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Decision No. 73487

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC SOUTHWEST)
AIRLINES for a Certificate of)
Public Convenience and Necessity.)

Application No. 49001
(Filed December 6, 1966;
Amended April 24, 1967;
Amended June 30, 1967.)

(Appearances listed in Appendix A)

O P I N I O N

By this application, as amended, Pacific Southwest Airlines (PSA) seeks a certificate of public convenience and necessity as a passenger air carrier between San Diego (Lindbergh Field Airport), Orange County Airport, San Francisco International Airport and Sacramento (Sacramento Municipal Airport or Sacramento County Airport).

Public hearing was held on May 15 through 19, 1967 at Santa Ana, on May 23 through 26, 1967 at Newport Beach and on June 29 and 30, 1967 at San Francisco. The matter was submitted upon the filing of concurrent briefs due on or before July 21, 1967. Briefs have been filed by PSA, by protestant Air California (AC) and by protestant Pacific Air Lines, Inc. (PAC).

The first amendment to the application, filed on April 24, 1967 added San Diego as a point to the proposed flights which theretofore had included Orange County Airport, San Francisco and Sacramento. The second amendment filed on June 30, 1967, the last day of hearing, sets forth a range of one-way fares between Orange County and San Francisco from \$13.33 plus tax to \$14.85 plus tax and leaves to the Commission the discretion to establish a fare it finds just and reasonable.

PSA has made it clear that in the opinion of its management it is necessary for it to fly each segment of the various routes for which it here seeks authority in order to economically provide service. It does not desire certification of a portion of the routes, but only of the whole proposal.

Several days of hearing were primarily devoted to the taking of testimony or statements by persons either supporting or objecting to the initiation of the proposed service. These persons included members of the California State Legislature or their representatives, public officials, businessmen and residents of the areas affected by the application. The large majority of these persons supported the application, most generally on the basis of establishing air line access between Orange County and Sacramento.

Objections to the application were based mainly on the premise that AC should be allowed a reasonable time to establish itself in the Orange County-San Francisco market before facing competition from a carrier the calibre of PSA, or that the incidence of danger and increased noise by way of PSA flights in addition to those of AC from Orange County Airport should not be allowed to increase.

Applicant's experience in the field of air operations in California was amply attested to and is otherwise well known to the Commission from past proceedings. Its financial stability, as reflected in Exhibit No. 21, is adequate to provide the proposed service and it possesses in excess of the requisite insurance coverage called for by General Order No. 120-A. The initial proposed schedule is one round trip daily San Diego-Orange County, four round trips daily Orange County-San Francisco, and three round trips daily San Francisco-Sacramento. The proposed one-way fares

for service between Sacramento-San Francisco or San Diego-Orange County, regardless of the type of aircraft utilized is \$6.35 plus tax. Proposed one-way fares Orange County-San Francisco exclusive of tax is \$15.24 in either Douglas DC-9-30 or Boeing B-727 aircraft and, as previously mentioned, between \$13.33 and \$14.85 for Lockheed Electra aircraft.

There was testimony, which was uncontroverted, that at the present time Boeing B-727 aircraft may not be utilized at Orange County Airport. Said aircraft may, however, be utilized at each of the other points for which certification is sought and either the Lockheed Electra or Douglas DC-9-30 is suitable for use at Orange County Airport presently. PSA has projected acquisition of Boeing B-737 aircraft in 1968 and that equipment is also suitable for use throughout the proposed route structure. PSA's Executive Vice President testified that service would be inaugurated in Electra aircraft, then as conditions warrant the equipment would be upgraded to lighter jet aircraft suitable for use at Orange County Airport.

The estimates presented by PSA in Exhibits Nos. 10, 11, 13, 14, 16 and 17 indicate that if it is able to transport the number of passengers reflected therein it can provide service over these segments at a substantial profit. The estimates of passenger usage are based on the theory that at the present time there are a certain number of PSA passengers who are either destined for or originate at points such as the Orange County or Sacramento area who now use PSA services at other points such as Los Angeles or San Francisco/Oakland, and who would utilize the proposed service if available. This theory is the same one relied upon by PSA in past certification proceedings before this Commission. The basis

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of the percentage estimates of persons who would utilize the service is derived internally by PSA from its financial records and from interviews by its sales personnel aboard its aircraft.

