

Debunking AOPA's Myths About OK3 AIR
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Over the past few years, Aircraft Owners and Pilots Association (AOPA) has repeatedly and unfairly targeted and threatened Heber Valley Airport and OK3 AIR, a single-location, independent fixed-base operator (FBO). Time and again, AOPA has claimed that OK3 AIR is the most complained about FBO in the country, that its fuel pricing is not reasonable, and that it has an illegal monopoly and exclusive right. AOPA has further claimed that Heber City must significantly lower its minimum standards (i.e., requirements for engaging in commercial aeronautical activities) to entice competition, or it will violate its grant agreements (i.e., airport sponsor assurances) with the Federal Aviation Administration (FAA) and lose its access to future federal funding that is used for maintaining the safety, security, and efficiency of the Heber Valley Airport. AOPA has presumably made these claims in an effort to obtain lower prices for fuel and other services for its members who utilize the Airport. The problem is that none of these claims are true. AOPA knows that. And, by repeatedly making them, AOPA and those that have instigated AOPA are harming the relationships between OK3 AIR and its customers, OK3 AIR and Heber City, and Heber City and the FAA. These actions are also harming OK3 AIR's and Heber Valley Airport's reputation in the local, national and international community.

OK3 AIR is not the only FBO that AOPA has targeted in this way, but it does appear to be the smallest and only independent FBO. As recently as 2018, AOPA filed three informal complaints with the FAA against the airport sponsors of the destination airports in Key West, Asheville and Waukegan, making similar, unfair claims about FBOs at those locations operated by Signature Flight Support, the largest FBO chain in the world. The FAA dismissed each of those complaints for lack of merit and AOPA did not pursue formal complaints. Nevertheless, AOPA has continued to harass airport sponsors and FBOs by taking the same, incorrect legal position on FBO pricing and, by doing so, has created unrealistic expectations in its members and an incorrect, unfair, and unreasonable narrative in the press. In the long run, this campaign will make FBOs less likely to find common ground with or to look favorably on AOPA members, and will ultimately drive away AOPA members, including many FBO owners and employees. OK3 AIR's owner, an AOPA member for 28 years, terminated his membership in 2017. And we have heard that many others, frustrated that their AOPA dues are being used to abuse the very FBOs they enjoy, have been doing the same.

While OK3 AIR has thus far declined to get in the mud with AOPA, it feels some responsibility to answer AOPA's most recent, common, and damaging misstatements and misleading statements about OK3 AIR and Heber Valley Airport. We have no expectation that this document will change AOPA's mind or direction. But, we do hope that this document will help our airport sponsor, customers, and neighbors understand the truth. And we hope that, if impressed upon by AOPA to write another news story, this document will allow the regional news response to be more balanced and well informed. Finally, we hope to arm the next airport sponsor or small, independent FBO that dares to upset AOPA.

AOPA Myth #1: OK3 AIR is the “most complained about” FBO in the country.

Misleading.

When AOPA repeatedly says that OK3 AIR is the “most complained about” FBO in the country, it appears to be relying on its own survey, conducted in 2017, about “egregious FBO pricing.” The very nature of the survey solicited complaints, not objective reviews. What made things worse in Heber City is that, in response to AOPA’s survey, Paul Boyer, one of AOPA’s local members, repeatedly disparaged OK3 AIR and then solicited complaints from his friends and other airport users. Because of this behavior, Boyer is currently being sued by OK3 AIR for defamation per se in state court. AOPA knew this, but still relied on the skewed survey results.

And AOPA apparently made no effort to consider reviews from other sources. This is no big surprise. AOPA often writes a letter about its position on a topic and then issues a press release quoting that letter as proof of the accuracy of its position. But, the fact that AOPA says something is true does not make it so.

