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ORIGINAL

Decision No. 78230

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
TRANS SIERRA AIRLINES, a corporation,
for a Certificate of public convenience
and necessity as a passenger air
carrier between the airports of
Los Angeles International; Bishop,
California; Mammoth Lakes, California
and San Jose, California, pursuant to
Sections 2753-2756 of the California
Public Utilities Code.

Application No. 52044
(Filed July 16, 1970)

ORDER GRANTING TEMPORARY CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

Trans Sierra Airlines (TSA), applicant herein, seeks a certificate of public convenience and necessity to operate as a passenger air carrier between Los Angeles and Bishop/Mammoth Lakes and San Jose.

A protest was filed by California Sierra Airlines (Cal Sierra). Shortly before public hearings were held, the Commission granted the request of Alpine Air Bus (Alpine) to participate as an interested party in opposition to TSA's application.^{1/}

The public hearings were held before Examiner Foley in Bishop on October 26, 27, 28 and 29, 1970. On October 26, 1970, California Sierra Airlines withdrew its protest. Alpine requested that a subsequent hearing be held in which it could present evidence opposed to TSA's request. The Commission staff also requested

1/ Alpine does not hold any operating authority from the Commission. In its petition it announced an intention to file an application for authority to operate between the same points TSA seeks to serve. No such application has yet been filed.

additional time to prepare its study of the applicant's operations before a permanent certificate is issued. As a result hearings on TSA's request for a temporary certificate in order to establish service for the 1970-71 ski season at Mammoth Mountain were held and the matter was submitted subject to filing of written statements upon receipt of the transcripts. The hearings on the issuance of a permanent certificate are scheduled for March 1-5, 1971 in San Francisco.

On October 22, 1970, the City of Bishop filed a petition requesting that TSA be permitted to conduct the proposed scheduled operations under the exemption authority provided in Section 2767 of the Public Utilities Code. By Decision No. 78035, dated December 8, 1970, the Commission denied the petition.

In determining whether TSA should be granted a temporary certificate of public convenience and necessity the Commission is required under Section 2753 of the Public Utilities Code to consider the public need for the proposed service, as well as TSA's business experience in the field of air passenger carrier operations, its financial stability, insurance coverage, the type of aircraft it will utilize along with the proposed routes and minimum schedules, whether it can economically provide adequate service, and any other factors which may affect the public interest.

Public Need

At the present time there is no scheduled air passenger carrier service into the Bishop/Mammoth Lakes area. The only surface public transportation into the area is provided by the Greyhound Bus, Inc. Mono County, the City of Bishop, the Bishop Chamber of Commerce, numerous residents and businessmen have indicated either by letter or by testimony, their support for TSA's application.

This support is based upon the fact that Cal Sierra has not commenced service under its certificate granted by Decision No. 75373, dated February 25, 1969, in Application No. 50391. The time for Cal Sierra to accept the certificate expired January 1, 1971.

In Decision No. 75373 the Commission found that there presently exists a public need for passenger air carrier service between Bishop/Mammoth Lakes and Los Angeles as well as San Francisco. The exhibits which support this finding in Decision No. 75373 were incorporated by reference in the present proceeding. In addition, similar but more current data was introduced by the manager of the Bishop Chamber of Commerce. The primary type of passenger is expected to be recreational, but this witness also testified that there is a high demand on the part of businessmen to travel to the major metropolitan areas for business purposes. No contrary evidence was introduced by any party. Therefore, we conclude that there is sufficient public need for the service proposed by TSA.

Business Experience

TSA's president has engaged in various businesses as a corporate executive, particularly in the finance business. He was one of the founders of Cal Sierra. He presently conducts an air taxi carrier business in partnership with the vice president of TSA. This business involves contract flying as well as charter flight operations into the Bishop/Mammoth Lakes area. He holds a multi-engine pilot rating, but he would not function as a pilot for scheduled flight operations in the event that TSA is granted operating authority.

TSA's vice president, director of operations and captain has had seven years experience in the U.S. Air Force. He holds various pilot ratings and a current Federal Aviation Administration (FAA) Air Taxi Captain Check Certificate. He has founded South Bay

Aviation Services, a fixed base operation in Torrance. He was also employed by Cal Sierra as a pilot and director of operations.

