercity Bus Code of Practice; Extra Provincial Accessibility Legislation; Q & A’s on STC wind down; *The Highway and Transportation Act*; STC information, and handwritten submissions.

Debra Mutlow, Bob L’Heureux and Roy Fleming formed the Panel of the Highway Traffic Board (Board) and a public hearing was held at the Travelodge on Albert Street South in Regina, Saskatchewan on June 12, 2017.

Legislation

Engelheim Charter Inc. filed its application pursuant to section 77 of *The Traffic Safety Act* (hereinafter the Act). Section 77 of the Act sets out the requirements as follows:

- 77 (1) An application for an operating authority certificate or an amendment to an operating authority certificate must:
- (a) be made to the Board in any form and manner that the Board may require; and
 - (b) be accompanied by any fees that are determined by the Board by regulation.
- (2) When considering an application for an operating authority certificate or an amendment to an operating authority certificate, the Board may consider:
- (a) whether public business will be promoted by the proposed undertaking;
 - (b) the fitness of the applicant; and
 - (c) any other matters that the Board considers relevant.
- (3) The Board may:
- (a) approve the application in whole or in part; or
 - (b) deny the application.
- (4) If an application:
- (a) for an operating authority certificate is approved, the Board shall issue the certificate; or
 - (b) for an amendment to an operating authority certificate is approved, the Board shall:
 - (i) issue an amendment to the operating authority certificate; or
 - (ii) if the Board considers it to be appropriate, cancel the existing operating authority certificate and issue a new certificate.
- (5) The Board may exempt any person or class of persons from the application of this section.

The sole issue before the Board

Should the Board approve the amendment application submitted by Engelheim Charter Inc. for a new passenger service within Saskatchewan?

Application Details

Engelheim Charter Inc. has been operating transporting passengers since 1976 and currently provides charter service to passengers from Saskatoon, Yorkton, Swift Current, Estevan, Weyburn and Regina. The amendment application to provide scheduled passenger service between Regina and the following locations: Saskatoon, Moose Jaw, Yorkton, Swift Current and Coronach as well as from Saskatoon to Alsask.

Engelheim Charter Inc. currently has a fleet 18 passenger buses with a capacity of between 51 and 56 passengers.

Engelheim Charter Inc. did provide the Board with a list of their current drivers that did receive a safe driver award.

Engelheim Charter Inc. will be subject to Saskatchewan Government Insurance's (the Administrator's) directive regarding the keeping of books, logs, and required documents, as well as any and all inspections.

Engelheim Charter Inc. does have safety manual for all drivers as well as a comprehensive fleet safety program, including regular inspection and maintenance programs.

Engelheim Charter Inc. will monitor the demand by those with disabilities and may look at additional service options in the future.

Legislation regarding Operating Authority Certificates

As per section 84 of the Act - Obligations of certificates:

- (1) In this section, "operating authority certificate for a bus" means an operating authority certificate for a bus used for the transportation of passengers on a specified route authorized pursuant to an operating authority certificate.
- (2) No holder of an operating authority certificate for a bus shall fail to ensure that any driver of the bus allows any person who attempts to Board at a regular stopping place or depot and tenders the fare or ticket to Board the bus, unless at the time:
 - (a) the seats of the bus are fully occupied; or
 - (b) the passenger is in an intoxicated condition or is conducting himself or herself in a disorderly manner.
- (3) Every holder of an operating authority certificate who operates a public service vehicle over a specified route shall, insofar as road conditions permit, operate in accordance with the approved schedule of arrival at and departure from each point.
- (4) The Board may exempt any person or holder or class of persons or holders of an operating authority certificate from the application of this section.

As per section 81 of the Act - No operating authority certificate:

- (a) confers exclusive rights on the holder; or
- (b) precludes the Board in any way from issuing any other operating authority certificate that the Board considers appropriate.

As per section 84(4)(above) - The Board has determined, by agreement and order at a May 29, 2017 meeting, to exempt holders of an Operating Authority and Class B certificate, from Board approval of scheduled routes. The Board determined it is no longer appropriate for routes to be approved by the Board in a competitive business environment.

As per section 85 of the Act, in reference to rates charged by holders of operating authority certificates

- (1) Holders of operating authority certificates shall charge the rates that:
 - (a) are determined by the Board; or
 - (b) are filed with and approved by the Board.

