

DEC 01 2017

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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RECEIVED UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FIRST AVIATION SERVICES INC., and
PIEDMONT PROPULSION SYSTEMS, LLC,

Petitioners,

v.

FEDERAL AVIATION ADMINISTRATION,

Respondent.

Case No. 17-1254

PETITION FOR REVIEW

ORIGINAL

Pursuant to 49 U.S.C. § 46110 and Federal Rule of Appellate Procedure 15(a), Petitioners First Aviation Services Inc. and its subsidiary Piedmont Propulsion Systems, LLC (“Piedmont”) hereby petition this Court for review of the Federal Aviation Administration’s (“FAA’s”) failure to enforce a final order. *See* Letter Regarding First Aviation’s Consistency & Standards Initiative (“Final Order”), dated November 10, 2016. A copy of the Final Order is attached as Exhibit 1.

Piedmont performs maintenance, preventive maintenance and alterations on Hamilton Sundstrand 568F propellers for which UTC Aerospace Systems (“UTAS”) is the design approval holder. Petitioner First Aviation Services Inc. is the parent company of Piedmont. Under 14 C.F.R. § 21.50(b), a design approval

holder must make a complete set of Instructions for Continued Airworthiness available to the owner of each type aircraft, aircraft engine, or propeller and “to any other person required by this chapter to comply with any of the terms of those instructions.”

1. The November 10, 2016 Final Order

For several years, Piedmont sought but was unable to obtain these Instructions for Continued Airworthiness from the design approval holder. In June 2013, Petitioners sought and obtained a March 2014 legal interpretation from the FAA that UTAS was obligated to comply with 14 C.F.R. § 21.50. After further unsuccessful attempts to obtain the instructions from UTAS, in 2015 Petitioners asked the FAA to order the design approval holder to comply with its legal obligation.

On November 10, 2016, the FAA granted Petitioners’ request. The FAA stated that it “will pursue distribution of the instructions for removal and replacement of the compression wrap with UTAS.” Exhibit 1 at 1. *See also id.* at 3 (“UTAS must make a complete set of 568F propeller [Instructions for Continued Airworthiness] available The FAA will follow-up as stated . . . above”). In the Final Order, the FAA stated: “The FAA considers this appeal closed.” *Id.* at

2.

2. The FAA's Unreasonable Delay in Enforcing its Final Order

On December 21, 2016, the FAA's Boston Aircraft Certificate Office asked for Piedmont's patience in receiving the Instructions for Continued Airworthiness. Exhibit 2 at 1.

On March 6, 2017, Piedmont wrote to UTAS again requesting that a complete set of instructions be provided, as required by the FAA's final order and the FAA regulation. On March 24, 2017, UTAS finally responded to Petitioners' repeated requests by stating that it had not determined what, if any, data would be made available. *Id.*

Piedmont then again wrote to the FAA; in its March 30, 2017 letter, Piedmont stated: "It seems clear that the FAA is allowing UTAS to ignore the agency's unequivocal determination that the compression wrap instructions are [Instructions for Continued Airworthiness]. Equally clear is the fact that UTAS' failure to make ICA available represents a continuing violation of the FAA's regulations." *Id.* at 1. Piedmont requested that the FAA "immediately take action that ensures UTC Aerospace Systems (UTAS) complies with 14 C.F.R. 21.50(b)." *Id.* Piedmont also "request[ed] that FAA inform [Piedmont] of the specific actions the agency is taking to make sure that [UTAS] distributes the required [Instructions for Continued Airworthiness] in the immediate future." *Id.* at 2.

In a May 18, 2017 meeting between UTAS and Piedmont, UTAS again was noncommittal about providing the Instructions for Continued Airworthiness.

Exhibit 3 at 2.

On August 3, 2017, Piedmont once again asked the FAA for immediate action to ensure that UTAS complies with 14 C.F.R. § 21.50(b). *See id.* at 1.

Piedmont repeated its request in an August 22, 2017 follow-up letter to the FAA. *See id.*

To date, over one year after the FAA issued its Final Order, Piedmont still has not received the Instructions for Continued Airworthiness at issue and there is no indication from the FAA or UTAS that it will ever receive the materials.