In this matter, AOPA has also misrepresented the size of its study. When AOPA uses terms like “alarming” and “substantial,” it infers that it has received hundreds of complaints about OK3 AIR in response to its survey. This is not the case. OK3 AIR has obtained the so-called “alarming number” of complaints. Prior to AOPA’s first attack in July of 2017, AOPA had received a total of 219 complaints in response to its survey and, of those 219 complaints, only 11 were complaints about OK3 AIR. So, AOPA made OK3 AIR its poster child for egregious fuel pricing based on 11 complaints, a mere 0.0037% of AOPA’s membership. This number is alarmingly insubstantial when you realize that Heber Valley Airport has more than 30,000 aircraft operations and OK3 AIR handles almost 10,000 aircraft operations a year. The number of survey responses and complaints are also insignificant when you compare them to other AOPA call-to-action efforts, such as ATC privatization, in response to which more than 200,000 letters, emails, and phone calls were sent by AOPA members to Congress.

AOPA’s willingness to use the full strength of its PR department to unjustly defame an independent, single-location FBO and interfere with its contracts, in order that its local members might obtain a fuel discount, is an abuse of power. AOPA should know better and its members should demand better.

AOPA Myth #2: OK3 AIR has a “monopoly.”

False.

FAA rules do not regulate whether an airport or FBO can have a ‘monopoly’ or not. Monopolies are a matter for antitrust law and deal with industries as a whole. AOPA and AOPA’s attorney know that. Moreover, AOPA cannot seriously argue that OK3 AIR—a

single-location, independent FBO—has a monopoly in the FBO industry, when other FBO chains legally have as many as 180 locations.

AOPA Myth #3: OK3 AIR has an “exclusive right” and, by failing to provide a second FBO, Heber City is violating its Grant Assurances.

False.

OK3 AIR does not have an exclusive right.

“Exclusive right,” unlike “monopoly,” is a legal term of art in aviation law. Heber City, as sponsor of the Heber Valley Airport, receives funding from the FAA under the Airport and Airway Improvement Act of 1982. As a condition of receiving Airport Improvement Program (“AIP”) funds, the City is subject to AIP Airport Sponsor Assurances, as incorporated into the City’s grant agreements (the “Grant Assurances”), including Grant Assurance 23, *Exclusive Rights*.

Generally, Grant Assurance 23 prevents sponsors from granting any entity the exclusive right to provide aeronautical services to the public. Although this would seem to prevent airports from having only one FBO, the law is more complicated than that. In fact, the FAA does not consider the presence of only one service provider at an airport to violate Grant Assurance 23, so long as the sponsor and provider have not agreed to exclude other qualified providers. AOPA and AOPA’s attorney know that.

The presence of one FBO at an airport is hardly rare. In 2017, there were 3529 public-use airports in the United States with a 3000 foot paved runway or longer. Of those airports, 15.81% had no FBO providing fueling services (including the airport sponsor), 76.25% of those airports had only one FBO, and only 7.94% had 2 or more FBOs. In other words, more than 92% of public-use airports in the United States had one or no FBO. Is AOPA really arguing that more than 76% of public-use airports have granted their FBOs illegal exclusive rights? Vail, Aspen and Sun Valley are among those airports that have only one FBO and AOPA has not attacked them.

Therefore, the sole fact that OK3 AIR is the only current FBO in Heber City does not establish that it has an exclusive right. Heber City and OK3 AIR have not agreed to exclude other qualified providers. Nor has the FAA found that OK3 AIR has an exclusive right, even though it recently had the chance to consider that question. On February 21, 2019, the FAA issued a preliminary decision on a complaint filed against Heber City by Paul Boyer, the same local agitator who defamed OK3 AIR and solicited the negative AOPA reviews. In his complaint to the FAA, Boyer alleged, among other things, that Heber City had improperly allowed OK3 AIR to have an exclusive right in violation of Grant Assurance 23. The FAA disagreed.

The FAA has decided that OK3 AIR does not have an exclusive right. Yet AOPA never mentions the FAA February 2019 decision on this issue. Rather, it keeps claiming—incorrectly and to the detriment of OK3 AIR’s reputation and relationship with Heber City

and its customers—that OK3 AIR has an exclusive right. And it has used this false claim most recently to threaten Heber City into changing its Minimum Standards. AOPA and AOPA’s attorney should know better.

AOPA Myth #4: Heber City was required by the Grant Assurances to amend its 2016 Minimum Standards and is violating the Grant Assurances by reverting to them.

False.

