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Order 2002-2-5

Served: February 8, 2002

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

Issued by the Department of Transportation  
on the 8th day of February, 2002

Notice of

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

**Docket OST-2001-8695-36**

of intent to resume operations under 14 CFR 204.7

**ORDER TO SHOW CAUSE**

**Summary**

By this order, we tentatively find Sunrise Airlines, Inc. d/b/a FLAIR Airlines (Sunrise) fit, willing, and able to resume scheduled passenger air transportation operations as a commuter air carrier, subject to conditions.

**Background**

By Order 91-12-45, issued December 30, 1991, the Department found Sunrise fit to engage in commuter air carrier services.<sup>1</sup> Sunrise operated under its commuter authority until November 3, 2000, when it ceased its scheduled passenger operations and sought protection under Chapter 11 of the United States Bankruptcy Code.

By letter dated November 6, 2000, we reminded Sunrise of the requirements of section 204.7 of our rules which provide that, once a commuter carrier ceases its scheduled passenger operations, its commuter authority is automatically suspended; that it may not recommence scheduled passenger operations nor advertise such services until the Department has redetermined that it is fit to do so; and that, if it did not have its fitness redetermined and resume operations by November 3, 2001, its commuter authority would be revoked for reason of dormancy.<sup>2</sup>

<sup>1</sup> The company's authority was made effective on April 6, 1992. At the time, its corporate name was "Aviation Services West, Inc." In 1993, it changed its name to "Scenic Airlines, Inc." In 1998, it changed its name to "SunAir Express, Inc." and, in 1999, changed to its present name of "Sunrise Airlines, Inc."

<sup>2</sup> The suspension of Sunrise's commuter authority did not affect its ability to conduct other operations under its Part 298 air taxi authority so long as it continued to maintain the liability insurance coverage required for such operations. While the carrier continued to provide limited on-demand services initially, it ultimately ceased all air transportation operations.

As part of its plan of reorganization, Sunrise was sold to Mr. Wallace Hilliard.<sup>3</sup> On January 16, 2001, the carrier filed in Docket OST-2001-8695 a notice of its intent to resume its scheduled passenger services.<sup>4</sup> If authorized to resume its commuter services, the carrier intends to provide services to points within Florida using 19-seat Jetstream 31 aircraft. Sunrise plans to offer these services using the trade name, "FLAIR Airlines."

No objections to Sunrise's application have been filed, and no special issues requiring an oral evidentiary hearing have come to our attention. Under these circumstances, we propose to decide the issue of Sunrise's fitness to resume scheduled passenger operations on the basis of the written record. As discussed below, we tentatively conclude that Sunrise is fit to resume its commuter air carrier operations, subject to conditions. We will, however, give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

### FITNESS

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 a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to financial resources sufficient to commence operations 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 find that the applicant is a U.S. citizen.

#### Managerial Competence

In addition to being the carrier's majority shareholder, Wallace Hilliard is the Chairman of its eight-person Board of Directors.<sup>5</sup> Mr. Hilliard has spent most of his career working in the insurance industry. From 1970 through 1988, he was President of the Wisconsin Employers Insurance Company.<sup>6</sup> From 1988 through 1996, he was President and part-owner of American Medical Security, another health insurance company located in Wisconsin. Since then, Mr.

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<sup>3</sup> Although Mr. Hilliard presently holds all of the carrier's stock, he intends to transfer that stock to a holding company, Florida Air Holdings, Inc. (FAH). At present, Mr. Hilliard, who is a U.S. citizen, holds approximately 67.5 percent of FAH's stock. The remaining stock is held by 24 additional shareholders, all of whom the carrier advises are U.S. citizens.

<sup>4</sup> The carrier has since filed a number of supplements to its initial filing, the most recent of which was filed on December 5. Also, included with Sunrise's notice to resume operations was a request for a waiver of the 45-day notice requirement of section 204.7. Since that time period has long since elapsed, we will dismiss the carrier's waiver request as moot.

<sup>5</sup> The following individuals also hold Director positions with the carrier: Eugene Gillespie, who is also Sunrise's CEO, Ronald Weyers, James Halron, Bernard Dahlin, William Malooly, Alfred Fleck, and Jan Visser. Although, with the exception of Mr. Gillespie, none of these individuals have direct aviation industry experience, they all bring current and/or past business experience to the company. All of these individuals also hold, or will hold, a minor ownership interest in the carrier.