The above mentioned exhibits presented by PSA when coupled with the testimony of the various public witnesses amply attest to the need for the proposed service especially with reference to the provisions of one plane service between Orange County Airport and Sacramento which is not now available.

Protestants AC and PAC resist this application with specific reference to two of the proposed route segments. AC at the time of hearing was operating solely between Orange County-San Francisco having inaugurated service January 16, 1967, and PAC presently offers service between San Francisco-Sacramento. PAC has also sought authority from the Civil Aeronautics Board to serve Orange County-San Francisco, that application is pending before the Board.

AC contends that there is insufficient demand in the Orange County-San Francisco market to support two carriers and that inauguration of the proposed service would have a severe detrimental effect upon AC, which at the worst would put it out of business and at the least greatly burden its financial development. AC contends that it is not yet stable enough to compete with PSA in this market.

PAC contends that there is an abundance of airline service between San Francisco-Sacramento and very little true local origination and destination traffic between those points, that the market is amply served and that the addition of another carrier would dilute the available traffic to the detriment of all those offering such service. It further contends that PSA cannot provide the service on the schedule and at the costs it envisions in its exhibits.

PSA counters these contentions with the claim that the same arguments have been advanced in every market in which it has inaugurated its service and that in every case these arguments have proved groundless, that the total markets have been greatly stimulated and that all carriers have in the long run benefited from the competition provided by PSA. Cited as such examples are Oakland, San Jose and Sacramento as well as the San Francisco-Los Angeles air corridor in which PSA is recognized as the single most contributory factor to the growth of that market.

Population statistics from the State Department of Finance were introduced by PSA. The figures were projected to various points in the future at five-year intervals, 1965 through 1985. These statistics show a very rapid growth in Orange County and the Bay Area, as well as San Diego and Sacramento. The total market for service between Orange County and the San Francisco Bay Area is growing at a more rapid rate than either the Los Angeles County - Bay Area Market or the San Diego County - Bay Area market. The anticipated population growth in Orange County is from 1,152,000 in 1965 to 1,514,000 in 1970. Likewise, the San Francisco Bay Area shows a projected population from 3,895,000 in 1965 to 4,379,000 by 1970. These are the areas most important in analyzing the market for the routes here under consideration.

At a \$14.85 fare for the Orange County - San Francisco segment the total fare from Orange County Airport to Sacramento, exclusive of tax, is \$21.20 compared to direct service Los Angeles-Sacramento of \$13.33. This fare differential may have some effect upon the public's choice of service from Orange County, but the record does not reflect the magnitude of such effect.

The primary issue to be decided in this proceeding is whether or not PSA should be allowed to compete in the two contested markets with AC and PAC respectively.^{1/} This Commission is without jurisdiction to control in any respect the route authority of PAC. Indeed they too are a potential competitor with AC over its segment of the proposed routes. This Commission must concern itself with a sound intrastate air network and certification of PSA between San Francisco-Sacramento is an important step forward in this regard.

AC when it received its original certificate of public convenience and necessity in Decision No. 71310 was put on notice that such authority was only a partial monopoly and that the State reserved the right to grant to others rights for the same authority. Here we are faced with a situation in which a strong and healthy competitor seeks authority to develop and expand its service by natural extensions to its present operating authority. The prospect, as far as the public is concerned, is that the competition between these carriers will inure to the public's benefit by way of frequency of service, addition of two new route segments, possibly better equipment and increased effort on the part of each carrier to stimulate their own share of the market. The past experience of

^{1/} Decision No. 73172 dated October 10, 1967 authorized AC to provide service from Orange County Airport to Oakland and San Jose, the latter two points being at that time served by PSA.

competition between and among airlines in California has shown that not only the public, but the carriers as well have benefited therefrom.

Findings

1. There presently exists a need for additional passenger air carrier service between San Diego-Orange County Airport-San Francisco-Sacramento.

2. Pacific Southwest Airlines possesses the requisite business experience in the field of air operations and maintains in effect the minimum insurance coverage sufficient for a grant of a certificate of public convenience and necessity as a passenger air carrier.

3. Pacific Southwest Airlines possesses the financial stability to provide service between the points sought and herein granted.

4. Pacific Southwest Airlines can economically provide adequate service to the points San Diego-Orange County Airport-San Francisco International Airport-Sacramento in Lockheed Electra, Douglas DC-9-30 or Boeing B-727 aircraft at the fares set forth in the application including a fare of \$14.85, plus tax in Lockheed Electra aircraft between Orange County Airport-San Francisco International Airport.