The 2016 Minimum Standards do not violate the Grant Assurances. At no time has the FAA found that the 2016 Minimum Standards violate Grant Assurances. In fact, just prior to the Heber City vote to adopt revised minimum standards in 2017, the FAA informed legal counsel for Heber City and OK3 AIR that it had no problems with the 2016 Minimum Standards. In response to Paul Boyer’s complaint, the FAA considered whether the 2016 Minimum Standards, particularly those relating to FBOs and other commercial operators existing at Heber Valley Airport, violated Grant Assurances. In its February 2019 preliminary decision on that complaint, the FAA again concluded that they did not. In particular, the FAA found that the 2016 Minimum Standards did not prevent a second FBO at the Heber Valley Airport. Thus, the FAA has been consistent in its opinion that the 2016 Minimum Standards do not violate Grant Assurances. It follows that, by voting to rescind the 2017 revised minimum standards and revert to the 2016 Minimum Standards, Heber City is not violating Grant Assurances. AOPA and AOPA’s attorney know this.

Yet, in recent weeks, AOPA has repeatedly taken credit for encouraging Heber City to adopt the revised minimum standards in 2017 and, now that they have been repealed, it is taking extraordinary measures to encourage Heber City to re-adopt them. In doing so, AOPA is admitting, indeed taking credit for, encouraging Heber City to breach its contract with OK3 AIR back in 2017. And it is encouraging Heber City to do so again.

Further, what AOPA does not recognize is that Heber City, in adopting the revised minimum standards in 2017, may have actually violated Grant Assurances. This became the subject of an informal complaint by OK3 AIR with the FAA, which has not yet been decided. So, in encouraging the City to adopt the revised minimum standards, AOPA was also encouraging Heber City to potentially violate its Grant Assurances. And it is encouraging Heber City to do so again. AOPA should know better.

AOPA Myth #5: OK3 AIR “drafted” the 2016 Minimum Standards to protect its monopoly.

False.

OK3 AIR did not draft the 2016 Minimum Standards. That the City may have “publicly acknowledged” OK3 AIR’s authorship—in legal pleadings, as a way to defend its decision to violate its contract with OK3 AIR—does not make it so.

In fact, Heber City first adopted minimum standards for the Airport in 1987. OK3 AIR did not exist in 1987. In 2005, the minimum standards were first modernized. At that time, OK3 AIR owner, Nadim AbuHaidar, recommended that the City hire a consultant to craft minimum standards that were specific to the Heber Airport. The cost of such standards at the time was about \$8000. At that time, Heber City declined to spend the money and, instead, the airport board and city manager cut-and-paste from standards that had been adopted at another airport. It was these minimum standards that were later amended in 2010 and 2016.

Ironically, Heber City refused to spend \$8000 to create airport-specific minimum standards in 2005 and has now paid an outside law firm approximately \$750,000, at least in part to revise its minimum standards in 2017 and then unsuccessfully defend them. Heber City has now rescinded those revised standards in favor of the 2016 Minimum Standards, which were fine to begin with.

AOPA Myth #6: OK3 AIR sued Heber City “to protect” its monopoly.

False.

In 2017, OK3 AIR filed suit against Heber City because Heber City had breached its lease agreement with OK3 AIR, improperly interfered with OK3 AIR’s ability to run its business, and violated OK3 AIR’s Constitutional rights, among other things. While OK3 AIR hopes, through the lawsuit, to protect its business and its employees, OK3 AIR did not sue Heber City in order to protect its nonexistent monopoly.

AOPA Myth #7: Heber City is obligated by the Grant Assurances “to promote competition and ensure fair pricing.”

False.

The Grant Assurances do not require the sponsor to ensure competition or “fair” prices. Grant Assurance 22, *Economic Nondiscrimination*, requires “reasonable, and not unjustly discriminatory” pricing. AOPA has never alleged that its members have been discriminated against, i.e., denied services based on their membership in a particular group, by OK3 AIR. Nor has it shown that OK3 AIR’s pricing is unreasonable.