<sup>6</sup> For a portion of this time (1970-1981), Mr. Hilliard was the 50 percent shareholder in this company.

Hilliard has been President of his own aviation equipment leasing company, Plane-1 Leasing Company.

Eugene Gillespie, who is an attorney, serves as the company's Chief Executive Officer. From 1988 until the present, Mr. Gillespie has had his own company, Gillespie & Associates, Inc, a management and turnaround consulting company. During this time, he served in long-term and short-term senior level management positions in various industries, including as Interim CEO and strategic consultant to Kiwi International Airlines. Prior to 1988, he was CEO of Stanley H. Kaplan Education Centers (1986-1988) and Senior Vice President of Newsweek International (1985-1986). From 1971 to 1984, he was employed in various positions with Dun & Bradstreet Corporation.<sup>7</sup>

Lawrence Sullivan has been with Sunrise since December 2000 and serves as the carrier's President/General Manager. From 1974 to 1997, Mr. Sullivan was President and General Manager of Renown Aviation. Between February 1999 and June 2000, he was General Manager of Trans Air Link. When not employed by Renown or Trans Air Link, Mr. Sullivan was self-employed providing maintenance consulting services. Mr. Sullivan holds Commercial Pilot and Airframe and Powerplant Mechanic licenses issued by the Federal Aviation Administration (FAA).

Stanley Brown is Sunrise's Vice President and Chief Financial Officer. Mr. Brown has significant airline experience, most recently serving as Vice-President-Marketing and Business Development for Kiwi International Airlines (1996-1999). He also was employed in various marketing/sales positions with Eastern Airlines between 1964 and 1991.<sup>8</sup> From 1991 to 1995, he served as Vice President for Claims Recovery for Eastern's bankruptcy estate. From 1999 to March 2001, he was Vice President-Sales (Eastern Region) for Gotham Media Group. When not specifically employed by Eastern or another company, Mr. Brown has been self-employed as an aviation consultant.

Sunrise's Director of Operations is Craig Sanderson. Mr. Sanderson has served as a pilot and in other positions with the carrier since 1982, including Vice President of Fixed Base and Air Cargo Operations (1991-1997), Director of Flight Dispatch (1997), and Chief Pilot for Part 135 operations (1997-1999). He holds FAA-issued Airline Transport Pilot and Flight Instructor licenses.

The carrier's Chief Pilot is John Farren. Mr. Farren joined Sunrise in January 1999 and has served as Chief Pilot since July 1999. Prior to that (1989-1998), he was a captain for WestAir.

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<sup>7</sup> These positions include: Senior Vice President of Marketing, Business Information Division (1980-1984), President and Director General, Dun & Bradstreet-France (1976-1980), Vice President & General Counsel (1973-1976), and Assistant General Counsel for Reuben H. Donnelley Corporation (a subsidiary of Dun & Bradstreet) (1971-1973).

<sup>8</sup> These positions included City Manager at Reno, Nevada (1979-1983), Manager, Passenger Sales at Tampa, Florida (1983-1984), Regional Sales Director for Continental Airlines and Eastern (1986-1988), Vice President-Passenger Sales for both Continental and Eastern (1988-1989), and Vice President, Passenger Sales (1989-1991).

Mr. Farren holds an FAA-issued Airline Transport Pilot license and has over 10,200 total flight hours, over 6,500 of which were as pilot-in-command.

Larry Martin II has over 20 years of aviation mechanic experience and has served as Sunrise's Director of Maintenance since March 1999. Other management positions he has held include Director of Maintenance, Paradise Airlines (1993-1999) and Director of Maintenance-Technical Services, States West Airlines (1986-1993). Mr. Martin holds an FAA-issued Airframe and Powerplant Mechanic license.

Bret Richards is Sunrise's Chief Inspector. His previous employment includes aircraft mechanic for Steven's Aviation (2000-2001); Lead Aircraft Mechanic/Maintenance Inspector for Trans Air Link (1999-2000); and Aircraft Mechanic/Maintenance Inspector/Airline Parts Manager for Renown Aviation (1994-1999). Mr. Richards holds an FAA-issued Airframe and Powerplant Mechanic license.

