

**ORIGINAL**

Decision No. 67077

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  
(Filed July 19, 1963)

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 AIR LINES, INC., California Intrastate Local Passenger Fares Tariff No. 8, California P.U.C. No. 25.

(I&S) Case No. 7670  
(Filed July 19, 1963)

Investigation on the Commission's own motion into the propeller-coach fares of Western Air Lines, Inc., between San Francisco and Los Angeles, Oakland and Los Angeles; between Long Beach and San Francisco and Los Angeles and San Francisco, as set forth in Western Air Lines, Inc., Local Passenger Tariff No. 8, Cal. P.U.C. No. 25.

Case No. 7700  
(Filed September 3, 1963)

(Appearances are shown in Appendix A)

O P I N I O N

By petitions filed July 19, 1963 under the provisions of the Commission's General Order No. 113-A and docketed as (I&S) Case No. 7668 and (I&S) Case No. 7670, the Cities of Long Beach and Oakland and their respective Chambers of Commerce sought suspension and investigation of a reduced propeller coach fare of \$13.50 between Los Angeles and San Francisco filed by

Western Air Lines, Inc., to become effective August 1, 1963, which fare replaced a fare of \$16.95 between said cities. Western's corresponding fares of \$16.95 between Oakland and Los Angeles and \$17.80 between Long Beach and San Francisco were not changed. The Cities of Long Beach and Oakland alleged that the reduced fare would be unlawful or unjustly discriminatory and prejudicial to the Cities of Long Beach and Oakland and would afford preferential and privileged treatment to the Cities of Los Angeles and San Francisco, in violation of Article XII, Section 21 of the Constitution of the State of California and Rule 9 of General Order No. 105-A.

After consideration of the allegations in the petitions and the replies thereto of respondent, the Commission, by Decision No. 65758 dated July 29, 1963, denied without prejudice the petitions for suspension and investigation, finding 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."

A prehearing conference in (I&S) Cases Nos. 7668 and 7670 was held before Examiner Mallory on August 13, 1963, to formulate the issues and to agree upon a hearing date. The order of procedure in the presentation of evidence, the hearing dates, and the issues to be considered at the public hearing to be scheduled were agreed upon by and between the parties. <sup>1)</sup> It was agreed that the hearing in (I&S) Cases Nos. 7668 and 7670 would be confined to the following issues:

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1/ The prehearing conference was attended by representatives of respondent Western Air Lines, Inc., and the Cities of Oakland, Long Beach and San Francisco, the Chambers of Commerce of Oakland, Long Beach and San Francisco, and the Commission staff.

1. Whether or not it is unlawful for Western Air Lines, Inc., to offer service of a particular class on a particular type of aircraft at a lower fare between San Francisco and Los Angeles than between Oakland and Los Angeles.

2. Whether or not it is unlawful for Western Air Lines, Inc., to offer service of a particular class on a particular type of aircraft at a lower fare between Los Angeles and San Francisco than between Long Beach and San Francisco, except as that differential is reasonably related to the difference in the mileage.

It also was agreed that the reasonableness of the fare level is not in issue.

Subsequently, on September 3, 1963, the Commission instituted an investigation on its own motion in Case No. 7700, for the following purposes:

1. To determine the lawfulness of the propeller-coach class fares of respondent Western Air Lines, Inc., between San Francisco and Los Angeles, Oakland and Los Angeles, and San Francisco and Long Beach, California.

2. To determine whether respondent is in violation of Article XII, Section 21 of the Constitution of the State of California, and Rule 9 of General Order No. 105-A in maintaining said fares.

3. To determine whether the Commission should establish other fares to be charged, demanded, collected or received by respondent for the transportation of passengers between said cities and for the type of service specified in aforesaid paragraph 1.

Case No. 7700 was consolidated for hearing with (I&S) Cases Nos. 7668 and 7670. Public hearing in these matters was held before Examiner Mallory at San Francisco on September 18 and 19, 1963, and the matters were submitted on the latter date.

In his opening statement, counsel for the Commission staff stated that under General Order No. 113-A the Commission could determine to suspend and investigate any proposed reduced fare or conclude not to suspend such fare; but there is no established procedure under that general order under which the Commission could

keep open such a proceeding for the purpose of investigating the lawfulness of a reduced fare once it had permitted such fare to go into effect. He stated that the purpose of instituting the investigation in Case No. 7700 was to dispel any doubt that the Commission had before it a proper proceeding in which it could receive evidence and issue an appropriate order. He further stated that by instituting Case No. 7700 there was no intent to broaden the issues agreed upon by and between the parties to the aforementioned prehearing conference. Petitioners in (I&S) Cases Nos. 7668 and 7670 have categorically limited themselves to the issues agreed upon at the prehearing conference.

Evidence was received in the three proceedings on a common record. Testimony and exhibits were presented by respondent; by the Cities of Oakland, Long Beach and San Francisco; by the president of a motor-hotel chain; by the traffic manager of a canned baby food company; and by an engineer from the Commission's Transportation Division staff.

Between San Francisco and Los Angeles scheduled airline passenger service is performed by Western Air Lines, Inc., (Western), United Air Lines, Inc. (United), Trans World Airlines, Inc. (TWA), Pacific Southwest Airlines, Inc. (P.S.A.), and Pacific Air Lines, Inc.<sup>2/</sup> These airlines operate between San Francisco International Airport and Los Angeles International Airport, except that P.S.A. also serves Burbank Airport.

