

Served: July 10, 2002



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

Issued by the Department of Transportation
on the 10th day of July, 2002

Notice of

**SUNRISE AIRLINES, INC.
d/b/a FLAIR AIRLINES**

Docket OST-2001-8695

of intent to resume operations under 14 CFR 204.7

ORDER VACATING SHOW CAUSE ORDER

Summary

By this order, we vacate Order 2002-2-5 which tentatively found Sunrise Airlines, Inc. d/b/a FLAIR Airlines (Sunrise) fit, willing, and able to resume operations as a commuter air carrier.

Background

By Order 91-12-45, issued December 30, 1991, the Department found Sunrise fit to engage in commuter air carrier services. It operated under its commuter authority until November 3, 2000, when it ceased those operations and filed for protection under Chapter 11 of the United States Bankruptcy Code. As a result of the cessation of its commuter operations, under section 204.7 of our rules (14 CFR 204.7), the carrier's commuter authority was automatically suspended. On January 16, 2001, Sunrise filed a notice under section 204.7 requesting approval to resume commuter operations.

By Order 2002-2-5, issued February 8, 2002, we tentatively found Sunrise fit to resume scheduled passenger operations as a commuter, subject to conditions. In that order, we specifically noted concerns we had about the carrier's compliance posture. As a result, we tentatively decided to impose a one-year limitation on the carrier's commuter authority. Shortly after issuance of our show cause order, we received information unknown to us earlier that indicated that, in May 2001, the Federal Aviation Administration (FAA) had issued a Notice of Proposed Civil Penalty (NPCP) to Plane-1 Leasing Co. (Plane-1) alleging that Plane-1 violated the Federal Aviation Regulations by operating as an air carrier without holding the required FAA operating authority to do so.¹ These allegations, if true, are serious. Plane-1 is owned by Mr. Wallace Hilliard, who, at the time the show cause order was issued, was also Sunrise's Chairman

¹ The NPCP sought an assessed civil penalty of \$90,000.

and principal shareholder and the moving force behind Sunrise's plans to resume operations.² Thus, this pending enforcement action involving another of Mr. Hilliard's companies was relevant to our assessment of Sunrise's fitness. On February 13, we orally requested that Sunrise provide us an explanation about the Plane-1 enforcement case, including its status, and Plane-1's attempts to resolve the matter.

On May 30, Sunrise filed Supplement 13 to its application in Docket OST-2001-8695. Sunrise advises us that the issues to be resolved in the Plane-1 enforcement proceeding include the extent to which flights identified by the FAA in the NPCP (1) were actually operated under the Part 135 authority of another company, and (2) were actually properly operated under Part 91 of the Federal Aviation Regulations.³ The company states that Plane-1's discussions with the FAA on this proposed action are currently "ongoing."

Supplement 13 also indicates that, since the issuance of Order 2002-2-5, Sunrise's parent, Florida Air Holdings, Inc. (FAH), purchased another company, Discover Air, Inc.⁴ This purchase resulted in significant changes in the ownership and management of FAH and Sunrise, including the resignation of the former Chief Executive Officer of FAH and Sunrise, Eugene Gillespie.⁵ The supplement also indicated that Sunrise would be providing us with an updated accounting of pre-operating expenses and other information relative to Sunrise's fitness.⁶ We have not yet received this outstanding material, nor do we currently have a date by which we might expect to do so.

Decision

It is clear to us that the information on which we based our earlier tentative fitness determination for Sunrise has changed materially since that order was issued. The company has made changes in its ownership and management structure and may now be contemplating further changes in its proposed operations. We also received new and potentially negative compliance-related information. Moreover, although it has now been five months since Order 2002-2-5 was issued, the record in this proceeding remains incomplete. Under these circumstances, we have decided to vacate our initial show cause order. If and when Sunrise completes the record and we are able

² While we understand that Mr. Hilliard's ownership interest in Sunrise has decreased since February, it appears that he still retains a substantial (10 percent or more) interest in the company and remains its Chairman.

³ It is not clear from Supplement 13 the extent to which Plane-1 agrees or disagrees with the FAA's allegations or what arguments it has made in its own defense.

⁴ Discover Air is a Part 135 air taxi operator in Florida.

⁵ An important factor in our tentatively finding the carrier fit in Order 2002-2-5 was that it had hired Mr. Gillespie to oversee the company's operations. Since February, FAH's Board of Directors has been reorganized. While no successor CEO for the carrier has yet been named, new individuals hold key management positions with FAH. These individuals are also slated to play a significant role in the oversight and direction of Sunrise's operations. Sunrise advises that its current key FAA technical personnel will remain with the carrier.

⁶ Since then, Sunrise informally advised us that it is considering making some changes in its operating plans. We informally asked the carrier to provide us with additional fitness information, including a revised first-year forecast, as necessary, and financial statements for the carrier and related companies.

to conclude that it continues to be fit to resume operations, we would issue another show cause order.

We also point out that it has now been almost a year and a half since Sunrise initially filed its application to resume operations. We appreciate that the carrier has recently undergone changes in its organizational structure, and are willing to give it some additional time to submit all required information. We cannot, however, provide it an open-ended period of time to do so. Therefore, Sunrise should file any remaining outstanding material needed to complete its application within 30 days of the issue date of this order. If it does not do so, we plan to dismiss its application to resume operations and revoke its commuter authority for reason of dormancy at that time.⁷

ACCORDINGLY:

1. We vacate Order to Show Cause 2002-2-5, issued February 8, 2002.
2. We will serve a copy of this order on the persons listed in Attachment A.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*

⁷ In this regard, section 204.7 of our rules provides that, if a carrier ceases the commuter operations for which it was found fit, it has one year from the date of cessation to resume those operations, or its commuter authority can be revoked for dormancy. Sunrise ceased operations on November 3, 2000; thus, its one-year dormancy period expired on November 3, 2001.

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