

Order: 2014-1-19
Served: January 30, 2014

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



Issued by the Department of Transportation
on the 30th of January, 2014

Essential Air Service at

**DEVILS LAKE, NORTH DAKOTA
JAMESTOWN, NORTH DAKOTA**

Under 49 U.S.C. 41731 *et seq.*

DOCKET DOT-OST-1997-2785

ORDER SELECTING CARRIER

Summary

By this Order, the Department is selecting SkyWest Airlines (SkyWest) to provide Essential Air Service (EAS) at Devils Lake, North Dakota, for \$3,224,917 annually, and Jamestown, North Dakota, for \$3,126,564 annually, with service set at eleven (11) nonstop or one-stop round trips per week at each community to Denver International Airport (DEN).¹

Background

By Order 2012-1-17, January 23, 2012, we selected Great Lakes Aviation, Ltd. (Great Lakes) to provide 18 nonstop round trips per week with 19-seat Beech 1900 aircraft between Jamestown and Minneapolis/St. Paul International Airport, MSP (Minneapolis) for a two-year period from the start of its service for an annual subsidy of \$1,987,655. As the carrier inaugurated service in mid-March 2012, the rate was set to end on March 31, 2014.

By Order 2011-12-6, December 14, 2011, we selected Great Lakes to provide 14 nonstop round trips per week between Devils Lake and Minneapolis with 19-seat Beech 1900 aircraft until further Department action for an annual subsidy of \$2,797,467. Order 2012-11-25, November 21, 2012, specified March 31, 2014, as the end of the contract, thereby making the rates at the two communities expire at the same time.

¹ Such subsidy is calculated and distributed on a fiscal year basis, subject to the availability of funds.

By Order 2013-10-14, October 28, 2013, we requested proposals for EAS at Devils Lake and Jamestown as the end of contract period was approaching. In response to that Order, the Department received proposals from Great Lakes, SkyWest and Sovereign Air, Inc. (Sovereign) as summarized below. We issued a request for community comments, comments have been received, and the issue is ripe for decision.

Subsequent Developments

On January 27, 2014, Great Lakes announced that it was suspending all operations at Devils Lake, Jamestown, and four other communities effective February 1, 2014, due to a severe pilot shortage at the carrier.²

Proposals

Great Lakes requests \$3,998,951 annual subsidy for service to both communities with 19-seat Beech 1900 aircraft to Minneapolis. The service would be a mixture of nonstop and one-stop service at each community, and the carrier projects 97 percent completion. As the service at Devils Lake and Jamestown would be linked on an operational basis, the carrier indicated that its proposal at each community was submitted as part of an inseparable package. Although Great Lakes announced that it will be suspending service at both communities effective February 1, 2014, it did not withdraw its proposal from consideration. However, given the fact that it will shut down its Minneapolis hub operation as of that date, the Department does not deem its proposal credible at this time.

Sovereign proposes to operate twenty four (24) nonstop round trips per week at Jamestown and 24 one-stop round trips per week at Devils Lakes, with all service going to Minneapolis and a projected 97 percent completion factor. Sovereign requested \$2,781,456 annual subsidy at Devils Lake and \$1,968,000 at Jamestown with 19-seat, Jetstream 31 or 32 aircraft.

SkyWest *originally* proposed to operate seven (7) nonstop round trips per week between Jamestown and Denver with 50-seat regional jets. The carrier requested \$3,126,564 annual subsidy and projected 98 percent completion.

At Devils Lake, SkyWest *originally* proposed to operate seven (7) nonstop round trips per week to Denver with 50-seat regional jets and requested \$3,126,564 annual subsidy and projected 98 percent completion.

However, SkyWest has recently stated that it can increase the number of round trips from seven (7) nonstop to each community to eleven (11) nonstop or one-stops at the same subsidy rates mentioned above (further details below).³

² The other communities include Thief River Falls, Minnesota; Fort Dodge and Mason City, Iowa; and Ironwood, Michigan.

³ See e-mail from SkyWest to Kevin Schlemmer, Chief of the EAS Program, dated January 24, 2014, and available on the docket at www.regulations.gov.