Between Long Beach and San Francisco scheduled airline service is performed by Western and Pacific Air Lines. Between ✓

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<sup>2/</sup> Pacific Air Lines is a local service air carrier and does not perform nonstop service between San Francisco and Los Angeles or between Long Beach and San Francisco.

Oakland and Los Angeles, Western, United, TWA, and Trans California Airlines (Trans California) offer scheduled service. No scheduled service is performed between Long Beach and Oakland.

Appendix B sets forth the daily coach schedules and coach fares of the scheduled airlines offering nonstop or single-stop service between the above points. Coach service is provided in three different types of airline equipment, namely, piston aircraft, turbo-prop aircraft (Electra), and jet aircraft. As shown in Appendix B, Western's coach service between Oakland and Los Angeles and between Long Beach and San Francisco utilizes only Electra equipment. Therefore, Western's coach fares for service in other types of airline equipment between San Francisco and Los Angeles are not directly in issue in these proceedings.

According to information developed by the Commission staff, intrastate passengers between San Francisco and Oakland, on the one hand, and Los Angeles, Burbank and Long Beach, on the other hand, for the calendar years 1961 and 1962 were as follows:

Table I

	<u>1961</u>	<u>1962</u>	<u>% Increase</u>
Pacific Southwest Airlines	473,230	731,787	54.64
Trans World Airlines	62,240	53,700	13.72*
United Air Lines	599,100	429,250	28.35*
Western Air Lines	<u>196,990</u>	<u>289,590</u>	<u>47.01</u>
Total	1,331,560	1,504,327	12.97

\* Decrease

(Pacific Air Lines and Trans California are excluded, because information was not available.)

The City of Oakland and Oakland Chamber of Commerce presented three witnesses. The chairman of the Regional Committee

for Better Service at Oakland International Airport testified concerning discussions with airlines in an effort to get more scheduled service from and to the Oakland airport. A survey was conducted in April 1962 of the origin of Bay Area airline passenger traffic destined to Los Angeles and three other major airline points. This survey showed, among other things, that the East Bay counties of Alameda, Napa, Solano and Contra Costa generated 32.3 percent of the traffic by Bay Area residents to Los Angeles. Upon conclusion of the survey, discussions were had with eight airlines, leading to improved service at Oakland by some of the airlines, commencing in June 1963. Western improved its service by adding a nonstop round-trip Electra flight between Oakland and Los Angeles, in addition to its single-stop flight via San Francisco. This witness testified that Western's lower fare at San Francisco would attract East Bay passengers from Western's nonstop Oakland-Los Angeles flight.

The president of the Industrial Traffic Managers' Aviation Council testified on behalf of that organization<sup>3/</sup> and for his company, a national retail store chain. Industrial firms, he stated, formerly used first class service and selected air transportation on the basis of the airline. Now, with the multiplicity of fares and equipment available, the selection is on the basis of cost, schedules and equipment. Whenever it is necessary for travelers to use San Francisco service, because of more frequent schedules or other reasons, P.S.A.'s low cost service or Western's Thriftair service is used. The witness stated that his employer's

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<sup>3/</sup> The Industrial Traffic Managers' Aviation Council is comprised of the traffic managers of 85 industrial firms located in Alameda, Contra Costa and Solano Counties.

regional headquarters is in Oakland, that the company's first choice of airline service is from Oakland, and that his company would continue to use Western's Oakland service at the \$16.95 fare rather than cross the bay to utilize the lower cost service available at San Francisco. However, based on the total number of yearly passengers, he estimated that his company would pay a premium of \$2,900 per year if Western's Oakland service was used exclusively for air travel between the Bay Area and Los Angeles. He acknowledged, however, that his company would not use Western's Oakland service exclusively, but would also use service from San Francisco or use Trans California's service from Oakland. It was his position that Western's reduced fare at San Francisco is effectively offered only to a portion of the Bay Area market and that fare, therefore, is discriminatory as to the portion of the market to which it is not effectively offered.

The manager of the Metropolitan Oakland International Airport testified concerning operations at that airport. He also testified concerning the effect on Oakland Airport of the inauguration in 1959 of P.S.A.'s Electra turbo-prop service between San Francisco and Los Angeles at a coach fare lower than that maintained by the other major airlines. He showed that from 1959 to 1962 P.S.A. had increased its passenger traffic in the Bay Area-Los Angeles market by 260 percent and its share of the total market from 20 percent to 45 percent. He concluded from this analysis that P.S.A.'s lower fare not only diverted traffic from one airline to another but also diverted traffic from Oakland Airport to San Francisco Airport.<sup>4/</sup> He also concluded that the maintenance

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<sup>4/</sup> Except for a short period in 1960 and 1961, P.S.A. has not operated between Los Angeles and Oakland.

of a lower Electra coach fare by Western from San Francisco than from Oakland would tend to divert passenger traffic from Oakland to San Francisco and, for this reason, the lower San Francisco fare would discriminate against Oakland. The witness also testified that Western receives competition on Oakland-Los Angeles traffic from Trans California, which inaugurated service in August 1962. He stated that Trans California's lower fare attracts passengers from Western.<sup>5/</sup> The number of passengers handled by Trans California has grown steadily, approximating 10,700 per month in August 1963.