Rick Olson, Sunrise's Director of Safety, has been with Sunrise since 1999. Prior to assuming his current position earlier this year, Mr. Olson had been a pilot/check airman with the carrier. From 1986 to 1999, Mr. Olson was a pilot as well as an attorney in the Arizona Attorney General's office. From 1983 to 1986, he was an aviation attorney at the law firm of Beer and Tone, P.C. Mr. Olson holds an FAA-issued Airline Transport Pilot license.

Based on the background and experience of the above individuals, coupled with the fact that the FAA must also review the qualifications of certain of the company's key technical personnel,<sup>9</sup> we tentatively find that Sunrise's management team is qualified to manage its proposed scheduled passenger operations.

We note, however, that while Sunrise plans to conduct all of its operations and daily maintenance activities in Florida, many of its management personnel will be located at offices in Las Vegas.<sup>10</sup> Specifically, while its Chief Executive Officer and President/General Manager will be at its headquarters in Florida, with the exception of the Chief Pilot, all of its key FAA-required technical managers will remain in Las Vegas. While carriers sometimes establish bases of operations distant from their key oversight personnel, we have been concerned as to whether such an arrangement will provide the necessary level of managerial oversight for Sunrise, especially in its initial period of resumed operations.<sup>11</sup> To address our concerns, Sunrise advises that it has hired a Base Maintenance Manager and other personnel to serve on-site and that it

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<sup>9</sup> We also note that the FAA evaluates the carrier's Directors of Operations, Maintenance and Safety, Chief Pilot, and Chief Inspector with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations (FARs). 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. The FAA has advised us that it has reviewed the qualifications of Messrs. Sanderson, Farren, Martin, Richards, and Olsen and found them to be qualified for their respective positions.

<sup>10</sup> Sunrise expects that major maintenance activities will be performed in Las Vegas, at least initially.

<sup>11</sup> While Sunrise has held commuter authority for some time, we note that it has undergone a number of changes over the past year that make it similar to a new airline. In this regard, it ceased operations, filed and emerged from bankruptcy, obtained new ownership and almost all new management, and plans to conduct operations in a geographic area different from its previous operations.

will be implementing other internal systems that will allow its Las Vegas-based managers to fulfill their oversight responsibilities.<sup>12</sup> Most importantly, we have discussed our concerns with the FAA and been advised by that agency that it is aware of Sunrise's plans with regard to its technical oversight and is prepared to authorize the carrier to resume operations under that structure.

### **Operating Plan and Financial Position**

When it ceased operations in November 2000, Sunrise was the essential air service provider at Page, Arizona, Ely, Nevada, and Vernal and Moab, Utah. It performed these services with leased 19-seat Jetstream-31 aircraft.<sup>13</sup> If authorized to resume operations, the carrier will not be reinstating its previous services. Rather, as noted earlier, it intends to conduct scheduled passenger flights between its main base of operations in Sarasota to various other points in Florida. The company plans to begin with two daily round trips between Sarasota and Miami. When at full service, the carrier anticipates conducting as many as five daily round trips in this market, with additional flights in other markets.<sup>14</sup> Mr. Hilliard has purchased six 19-seat Jetstream-31 aircraft for the carrier's initial services.

Sunrise's October 31, 2001, balance sheet indicates that, at that date, the carrier had \$12,725 in cash, negative working capital of \$177,564 (for a current assets to current liabilities ratio of 0.48 to 1), negative retained earnings of approximately \$1 million, and positive stockholders' equity of \$458,341. To support its resumption of operations, Sunrise has been relying on funds provided by Mr. Hilliard and other investors in FAH. Thus far, FAH has received a total of \$6.73 million in funds and funding commitments. This includes approximately \$880,000 in loans,<sup>15</sup> \$2.65 million in equity contributions received from Mr. Hilliard and other shareholders, as well as a further pledge of \$3.2 million from Mr. Hilliard.<sup>16</sup> The company is continuing to solicit investors in the company<sup>17</sup> and has identified seven additional individuals who have stated their intention to provide the company with a total of approximately \$2.4 million in additional equity. Coupled with the \$6.73 million already raised, these funds will provide the company with approximately \$9.1 million.

