

SERVED JULY 30, 2008

DEPT. OF TRANSPORTATION
DOCKETS

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

2008 JUL 31 P 1:35

IN THE MATTER OF

AERO MICRONESIA, INC.

dba

Asia Pacific Airlines, Inc

FAA DOCKET NO. CP08WP0011
(Civil Penalty Action)

DMS No. FAA-2008-0692

PROCEDURAL ORDER

In order to expedite the hearing in this matter,¹ the parties shall comply with the Procedural Schedule set forth hereinbelow.² The Rules of Practice for this proceeding are set forth in 14 C.F.R. Part 13, Subpart G, of the Federal Aviation Regulations. Those rules provide, inter alia, that the Respondent must file a written Answer or motion within thirty (30) days after service of the Complaint (14 C.F.R. § 13.209(a)), that a general denial is deemed a failure to file an Answer (§ 13.209(e)), that failure to file an Answer without good cause is deemed an admission of each allegation in the Complaint (§13.209(f)), and that, absent agreement of the parties, a party seeking an extension of time must file a written motion not less than seven (7) days before the document is due, absent good cause shown (§ 13.213(a) and (b)).

More specifically, 14 CFR § 13.209 (e) states:

A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of

¹ 14 C.F.R. § 13.221 states: "The administrative law judge shall give each party at least 60 days notice of the date, time and location of the hearing."

² Further amendments of the pleadings will not be anticipated absent good cause shown. While 14 C.F.R. § 13.214(b)(1) permits amendments at any time more than 15 days before a hearing, utilization of that provision would prevent orderly preparation for a hearing and could prevent any hearing at all, since notice of a hearing must be given 60 days in advance. 14 C.F.R. § 13.221(a). An amendment which might be filed 15 days prior to the hearing would entitle the other party up to 20 days in which to reply (14 C.F.R. § 13.214(c)), and could generate a new round of schedules (14 C.F.R. § 13.217), motions (14 C.F.R. § 13.218), and discovery (14 C.F.R. § 13.220), necessitating a postponement of the hearing, a new 60-day notice, et cetera ad infinitum.

that allegation. A general denial of the complaint is deemed a failure to file an answer.

Under FAA Order 2150.3A and the Rules governing these proceedings, the Agency attorney and the Respondent should continue to consider the possibility of settlement and compromise of this matter.³ Compromise may be effected with or without a finding of violation (14 C.F.R. §13.16 (n) (1)).

NOTE: This presiding Judge does not require "Discovery" to be served on the Judge. Other Judges have different policies, but as long as this case is assigned to the undersigned presiding Judge the parties may, but are not required, serve discovery on the undersigned.

WHEREFORE, the parties be and are hereby ORDERED to adhere to the following procedural schedule:

1. Venue shall be Honolulu, HI.;
2. On or before fifty-five (55) days *after* the date of service of this Order the parties shall conclude all discovery including, but not limited to, depositions, document production, responses to production requests and/or interrogatories. If the parties cannot resolve a discovery dispute they shall submit the dispute to the undersigned for resolution in a timely manner;
3. **NOTICE IS HEREBY GIVEN THE PARTIES SHALL BE PREPARED TO PRESENT THIS CASE AT A HEARING ON THE MERITS ON OR AFTER SIXTY (60) DAYS FROM THE DATE OF THE SERVICE OF THIS ORDER⁴, SUBJECT TO THE AVAILABILITY OF COURTROOM FACILITIES.**
4. The parties will have the opportunity to file Post-Hearing briefs and arguments pursuant to a schedule to be determined at the hearing. For guidance, the following schedule is typically used: Complainant shall file its brief fifteen (15) days after receipt of the transcript; Respondent shall its brief fifteen (15) days thereafter; and any rebuttal brief by the Complainant shall be filed seven (7) days thereafter.
5. **SETTLED CASES WILL NOT BE REMOVED FROM THE HEARING DOCKET UNTIL THE PROPER WRITTEN**

³ See Linda Joyce Goodman, FAA Docket No. CP89WP0061, Order dated May 30, 1989.

⁴ 14 C.F.R. § 13.221 states: "The administrative law judge shall give each party at least 60 days notice of the date, time and location of the hearing."

**PLEADING(S), CONSISTENT WITH THE APPLICABLE RULES,⁵
IS RECEIVED BY THE PRESIDING JUDGE.⁶**

- 6. THE PARTIES ARE ADVISED THAT SUBMISSIONS SENT TO THE STREET ADDRESS OF THE U.S. DEPARTMENT OF TRANSPORTATION, OFFICE OF HEARINGS, MAY BE DELAYED IN DELIVERY DUE TO SCREENING CONDUCTED AT THE LOCAL U.S. POST OFFICE BULK MAIL FACILITY AND MAY TAKE UP TO FOUR WEEKS TO ARRIVE BY REGULAR MAIL. IN ADDITION, SUBMISSIONS MAY BE "IRRADIATED" AT THE FACILITY, WHICH AFFECTS THE QUALITY OF THE SUBMISSION. THE PARTIES ARE ENCOURAGED, BUT NOT REQUIRED, TO FAX OR EXPRESS CARRIER PLEADINGS AND/OR OTHER SUBMISSIONS. THE CERTIFICATE OF SERVICE SHALL REFLECT THE MANNER OF SERVICE. ALL PLEADINGS SHALL INCLUDE TELEPHONE NUMBERS WHERE THE PARTIES CAN BE REACHED.**



Richard C. Goodwin
U.S. Administrative Law Judge

Attachment – Service List

⁵ 14 C.F.R. § 13.215 states: At any time before or during a hearing, an agency attorney may withdraw a complaint or party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge shall dismiss the proceedings under this subpart with prejudice.

⁶ See: In the Matter of Lewis Drake & Associates, FAA Docket No. CP03SO0045, DMS. No. FAA-2003-16379, "Order Terminating Proceeding", served February 26, 2005; citing Kerry James Eldridge, FAA Docket CP89GL0458, "Order Canceling Hearing and Terminating Proceeding", served January 16, 1991, at 1; In The Matter of Robert Harris FAA Docket No. CP03EA0001. DMS No. FAA-2002-14236., Orders dated October 18, 2004 and October 27, 2004. USAIR, Inc., FAA Docket CP90NE0359, Trans World Airlines, Inc., FAA Dockets CP90GL0085, CP90CE0110, CP90CE0114, CP90CE0134, Order of Administrative Law Judge Burton S. Kolko, served April 8, 1992, p. 2. See "Order Dismissing Complainant's Appeal". In The Matter of Robert Harris, FAA Docket No. CP03EA0001. DMS No. FAA-2005-14, August 15, 2005.

**SERVICE LIST
ORIGINAL & ONE COPY**

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
Att: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014¹

ONE COPY

Mr. Robert A. Resling
Vice President of Operations
Asia Pacific Airlines
156 Diablo Road, Suite 203
Danville, CA 94526
TEL: (925) 362-4430
FAX: (925) 362-4432

Don Bobertz, Attorney
Office of the Regional Counsel
Western-Pacific Region, AWP-7
Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007
TEL: (310) 725-3454
FAX: (310) 725-6816

The Honorable Richard C. Goodwin
Office of Hearings, M-20
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
East Building Ground Floor, Room E12-320
Washington, D.C. 20590
TEL: (202) 366-2139 Attorney-Advisor
(202) 366-5121 Legal Assistant
FAX: (202) 366-7536

¹ Service was by U.S. Mail. For service in person or by expedited courier, use the following address:
Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building – Room
2014, Washington, DC 20591, Att: Hearing Docket Clerk, AGC-430.