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ORIGINAL

Decision No. 78399

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of

WESTGATE-CALIFORNIA CORPORATION

for a Disclaimer of Jurisdiction over acquisition by WESTGATE-CALIFORNIA of a controlling interest in AIR CALIFORNIA, a passenger air carrier; or, in the alternative, for an order authorizing acquisition by WESTGATE-CALIFORNIA of such controlling interest.

Application No. 52036

(Filed July 14, 1970)

C. Hugh Friedman and Gerry Levenberg, for Westgate-California Corporation, applicant.

Darling, Hall, Rae & Gute, by Donald K. Hall, and Ernest T. Kaufmann, for Western Air Lines, Inc.; O'Melveny & Myers, by Stuart Tobisman and Don Wessling, and John W. McInnis and Ken Bishop, for Pacific Southwest Airlines, protestants.

Geoffrey L. Turner and Mr. A. Taylor, by Geoffrey L. Turner, for Hughes Air West; Edward L. Colby and Fred R. Metheny, by Edward L. Colby, for City of Palm Springs; Clarence E. Belinn and Robert Kirschten, for Los Angeles Airways, Inc., interested parties.

B. A. Peeters and Gary L. Hall, Counsel, and A. L. Gieleghem, for the Commission staff.

O P I N I O N

Westgate-California Corporation (Westgate) seeks a disclaimer of jurisdiction from this Commission over its acquisition of a controlling interest in Air California, or, in the alternative, for an order authorizing the acquisition. Pacific Southwest Airlines (PSA) and Western Air Lines (Western) protested. Palm Springs and the Commission staff support the application; the staff, with some reservations. Public hearings were held before Examiner Robert Barnett in San Diego on August 3 and 4, and August 24, 25, 26, 27, and 28, 1970. The matter was submitted subject to the filing of briefs, which have been received.

Westgate's Evidence[1/]

The vice-president and general manager of Air California testified substantially as follows: Early in 1970, Air California and PSA had entered into negotiations whereby PSA was to acquire Air California. On May 18, 1970, PSA withdrew from negotiations, and at that time the financial and general corporate condition of Air California was critical. The most immediate concern was a contract with the Boeing Company for the delivery of three Boeing 737 airplanes at a total price of $12,300,000. Air California had made a down payment of $455,000 on these three

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1/ This summary is primarily of testimonial evidence. Evidence in the form of exhibits gives greater detail of some testimony, contradicts some testimony, and provides basic financial data. Exhibit evidence has been used extensively in the discussion portion of this opinion and, as it would unduly lengthen this opinion, will not be set out in this summary.

airplanes but had no money or credit to complete the contract. Boeing told Air California that if the contract was not fulfilled, the $455,000 would be withheld as a penalty, and, in addition, Boeing expected a monthly penalty payment of approximately $40,000 for each airplane for each month that each of the three airplanes remained unsold for a maximum of twelve months. Air California took three steps to relieve itself of the burden of the contract. It tried to sell the airplanes in the open market; it tried to lease the airplanes; and it tried to have Boeing release Air California of its obligation under the contract. All three of these steps proved fruitless.

At the time PSA broke off merger discussions Air California had three substantial notes outstanding: Two notes in the total amount of $1,000,000 to Bankers Life Insurance Company of Nebraska and a note in the amount of $1,150,000 to the Allstate Insurance Company. All notes were in default because certain net worth requirements had not been met, and when the PSA negotiations terminated, Air California was in no financial position to cure the default, nor liquidate the principal and interest amounts due on the notes. At this same time Air California had a contract to purchase a Pratt & Whitney airplane engine on which approximately $48,000 in payments had been made. Air California had no funds with which to make the remaining payments and stood to lose the $48,000 already paid. Nor did it have funds to inaugurate service on its newly acquired San Diego and Long Beach routes. During the pendency of the PSA acquisition many employees of Air California quit to seek other employment, including management at the highest levels in addition to staff members.