Sunrise has provided a detailed listing of the costs it expects to incur prior to resumption of commuter service as well as a forecast profit and loss statement for the first year of resumed operations, based on its current operating plans. Specifically, the carrier forecasts that it will

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<sup>12</sup> In addition, Sunrise expects that its Las Vegas-based personnel will travel to Florida on a regular basis in connection with their duties.

<sup>13</sup> The company also had a number of smaller aircraft that it used to provide on-demand charter services.

<sup>14</sup> These include the following routings: Sarasota-Naples-Miami, Ft. Myers-Sarasota-Tallahassee, Sarasota-Naples-Key West, and Sarasota-Orlando-Jacksonville. In all, the company estimates it will operate as many as 12,682 block hours during its first year of resumed scheduled passenger services.

<sup>15</sup> These loans may be converted to FAH stock at a later date.

<sup>16</sup> The carrier has provided bank statements showing that these funds have been provided or, in the case of Mr. Hilliard's \$3.2 million pledge, a personal financial statement for him that shows he has sufficient net worth to fulfill his commitment. In all, these funds total approximately 73 percent of the funding needed to meet our financial test.

<sup>17</sup> To date, 21,855 of the company's authorized 30,000 shares of stock have been subscribed.

incur approximately \$5.3 million in pre-operating expenses,<sup>18</sup> and approximately \$12.3 million in first-year expenses. We have reviewed these forecasts and find them to be reasonable for the operations proposed. Thus, we estimate that Sunrise will need approximately \$8.6 million to meet our financial fitness criteria.<sup>19</sup>

On the basis of the above, we tentatively conclude that Sunrise has a funding plan that, if fully realized, will provide the company with access to sufficient financial resources to recommence its scheduled passenger operations without posing undue risk to consumers or their funds.<sup>20</sup>

### **Compliance Disposition**

Sunrise states that there are no DOT or FAA investigations, enforcement actions, or formal complaints pending against it, persons holding a substantial interest in it, or its key personnel. Nor have there been any charges of unfair or anticompetitive business practices, or of fraud, felony or antitrust violations brought against any of these parties within the past 10 years.<sup>21</sup> In addition, the FAA advises us that it has been working with Sunrise in its efforts to resume operations and that that process is proceeding satisfactorily.

Notwithstanding the above, we have been troubled by the manner in which the carrier prosecuted its application, particularly in its initial submissions filed with the Department. For instance, we understood early on that Dekkers Aviation Group (DAG), a company owned by a non-U.S. citizen, Rudi Dekkers, would be its aircraft lessor, but would have no other role with

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<sup>18</sup> In addition, as is our practice, we consider the carrier's negative working capital—in this case, \$177,564—to be a pre-operating expense that must be covered. This brings the carrier's total forecast pre-operating expenses to approximately \$5.5 million.

<sup>19</sup> To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are reasonably projected to be incurred during three months of operations. In calculating available resources, projected revenues cannot be used. In this case, the \$8.6 million figure is the sum of the \$5.5 million in forecast pre-expenses plus approximately \$3.1 million, which is one-quarter of the applicant's \$12.3 million first-year forecast expenses. We note, however, that Mr. Hilliard has obtained a one-year bank note for \$3.6 million in connection with the purchase of its six Jetstream aircraft. Under its terms, the loan is due and payable in December 2001. Sunrise has, however, provided a letter from its bank stating that the bank intends to convert the loan to a long-term obligation provided that the company is able to resume its air carrier operations. We have, therefore, not included this \$3.6 million payment in determining the amount needed to meet our fitness test. If Sunrise is found fit to resume operations, prior to giving it effective authority, we will require it to demonstrate either that the loan has been paid or that it has actually been re-negotiated as a long-term obligation as currently envisioned. Absent either of these actions, we will recalculate the amount needed to meet our fitness test to account for this \$3.6 million obligation.

<sup>20</sup> As is our practice, prior to making Sunrise's authority effective, we will require it to provide updated information demonstrating that it continues to have sufficient financial resources available to it.

