Applications of

BOSTON-MAINE AIRWAYS CORP.

for issuance of an amended certificate of public
convenience and necessity pursuant to 49 U.S.C. § 41102
(Interstate and Foreign Large-Aircraft Operations)

Docket OST-00-7668 - 91
Docket OST-03-14985-30

REPLY OF
BOSTON-MAINE AIRWAYS CORP.
AND MOTION FOR LEAVE TO FILE AN OTHERWISE UNAUTHORIZED DOCUMENT

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October 20, 2005
Applications of

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Boston-Maine Airways Corp., d/b/a Pan Am Clipper Connection

("BMAC") hereby submits this Reply, with an included Motion for leave to file an
otherwise unauthorized document,\(^1\) in response to the Answer of the Air Line Pilots
Association ("ALPA"), filed on October 17, 2005 in response to BMAC's Emergency
Motion, filed October 12, 2005 in the captioned proceedings. BMAC does not intend to
file any response to the latest submission by Captain Dirck Hecking, filed in this
proceeding on October 13, 2005. BMAC interprets Captain Hecking's filing as an
Answer in opposition to BMAC's Motion, and, in accordance with Rule 6(b) and (c)(3)

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\(^1\) Motion For Leave To File. Pursuant to Rule 6(c) of the Rules of Practice, BMAC hereby moves for leave to file this Reply to
ALPA's Answer as an otherwise unauthorized document. Receipt and consideration of BMAC's Reply is warranted to clarify a
specific issue (the matter of the IG's report) raised in BMAC's Motion and ALPA's Answer, and will thus assist the Department
in reaching a sound and expeditious decision in this proceeding.
of the Department’s Rules of Practice, BMAC requests that any new matter in Captain Hecking’s Answer to BMAC’s Motion be deemed to be controverted by BMAC.

In its Answer, ALPA urges the Department to deny BMAC’s Emergency Motion on the ground that the report of an investigation by the Department’s Inspector General (the “IG”) into the certain questions arising out of the admitted misconduct of BMAC’s former General Counsel has not yet been issued, and asserts that issuance of the IG’s report is an express prerequisite to grant of the relief requested in BMAC’s Emergency Motion (ALPA Answer, p. 2, citing the August 2, 2005 letter from Assistant Secretary Karan Bhatia to Inspector General Kenneth Mead).

In response to ALPA’s Answer, BMAC hereby states as follows:

1. BMAC obviously does not dispute the unequivocally clear statement of the Department’s intent, as stated in the Assistant Secretary’s August 2, 2005 letter to Inspector General Mead, to defer further action in various pending proceedings involving an inquiry into BMAC’s fitness until the Department has received and reviewed a report from the IG pertaining to its findings in the requested investigation at issue. BMAC fully recognizes that the primary focus of the IG’s investigation, as specified in the Department’s August 2nd letter, is to determine: (1) “whether Mr. Nadolny’s [BMAC’s former General Counsel] actions were limited to only those instances that were previously disclosed”, and (2) “whether other individuals employed by Boston-Maine were involved in, or knew of, Mr. Nadolny’s actions” (Bhatia letter, p. 2).

The second of those two inquiries is clearly of central and critical relevance to the issue of BMAC’s fitness and, specifically, its compliance disposition. BMAC certainly
neither expects nor suggests that the Department – having requested a formal IG investigation into that very question – would proceed to issue a determination of BMAC’s fitness without first receiving and considering a report of the IG’s findings on that question.

2. As indicated in BMAC’s Emergency Motion, however, BMAC believes that the IG’s exhaustive investigation into the Department’s questions relating to BMAC has now been completed. BMAC understands that a meeting relating to the status of the IG’s investigation was held in Washington, D.C. between the IG’s Special Investigator and senior officials of the Department on Thursday, October 6th, the week before BMAC’s Emergency Motion was filed in this proceeding. BMAC assumes that the foregoing high-level meeting must have included a very detailed discussion of the evidence adduced during the IG’s investigation bearing on the question of BMAC’s (i.e., individual officers, employees and agents of BMAC) involvement in, and knowledge of, Mr. Nadolny’s actions relating to the performance bond forgery and the submission of falsified financial statements and altered bank statements to the Department.

BMAC respectfully urges the Department to accept the IG’s October 6th briefing and status report as a report of the IG’s findings sufficient to satisfy the requirement of the Department’s August 2nd letter with regard to the inquiry into BMAC’s conduct specified in that letter. The IG’s investigation into the BMAC issue has now been under way for more than two months, and it has been thorough and comprehensive in its scope. BMAC has cooperated fully with every aspect of the IG’s investigation, and has responded promptly and completely to every question presented by the IG, and to every
request by the IG for documents and for the production of specific individuals to be interviewed.

Based on BMAC’s direct knowledge of the scope and thoroughness of the IG’s investigation of BMAC itself, and on the assumption that the IG’s October 6th briefing and status report to the Department on that subject fully covered the evidence adduced and findings made during the course of the IG’s investigation, BMAC believes that the Department has now been provided with full, detailed and complete information bearing on the issue of BMAC’s involvement in, and knowledge of, Mr. Nadolny’s actions. BMAC submits that the IG’s briefing and status report, together with other information already presented to the Department by BMAC and others, is more than sufficient to enable the Department to reach a fully-informed decision on the question of BMAC’s fitness for certification.

