

M A N I T O B A

THE PUBLIC UTILITIES BOARD ACT

Order No. 11/10

January 28, 2010

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

AVION SERVICES CORPORATION
AIRPORT SHUTTLE SERVICE

Summary:

By this Order, the Public Utilities Board (Board) grants Unicity/Duffy's (U/D) application to review and vary Order 169/09.

The Board will prohibit Avion from selling, transferring or assigning the shuttle service, which Avion has conditional approval to operate, to a third party without the prior approval of the Board.

Background:

Avion applied in early 2007 for approval to operate an airport shuttle service after the Council of the City of Winnipeg (City) passed a resolution approving an agreement with Avion for the operation of an airport shuttle service subject to approval of the Board (pursuant to Section 163(3) of the City of Winnipeg Charter).

Following a public hearing that commenced in July 2009 and concluded in August 2009, the Board, by Order 137/09, provided conditional approval of Avion's proposed shuttle service.

Subsequently, and following an application by Avion to review and vary Order 137/09, the Board varied the Order through Order 169/09, amending the conditional approval established by Order 137/09.

Application

On January 14, 2010, U/D applied to the Board seeking a review and variance of the Board's conditional approval of Avion's shuttle service.

U/D submitted that Avion's airport/downtown hotel fixed-fee shuttle service (assuming Avion met the conditions of the Board's varied Order, obtained the Board's final approval of the service, and commenced service) not be sold, transferred or assigned to any other party that has not both obtained an agreement with the City and the approval of the Board.

U/D submitted that both the City and the Board have proceeded on the assumption that any authorization either provided or to be provided is specific to Avion in its current corporate format as a wholly owned subsidiary of Winnipeg Airport Authority (WAA). U/D further submitted that while being implicit through the approval process that Avion is not at liberty to sell, transfer or assign such business to a third party without first undergoing a full approval process, this should be made explicit through a variance of the Board's conditional approval.

Avion's Response

Avion responded to U/D's application by way of a letter to the Board dated January 20, 2010. Avion submitted that U/D's application did not raise a matter that should be reviewed by the Board, and that there is no reason to support the Order being further varied.

Avion submitted that the question contained in Sec. 36(4) of the Board's Rules of Practice and Procedure, namely, whether there is reason to believe the Order or decision should be rescinded, changed, altered or varied, should be answered in the negative. Alternatively, Avion submitted that U/D's application should be dismissed *"... because U/D's alleges no error of law or jurisdiction, or error in fact or new facts not available at the time of the Board hearing."*

Avion disputed U/D's position that both the City and the Board proceeded on the assumption that the authorization given to proceed with a shuttle service was provided specific to Avion, or that implicit in the approval process is the notion that Avion is not at liberty to sell, assign or transfer the business to a third party without a prior full approval process.

Avion submitted that the Board has a high level of supervision and authority over the operation of the service, as provided for by the existing legal framework.

In summary, Avion submitted that the Order should not be varied as requested. Avion further submitted that U/D's request for variance raises a new issue, contradicting U/D's earlier submissions, and that issue is not related to the public interest, is without merit, and the request should be dismissed.

Board Findings

The regulatory approval process is an essential part of protecting the interest of the public in this matter.

Avion, first, had to secure an agreement with the City. That agreement required Avion to secure the approval of the Board. Section 163(3)(b) of the Charter provides the Board with authority and supervision over the operation of the service "in all respects".

The Board notes that City Council's Resolution providing for an agreement with Avion states:

"Avion Services Corporation (shall) not be permitted to assign or sublet the Agreement without the consent of the Director of Transit".

The "consent of the Director of Transit" could be interpreted not to apply to a situation involving the sale of shares in Avion by the WAA, its current and sole shareholder, whereby Avion would still carry on the shuttle business with new ownership. The possibility of such an eventuality is of concern to the Board, although the possible eventuality is not addressed in Order 169/09.

One of the factors that the Board took into account in providing conditional approval to Avion to operate a shuttle service was that Avion is wholly-owned by WAA, a not for profit organization, itself seeking to serve the public interest and being in a position to provide oversight of Avion.

Accordingly, the Board accepts U/D's request to vary its conditional approval of Avion's proposed shuttle service.

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 (Rules). The Board's Rules may be viewed on the Board's website, www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

Board Order 137/09, as varied by Order 169/09, is further varied to include an additional direction, that being:

6. Avion shall not, either directly or indirectly, sell, transfer or assign the shuttle service, the operation of the shuttle service or the shares of its capital stock, to a third party, without prior approval of the Board, and Avion shall provide the Board with at least ninety (90) days notice of any proposed sale, transfer or assignment, in whole or in part, thereof.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"HOLLIS SINGH"
Acting Secretary

Certified a true copy of Order No. 11/10
issued by The Public Utilities Board

Acting Secretary