Summary of Proposals Before the Department⁴

<u>Community</u>	<u>Carrier</u>	<u>Hub</u>	<u>Aircraft</u>	Weekly		<u>Subsidy</u>	<u>Passengers</u>
				<u>Trips</u>	<u>Stops</u>		
Devils Lake	Great Lakes	MSP	B-1900	18	1/0	\$1,999,476	7,250
	Sovereign	MSP	J-31/32	24	1	\$2,781,456	10,000
	SkyWest	DEN	R. Jets	11	1/0	\$3,224,917	8,000
Jamestown	Great Lakes	MSP	B-1900	18	1/0	\$1,999,476	7,250
	Sovereign	MSP	J-31/32	24	0	\$1,968,000	10,000
	SkyWest	DEN	R. Jets	11	1/0	\$3,126,564	8,000
Combined							
	Great Lakes Total	MSP	B-1900	18	1/0	\$3,998,951	14,500
	Sovereign Total	MSP	J-31/32	24	1/0	\$4,749,456	20,000
	SkyWest Total	DEN	R. Jets	11	1/0	\$6,351,481	16,000

Community Comments⁵

Devils Lake

The community strongly and unanimously supported the selection of SkyWest. The City of Devils Lake indicates that it feels:

strongly that SkyWest should be awarded the EAS contract. Our bookings had been climbing steadily over the years when we were being served by Delta with Saab aircraft. Since the switch to Great Lakes we have seen significant change. Their dependability continues to erode, there have been booking problems and the local travelers have simply lost all trust in them as a carrier. We are very excited about the possibilities that SkyWest would present. They are a dependable, major carrier with jet service. We would concur with waiving the 12 round trips per week required in the current [SkyWest] proposal.

The airport authority also supports SkyWest. It too notes the fact that passenger traffic climbed steadily before Great Lakes began service and then declined when Great Lakes inaugurated service. The authority cites similar causes. However, the key issue is flight cancellations and unreliable service:

The pilot shortage that [Great Lakes] has experienced resulted in a cancellation of 39 flights of a scheduled 90 flights during November [2013]. In December, [Great Lakes] reduced the number of scheduled flights per day from three to two per day, a reduction of 31 flights, and still cancelled an additional 22 flights. With the current trend of air

⁴ Great Lakes estimated its subsidy at Devils Lake and Jamestown to be \$3,998,951, and we have divided that amount by two.

⁵ The communities based their comments on SkyWest's original proposal of seven (7) round trips per week.

service at DVL, we feel that any plan that Great Lakes is working toward to correct their pilot shortage will not be soon enough to rectify our situation at DVL and we cannot support their proposal. [SkyWest's] association with a major air carrier, United Airlines, brings with them the credibility, proven dependability, and perks that are needed to bring our airport service and consumer confidence back [to pre-Great Lakes periods]. We are aware that in their proposal [SkyWest] offers one round trip per day, and we request that that requirement for two flights [per day] be waived. We believe this one flight [per day by SkyWest] will be very attractive service for our airport and we are excited to begin marketing this program. We fully support their proposal.

Jamestown

The city of Jamestown strongly and unanimously supports SkyWest. The community leaders indicate that:

Though we believe the Jamestown area traveling public still prefers to fly into Minneapolis/St. Paul, Great Lakes Airlines has not provided our community the reliable, affordable air service expected. We've suffered from very expensive through-fares and poor service for travelers connecting with other airlines at MSP, and Great Lakes has exhibited dismal reliability for the duration of their contract. Therefore, we support the bid for air service submitted by SkyWest in partnership with United Airlines. We are fully aware that the SkyWest bid does not meet the 12 round trip/week requirement as stipulated in the RFP, but still affirm that this is our best option. SkyWest's performance history as a reliable airline and the relationship with United Airlines in the form of a seamless and integrated marketing agreement make SkyWest the only viable bidder.

