



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 19<sup>th</sup> day of September, 2002

Fitness Determination of

**M&N AVIATION, INC.**

as a commuter air carrier under section  
49 U.S.C. 41738

**Served: September 19, 2002**

**Docket OST-02-12358**

**ORDER TO SHOW CAUSE  
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

**Summary**

By this order, we tentatively find that M&N Aviation, Inc. (M&N) is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier subject to conditions.

**Background**

Section 41738 of Title 49 of the United States Code (“the Statute”) and section 298.21(d) of the Department’s Aviation Economic Regulations (14 CFR 298.2 1(d)) direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are “fit, willing, and able to perform the service,” and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act’s liberal entry policy with Congress’ concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a carrier’s fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will comply with the Statute and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On May 21, 2002, M&N filed an application in Docket OST-02-12358 for authority to provide scheduled passenger operations as a commuter air carrier pursuant to section 41738 of the Statute.<sup>1</sup> M&N accompanied its application with the fitness information required by section 204.3 of our regulations.<sup>2</sup>

<sup>1</sup> To meet the requirements of 14 CFR 215.5 regarding carriers having similar, and possibly confusing names, M&N notified MN Airlines of Medina Heights, Minnesota, of its application by letter dated August 5, 2002.

<sup>2</sup> M&N filed information supplementing its application on August 13 and 19, 2002.

No answers were filed to the application and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we tentatively conclude that M&N is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that M&N is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier.

### **The Company**

M&N was organized under the laws of the Commonwealth of Puerto Rico in November 1992 and registered with the Department that same year to provide Part 298 air taxi operations. Since then, the carrier has conducted its operations from San Juan, providing a variety of on-demand services including executive charters to destinations in the western hemisphere and cargo operations to points in the Caribbean.<sup>3</sup> At the present time, M&N employs 31 full-time and 10 part-time employees, and maintains a fleet of nine aircraft, including five Cessna 208 aircraft, each having no more than 9 passenger seats. M&N's stock is owned wholly by Mr. Jose Maldonado, the carrier's President and founder and a U.S. citizen.

If found fit, M&N proposes to provide scheduled service from Isla Grande to Vieques, Puerto Rico, and subsequently to other destinations in the Caribbean region. M&N plans to conduct its initial commuter operations with its existing Cessna 208 aircraft.

## **FITNESS**

### **Managerial Competence**

Mr. Jose Maldonado, an FAA Airline Transport Pilot, is M&N's President, General Manager and sole owner. After graduating from the University of Puerto Rico in 1969, Mr. Maldonado entered the U.S. Army, qualifying in a number of specialties including that of helicopter pilot. He left the Army in 1973 and transferred to the Puerto Rico National Guard, where he rose to the rank of Colonel and held the positions of Director, Aviation Directorate (November 1973 to July 1988) and U.S. Property and Fiscal Officer (July 1988 to August 1997). In 1992, he formed a partnership with Eduardo Nevares and founded M&N. Upon retiring from the Guard in August 1997, he became the airline's full-time manager, and in August 2000, he acquired Mr. Nevares' interest in the company.

Mr. William W. Duncan, an Airframe and Powerplant Mechanic, serves as M&N's Vice President of Operations and Maintenance. He is also an Airline Transport Pilot with over 14,700 total hours. Mr. Duncan began his aviation career in 1968 with the U.S. Army where he received training as a helicopter pilot and maintenance test pilot. Since leaving the service in 1976, he has worked as a pilot for a number of companies including Bell Helicopter International, UTL Corporation; Air Logistics; and Bell Helicopter Textron. Between November 1991 and February 1998, when he

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<sup>3</sup> M&N previously held commuter authority (see Order 98-5-2, issued May 1, 1998). The carrier operated scheduled passenger service under this authority for approximately 6 months before suspending operations in November 1998 following a series of devastating hurricanes that struck its operating region and caused a significant decrease in passenger travel to the area. The Department revoked M&N's commuter authority for reason of dormancy by letter dated December 3, 1999.

was hired by M&N, Mr. Duncan served as General Manager/Director of Operations for Hill Aviation.

Mr. Julio Robles Hance, an Airframe and Powerplant Mechanic, has been M&N's Director of Maintenance since 1995. After studying aviation maintenance in the U.S. Army, he joined the Aviation Battalion of the Puerto Rico National Guard in 1961 where he continues to serve on a part-time basis. From 1963 to 1993, he was a mechanic in the Aviation Division of the Electrical Resources Company. Following this, Mr. Hance worked for two years full time for the Air Guard Aviation Battalion.