The president of a motor-hotel chain testified concerning the effect of airline fares on the operations of that company. He stated that the selection of hotel sites near the Long Beach and Oakland airports was made to attract guests traveling by air from and to those cities. He testified that higher fares between Oakland and Los Angeles and between Long Beach and San Francisco than between San Francisco and Los Angeles would tend to divert passengers from the Oakland and Long Beach airports, causing a loss of potential patrons for his enterprise.

Evidence was presented on behalf of the City of Long Beach and the Long Beach Chamber of Commerce through the executive secretary of the Long Beach Chamber of Commerce and the director of aeronautics and airport manager for Long Beach Airport. Long Beach Airport had no single-stop airline service to the Bay Area prior to April 30, 1962. On that date Western inaugurated direct Electra coach service from and to San Francisco. One month following, Western inaugurated its Thriftair service between Los Angeles

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<sup>5/</sup> As shown in Appendix B, Trans California's fare is \$10.99 or \$10.50 on a round-trip basis, and Western's fare is \$16.95. Trans California operates only from and to Oakland.



Airport and San Francisco. Long Beach contends that Western has extensively promoted and advertised its Thriftair and other air services from and to Los Angeles Airport throughout the Los Angeles-Orange Counties metropolitan area and has failed to publicize its Long Beach service. Thus, the witness opined, potential patrons are not aware of the service from Long Beach. The airport coach fare between Long Beach and Los Angeles Airport is less than the difference in Western's fares to San Francisco from the two airports. Long Beach maintains that there is an unreasonable difference in Western's propeller coach fares in favor of Los Angeles, and that this difference in fares coupled with Western's practice of promoting its Los Angeles services diverts air passenger traffic to Los Angeles, which traffic, from a geographical standpoint, is best served through Long Beach Airport. Based on a comparison of coach fares maintained by Western between other points on its system, Long Beach contends that the Long Beach-San Francisco coach fare should not exceed the Los Angeles-San Francisco fare by more than 4.5 percent. This is the percentage that the airline mileage between Long Beach and San Francisco exceeds the mileage between Los Angeles and San Francisco.

Western's witness testified that it reduced its San Francisco-Los Angeles Electra coach fare to the level of P.S.A.'s fare in order to meet the competition of that airline. P.S.A. does not operate between Oakland and Los Angeles or between Long Beach and San Francisco. Western maintains that the \$13.50 fare is a depressed fare, yielding a rate per mile far less than coach fares elsewhere on its system. Therefore, it elected not to lower its Electra coach fares at Oakland and Long Beach where it claims it has no competition from P.S.A. Western presented evidence to show

that conditions at Oakland and Long Beach are different from those at San Francisco and Los Angeles. San Francisco and Los Angeles are served by all major airlines operating within California. The San Francisco-Los Angeles market is a high-density market, with over 1,500,000 air passengers in 1962. As the largest intrastate market in the nation, it is capable of sustaining a high frequency of service. There is a high degree of competition between the several airlines for San Francisco-Los Angeles coach traffic, resulting in vigorous fare competition. According to Western, Long Beach and Oakland are satellite airports. Service from and to Oakland and Long Beach was not inaugurated until the Los Angeles-San Francisco market was well-established. In Western's view, operations from and to Oakland and Long Beach are marginal. P.S.A. formerly operated between Oakland and Los Angeles, but discontinued such service. United at one time served Long Beach, but discontinued operations at that airport. Western's view is that there is little possibility for growth of traffic at the so-called satellite airports, and that it now operates all of the schedules from and to such airports which are economically feasible. If fares are reduced at Oakland and Long Beach, no substantial new traffic would be developed. Therefore, the result of a fare reduction at Oakland and Long Beach would be to reduce Western's net revenues. On the other hand, Western expects the San Francisco-Los Angeles fare reduction to increase its net revenues by attracting passengers now carried by other airlines. Western presented evidence to show that in August 1963, its passenger traffic increased over July 1963, by approximately 10 percent between all points on its system, between Long Beach and San Francisco by 4.4 percent, and between Oakland and Los Angeles by 10.4 percent. The passenger traffic on its six

Electra flights between San Francisco and Los Angeles under the reduced fares increased 103.2 percent during that period. From this Western concluded that there was little or no diversion of traffic from Oakland and Long Beach because of the reduced San Francisco-Los Angeles coach fare; and that the San Francisco-Los Angeles fare reduction achieved the purpose of attracting new passengers to Western's Electra flights between those points.

Western's witness stated that if the Commission found its reduced Electra fare to be unduly discriminatory, the three methods it could employ to remove the discrimination would be to (1) reduce the Oakland and Long Beach fares, (2) increase the San Francisco-Los Angeles fare, or (3) discontinue its service from Oakland and Long Beach. Western stated it would seriously consider discontinuance of service as the method it would employ.<sup>6/</sup>

The City and County of San Francisco presented evidence concerning airline operations from and to San Francisco Airport. San Francisco supported the right of Western to meet the competition of P.S.A. on service between San Francisco and Los Angeles. It took no position with respect to the levels of fares from or to Long Beach or Oakland.