Since Westgate's purchase of a controlling interest Air California's financial outlook has improved as follows: (1) The Boeing contract has been modified whereby Air California will purchase only two Boeing 737 aircraft; one for delivery about September 1, 1970, and another for delivery about November 1, 1970. Boeing waived penalties and forfeitures in this matter. Westgate has agreed to make funds available for the Boeing acquisition as Air California has no other source; (2) The Bankers Life and Allstate notes have been retired. Westgate purchased the notes and sold them to Air California, who borrowed $1,900,000 from United States National Bank (USNB) and used that borrowing to pay Westgate. This transaction netted Air California a balance sheet credit of approximately $248,000. The loan was arranged by Westgate; (3) The Pratt & Whitney engine was paid for; (4) When the PSA acquisition fell through and Westgate's tender offer was announced, the morale of Air California's employees improved as they realized that Air California would continue as an independent carrier and that their jobs would not be in jeopardy; and (5) Because of Westgate, Air California can now start service into San Diego when it accepts delivery on the new Boeing aircraft. Prior to such delivery Air California did not have enough aircraft to serve San Diego.

At the time Westgate made its tender offer there was no other legitimate reliable offer available. If the Westgate application is denied, Air California will be in dire financial trouble. In May 1970, Air California projected net profit of $32,000 for the year 1970; as of August 1970, the projection does not look like it will be fulfilled.

Regarding the purchase of a Lockheed Electra airplane by Air California, the witness testified that he learned about the availability of the Electra after Westgate took control of Air California. At the first meeting of Air California's new directors, Mr. C. Arnholt Smith suggested that it might be beneficial to Air California to investigate the purchase of the Electra which is used to transport the San Diego Padres baseball team (controlled by Mr. Smith); the particular Electra was owned by Aztec Aircraft Corporation, also known as Golden West Air Terminals, which is a member of the Westgate group of companies either as a subsidiary or an affiliate; the plane was eventually purchased by Air California for $950,000; at the time of purchase, the plane had 24,000 hours on the airframe and its four engines, since last overhaul, had times of 2,700, 1,500, 1,000, and 150 hours, respectively; it was understood that Air California would get the contract to continue to transport the Padres, although not confirmed in writing; at the time of the purchase, no attempt was made to determine if other Electras were available.

Since Westgate took control of Air California, the board of directors consists of 15 authorized positions. Only ten directorships are filled; eight of the directors are Westgate nominees.

The executive vice president of Westgate testified substantially as follows: He is the chief financial and accounting executive for Westgate. Westgate is a corporation holding diversified operations in food, transportation, real estate, insurance, and investments, which include holdings in USNB and Air California. Westgate owns approximately 60 percent of the outstanding shares of Air California. In ground transportation, Westgate controls, through subsidiaries, the Yellow Cab taxi operations in San Francisco, Oakland, Los Angeles, San Jose, and Palm Springs. In addition, Westgate operates, through subsidiaries, airport transit buses in Los Angeles, San Francisco, Oakland, San Jose, and Hollywood-Burbank. Westgate operates a freight division transporting products by truck through the Atlantic Transfer Company. There are approximately 50 companies which are subsidiaries of Westgate whose transactions are reflected in Westgate's consolidated balance sheet. In addition to those 50 companies, there are other companies that are related to Westgate because of various combinations of stock ownership. Westgate's total assets are in excess of $160 million; stockholders' equity in excess of $34 million; earnings for the year ended December 31, 1969, were approximately $3.5 million; there was approximately $8 million cash flow in 1969; and earnings in 1970 have improved and cash flow in 1970 will be greater than in 1969.

The principal control of Westgate is in the United States Holding Company, which holds 100 percent of the Class B common stock of Westgate representing 52 percent of Westgate's voting stock. United States Holding Company is controlled by C. Arnholt Smith. Except for Air California, all subsidiaries of Westgate are either 100 percent owned by Westgate, or virtually 100 percent owned. Westgate owns approximately 16 percent of USNB stock; C. Arnholt Smith owns 37.5 percent of USNB stock. Westgate's holdings, plus Mr. Smith's holdings, are more than 50 percent of the voting stock of USNB.