5. Public convenience and necessity require the granting of a certificate as a passenger air carrier between San Diego-Orange County Airport-San Francisco International Airport-Sacramento to Pacific Southwest Airlines.

Conclusion

Based upon the foregoing findings of fact the Commission concludes that the application of Pacific Southwest Airlines, as amended, should be granted.

Pacific Southwest Airlines 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pacific Southwest Airlines, a corporation, authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, as set forth in Appendix B, 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 a cancellation of the operating authority granted by this decision.

3. Within one hundred and twenty days after the effective date hereof, applicant shall amend its tariffs and timetables to reflect the authority herein granted. Such filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten 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.

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

Dated at San Francisco, California, this 19th day of December, 1967.

[Signature]
President

[Signature]

[Faint circular stamp]

[Signature]
Commissioners

*I will submit
a dissenting opinion
Allegretto*

APPENDIX A

LIST OF APPEARANCES

For Applicant: John W. McInnis and Frank G. Michelena, for Pacific Southwest Airlines.

Protestants: Gates, Talbot, Morris & Merrell, by J. Thomas Talbot, Mark T. Gates, Jr., and Brownell Merrell, Jr., for Air California; Cooper, White & Cooper, by R. Barry Churton and Robert M. Raymer, for Pacific Air Lines; J. Ogden Merkel, for himself; and Jack Garhaus, for Bay Area Citizens Council.

Interested Parties: Joseph D. Patello, for San Diego Unified Port District; Assemblyman John Briggs, George E. Delahanty, Harry Babbitt, Edmond B. Buster, Donald N. Schneider, Clinton Rygel, William G. Clay, Burr Williams, Harry H. Harvey, Assemblyman Robert E. Bacham, by John Hopwood, Frank H. White, and John E. Frost, for themselves; Mayor William D. Martin, for City of Laguna Beach; Robert F. Brambley, for Orange County Chamber of Commerce; Will Watkins, for Disneyland Hotel; Robert C. Smith, for Sunrise International Travel; Irving B. Hamlin, for E and J Travel Bureaus; Edgar M. Secord, for Irvine Industrial Complex; E. J. Langhofer, for San Diego Chamber of Commerce.

Commission Staff: Sergius M. Boikan, Counsel; C. J. Astrue, and E. C. Crawford.

Pacific Southwest Airlines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers in either direction between San Diego-Orange County Airport-San Francisco International Airport-Sacramento, flying a minimum schedule of one round trip daily San Diego-Orange County Airport, four round trips daily Orange County Airport-San Francisco International Airport, and three round trips daily San Francisco International Airport-Sacramento at one-way fares plus tax of \$6.35 between either San Diego-Orange County Airport or San Francisco International Airport-Sacramento in Lockheed Electra, Douglas DC-9-30 or Boeing B-727 aircraft and at one-way fares plus tax of \$14.85 between Orange County Airport-San Francisco International Airport in Lockheed Electra aircraft or \$15.24 plus tax between Orange County Airport-San Francisco International Airport in Douglas DC-9-30 or Boeing B-727 aircraft.

Issued by California Public Utilities Commission.

Decision No. 73487, Application No. 49001.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC SOUTHWEST
AIRLINES for a Certificate of
Public Convenience and Necessity.

Application No. 49001

DISSENTING OPINION OF COMMISSIONER GATOV

When the majority of the Commission approved Application No. 49001 on December 19, 1967, it had the effect of reversing another majority decision, No. 73172, in Application No. 49522 (as amended), and this same majority's decision, No. 73440, which denied a petition for rehearing of Decision No. 73172!

At first blush this change of course by 180 degrees between December 5th and December 19th without further opening or enlargement of three submitted records might, to a casual observer, appear to be anomalous or at least puzzling. Commission watchers, however, who follow our day-to-day work will, I believe, recognize these actions as merely further testimony of the Commission's mobility in the decision changing process.

Notwithstanding that this Application No. 49001 was hotly contested by existing carriers in the sought after routes, the findings and conclusions are "boiler plate," and appear to have been extracted from the Commission's list of stock paragraphs.