The Commission staff participated in the proceeding, but took no position on the matters involved herein.

#### Discussion

The principal issue before the Commission is whether Western, by maintaining a \$13.50 Electra coach fare between San Francisco and Los Angeles but not between Oakland and Los Angeles

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<sup>6/</sup> This Commission's jurisdiction over air common carriers stems from the provisions of Article XII, Sections 17 and 19 through 22 of the Constitution of the State of California. The Commission does not have jurisdiction under the Constitution to regulate the services offered or the routes operated by air common carriers.

and San Francisco and Long Beach, is in violation of Article XII, Section 21 of the California Constitution and Rule 9 of General Order No. 105-A of this Commission. The question of reasonableness, per se, of such fare is not before the Commission.

The pertinent part of Article XII, Section 21 of the California Constitution provides as follows:

"Section 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons ..." (Emphasis added)

Oakland and Long Beach contend that their airports draw patronage from a large part of the same transportation market as San Francisco and Los Angeles airports, and that Western's lower fare between Los Angeles and San Francisco than between Oakland and Los Angeles or Long Beach and San Francisco will divert traffic from Oakland and Long Beach. Oakland contends that the same Electra service is provided by Western between Oakland and Los Angeles as is provided between San Francisco and Los Angeles, and therefore Oakland is entitled to the same fare. Long Beach contends that the fare between Long Beach and San Francisco is not reasonably related to the Los Angeles-San Francisco fare. Problems concerning the adequacy of airline service from and to Long Beach and Oakland were raised by those cities. While service has some bearing on fare levels, we have no power to correct any inadequacies in airline service at those airports.

Western contends that it should be permitted to meet its competition where it finds it, that is, between San Francisco and Los Angeles. It contends that conditions are different at Long Beach and Oakland than at San Francisco and Los Angeles; therefore, a different level of fares at Oakland and Long Beach does not unduly discriminate against those cities. ✓

In determining whether the fare differential here in issue violates Article XII, Section 21 of the California Constitution, the following issues must be determined: (1) whether Western faces competition from P.S.A. only between San Francisco and Los Angeles, or between other airports within the metropolitan areas encompassing San Francisco and Los Angeles, (2) whether Western's maintenance of a lower turbo-prop fare between San Francisco and Los Angeles will divert traffic to those airports from Oakland and Long Beach, (3) whether transportation conditions between Oakland and Los Angeles, on the one hand, and Long Beach and San Francisco, on the other, are materially different from those between San Francisco and Los Angeles so as to warrant a higher level of fares for Western from Oakland and Long Beach.

Western is a "transportation company" as that term is used in Article XII, Section 21 of the California Constitution and, for the purposes of these proceedings, is subject to regulation by this Commission pursuant to the terms of said constitutional provision. (People v. Western Air Lines, 42 Cal. 2d 621.) This Commission has held that a common carrier may publish rates lower than can be required of it by a regulatory body, but in doing so, the carrier is charged with the duty of seeing that such rates are not unduly discriminatory. (Pacific Portland Cement v. Southern Pacific R.R., 23 CRC 568, 574.) The preference or prejudice alleged to constitute undue discrimination must be shown to be a source of advantage to parties or traffic allegedly favored and a detriment to other parties or traffic. (California Portland Cement v. Union Pacific R.R., 54 CPUC 539.) Whether in particular instances a difference in rates as between users of a common carrier service constitutes unjust discrimination, or whether such difference is justified by

conditions and circumstances attending such use, are questions of fact depending upon the matters proved in each case. (City and County of San Francisco v. Western Air Lines, 204 C.A. 2d 105, 137.)

#### The Market

Western claims that its \$13.50 fare between San Francisco and Los Angeles was designed to compete with P.S.A. between these points and that since P.S.A. does not operate directly between Oakland and Los Angeles or between San Francisco and Long Beach, Western is not in direct competition with P.S.A. and it is not necessary for Western to reduce its fare between these points. The record is clear, however, that the San Francisco Bay metropolitan area and the Los Angeles-Orange Counties metropolitan area each constitutes an integrated air passenger market, and that regardless of the particular airport in each area from which operations are conducted, the competition between Western and P.S.A. is for all passengers in the respective areas. As Western's witness stated, "We are competing for the total patronage of P.S.A. ..." Western's Thriftair service from Los Angeles International Airport, for example, draws passengers from the Long Beach area and P.S.A. draws passengers from the East Bay with its service from San Francisco International Airport. Accordingly, Western's contention that P.S.A. provides competition only at San Francisco and Los Angeles Airports is not supported by the evidence.

#### Diversions

Oakland and Long Beach claim that the reduced fare will cause detriment to the public in that it will divert passengers from air services provided at their respective airports, causing inconvenience to such passengers due to the additional ground travel time necessary to reach San Francisco International or Los Angeles

International Airports. As to passengers who find it more convenient to use Oakland and Long Beach airports, such passengers would, nevertheless, have to pay a substantially higher fare.