The witness testified that he was responsible for the 1969 annual report of Westgate. One sentence in that report states: "During 1969 and prior years, without approval of Westgate's shareholders, titles to certain properties were transferred by subsidiaries of Westgate to the above companies and encumbrances were placed upon the properties. During those years, these properties were included in Westgate's accounts. All of these properties were reconveyed to Westgate prior to December 31, 1969 free of encumbrances ... (with minor exceptions)." The "above companies" refers to companies controlled by C. Arnholt Smith. Prior annual reports did not mention these transactions. At the time of transfer from Westgate, the properties were held free and clear by Westgate. The transfers were made to the United States Holding Company and other companies owned or controlled by C. Arnholt Smith or members of his family. The properties transferred were used as security for borrowings by the transferees, who used some of the funds to purchase stock in banks which subsequently were merged into USNB. The transferees paid nothing to Westgate for the use of these properties.[2]

The witness stated that Westgate did not originally seek authority from the Public Utilities Commission to acquire Air California because the attorneys for Air California advised Westgate that the Commission had no jurisdiction over the acquisition. Sometime prior to May 24, 1970, Westgate's own attorneys requested advise from the Commission on this point. They telephoned the Commission and were told by certain staff members, including the director of finance and accounts, that the Commission had no jurisdiction. Based upon these opinions, Westgate went forward with the acquisition without requesting Commission approval. Subsequent to the mailing of a tender offer for Air California's shares, Westgate was advised that there was a possibility that the Commission would exercise jurisdiction. Because of that advice and on further inquiry from other staff members, Westgate decided that it should file the pending application for either a disclaimer of jurisdiction or authority to acquire controlling interest in Air California.

Westgate originally purchased approximately 60 percent of the outstanding stock of Air California for about $2 million. Westgate's interest in Air California is primarily financial and Westgate does not expect to have any involvement in the day-to-day operations of the company. Westgate's resources are adequate to

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2/ The witness was cross-examined on other transactions between affiliates and subsidiaries of Westgate. Those transactions will be discussed in another portion of this opinion.

provide funds as needed for Air California without detriment to Westgate's existing surface common carrier operations. Since obtaining an equity interest in Air California, Westgate has done a number of things to make Air California more financially secure. Westgate has caused Air California to hold a line of credit with USNB of an amount between $3.5 and $4 million. Further, Westgate has secured an additional line of credit for Air California from an eastern bank in the amount of $1.5 million guaranteed by Westgate. Westgate has no plans for merging or consolidating Air California with any other carrier, air or surface; nor any plan to sell or otherwise dispose of Air California or any part of its operating assets. Rather, Westgate is seeking methods to improve Air California's equity position and is considering issuing more shares for cash.

Westgate has relieved Air California of some pressing obligations. Westgate purchased the Bankers Life and Allstate notes for 87 percent of their face value plus accrued interest, resulting in a discount in excess of $300,000. On the date that Westgate purchased the notes, July 15, 1970, Westgate sold them to Air California on the exact basis purchased. The details of the acquisition are: The Allstate note had a face amount of $1,150,000 with accrued interest of $228,000. The Bankers notes had a face amount of $1,000,000 with accrued interest of $34,000, for a total for the three notes of $2,412,000. These notes were purchased for $2,104,000, or a discount of $308,000. Air California had a deferred debit expense of $60,000 against these notes which left it a net gain of approximately $248,000 after the purchase.

The $2,104,000 which Air California paid to Westgate was comprised of $204,000 in cash and $1,900,000 borrowed from USNB on an unsecured loan. The note to USNB was originally due January 1971, but that note has since been extended to January 1972.

Since Westgate obtained control of Air California the contract with Boeing has been modified to require Air California to take only two of the airplanes. And since that modification Westgate has assumed Air California's position in the contract and has paid Air California the $455,000 that Air California paid to Boeing as a down payment. Westgate's agreement to buy the two planes entails an obligation of over $8 million. Westgate will lease the aircraft to Air California for twelve years at $42,700 a month. Air California will pay taxes and insurance on the airplanes. The $42,700 charge was arrived at based on an aircraft cost of $4,040,000, a residual price of $650,000, a twelve-year lease, and a (claimed) 7.5 percent return. This is the same kind of aircraft which Air California is leasing from GATX-BOOTHE for $43,000 a month.

Air California acquired a Lockheed Electra from Western Skyways for $950,000 which was paid for with $760,000 borrowed from USNB on a note secured by the Electra and an account payable of $190,000.3/ There is no connection between Western Skyways and Westgate. The contract that Western Skyways had to transport the San Diego Padres baseball team went with the aircraft as a condition of the purchase.

3/ It was stipulated that this $190,000 account payable was to Golden West Air Terminals.