- (2) Except with the consent of the Board, no person shall alter any schedule of rates determined or approved by the Board.
- (3) Every passenger on a public service vehicle shall pay the rates that:
 - (a) are set by the Board by regulation; or
 - (b) are filed with and approved by the Board.
- (4) Subsections (1) and (3) do not apply to
 - (a) motor vehicles owned and operated by a city; or
 - (b) the operation of a taxi service.
- (5) the Board may exempt any person or class of persons from the application of subsection (1) or (3) on any terms that the Board considers appropriate.

As per section 85(5)(above) - The Board has determined, by agreement and order at a May 29, 2017 meeting, to exempt holders of an Operating Authority and Class B certificate, from Board approval or filing of rates. The Board determined it is no longer appropriate for rates that are set in a competitive business environment be approved by the Board.

As per section 88 of the Act in reference to bills of lading and tickets

- (1) Every holder of an operating authority certificate or safety fitness certificate authorizing the transportation of goods shall use bills of lading or other documents relating to the transportation of good in the form and manner determined by the Board by regulation
- (2) Every holder of an operating authority certificate authorizing the transportation of passengers and express over a specified route shall use tickets and express receipts in the form and manner required by the Board.
- (3) The Board may exempt any person or class of persons from the application of this section on any terms that the Board considers appropriate

As per section 88(3)(above) - The Board has determined, by agreement and order to exempt holders of an Operating Authority and Class B certificate, from Board approval of the form and manner of tickets being used for passengers. The Board has by agreement upheld the requirement to “ticket” in a manner best suited by the holder to maintain logs and information regarding passenger manifests.

Opposition to the Application

According to legislation and the required advertising of Operating Authority Certificate Applications in the Gazette, opposition was received within the required timelines regarding Engelheim Charter Inc.’s application for an intra-Saskatchewan Operating Authority Certificate.

If opposition is received, and a notice of opposition is filed then according to section 4 of the Operating Authority Regulations 2011:

- (4) On receipt of an application, the board shall publish a notice in the Gazette describing the application and fixing a date, not less than 21 days from the date of the publication of the notice, within which a notice of opposition to the application may be filed with the board.

- (5) If, on or before the date fixed in accordance with subsection (4), a notice of opposition to the application has been filed with the board, the board shall hold a public hearing.
- (6) The board may dispense with the holding of a public hearing pursuant to subsection (5) if:
- (a) the applicant for a certificate withdraws or abandons the application;
 - (b) all persons who have filed a notice of opposition to the application withdraw those notices; or
 - (c) a notice of opposition has not been filed with the board.
- (7) Every hearing held by the board with respect to an application must be open to the public, and the board shall hear all persons who have filed with the board a notice of opposition.
- (8) the board may exempt any applicant for a certificate or class of applicants for certificates from complying with this section if the board considers it to be in the public interest to do so.

Opposition concerns pertaining to the application

1. Safety
 - (a) Training for drivers
 - (i) First Aid/CPR
 - (ii) Operation of a bus
 - (b) Inspections, safety checks, maintenance, hours, accident reporting
 - (c) Monitoring systems – internal/external
2. Accessibility
3. Affordability of fares

Board's Findings and Analysis in Regards to Opposition's Concerns Relevant to the Application

1. Safety
 - (a) Training for drivers
 - (i) First Aid/CPR
 - (ii) Operation of a bus
 - (iii) De-escalation of difficult situations.

Engelheim Charter Inc. employees a Human Resource and Occupational Health and Safety Director to ensure they exceed minimum standards in terms of safety. Engelheim has a safety manual which includes an extensive fleet management program. Currently they have six mechanics on staff and complete all their own maintenance. The safety manual does include a disciplinary policy to deal with employees who do not meet the requirements.

Engelheim Charter Inc. does have a conflict resolution model within their safety manual to deal with difficult passengers.

(b) Inspection and safety program for buses

Engelheim Charter Inc. have six mechanics on staff that complete all repairs and regular inspections as required. They exceed that standards set out by SGI and have received a satisfactory audit rating with SGI with their vehicles and log book. They have been certified and hold a satisfactory audited safety fitness rating under the standards of the National Safety Code.

Holders of an NSC are required to keep records on drivers, hours of service, vehicle maintenance, accidents, and trip inspections reports. Records may be examined to ensure compliance with the law and to check if safety programs are in place. (Standard 15 of the NSC)

Accident reporting is also a requirement within the Inspection and Audit process handled by SGI. As per the Act, SGI is responsible and will impose penalties as they see fit. These may include suspensions and/or fines or as SGI sees fit.