Western's reduced fare was in effect for only one month at the time of the hearing. By itself the time period is not long enough to provide sufficient direct evidence of the extent to which such fare will divert traffic from either Long Beach or Oakland airports. That the fare in issue here does have the ability to divert is shown by the fact that Western's Electra coach passengers between Los Angeles and San Francisco during this month (the first month of operations under the \$13.50 fare) increased 103.2 percent over the prior month (Exhibit WAL-14). Western's witness concluded that this increase was the result of diversion from other carriers, including P.S.A. During this same month Western's operations showed a passenger traffic increase over the prior month of approximately 10 percent for its system, 4.4 percent between Long Beach and San Francisco, and 10.4 percent between Oakland and Los Angeles.

It should be noted that the 103.2 percent increase in the Electra coach traffic between San Francisco and Los Angeles was between the same specific points where P.S.A., a well-established low-fare carrier, has long operated. If Western's \$13.50 fare can divert from P.S.A. where the carriers are in point-to-point competition and where P.S.A. has the same \$13.50 fare, it would seem reasonable to conclude that such fare would have the same or greater ability to divert from carriers serving the entire market, including Western itself, which maintains higher coach fares. Western, however, argues that the August over July increases between Long Beach and San Francisco (4.4 percent) and Oakland and Los Angeles (10.4 percent) approximate its system-wide increase, thus showing no diversion. The cities argue, on the other hand, that these

statistics are based upon normally peak summer months and therefore the percentages are not indicative of the extent of diversion.

While in itself this evidence of the diversionary ability of the fare in issue is inconclusive, other evidence of record shows generally that low fares have the ability to generate or divert traffic from other carriers and other areas. For example, Table I, supra, shows that Western's and P.S.A.'s 1962 traffic increased 54 and 47 percent, respectively, over 1961, while United's and TWA's decreased 28 and 13 percent, respectively. P.S.A.'s Electra fare of \$13.50 and Western's Thriftair fare of \$11.43, which were effective in 1962, were considerably lower than United's and TWA's coach fares of \$16.95.

Other such evidence is found in Exhibit WAL-2 which shows that during the month of June 1963, out of a total of 2,047 passengers who made reservations at Long Beach Municipal Airport for flights to San Francisco, 748 requested boarding at Long Beach Airport and 1,299 at Los Angeles. Of the 1,299 who requested boarding at Los Angeles, 1,112 were Thriftair passengers while the remaining 187 presumably used Western's Boeing jet and Electra services to San Francisco. Regarding this evidence, Western's witness testified that in his judgment, the 1,112 Long Beach Thriftair passengers were generated as a result of the fare decrease<sup>7/</sup> which became available to them at the Los Angeles International Airport. (Tr. p.196.) He further testified that these were passengers that Western would not otherwise have obtained and that, prior to Thriftair, a good many of them were probably using P.S.A.'s service. (Tr. p.197.) This conclusion is supported by Exhibit WAL-7, which shows that, in the

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<sup>7/</sup> Western inaugurated its Thriftair service between Los Angeles and San Francisco in June 1962. In June of 1963 this fare was \$11.43.



prior year, during June 1962, out of a total 970 San Francisco-bound passengers who made reservations at Long Beach Municipal Airport, 648 requested boarding at Long Beach while only 322 requested boarding at Los Angeles; 25 of the 322 passengers who requested boarding at Los Angeles were Thriftair passengers.

It would appear from this evidence that prior to Thriftair, P.S.A. drew a substantial amount of traffic from Long Beach with its \$13.50 fare out of Los Angeles. After Thriftair, the lower \$11.43 fare diverted from P.S.A. It is reasonable to conclude that substantially all, if not all, of such Thriftair passengers would use Western's Electra service at Long Beach given the choice of a comparably low fare. Furthermore, when Thriftair was inaugurated, of the 970 San Francisco-bound passengers who apparently preferred Western's service over P.S.A.'s, almost two-thirds of them utilized Western's services out of Long Beach rather than Los Angeles. This is in sharp contrast to what happened the following year when Western offered its Thriftair fare.

Still other evidence of the ability of a low fare to generate or divert traffic is provided by a comparison of Trans California's and Western's operations at Oakland. Trans California, an intrastate carrier between Oakland and Los Angeles and San Diego, inaugurated service in August of 1962. Its service is provided by piston driven Constellations and its fares are \$10.50 between Oakland and Los Angeles and \$16.00 between Oakland and San Diego (on a round-trip basis). Western started its nonstop Oakland-Los Angeles service in June 1963. Its service is provided by turbo-prop Electras at a \$16.95 coach fare. During the three months of June, July and August, 1963 (during which both carriers operated nonstop between Oakland and Los Angeles), Trans California's

August traffic was almost 40 percent higher than it was in June (Tr. pp. 142-143), while Western's August traffic was about 15 percent above its June experience (Exhibits WAL-2 and WAL-13). Thus, notwithstanding Western's longer identity, improved nonstop service and superior equipment, Trans California's traffic is growing at a much more rapid rate.

While such evidence indicates that low fares have the ability to generate and divert traffic, it is nevertheless difficult to predict the extent to which the fare in issue here will divert traffic from Oakland and Long Beach. The most that can be said is that there is a reasonable probability that some diversion will result.

