

To: Jan Broocke  
Director to the Board

Date: April 30, 2018

From: Catharine Read  
Chair

**Re: Reconsideration Request: Application 256-17 (Greyhound Transportation Canada ULC)**

Andy Shadrack (the “Requestor”) asks the Passenger Transportation (PT) Board to reconsider the above noted application pursuant to section 21(4)(b) [error in procedure] of the *Passenger Transportation Act*.

The Requestor is asking the Board to vary its decision and change implementation dates on many routes that will be eliminated or face reduced minimum route frequencies (MRF) to June 1, 2019.

The Board has also received letters supporting the reconsideration request from some local governments and community agencies.

On March 27, 2018, PT Board staff wrote to counsel for Greyhound Canada Transportation ULC, (“Greyhound”) with respect to the reconsideration request, including third party letters of support, and invited comments from Greyhound on whether the grounds for reconsideration were met. Greyhound’s comments were received on April 6, 2018.

### **I. Application #256-17 and Board Decision**

Greyhound sought the Board’s approval to:

- 1) eliminate nine routes and three route segments;
- 2) reduce minimum route frequency to 4 trips weekly (2 in each direction) on 10 routes; and
- 3) eliminate some route points on 8 of the 10 remaining routes.

The PT Board approved the application and established notice requirements. These are set out in the table on the next page.

Route or Route Points	PT Board Decision	Notice Required																																								
Y: Victoria - Vancouver	1. Approved – Immediate Elimination	None																																								
S2: BC Endowment Lands – Whistler T: Victoria-Nanaimo	2. Approved – Immediate Elimination	7 days																																								
K: (Prince George – Fort St. James)	3. Approved (a) Elimination as of <b>June 1, 2018</b>	14 days																																								
I1: (Dawson Creek – Fort Nelson) I2: (Fort Nelson – Yukon Border) J: (Dawson Creek – Prince George) L1: (Prince Rupert – Prince George) L2: (Prince George – Alberta Border [at Highway 16]) B1: (segment) Highway 97 between Highways 1 (near Monte Creek) & 97 (north of Vernon) C: (segment) Hope -Kaleden Junction (via Highways 3 & 3A) E: (segment) Cache Creek – Hope (Fraser Canyon area via Highway 1)	4. Approved (a) Elimination as of <b>June 1, 2018</b> (b) Immediate reduction in minimum route frequency	(a) 14 days  (b) 7 days																																								
<table border="0"> <tr> <td><b>A1</b></td> <td>West Louise Lodge</td> <td><b>E2(b)</b></td> <td>Laidlaw</td> </tr> <tr> <td></td> <td>Field Junction</td> <td></td> <td>Bridal Falls</td> </tr> <tr> <td></td> <td>Glacier Park East</td> <td></td> <td>Agassiz</td> </tr> <tr> <td></td> <td>Roger’s Pass</td> <td>N</td> <td>Agassiz</td> </tr> <tr> <td><b>A(2)(a)</b></td> <td>Oyama</td> <td>P</td> <td>Agassiz</td> </tr> <tr> <td><b>A(2)(b)</b></td> <td>Agassiz</td> <td>S1</td> <td>West Vancouver</td> </tr> <tr> <td><b>B1.3</b></td> <td>Oyama</td> <td></td> <td>Brittania Beach</td> </tr> <tr> <td><b>C</b></td> <td>Agassiz (alt)</td> <td></td> <td>Pincrest/Black Tusk</td> </tr> <tr> <td><b>D</b></td> <td>Beaverdell</td> <td></td> <td>Mount Currie</td> </tr> <tr> <td><b>E1</b></td> <td>McLeese Lake</td> <td></td> <td></td> </tr> </table>	<b>A1</b>	West Louise Lodge	<b>E2(b)</b>	Laidlaw		Field Junction		Bridal Falls		Glacier Park East		Agassiz		Roger’s Pass	N	Agassiz	<b>A(2)(a)</b>	Oyama	P	Agassiz	<b>A(2)(b)</b>	Agassiz	S1	West Vancouver	<b>B1.3</b>	Oyama		Brittania Beach	<b>C</b>	Agassiz (alt)		Pincrest/Black Tusk	<b>D</b>	Beaverdell		Mount Currie	<b>E1</b>	McLeese Lake			5. Approved – Immediate elimination of route points	14 days
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## II. Reconsideration Request and Applicant Submission

### 1) Request

The Requestor seeks reconsideration on the ground of error in procedure. The Requestor indicates that he is not seeking a reconsideration of the Board's approval of the application. Rather, the issue on reconsideration is the effective dates and notice requirements for the eliminated "Routes E2(b), K, I1, I2, J, L1 and L2 or for allowing reduction in frequency of service to Routes A, B1, B2, C, D, E, G, N, P and S1"<sup>1</sup>. In his letter of March 16, 2018, the Requestor indicates that his request is for "a reconsideration and a variance as to timing of said Board decisions for the above routes from May 31st/June 1st 2018 and 14 days' notice to June 1st, 2019".