TSA has negotiated operating rights agreements for Los Angeles Airport (LAX), San Jose Airport and Mammoth Lakes Airport. It has also prepared a detailed operations manual for its proposed operations (Exhibit No. 6). TSA has made arrangements to hire another pilot and additional personnel.

The Commission staff asserts that this experience is inadequate because none of the personnel has had experience with a passenger air carrier as defined in the Public Utilities Code. This position is rejected. Certificates of public convenience and necessity have been granted to applicants whose founders had similar experience as involved herein (See App. Swift Airlines, Decision No. 75372, dated February 25, 1969, in Application No. 50642; and App. California Sierra Airlines, Decision No. 75373, supra).

Insurance Coverage

Applicant has filed an insurance certificate with the Commission which indicates adequate insurance coverage as required by the Public Utilities Code.

Type of Aircraft

TSA proposes to commence operations with a Cessna 402A twin engine turbo supercharged aircraft. This aircraft was formerly owned by the partnership of TSA's president and vice president, but according to TSA's brief herein, it is now registered under TSA's ownership. This aircraft holds eight passengers and two crew members. According to a FAA report, forty-six such aircraft were utilized for scheduled commuter type air carrier operations in the U.S. as of September, 1969. (Exhibit No. 23)

The Commission staff objects to the utilization of this type of aircraft on the ground that it does not have a locking door separating the pilot and passenger compartments as required by Section 21416 of the Public Utilities Code. The staff's objection is erroneous. Section 21416 does not require such a door. It only provides that if such a door exists then it must be locked. Several types of aircraft without such doors are utilized in regular passenger service by intrastate airlines certificated by this Commission, including Beechcraft Model 18 and 99 aircraft, and Dehavilland DHC-6 "Twin Otter" aircraft.

Proposed Schedule

Applicant proposes to operate two daily round trip flights between Los Angeles and Bishop/Mammoth Lakes, and one daily round trip between Bishop/Mammoth Lakes and San Jose, as follows:

<u>NORTHBOUND FLIGHT NO.</u>	<u>100</u>	<u>102</u>
LOS ANGELES	LV 6:00AM	LV 1:45PM
BISHOP/MAMMOTH	AR 7:15AM LV 8:00AM	AR 3:00PM
SAN JOSE	AR 8:50AM	
<u>SOUTHBOUND FLIGHT NO.</u>	<u>101</u>	<u>103</u>
SAN JOSE	LV 9:05AM	
MAMMOTH/BISHOP	AR 9:55AM LV 10:30AM	LV 4:30PM
LOS ANGELES	AR 11:45AM	AR 5:45PM

This schedule pertains to the use of one Cessna 402A aircraft. TSA intends to lease one additional Cessna 402A aircraft within 30 days after commencing operations. Upon acquisition of this second aircraft it plans to double the daily schedule set out above. The proposed one-way fare is \$25.00 plus federal tax.

Within six months after commencing operations TSA intends to acquire a Volpar turbo liner for use on its routes. This aircraft seats 15 passengers plus two crew members. It will cost approximately \$380,000. TSA's balance sheet shows a deposit of \$5000 for this aircraft, but no terms for financing or delivery have been arranged.

Financial Stability

The financial support for TSA's proposed operations is derived from two sources. One consists of the assets of the partnership of the president and vice president in the air taxi business. These assets are essentially the one Cessna 402A aircraft, one Piper Apache aircraft, and approximately \$12,000 of prepaid expenses which will operate to the benefit of TSA. (Exh. No. 18) The Piper Apache aircraft will not be used for scheduled operations.

The other source is new capital. This consists of \$1,000 certificate of deposit invested by TSA's president, Mr. Ernest D. Taub, in exchange for 1000 shares of TSA stock; and a commitment to participate with a third investor, Mr. W. Guy Cobb, in lending TSA the sum of \$100,000.^{2/} In addition, Mr. Cobb has declared his intention to purchase 30 percent of TSA's common stock for \$50,000. Unaudited balance sheets, dated July 1, 1970 and September 15, 1970, for each of these individuals, indicate sufficient net worth to permit their compliance with this commitment. On the other hand, we note that there are not any written agreements which create any legal obligations upon anyone to advance these funds at any particular time.

^{2/} This certificate of deposit is apparently non-negotiable. Therefore, it appears that TSA has not received any consideration for the issuance of 1000 shares of stock.