The FAA's failure to enforce its Final Order and constructive denial of Petitioners' repeated requests that the agency enforce its regulation violates the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

This court has jurisdiction over this matter under 49 U.S.C. § 46110 and Federal Rule of Appellate Procedure 15. Venue is proper pursuant to 49 U.S.C. § 46110(a). *See Air Line Pilots Ass'n, Int'l v. Civil Aeronautics Bd.*, 750 F.2d 81, 85 (D.C. Cir. 1984) (this Court has jurisdiction over claims of unreasonable agency delay); *Friedman v. FAA*, 841 F.3d 537, 541-43 (D.C. Cir. 2016) (an agency's constructive denial of request for relief is subject to direct review under 49 U.S.C. § 46110(a)).

Given its failure to enforce the Final Order, and UTAS' intransigence in complying with its regulatory obligations, this Court should promptly order the FAA to provide Petitioners directly with a complete set of Instructions for Continued Airworthiness or to immediately enforce the design approval holder's obligation to provide them.

December 1, 2017

Respectfully submitted,



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Counsel for Petitioners

Exhibit 1



U.S. Department
of Transportation
**Federal Aviation
Administration**

Aircraft Certification Service

Design, Manufacturing, and
Airworthiness Division
800 Independence Ave. S.W.
Washington, DC 20591

November 10, 2016

First Aviation Services, Inc.
Attn: Mr. Aaron P. Hollander
15 Riverside Avenue
Westport, CT 06880

Dear Mr. Hollander:

Subject: Request to Reconsider April 28, 2016 FAA Decisions RE: First Aviation's
Consistency & Standards Initiative

The Federal Aviation Administration (FAA) received your letter dated May 27, 2016 requesting reconsideration of the April 28, 2016 FAA decisions with respect to your Consistency & Standards Initiative (CSI) submission about Hamilton Sundstrand 568F propeller Instructions for Continued Airworthiness (ICA).

The FAA has reviewed your CSI reconsideration request. Responses to each of the items for which you requested reconsideration are presented below. Each appeal requested five (5) specific actions, however three (3) of the five are repeated in both appeals. Therefore, the specific actions will be addressed beneath each appeal and the common actions will be addressed in a separate paragraph.

- a. **Appeal to April 28, 2016 FAA Decision #1.** *"FAA determined that Hamilton Sundstrand has provided all the necessary instructions for the removal and replacement of the compression wrap to repair stations who agreed to their terms and conditions. We recommend that you contact Hamilton Sundstrand for the necessary instructions."*
1. *Retract Boston ACO's [Aircraft Certification Office] assertion that UTAS [United Technologies Corporation Aerospace Systems] "has provided all the necessary instructions for the removal and replacement of the compression wrap to repair stations who agreed to their terms and conditions" as PPS [Piedmont Propeller Services] has agreed to UTAS terms and paid UTAS for the ICA, but has not received the instructions for removing and replacing the compression wrap.*

The FAA reviewed the April 28, 2016 FAA CSI decision, First Aviation's appeal, and additional supporting documentation provided by both. We have determined that the instructions for removal and replacement of the compression wrap are ICA. The FAA considers this appeal closed. The FAA will pursue distribution of the instructions for removal and replacement of the compression wrap with UTAS.

2. *Acknowledge that for an unreasonably long time, UTAS has failed to furnish and/or make available a complete set of 568F propeller ICA to PPS in accordance with 14 C.F.R. § 21.50(b).*

Since we have determined the instructions for removal and replacement of the compression wrap to be ICA, we acknowledge that the current ICA is not complete. The FAA will follow-up as stated in a.1 above.

- b. **Appeal to April 28, 2016 FAA Decision #2.** *“The issue of proprietary is no longer a consideration as we have since discovered that Hamilton Sundstrand has provided the instructions in question to repair stations, therefore there is no need to reissue the October 9th letter.”*

1. *On an urgent basis, retract Boston ACO's October 9, 2015 letter to the extent that it suggests that ICA may be restricted for any reason including “proprietary”.*

The FAA agrees that a design approval holder (DAH) may not deny access to ICA based on claims of proprietary data.

