

ORIGINAL

Decision No. 71649

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
TROJANAIRE, INCORPORATED, a California
Corporation, for a passenger air
carrier certificate, Torrance,
Los Angeles, Inyokern.

Application No. 48162
(Filed December 31, 1965)

PACIFIC AIR LINES, INC., a
corporation,

Complainant,

vs.

TROJANAIRE, INCORPORATED, a
California Corporation,

Defendant.

Case No. 8420
(Filed May 23, 1966,
no answer on file.)

Thomasian & Walton by Harold Thomasian,
for applicant and defendant.
Cooper, White & Cooper by R. Barry Churton,
for Pacific Air Lines, Inc., protestant
and complainant.
S. J. Slade, for Los Angeles Airways, Inc.,
interested party.
E. C. Crawford and Joseph Braman, for
the Commission staff in Application
No. 48162 only.

O P I N I O N

The application and complaint herein were consolidated
for hearing. Hearing was held before Examiner Gravelle at
Los Angeles on August 2, 3, 4, and 12, 1966. The matter was
submitted on the filing of concurrent briefs. Pacific Air Lines,
Inc. (Pacific) filed its brief on October 3, 1966, it was the only
brief filed.

Trojansaire, Incorporated (Trojan, applicant or defendant) commenced operations as a passenger air carrier in mid-January 1966 between Los Angeles International Airport and Inyokern, actually Kern County Airport. Prior to that time Trojan had been exclusively engaged in aircraft operations in student instruction, rental and charter business; those activities have been continued to the present time. In late 1965 Trojan successfully negotiated a contract with the United States Government whereby it was to transport personnel from Los Angeles International Airport to Inyokern for the eventual destination of the United States Naval Ordnance Test Station at China Lake. This latter service commenced in February of 1966 by contract that expired July 31, 1966. It was continued by the parties thereafter on a temporary orally contractual basis awaiting the outcome of this proceeding and the reduction to writing of a new contract. The service for the Federal Government (contract service) called for a scheduled operation in which Trojan must have available as a minimum, one 8-passenger aircraft approved by the Federal Government. The Government in turn guaranteed to Trojan and paid for 2 passengers on each flight regardless of whether or not such passengers were actually transported. Trojan seeks a certificate of public convenience and necessity from this Commission to enable it to carry passengers for compensation in common carriage on the same flights it operates for the Federal Government pursuant to contract.

Several witnesses testified on behalf of applicant as to the need for the service offered by Trojan. From such testimony it is evident that the general area around Inyokern, within a 40-mile radius, contains a population of approximately 40,000 persons. Growth in the area has been relatively slow and is expected to

continue in the same manner. Movement between Los Angeles and Inyokern is limited to private transportation, Greyhound bus, Pacific or Trojan air transportation. The area was characterized by one witness as a "desert island" needing additional communication with the outside world. Another witness stated that people in the area must fight for services that others on the "outside" take for granted. Prior to August 1, 1966 Pacific was offering only one round trip daily between Inyokern and Los Angeles. On that date, due to renegotiated labor contracts, Pacific found it advantageous to increase its service to two round trips daily.

During the period February 7, 1966 through July 29, 1966 Trojan reported carrying 774 passengers in common carriage and 784 contract passengers. Pacific had 4,072 Inyokern passengers in 1965 and 2,402 passengers through June 1966. There was some dissatisfaction expressed by several of the public witnesses with Pacific's service prior to August 1, 1966. The one round trip daily at that time was flown to Inyokern in the evening, the crew and aircraft laid over for the night and there was an early morning departure the next day to Los Angeles. This service was unsatisfactory for persons destined for Inyokern on one-day business trips and necessitated arrival the night before the business day and a departure the day following the business day. The August 1, 1966 schedule provides for one southbound flight in the morning and another in the evening as well as a northbound flight morning and evening. Pacific service is offered in 40-passenger Fairchild F-27 aircraft or Martin 404 aircraft.

The service provided by Trojan for which it here seeks operating authority is conducted in small aircraft of which it has several. They were listed as a Piper Apache 4-passenger aircraft;

Aerocommander 500-B 6-passenger aircraft; Beechcraft D-18 9-passenger aircraft and Beechcraft Bonanza, Cessna 172 and Cessna 182, 3-passenger aircraft.

Pacific, in its protest, contends that there is insufficient traffic between the sought after terminal points to sustain two operators and that it can provide better, safer and more efficient service than can Trojan, that Trojan lacks the necessary business experience and financial stability and cannot economically serve the communities involved.

