Order 99-10-5

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

Issued by the Department of Transportation
on the **6th day of October, 1999**

SERVED October 8, 1999

Essential Air Service at **MOAB, UTAH** **ELY, NEVADA** under 49 U.S.C. 41731 *et seq.*	**Dockets OST-1997-2827** **OST-1995-361**

ORDER DENYING PETITION FOR RECONSIDERATION

Summary
By this order, the Department is denying the petition of Alpine Aviation, Inc., for reconsideration of Order 99-6-13, issued June 14, 1999.

Background
By Order 98-7-1, issued July 1, 1998, the Department selected Redtail Aviation, Inc., to provide essential air service at Moab, Utah, and Scenic Airlines, Inc., to provide essential air service at Ely, Nevada, replacing Alpine in both instances. That order established subsidy rates to be effective for approximately a two-year period from the date of inauguration of service, through September 30, 2000. However, before either Redtail or Scenic began service, each company was sold.

Moab Essential Air Service: In September 1998, Express Air, Inc., a commuter air carrier wholly owned by Mr. Cliff Langness, purchased 100 percent of the outstanding stock of Redtail and subsequently merged the operations of Redtail into Express Air. As part of that transaction, Express Air assumed all of the assets and liabilities of Redtail, including the award of the subsidized Moab essential air service route, under the same terms and conditions as those applicable to Redtail. Express Air later requested that its essential air service obligations be transferred to Sunrise, a related company.
Sunrise inaugurated service at Moab on June 15, 1999, with 13-seat British Aerospace is weight restricted to only five passengers on the hottest days. Third, it implies that Sunrise's service is not reliable, citing two cases of seriously late flights on its first day of service at Moab, June 15. Alpine states that it will suffer damages as a result of the Department's actions.

Reply of Sunrise Aviation

Sunrise responded that notwithstanding the difficulties that Scenic and Redtail encountered, its own performance has been diligent and in full conformance with FAA requirements. It stated that it has maintained full backup capability beginning with the first EAS flights when it had a fleet of three certificated Jetstream aircraft, one dedicated to the Page-Phoenix route, one to the Moab-Salt Lake City route, and the third positioned in Page for system backup. (Sunrise did not begin the Ely EAS until it had a fourth airplane on-line.) Sunrise acknowledged that all aircraft (and all airlines) are subject to possible weight restrictions for safety reasons, depending on altitudes and temperatures. It added, however, that in any instance that traffic exceeds the available seats on one aircraft, it can and will accommodate all traffic by operating extra sections with its backup aircraft.

Finally, Sunrise stated that its FAA flight logs confirm that Alpine's representations about Sunrise's schedule performance on June 15 are substantially inaccurate.

Response of Alpine Aviation to Sunrise's Reply

On July 14 Alpine filed further comments, asserting that under the terms of Order 98-7-1, Sunrise's positioning an aircraft at Page does not satisfy the carrier's back-up aircraft requirement at Moab. [1] Alpine restated its comment that on hot days Sunrise's Jetstream aircraft can be weight-restricted to as few as five seats at Moab.

Decision

After careful consideration of this record, we have decided to deny Alpine's petition for reconsideration.

Alpine's dissatisfaction with the Department's reaffirmation of replacement service at Moab and Ely and its extension of the replacement carrier's service periods focuses on the amount of time that lapsed between the original selection decision and Sunrise's inauguration of the replacement service, and assertions that Sunrise is not meeting its contractual terms. Alpine concludes that "the Department's actions in this matter are unfair" to Alpine and to the communities.

First, we will reiterate that an important consideration in our decision to select replacement carriers at Moab and Ely (Order 98-7-1) was Alpine's own history at those communities. Orders 95-12-28 and 96-6-39, by which the Department had most recently reselected Alpine to provide subsidized EAS at Ely and at Moab, required the use of pressurized aircraft. Alpine later acknowledged that it had substituted a non-pressurized aircraft for some 2,000 flights although it claimed to have used the more expensive, pressurized aircraft when filing its monthly subsidy claims with the Department. Primarily for that reason, we stated in Order 98-7-1 that "we do not find (Alpine's) performance satisfactory for Essential Air Service purposes."

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[1] We note that in the fall of 1997, Alpine negotiated rates with the Department for its continued essential air service at both Moab and Ely. Those rates, which were established in Order 97-12-29, included prorated expenses for a single Navajo aircraft that was to be used as a backup on both routes.