According to TSA's pro forma, unaudited balance sheet the issuance of capital stock in the amount of \$50,000 plus accounts receivable, less accounts payable and repayment of three loans,^{3/} will result in about \$20,000 in current assets. TSA estimates that this sum, combined with the \$100,000 long term debt to be provided by Messrs. Cobb and Taub, will be sufficient to cover TSA's expenses for the first seven months of operations. At that time TSA expects to have achieved either a breakeven position or a profitable one.

Although TSA's financial condition cannot be described as strong, it appears to be adequate for the purpose of granting a temporary certificate for a limited period of time. TSA's president testified that TSA would receive the \$100,000 loan within the first ninety days of scheduled operations (Tr. 267-8). He has also testified that additional financial resources will be made available to TSA if necessary (Tr. 201). In view of the fact that a hearing on granting a permanent certificate must still be held, the Commission will have adequate regulatory control of the situation. We conclude that TSA's financial condition is adequate for the limited purpose involved herein, but we will require that it present a current additional balance sheet, a statement of profit or loss, and a projection of cash flow for the hearing on a permanent certificate.

^{3/} One of these loans, in the amount of \$21,000, is owed to Mr. Taub (Tr. 264). Repayment of another loan from Mr. Taub, in the amount of \$19,264 for an indefinite term, is not provided for in TSA's projection of operating results.

Ability to Provide Adequate Service Economically

TSA's vice president and director of operations developed the applicant's forecast of traffic and operating results. His traffic forecast was based upon consideration of the experience of Aspen Airways and Rocky Mountain Airlines, two scheduled commuter type carriers which conduct operations in other states similar to those proposed by TSA. The witness also utilized the experience of Cal Aero, a local carrier which operated for a short period between Mammoth Lakes and Los Angeles. This data was previously compiled and presented by this witness for the benefit of Cal Sierra in its application proceeding.

The witness explained that TSA plans to operate one aircraft during its first month of scheduled service. The witness utilized a 40 percent load factor as a conservative estimate. This results in approximately 580 passengers as the first month's traffic projection. The forecast calls for operations with two Cessna aircraft during the second month of operations and thereafter until the fourth month. At that time TSA hopes to place the first Volpar aircraft in operation. If it is unable to do so, it plans to lease another Cessna aircraft and utilize it. The forecast includes an estimate of 60 percent load factor, or 860 passengers per month, during the second month of operations, and 80 percent thereafter, or 1150 passengers per month. Upon commencement of operations with the Volpar aircraft, TSA estimates that a 40 percent load factor will be achieved, resulting in 1080 passengers during the first month of operations with the Volpar. Finally, TSA also expects additional income from air freight revenues, which it estimates will amount to 20 percent of passenger sales.

TSA's witness estimated that gross revenues for the first month's operations would be approximately \$14,000 and total expenses would be \$29,550, including \$2,000 for advertising expenses. For the three months TSA expects to operate with two Cessna aircraft, it forecasts gross revenues of \$29,000, \$43,000 and \$57,000 respectively. Total expenses are estimated to be \$55,410, \$56,010 and \$57,430, respectively, thereby achieving a breakeven or profitable operation in the third month. If operations with the Volpar aircraft are then commenced during the fifth month, it is estimated that a profitable operation will not be attained for an additional three months. In estimating operating costs and administrative expenses, TSA's witness stated that he utilized airline industry guidelines.

Although the load factor projections of TSA appear to be optimistic, particularly for the initial months of operation, TSA's witness characterized them as conservative. He relied in large part upon the figures experienced by Cal Aero, which operated for a short time. According to the witness, Cal Aero achieved a 60 percent load factor during its first month of operations, and a 75 percent load factor during its last two months of operations. TSA also points out that a 80 percent load factor for the Cessna 402A aircraft is only 6.3 passengers per flight.

Since we are concerned with a request for a temporary certificate to conduct operations over routes on which there is no present scheduled service, and as a result little actual experience to rely upon, the Commission concludes that TSA's projection is within the zone of reasonable feasibility. The accuracy of the forecast, including the applicability of airline industry cost experience to TSA's operations and the estimate that Volpar operations can commence after only four months, will be reviewed at the hearing for a permanent certificate in the light of actual experience.