The airport also strongly supports SkyWest, for the reasons outlined by the other commenters:

[O]ver 40% of [Great Lakes] flights for the Jamestown market were cancelled in November 2013 as a consequence of operational issues. This is very indicative of a general lack of reliability, which has had a profound adverse impact on our boarding numbers. We've gone down from an average monthly passenger boarding figure of 474 back in 2011 [before Great Lakes] to an average monthly figure of 223, a staggering loss of 53% of our market share. To proceed with the bid offered by Great Lakes would be conducive to a furtherance of the present situation, which is untenable. We've received community feedback from over 100 individuals, members of businesses, and organizations who have overwhelmingly and emphatically recommended the selection of SkyWest as our commercial air carrier. To reiterate, we're fully aware that the SkyWest bid does not meet the 12 round-trip/week requirement as stipulated in the RFP, but still affirm that this is our best and only option.

Decision

Sovereign requests \$4,749,456, a level of subsidy very close to Great Lakes' current annual subsidy rate, and proposes service that would fully meet EAS. However, it does not have the authority to provide scheduled service, and so we will not consider their proposal further.

Orders 2012-1-17 and 2011-12-6 selected Great Lakes to provide EAS at Devils Lake and Jamestown. At both communities the carrier was selected to provide 12 or more round trips per week, (14 for Devils Lake and 18 for Jamestown). Great Lakes entered these two markets and four others under the aegis of the EAS program, inaugurating service to Minneapolis, a new hub operation for the company. Due to Great Lakes' severe pilot shortage as described in its January 27, 2014, press release, it has not been able to meet the terms of its contract, as discussed above, including total suspension of service at Devils Lake and Jamestown effective February 1, 2014. Although Great Lakes has submitted a proposal in response to the RFP, the carrier has provided no concrete evidence that its operational problems will be resolved, thereby enabling it to meet the terms of the new contract. We note that for the last several months, the carrier's completion factor has continued to deteriorate at Devils Lake and Jamestown. Although Great Lakes' proposal requesting \$3,998,951 requires the lowest subsidy of all proposals, and fully meets the communities' EAS level, we cannot select it because we cannot currently rely on it to provide the service it proposes.

SkyWest submitted a timely-filed proposal, and that proposal was for one nonstop round trip per day, seven days per week, although it did not meet the statutory minimum level of two daily round trips, six days a week as required by 49 U.S.C. § 41732(b)(1)(A). However, SkyWest has a long-term record of providing excellent service for the EAS program. Moreover, after considering the five factors that the Department considers when selecting an air carrier for EAS, SkyWest clearly meets those factors, including experience in providing reliable service, contractual, marketing, and interline arrangements with larger carriers, and favorable community views.⁶ All of the EAS communities where it is currently subsidized praise SkyWest in terms of its reliability, responsiveness to their communities, and marketing of their service. In brief, the carrier has a well-deserved, stellar reputation and demonstrated ability to deliver on its commitments.

After the deadline for proposals, EAS staff reached out to both Great Lakes and SkyWest to discuss the deficiencies with each proposal, including SkyWest not offering both communities at least basic EAS as specified in 49 U.S.C. § 41732(b)(1)(A) and Great Lakes' current service not meeting basic EAS in terms of frequency requirements.⁷ While Great Lakes stated that its

⁶ In selecting an air carrier to provide subsidized EAS, 49 U.S.C. § 41733(c)(1) directs us to consider five factors: (1) service reliability; (2) contractual and marketing arrangements with a larger air carrier at the hub; (3) interline arrangements with a larger air carrier at the hub (4) community views; and (5) whether the air carrier has included a plan in its proposal to market the service. In addition, the Consolidated Appropriations Act, 2014, Public Law No. 113-76, provides that when selecting a carrier to provide EAS, the Department may consider the relative subsidy requirements, thus codifying a factor that we have considered since the inception of the program.

⁷ See e-mail from Kevin Schlemmer to SkyWest and Great Lakes dated January 22, 2014, and available on the docket at www.regulations.gov.

service capacity “would be at the level originally requested in the RFP,”⁸ its decision to suspend service at both communities and four others effective February 1, 2014, brings that assertion into doubt. SkyWest, while unable to promise the community its basic EAS, stated that its “proposal for Jamestown and Devils Lake is to provide eleven (11) one-stop round trips at the same subsidy rate as originally proposed.”⁹ This is a four round trip a week increase from its original proposal.

