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ORIGINAL

Decision No. 72305

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
HENRY KENGLA (HOLIDAY AIRLINES) to)
operate passenger air carrier service)
between Oakland, San Jose, Fresno &)
Al Tahoe; to establish fares; to)
establish time of operation; to)
establish frequency of service.)

Application No. 47901

SUPPLEMENTAL ORDER

On March 3, 1967, Holiday Airlines, Inc. (Holiday), a certificated passenger air carrier, pursuant to Decision No. 71648 dated December 6, 1966, in the above numbered application, filed "Application for Amendment of Certificate to Permit Use of Large Aircraft". Said pleading was treated by the Commission as a "Petition for Modification of Decision No. 71648".

The certificate of public convenience and necessity granted by Decision No. 71648 limited operations by Holiday to aircraft with a gross weight under 12,500 pounds. Holiday now seeks a change in its certificate to allow operation of a Douglas DC-3 aircraft which has a gross weight above 12,500 pounds and a passenger capacity of 28.

In support of its request Holiday has attached Exhibits "A", "B" and "C" to its verified application. Exhibit "A" reflects the traffic carried by Holiday for three six month periods, July 1, 1965 through December 31, 1965; January 1, 1966 through June 30, 1966; and July 1, 1966 through December 31, 1966. There has been a steady growth of passenger traffic from the first period in which 3,643 persons were carried to the last period in which 5,624 persons were carried. Seat utilization has grown from 73 percent to 79

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percent and the number of scheduled trips from 492 to 680. Holiday alleges that its present aircraft, limited to 12 seats, is insufficient to meet the demands of Friday, Saturday and Sunday traffic and that although sufficient to supply present mid-week needs the availability of a larger aircraft will increase the demand for service other than on week ends. Holiday proposes to utilize the Douglas DC-3 supplemental to its present aircraft.

Exhibit "B" sets forth an analysis of projected operation on a daily, monthly and 90 day basis and indicates that at the fare of \$11.95 plus tax, Holiday would reach a break-even point at about a 55 percent load factor in the 28 passenger aircraft. Holiday anticipates a load factor of 68 percent.

Its instant proposal is based upon rental of the Douglas DC-3 at \$1,200 monthly for a twelve month period. Exhibit "C" sets forth anticipated expenses in connection with the operation of the aircraft and includes flight operations, direct operating costs, indirect operating costs, ground operations, personnel, insurance, advertising, aircraft lease, taxes and professional services. Total projected costs on a monthly basis are \$23,400. At 55 percent load factor of 15.5 passengers per flight for two round trips daily, Holiday would generate an income of \$23,343 monthly. At a 62 percent load factor, 17.5 passengers per flight, or 70 daily, Holiday would generate \$26,385 monthly. It is obvious the cost of operating the larger aircraft will decrease in proportion to the extent of its use; hence, if not utilized on mid-week flights both income and expense would be lower although not necessarily in the same proportion.

Pacific Air Lines, Inc., was a protestant in the certificate application of Holiday and on March 15, 1967 filed a "Protest and Request for Hearing". Said pleading is based on the grounds that

there is no procedure to accomplish the modification requested by Holiday, that the Civil Aeronautics Board has already denied the same type of request by Holiday, and that in any event there should be no modification of Holiday's authority without a full comparative hearing.

In support of its protest Pacific Air Lines, Inc. (Pacific) states that it has searched the Public Utilities Code and the Commission's Rules of Procedure and finds no provision authorizing the Commission to entertain such a proceeding. Pacific therefore contends that Holiday in reality is seeking a new certificate of public convenience and necessity and that the Commission should dismiss the instant filing and require the filing of a "fresh application".

Within the purview of Chapter 4 of Part 2 of Division 1 of the Public Utilities Code dealing with Passenger Air Carriers, Section 2759 provides in part: "For any other good cause, the commission may at any time upon notice to the holder of any certificate and opportunity to be heard, suspend, revoke, alter or amend any such certificate." Section 2754 of the Public Utilities Code provides in part: "The commission may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require." Moreover Section 1708 of the Public Utilities Code provides in part: "The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it."

While it is true that the Public Utilities Code and the Commission's Rules of Procedure nowhere employ the specific term

"Petition for Modification", we find the Commission has jurisdiction to entertain and act upon such petitions. All that has taken place here, is that Holiday has asked by way of "Petition," for the Commission to exercise its authority to change one of the conditions attached to Holiday's certificate. We find nothing procedurally unusual in this request and conclude that we have the authority to entertain the instant "Petition."

Pacific's next contention, concerning the Civil Aeronautics Board, is based upon an alleged order of that Board dated October 3, 1966, said to be attached to its "Protest" as Exhibit "A". We find no such attachment; however, assuming such an order as stated by Pacific exists, we do not feel bound thereby. We have no knowledge of what was presented to the Board, what it considered, or what the basis of its decision was. At the hearings before this Commission preceding Decision No. 71648, Pacific stated it was about to commence one plane service between Lake Tahoe, Oakland and San Jose in Boeing B-727 jet aircraft. Its present "Protest" alleges that the Board has given it such authority, but nowhere does it allege that such service has been or is now being provided. As between the allegations of Pacific and those of Holiday in which Holiday sets forth its experienced traffic and its projected operations with the Douglas DC-3 we have no hesitancy in modifying our prior order.