Ms. Alicia Pineda is M&N's Vice President of Finance. She is a Certified Public Accountant. Prior to coming with M&N in February 1998, Ms. Pineda worked as a Senior Auditor for six years for Armando Figueroa Toro & Co. Ms. Pineda is responsible for oversight of the company's accounting department, as well as the preparation of budgets, financial statements, contract packages and forecasts.

Mr. Dennis Ortiz Landron, an Airline Transport Pilot with over 4,000 total flight hours, serves as M&N's Chief Pilot. Before coming to M&N in November 1998, Mr. Landron worked for nearly four years as a flight instructor or pilot for a number of Puerto Rico-based flight schools and air carriers including, Universidad Interamericana de Puerto Rico, Ponce Aero Training, Flamenco Airways, and Isla Nena Air Service. He is a graduate of the University of Puerto Rico where he received a degree in Aircraft System Management.

In view of the experience and background of the applicant's key personnel, and the fact that these individuals have been managing the carrier's on-demand operations for several years, we tentatively conclude that M&N possesses a management team that has the managerial skills and technical ability to conduct its proposed commuter operations. Moreover, the FAA has advised us that the carrier's key technical personnel are acceptable to it.<sup>4</sup>

### **Operating Proposal and Financial Condition**

If granted the commuter authority it seeks, M&N proposes to operate three scheduled daily flights between Isla Grande and Vieques, utilizing aircraft from a pool of five (5) Cessna aircraft, each having no more than 9 passenger seats. The carrier expects to offer scheduled service to additional markets throughout the Caribbean region in the future.

We have reviewed M&N's first year operating plan and expense forecast and find that they appear to be reasonable. We also note that the proposed commuter operations between Isla Grande and Vieques will be conducted in largely the same manner as the carrier's present on-demand service between the same points. Further, M&N states that its current roster of employees and fleet of aircraft are sufficient to operate the proposed limited scheduled service and that its pre-operating costs will be minimal.<sup>5</sup> Total monthly operating costs for these flights, including overhead, are

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<sup>4</sup> The FAA evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability.

<sup>5</sup> M&N has stated that it does not expect to incur any significant FAA pre-certification expenses, and that its current insurance coverage exceeds the Department's requirements for commuter air carriers.

computed to be \$12,734. Based on our analysis of M&N's projections, we have concluded that M&N will need access to approximately \$38,000 to meet our financial fitness criteria.<sup>6</sup>

M&N's current on-demand air taxi operations have been profitable and the company appears to be in good financial condition overall. The carrier has supplied historical financial information indicating that it has earned a profit during each of the past three years with the bulk of its operating revenues coming from fixed contracts with nearly a dozen principal customers. M&N's most recent fiscal year ended April 30, 2002. During this twelve-month period, the company earned a net income of \$117,509 on total revenues of \$3.6 million. Further, for the first two months of its current fiscal year (May and June 2002), M&N reported net income of \$94,438 on total operating revenues of \$634,473.

M&N's balance sheet dated June 30, 2002, shows total current assets and total current liabilities each totaling approximately \$1.1 million. Stockholder's equity is reported as \$641,780.

M&N states that the capital needed for commencing scheduled passenger operations will be provided by the cash flow of the company, and will not have to be borrowed or raised through a security offering. We also note that the carrier has provided third-party verification that it had a savings account balance available to it of \$250,467 as of August 14, 2002.

In light of the company's history of profitable operations and current financial condition,<sup>7</sup> and the fact that no significant new capital appears necessary to launch the proposed commuter operations,<sup>8</sup> we tentatively conclude that M&N will have access to financial resources sufficient to enable it to initiate the proposed commuter service without posing an undue risk to consumers or their funds. However, prior to making M&N's authority effective, we will require that the company provide a statement as to the amount of pre-operating costs it has actually incurred, indicating which portion of these costs remain unpaid. In addition, M&N will be required to provide us with updated financial information that demonstrates that it continues to have sufficient funds available to meet our financial fitness criteria.

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<sup>6</sup> To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are reasonably projected to be incurred during three months of operations.

<sup>7</sup> Moreover, we would expect that M&N's on-going air taxi operations, which have been profitable in the past, will provide a reliable source of cash flow to support M&N's expanded operations.

