



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

Issued by the Department of Transportation  
on the 30th day of July, 2020

Fitness Determination of

**PUBLIC CHARTERS, INC.**

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

**Docket DOT-OST-2019-0173**

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

**Summary**

By this Order, the U.S. Department of Transportation (the “Department”) tentatively finds that Public Charters, Inc. (“PCI”) 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 298.50 of the Department’s Aviation Economic Regulations (14 CFR § 298.50) 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 an air carrier’s fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations; (2) will have 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 December 17, 2019, PCI filed an application in Docket DOT-OST-2019-0173 for authority to conduct scheduled passenger operations as a commuter air carrier. PCI accompanied its application with fitness information required by section 204.3 (14 CFR § 204.3) of our regulations and supplemented its application with additional information, most recently on July 10, 2020.

No answers opposing PCI's application were filed. Under these circumstances, the Department proposes to decide the issue of the applicant's fitness on the basis of the written record, and tentatively concludes that PCI is a U.S. citizen and is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier. However, the Department will give interested persons an opportunity to show cause why it should not adopt as final these tentative findings and conclusions.

## **FITNESS**

### **The Company**

PCI was incorporated on October 1, 2009, as an "S" corporation in the state of Pennsylvania. Located in Avoca, Pennsylvania, PCI is solely owned by Mr. James Gallagher, a U.S. citizen. PCI currently provides on-demand passenger air transportation pursuant to 14 CFR Part 135 of the Federal Aviation Regulations and Part 298 of the Department's rules (14 CFR 298) using a fleet of three aircraft: one Piper Navajo aircraft, configured with 7 passenger seats, one Piper Mojave configured with 6 passenger seats, and a King Air B200, configured with 9 passenger seats. The applicant also operates as an indirect air carrier, marketing and selling public charter programs under Part 380 of the Department's regulations (14 CFR Part 380) using the trade names "North Country Sky," "Texas Sky," and "Regional Sky."

By Order 2017-5-16, issued May 24, 2017, the Department confirmed its oral action of April 28, 2017, making the commuter authorization issued to PCI effective on that date. On August 28, 2018, the air carrier informed the Department it intended to cease scheduled operations as of September 5, 2018. The Department subsequently revoked PCI's commuter authorization without prejudice on November 21, 2019, in accordance with 14 CFR 204.7 of the Department's dormancy rules.<sup>1</sup> As stated above, the air carrier refiled for commuter authority on December 17, 2019.

### **Managerial Competence**

PCI's management and key technical personnel consist of the following individuals, all of whom are U.S. citizens.

Mr. James M. Gallagher - Chief Executive Officer ("CEO")/President/Secretary/Treasurer  
 Mr. Michael A. Gallagher - Chief Financial Officer ("CFO")  
 Mr. Joseph Stahurski - Corporate Controller  
 Mr. Robert E. Jenkins - Director of Operations  
 Mr. Kris Cerretani - Director of Maintenance  
 Mr. Marc Nuzzo - Chief Pilot

The Department has previously reviewed the managerial competence of Mr. James Gallagher, Mr. Michael Gallagher, and Mr. Jenkins and found all were qualified to hold their respective positions.<sup>2</sup>

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<sup>1</sup> See Order 2019-22-13, issued November 21, 2019.

<sup>2</sup> See Order 2016-6-14, issued June 27, 2016.

Mr. Joseph Stahurski, PCI's Corporate Controller since October 2009, also holds this position with Aviation Technologies Inc., a sister company to PCI (2007-Present). He has over 33 years of accounting experience, working as an Accountant in the aviation and healthcare industries. Mr. Stahurski was also a Petty Officer First Class in the U.S. Coast Guard (1973-1979).

Mr. Kris Cerretani was promoted to PCI's Director of Maintenance in April 2020, from his previous role as Assistant Director of Maintenance, a position he had held since September 2013. Mr. Cerretani, a licensed Airframe and Powerplant Mechanic, also was a Chief Inspector with O&N Aircraft Modifications (October 2006-August 2013).