<sup>21</sup> Sunrise advises that an individual has filed a lawsuit against several parties, including FAH (which is to become Sunrise's parent) regarding allegations that the plaintiff is owed \$5,000 in pay in connection with scheduled passenger services conducted in Florida in early 2001 by another commuter air carrier, Harbor Air. Sunrise advises that the trial in this case was concluded on December 5, 2001, and the parties are now awaiting a decision from the presiding judge.

Sunrise.<sup>22</sup> We soon learned, however, that Mr. Dekkers, a partner with Mr. Hilliard in other businesses, was, in fact, at that time a principal player in Sunrise's proposed reinstatement of service and he desired to continue playing a key role with the carrier once it had resumed its commuter flights. This would have included a substantial ownership interest and senior management role with the carrier. Since Mr. Dekkers is not a U.S. citizen, his involvement with the carrier caused concerns as to whether Sunrise would meet the requirement in the Statute that U.S. air carriers be substantially owned and controlled by U.S. citizens.

Sunrise also initially stated that it intended to resume operations by providing services to its prior points--Page, Vernal, Ely, and Moab--and that it would "research additional EAS and non-EAS routes." It soon became apparent, however, that Sunrise's primary operating plans included services to and from points within Florida.<sup>23</sup> This lack of information initially hindered the Department's ability to make a fully informed assessment of the carrier's proposed operations and the level of financial support needed to support those plans.

Although the carrier subsequently provided us with more complete information both on its operating plans and Mr. Dekkers' involvement with Sunrise, its initial failure to fully and accurately disclose significant information material to its fitness is a matter of serious concern to us because it raises doubts as to the carrier's future compliance disposition. However, because the carrier has since corrected the record of relevant fitness information, has hired new senior executive officers, has removed Mr. Dekkers from any involvement with the carrier,<sup>24</sup> and in other respects appears to have a positive compliance disposition, we are willing to allow the company to resume operations on a limited basis. Specifically, as discussed below under "Effective Commuter Conditions and Limitations," we have tentatively decided to limit the company's commuter authority to a period of one year, during which time we will closely monitor its compliance posture. At the conclusion of that period, and upon receipt from Sunrise of an application for renewal of its authority along with updated fitness information, we will re-evaluate the record in this proceeding. If that evaluation demonstrates a satisfactory record of compliance, and if Sunrise continues to meet our other fitness standards, we will grant the carrier either extended or permanent authority.

### CITIZENSHIP

49 U.S.C. 41102 requires that certificates 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 specifies that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have

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<sup>22</sup> Affidavits provided by Mr. Dekkers and Mr. Hilliard affirmed that Mr. Dekkers and DAG were intended to have no involvement in Sunrise beyond that of an aircraft lessor.

<sup>23</sup> We note that Mr. Hilliard and Mr. Dekkers entered into an arrangement with another commuter airline, Harbor Air, under which Harbor would provide scheduled services in Florida under the "Florida Air" name until such time as Sunrise was able to offer such services on its own. Harbor provided commuter flights in Florida markets for a couple of months in early 2001.

<sup>24</sup> The carrier has provided an affidavit stating that neither Mr. Dekkers nor any company owned or controlled by him will have any ownership interest in or relationship with Sunrise without the prior written approval of the Department.

also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

At the present time, Sunrise is owned solely by Wallace Hilliard, a U.S. citizen. As noted earlier, Mr. Hilliard intends for Sunrise to become a wholly owned subsidiary of FAH, a Florida corporation. Mr. Hilliard currently holds approximately 67 percent of FAH's stock. Including Mr. Hilliard, there are presently 25 shareholders in FAH, all of whom the carrier states are U.S. citizens. In addition, all of its directors and key management and technical personnel are U.S. citizens. Finally, we have found nothing in the record that would lead us to conclude that Sunrise is not now under the control of U.S. citizens.<sup>25</sup>

In view of the foregoing, we tentatively conclude that Sunrise is a U.S. citizen and is fit, willing, and able to provide scheduled passenger operations as a commuter.