The vice president and general manager of Westgate's taxicab and bus operations testified about the extent of those operations as they concerned airport traffic. He said that Westgate provides taxi, bus, and common carrier service through its wholly owned subsidiary, Yellow Cab Company, and the latter's wholly owned subsidiaries, namely, Yellow Cab Company of California, Yellow Cab Company of Alameda County, Mission Yellow Cab Company, Airportransit, Inc., Airportransit of California, Satellite Charter Coach, and Atlantic Transfer Company.

Westgate operates the following percentages of taxicabs in the cities indicated:

Los Angeles	90%
San Francisco	55%
Oakland	65%
Burbank	54%

Westgate provides service to and from the major airports as follows:

	Taxi	Bus	Tram	Air Freight
LAX	X	X	X	X
BUR	X	X		
ONT		X		
PSP	X	X		
SFO	X	X	X	
OAK	X	X		
SJC	X	X		

To the extent available, percentages of airport passengers using Westgate's services in 1969 were:

	Taxi		Bus[4]	
	In	Out	In	Out
LAX	50%	85%[5]	50%	50%
BUR	55	50	-	-
PSP	95	95	-	-
SFO	45	70	65	-
OAK	45	100	-	100
SJC	30	45	-	-

There are approximately 25 taxicab companies in the Los Angeles area bringing passengers to Los Angeles International Airport. Approximately 30 taxicab companies bring passengers to the Oakland Airport. At Hollywood-Burbank four taxicab companies regularly bring passengers to the airport; two companies operate from the airport. In San Francisco approximately 35 taxi companies bring passengers to the airport; four take passengers from the airport.

The treasurer and controller of Air California testified substantially as follows: Air California had operating income of $120,000 for the first seven months of 1970. However, from the period June 1 through December 31, 1970, he estimates a net loss

4/ The evidence concerning bus statistics did not present a complete picture.

5/ Westgate has the exclusive right to pick up cab passengers at LAX. "Pirating" results in a 15% loss of passengers.

of $379,000. Air California projects a cash position of $80,000 as of year-end 1970 if all Westgate transactions are ignored; and a cash position of $75,000 as of year-end 1970 if Westgate transactions are included. The financial condition of Air California has improved through its acquisition and support by Westgate. Air California's negative working capital has changed to positive. Even with the help of Westgate, Air California will have a financial emergency at the end of 1970 as far as its cash position is concerned. Air California is running approximately 8-1/2 percent below forecasted traffic. Within the last year Air California has revised its forecasts downwards approximately three times based upon current economic conditions and actual experience in the field.

In mid-July a meeting of the executive committee of Air California approved the purchase of the Lockheed Electra on the ground that it was economically feasible. After the purchase the Electra was leased to the San Diego Padres at a rental of $11,000 a month, dry lease. The lease expired September 28, 1970. Air California entered into a contract to perform ticketing and ramp service for Golden West Airlines at Santa Ana, Ontario, San Francisco, Palm Springs, and San Jose. Also, Air California will provide accounting and maintenance service for Golden West.

Western Evidence

Western presented its manager of contracts services who is responsible for the disposal of surplus aircraft and equipment for Western. He testified that since 1968 Western has four Lockheed Electra passenger airplanes for sale. Western has advertised the sale in aviation publications and by letter to prospective buyers all over the world, with no takers. The present asking price for each Electra is $250,000, as is; $450,000, zero time. The price has been continually reduced. Prior to the most recent price reduction the airplanes were offered at $400,000, as is; $550,000, zero time. They were originally offered at $500,000, as is, and $750,000, zero time. There are approximately 90 Lockheed Electras available for sale at present. In his opinion, the asking price as of July 1970 of a Lockheed Electra aircraft, with 56 seats, long-range fuel tanks, 24,000 hours on the airframe, and engine times since last overhaul of 2,700, 1,700, 1,500 and 150 hours on each engine, respectively, would be about $550,000 and the cash sales price would be about $450,000. An automatic power unit on the plane would increase the price from $35,000 to $80,000.

Staff Evidence

An accountant for the Commission staff testified substantially as follows: He examined financial and operating statements of Westgate and concluded that consideration of Westgate's acquisition of Air California in terms of the financial capability of Westgate cannot ignore Westgate's existing investments in Golden West Airlines and certain other affiliates. But Westgate imposed an investigation restriction that limited review and disclosure of important data which precluded any valid opinion regarding Westgate's financial condition and resources available to assist Air California.