Mr. Marc Nuzzo is PCI's Chief Pilot, a position he has held since January 2019. A licensed Airline Transport Pilot, Mr. Nuzzo is also PCI's Check Airman and Instructor. Previously, he was a pilot with Southern Airways Express (July 2017-December 2018) and also held other pilot positions with AMG Jets (November 2012-April 2013), Makani Kai Air Charters (July 2012-November 2012), Corporate Air (March 2011-July 2012), and Kamaka Air Cargo (August 2010-October 2012). Mr. Nuzzo also holds a law degree and previously worked in the legal field, including as an attorney in private practice (June 2017-December 2018), a Legal Education Instructor with CAPE Institute (November 2013-Present), a Legal Instruments Examiner for the U.S. Coast Guard National Maritime Center (January 2015-May 2017), a Staff Judge Advocate for the U.S. Navy (May 2002-August 2009), and a paralegal specialist with the Pittsburgh U.S. Attorney's Office (May 2001-May 2002)

In view of the experience and background of the applicant's key personnel, the Department tentatively concludes that PCI has demonstrated that its key management and technical personnel have the managerial skills and technical ability to support its proposed operations. Moreover, the FAA has advised the Department that all of the applicant's key personnel have been found qualified to hold their respective positions.<sup>3</sup>

### **Operating Proposal and Financial Plan**

If granted the commuter authority it seeks, PCI intends to operate one scheduled roundtrip flight 5 days per week, between Wilkes-Barre/Scranton International Airport ("AVP") and Atlantic City International Airport ("ACY"), using its Piper Mojave aircraft configured with 7 passenger seats.

In establishing financial fitness, the Department typically asks an applicant to demonstrate that it has access to financial resources sufficient to cover its pre-operating expenses and any negative working capital balance, plus a working capital reserve equal to the operating costs that are reasonably projected to be incurred during three months of "normal" operations.<sup>4</sup>

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<sup>3</sup> Before authorizing an air carrier to conduct air transportation, the FAA evaluates certain of the applicant'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 the skills and technical ability of these individuals. As mentioned previously, the FAA has advised the Department that PCI's key technical personnel are acceptable to that agency in their respective positions.

<sup>4</sup> Because projected expenses during the first several months of operations frequently do not include all of the costs that will be incurred during a "normal" period of operations, it is our practice to base our three-month standard on one quarter of the applicant's first year operating cost forecast. In calculating available resources, projected revenues may not be used.

As required by our regulations, PCI provided historic and current financial statements. The financial statements PCI provided show that, for the calendar year 2017, PCI earned \$821,068 on revenues of \$10.02 million; for calendar year 2018, the air carrier lost \$329,405 on revenues of \$8.67 million, and for calendar year ended 2019, PCI experienced a loss of \$750,582 on revenues of \$6.45 million. The air carrier's balance sheet, dated December 31, 2019, shows the company has current assets and current liabilities of \$1.26 million and \$2.28 million, respectively, giving the company a negative working capital position of approximately \$912,000. We note, however, that PCI's balance sheet includes a \$1.0 million accounts payable charge due to a related company, Aviation Technologies, Inc., which PCI states may be converted to a note or deemed an inter-company loan if necessary. Reassessment of this charge results in a positive working capital position of approximately \$90,000.

PCI also provided a list of remaining pre-operating expenses and a forecast of first-year operating expenses associated with its proposed commuter operations. The air carrier states it owns and operates the aircraft it intends to use for its scheduled service, and will not require additional aircraft to support the proposed service. The pre-operating expense forecast and first-year operating expense forecast PCI provided show that the air carrier anticipates that its pre-operating expenses will total approximately \$26,000 and its first-year operating expenses will total approximately \$370,000. The Department has reviewed PCI's forecast and finds it to be reasonable. Therefore, to meet the financial fitness test, the Department estimates that PCI will require \$118,500<sup>5</sup> in working capital or other available funds.

In support of PCI's financial fitness, its owner, Mr. James Gallagher, provided a letter stating he would personally commit to fund the company with up to \$1 million in his own funds. He also provided a letter from his bank, LPL Financial, confirming that Mr. Gallagher holds an account with a market value of at least \$1 million.

