

Decision No. 71310**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of CALIFORNIA TIME AIRLINES, INC., a California corporation, for a certificate of public convenience and necessity as a passenger air carrier between the airports of Los Angeles and/or Burbank, San Jose and/or Oakland and/or San Francisco, Lake Tahoe and Santa Ana (Orange County Airport), pursuant to Chapter 4, Part 2, Division 1 of the Public Utilities Code.

Application No. 47843
(Filed August 25, 1965;
Amended October 15, 1965;
Amended October 20, 1965.)

Application of CALIFORNIA AIRLINES for a certificate of public convenience and necessity to engage in the intra-state transportation of persons and property.

Application No. 47913
(Filed September 22, 1965;
Amended November 15, 1965.)

Application of AIR CALIFORNIA for a certificate of public convenience and necessity.

Application No. 48406
(Filed April 18, 1966)

Donn C. Douglass, for California Time Airlines, Inc. and California Airlines, applicants.
Mark T. Gates, Jr. and J. Thomas Talbot, for Air California, applicant.
W. F. MacInnes and William R. Holmes, in propria personae, protestants.
Jack M. Stoops, for Pacific Southwest Airlines;
Raymond E. Costello, for Pacific Air Lines, Inc.;
Stephen J. Slade, for Los Angeles Airways;
D. J. Stadler, for A.B.C. Airlines, Inc.; Walter A. Wilson, for Newport Upper Bay Association;
Phil N. Scheid, for Bay Area Citizens Council of Orange County and in propria persona; Elmer Eberhardt; R. M. Towle; Cyril Fritz; and Dr. L. K. Wanlass, interested parties.
George L. Hunt, Eric Mohr and Milton J. DeBarr, for the Commission staff.

O P I N I O N

Each of the applications herein seeks a certificate of public convenience and necessity authorizing passenger air carrier service from Orange County Airport at Santa Ana (OCA) to the San Francisco Bay Area.

Public hearing was held before Examiner Gravelle at Santa Ana on June 28, 29 and 30, 1966. The matters were submitted on the latter date.

Applications Nos. 47843 and 47913

At the commencement of the first day of hearing Donn C. Douglass, appearing for California Time Airlines, Inc. and California Airlines, moved that the application of California Airlines be withdrawn and that the application of California Time Airlines, Inc. be deferred for hearing for 90 days. No reasons were given in support of the motion for continuance. Counsel for applicant Air California objected to any continuance and moved for dismissal of both applications for lack of prosecution. He stated that each applicant had ample time to prepare its case inasmuch as said applications were filed respectively on August 25, 1965 and September 22, 1965 and that further delay would only be detrimental to the public.

California Time Airlines, Inc. and California Airlines were each parties to the proceedings that resulted in Decision No. 70657 which awarded a certificate of public convenience and necessity to Pacific Southwest Airlines authorizing service between San Jose and Los Angeles. California Time Airlines, Inc. withdrew from those proceedings on the first day of hearing and California Airlines withdrew during the course of the proceedings. California Airlines has never filed its articles of incorporation with this Commission.

The Commission to date has received no communication from California Time Airlines, Inc. relative to further hearing on its application. It is evident that neither of these applicants are prepared to proceed with hearing much less offer passenger air carrier service to the public. The motion of California Time Airlines, Inc. for a continuance is denied, and the motion of California Airlines for withdrawal of its application is granted.

Application No. 48406

By this application Air California (Air Cal) proposes to inaugurate passenger air carrier service between OCA and San Francisco International Airport (SFO) with Lockheed Electra aircraft flying a minimum of five flights in each direction daily at a fare of \$14.85 plus tax, one way.

Air Cal is not now an operating organization in the sense of presently being able to perform the service for which it here seeks authorization. It has, however, taken all the steps preparatory to actual acquisition of aircraft and commencement of service which might be expected in the anticipation of receiving a certificate of public convenience and necessity. Options have been secured on the purchase or lease of the aircraft, maintenance of the aircraft has been tentatively arranged, financing has been firmly committed, the potential market has been thoroughly researched, management and executive personnel with ample air passenger transport experience have been selected and plans for flight crew hiring and training have been made.

Air Cal offered the testimony of experts in urban planning and market research to establish the growth potential of Orange County and the present available market upon which it might draw.

The northern portion of Orange County is already developed to a large extent, while the southern portion is presently in the planning and construction stage. OCA is located near the geographic center of the County and is accessible to all areas thereof. Some of the figures relative to the future growth of Orange County would appear overstated were it not for the fact of experienced growth in the last two decades. It is certain that the southern California area in general and Orange County in particular will continue to be a vibrant, growing region with almost limitless expansion potentials. This growth, however, is dependent inter alia upon the availability of efficient, comprehensive transportation facilities, of which air passenger transportation is yearly increasing in relative importance. There was ample testimony of the difficulty occasioned Orange County residents and visitors using vehicular transportation between Los Angeles International Airport and Orange County during peak hours.

Public support of the service herein proposed was evident from the large number of witnesses who testified in behalf of the application. These witnesses included businessmen, local public officials and a United States Congressman. The only opposition to the application was that of two private individuals who apparently reside at the end of the OCA runway and are, therefore, in the flight path and noise area of the aircraft to be utilized in the proposed service. These individuals offered no testimony but each made statements protesting the application. Later witnesses who also lived in the flight path of OCA testified that the noise factor caused by aircraft overhead was not unduly disturbing and that they accepted such annoyance as was caused as "merely one of the facts of life". In determining public convenience and necessity this Commission considers all of the public, and we do not treat lightly

the protest of those who fear the noise consequence of any accelerated activity at OCA. To deprive the overwhelming body of the public of the proposed service because of the inconvenience caused a few, however, would not be in the public interest. We are cognizant of the problem posed here but cannot allow such objection to deny the benefits that will flow to the OCA area and the State as a whole by the institution of the proposed service.