Pacific's last contention argues that the "Petition" does not set forth adequate information upon which the Commission can make findings regarding the soundness of the proposed routes and schedules, the ability to economically provide the service or the need for the service. Pacific therefore requests a "full comparative hearing on the merits" before the Commission acts.

As we have stated before in other proceedings pursuant to Chapter 4 of Part 2 of Division 1 of the Public Utilities Code, Section 2753 does not set forth findings required other than public convenience and necessity. It does require the Commission to consider certain factors which may or may not be the subject of findings before issuing a certificate. Such requirement is in contrast, for instance, to that of Section 3623 of the Public Utilities Code. In this proceeding we find the pertinent considerations are the need for the service and the economics thereof. The routes to be operated have already been considered and the schedules should, as in the past, remain flexible and responsive to the demands of the public. The verified petition filed by Holiday contains sufficient data for us to find, based upon the growth of Holiday's traffic and particularly its peaking on weekends that there is a need for service in an aircraft the size of the Douglas DC-3. There is also sufficient data for us to find, based upon Exhibits "B" and "C" to the "Petition", that Holiday can economically provide service in a Douglas DC-3 to the communities of Lake Tahoe, Oakland and San Jose. We recognize that absent sufficient traffic operations the Douglas DC-3 operation will not be economical; however, Holiday's projections are reasonable and the additional service should stimulate the existing traffic growth as reflected by Exhibit "A" of the "Petition".

Inasmuch as Section 2754 provides in part that the Commission may issue a certificate with or without hearing it may also amend an existing certificate without hearing pursuant to Sections 1708 and 2759, if the public utility's rights are not thereby prejudiced. Here Holiday has requested ex parte treatment and thereby declined the opportunity for hearing. We find that

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no useful purpose would be served by public hearing in this matter and that it should be handled ex parte as prayed. Pacific's request for hearing is denied.

After consideration and based upon the pleadings the Commission finds that:

1. Exhibit "A" attached to the "Petition" of Holiday and Holiday's traffic experience with reference to the large week-end demand for service show a need for use by Holiday of aircraft with gross weight exceeding 12,500 pounds.
2. Holiday has available to it an aircraft for use between Lake Tahoe, Oakland and San Jose with a gross weight exceeding 12,500 pounds, namely, a Douglas DC-3 aircraft.
3. Holiday's projection of use as set forth in Exhibits "B" and "C" attached to its "Petition" show that given a 55 percent load factor it will be able to economically provide service to Lake Tahoe, Oakland and San Jose.
4. The demand for service as experienced by Holiday and the stimulation of traffic by use of a Douglas DC-3 aircraft should enable Holiday to operate a Douglas DC-3 between Lake Tahoe, Oakland and San Jose on an economical basis.
5. Sections 1708, 2759 and 2754 of the Public Utilities Code give the Commission authority to amend the certificate of Holiday by modifying the terms attached thereto without public hearing.
6. The Commission is not bound by the alleged October 3, 1966 order of the Civil Aeronautics Board said to deny the need for the service herein proposed by Holiday.
7. There is no need for public hearing of this "Petition". Pacific's request for hearing should be denied.

8. Public convenience and necessity require the certificate of Holiday be amended to allow service in a Douglas DC-3 aircraft.

Based upon the foregoing findings of fact the Commission concludes that Holiday's certificate should be amended as set forth in Finding No. 8 and Pacific's request for hearing should be denied.

IT IS ORDERED that:

1. The request of Pacific Air Lines, Inc. for public hearing is denied.

2. The certificate of public convenience and necessity granted to Holiday Airlines, Inc. in Decision No. 71648 dated December 6, 1966 is amended as set forth in Appendix A, attached and hereby made a part hereof; in all other respects Decision No. 71648 continues in full force and effect.

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

Dated at San Francisco, California, this 18th day of APRIL, 1967.

John E. Zappella
President
William L. Bennett
Augustus
William Thomas J.
Jack R. Morrissey
Commissioners

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Appendix A
(Dec. 71648)

HOLIDAY AIRLINES, INC.

First Revised Page 1
Cancels
Original Page 1

Holiday Airlines, Inc., by the certificate of public convenience and necessity granted in Decision No. 71648 and amended by the decision noted in the margin, is authorized to transport passengers by air in either direction in De Havilland Dove Aircraft or other similar aircraft having a gross weight under 12,500 pounds or in a Douglas DC-3 aircraft:

1. Between Tahoe Valley Airport, on the one hand, and Oakland International Airport and San Jose Municipal Airport, on the other hand.

Issued by California Public Utilities Commission.

Decision No. 72305, Application No. 47901.