The amount of time that elapsed following our decision to select replacement carriers at Moab and Ely is not a basis in these circumstances for the Department to reverse that finding. Moreover, although we were of course concerned with the passage of time, we continued to monitor Sunrise's progress closely. Sunrise continually advised us of the progress it was making in obtaining the proper certification from the FAA for its Jetstream operations. We also confirmed with the FAA that Sunrise was making good progress toward full certification. If Sunrise had not made satisfactory progress in getting its new service in place, we would have been more likely to restart the selection process. [2] In confirming in Order 99-6-13 our decision to rely on Sunrise as the new EAS carrier for both communities, we were satisfied that Sunrise was fully prepared to provide reliable service to both cities. Alpine, in the meantime, has been compensated for its services to Moab and Ely at a subsidy rate to which it had agreed. We do not agree, therefore, that Alpine has suffered damages or was treated unfairly.

Alpine's objections to the quality of service being provided by Sunrise at Moab are directed to events that have occurred after our decision was made and after Sunrise's service was in place. As such they should rightly be addressed when Sunrise's contract comes up for renewal in two years. Nevertheless, we will address Alpine's objections here.

Alpine's allegation that Sunrise did not have a backup aircraft available is not supported by the facts. The Las Vegas FSDO office has advised us that, as of the date that Sunrise inaugurated service at Moab on June 15, 1999, the carrier had three fully operational Jetstream aircraft on its Operations Specifications -- one in service on the Moab-Salt Lake City route, one on the Page-Phoenix route, and a third on standby at Page, Sunrise Airlines' maintenance base. This aircraft was available for immediate use on either route, with flight times from Page of an hour or less to Salt Lake City, Moab or Phoenix. Sunrise did not begin its Ely essential air service until after delivery of its fourth aircraft, thus maintaining its backup ability.

We find that Sunrise has sufficient seat and backup capacity in its system to meet its essential air service route obligations. EAS carriers are generally required to operate according to the terms of their applicable agreement(s) with us, including use of specified aircraft type(s). Similarly, these carriers are expected as well to have sufficient backup capability in their systems to provide reliable service and to complete a high percentage of their EAS flights. Sunrise now has four pressurized British Aerospace Jetstream 31 aircraft on its operations specifications to serve three essential air service routes (one for Moab, one for Page, and one for Ely), a practical fleet arrangement that satisfies its relevant backup obligations. [3]

We are also aware that operating restrictions apply to some aircraft in some conditions, notably at high temperatures and/or at high altitude. The FAA has advised us that on the hottest days, Sunrise's Jetstreams may possibly be limited to a capacity of as low as nine seats. However, the conditions that impose such a limit arise only a relatively few times each year. It would be fairly rare for Sunrise to be restricted to a capacity of less than 10 seats which is more seats than Alpine provided at Moab and Ely with its 8-passenger seat Piper Cheyenne. On the hottest summer

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[2] It bears noting that we selected Redtail Aviation to serve Moab in 1998 with knowledge that it had not yet received full authorization to begin flight operations.

[3] Sunrise's fleet will soon be further expanded with the addition of two more aircraft.

days, only the midday flight -- when the temperature is the hottest -- would be affected, and thus only one of three scheduled round trips would possibly be limited to a lower seat capacity. Moreover, the historical traffic at Moab and at Ely averages less than three and two passengers per flight, respectively. Third, as noted, Sunrise has a second plane on-line allowing it to double the available seats on any given flight by flying an extra section. Under those circumstances we are fully satisfied with Sunrise's seat and backup capacity.

We also disagree with Alpine's implication that Sunrise's performance at Moab is not reliable. Since Sunrise began serving Moab and Ely we have monitored its performance and find its record to be very good. During its first four weeks of service at Moab, Sunrise completed 99 percent of its scheduled flights and more than 80 percent were on-time. [4] During its first four weeks of service at Ely, Sunrise completed 96 percent of its scheduled flights and more than 84 percent were on-time. We find Sunrise's on-time performance record to be fully acceptable.

Finally, Alpine also objects to our extension of the rate terms for Sunrise's service at Moab and Ely. From the inception of the EAS program our practice has been routinely to establish two-year rate terms in carrier selection cases. It is especially important that newly selected EAS carriers be given at least that duration as the minimum amount of time that is necessary to justify their investment and to make reasonable progress toward developing the market. Alpine has suggested no basis for us to deviate from that long-standing policy in this case.

