

ORIGINAL

Decision No. 75903

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SKYMARK AIRLINES, INC., a California corporation, for a certificate of public convenience and necessity to establish, maintain and operate passenger and cargo airline service.

Application No. 49643
Order to Show Cause
(Filed December 3, 1968)

Appearances on Order to Show Cause

J. F. Thacher, for Skymark Airlines, Inc., applicant and respondent.
Glenn A. Howard, for Golden Pacific Airlines and Marshall G. Berol, for Holiday Airlines, Inc., interested parties.
David R. Larrouy, Counsel, for the Commission staff.

O P I N I O N

By Decision No. 74770, issued October 1, 1968, in Case No. 8812, Golden West Airlines, Inc. vs. Cable Flying Service, Inc., the Commission found that pursuant to Section 2741^{1/} of the Public Utilities Code the operations of a passenger air carrier are not subject to the provisions of the Passenger Air Carriers' Act (Public Utilities Code Sections 2740-2769.5) so long as the passenger air carrier maintains scheduled out-of-state service. On November 12, 1968, Skymark Airlines, Inc. (Skymark), applicant and respondent herein, at a hearing held in Application No. 50575, represented to this Commission that effective November 18, 1968, Skymark would

^{1/} "2741. As used in this chapter, 'passenger air carrier' means a person or corporation owning, controlling, operating, or managing aircraft as a common carrier of passengers for compensation wholly within this state, between terminal points including intermediate points if any."

Effective June 4, 1969, this section was amended to read as follows: "2741. As used in this chapter, 'passenger air carrier' means a person or corporation owning, controlling, operating, or managing aircraft as a common carrier of passengers for compensation between points within this state."

commence regularly scheduled passenger and freight air carriage from a point within California to a point outside California; to wit, Reno, Nevada. Subsequently on December 3, 1968, this Commission issued its order directing Skymark to show cause why the certificate of public convenience and necessity issued to it by Decision No. 73472 in the application herein should not be revoked.

Hearing on the order to show cause was held before Examiner Cline in San Francisco on March 24, 1969. The matter was taken under submission subject to (1) the filing of late-filed Exhibits Nos. 0-1 and 0-2 on or before April 3, 1969, (2) the condition that any party would have the opportunity to make a request for further hearing for the purpose of considering evidence pertaining to late-filed Exhibit No. 0-2, and in the event no such request were made (3) the filing of concurrent opening briefs on or before May 3, 1969, and concurrent closing briefs on or before May 8, 1969.

Exhibit No. 0-1 was filed April 4, 1969, and Exhibit No. 0-2 was filed April 7, 1969. No request for further hearing was made by any of the parties. The time for filing the concurrent opening and closing briefs was extended to May 14 and May 19, 1969, respectively. The opening brief was filed by the Commission staff on May 14, 1969, and the opening brief of Skymark was accepted and filed on May 16, 1969. No closing briefs were filed and the matter was taken under submission on May 21, 1969, five days after the filing of the last opening brief.

The parties stipulated that Skymark was flying air passengers on a scheduled basis from a point within California, namely, North Shore Lake Tahoe, to a point outside California, namely Reno, Nevada. Exhibit No. 0-1 contains a copy of the Skymark Airlines

Flight Schedule, effective February 10, 1969. This exhibit shows the time schedule and fare for such nonstop flights between North Shore Lake Tahoe and Reno. The exhibit also shows time schedules and fares for flights with stops between Reno, Nevada, and other points in California such as Bakersfield, Fresno, South Lake Tahoe, Oakland, Monterey, Sacramento and San Jose.

Exhibit No. 0-2 is a statement by the President of Skymark that (1) Skymark has invested \$50,000 in the procurement of its certificate of public convenience and necessity; (2) in addition to general public acceptance of a carrier with such a certificate, certain governmental agencies refuse to let the employees use carriers without such a certificate, and (3) it is his belief that cancellation of Skymark's certificate would have a serious economic impact on Skymark, both in terms of material investment and in terms of future revenue.

Counsel for the staff urges that since Skymark is no longer a passenger air carrier under the provisions of the Passenger Air Carriers' Act, the Commission (pursuant to Section 1708^{2/} of the Public Utilities Code) should rescind the order granting Skymark a certificate to operate as a passenger air carrier. As further authority for such action he refers to Cable Flying Service, Inc., Decision No. 75488, issued March 25, 1969 in Application No. 49481, Order to Show Cause filed November 6, 1968, in which the Commission revoked Cable's certificate to operate as a passenger air carrier under similar circumstances.

^{2/} "1708. 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. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision."

In his brief, counsel for Skymark urges that revocation of Skymark's certificate is limited by Section 2755 of the Public Utilities Code, which reads as follows:

"2755. The rights conferred by a certificate issued pursuant to Section 2754 or 2757 may not be revoked or suspended absent a finding by the commission, after notice and hearing, that the holder has abandoned such rights, or is no longer fit, willing, or able to perform all or part of the certificated services, or to conform to the law and to the rules and regulations of the commission."

Counsel for Skymark further contends that the Commission has failed to establish that Skymark has acted or failed to act in any manner set forth in Section 2755 as a basis for revocation of its certificate and therefore requests that the order to show cause be dismissed and that Skymark's certificate of public convenience and necessity issued by Decision No. 73472 not be revoked.

The Commission will take official notice of the "Adoption and Withdrawal Notice" issued March 27, 1969, effective March 28, 1967, for Skymark Airlines, Inc. Tariff, Cal. P.U.C. No. 1. By this notice Catalina Airlines, Inc. adopted the former tariff of Skymark Airlines, Inc. and Skymark Airlines, Inc., withdrew from offering service to the public.

Based upon the record herein the Commission finds as follows:

1. By Decision No. 73472 issued December 12, 1967, in the application herein, Skymark was issued a certificate of public convenience and necessity authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code.
2. Skymark has notified the Commission of its discontinuance of passenger services between points within California by filing a notice on March 27, 1969, of withdrawing its tariff, Cal. P.U.C. No. 1, effective March 28, 1969.

Based upon the foregoing findings we conclude that the certificate of public convenience and necessity issued to Skymark by said Decision No. 73472 should be revoked.

O R D E R

IT IS ORDERED that the certificate of public convenience and necessity issued to Skymark Airlines, Inc. by Decision No. 73472 is revoked.

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

Dated at San Francisco, California, this 2th day of JULY, 1969.

William J. Lyons, Jr.
President
Augusta
Fred P. Mansueti
William J. Lyons
Commissioners