The October 9, 2015 FAA letter was addressed only to First Aviation Services, Inc., and the letter's stated position regarding “proprietary” information was not disseminated as national FAA policy. This CSI response reiterates the FAA's position that a DAH may not refuse to provide complete ICA based on a claim of proprietary data.

The FAA considers this appeal closed.

2. *Similarly amend or correct Boston ACO's Decision #2.*

See the response to b.1 above.

- c. **Common Actions Requested for both Appeals.**

1. *Confirm that 14 C.F.R. § 21.50(b) requires Design Approval Holders to furnish and/or make available a complete set of ICA to all owners and other Persons required to comply with those ICA.*

Section 21.50(b) requires the DAH to “furnish at least one set of complete Instructions for Continued Airworthiness to the owner of each type aircraft, aircraft engine, or propeller. ... Thereafter, the holder of a design approval must make those instructions available to any other person required by this chapter [14 CFR Chapter 1] to comply with any of the terms of those instructions.”

2. *Confirm that existing FAA guidance on the topic of ICA – such as FAA Order 8110.54A, Policy Statement PS-AIR-21.50-01, AC 120-106A, Draft AC20-ICA, and*

various legal opinions - remains valid and that Boston ACO's letters should be disregarded to the extent that they conflict with such FAA guidance.

Current guidance (FAA Orders, Advisory Circulars (AC) and Policy Statements) are valid, with respect to the audience intended, until superseded. Draft guidance is not valid until issued. Legal opinions are responses based on specific requests and while they may discuss issues on a broad basis, the opinions apply specifically to that request. However, many of these legal opinions state generally applicable legal determinations; accordingly, those principals apply to all affected persons.

3. *Confirm that UTAS must, as DAH, make available a complete set of 568F propeller ICA -including the instructions for the removal and replacement of the compression wrap (a mandatory action) - to PPS, a person required to comply with the terms of those ICA.*

UTAS must make a complete set of 568F propeller ICA available as discussed in c.1 above. The FAA will follow-up as stated in a.1 above.

You have 30 calendar days to respond to the FAA decisions with the CSI. The FAA will close out the CSI if you concur with our decision. The CSI will remain open and be forwarded to the next level for management review if you do not concur with our decision.

Sincerely,



Susan J. M. Cabler
Acting Manager, Design, Manufacturing,
and Airworthiness Division
Aircraft Certification Service

Exhibit 2



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March 30, 2017

Mr. Nicholas Faust
Branch Manager
Boston Aircraft Certification Office
Federal Aviation Administration (FAA)
12 New England Executive Park
Burlington, MA 01803

VIA EMAIL: Nicholas.Faust@faa.gov

RE: URGENT ACTION NEEDED

Dear Mr. Faust,

First Aviation Services Inc. and its subsidiary Piedmont Propulsion Systems, LLC (PPS) urgently request that the Federal Aviation Administration (FAA) immediately take action that ensures UTC Aerospace Systems (UTAS) complies with 14 C.F.R. 21.50(b).

On November 10, 2016, FAA determined "...that the instructions for the removal and replacement for the compression wrap [for the UTAS model 568F propeller system] are ICA" (Instructions for Continued Airworthiness), and that UTAS, as the design approval holder (DAH), "...may not deny access to such ICA based on claims of proprietary data."¹

In your December 21, 2016 email, you asked for PPS's patience as the FAA is working with UTAS "...toward distribution of the removal and replacement for the compression wrap" and that "...if the [DAH] is willing to work with the FAA towards compliance, it is likely that no enforcement action will be taken."

In a March 16, 2017 telephone conversation, you indicated that FAA-UTAS discussions were going more slowly than expected.

For more than five years PPS has repeatedly asked UTAS to make the complete ICA available. On March 24, 2017, UTAS finally responded to PPS's repeated requests for the ICA stating that "UTAS has not yet completed its determination of what, if any, data will be made available."² It seems clear that the FAA is allowing UTAS to ignore the agency's unequivocal determination that the compression wrap instructions are ICA. Equally clear is the fact that UTAS's failure to make ICA available represents a continuing violation of the FAA's regulations; a condition that would surely never be tolerated if PPS was the certificate holder. We request that the FAA either provide

¹ Cabler, Susan J. M. "Re: Request to Reconsider April 28, 2016 FAA Decisions RE: First Aviation's Consistency & Standards Initiative." November 10, 2016. Letter to First Aviation

² Hills, Laura. "Subject: Piedmont Request RE: Instructions for Continued Airworthiness (ICA) for 568F propeller." March 24, 2017. Letter to PPS

the ICA that is being withheld by UTAS or begin legal action against UTAS under the law, regulation and FAA policy.³

The agency has several methods of ensuring immediate compliance, including punitive and remedial sanctions.