### **REGISTRATION OF TRADE NAME**

Sunrise requests that the Department register the trade name, "FLAIR Airlines," for use in its scheduled passenger services.<sup>26</sup>

Part 215 of the Department's regulations provides that any carrier wishing to use an alternative trade name must first register that name with the Department. The rule further states that the Department may register such name after the carrier gives notification to similarly named carriers of the proposed use of the name. In this case, there are no other airlines with names similar to "FLAIR Airlines." Under the circumstances, then, if the carrier is found fit to resume commuter operations, we will register "FLAIR Airlines" as a trade name to be used by Sunrise in its air transportation operations.

### **REQUEST FOR CONFIDENTIAL TREATMENT**

On April 9, May 15, June 27, July 20, August 10, November 13, November 19, and December 12, 2001, Sunrise filed Motions for Confidential Treatment of much of the information submitted in connection with its application in this docket. On December 19, the carrier amended its previous requests for confidential treatment. In doing so, the carrier has narrowed the amount of information for which it continues to seek such treatment and, at the same time, filed in the public section of the docket the information for which it no longer seeks confidential treatment. Thus, at the present time, Sunrise requests confidential treatment for the following:

- a. Facility Lease Agreement attached to Exhibit H of Supplement 3
- b. Exhibit E, p. 5 to Supplement 4 (Detailed Revenue/Traffic Forecast)
- c. Exhibit H, p. 2 to Supplement 5 (Florida Air Holdings, Inc., balance sheet)

<sup>25</sup> Although Rudi Dekkers, a non-U.S. citizen, was instrumental in the purchase and the early efforts of Sunrise to resume its commuter air carrier operations, as noted earlier, Mr. Dekkers is no longer involved with the carrier.

<sup>26</sup> On November 19, 2001, Sunrise requested our approval to register the trade name "Florida Air" for use in its operations. However, in response to an objection raised by another commuter air carrier applicant, Air Florida Express, Inc. d/b/a Air Florida, Sunrise amended its request, proposing to use the trade name of "FLAIR Airlines" instead. Air Florida subsequently withdrew its objection.

- d. The following material contained in Supplement 6:
  - i. Details relative to expense/traffic information in Exhibit A, including Tables I and II
  - ii. Information on minor shareholders contained in Exhibit B
  - iii. Exhibit C (Personal financial statement for Wallace Hilliard)
- e. The following material contained in Supplement 7:
  - i. Financial Statements for Dekkers Aviation Group, Inc. in Exhibit A
  - ii. Exhibit B, pp. 1-3 (Supplemental information on Florida Air Holdings, Inc., balance sheet)
  - iii. Financial documentation and minority shareholder information contained in Exhibit C
  - iv. Exhibit E, Table II (Detailed traffic forecast information)
- f. The following material contained in Supplement 8:
  - i. Exhibit A, pp. 2 and 3 (Florida Air Holdings, Inc., balance sheet)
  - ii. Exhibit C, p. 1 (Minority shareholder information)
  - iii. Exhibit D (Verification of financial resources)
  - iv. Exhibit G (Specific shareholdings of Board Members Alfred Fleck and Jan Visser)
  - v. Exhibit I (Minority shareholders in Executive Flight Support)
- g. Exhibit C, pp. 2-5 contained in Supplement 9 (Minority shareholder information)

In support of its request for confidential treatment of the above documents, Sunrise states that these documents are financial and/or confidential information that fall within the parameters of Exemption 4 to the Freedom of Information Act.

Rule 12 instructs us to evaluate requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (5 U.S.C. 552). Information may be withheld from disclosure under 5 U.S.C. 552(b)(4) if it is (1) commercial or financial, (2) obtained from a person outside of government, and (3) privileged or confidential.<sup>27</sup>

There is no question that the information for which Sunrise seeks confidential treatment is financial or commercial in nature and that it was obtained from a person outside the government. The remaining question is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained."<sup>28</sup> Further, to be privileged or confidential, the information must not be of the type that is usually released to the public.<sup>29</sup>

Upon review, we find that information contained in the above documents is of a level of detail beyond that typically required by the Department or provided by carrier-applicants in fitness cases and/or is similar to information for which we have provided confidential treatment in the past when asked to do so. Thus, we will grant Sunrise's request for confidential treatment of the above material.

<sup>27</sup> See Gulf and Western Industries, Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1979).