At present Air California's debt exceeds its net assets, and its basic problem is under-capitalization. He recommended the conversion to common stock of the 7 percent convertible debentures which would reduce an already top-heavy debt position and at the same time either eliminate the negative equity position or perhaps even produce some positive equity. The debentures are currently selling at between 60 and 65, and perhaps lower. Westgate has not materially improved Air California's need for additional working cash. After Westgate's take-over Air California projected working cash of only $75,000 when at least $400,000 is required for the proper conduct of Air California's operations. However, Westgate has taken action to support Air California but more is needed, especially in the area of additional equity financing.

Air California's balance sheet does not reflect its potential liability under its long-term lease for its entire fleet of aircraft, and this same potential liability applies to the two new 737s to be leased to Air California by Westgate; the loan of

$1.9 million by USNB may not have been much assistance to Air California because it substituted a loan at 8.5 percent for loans at 6.25 and 6.5 percent and it made a short-term loan out of a long-term obligation; Bankers and Allstate could not have foreclosed their loans because there were no assets in Air California to satisfy the loans; Westgate may benefit from Air California's $5.7 million loss carry-forward with a potential tax saving of approximately $2.5 million; and, Westgate forgave a debt of $2.3 million to Golden West Airlines.

Discussion

A. Background

Air California is an intrastate passenger air carrier serving the California points of Orange County/Disneyland, Palm Springs, Ontario, San Jose, Oakland, and San Francisco. Air California's original route, Orange County-San Francisco, was authorized by this Commission in Decision No. 71310, dated September 20, 1966, in Application No. 48406. Since that decision Air California's route service has expanded to encompass the six points just mentioned plus San Diego, with conditional route authority into Long Beach.[6/] In addition to its authorized points Air California has applications on file to serve Los Angeles International Airport and Sacramento Metropolitan Airport.[7/]

6/ Air California's operating authority can be found in the following decisions: No. 73172, No. 74248, No. 75478, No. 76110, and No. 76397. Service to San Diego is authorized to start November 1970.

7/ Applications Nos. 50381, 51007 and 51311.

Air California has never shown a fiscal year profit. Its balance sheet as of July 31, 1970, shows:

ASSETS

Current Assets	$3,377,177
Deposit on Aircraft	455,000
Property & Equipment (Depreciated)	3,266,520
Deferred Charges	1,118,172
	$8,216,869

LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)

Current Liabilities	$4,826,840
Contracts Payable - Non-Current	39,581
Accumulated Provision for Overhaul - Non-Current	374,509
Long-Term Debt, Due After One Year:	
Notes Payable to Banks	1,131,881
7% Convertible Debentures	4,973,700
	6,105,581
Stockholders' Equity (Deficit):	
Common Stock, $1 Par Value, 3,000,000 Shares Authorized, 408,198 Shares Issued	408,198
Additional Paid-In Capital	2,202,578
Retained Earnings (Deficit)	(5,740,418)
Total Stockholders' Equity (Deficit)	(3,129,642)
	$8,216,869

In 1969 Air California carried 835,455 passengers on its system, over two and one-half times more than it carried in 1967, its inaugural year. Gross revenues in 1969 were approximately $13.5 million.

In February 1970 PSA began attempts to acquire Air California. On May 18, 1970, PSA terminated those attempts. On May 22, 1970, Westgate began its attempts to acquire Air California and acquired control as of June 27, 1970. At the time of the acquisition Air California's financial position was critical. It had no funds or sources of funds with which to fulfill its contract obligations to the Boeing Company for the purchase of three 737 aircraft at a total contract price of $12,300,000 upon which it had made advance payment of $455,000; it was in default with respect to the net worth requirements of $2,150,000 worth of notes with Allstate Insurance Company and Bankers Life Insurance Company of Nebraska; it could not pay the balance due on its agreement to purchase a Pratt & Whitney engine for $245,000 on which it had made a down payment of $48,000; and it was finding it difficult to keep experienced personnel.

