

Decision No. 72887

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of D. W. MERCER,
doing business as MERCER
ENTERPRISES, for a Certificate
of Public Convenience and
Necessity as an Air Carrier.

Application No. 49565
(Filed July 24, 1967)

INTERIM OPINION

By this application D. W. Mercer seeks a certificate of public convenience and necessity as a passenger air carrier between Burbank (Lockheed Air Terminal) and Long Beach, on the one hand, and Palomar Airport (County of San Diego), on the other.

Service is to be provided at a schedule of one flight in each direction daily each day that horse racing is conducted at Del Mar Turf Club. The horse racing schedule commenced July 25, 1967 and is to operate through forty-one subsequent racing days. Applicant proposes to charge a round-trip fare of \$20.00 per passenger, including federal transportation tax, taxi service to Del Mar Turf Club, and club house admission fee to Del Mar Turf Club.

The aircraft to be utilized in the proposed service is Douglas DC-3 equipment.

Applicant presently operates pursuant to a certificate of public convenience and necessity as a passenger air carrier granted by Decision No. 71490 in Application No. 48157 between Burbank/Long Beach and Brown Field in San Diego.

Applicant has attached to his application as Exhibit A balance sheets and profit and loss statements for the year 1966 and for the three months ended March 31, 1967. As of March 31, 1967, applicant shows a net worth of \$72,176. He has in effect insurance coverage

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exceeding the minimum requirements of General Order No. 120-A and holds an operating certificate issued by the Federal Aviation Agency authorizing common carrier operation as a scheduled intrastate passenger carrier.

Applicant alleges that the service for which a certificate is herein sought was commenced more than sixteen years ago, that it is the only service of its kind provided and competes with no other passenger air carrier.

We note with some consternation that the application filed on July 24, 1967 requested a permanent certificate of public convenience and necessity for the service and that the service be authorized to commence the next day. That applicant would expect that this Commission, or in fact any Commission, would be able to process, hear, and decide an application such as this within a matter of hours is beyond belief.

We will grant a certificate for the remainder of the 1967 Del Mar Turf Club racing season only, in order that the traveling public may not be unduly inconvenienced by applicant's untimely application. Furthermore, we will set down for hearing at a date to be determined the matter of granting to applicant a permanent certificate of public convenience and necessity.

The Commission finds that:

1. D. W. Mercer possesses the business experience in the field of air operations, the financial stability and the requisite insurance coverage to receive a certificate of public convenience and necessity, for a limited period of time, as a passenger air carrier operating between Burbank/Long Beach and Palomar Airport.

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2. There is insufficient data before the Commission to determine whether such operation can be provided economically by D. W. Mercer flying Douglas DC-3 Aircraft.

3. Public convenience and necessity require the granting of a passenger air carrier certificate to D. W. Mercer for operations between Burbank/Long Beach and Palomar Airport for the remainder of the 1967 Del Mar Turf Club horse racing season only.

4. Public hearing should be set at a time subsequent to the end of the 1967 Del Mar Turf Club horse racing season on applicant's request for a permanent certificate of public convenience and necessity to serve the route herein sought.

The Commission concludes that the application of D. W. Mercer for a certificate of public convenience and necessity as a passenger air carrier between Burbank/Long Beach and Palomar Airport should be granted as limited by the order herein and in conformance with the above-stated findings.

D. W. Mercer 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.

INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to D. W. Mercer, authorizing him to operate as a passenger

air carrier as defined in Section 2741 of the Public Utilities Code, between the points and over the routes particularly set forth in Original Page 2 of Appendix A (Dec. 71490), 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 regulations:

- (a) 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 he will be required, among other things, to file annual reports of his 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 a cancellation of the operating authority granted by this decision.
- (b) Applicant shall amend or reissue the tariff on file with the Commission, naming rates and rules governing the common carrier operations herein. The tariff filings shall be made effective not earlier than one day after the effective date of this order on not less than one day's notice to the Commission and the public.
- (c) The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 105-A.

3. D. W. Mercer shall maintain his accounting records in such a fashion that this Commission is able to determine the number of passengers, the expenses and the aircraft utilized in his certificated service, his contract service, his charter service and any or all other air service, respectively.

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APPENDIX A
(Dec. 71490)

D. W. MERCER
(Doing business as Mercer Enterprises)

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D. W. Mercer, 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 Douglas DC-3 Aircraft, flying a minimum schedule of one flight in each direction daily on days that horse racing is scheduled at Del Mar Turf Club during said Club's 1967 horse racing season only. Said authority shall terminate at the end of said 1967 horse racing season.

Between Burbank, Long Beach and
Palomar Airport (San Diego County).

Issued by California Public Utilities Commission.

Decision No. 72887, Application No. 49565.