#### Critical Load Factor

In the circumstances of this case, the prospect of even a minimal amount of diversion becomes important. Western claims that its operations at Oakland and Long Beach are economically marginal. For example, its service between Oakland and Long Beach was operated at about a 47 percent load factor at the time of hearing, while its break-even load factor for such an operation is about 53 percent. It claims that if it were to reduce its Oakland-Los Angeles and San Francisco-Long Beach fare to the same level as the San Francisco-Los Angeles fare, it would require a 25 percent increase in passengers to produce the same revenues as under its present fares. Western contends that the chances of increasing the traffic to this extent are "problematical" and if operations proved to be uneconomic, it would, as one alternative, have to withdraw from serving Oakland and Long Beach altogether. ✓

The Cities' answer to this contention is best summarized by counsel for Long Beach who stated, "...If we don't complain..." ✓

and traffic is diverted and we go down hill...we lose the service. If we do protest and Western...reduce[s] its fare and we can't generate the additional traffic, then we are taking the same risk; we are liable to lose it." He stated that in the long run they would prefer to take the chance of developing traffic under a reduced fare. Thus, whatever risk there is of a reduced fare not generating sufficient traffic to offset the loss in revenue, the Cities recognize it and are willing to assume such risk. ✓

With the load factor hanging so critically in the balance, even a small amount of diversion could prevent achieving the break-even point. The risk of not being able to generate a sufficient number of passengers necessary to offset the possible loss of revenue caused by the reduced fare seems to us to be less than the risk of diversion taking place to such an extent as to prevent these operations from being economic. There is no evidence in this record which shows that the Oakland-Los Angeles and San Francisco-Long Beach traffic would not react as favorably to a comparably low fare as San Francisco-Los Angeles traffic did under the \$13.50 fare. For instance, given the chance of a comparatively low fare at Long Beach, if but half of the 1,112 Long Beach-San Francisco passengers who traveled Thriftair out of Los Angeles in June 1963 were to switch to Western's services at Long Beach, such increase would be sufficient to constitute the 25 percent increase that Western claims would be necessary to offset the loss of revenue resulting from the reduced fare. With respect to Oakland, considering that Trans California's August over June, 1963, increase was 40 percent compared to Western's 15 percent, all that Western would have to gain is approximately an additional 1,300 passengers to make up the loss in revenues. We are of the opinion that a reduced fare at Long Beach and Oakland could accomplish these objectives.

Comparison of Conditions

Assuming that the present fares do not result in diversion and that the service at Oakland and Long Beach is not withdrawn, the fact remains that under such circumstances, air passengers utilizing Western's services between Oakland and Los Angeles and San Francisco and Long Beach would, nevertheless, have to pay substantially higher fares than passengers using Los Angeles and San Francisco airports. Thus, it becomes necessary to determine whether conditions at Oakland and Long Beach airports are so different from those at San Francisco and Los Angeles airports as to justify the assailed difference in fare.

Each pair of airports is situated in the heart of large, densely populated and growing metropolitan areas of this State. The runway, terminal and navigational facilities at Oakland and Long Beach are comparable to those at San Francisco and Los Angeles. The airline distances between the airports are as follows: Oakland Municipal Airport and Los Angeles International Airport, 339 miles; San Francisco International Airport and Los Angeles International Airport, 340 miles; San Francisco International Airport and Long Beach Municipal Airport, 355 miles; (Oakland Municipal Airport is about 12 miles from San Francisco International Airport, and Long Beach Municipal Airport is about 17 miles from Los Angeles International Airport).

Western's service, insofar as it involves the fares in issue, is provided by the same type of turbo-prop Electra aircraft and the flight times are comparable. Western, of course, claims that conditions at Oakland and Long Beach are different from those at San Francisco and Los Angeles due to the multiplicity of services and the larger volume of passengers at the latter airports; San Francisco

International Airport handles four times as much traffic as Oakland Municipal Airport, and Los Angeles International Airport 13 times as much as Long Beach Municipal Airport. We have already discussed the marginal aspects of the traffic at Oakland and Long Beach, and in light of that discussion we do not consider the difference in traffic volumes to be significant differences in transportation conditions for the purposes of this proceeding. We observe that, to a large extent, even assuming that a potential exists, the amount of traffic handled is related to the extent of services provided. For instance, when Western instituted its Long Beach-San Francisco nonstop Electra service in May 1962 its traffic increased in one month from 406 passengers in April to 1,363 in May. Similarly, when it instituted its Oakland-Los Angeles nonstop flights in June 1963 its traffic increased in one month from 2,585 passengers in May to 4,525 in June. (Exhibit WAL-2.) Further evidence of this is seen in the fact that notwithstanding that Western was already serving the Oakland-Los Angeles market, when Trans California commenced service, Trans California's passenger volume increased by almost 50,000 passengers between August 1962 and August 1963. (Tr. pp. 142-143, Ex. WAL-2.)

Western contends that the facts presented here are similar to those considered by the Commission in the following decisions: Sperry Flour Co. v. Island Transportation Co., 30 CRC 561; Northwestern Pacific Railroad Co. to increase fares, 39 CRC 339; and Pacific Gas and Electric Co., 56 CPUC 169. We have considered the cases relied upon by Western and find that they are inapplicable in the present situation. In the P.G.&E. case, for example, P.G.&E. established a special rate area within which its charges for electricity were less than its system rates but were equivalent to

those levied by the Shasta Dam Area Public Utility District. While P.G.&E.'s rate was competitive, it was limited to the area where it found its competition from the Utility District. The significant fact here is that the reduced rates were available to all customers in the competitive area. In the instant case the evidence shows that the Oakland and San Francisco area, on the one hand, and the Los Angeles and Long Beach area, on the other, constitute the air markets wherein Western finds its competition from P.S.A. In the instant case, however, unlike that in the cited case, the reduced fare is not being made available to all persons in such competitive markets.