In particular, we recommend that the FAA seek a penalty of at least \$25,000 per day for past violations, and the same daily amount for each subsequent day of continued violation. We recommend such a penalty because UTAS's violation has monopolized the entire blade overhaul market, and this monopolization is likely generating profits in excess of the FAA's typical fine structure. Therefore, a lower penalty level for continued non-compliance may be insufficient to motivate compliance on UTAS's part.

In addition, we recommend that the FAA suspend the 14 C.F.R. § 21.45 privileges of type certificate P8BO pending compliance. Such a temporary suspension is an authorized sanction, is consistent with the FAA's enforcement guidance, and is also calculated to impact the non-compliant design approval holder while minimizing the negative impact on those who are currently using the propellers made to conform to the type certificate.

UTAS should also be required to implement a companywide ICA compliance program to avoid the cost and wasteful use of FAA (and owner and repair station) resources in the future. This compliance program should include UTAS notifying FAA of any requests for ICA that UTAS deems inappropriate or that UTAS will not or does not honor.

We respectfully request that FAA inform PPS of the specific actions the agency is taking to make sure that the DAH distributes the required ICA in the immediate future.

Thank you for your prompt attention and action in this matter.

Regards,



Aaron P. Hollander
Chairman, President & Chief Executive Officer

cc: Susan J. M. Cabler, Acting Manager, Design, Manufacturing and Airworthiness Division, FAA
cc: Edmund "Skip" Averman, Attorney, Office of Chief Counsel, FAA
cc: Jason Dickstein, Esq., Washington Aviation Group PC
cc: Sarah MacLeod, Esq., Executive Director, Aeronautical Repair Station Association

Enc: Susan J. M. Cabler (FAA) Letter of November 10, 2016
Enc: Laura Hills (UTAS) Letter of March 24, 2017

³ FAA Order 2150.3B Appendix B, Part 1, ¶3(a) (October 1, 2007).

Exhibit 3



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August 22, 2017

Mr. David Hempe
Deputy Executive Director
Regulatory Operations
Aircraft Certification Service
Federal Aviation Administration (FAA)
800 Independence Ave, SW
Washington, D.C. 20591

SUBJECT: Hamilton Sundstrand Model 568F Propeller Instructions for Continued Airworthiness (ICA)

Dear Mr. Hempe,

As discussed at our August 3, 2017 meeting, Piedmont Propulsion Systems, LLC (PPS) urgently requests that the Federal Aviation Administration (FAA) immediately take action that ensures UTC Aerospace Systems (UTAS) complies with 14 C.F.R. § 21.50(b).

On November 10, 2016, FAA determined "...that the instructions for the removal and replacement for the compression wrap [for the UTAS model 568F propeller system] are ICA" (Instructions for Continued Airworthiness), and that UTAS, as the design approval holder (DAH), "...may not deny access to such ICA based on claims of proprietary data."¹

On December 21, 2016, FAA Boston ACO asked for PPS's patience as the FAA is working with UTAS "...toward distribution of the removal and replacement for the compression wrap" and that "...if the [DAH] is willing to work with the FAA towards compliance, it is likely that no enforcement action will be taken."

On March 16, 2017, FAA Boston ACO indicated that FAA-UTAS discussions were going more slowly than expected.