Each of the corporate officers or stockholders of applicant is employed elsewhere. Several of Trojan's personnel are connected with Trans World Airlines in flight capacities, others are engaged in non-airline endeavors. Trojan began as a partnership in 1960, and became incorporated in 1963. Its entire operation through the time of public hearing in these matters was conducted as a part-time operation by its management. George E. Rudberg, applicant's president, testified that he was negotiating with a retired Trans World Airline pilot, Bernard M. Lloyd, to take over the operation of Trojan. Mr. Lloyd also testified his possible relationship with Trojan was contingent upon several factors, among them successful certification, renegotiation of the Government contract and a satisfactory audit. While the personnel of Trojan are all apparently well qualified in their respective fields, some of which involve facets of air operation, we cannot on this record find that applicant is presently constituted with sufficient experience in air operations to receive a certificate of public convenience and necessity.

Applicant had attached to its application a balance sheet and profit and loss statement dated October 1965. This date was, of course, prior to the commencement of passenger air carrier service. Said balance sheet indicated outstanding common stock at \$21,300, a negative earned surplus figure of \$7,480.56 and a loss of

\$1,488.05. There was a bank overdraft of \$1,840.67. At the hearings applicant offered a newly-engaged (two weeks) bookkeeper who testified that applicant's books were currently in no position to prove anything. Applicant offered no additional financial data though it did present three witnesses who expressed an interest in investing in Trojan. They were each employees of Trans World Airlines and any investment they might make was contingent upon Mr. Bernard M. Lloyd's employment by and freedom to manage the applicant.

A financial examiner from the Commission staff testified as to his examination of applicant's operation. He presented Exhibit No. 5 which included a balance sheet dated June 30, 1966 and an operating revenue and expense statement for the six-month period ending June 30, 1966. The balance sheet showed capital stock outstanding of \$31,700 as against \$21,300 on October 31, 1965 and a negative earned surplus of \$20,025 as against \$8,968 on October 31, 1965. There was a net loss of \$9,779 for the six-month period up to June 30, 1966 and a bank overdraft of \$8,677. While the passenger figures submitted by applicant show a steady growth throughout its common carrier operation and we cannot predict the extent to which its traffic might be able to grow, we cannot herein find that applicant possesses the financial stability necessary to receive a certificate of public convenience and necessity.

Applicant's insurance coverage is adequate as required by General Order No. 120-A. The aircraft with which it operates are small and of a type that conceivably could provide a needed and economically feasible operation under proper management and with sufficient public support. Its schedules fill a definite void in air service between Inyokern and Los Angeles but those schedules and indeed the service itself is to a great, if not exclusive extent,

dependent upon the conduct of the contract operation. It was testified that contract passengers take precedence over common carriage passengers and that the common carriage operation was not feasible without the contract service, and it was stipulated that under the terms of the contract the Federal Government could at any time cancel the same at its convenience.

Based upon the evidence presented in this proceeding, we are unable to grant applicant a certificate of public convenience and necessity. This is not to say, however, that we do not recognize the need for adequate passenger air carrier service between Inyokern and Los Angeles or that an adequately financed and well managed passenger air carrier could not economically provide such a service.

We are cognizant of the fact that this Commission is without jurisdiction over the service provided by Pacific and that it currently is offering its services between Inyokern and Los Angeles on a temporary basis. Pacific may elect by May 1, 1967 whether or not it will seek permanent certification from the Civil Aeronautics Board to serve Inyokern. Two of its corporate officers testified that they would strongly urge continuation of the two round trips daily inaugurated on August 1, 1966. They testified that the chief executive officer of Pacific, Matthew McCarthy, had been advised and was receptive to seeking permanent certification for this route.

Because of the result we reach in the application it is unnecessary to dwell at length on the complaint. Suffice it to say that defendant's operation was in violation of Section 2752 of the Public Utilities Code; such operation however was instituted and

conducted in good faith under statutes that were newly enacted and which had not been interpreted by this Commission or any Court.

Findings

1. Applicant lacks the business experience in the field of air operations and the financial stability to receive a certificate of public convenience and necessity as a passenger air carrier.

2. Applicant has not established its ability to economically serve the points of Inyokern and Los Angeles as a passenger air carrier.

Based upon the foregoing findings of fact the Commission concludes that the application of Trojanaire, Incorporated for a certificate of public convenience and necessity as a passenger air carrier should be denied and it should be ordered to cease and desist from providing common carrier passenger air carrier service between terminal points wholly within this State.

O R D E R

IT IS ORDERED that:

1. Application No. 48162 of Trojanaire, Incorporated for a certificate of public convenience and necessity as a passenger air carrier is denied.

2. Trojanaire, Incorporated shall cease and desist ✓
from providing service as a passenger air carrier as that term is defined in Section 2741 of the Public Utilities Code.

3. Case No. 8420, the complaint of Pacific Air Lines, Inc. is dismissed as moot. ✓

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 6th day of DECEMBER, 1966.

Arthur E. Mitchell President
George T. Hoover
Frederick B. Holdoff
Augustas
William M. Dennis Commissioners