The letter also states:

*"I do, however, think that the Board erred in procedure, under 21(4)(b), to protect the public interest under 28(1)(a) when it failed to consult governments, both provincial and local, and the health authorities, First Nations, and federal government as to timing of these Passenger Transportation Board decisions.*

*The Board, I humbly submit, should be aware, and should therefore have taken into account, the budgeting cycles under which governments, both provincial and local, and the health authorities, First Nations and federal departments operate, and should therefore know that a date of May 31st/June 1st for elimination of certain routes and 14 days for reduction in service of certain routes is wholly inadequate for both consultation and alternative arrangements to Greyhound service to be made by said governments."*

### 2) Greyhound Submissions

Greyhound responded to the request indicating that grounds for error in procedure have not been established. Greyhound submits that the issue of time for the decision is a substantive matter, not procedural. Further, the Board addressed this matter specifically in the decision. "[the] Requestor's disagreements are with substantive issues within the Decision itself, which do not give rise to a request to reconsider for procedural error under section 21 of the Act and under Rule 50."

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<sup>1</sup> The request does not refer to routes S2, T or Y, nor specifically to the eliminated route segments on routes B and C.

Greyhound noted that the letters in support of the reconsideration request are “inappropriate and without foundation in the Act or Rules” and should not be considered by the PT Board.

Greyhound also made submissions with respect to the grounds of “new evidence” even though this was not a ground specified by the Requestor. Greyhound noted that information on fiscal and budget cycles of local governments, First Nations and other public agencies is not new information within the meaning of the PT Act. Such issues could have been raised by the Requestor in the public comment period or at the public meetings. Moreover, issues of public policy fall outside the Board’s jurisdiction.

### **III. Legislation, Rules & Policy**

Section 21(4) of the *Passenger Transportation Act* (PT Act) states:

*“The board may reconsider, vary or rescind any decision made by it if the board is satisfied that*

*(a) information has become available that was not available at the time the decision was made, or*

*(b) there has been an error in procedure.”*

Rule 50 of the Board’s *Rules of Practice and Procedure* states that a reconsideration request must be made within 30 days of the publication of the Board’s decision. Requests must be in writing and state the reasons for the request and describe in detail the grounds for reconsideration. Requestors who are not applicants must notify applicants of their request. If the Board grants a request for reconsideration, it will notify the participants and establish procedures governing the reconsideration.

### **IV. Board Reconsideration Policy**

The Board’s Operational Policy 1.4: *Reconsideration Based on New Information & Error in Procedure* states:

*“**New evidence**” is evidence that could not have been obtained if a party had made a reasonable effort to get it prior to the decision.*

*New evidence is not additional or more evidence (such as more letters from potential service users) that is gathered or created after the Board’s original decision. The question that anyone requesting reconsideration should ask themselves is: “If I had made an effort, could I have obtained this evidence before the original decision was made?”*

*The purpose of “new evidence” is to allow the Board to consider evidence that was unavailable at the time the application was decided. It is not to provide applicants with an opportunity to submit more information to correct or rectify an unsuccessful application.*

***Error in Procedure**” relates to the Board’s duty of administrative fairness. The Board has a duty to act fairly and impartially in making its decisions. An error in procedure occurs when the Board does not act fairly. Procedural fairness relates to the Board’s decision-making process, not to the outcome of the decision. Disagreement with the Board’s analysis or reasons does not give rise to an “error of procedure”.*

*The Board has developed Rules of Practice and Procedure to outline its processes. Although the Board may vary a rule or timeline “where appropriate in the circumstances”, these rules are normally followed by the Board. Failure to follow a Rule may give rise to an error of procedure.*

## **V. Discussion**

### *1. Receipt of Reconsideration Request*

The PT Board published its decision on application 256-17 on February 21, 2018. Thirty days from this date is March 23, 2018.

On March 16, 2018, the PT Board received e-mail notice of reconsideration from Andy Shadrack. This notice indicated that the he had, on the same day, sent relevant documents and forms by registered mail to the PT Board and Greyhound Canada in Calgary. The PT Board received the materials from Canada Post on March 26, 2018.

Rule 3.7 of the Board’s *Rules of Practice and Procedure* states:

*“If a notice or response is sent by registered mail, it must be sent to the most recent address known to the sender and is deemed received*

- a) on the day it was delivered according to Canada Post’s mail tracking system;  
or*
- b) on the fifth day after it is mailed if Canada Post does not deliver it within 5 days, or if the fifth day is a Saturday or holiday, on the next day that is not a holiday.”*

Canada Post tracking indicates that the letter was accepted by Canada Post on March 16, 2018. Therefore, applying Rule 3.7(b), the reconsideration request would be deemed

received on March 21, 2018 which is within the 30-day time period for requesting reconsideration.