(c) Monitoring systems – internal/external

Engelheim Charter Inc. does have GPS and tracking devices on their buses. The company has continually evolved as new technology is available and will continue to do this.

2. Accessibility

Engelheim Charter Inc. currently has 8 buses that are accessible for the disabled.

3. Affordability

Engelheim Charter Inc. has operated in Saskatchewan for 42 years and are hoping to provide transportation in a safe manner and fill in some of the gaps that have been created in Saskatchewan.

Board's Findings and Analysis to Opposition not Pertaining Directly to the Application

1. The Hearing Process

- a. Has the Board been reappointed and do they have jurisdiction?
- b. Is this a fair and unbiased process?

The Highway Traffic Board followed the process as per section 77 of the Traffic Safety Act. With respect to the application of Engelheim Charter Inc., the Board has complied with all aspects of the Act. The Board is duly appointed and does have jurisdiction to hear this matter.

2. Public Inquiry

- a. The Board should hold a public inquiry prior to approving any Operating Authority Certificate applications to review the passenger transportation sector in Saskatchewan.

The requested public hearing is not relevant to the Board making a disposition to the application for an Operating Authority Certificate submitted by Engelheim Charter Inc. Also *The Public Inquires Act* states that the Lieutenant Governor in Council establishes a commission of inquiry to report on an issue of public interest.

3. The Board consulted with a lawyer and utilized a communication director, both from the Ministry of Justice. This creates a conflict.

The Board is an independent administrative tribunal that can access advice from those that they deem suitable.

Board Conclusions

The Board received an amendment application from Engelheim Charter Inc. for an Operating Authority Certificate to provide passenger service in Saskatchewan. The Board's review and decision on this application must be based on the provisions of the Act and the fitness of the applicant.

Firstly, the Board has in the past and continues to focus on how to provide residents of Saskatchewan with safe passenger transportation services. A number of safety issues were raised by the Board and opponents of this application. Prior to the Board making a decision on the application they must be satisfied that these concerns are or will be addressed. These concerns are limited to the operation of the service that is the subject of the application. After a review of the application and additional information that was provided at the hearing the Board is satisfied that the safety concerns as related to this application have been addressed by the applicant. This applicant will be required to comply with all existing federal and provincial safety requirements for this type of vehicle.

Secondly, the closure of a company that previously provided passenger service in Saskatchewan does not impact the Board's decision for this application. The Act clearly states that the issuance of an Operating Authority Certificate does not provide the applicant with any type of exclusivity of the service they have been approved for. The Board reviewed this application on the merits of the service that the applicant is interested in providing to residents of Saskatchewan.

Finally, the Board is duly appointed under the provisions of the Act and are required to deal with any and all applications for an Operating Authority Certificate to transport passengers in Saskatchewan.

Decision

The Board grants Engelheim Charter Inc. an Operating Authority Certificate to provide passenger service within Saskatchewan in compliance with the guidelines, standards and requirements of all Federal and Provincial statutes and regulations. This Operating Authority Certificate will be provided on the following conditions:

- (a) any vehicle used to provide the service must be the object of a valid stage 2 inspection certificate issued pursuant to section 4 of The Vehicle Inspection Regulations 2013;
- (b) any vehicle used to provide the service must not be equipped with a taxi meter or any equipment designed to calculate a passenger fare based on distance travelled;
- (c) the service provided to the passenger must be a pre-booked or chartered service and the passenger hiring the vehicle must be collected at a predetermined location;
- (d) the service provided to the passenger must not be obtained by the passenger hailing, signalling, or attracting the attention of the vehicle operator while the vehicle is being operated on any street, highway or road in Saskatchewan;
- (e) the service provided to the passenger must comply with any other conditions, limitations or restrictions imposed on the holder of the operating authority by the Board and/or Saskatchewan Government Insurance.
- (f) any vehicle used to provide the service must comply with all safety requirements in Saskatchewan as governed by Saskatchewan Government Insurance, including all provisions of the National Safety Code;
- (g) all drivers must have a completed criminal record check on file on an annual basis and are required to complete first aid, CPR, and de-escalation training or equivalent, within 12 months of being hired;
- (h) the owner must have all insurance in place as required by Saskatchewan Government Insurance;
- (i) all vehicles that provide this service must be equipped with a tracking/monitoring system, an on-board surveillance for passenger safety and have an emergency response plan.

Dated July 7, 2017