“Unreasonable” does not mean that prices for services are above average, higher than other airports, or even the highest in a particular region. Logic dictates that, in a free market, there will always be a highest price and half of the FBOs will have priced their services above average. Nor does unreasonable mean that a particular FBO’s pricing has accumulated the most complaints from the “public” or from a local agitator with enough time, energy and willingness to misrepresent the facts. Above all, Grant Assurance 22 cannot be read to require that aviation services be provided at a price acceptable to the AOPA membership. AOPA knows this.

And, recently, the FAA agreed with this interpretation. In its February 21, 2019 response to Paul Boyer's fuel pricing complaint, the FAA stated that it would not regulate FBO pricing of fuel. The FAA explained that "reasonable" does not mean an "an affordable, cheap, or inexpensive price" and that the Grant Assurances "do not require that an airport sponsor insist that its FBOs pursue a high volume/low margin fuel price strategy ... [or determine] what is an acceptable or unacceptable profit margin for a commercial service provider." While fuel surveys relied upon by Boyer may have indicated that OK3 AIR's fuel prices were high in comparison to those airports nearest to Heber City, the FAA found that OK3 AIR's fuel prices were comparable to those "within a larger service area," so they were "not an anomaly within the industry." The FAA further found that OK3 AIR was not exploiting a geographically remote location, i.e., there were at least six other airports in close vicinity so "free market conditions exist." Finally, the FAA explained that the reasonableness of FBO pricing is dependent on specific aspects of a particular airport and that Boyer's claim of unreasonable price setting "has not been adequately substantiated in the complaint."

Although the FAA issued this determination more than two months ago, AOPA's most recent statements and press releases, which continue to criticize OK3 AIR's pricing for fuel and other services and even ask the FAA to intervene, utterly ignore it. AOPA may not like or agree with the FAA's decision, but that does not change its import: OK3 AIR's pricing methodology does not put Heber City in violation of its Grant Assurances.

AOPA Myth #8: OK3 AIR's prices for fuel and other services are unreasonable, "unfair," "egregious," and "grossly disproportionate to the services rendered."

False.

As noted above, OK3 AIR's pricing is not unreasonable or unjustly discriminatory. The other terms that AOPA uses to criticize OK3 AIR's pricing, like unfair, egregious, and grossly disproportionate, are not standards used in aviation law. They are labels intended to inflame public opinion and are, in any event, based on false comparisons.

In order to demonstrate that OK3 AIR's prices are unfair or egregious, AOPA has compared its prices to nearby airports, i.e., within 50 nautical miles. However, AOPA has compared prices without comparing other costs. For example, AOPA cited one individual who flies into Salt Lake International instead of Heber Valley Airport, because the cost of AvGas is lower there. But, so are the costs of other things. FBOs at Salt Lake International can keep their AvGas costs lower, in part, because the volume of fuel they sell is higher than in Heber City, allowing them to purchase fuel at a cheaper cost than OK3 AIR. Those FBOs are also closer to their supply, reducing the costs of delivery.

The cost of living in Salt Lake City is also lower than the cost of living in Heber City, impacting what OK3 Air's employees need to support their families. Heber City residents pay a 6% higher median purchase price and a 35% higher median rental price for housing than their counterparts in Salt Lake City. When this cost of living disparity is considered, it is not surprising that AvGas prices at Heber Valley Airport are 1.5% higher than in Salt Lake City. OK3 AIR is proud to pay its 20 employees, who work and live in and around

Heber City, a living wage. Is AOPA really suggesting that OK3 AIR should reduce its employee compensation so that its members can enjoy a fuel discount?

The cost of living in Heber City is higher than in Salt Lake City and the other nearby cities that AOPA cites because the Heber Valley is a destination in itself and provides the nearest airport to other destinations such as Park City Mountain and Sundance Resort. Destination airport pricing is based on many factors, including the seasonality of the location and peak demands, which are simply not present at the airports in Spanish Fork and Toole. Thus, when critics like AOPA try to limit their pricing comparison to airports within 50 nautical miles of Heber City, they are setting up a false comparison. The FAA agreed, when it found that a comparison of Heber Valley Airport to destination airports “within a larger service area,” like Aspen, Sun Valley, Vail, and Jackson Hole, was appropriate. This comparison demonstrated that OK3 AIR’s pricing was not an issue for Heber City under the Grant Assurances.