In Sperry Flour Co. v. Island Transportation Co., complainant claimed that a \$2.00 vessel rate on flour and related articles by Island Transportation Co. from South Vallejo to Stockton was unjust and unreasonable because the rate on similar articles was \$1.40 between San Francisco and Stockton and \$1.60 between Oakland and Stockton. The lower rate between San Francisco and Stockton was defended upon the ground that it was necessary to meet the competition of California Transportation Co. which provided service between San Francisco and Stockton but did not operate between South Vallejo and Stockton. In this case the record showed that while defendant maintained the same rate as California Transportation Co. between San Francisco and Stockton, it did not handle any of the tonnage between these two cities. Moreover, the Commission took note of the fact that the circumstances and conditions (other than the fact of competition) surrounding the rates between Stockton and Oakland were different from those which governed the South Vallejo to Stockton rate. This is unlike the instant case, where, as we have found, the transportation conditions between Oakland and Los Angeles and San Francisco

and Long Beach are substantially the same as between San Francisco and Los Angeles.

In the Northwestern Pacific case, Northwestern was authorized to increase rates between San Francisco and certain points in Marin County but not between San Francisco and Sausalito. Northwestern claimed that because it received competition from Southern Pacific Golden Gate Ferries only between San Francisco and Sausalito, its failure to apply for increases in such rates was justified. This case is again distinguishable because the competitive rate was available to all passengers traveling between San Francisco and Sausalito. Moreover, there was no showing that such a reduced rate would divert traffic from other points in Marin County to Sausalito or that there would be any impact upon industries which would place them at a disadvantage.

We think that the situation presented here is like that which the California Supreme Court and the Commission considered in the following cases: California Portland Cement Co. v. Public Utilities Commission, et al., 49 Cal. 2d 171; Sacramento Box & Lumber Co. v. Southern Pacific Co., 30 CRC 338; South San Francisco Chamber of Commerce v. Southern Pacific Co., 18 CRC 997; Albers Bros. Milling Co. v. Southern Pacific Co., 31 CRC 95. All of the cases considered discrimination in charges with respect to localities and places.

California Portland Cement Co. v. Public Utilities Commission appears to be controlling. There, an iron ore rate of 1.9824¢ per long ton between Basin and Colton, a distance of 132 miles, was assailed as discriminatory and prejudicial to petitioner and Colton and unduly preferential to Kaiser, which had available

to it from the same carrier, a rate of 1.736¢ per long ton between Dunn and Kaiser, a distance of 133.5 miles.

The Court said at page 175: "The implied finding of the Commission, which is thus clearly to the effect that the rates violated both section 453 of the Public Utilities Code and section 21 of Article XII of the Constitution, is supported by the evidence. The mileage and the operating conditions from Basin to Colton and from Dunn to Kaiser were substantially the same, except that there was a difference in anticipated volume and regularity of shipments. The weighing of whatever factors may have tended to show that the differential was reasonable as against the approximate equality of distances and conditions of transportation was a matter within the exclusive jurisdiction of the commission.

... "We are, of course, concerned here with the statutory and constitutional prohibitions against any 'unreasonable difference' or 'discrimination' with respect to localities and places, (emphasis added) and we are not confronted with the determination of the proper construction to be given to the language in section 453 of the code which prohibits a utility from granting any 'preference or advantage' to any corporation or person and from subjecting any corporation or person to any 'prejudice or disadvantage'. Whether or not the language relating to corporations and persons may be construed as referring to competitive relations, clearly such is not the case with the language pertaining to localities."

The record is persuasive that the assailed differentials in fares between Los Angeles-San Francisco, on the one hand, and Oakland-Los Angeles and Long Beach-San Francisco, on the other hand, are not justified by transportation conditions, and are a detriment to the movement of Western's airline traffic from or to Oakland and Long Beach.

Based upon the evidence of record, we find that:

1. Respondent's airline coach fares for turbo-prop service (Electra equipment) are the following:

<u>Between</u>	<u>And</u>	<u>One-Way Coach Fare</u>
Los Angeles	San Francisco	\$13.50
Oakland	Los Angeles	16.95
Long Beach	San Francisco	17.80



2. The mileages between airports are as follows:

<u>Between</u>	<u>And</u>	<u>Mileages</u>
Los Angeles	San Francisco	340
Oakland	Los Angeles	339
Long Beach	San Francisco	355

3. Oakland Airport serves a portion of the San Francisco Bay metropolitan area market for airline passenger service, which market also is served by San Francisco International Airport.

4. Long Beach Airport serves a portion of the Los Angeles-Orange Counties metropolitan area market for airline passenger service, which market also is served by Los Angeles International Airport and Lockheed Air Terminal at Burbank.

5. The maintenance of a lower coach fare for turbo-prop service by respondent between San Francisco and Los Angeles than between Oakland and Los Angeles, will deprive Oakland Airport of the opportunity to effectively compete with San Francisco Airport for airline passengers between points in the San Francisco Bay metropolitan area and Los Angeles.

