(I&S) C. 7668, C. 7670*

Decision No. 65758

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Protest and Request of the CITY OF LONG BEACH, CALIFORNIA, and the LONG BEACH CHAMBER OF COMMERCE For Investigation and Suspension of Tariff Schedule Published by Western Air Lines, Inc., Reducing Propeller Coach Fares between Los Angeles and San Francisco, California.	(I&S) Case No. 7668
In the matter of the petition of the CITY OF OAKLAND and of the OAKLAND CHAMBER OF COMMERCE for suspension and investigation of certain fares of WESTERN AIRLINES, INC., California Intrastate Local Passenger Fares Tariff No. 8, California P.U.C. No. 25.	(I&S) Case No. 7670

ORDER DENYING PETITION FOR SUSPENSION AND INVESTIGATION AND SETTING HEARING

By petitions filed July 19, 1963, the Cities of Long Beach and Oakland and their respective Chambers of Commerce seek suspension and investigation of Western Air Lines' proposed reduced propeller-coach fare of $13.50 scheduled to become effective August 1, 1963, between Los Angeles and San Francisco.[1] The current fare is $16.95.

Petitioner City of Long Beach owns and operates the Long Beach Airport through which scheduled and non-scheduled air passenger and freight flights provide service. This facility

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[1] The proposed fare is published in Western's California Intrastate Local Passenger Fares Tariff No. 8 (Cal.P.U.C. No. 25) issued by M. E. Sullivan, Director of Traffic.

is designated "Large Hub" by the Federal Aviation Agency, which is the same designation as that given Los Angeles International Airport. Long Beach Airport ranks fifth in the nation in operational activity. The citizens of Long Beach have a substantial investment in the Long Beach Airport and proposed further improvements of that airport. Petitioner Long Beach Chamber of Commerce, among other things, is engaged in the promotion and development of the economic growth and welfare of Long Beach and its trade area.

According to the Long Beach petition, Western Air Lines, on April 1, 1962, inaugurated non-stop air passenger service between Long Beach and San Francisco, using prop-jet Electra aircraft, and continues to furnish such service. Western's one-way coach fare between Long Beach and San Francisco is $17.80, plus tax. At the present time, Western provides one northbound and two southbound non-stop flights per day between Long Beach and San Francisco, using prop-jet Electra aircraft. The petition recites that Western presently provides three round-trip flights per day between Los Angeles International Airport and San Francisco, using prop-jet Electra aircraft, with a one-way coach fare of $16.95; 11 round-trip "thrift air" flights per day between Los Angeles and San Francisco, using DC-6B equipment, for a one-way fare of $11.43. The Long Beach petitioners aver that these flights although using slower and less modern aircraft than the Electra, have brought about a major diversion of Southern California-San Francisco passengers from the Long Beach Airport to Los Angeles and that the proposed coach fare reduction between Los Angeles and San Francisco will result in further diversion of Long Beach area passengers to Los Angeles.

Petitioners state that the present one-way propeller-coach fare between Long Beach and San Francisco of $17.80 is 31.9 per cent greater than the proposed one-way propeller-coach fare of $13.50 between Los Angeles and San Francisco. The petition recites that the fare per mile from Long Beach to San Francisco is 4.89 cents ($17.80 ÷ 364 miles) or 25.7 per cent greater than the 3.89 cents ($13.50 ÷ 347 miles) fare per mile from Los Angeles to San Francisco under the proposed reduced fare. The petition recites that San Francisco and Oakland are approximately the same air miles from Los Angeles, and the one-way propeller-coach fare between Los Angeles and San Francisco is the same as the fare between Los Angeles and Oakland. The proposed reduction, petitioners assert, will create an anomalous situation in that the fare from Los Angeles to San Francisco is to be reduced to $13.50, but the fare from Los Angeles to Oakland, the same distance, will remain $16.95.