<sup>8</sup> M&N will utilize aircraft from its current fleet and will not need to add personnel or facilities to conduct its proposed commuter operations.

## **Compliance Disposition**

We also tentatively conclude that M&N has the proper regard for the laws, rules, and regulations governing its services to ensure that its aircraft and operations conform to applicable safety standards and that acceptable consumer relations practices will be followed.

M&N has stated that there have been no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices filed against it, its owners, or its key personnel. Nor are there any outstanding judgments or pending actions against any of these parties. Moreover, our search of the Department's records found no compliance problems involving M&N, its owners, or its key personnel. Further, the FAA has advised us that it has no objections to the Department's grant of M&N's request for commuter authority.<sup>9</sup>

## **CITIZENSHIP**

49 U.S.C. 41102 requires that authority to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

As previously stated, M&N is a Puerto Rican corporation, and Mr. Jose Maldonado, a U.S. citizen, owns 100 percent of the company's issued and outstanding stock. Further, all of M&N's key personnel are identified as U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. Our review of the applicant has uncovered no reason to suggest that control of M&N rests with non-U.S. citizens.

Based on the above, we tentatively conclude that M&N is a citizen of the United States and is fit, willing, and able to provide the limited scheduled passenger service it proposes as a commuter air carrier.

## **OBJECTIONS**

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to M&N's fitness and commuter authority.

## **EFFECTIVE COMMUTER AUTHORIZATION**

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<sup>9</sup> In order to conduct the proposed commuter operations, M&N must also obtain appropriate amendments to its operations specifications to authorize scheduled passenger service. The FAA indicates that this request is being processed and that there do not appear to be any matters of concern.

## **CONDITIONS AND LIMITATIONS**

In the event that we find M&N fit, willing, and able to conduct the proposed commuter service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier has fulfilled all of the requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization.<sup>10</sup> Among other things, this includes our receipt of evidence that the carrier has been issued Operations Specifications by the FAA authorizing scheduled passenger service under Part 135 of the Federal Aviation Regulations.

Moreover, given the relatively limited scope of M&N's proposed operations—one market with up to three daily flights using aircraft that can be operated under FAA Part 135—and the fact that the carrier is relying on internal resources to fund its proposed commuter operations, we have decided to limit any commuter authority issued to M&N to the use of aircraft that can be operated under Part 135 (in effect, aircraft with not more than nine seats in scheduled passenger operations). Our findings regarding the adequacy of M&N's management or financial resources may not hold true if the company were to initiate operations using larger aircraft that would require certification from the FAA under Part 121. Thus, should M&N propose to conduct such operations, it must first be determined fit to do so.<sup>11</sup>

Furthermore, we remind M&N of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that commuter air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. In this regard, should M&N propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>12</sup> The compliance of the company with these requirements is essential if we are to carry out our responsibilities under the Statute.<sup>13</sup>

### **ACCORDINGLY:**

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<sup>10</sup> We also reserve the right to stay the effectiveness of M&N's authority if any new information becomes available to us that warrants such action.

<sup>11</sup> We note that the operation of larger aircraft could require the carrier to have access to additional funds and/or hire additional management personnel.

<sup>12</sup> The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. Moreover, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's commuter authority.

<sup>13</sup> We also remind M&N about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume commuter operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

1. We direct all interested persons to show cause why we should not issue an order finding that M&N Aviation, Inc., is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using small aircraft pursuant to Part 135 of the Federal Aviation Regulations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the award of authority set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-02-12358, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.<sup>14</sup>
4. In the event that no objections are filed, we will consider all further procedural steps to be waived, and we will enter an order making final our tentative findings and conclusions set out here and awarding M&N Aviation, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

**READ C. VAN DE WATER**  
Assistant Secretary for  
Aviation and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at  
<http://dms.dot.gov>*

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<sup>14</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



Specimen  
Terms, Conditions, and Limitations

**M&N AVIATION, INC.**

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for scheduled passenger operations of more than five round trips a week in any one market, and any advertisement or listing of such flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.

- (5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all Department of Transportation requirements concerning security.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (7) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render this authority ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this authority.*
- (8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*
- (9) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*
- (a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*
- (b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*
- (10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*
- (11) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.*



ATTACHMENT A

SERVICE LIST FOR M&N AVIATION, INC.

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