For the reasons set forth in detail in BMAC’s Emergency Motion, BMAC urgently requests the Department to issue its decision on the subject of BMAC’s fitness without further delay.

3. BMAC is gravely concerned that the Department may be inclined to continue to defer action on BMAC’s fitness determination and pending applications for expanded authority until after the IG has completed its entire investigation as requested by the Department’s August 2nd letter – i.e., the portion of the investigation involving the issue of the full scope of Mr. Nadolny’s unlawful actions.

BMAC understands that the IG’s investigation into Mr. Nadolny’s actions could take as long as a year, and that the IG does not plan to issue a Final Report of its
investigation until after it has reached fully-investigated findings pertaining to Mr. Nadolny's actions.

A delay of action on BMAC’s pending applications before the Department for as long as the time necessary to await completion of the IG’s investigation into Mr. Nadolny’s actions would be grossly unfair and unjust to BMAC for three reasons:

First, Mr. Nadolny’s admitted and serious misconduct has absolutely no bearing on BMAC’s fitness. BMAC terminated its relationship with Mr. Nadolny one day after his first serious act of misconduct – the forgery of the surety’s signature on a Performance Bond – first came to light and was admitted to by Mr. Nadolny. At that time, Mr. Nadolny acknowledged in writing to BMAC that he had acted entirely alone and without the involvement or knowledge of any other person at BMAC in connection with the surety bond forgery, and he resigned in disgrace. When the subsequent discovery by BMAC of further extremely serious misconduct by Mr. Nadolny affecting the accuracy of information and documents filed by BMAC with the Department first came to light as a result of BMAC’s own internal investigation, Mr. Nadolny admitted to BMAC’s new General Counsel that he had falsified each of the documents found by BMAC to be inaccurate and/or deceptively altered, and he stated that he had acted wholly alone in producing the inaccurate and altered financial and bank account statements. BMAC immediately brought those further discoveries of wrongdoing by Mr. Nadolny to the Department’s attention on the public record. In a detailed letter dated July 26, 2005 to the Chief of the Department’s Fitness Division, BMAC explicitly confirmed that Mr. Nadolny’s actions were wholly unknown to BMAC’s senior officers, that he had
committed those actions in breach of a high degree of trust accorded to Mr. Nadolny by BMAC’s senior management after 17 years of employment in increasingly-responsible positions without a hint of any prior misconduct or basis for suspicion, and then described actions taken by BMAC to guard against any future repetition of such hidden misconduct by any future officer or employee of BMAC.

Second, as noted above, BMAC believes that the Department now has, in hand, substantial information confirming BMAC’s innocence of any involvement in, or prior knowledge of, Mr. Nadolny’s actions. In that circumstance, BMAC submits that there is absolutely no need or justification for the Department to continue to defer making a determination on the issue of BMAC’s fitness for certification at this time.

Third, and finally, for the reasons spelled out in detail in BMAC’s Emergency Motion (Motion, pp. 5-7), a delay of action on BMAC’s pending applications for urgently-needed expanded authority of the length of time entailed in awaiting final completion of the IG’s ongoing investigation of Mr. Nadolny’s actions, which have no bearing on BMAC’s fitness whatsoever, would most certainly and unavoidably be fatal to BMAC long before that full investigation is completed and the IG’s Final Report is delivered. Such a prolonged delay of action by the Department on the BMAC-specific issues, in the face of what BMAC believes to be clear and convincing evidence of its innocence now in the possession of the Department, would amount to the equivalent of a decision by the Department to revoke BMAC’s certificate authority and put BMAC out of business, without any justification for that effective death sentence.
As discussed above, and as goes without saying, that effective revocation of BMAC’s authority without cause would inflict a grossly unjust result on BMAC, and on its shareholders, employees and on the traveling public which BMAC serves.

WHEREFORE, Boston-Maine urgently requests the Department to grant the relief requested by BMAC’s Emergency Motion, based on the recent informal issuance of the IG’s briefing and status report to the Department on the BMAC-specific questions investigated by the IG. Specifically, BMAC requests the Department: (1) to issue an immediate statement of its findings and conclusions on the subject of BMAC’s general fitness to provide air transportation pursuant to its Certificates of Public Convenience and Necessity, (2) to issue an immediate Final Order denying ALPA’s pending December 29, 2004 Motion asking the Department to revoke BMAC’s certificate authority, and (3) to issue an expedited Final Order finding BMAC to be specifically fit to provide the air transportation for which it has applied in the captioned proceedings, and granting certificate or exemption authority to BMAC authorizing it to operate up to seven B-727-200 aircraft, as applied for by BMAC in these proceedings.

Respectfully submitted,

[Signature]

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Attorneys for
BOSTON-MAINE AIRWAYS CORP.
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Reply of Boston-Maine Airways Corp. by messenger, teletypewriter transmission, or United States mail, properly addressed and with postage prepaid, upon each of the persons listed in the Service List attached hereto.

Nathaniel P. Breed, Jr.

Washington, D.C.
October 20, 2005
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