I am dissenting in this decision because I agree with the Presiding Officer who heard the case, our Examiner Division, and our Transportation Division that the applicant failed to make a record which could support any other conclusion than that the application should be denied.

This decision completely ignores the clear language and intent regarding certification in the Passenger Air Carriers Act.

If this decision actually goes into effect, I would urge in the interest of saving great amounts of time and money that all future applications for certificated passenger air carrier authority be handled in an ex parte manner.

A handwritten signature in cursive script, appearing to read "A. J. ...", is written over a horizontal line. Below the line, the word "Commissioner" is printed in a serif font.

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COMMISSIONER WILLIAM SYMONS, JR., DISSENTING:

The record clearly shows that there presently does not exist a market between Orange County and San Francisco wherein two passenger air carriers can profitably conduct operations. Between January 16, 1967, (when Air California commenced airline operations between Orange County Airport and San Francisco International Airport) and May 1, 1967, it had space available for additional passengers on all but 38 of its 1225 flights. Less than 3% of all flights were sold out. The record also shows that as of June 15, 1967, there were a minimum of 17 and a maximum of 21 daily flights southbound between Sacramento and San Francisco, and the same number northbound between San Francisco and Sacramento. As demonstrated by the exhibits herein, the present San Francisco-Sacramento air market is more than adequately served by the three carriers, United, West Coast and Pacific Airlines, now serving the area. The schedules are such that a passenger traveling between Sacramento and Orange County usually need not be delayed longer than one hour between connecting flights, and on some occasions can make direct connections. Studies introduced by Air California show that the time required for a passenger to transfer at San Francisco International Airport from Air California to a Sacramento bound carrier is no longer than twenty minutes, if baggage must be claimed, and no longer than 11 minutes without baggage. Furthermore, Air California has instituted a service whereby a passenger who is bound for Sacramento may have his luggage set apart for claiming at the Air California gate, thus avoiding the necessity of proceeding to the baggage carousel in the main lobby of the Airport. Under these circumstances, the longest that it would take a passenger to transfer to another airline from the Air California

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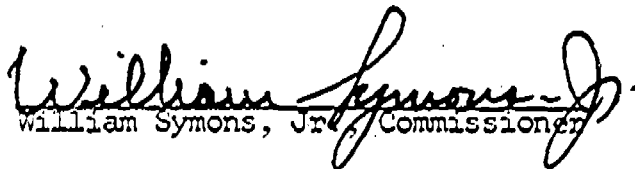
gate would be about 11 minutes. Furthermore, PSA is not offering direct Orange County-Sacramento service but only a one-stop service via San Francisco and at a combination fare higher than its fares for direct service from Los Angeles to Sacramento.

The applicant for a certificate has the burden of establishing that public convenience and necessity require the proposed service. A review of the record herein shows that applicant has failed to establish any need for additional airline service at this time between the Orange County Airport and San Francisco. Under Section 2753 of the Public Utilities Code, the Commission, in granting certificates pursuant to Section 2752, shall take into consideration, among other things, "the need for the service, and any other factors which may affect the public interest". Since the imposition of applicant as a competitor to Air California is documented in the record as having a severe economic effect upon Air California and since the reason for this result is not because of the failure of Air California, its management or shareholders to provide a good and sufficient service at a competitive price, but rather is solely the result of its infancy and pioneering position in a market previously ignored by applicant, PSA. (Only last year when Air California sought a certificate to serve between Orange County and San Francisco, PSA did not demonstrate any interest in serving the area.) I am of the opinion that it is incumbent upon the Commission to function as the entire spirit and wording of the Passenger Air Carrier Act of 1965 contemplated; namely, limit entry into the passenger air carrier field in the public interest. That public interest must encompass not only the traveling public but also those persons whom the Commission has seen fit to certificate as public utility common carriers. The evidence amply demonstrates that although Air California at the

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time of the hearings herein were commenced had served the public for a little more than 120 days. it had successfully established punctual, frequent, and safe commuter type service of the highest quality and at a reasonable cost to the public between Orange County and San Francisco.

It may well be that at some future time, after the market in question has matured and Air California has strengthened itself that additional competition would be appropriate. I am of the opinion that the Commission in granting a certificate to PSA at this time to serve between Orange County and San Francisco has failed to comply with Section 2753 of the Public Utilities Code.


William Symons, Jr. Commissioner

San Francisco, California

December 20, 1967