6. The maintenance by respondent of a lower coach fare for service in turbo-prop aircraft between San Francisco and Los Angeles than between Oakland and Los Angeles is an unreasonable difference in fares which unduly discriminates against Oakland.

7. The maintenance of a differential in respondent's coach fare for turbo-prop service greater than the difference in such fares maintained prior to August 1, 1963, or greater than the 4.5 percent difference in airline mileages between Los Angeles and San Francisco and between Long Beach and San Francisco will deprive Long Beach Airport of the opportunity to effectively compete with Los Angeles Airport for airline passenger traffic between the Los Angeles-Orange Counties metropolitan area and San Francisco.

8. The maintenance of a greater differential in respondent's coach fares for service in turbo-prop aircraft between Los Angeles and San Francisco, on the one hand, and Long Beach and San Francisco, on the other hand, than maintained by respondent prior to the reduction in respondent's Los Angeles-San Francisco propeller coach fare effective August 1, 1963, or a differential greater than the 4.5 percent difference in airline mileage between the respective airports, is an unreasonable difference in fares which unduly discriminates against Long Beach.

We conclude that respondent, Western Air Lines, Inc., should be ordered to remove the undue discrimination and preference described in the above findings.

O R D E R

IT IS ORDERED that:

1. Respondent is hereby directed, within sixty days after the effective date of this order, to remove the undue discrimination more specifically set forth in the findings in the foregoing opinion by means of reductions or the filing of a formal application to establish increased fares.

2. Respondent is directed to serve upon the parties of record in these proceedings copies of all filings made pursuant to the preceding ordering paragraph.

The Secretary of the Commission is directed to serve a copy of this order upon respondent and upon all appearances in these proceedings. The effective date of this order shall be twenty days after service upon respondent.

Dated at San Francisco, California, this 7<sup>th</sup> day of April, 1964.

William L. Bennett  
President  
Richard Mitchell  
Walter W. Rapp  
George H. Trover  
Frederick B. Holbrook  
Commissioners

APPENDIX A

APPEARANCES

D. P. Renda and John W. Simpson, for Western Air Lines, Inc., respondent.

J. Kerwin Rooney and George E. Thomas, for the City of Oakland and Oakland Chamber of Commerce, petitioners in (I&S) Case No. 7670, and interested parties in (I&S) Case No. 7668 and Case No. 7700.

Leslie E. Still, Jr. and Gerald Desmond, for the City of Long Beach and Long Beach Chamber of Commerce, petitioners in (I&S) Case No. 7668, and interested parties in (I&S) Case No. 7670 and Case No. 7700.

Thomas M. O'Connor, Frank Needles and William F. Bourne, for the City and County of San Francisco; Charles J. Miller and James M. Cooper, for the San Francisco Chamber of Commerce; W. Ray Walker, for the Port of Oakland; V. A. Bordelon, for Los Angeles Chamber of Commerce; Jim Stockman, for Edgewater Inn; and Jack P. Sanders, for Gerber Baby Products, Co.; interested parties.

Cyril M. Saroyan, for the Commission staff.

APPENDIX B

TABLE SHOWING DAILY COACH SCHEDULES AND COACH FARES OF SCHEDULED AIRLINES PERFORMING NON-STOP OR SINGLE-STOP SERVICE BETWEEN LOS ANGELES AND SAN FRANCISCO, LOS ANGELES AND OAKLAND, AND LONG BEACH AND SAN FRANCISCO, AS OF SEPTEMBER 19, 1963

<u>CARRIER</u>	<u>COACH SERVICE</u>	<u>TYPE OF AIRCRAFT</u> (1)	<u>NUMBER OF FLIGHTS</u> (2)	<u>ONE-WAY COACH FARES</u>
<u>Between San Francisco and Los Angeles</u> (3)				
Western	Thriftair	DC-6B	13	\$11.43
	Propeller	Electra	3	13.50
	Jet	B-720	5 (N) 6 (S)	23.70
P.S.A.	Propeller	Electra	19 (N)	13.50
			18 (S)	
United	Jet	DC-8 or B-720	13 (N)	23.70
			13 (S)	
T.W.A.	Propeller	Constell.	3 (N)	16.95
			2 (S)	
	Jet	C-880	8 (N) 9 (S)	23.70
P.A.L.	Propeller	M-404 or F-27	3 (N)	16.95
			2 (S)	
<u>Between Oakland and Los Angeles</u>				
Western	Propeller	Electra	2	16.95
T.W.A.	Propeller	Constell.	2	16.95
			Jet	C-880
United	Jet	DC-8	1	23.70
Trans Calif.	Propeller	Constell.	5	10.50 (4)
<u>Between Long Beach and San Francisco</u>				
Western	Propeller	Electra	1 (N) 2 (S)	17.80

(N) - Northbound  
(S) - Southbound

(1) Turbo-prop aircraft - Lockheed Electra, Fairchild F 27.  
Piston aircraft - Constellation, Douglas DC-6B, Martin 404.  
Jet aircraft - Boeing 720, Douglas DC-8, Convair 880.

(2) Number of round trip flights, except as shown.

(3) Los Angeles includes Burbank.

(4) One-half of round trip coach fare. For single trip, coach fare is \$10.99.

End of Appendix B