AOPA Myth #9: Heber Valley Airport does not currently offer self-serve AvGas.

False.

OK3 AIR has self-service fuel facilities, which it has paid for and maintained over 19 years. OK3 AIR has provided self-serve AvGas fuel from the time it began operations in 2000 until present. In 2017, when the City amended its landing fee ordinance, service to the general public was interrupted for a brief period. For the first time, this amendment required OK3 AIR to begin collecting landing fees from traffic that most frequents the self-serve AvGas pump, i.e., aircraft under 12,500 lbs. OK3 AIR became worried that it would be unable to collect fees from these operators without requiring them to interface with the company. At the time, OK3 AIR understandably worried that Heber City might try to find it in violation of its lease if it failed to collect fees from aircraft that purchased self-serve AvGas yet did not check in with OK3 AIR to pay the City’s landing fee. In April 2017, OK3 AIR explained to Heber City that it would re-open self-serve fuel to the general public if the City granted it a release for any transient landing fees that might be lost if the self-serve fuel pump was restored. Although at first Heber City indicated its willingness to grant OK3 AIR a release, it refused to do so for more than two years. This solution for re-opening the self-serve fuel pump was discussed and rejected during open meetings, but AOPA and its members did not support the measure. Nor did they offer a different solution. They just continued to complain.

Even though Heber City rejected this rather simple solution, OK3 AIR understood that the issue of access to self-serve fuel was important to the flying public and took action on its own to re-open the pump, albeit on a limited basis that would not expose OK3 AIR to a potential lease violation. OK3 AIR created a program where volume AvGas purchasers could indicate their based v. transient status, commit to paying landing fees, where needed, and thereby gain access to the self-serve pump. This program has been in place for almost two years and more than 30 aircraft owners have thereby been able to utilize the self-serve AvGas pump.

Those who frequent the Heber Valley Airport, including many AOPA members, were aware of OK3 AIR’s program, yet no one acknowledged it as a positive step. Nor did AOPA ask for or

offer ways in which the program might be expanded. Rather, AOPA just continued to complain. Claims by AOPA and its members that OK3 AIR does not care about ‘small GA’ or selling AvGas, has abandoned its self-serve AvGas business, and has unreasonably withheld self-serve AvGas from the general public fail to acknowledge the history of the matter. The claims also fail to acknowledge attempts OK3 AIR consistently made to make self-serve AvGas available to the flying public. To the extent it was not available, it was Heber City—not OK3 AIR—that stood in the way.

Due to recent, positive changes at the Heber Valley Airport, namely the hiring of a new airport manager, OK3 AIR once again proposed to the sponsor the possibility of re-opening the self-serve fuel pump to the general public. Almost immediately, Heber City agreed to release OK3 AIR for responsibility for any missed landing fees. As a result, on May 7, 2019, the self-serve fuel pump was re-opened to the general public.

This move will surely benefit the flying public, including many AOPA members. However, the move cannot be attributed to actions taken by AOPA. It was accomplished in spite of such actions. Over the past few years, AOPA has complained, but has offered no solutions. AOPA continues to push an agenda that demonizes OK3 AIR and pits the airport sponsor and the FAA against us. Such behavior encourages a poor relationship between Heber City and OK3 AIR. But, the agreement to re-open the self-serve fuel pump was possible only because of a working—rather than antagonistic—relationship between Heber City and OK3 AIR.

It is unclear how a poor relationship between Heber City and OK3 AIR—which AOPA seems so intent on encouraging—benefits AOPA’s members and other users of the Heber Valley Airport. It is equally unclear how a poor relationship between OK3 AIR and AOPA benefits AOPA’s membership. OK3 AIR actually reached out to AOPA in 2017, looking for advice and assistance. AOPA never responded. More telling, AOPA has never picked up the phone to discuss its concerns about the Heber Valley Airport with OK3 AIR. OK3 AIR would have been more than willing to discuss ways to find common ground with AOPA, but the advocacy group went immediately into attack mode. At this juncture, maybe AOPA—which should be representing all aircraft owners and pilots, including those who own and run FBOs—should consider becoming part of the solution, rather than continuing to sling mud and threats.