Air Cal has acquired the services of experienced management personnel to direct its operations. Its Board Chairman, President, Assistant to the President, Treasurer, and Vice President Operations are all men of broad executive and technical experience of many years standing in air transportation and allied fields, having served with many of this country's outstanding air carrier and plane manufacturing firms. Interspersed with these top executives is a group of younger men whose initial responsibilities will be in sales, public relations, advertising, and financing.

Air Cal has entered into firm agreements for its initial financing, which has been arranged in several steps. The first calls for private equity financing by the incorporators consisting of \$300,000 made up by the issue of 135,000 shares at \$1.00 per share and 16,500 shares at \$10.00 per share. The second step is for the issue of partially convertible subordinated debentures to Bankers Life Insurance Company of Nebraska to the extent of \$1,000,000 principal amount. The third step is debt or lease financing on the aircraft up to \$1,800,000, which entails financing up to 90% of the total aircraft cost. Three potential sources of this step have been secured, Transamerica Leasing, Occidental Life Insurance Co. and Guardian Life Insurance Company. The last financing step consists of a public stock offering of 220,000 shares at \$10.00 per

share. First California Company has by action of its executive committee and through Richard S. Nair, Vice President, Corporate Finance Department, committed itself to underwrite on a firm basis the entire public offering and to assist Air Cal in its overall financial activities.

Air Cal is aware of and is prepared to meet the insurance requirement for commercial air operation established by this Commission in General Order No. 120-A.

The Lockheed L-183 (Electra) is an historically proven aircraft operated with great success by Pacific Southwest Airlines and others between SFO and Los Angeles International Airport. It is particularly adapted to OCA because of the runway length of 5,700 feet which, according to Air Cal's Operations Vice President precludes the use of pure jet equipment. It is a comfortable, low cost, high density aircraft. Air Cal proposes a seating configuration of 77 seats initially, going to 96 seats as the need arises. Initial operations are to consist of the use of two aircraft with major maintenance handled by Pacific Southwest Airlines on a contract basis and with standby equipment available on a lease basis from Pacific Southwest Airlines in the event of equipment failure or other unavailability. Initially, five round trips daily are to be flown between OCA-SFO, with a proposed increase to seven after three months operations. The times of the schedule are not now firm and will remain flexible so as to allow for adjustments aimed to best serve the demands of the public.

Air Cal, in the projection which it has entered in this proceeding, has indicated that it expects operating losses at least through the first two years of operation. One of its projections shows a passenger market potential in 1966 of from 806,057 to

675,608. Another shows a 1965 potential of 444,750. Its income figures show a projected movement of 119,000 persons in the first year, 277,000 in the second year, 314,000 in the third year, and 386,000 in the fourth year. The evidence shows that the market potential will increase during each of those years and that Air Cal will garner the market to the extent of 21% in the first year, 35% in the second year, 36% in the third year, and 41% in the fourth year. Contemplated load factors are 26% in the first year, 56% in the second year, 64% in the third year, and 77% in the fourth year. The fare of \$14.85 plus tax was calculated on the basis of a cost of operation of 3.75 cents per mile. Other airlines operating Electras purportedly do so on a range of from 3.50 to 3.60 cents per mile.

Based upon the evidence of record in these proceedings the Commission finds that:

1. California Time Airlines, Inc. is not prepared to proceed with its application for authority to provide passenger air carrier service within the State of California.

2. Air California possesses adequate business experience in the field of air operations and financial stability and can provide the requisite insurance coverage, and that it should receive a certificate of public convenience and necessity as a passenger air carrier to inaugurate service between Orange County Airport and San Francisco International Airport.

3. Air California has established that it can economically serve the Orange County Airport-San Francisco International Airport route as a passenger air carrier operating a minimum of five round trips daily with Lockheed Electra Aircraft at a fare of \$14.85 plus tax, one way.

4. There presently exists a need for direct passenger air carrier service between Orange County Airport and San Francisco International Airport. No such service now exists.

5. Public convenience and necessity require the granting of a certificate as a passenger air carrier between Orange County Airport and San Francisco International Airport to applicant Air California.

Based upon the foregoing findings of fact the Commission concludes that the application of Air California for a certificate of public convenience and necessity between Orange County Airport and San Francisco International Airport should be granted.

Air California is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Air California, a corporation, authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, between the points and over the route particularly set forth in Appendix A, attached hereto and hereby made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulation:

Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the insurance requirements of the Commission's General Order No. 120-A. Failure to file such reports in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 120-A, may result in cancellation of the operating authority granted by this decision.

3. Within one hundred and eighty days after the effective date hereof, applicant shall establish the service herein authorized and file its tariff and timetables to reflect the authority herein granted. Such filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public and shall comply with the regulations governing the construction and filing of tariffs in the Commission's General Order No. 105-A.

4. Application No. 47843 of California Time Airlines, Inc. is dismissed.

5. Application No. 47913 of California Airlines is dismissed. The effective date of this decision shall be ten days after the date hereof.

Dated at Los Angeles, California, this 20th day of SEPTEMBER, 1966.

President
George T. Trover

Frederick B. Holboff

William M. Bernard

Augusta
Commissioners

Air California, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers by air in either direction in Lockheed L-188 (Electra) aircraft at a minimum of five scheduled round-trip flights daily:

Between Orange County Airport and
San Francisco International Airport.

Issued by California Public Utilities Commission.

Decision No. 71310, Application No. 48406