

Decision No. 76824

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CATALINA SEAPLANES, INC., a)
California corporation, for a cer-)
tificate of public convenience and)
necessity to carry passengers and)
cargo by airplane between the Port)
of Los Angeles, California, and)
points on Santa Catalina Island,)
California.)

Application No. 51215
(Filed July 1, 1969)

O P I N I O N

Catalina Seaplanes, Inc., a California corporation (hereinafter referred to as applicant), seeks a certificate of public convenience and necessity as a passenger air carrier pursuant to Sections 2752-2754 of the Public Utilities Code and particularly Section 2754.1 (added by Assembly Bill 328).

Applicant, in a verified application, alleges that it was actually operating in good faith and doing business between the below-listed airport pairs on April 1, 1969 and has so operated continuously thereafter:

- a. Port of Los Angeles and Santa Catalina Airport,
- b. Port of Los Angeles and Pebbly Beach,
- c. Port of Los Angeles and Catalina Harbor.

In its Statement of Legal Position, attached to the application, applicant challenges California's power to require a certificate for operations between Catalina and the mainland. Applicant claims that the federal power asserted under 49 USCA Section 1301(20)(a) has preempted state regulation of any air carrier which overflies "open seas", citing CAB vs. Island Airlines,

Inc., 235 Fed. Supp. 990; applicant cites U.S. vs. California, 14 L.ed. 2d 296, for the proposition that the Gulf of Catalina, San Pedro Bay and San Pedro Channels are not California inland waters.

Applicant's announced purpose, in challenging this Commission's jurisdiction to grant the relief prayed for, is merely to avoid prejudice to its position.

It obviously would be inappropriate to attempt to dispose of the issues raised by applicant's statement in an ex parte proceeding. Rather, we merely hold that applicant has not in any way waived its right to later raise these issues by seeking and accepting the certificate herein granted. We note, however, that the reasoning expressed in Decision No. 72339 in Case No. 8458, Inv. of Dowdle et al. (67 Cal. P.U.C. 104, rev. den. SF No. 2258), while not directly applicable to certificate matters, would nevertheless seem to support our jurisdiction herein.

In a letter dated January 9, 1970 (hereby incorporated into the formal record as Exhibit No. 1), applicant's counsel indicated that operations to Santa Catalina Airport and Catalina Harbor were occasional weather alternates and requested that the certificate permit operations on that basis.

The application was served in accordance with the Commission rules and notice appeared in the Commission's Daily Calendar of July 2, 1969. No protests have been received; no hearing appears necessary.

The Commission finds that:

1. The above-entitled application was filed on or before July 1, 1969.
2. Applicant was actually operating in good faith and doing business as of April 1, 1969 and continuously thereafter between the Port of Los Angeles and Pebbly Beach (Santa Catalina Island).

The Commission concludes that:

1. For a passenger air carrier utilizing seaplanes or amphibian aircraft, a harbor actually used as a landing facility and a location for boarding and discharging passengers is an "airport" within the meaning of Section 2751.1 of the Public Utilities Code.
2. The certificate must be granted as prayed for, as modified by Exhibit No. 1.

O R D E R

IT IS ORDERED that:

1. Applicant Catalina Seaplanes, Inc. is hereby granted a certificate of public convenience and necessity as a passenger air carrier as stated in Appendix A hereto.
2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.
 - 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 it will be required, among other things, to file annual reports of its operations and to comply with and observe the requirements of the Commission's General Orders Nos. 105-A, 120-B and 129.
 - b. Within one hundred and twenty days after the effective date hereof, applicant shall file timetables, in triplicate, in the Commission's office.

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

Dated at San Francisco, California, this 20th day of FEBRUARY, 1970.

William S. Jones, Jr.
President

Thomas W. Jones
Vernon L. Stinson
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Catalina Seaplanes, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate seaplanes or amphibious aircraft as a passenger air carrier over the routes and between the points listed below:

Route 1, Port of Los Angeles (San Pedro) -
Pebbly Beach (Santa Catalina Island).

Condition

1. Authority is granted to utilize Santa Catalina Airport or Santa Catalina Island or Catalina Harbor as alternates in the event water conditions are unsuitable for amphibious aircraft at Pebbly Beach; otherwise, the authority granted herein is limited to service over the specific route described above.
2. The route shall be served a minimum of one round trip per day.
3. No aircraft having more than 25 revenue passenger seats shall be operated.

Issued by California Public Utilities Commission.

Decision No. 76824, Application No. 51215.