For all of the aforementioned reasons, we deny Alpine's petition for reconsideration.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. The Department denies the petition for reconsideration of Alpine Aviation, Inc., to the extent that it objects to the Department's decision in Order 99-6-13, ordering paragraph 1, to select Sunrise Airlines, Inc., to provide essential air service at Moab, Utah, as the successor-in-interest to Redtail Aviation, and at Ely, Nevada, as the successor-in-interest to Scenic, Airlines, Inc.;

2. The Department further denies the petition for reconsideration of Alpine Aviation, Inc., to the extent that it objects to the Department's decision in Order 99-6-13, ordering paragraph 2, amending the effective dates of the annual subsidy rates established in Department Order 98-7-1, for Sunrise Airlines, Inc., (formerly Redtail Aviation, Inc., and Scenic Airlines, Inc.), for the provision of essential air service at Moab, Utah, and Ely, Nevada;

3. These dockets will remain open until further order of the Department; and

4. The Department will serve a copy of this order on the mayors and airport managers of Moab, Utah, and Ely, Nevada, the airport manager of Salt Lake City Airport, the Grand County Airport Board, the Grand County Council, the White Pine County Commission,

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[4] The Department's Air Travel Consumer Report defines "on-time" flights as those that arrive within 15 minutes of their scheduled time.

the Governors of Utah and Nevada, the Utah and Nevada Departments of Transportation, Sunrise Airlines, Alpine Aviation, SkyWest Airlines, and British Aerospace, Inc.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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[BB: I don't understand what that means. Are they saying that they limit the number of seats available for sale, regardless of temperature??]

Sunrise has inherited Redtail's EAS rate and service obligations at Moab because Express Air, a company related to Sunrise, purchased Redtail and requested that Sunrise serve Moab under Redtail's rate and terms.

Alpine also raises issues concerning the quality of service being provided by Sunrise at the two communities.

In the attached order, we address only the specific issues that Alpine raises in its petition for reconsideration and its subsequent answer to Sunrise's response. With respect to the issue Alpine raises concerning the number of seats provided by Sunrise, Alpine has only addressed this issue in connection with EAS at Moab. The seat issue hinges on the fact that while Sunrise is using a 19-seat aircraft, these markets are so thin that it has insured only 13 seats on all its aircraft, making only 13 seats available for sale. At Moab, Sunrise is to provide service with at least 8-seat aircraft, and so Sunrise's 13-seat aircraft far exceed the seat requirement, and the draft order so states.

At Ely, which Alpine has *not* raised in its filings, Sunrise uses the same aircraft insured for 13 seats; however, its predecessor, whose rates and terms Sunrise purchased, was selected to provide service with 19-seat aircraft. When Alpine filed its petition and subsequent answer addressed in the draft order, Sunrise had not yet commenced EAS at Ely, and Alpine thus had no way of knowing that the carrier would commence service with less than 19-seat aircraft. Therefore, Alpine may later file another petition for reconsideration objecting to that aspect of EAS provided by Sunrise at Ely. Were that to happen, Sunrise would probably argue that it will have a total of six 13-seat aircraft to serve three routes -- Moab, Ely and Page, Arizona -- allowing an entire backup aircraft for each EAS city, thereby giving it the ability to operate an extra section, effectively making 26 seats available, in excess of the required 19.

., and amending the two-year rate terms for Sunrise's service at those points, established for its predecessors, Redtail Aviation, Inc. and Scenic Airlines, Inc. (Scenic) in Order 98-7-1, issued July 1, 1998.

Alpine objects to the Department's authorizing a full two-year contract to Sunrise at both points, on the grounds, in Alpine's view, Sunrise and its predecessors' ineptitude caused major delays in their start up of service. It contends that, from July 1, 1998, through the time that the carrier transitions took place, Alpine maintained high quality air service. On that basis it argues that the Department should reconsider its decision and what**? Reselect Alpine?**

Department and the FAA's Las Vegas Flight Standards District Office were aware of the diligent efforts it was making while securing the necessary certifications to implement the new service.

As we have previously noted, in order for a new carrier to inaugurate essential air service at a new community -- in this case, at two new communities -- a considerable commitment is required in both financial and manpower resources. The carrier has leased six Jetstream aircraft, hired new aircrews and ground personnel, and set up and staffed five new stations just to serve the essential air service routes. (Ely's essential air service is provided over an Elko-Ely-Las Vegas routing, and Moab's essential air service is provided over a Moab-
Salt Lake City routing.) In addition, complete FAA certification is necessarily a very thorough and time-consuming experience. All of Redtail and Scenic's old manuals had to be rewritten. The newly hired flight personnel and maintenance crews had to be trained in the new aircraft, proving runs had to be conducted, and all the new stations had to pass FAA inspection. The carrier has approached this task, in our view, with diligence and persistence, not ineptitude.

When a new carrier is selected to provide essential air service at a community, replacing an incumbent, there is always a transition that takes place. We try to work with both carriers and the community to ensure that this transition is as transparent as possible.

In fact, we consider Sunrise's service at Moab and Ely to be quite good, especially during a service transition.

those objections are for events that occurred after our decision was issued in Order 99-6-13, and after Sunrise's service was in place.