In light of the above, the Department tentatively concludes that PCI will have access to sufficient financial resources to enable it to commence the proposed operations without posing an undue risk to consumers or their funds. As is our practice, prior to making any award of authority to PCI effective, the Department will require the company to demonstrate that it continues to have access to the financial resources needed to meet the financial fitness test.

### **Compliance Disposition**

With the exception of Mr. Marc Nuzzo, PCI's Chief Pilot, PCI states that there are no pending legal actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive, or anti-competitive business practices, or of fraud, felony, or antitrust violations, or other legal action brought against these parties in the past ten years. The applicant also states that there are no pending investigations, enforcement actions, or formal complaints involving the applicant, persons holding a substantial interest in it, or its key personnel with respect to compliance with the Transportation Code or the Department's regulations.

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<sup>5</sup> The \$118,500 noted here is one-quarter of the applicant's forecast of approximately \$370,000 in first year expenses plus \$26,000 in pre-operating costs.

PCI states that Mr. Nuzzo is currently the subject of a legal proceeding pending in appellate court alleging charges of involuntary manslaughter and vehicular homicide related to an automobile accident that occurred in 2018. The applicant states that Mr. Nuzzo has not been convicted of any felony charges and that he is an outstanding employee.

While the pendency of Mr. Nuzzo's charges does not impede the issuance of a tentative finding of fitness in this case, we remind PCI of its obligation to provide current, updated fitness information to enable the Department to evaluate PCI's ability to operate as a U.S. air carrier. The applicant's failure to do so may reflect negatively on its compliance disposition. In this connection, the Department notes that PCI initially stated only that Mr. Nuzzo was the subject of "a pending automobile accident investigation" without disclosing that he was facing felony charges of involuntary manslaughter and vehicular homicide. Going forward, PCI will be expected to demonstrate greater candor in meeting its obligation to apprise the Department of relevant information related to its fitness.

Our search of the Department's records and information available to us has uncovered no other information that would reflect negatively on the applicant or any of its other key personnel. The FAA advises us that it is working with PCI in connection with the applicant's efforts to obtain Part 135 commuter operating authority from that agency, and that it knows of no reason why the Department should act unfavorably on the company's commuter application.

In light of these circumstances, the Department tentatively concludes that PCI has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

### **CITIZENSHIP**

Section 41102 of the Transportation Code 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, that at least 75 percent of the voting interest be owned by U.S. citizens, and that the air carrier must be under the actual control of U.S. citizens.

As noted earlier, PCI was incorporated under the laws of the State of Pennsylvania in 2009. The company has 100 shares of stock authorized, all of which are issued and outstanding, and owned by Mr. James Gallagher, a U.S. citizen. Mr. Gallagher has been PCI's sole shareholder, board member, owner, and CEO since the company's inception in 2009. He is also the company's President, Secretary, and Treasurer. PCI's key personnel are all 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. Our review of the applicant has uncovered no reason to suggest that control of PCI rests with non-U.S. citizens.

In light of the foregoing, the Department tentatively finds that PCI is owned and actually controlled by U.S. citizens, consistent with 49 U.S.C. § 40102(a)(15) and is fit, willing, and able to provide the proposed scheduled passenger operations, subject to conditions.

## **TRADE NAME REGISTRATION**

In a related matter, on February 25, 2020, PCI requested that the Department allow the continued use of the trade names “Regional Sky,” “Texas Sky,” and “North Country Sky” in certain of its air transportation operations. The Department had previously approved these trade names when PCI initially requested that they be registered, pursuant to 14 CFR Part 215.<sup>6</sup> PCI intends to continue using those trade names.

## **OBJECTIONS**

The Department 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. The Department expects such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* 14 CFR Part 302, Rules 19 and 20); if not, the reasons why not should be explained. The Department will not entertain general, vague, or unsupported objections. If no substantive objections are filed, an Order that will make final our tentative findings and conclusions with respect to PCI’s fitness and certification will be issued.

## **EFFECTIVE COMMUTER CONDITIONS & LIMITATIONS**

If PCI is found fit and issued the commuter authority it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its commuter authorization. Among other things, this includes our receipt of evidence that PCI has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of section 205.5(b) of our rules for all of its aircraft, third-party verification of available funding necessary to meet the Department’s fitness requirements, and a statement of changes it may have undergone since its fitness was examined.