## *2. Application Procedures*

The PT Act addresses procedures that the Board must and may follow with regard to applications and decision making. These include:

- The Board must publish notice of “the fact and nature” of applications (section 26) in a manner that, in the opinion of the Board is reasonably sufficient to bring the application to the attention of the public (section 26 (2))
- The Board must accept and consider written submissions (section 27 (2))
- The Board then may conduct hearings or investigations (section 27 (3) and (4))
- The Board must issue its decisions in writing, with reasons and make the decisions accessible to the public (section 28).

The PT Act states that the making of a submission does not entitle a submitter to participate further in the application process or to obtain further information about the application (section 27(5)).

Although the PT Act imposes some procedural requirements on the Board, the Act also gives the Board the power to control its own process. Section D of the Board’s *Rules of Practice & Procedure* pertains to inter-city bus applications. Under these rules, operators seeking service reductions must notify various governments and First Nations of an application to the Board and provide a public rationale for their reductions.

The PT Board’s procedures with respect to application 256-17 were as follows:

- Application published in PT Bulletin – *September 13, 2017*
- Greyhound confirms it sent out required notices – *September 13, 2017*
- Public comment period ends - *October 13, 2017*
- Greyhound responds to public comments – *November 6, 2017*
- Board posts notice of public meetings– *November 29, 2017*
- Board holds public meetings in Prince George, Smithers, Terrace and Fort St. John – *Dec. 11-14, 2017*
- Board issues final decision in writing - *February 20, 2017*
- Decision published in PT Bulletin - *February 21, 2018*
- Decision amended to correct a clerical error in Section VII – *April 26, 2018*

### 3. Board Mandate & Decision

The PT Act states that the Board may approve an application if the board considers that:

- (a) there is a public need for the service the applicant proposes to provide under any special authorization,
- (b) the applicant is a fit and proper person to provide that service and is capable of providing that service, and
- (c) the application, if granted, would promote sound economic conditions in the passenger transportation business in British Columbia.

The Board considered the above three factors in the decision. It found Greyhound fit and proper and capable of providing an inter-city bus service. In summarizing its decisions on various routes, the Board noted:

*“The Board is tasked with promoting sound economic conditions in the passenger transportation business in B.C. It also must consider whether ridership on a route demonstrates sufficient public need for the service.*

*If Greyhound’s business strategy is sound, eliminating highly unprofitable routes, moving to a more flexible MRF and eliminating route points with low ridership should in turn result in a more financially viable transportation company that continues to offer some inter-city bus service to parts of the province.”*

The PT Board stated in its decision on the route eliminations in the North Central Region (I-L2) and the route segment eliminations that:

*“Greyhound states that by eliminating 1.6 million scheduled miles in the province, it will be able to retain 3.7 million scheduled miles in B.C. Keeping a viable inter-city passenger bus service in at least some parts of the province is preferable to no service from Greyhound. The Board finds that if these route eliminations are implemented without adequate notice, public need is not met. Greyhound is relied upon by those who currently use it. Immediate stoppage on these routes and route segments would endanger public safety given the harsh winter climate, inhospitable terrain, and the*

*isolation of those living and working along these routes. By May 31, weather conditions in the province will have tempered.*

*Setting a date of May 31, 2018 will provide a period for others who may be interested in providing transportation services along these corridors to apply for a licence. The Board will expedite applications for an ICB licence on these routes<sup>2</sup>. The time period between the release of this Decision and May 31 will provide an opportunity for government to work with others on alternate transportation services, if it determines it will do.”*

## **VI. Decision**

I have reviewed the file in its entirety. The issue for me to decide is whether I am satisfied that there are grounds, pursuant to section 21(4) (b) of the *Passenger Transportation Act*, to reconsider its decision. I will also consider Board’s Operational Policy 1.4: *Reconsideration Based on New Information & Error in Procedure* when determining grounds under 21(4) (b).

The Board’s Reconsideration Policy states that an “error in procedure” relates to the Board’s decision-making process and the duty of the Board to act fairly and impartially in making its decisions. An error in procedure does not relate to the outcome of the decision.

Three required procedures and one optional procedure in the decision-making process are stipulated in the PT Act. These procedures and how they were followed in the Greyhound decision are considered.

1. The Board must publish notice of “the fact and nature” of applications (section 26) in a manner that, in the opinion of the Board, is reasonably sufficient to bring the application to the attention of the public (section 26 (2)).

The Board published Greyhound’s application in the PT Bulletin on September 13, 2017. The Board posted more details, including Greyhound’s Explanatory Paper on a [webpage](#) dedicated to the application.