Petitioners aver that business and industry in the area best served by Long Beach Airport are engaged in competition with business and industry best served by Los Angeles International Airport; that business and industry in the San Francisco area do business with business and industry in Southern California. In addition, Long Beach and Los Angeles competitively seek tourists and convention business, and San Francisco is a noted tourist and convention center, which attracts many visitors in the Long Beach area. Petitioners assert that the furnishing of air transportation by Western, using the same equipment over relatively the same distance, for a fare to Long Beach that is almost 32 percent

greater than the fare to Los Angeles from San Francisco, will place Long Beach and its business and industry at a competitive disadvantage with Los Angeles. Petitioners aver further that this will result in the unduly discriminatory treatment of air passengers desiring to originate or terminate their San Francisco flight at Long Beach Airport and that this inequitable fare structure will result in the diversion to Los Angeles of traffic more conveniently served by Long Beach Airport, thus resulting in treatment prejudicial to Long Beach and preferential to Los Angeles. Petitioners aver that the preferential and privileged treatment which will be afforded Los Angeles by the proposed unlawful fare reduction will be in violation of Sections 451, 453, 494 and other sections of the Public Utilities Code and Section 21 of Article XII of the Constitution of the State of California.

Petitioners state that the unduly discriminatory rate proposed by Western is contrary to the well-established principle opposing the favoring of one community over another declared by this Commission in the following cited proceedings:

> "Of course a lower scheme of rates to San Jose has a tendency to draw business to that city. San Jose is now and has been for many years a natural shopping center for the territory closely adjacent to it and would probably hold a greater share of this business even though the rates be exactly the same to other towns. <u>However, it is not the business of this Commission to foster trade for a particular community by countenancing discriminatory rates.</u>"
> (Emphasis added.) (Peninsula Railway Company, 6 C.R.C. 658, 664)

> "A carrier as a public servant cannot build up one community at the expense of another and this is what occurs whenever rates between industrial centers are not on a uniform and nondiscriminatory basis." (Pacific Electric Railway Company, 16 C.R.C. 7)

The petition of the City of Oakland and the Oakland Chamber of Commerce avers that the economic well being of their community, other communities in the East Bay, petitioners and air line passengers and the convenience of air line passengers require that scheduled air line fares from Oakland to a given point be no higher than such fares from San Francisco to same point. These petitioners allege that the passenger fares of all the air lines providing scheduled service between both Oakland and Los Angeles, and San Francisco and Los Angeles, with similar equipment, now are and have for many years been identical. It states that the air line mileage between Oakland and Los Angeles and between San Francisco and Los Angeles is the same. It is alleged that the establishment by Western of a fare between San Francisco and Los Angeles at a lower level than the fare between Oakland and Los Angeles for like service grants a preference or advantage to San Francisco and West Bay air line passengers and subjects Oakland, the East Bay, the petitioners and East Bay air line passengers to prejudice and disadvantage. It is further averred that the establishment by Western of a fare between San Francisco and Los Angeles at a lower level than the fare between Oakland and Los Angeles for like service constitutes an unreasonable and unlawful difference as to rates between localities; and unlawfully discriminates against petitioners, other East Bay communities and air line passengers.

Respondent in its reply requests that the petitions for suspension be denied. It states that the $13.50 fare of which Long Beach and Oakland now complain is not a new fare; that Pacific Southwest Airlines has had such a fare in effect on its Electra aircraft between Los Angeles and San Francisco for some time; that this fare was specifically approved by the Commission after full hearing on November 22, 1960 (Decision No. 61102); and therefore, if the preference of which Long Beach and Oakland now complain exists at all, it has been in effect for over 2½ years. Respondent states further that granting the relief requested by Long Beach and Oakland would not remove the preference allegedly resulting from a $13.50 fare level between Los Angeles and San Francisco because Pacific Southwest Airlines would still continue to offer a $13.50 fare. Therefore, respondent concludes, that the real question to be decided at this time is whether or not the Commission must discriminate against Western by prohibiting it from meeting its principal competitor's fare level which has been in effect for 2½ years. It avers that neither Long Beach nor Oakland complained to the Commission when the existing $13.50 fare between Los Angeles and San Francisco was established, even though that fare created the very preference which they now allege exists. Therefore, it would be grossly unfair for the Commission to refuse to allow Western to meet the existing fare level.