In addition, consistent with the applicant’s proposed operations, the Department proposes to limit any authority issued to PCI to operations using aircraft that can be operated under FAR Part 135. Should PCI desire to acquire and operate larger aircraft that would require certification from the FAA under 14 CFR Part 121, or certificate authority from the Department under 49 U.S.C. § 41102, it must first provide the Department with at least 45-days advance notice of such plans

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<sup>6</sup> See Order 2016-6-14, issued June 27, 2016.

along with updated information establishing its fitness for such expansion, and be found fit for such operations.<sup>7</sup>

Moreover, the Department reminds PCI of the requirements of 49 U.S.C. § 41110(e). Specifically, that section requires that, once an air 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, the Department requires that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. Should PCI subsequently propose substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>8</sup> The compliance of the company with this requirement is essential if the Department is to carry out its responsibilities under section 41110(e).<sup>9</sup>

Additionally, if the air carrier is granted effective authority, it would be required to submit a detailed progress report, within 45 days following the end of its first year of commuter flight operations, to the Air Carrier Fitness Division. The submission of a first-year progress report is conditioned upon all newly authorized air carriers and was adopted as policy by the Department to aid in monitoring the fitness of new air carriers. The report should include a description of PCI's current operations (number and type of aircraft, principal markets served, total number of full-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,<sup>10</sup> and a listing of current senior management and key technical personnel. The air carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

### **ACCORDINGLY:**

1. The Department directs all interested persons to show cause why it should not issue an Order finding that Public Charters, Inc., is fit, willing, and able under 49 U.S.C. § 41738 to provide

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<sup>7</sup> The Department notes that the operation of larger aircraft could require the air carrier to have access to additional funds and hire additional personnel.

<sup>8</sup> PCI may contact the Department's 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. In addition, by notice dated July 21, 1998, the Department requested that air carriers provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If PCI fails to file this updated information or if the information fails to demonstrate that the air 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 air carrier's economic authority.

<sup>9</sup> The Department also reminds PCI 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.

<sup>10</sup> These financial statements should include a balance sheet as of the end of the company's first full year of actual commuter flight operations and a 12-month income statement ending that same date.

scheduled passenger service as a commuter air carrier using small aircraft<sup>11</sup> pursuant to Part 135 of the Federal Aviation Regulations.

2. The Department directs any interested persons having objections to the issuance of an Order making final any of the proposed findings, conclusions, or award of authority set forth here to file them with Department of Transportation Dockets, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, in Docket DOT-OST-2019-0173 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. The Department registers the trade names “Regional Sky,” “Texas Sky,” and “North Country Sky” for use in certain air transportation operations of Public Charters, Inc.

4. If timely and properly supported objections are filed, the Department will accord full consideration to the matters or issues raised by the objections before taking further action.<sup>12</sup>

5. In the event that no objections are filed, the Department will consider all further procedural steps to be waived and will enter an Order making final the Department’s tentative findings and conclusions set out here and awarding Public Charters, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.

6. The Department will serve a copy of this Order on the persons listed in Attachment A.

By:

David E. Short  
Deputy Assistant Secretary  
Aviation and International Affairs

*An electronic version of this document is available at:*  
<http://www.regulations.gov>

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<sup>11</sup> Small aircraft is defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

<sup>12</sup> Since the Department has provided for the filing of objections to this Order, it will not entertain petitions for reconsideration.





**SPECIMEN**

*Terms, Conditions, and Limitations*

**PUBLIC CHARTERS, 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, and any advertisement or listing of 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 14 CFR 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 may not operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.*

(6) *The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all U.S. Government requirements concerning security, including, but not limited to 49 CFR Part 1544.\**

(7) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. § 40102(a)(15).*

(8) *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.*

(9) *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.*

(10) *Should the holder propose any substantial change in its ownership, management, or operations (as 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.*

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\* *To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.*

**SERVICE LIST FOR  
PUBLIC CHARTERS, INC.**

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