

Docket OST-98-4838-4



U.S. Department of Transportation

Office of the Secretary of Transportation

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Mr. Jim J. Marquez
The Marquez Group
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McLean, Virginia 22012-3805

DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

400 Seventh St., S.W.
Washington, D.C. 20590

February 10, 1999

Re: Docket OST-98-4838 - 4
Application of Puerto Rico Airways, Corp., for a certificate of public convenience and necessity

Dear Mr. Marquez:

On December 2, 1998, your client, Puerto Rico Airways, Corp., filed an application for a {determination of its fitness to conduct scheduled passenger operations as a certificated air carrier. By letter dated December 17, 1998, the Department notified Puerto Rico Airways of certain deficiencies in its application and requested additional and/or clarifying information. Puerto Rico Airways filed a response to this request on January 26, 1999. While this response has answered a number of our questions, it has not satisfactorily addressed our primary concern---that is, the lack of adequate information regarding Puerto Rico Airways' proposed funding.

As we noted in our earlier letter, in order for the Department to evaluate the financial fitness of an applicant, the applicant must provide forecasts of its anticipated preoperating costs and first year operating revenues and expenses, which Puerto Rico Airways has now done. However, in addition, the applicant must be able to demonstrate that it has obtained all of the funding needed to meet our financial fitness test,¹ or, at a minimum, that it has a *reasonable* plan for doing so. In order to establish that this plan is reasonable, an applicant must provide *clear* evidence that it is likely that its **financing** plan will be fulfilled.

Based on its forecasts, Puerto Rico Airways will require funding of at least \$9.16 million in order to meet the Department's financial fitness test. The applicant has **provided** (a) a copy of its New York Private Offering Memorandum which, if fully successful, would raise \$1 .0 million; (b) evidence of its Puerto Rico Private Offering Memorandum which, if fully successful, would raise \$1 .0 million; (c) a letter from the

¹ In order to find that an applicant is financially fit, the Department requires that the company demonstrate that it has available, at a minimum, funds sufficient to cover all of its preoperating costs plus the operating expenses that are reasonably projected to be incurred by the applicant during three months of "normal" operations. In calculating available resources, projected revenues can not be included.

Banco de Desarrollo **Economico para** Puerto Rico dated December 15, 1998, indicating that it is evaluating a loan request of the applicant, which, if granted, would provide Puerto Rico Airways with \$3.0 million in funds; and (d) a letter from Funding Brokers of Scottsdale indicating that it has contacted several sources in efforts to secure equity and/or debt loans for the applicant in the amount of \$10-20 million.

As a whole, these documents do not provide clear evidence that Puerto Rico Airways is likely to obtain the funds necessary to meet the Department's financial fitness test.

It appears that management of the applicant is handling the two private offerings noted in items (a) and (b) above. However, the applicant has not identified the individual employee who is responsible for these offerings, nor has it provided information on this individual's past experience and success in handling similar offerings. This lack of information is particularly disturbing in that the applicant indicates that it has thus far succeeded in raising only \$160,000 of the total \$2 .0 million being sought and it appears that these offerings have been active since at least mid-1997.

With respect to the loan referenced in item (c) above, while such a loan has been discussed, it does not appear that the bank involved is likely to approve Puerto Rico Airways' request. In this regard, while Puerto Rico Airways has requested such a loan in order to cover its *preoperational* expenses, the letter submitted specifically states that usage of the proceeds from any loan granted would be restricted to covering *actual operational* expenses. In addition, the letter states that grant of any such loan would require: the participation of Banco Gubernamental de Formento, yet Puerto Rico Airways has not provided the Department with any evidence of this entity's willingness to participate in this matter. Further, the letter notes that these conditions were communicated to you by bank officials in May 1998, but had not yet been fulfilled as of the December 9, 1998, meeting referenced in the letter.

Finally, the letter referenced in item (d) above is merely a statement indicating that Funding Brokers of Scottsdale has discussed a placement of equity and/or debt with Puerto Rico Airways. As we noted in our December 17, 1998, letter, if Puerto Rico Airways intends to raise funds through a private or public placement of equity and/or debt, it needs to provide us with a copy of the placement memorandum that will be utilized, and 'other evidence demonstrating that it has taken clear, concrete steps towards such an offering. This evidence should, at a minimum, consist of information on the past experience of the firm underwriting the offering and a letter from that firm indicating the time frames for conducting the offering and its current status. Until such information is provided, we can not consider the potential funding referenced in the Funding Brokers letter when determining whether the applicant is likely to have adequate resources to meet our financial fitness test.

I am sure you can appreciate that the processing and maintaining of materially incomplete applications creates a substantial burden on the Department's staff that often results in delays in processing the applications of companies that have taken the necessary time and effort to prepare complete applications. Nonetheless, it is our practice to work with an applicant in the certification process and, where warranted, allow additional time for a company to provide all of the information needed for us to make an informed decision on its fitness. Thus, we will give Puerto Rico Airways an additional 30 days to provide clear evidence that its funding plan is likely to be fulfilled. In the event that Puerto Rico Airways is unable to provide this material within this time period, we intend to dismiss its application without further notice. Of course, any such action on our part would be without prejudice to Puerto Rico Airways' filing a new application when it is prepared to provide all of the information we require.

As a final matter, please remember that Puerto Rico Airways should promptly provide the Department with any information regarding changes it may undergo in areas affecting its fitness (*i. e.*, management, operating plans or financial condition, compliance disposition, or ownership) while its application is under review.

Thank you for your cooperation in this matter. If you have any questions regarding this letter, please feel free to contact Janet Davis or Galvin Coimbre at (202)-366-9721.

Sincerely,



Patricia L. Thomas
Chief, Air Carrier Fitness Division
Office of Aviation Analysis

cc: Docket OST-98-4838

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