The communities fully endorse SkyWest. Even though SkyWest’s service does not meet the technical specifications of EAS, we find that selecting SkyWest is the best and only practical alternative. And because SkyWest has indicated to the Department its willingness to increase the number of weekly round trips in its proposal from seven (7) originally proposed to eleven (11) at the same subsidy rate, we are comfortable selecting SkyWest to provide EAS at both communities. However, we ask that SkyWest work together with both communities to increase its number of round trips to the statutory minimum of two daily round trips, six days a week as required by 49 U.S.C. § 41732(b)(1)(A).

Carrier Fitness

49 U.S.C. §§ 41737(b) and 41738 require that the Department find an air carrier fit, willing, and able to provide reliable service before the Department may subsidize it to provide EAS. SkyWest is subject to the Department’s continuing fitness requirements, and no information has come to our attention that would cause us to question the carriers’ fitness at this time. DOT has contacted the Federal Aviation Administration, and it has raised no concerns that would negatively affect our fitness findings. We therefore conclude that SkyWest remains fit to conduct the operations proposed here.

This Order is issued under authority delegated in 49 CFR Part 1.25a(b).

ACCORDINGLY,

1. We select SkyWest Airlines to provide EAS at Devils Lake and Jamestown, North Dakota, as described in Appendix B-1 and B-2;
2. We direct SkyWest Airlines to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years from the service date of the Order or until the Department indicates that the records may be destroyed, whichever comes first. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this Order;

⁸ See e-mail from Great Lakes to Kevin Schlemmer dated January 22, 2014, and available on the docket at www.regulations.gov.

⁹ See e-mail from SkyWest to Kevin Schlemmer dated January 24, 2014, and available on the docket at www.regulations.gov.

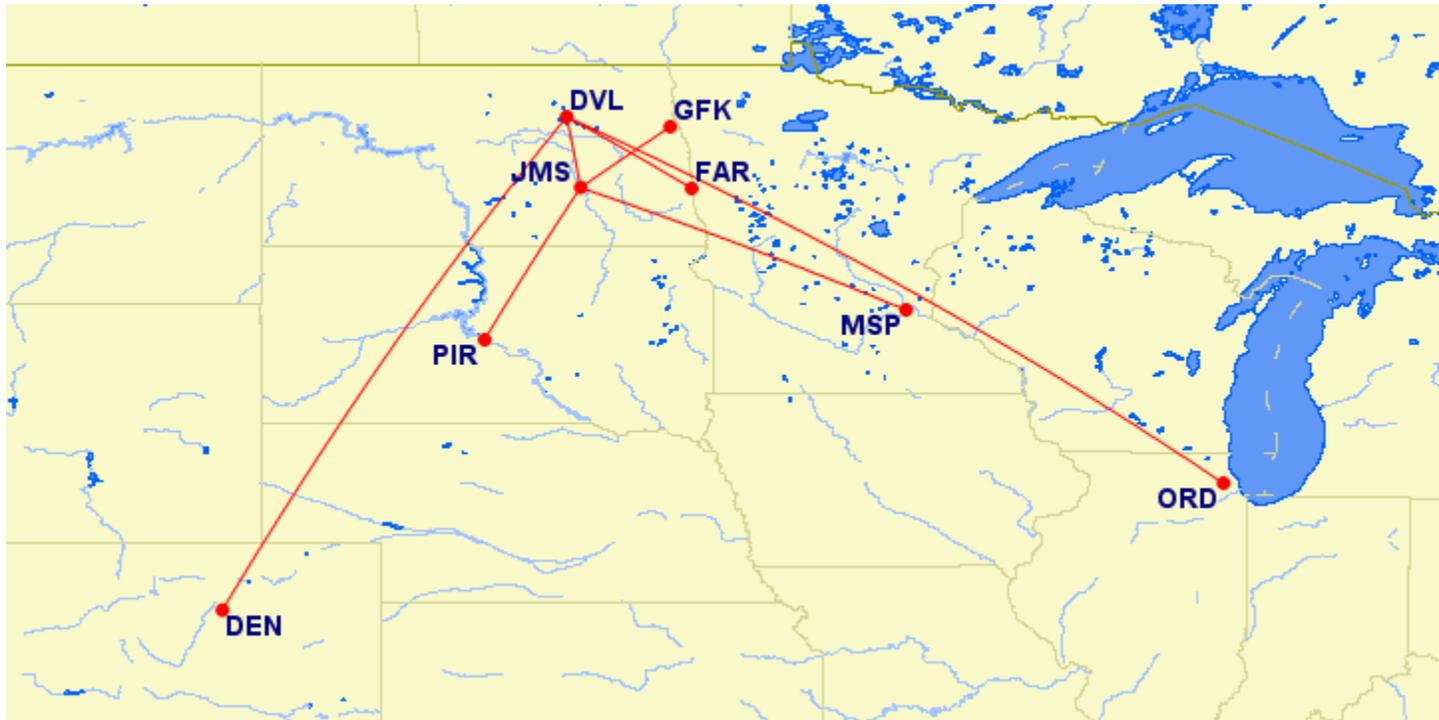
3. We find SkyWest Airlines continues to be fit, willing and able to operate as a certificated air carrier and capable of providing reliable EAS at Devils Lake and Jamestown, North Dakota;
4. This docket will remain open until further Order of the Department; and
5. We will serve copies of this Order on the civic officials of Devils Lake and Jamestown, North Dakota, and on Great Lakes Aviation, Ltd., Sovereign Air, Inc. and SkyWest Airlines.