<sup>28</sup> See National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

<sup>29</sup> See Gulf and Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979).

## **OBJECTIONS**

We will give interested persons 14 calendar 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 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses.<sup>30</sup> We will not entertain general, vague, or unsupported objections. If no substantial objections are filed, we will issue an order that will make final our tentative findings and conclusions authorizing Sunrise to resume its commuter air carrier operations.

## **EFFECTIVE COMMUTER AIR CARRIER CONDITIONS AND LIMITATIONS**

If Sunrise is found fit to resume scheduled passenger operations, we will issue to it a Commuter Air Carrier Authorization.<sup>31</sup> That authorization will not become effective until the carrier has fulfilled all requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to the authorization.<sup>32</sup> This includes evidence that the carrier has obtained (1) approval from the FAA to resume commuter services, (2) liability insurance coverage meeting the requirements of section 205.5(b) of our rules for all of its aircraft, and (3) all of the financial resources needed to meet our financial fitness test, as well as a statement demonstrating that Sunrise has undergone no other changes in its ownership, management, operations, finances, or compliance posture that would alter our finding of fitness for the company.

Due to our concerns about the carrier's compliance posture as discussed earlier, we are not prepared to grant it permanent authority at this time, and have decided to limit the carrier's commuter authority to a period of one year. During this period, we will have the opportunity to monitor the company's overall compliance disposition. Should Sunrise choose to renew its commuter authority, it will be required to submit updated fitness data with its renewal application. We will then review all of this material prior to making a decision on whether any additional authority should be granted.<sup>33</sup>

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<sup>30</sup> 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* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

<sup>31</sup> At the time that Sunrise was initially found fit for scheduled passenger operations in 1991, it was not the Department's practice to issue separate Commuter Air Carrier Authorizations to commuter carriers. Since we now routinely issue these authorizations to such carriers, we will take this opportunity to issue Sunrise a Commuter Air Carrier Authorization.

<sup>32</sup> We also reserve the right to stay the effectiveness of Sunrise's authority if any new information becomes available to us that warrants such action.

<sup>33</sup> Sunrise will be directed to file any renewal request with the Department at least 45 days prior to the one-year expiration date and to provide us with a statement of any changes in its ownership, key personnel, compliance history, operating plans, or financial posture which it may have undergone between the issuance of its temporary authority and the filing of its application for renewed authority.

Furthermore, we remind Sunrise of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a company is found fit initially, it must remain fit in order to hold its authority. Thus, should Sunrise propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>34</sup> The compliance of the carrier with this requirement is essential if we are to carry out our responsibilities under 49 U.S.C. 41110(e).<sup>35</sup>

**ACCORDINGLY:**

1. We direct all interested persons to show cause why we should not issue an order finding that Sunrise Airlines, Inc. d/b/a FLAIR Airlines is fit, willing, and able to resume scheduled passenger air transportation operations as a commuter air carrier for a period of one year.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions set forth herein to file them with the Department of Transportation Dockets, 400 7<sup>th</sup> Street, S.W., Washington, D.C. 20590, in Docket OST-2001-8695, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.<sup>36</sup>
4. If no timely and properly supported objections are filed, we will consider all further procedural steps to be waived and will enter an order making final our tentative findings and conclusions, and issue to Sunrise Airlines, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.

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<sup>34</sup> Sunrise may contact our 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 air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file this updated information, or if the information fails to demonstrate that the 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 carrier's commuter authority.

<sup>35</sup> We also remind Sunrise 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 the 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>36</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

5. To the extent discussed herein, we grant the amended Motion for Confidential Treatment filed by Sunrise Airlines, Inc., on December 19, 2001.
6. We dismiss, as moot, the request of Sunrise Airlines, Inc., for a waiver of the 45-day notice requirement of section 204.7.
7. We will serve a copy of this order on the persons listed in Attachment A.
8. We will publish a summary of this order in the Federal Register.

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>*



Specimen  
Terms, Conditions, and Limitations

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

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 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.*
- (5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all FAA requirements concerning security.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (7) *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.*
- (8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*
- (9) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*
- (a) *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.*
- (b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*
- (10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is 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, this 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.*
12. *The authority contained herein shall expire [one year after the effective date].*