

Order 97-2-23

Served: March 3, 1997

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

Issued by the Department of Transportation  
on the

Application of

**HEAVYLIFT-VOLGADNEPR LTD.**

for an exemption under 49 U.S.C. section 40109(g)

Docket **OST-96-1719**

**ORDER CONFIRMING EXEMPTION**

**Summary**

This order confirms our oral action of September 19, 1996, granting Heavylift-VolgaDnepr Ltd. exemption authority to operate a cargo charter flight between Charlotte, North Carolina, and Oakland, California carrying emergency cabotage traffic consisting of an outsized generator rotor.

**Application**

On September 18-19, 1996, Heavylift-VolgaDnepr requested an exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way emergency cabotage cargo charter flight, using Russian-registered Antonov 124 aircraft, between Charlotte, North Carolina, and Oakland, California, during the period September 19-22, 1996, on behalf of the General Electric Company (GE) of Greenville, South Carolina

In support of its request, the applicant stated that GE urgently required delivery of one oversized generator rotor to the Crocket Cogen plant, an electric utility company. It stated that a turbine failure resulted in the shutdown of the plant and loss of service to thousands of customers. It stated that GE personnel were scheduled to arrive at the plant on September 20 to commence the work necessary to install the rotor and restore service. The carrier also stated that, because of the immediate and urgent need for replacement and to coordinate efforts to get the plant back on line as soon as possible, delivery by air of the equipment was essential. It further stated that, because of the size of the rotor, transportation on U.S.-carrier aircraft was not possible. Heavylift-VolgaDnepr attached to its application a statement from GE confirming its characterization of the situation and supporting its request.

### **Answers**

Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operation, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

### **Statutory Standards**

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here<sup>1</sup>).

### **Decision**

On September 19, 1996, we orally granted Heavylift-VolgaDnepr's request to conduct its proposed emergency cabotage flight. We confirm that action here. We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest<sup>2</sup>.

The unforeseen equipment failure resulting in the electric utility company's shutdown and loss of power generating capability, and GE's immediate need to transport replacement equipment to restore service as soon as possible, constituted an emergency created by unusual circumstances not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would

<sup>1</sup> For examples of earlier grants of authority of this type see Orders 95-11-35 and 94-4-19.

<sup>2</sup> We also found Heavylift-VolgaDnepr qualified to perform the operations at issue here. We have previously found the carrier qualified to conduct charter operations using its AN-124 aircraft (*e.g.*, Order 93-10-19).

prevent undue hardship to Crocket Cogen and its customers by facilitating the transport of urgently needed equipment to restore service to those customers.

In view of the above, we found that immediate action on this application was required; that our action met the relevant criteria of 49 U.S.C. 40109(g) and was required in the public interest; and that our action did not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

**ACCORDINGLY,**

1. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of September 19, 1996, granting Heavylift-VolgaDnepr Ltd. authority to operate one one-way emergency cabotage flight between Charlotte, NC, and Oakland, CA; transporting one outsized generator rotor on behalf of General Electric Company, during the period September 19-22, 1996;
2. The grant of this authority was subject to the conditions of Appendix A, and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight;
3. We shall serve this order on Heavylift-VolgaDnepr Ltd., and the Federal Aviation Administration (AFS-200; AIA-101).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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**CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

