SERVED: February 23, 2015

NTSB Order No. EA-5741

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. § 800.24)
on the 23rd day of February, 2015

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, v. JAMES WILSON SMITH, Respondent.	)	Docket SE-19035RM

ORDER DENYING RESPONDENT'S MOTION TO ADOPT RULE

On January 6, 2015, respondent filed a "Motion to Adopt Rule of Administrative Law Judge" in response to the law judge's oral initial decision on remand, issued on October 30, 2014. The Administrator responded to the motion contending the law judge's decision on remand was final and the parties were bound by it as neither party had filed a notice of appeal. The Administrator argued the Board should deny the requested relied as contrary to the Board's Rules of Practice.

The Board's Rules of Practice require a notice of appeal be filed within 10 days after the oral initial decision or written order, and must be perfected by an appeal brief filed within 50 days after an oral initial decision.[1] In this case, neither party filed a notice of appeal within 10 days of

[1] 49 C.F.R. §§ 821.47(a) and 821.48(a).

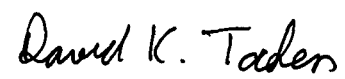
the law judge's oral initial decision.

Title 49 C.F.R. § 821.43 provides, "if no appeal from the law judge's initial decision or appealable order is timely filed, the initial decision or order shall become final with respect to the parties, but shall not be binding precedent for the Board."

The NTSB General Counsel, under 49 C.F.R. § 800.24(b), may "[a]pprove or disapprove in safety enforcement proceedings, for good cause shown, requests … for other changes in procedural requirements subsequent to the initial decision." In addition, under 49 C.F.R. § 800.24(j), the General Counsel may dismiss late filed notices of appeal and appeal briefs for lack of good cause. As noted above, respondent failed to file a timely notice of appeal in this matter, therefore, under 49 C.F.R. § 821.43, the law judge's oral initial decision issued on October 30, 2014, became final. In this regard, the Board's Rules of Practice contain no procedure for reopening a case to certify, endorse, or otherwise opine on a ruling a law judge has issued when neither party has submitted a timely appeal.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's motion is denied.



David K. Tochen
General Counsel