The Board required that Greyhound post public notices of its proposed changes on its website and at all its depots and terminals along the affected routes. Greyhound also

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<sup>2</sup>If the PT Board considers that there is an “urgent public need” for a service, it can process the application without publishing or considering submissions.



provided written notice to local and regional district governments that could be affected by a proposed change. The notice was sent to 84 municipalities, 22 Regional Districts and 17 First Nations.

Public notices indicated that comments on the application could be submitted to the Board's office until October 13, 2017. We received some comments after the deadline. Comments received by noon on October 20, 2017 were marked "late" and disclosed to Greyhound with on-time public comments.

I find that this procedural requirement of the PT Act was met.

2. The Board must accept and consider written submissions (section 27 (2))

The Board received more than 220 individually-written emails and letters from across the province, including a submission from the Requestor. Most were from individuals. Many emails and letters came from government representatives as well as advocacy groups and businesses. In addition, more than 1,700 people submitted form letter emails about proposed route eliminations on Highway 16, the Highway of Tears. More than 100 of these emails provided additional information and comments. The Board also received about 1,000 petition signatures and comments about Greyhound's proposal to eliminate route points, notably Lytton, on Route E3, Cache Creek and Hope via the Fraser Canyon.

The Board received and provided Greyhound with a copy of Resolution LR3 (Commercial Inter-City Bus Transportation) that the Union of British Columbia Municipalities (UBCM) endorsed at its September 2017 convention.

The Board's decision summarizes the content of the written submissions and the decision demonstrates consideration of these submissions.

I find that this procedural requirement of the PT Act was met.

3. The Board then may conduct hearings or investigations (section 27 (3) and (4))

The Board determined that to further inform its decision-making, we would hold public hearings in the North Central Region of B.C. This region faced the greatest potential impact of any region in the province if the changes that Greyhound proposed were approved. Hearings were held in Prince George, Terrace, Smithers and Fort St. John from December 11 to 14, 2017.

Greyhound made a presentation at the start of the meetings and then we heard speakers from the community, which included local government officials, advocacy organizations as well as individuals. Greyhound was presented with an opportunity to respond to the speakers.

The outcomes of the hearings are summarized in the Greyhound decision and the decision demonstrates consideration of this.

Hearings are an optional procedure in the PT Act, but they demonstrate additional due diligence by the Board in considering public need.

4. The Board must issue its decisions in writing, with reasons and make the decisions accessible to the public (section 28).

The Board issued its decision in writing on February 20, 2018 and it was published in the PT Bulletin on February 21, 2018. The decision generated significant media attention which further increased public awareness of the decision.

I find that this procedural requirement of the PT Act was met.

While the Requestor disagrees with the timing of the implementation of aspects of the Board's Greyhound decision, I find that the Board's procedures were followed and there was no error in procedure.

The Requestor states that the Board failed to consult the different levels of government as to timing of these decisions. He states that given the budgeting cycles of the different levels of governments, the Board's date of May 31 / June 1, 2018 for service eliminations and reductions is inadequate for consultation and alternative arrangements to be made by the different levels of government. The timing in the Board's decision is also inadequate for private sector carriers who might want to provide service on these routes.

The Greyhound decision, however, does demonstrate that the Board deliberated on the timing of service reductions and eliminations. This is demonstrated in the following:

*"The Board finds that if these route eliminations are implemented without adequate notice, public need is not met. Greyhound is relied upon by those who currently use it. Immediate stoppage on these routes and route segments would endanger public safety given the harsh winter climate, inhospitable*

*terrain, and the isolation of those living and working along these routes. By May 31, weather conditions in the province will have tempered.*

*Setting a date of May 31, 2018 will provide a period for others who may be interested in providing transportation services along these corridors to apply for a licence. The Board will expedite applications for an ICB licence on these routes<sup>3</sup>. The time period between the release of this Decision and May 31 will provide an opportunity for government to work with others on alternate transportation services, if it determines it will do so.”*

With respect to a request for reconsideration based on new evidence, the Board’s Operational Policy states that new evidence is not additional information made available after the Board’s decision. Rather, it is evidence that was not available at the time the application was decided. The budget cycles of First Nations, local, regional and senior levels of governments are well known, and are not new evidence. Decisions that may affect budgets must often be made outside of the budget preparation cycle.

As highlighted in the section of the Greyhound decision entitled “Factors Not Within Scope of the Decision Making”, it is beyond the Board’s legislative mandate and authority to address public policy, transportation planning and programing considerations.

## **VII. Conclusion**

For the reasons set out above, this reconsideration request is denied.

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<sup>3</sup>If the PT Board considers that there is an “urgent public need” for a service, it can process the application without publishing or considering submissions.