Westgate is a conglomerate holding company having diverse business interests in a number of unrelated fields. Exclusive of Air California, Westgate has 34 wholly owned subsidiaries. As of June 27, 1970, Westgate had acquired approximately 57.9 percent of the outstanding stock of Air California. Westgate is involved directly or through subsidiaries in at least 19 joint ventures with related and other interests, and its subsidiaries have a total of 26 operating divisions. In all, Westgate owns and operates or is a partner in 80 enterprises. The fields of endeavor include, in addition to transportation, seafood processing, produce, real estate, insurance, hotels, and related services. Westgate owns Yellow Cab Company and operates taxicabs in Los Angeles, San Francisco, Oakland, San Jose, Daly City, Beverly Hills and Palm Springs. It also operates, through subsidiaries, airport buses to and from Los Angeles International Airport, Hollywood-Burbank Airport, Ontario Airport, Oakland International Airport, and San Jose International Airport. It operates Atlantic Transfer Company, a motor carrier which provides, among other things, air freight trucking service at Los Angeles International Airport. Westgate owns approximately 17 percent of the shares of USNB.

Mr. C. Arnholt Smith is president and chairman of the board of directors of Westgate and owns or controls approximately 52 percent of its outstanding voting securities. Smith is also president and chairman of the board of Air California and president and chairman of the board of USNB. Smith owns 37.5 percent of the outstanding stock of USNB and that, combined with Westgate's holdings, gives Smith the controlling interest in the bank. Some of Westgate's and Smith's related interests include USNB, Westgate-California Products, Inc., the San Diego Padres, Western Skyways, Inc., and Golden West Air Terminals, Inc., formerly Aztec Aircraft Corporation.

B. Statutory Compliance

Protestants assert that Westgate acquired control of Air California without prior approval of the Commission and, therefore, Westgate should be required to divest itself of such control before proceeding with this application. Further, such failure to obtain prior Commission approval is evidence of Westgate's unfitness to control Air California.

On May 27, 1970, Westgate entered into a memorandum of understanding with Air California whereby Westgate was to make a cash tender offer to all Air California shareholders. This tender was submitted on June 10, 1970, and as of June 27, 1970, Westgate had acquired almost 60 percent of Air California's outstanding stock.

Not until July 14, 1970, was this application filed. Prior to May 27, 1970, Westgate controlled the common carriers, Airportransit, Inc., Airportransit of California, and Atlantic Transfer Company.

To determine whether Westgate was required to obtain Commission authority prior to acquiring control of Air California, the following Public Utilities Code sections must be considered:

> Section 211. "Common carrier" includes:
> (c) Every "passenger stage corporation" operating within this State.
>
> Section 216. (a) "Public utility" includes every common carrier . . . .
>
> Section 226. "Passenger stage corporation" includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this State . . . .
>
> Section 2745. As used in this chapter, "person" means any individual, firm, copartnership, corporation, company, association . . . .
>
> Section 2757. It is unlawful, unless authorized by order of the commission as provided in this section:
> (c) For any passenger air carrier, or any person controlling a passenger air carrier or any other common carrier, to acquire control of any passenger air carrier in any manner whatsoever.

> Section 2758. Any person seeking authorization for a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in Section 2757, shall file an application, and thereupon the commission shall notify all persons known to have a substantial interest in the proceeding of the time and place of a public hearing. The commission shall by order authorize such consolidation, merger, purchase, lease, operating control, or acquisition of control, <u>upon such terms and conditions as it shall find to be just and reasonable</u>, after hearing, <u>if the</u> consolidation, merger, <u>purchase</u>, lease, operating contract <u>or acquisition of control, is in the public interest</u>. The commission shall not authorize, however, any consolidation, merger, purchase, lease, operating contract, or acquisition of control, which would result in creating a monopoly or monopolies and thereby restrain competition, or <u>jeopardize another passenger air carrier</u> not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control . . . .
> (emphasis added)

Clearly, Westgate, as a person controlling a common carrier, is required to obtain Commission approval prior to acquiring control of a passenger air carrier. In addition, Westgate is a common carrier (Sections 226, 211(c)) and a public utility (Section 216(a)). "A corporate combine consisting of a parent corporation and a subsidiary or subsidiaries may be considered as one operation for purposes of regulation . . . . To omit the regulation of the parent and confine regulation to the subsidiary would be like disregarding the substance and seizing upon the shadow." <u>Key System Transit Lines</u> (1953) 52 CPUC 687, 689. "As a matter of law, it follows that once ownership or control over a public utility operation is established then the entity exercising such control is a public utility." <u>Key System Transit Lines</u> (1953) 52 CPUC 589, 597.