We have been monitoring Sunrise's performance and based upon our review of its operations during its first four weeks of service at Moab, we find that its service has been quite good. Sunrise completed more than 99 percent of its scheduled flights of which more than 80 percent were completed on-time. The issues raised by Alpine regarding Sunrise's performance in its first weeks of service, in our view, do not represent evidence that there is a fundamental lack of qualification of the carrier or that any serious problems exist that call into question our selection decision.

The issues raised by Alpine regarding Sunrise's performance in its first weeks of service, in our view, do not represent evidence that there is a fundamental lack of qualification of the carrier or that any serious problems exist that call into question our selection decision. As with all air carriers, the Department will continually monitor Sunrise's fitness and its compliance with applicable terms of service. If a problem arises, we will pursue our standard practice and first attempt to work with the carrier to find a viable solution.

Finally, Alpine objects to the quality of service being provided by Sunrise at Moab. Absent some indication that Sunrise's service somehow calls into question its basic ability to meet its EAS obligations, Alpine's allegations are properly addressed when Sunrise's contract comes up for renewal in two years and the carrier's performance over the entire rate period can be evaluated.

Nevertheless, we will address Alpine's objections here. Review of the facts does not disclose any reason to doubt Sunrise's qualification or substantial compliance with the terms of service.

The non-pressurized, piston-powered aircraft was less costly to operate and represented an inferior level of service to the flying customers because it is slower and because the minimum enroute altitudes required between Moab and Salt Lake City frequently exceed 10,000 feet.

. and that it will provide as many seats as are necessary for the market utilizing the Jetstream aircraft.

Sunrise states that the 13-seat passenger limitation is a self-imposed insurance issue based on its evaluation of various factors relating to aircraft performance, demand for service, lease costs and reliability.

Therefore, it is unfair to look upon delays in its start up of service as an indication that it is unfit to provide essential air service.

In its letter protesting Order 99-6-13, Alpine objects to the Department's decisions both to select Sunrise to provide essential air service at Moab and Ely, and to extend the effective dates of the annual subsidy rates for Sunrise's service at those points, from September 30, 2000, to June 30, 2001. In addition, it is critical of Sunrise's operations at Moab, specifically its backup capability, since its inauguration of service on June 15.

. In addition, the Department confirms the selection of Sunrise Airlines, Inc. (Sunrise) to provide essential air service at Moab, Utah, and Ely, Nevada, and the previous extension of the two-year rate terms for Sunrise's subsidized service at those points.

. Consistent with EAS program practice, should Sunrise's performance ever become unreliable, we would intend to contact the carrier to ascertain the problem and work with it to effect necessary improvements

We find that Sunrise has sufficient seat and backup capacity in its system to meet its essential air service route obligations. The carrier had four pressurized British Aerospace Jetstream 31 aircraft on its operations specifications -- one in service on the Moab-Salt Lake City route, one on the Page-Phoenix route, one on the Ely-Elko route, and a fourth on standby at Page, Sunrise Airlines' maintenance base.[5] With those four aircraft to serve three essential air service routes, Sunrise has adequate backup capability through a practical fleet arrangement that satisfies the terms of the relevant EAS orders. Our decision in Order 98-7-1 to select Redtail to serve Moab instead of Alpine was not based on Redtail's back-up capability. Redtail's agreed-to subsidy rate included a back-up aircraft; however, all EAS carriers are expected to have sufficient back-up capability in their system to provide reliable service at a high flight completion percentage. We find that Sunrise had such back-up capability -- even on the hottest summer days when its Jetstream aircraft

[5] Sunrise added the fourth Jetstream aircraft to its Operations Specifications on July 13, and expects to add two more in the next few weeks.

accommodate five passengers at most, Sunrise has a second plane on-line allowing it to increase the seats on any given flight to ten seats by flying an extra section.

In administering the Essential Air Service Program, the Department provides strong incentives for air carriers to maximize passenger ridership and revenue. Essential air service carrier subsidy rates are set for two-year periods. Alpine had about 20 years to develop the Moab-Salt Lake City market, and it is only fair for the newly selected carrier to have two full years to increase ridership in these markets. We extended the two-year rate terms for Sunrise Airlines' to provide essential air service at Moab and Ely since it took several months longer than expected for Sunrise to begin service at the communities. Our decision to give Sunrise a full two-year opportunity to make these markets work is fully consistent with our program policy to provide all essential air service carriers with the much-needed funding certainty required for them to make their own financial commitments. In the case of a new carrier transition at a community, it is also imperative that the incoming carrier be given sufficient time to develop the market.

Quarters 9806 through 9903

Moab

Total passengers: 5,028

Alpine provided 18 round trips a week.

18 x 2 x 52 = 1,872 flights annually (at 100 percent completion)

5,028/1,872 is an average of 2.7 passengers a flight