For more than five years PPS has repeatedly asked UTAS to make the complete ICA available. On March 24, 2017, UTAS finally responded to PPS's repeated requests for the ICA stating that "UTAS has not yet completed its determination of what, if any, data will be made available."²

On March 30, 2017, PPS sent a letter to Boston ACO stating that "it seems clear that the FAA is allowing UTAS to ignore the agency's unequivocal determination that the compression wrap instructions are ICA. Equally clear is the fact that UTAS's failure to make ICA available

¹ Cabler, Susan J. M. "Re: Request to Reconsider April 28, 2016 FAA Decisions RE: First Aviation's Consistency & Standards Initiative." November 10, 2016. Letter to First Aviation

² Hills, Laura. "Subject: Piedmont Request RE: Instructions for Continued Airworthiness (ICA) for 568F propeller." March 24, 2017. Letter to PPS

represents a continuing violation of the FAA's regulations; a condition that would surely never be tolerated if PPS was the certificate holder." This letter also requested that the FAA either provide the ICA that is being withheld by UTAS or begin legal enforcement action against UTAS under the law, regulation and FAA policy³ then outlined several methods through which FAA could ensure immediate compliance, including punitive and remedial sanctions.

A month later, UTAS reached out to PPS and offered to meet and discuss the 568F propeller. I personally attended the meeting, which occurred in Windsor Locks, CT on May 18, 2017. It was clear to me that UTAS's objective during the meeting was to find some other method of satisfying PPS as an alternative to making the 568F ICA available. Nevertheless, PPS stayed on topic and insisted that UTAS needs to make the complete set of 568F ICA available to PPS. UTAS made no commitment to making the 568F ICA available. Instead, UTAS insisted that PPS and UTAS begin discussions to ultimately "license" PPS to perform 568F blade compression wrap removals and replacements. PPS attempted to have such discussions in good faith, but after more than one month, UTAS would not even propose the basic terms of a "license," let alone provide any information regarding the 568F compression wrap.

It remains clear that UTAS continues to ignore FAA's unequivocal determination that the compression wrap instructions are ICA, and that UTAS's ongoing failure to make ICA available represents a continuing violation of the FAA's regulations. As such, we implore FAA to begin legal action against UTAS under the law, regulation and FAA policy.⁴

We urge FAA to mandate that UTAS immediately provide all existing instructions for the 568F compression wrap removal and replacement to PPS. There are at least three (3) repair stations using 568F compression wrap instructions provided by UTAS: (1) Ratier-Figeac, France (a UTAS-owned facility); (2) Aircraft Propeller Service, Illinois, USA (a UTAS "licensee"); and (3) Aircraft Propeller Service, Brazil (a "UTAS" licensee). We are also told that a fourth (4th) facility in Malaysia, operated by Malaysia Airlines Bhd and/or Aircraft Propeller Services (as a UTAS "licensee"), is establishing 568F blade compression wrap capability using instructions provided by UTAS.

Clearly, the necessary 568F compression wrap instructions already exist. These instructions are ICA and must be made available to PPS immediately. The DAH has been given ample time to redact any non-relevant information.

In addition, we recommend that the FAA suspend the 14 C.F.R. § 21.45 privileges of type certificate P8BO pending compliance. Such a temporary suspension is an authorized sanction, is consistent with the FAA's enforcement guidance, and is also calculated to impact the non-compliant design approval holder while minimizing the negative impact on those owners and operators who are currently using the propellers made to conform to the type certificate.

UTAS should also be required to implement a companywide ICA compliance program to avoid the cost and wasteful use of FAA (and owner and repair station) resources in the future. This compliance program should include UTAS notifying FAA of any requests for ICA that UTAS deems inappropriate or that UTAS will not or does not honor.

We respectfully request that FAA inform PPS of the specific actions the agency is taking to make sure that the DAH distributes the required ICA in the immediate future. Thank you for your prompt attention and action in this matter.

³ FAA Order 2150.3B Appendix B, Part 1, ¶3(a) (October 1, 2007).

⁴ *Id.*

Regards,

A handwritten signature in black ink, appearing to read 'Joshua T. Krotec', with a stylized flourish at the end.

Joshua T. Krotec
Senior Vice President

cc: Susan J. M. Cabler, Acting Manager, Design, Manufacturing and Airworthiness Division, FAA
cc: Edmund "Skip" Averman, Attorney, Office of Chief Counsel, FAA
cc: Naomi Tsuda, Assistant Chief Counsel for Enforcement, FAA
cc: Mark Bury, Office of the Chief Counsel for Enforcement, FAA
cc: Jason Dickstein, Esq., Washington Aviation Group PC
cc: Ryan Aggergaard, Esq., Washington Aviation Group PC