We will reschedule this hearing later this year in order to have the actual results for as many months of scheduled operations by TSA as possible. TSA will be required to present its actual passenger traffic results and expenses at this hearing in order to permit the Commission to evaluate its long range projection. In concluding that TSA should receive a temporary certificate until December 31, 1971 we give considerable weight to the fact that there is considerable recreational traffic potential for the proposed service; that TSA has one aircraft available for scheduled service; and that it is actually conducting charter operations between the points at the present time.

Findings of Fact

1. There is no scheduled air passenger carrier service between Los Angeles and Bishop/Mammoth Lakes and the San Francisco Bay Area. There is a large potential market for air passenger carrier service between these points for recreational and business purposes. Therefore, a need presently exists for such service between these points.

2. Trans Sierra Airlines possesses the business experience, financial stability and the requisite insurance coverage to receive a temporary certificate of public convenience and necessity as an air passenger carrier between these points until December 31, 1971.

3. Trans Sierra Airlines can economically serve Los Angeles to Bishop/Mammoth Lakes and to San Jose as a passenger air carrier, with Cessna 402A turbo supercharged aircraft or Beech Volpar aircraft at a one-way fare of \$25,00 plus tax, for the period permitted by this temporary certificate.

4. Public convenience and necessity require the granting of a certificate to the applicant authorizing operations as an air passenger carrier serving Los Angeles to Bishop/Mammoth Lakes to San Jose, subject to the conditions set forth in the following order.

Based upon the foregoing findings of fact, the Commission concludes that a temporary certificate of public convenience and necessity should be granted to TSA authorizing it to operate between Los Angeles and Bishop/Mammoth Lakes to San Jose.

Trans Sierra Airlines, Inc. 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.

IT IS ORDERED that:

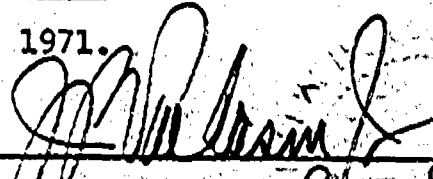
1. A temporary certificate of public convenience and necessity is granted to Trans Sierra Airlines, Inc., authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, between the points and over the routes as more particularly set forth in Appendix A, attached hereto and hereby made a part hereof.

2. In providing service pursuant to the temporary certificate herein granted, applicant shall comply with and observe the following service regulations. Failure to do so may result in a cancellation of the operating authority granted by this decision.

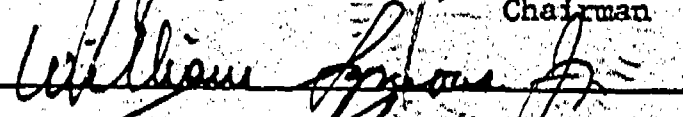
- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the temporary certificate herein granted. By accepting the temporary certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other 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.
- b. Within one hundred and twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- c. The tariff and timetable filings shall be made effective not earlier than five days after the effective date of this order on not less than three days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.
- d. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 105-A.

The effective date of this order shall be the date hereof.

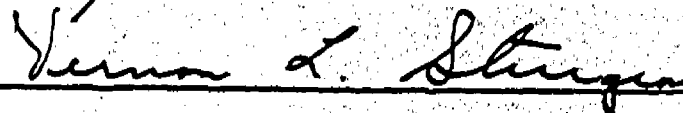
Dated at San Francisco, California, this 26th
day of JANUARY, 1971.



Chairman







Commissioners

Trans Sierra Airlines, by the temporary certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a passenger air carrier over the routes and between the points listed below:

ROUTE 1 - San Jose - Bishop Intermediate Point:
Mammoth Lakes

SJC-BIH
SJC-MMH
MMH-BIH

ROUTE 2 - Los Angeles - Mammoth Lakes Intermediate Point:
Bishop

LAX-MMH
LAX-BIH
MMH-BIH

Conditions:

1. Authority granted herein is limited to service over the specific routes described above. Direct service between a point on one route and a point on any other route shall not be provided except through junction points of two or more routes.
2. On each route each airport shall be served with a minimum of one flight in each direction on each of seven days a week.
3. No aircraft having more than 25 revenue passenger seats shall be operated.
4. No passenger shall be carried whose transportation is solely between the respective airports of MMH and BIH.
5. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
SJC	San Jose	San Jose Municipal Airport
LAX	Los Angeles	Los Angeles International Airport
MMH	Mammoth Lakes	Mammoth Lakes Airport
BIH	Bishop	Bishop Airport

Issued by California Public Utilities Commission.

Decision No. 78230, Application No. 52044.