The right of a common carrier or other public utility, the reply recites, to meet the fares of its competitor has long been recognized by both the United States Supreme Court and the California Public Utilities Commission. This principle was expressed by the U.S. Supreme Court in East Tennessee, Virginia, & Georgia Railway Co. v. Interstate Commerce Commission, 181 U.S. 1 (1901), in which the court held that a railroad could legally meet the rates of its competitor, even though it violated the long haul-short haul rule:

> "(C)ompetition which is real and substantial and exercises a potential influence on rates to a particular point, brings into play the dissimilarity of circumstance and condition provided by the statute, and justifies the lesser charge to the more distant and competitive point than to the nearer and noncompetitive place . . . (T)his right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point, and the greater rate to the noncompetitive point may apparently engender a discrimination against it. We say seemingly on the one hand and apparently on the other, because in the supposed cases the preference is not 'undue' or the discrimination 'unjust.'" (181 U.S. 19)

The reply further states that the California Public Utilities Commission has followed the above holding in a long and unbroken line of legal authority. As a recent example, in Decision No. 56242, 56 Cal.P.U.C. 169 (1958), the Commission stated as follows:

> "In our opinion, respondent (Pacific Gas & Electric Company) has the legal right to reduce its rates in order to meet in good faith the competitive rates being offered by the Shasta Dam Area Public Utility District, arguments of certain counsel to the contrary notwithstanding. There is ample precedent for such action, both in this Commission's prior determination and in those of other states. The long and unbroken line of legal authority and precedent in such respect overwhelmingly sustains the right of a utility to meet in good faith a competitive rate without rendering itself subject to a

charge of unlawful locality discrimination. Merely for the purpose of maintaining all of a particular class of customers on an exact parity, this Commission should not compel a utility to charge rates which will annihilate its service in competitive territory." (56 Cal.P.U.C. 172; Emphasis added)

The same rule, respondent states, had already been adopted by the California Railroad Commission in Case No. 3015, 36 C.R.C. 767 (1931). The Commission there followed the United States Supreme Court's holding in the East Tennessee Case, supra, and stated as follows:

"Neither in reason nor on authority may it be concluded that the company by merely meeting the rates of its competitor in order to attempt to hold its business created an unjust or unlawful discrimination. While the prevention of locality discrimination long ago has been the object of prohibitory statutes, Federal and State, and of orders of administrative bodies such as the Interstate Commerce Commission and the various State, railroad and utility commissions, the existence of competition at one point and not at another has, in itself, generally been deemed to destroy that similarity of circumstances and conditions without which such discrimination would not exist . . .

* * *

"As to carriers, the United States Supreme Court in interpreting, and the Interstate Commerce Commission in administering, the Interstate Commerce Act have repeatedly recognized the existence of competition as justifying rates which differ as between localities, variations forced by competition not being considered to work an unlawful discrimination (citing 181 U.S. 1, 19; 162 U.S. 197; 168 U.S. 144; 190 U.S. 273; and two Interstate Commerce Commission cases).

"Similarly in California this Commission has uniformly recognized the existence of competition as warranting railroad companies in publishing a lower rate at a competitive point than a corresponding one where competition does not exist." (36 C.R.C. 770-771; Emphasis added by the Commission).

Upon consideration of the allegations in the petitions and the replies thereto, the Commission is of the opinion and finds that this is not a matter in which its suspension power should be exercised but is one in which hearings should be scheduled for the receipt of evidence concerning the issues which have been raised.

Good cause appearing,

IT IS ORDERED that:

1. Said petitions for suspension and investigation are hereby denied without prejudice.

2. A hearing in these proceedings on the matters referred to above be held before such Commissioner or Examiner as may be designated at a time and place to be determined.

3. Copies of this order shall be forthwith served upon petitioners and upon Western Air Lines, Inc.

Dated at San Francisco, California, this 29th day of July, 1963.

William M. Bennett
President

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.