Westgate asserts that it acted in good faith in not seeking Commission approval of its tender offer prior to its acquisition of Air California's shares. Westgate claims that it relied on opinions of its counsel and on a telephone conversation with the director of finance and accounts of the Commission that Westgate's acquisition of a controlling interest in Air California would not require Commission approval. Subsequently, on the receipt of contrary views by the staff legal division Westgate filed this application.

Westgate's purported reliance upon an opinion of the director of finance and accounts did not relieve it of its obligation to file a timely application in this matter. First, the statute (Section 2757(c)) is easily understood; second, opinions of staff members cannot waive requirements of law nor bind the Commission;[8] third, prior to accepting the tender offers, Westgate was informed by the staff legal division that an application to acquire controlling interest should be filed with the Commission; fourth, there is no evidence concerning the detail that was given to the director of finance and accounts nor is there any evidence that the director knew of Westgate's various interests in other common carriers; fifth, none of this material was in writing. On an issue as important as this we would expect counsel to put its request for an opinion in writing rather than by telephone, and certainly to request that the telephone opinion be confirmed in writing; and sixth, the question being one of interpretation of statute, essentially a legal question, it would appear more appropriate to have asked the Commission's chief counsel for guidance.

[8] In certain exceptional circumstances, which we do not find here, reliance on staff opinion may be a mitigating, or even controlling, factor in determining violations of statutes.

However, the cure for this improper acquisition is not necessarily, as PSA and Western would have it, to require complete divestiture by Westgate. Section 2758 gives this Commission ample authority to cure any actual harm done by premature acquisition of a passenger air carrier. That section states, in part, that "the Commission shall by order authorize such . . . acquisition of control, upon such terms and conditions as it shall find to be just and reasonable . . ." This is certainly sufficient power to correct any improprieties. The Civil Aeronautics Board's "Sherman Doctrine"[9/] that PSA and Western would like us to apply is not required in this situation because of our broad statutory remedial powers. While divestiture might be appropriate in some cases, it is not appropriate here.

9/ ". . . (W)ith respect to any application for approval of matters covered by sections 408 and 409 (of the Federal Aviation Act) . . . , whenever the Board has reasonable grounds to believe that the applicant has, at the time of his application, violated either of those sections by having acted without prior Board approval, the application will be held in abeyance until either the alleged violation has been voluntarily terminated, or the completion of a proceeding to determine the existence of the violation and, in the event a violation is found to exist, until the violator has taken required corrective action . . . . (A)n application under 408 or 409 will not be considered by the Board for approval as long as the action or relationship exists in apparent violation of the Act, whether or not the action or relationship in question would ultimately be found to be consistent with the public interest."
Sherman, Control and Interlocking Relationships (1952) 15 CAB 876, 881.

C. Golden West Airlines

During the course of these hearings there was much testimony concerning the ownership of Golden West Airlines and the attempted acquisition of Golden West Airlines by Westgate (see Application No. 52092, application withdrawn by Westgate November 11, 1970). All evidence concerning Golden West Airlines, except as it referred to present firm commitments of Westgate, was held to be immaterial to this proceeding on the ground that the hearing on the acquisition of Golden West Airlines had not been consolidated with this case, had not been set, might not be set within a reasonable time, would tend to confuse issues in this case, and would unduly broaden the issues and the time necessary to try this matter. The examiner's rulings concerning the exclusion of evidence of Westgate's proposed control of Golden West Airlines and the effect that such control, if granted, would have on Westgate's financial statements were correct.

D. Jeopardy to Existing Air Carriers

Protestants assert that Westgate's surface transportation subsidiaries (bus and taxicab) exercise substantial power over ingress and egress at California's major air terminals, and that this power, if coupled with control over Air California, will jeopardize existing passenger air carriers. It is feared that airport bus scheduling and operations and taxi operations will give Westgate the incentive to coordinate the activities of its subsidiaries to the detriment of competitors. They cite a statement in Westgate's 1969 annual report to the effect that "buying power established by the massive purchases of the taxicab companies from oil and tire companies boosts the profit margins of airport limousines and shuttle bus services owned by your company in Los Angeles and the San Francisco Bay Area."