By:

SUSAN L. KURLAND
Assistant Secretary for
Aviation and International Affairs

(SEAL)

An electronic version of this document is available at
<http://www.regulations.gov>



Nonstop Great Circle Miles to Devils Lake (DVL)

Fargo (FAR)	128
Jamestown (JMS)	83
Denver (DEN)	638
Chicago (ORD)	684

Nonstop Great Circle Miles to Jamestown (JMS)

Minneapolis (MSP)	299
Grand Forks (GFK)	100
Pierre (PIR)	192

SkyWest Airlines EAS to be Provided to Devils Lake, North Dakota
Docket 1997-2785

Effective Period: April 1, 2014, through June 30, 2016;¹

Service: Eleven (11) nonstop or one-stop round trips per week to Denver (DEN);

Aircraft Type: 50-seat regional jet

Annual Subsidy: \$3,224,917

Annual Flights: 1,121²

Subsidy per Flight: \$2,877³

Weekly Subsidy Ceiling: \$63,294⁴

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plans outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy.

In addition, if the carrier does not schedule or operate its flights in full conformance with the order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the stipulated amounts or at the stipulated service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

Funds may not be available for performance under this Order beyond September 30, 2014. The Government's obligation for performance under this Order beyond September 30, 2014, is subject to the availability of funds from which payment for services can be made. No legal liability on the part of the Government for any payment may arise for performance under this Order beyond September 30, 2014, until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond September 30, 2014, the Department will provide notice in writing to the carrier.

All claims for payment, including any amended claims, must be submitted within 90 days of the last day of the month for which compensation is being claimed. For example, claims filed for service provided in July must be filed by October 31; August claims must be submitted by November 30, and so on.

¹ Because a budgetary marker is required, we have indicated a start date of April 1, 2014, but realize that the actual start-up date will be determined by SkyWest's operational requirements and its partner, United Airlines.

² 11 flights per week x two directions x 52 weeks x 0.98 completion = 1,121 flights.

³ \$3,224,917 ÷ 1,121 flights.

⁴ \$2,877 per flight x 22 flights per week.

SkyWest Airlines, EAS to be Provided to Jamestown, North Dakota
Docket 1997-2785

Effective Period: April 1, 2014, through June 30, 2016;¹

Service: Eleven (11) nonstop or one-stop round trips per week to Denver (DEN);

Aircraft Type: 50-seat regional jet

Annual Subsidy: \$3,126,564

Annual Flights: 1,121²

Subsidy per Flight: \$2,789³

Weekly Subsidy Ceiling: \$61,358⁴

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plans outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy.

In addition, if the carrier does not schedule or operate its flights in full conformance with the order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

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