The buying power argument is immaterial. To the extent that any conglomerate grows and acquires more subsidiaries, its buying power will be enhanced. Merely because subsidiaries are common carriers, this result should not be condemned. Subsidiaries often compliment and support each other. PSA owns hotels and car rental agencies. It would be anomolous if these subsidiaries were not utilized in the best manner to enhance the overall corporate operations; always with the proviso that the common carrier elements of the operation do not suffer because of the affiliation.

The argument that ownership of ground and air transportation, as shown in this case, will lead to a coordination of scheduling to favor Air California over other carriers seems more imaginative than real. The only present point-to-point competition between Air California and any protestant is the Palm Springs-San Francisco route where Air California and Western compete. (If Air California is permitted entry into LAX, then additional routes would be competitive.) As far as taxicab drivers or bus drivers switching patrons from one carrier to another, we cannot believe that this will happen, with perhaps rare exceptions. Most travelers on airlines have reservations prior to coming to the airport and will not be switched by a taxi driver. Discriminatory bus scheduling can easily be remedied by application to this Commission to regulate the routes, stops, and timetables of airport transit buses. Lastly, by implication the Public Utilities

Code permits such a consolidation of ground and air transportation in Section 2757 which grants this Commission jurisdiction to authorize "(c) ... any passenger air carrier, or any person controlling a passenger air carrier or any other common carrier, to acquire control of any passenger air carrier in any manner whatsoever."

It is difficult to believe that Westgate's acquisition of Air California, which has never shown a profit and which had gross revenue in 1969 of $13.5 million, will jeopardize the operations of PSA, which had gross revenue in 1969 of $75 million, and Western, which had gross revenue in 1969 of $240 million.

We find that authorization of Westgate to acquire controlling interest in Air California will not jeopardize existing carriers.

E. Financial Ability

The staff, in its Exhibit 11, questioned Westgate's financial ability to assist Air California because of Westgate's marginal liquid position, low working cash ratio, and high debt-equity ratio.

Accepting as true the staff's evidence that Westgate's balance sheet is not as strong as might be desired, the financial ability of Westgate to provide the needed support for Air California's continued existence cannot be determined solely from an examination of Westgate's books. Significantly important is Westgate's ability to secure funds from USNB and other financial institutions for the use of subsidiaries. An obvious example was Air California's borrowing of $1.9 million to purchase the Allstate and Bankers Life notes. We have no doubt that Air California could not have borrowed that much money without the support of Westgate.

In addition, Westgate has secured for Air California a line of credit of $3.5 million with USNB and additional lines of credit of at least $1.5 million with other banks. None of this support is reflected in Westgate's balance sheet, yet it is the kind of support that Air California needs and could not get without Westgate's intervention. Westgate's balance sheet shows that it might be difficult for Westgate to make extraordinary cash commitments to Air California. But Westgate's balance sheet apparently satisfied those who financed Westgate's purchase of two Boeing 737 airplanes, an $8 million investment. The fact that Westgate cannot do all that is necessary does not lessen the fact that Westgate is doing considerably more than Air California could do on its own or that anyone else has come forward and attempted to do.

Since Westgate has assumed control of Air California, a number of things have occurred:

1. Employee morale has risen. Experienced personnel are staying with Air California and employee turnover has returned to normal.

2. Westgate has obtained lines of credit for Air California of approximately $5 million through USNB and other banks.

3. Westgate caused the elimination of the long-term notes to Allstate and Bankers Life. On July 15, 1970, Westgate purchased the notes for an aggregate payment of $2,103,800. At that time principal and interest accrued totalled $2,412,000. The $2,103,800 came from Air California, which on the same date borrowed $1,900,000 of it from USNB and paid $203,800 out of cash on hand. Westgate returned the notes to Air California marked paid.

Protestants and the staff claim that this was a bad deal for Air California. They assert that Air California's default was technical in nature because it involved net worth provisions rather than default in payments; that the $1,900,000 note bears a higher interest rate (8-1/2 percent annually) than the retired notes, calls for monthly payments on principal of $19,000, and falls due January 15, 1972.

The evidence shows that the default occurred some months prior to the hearing and the creditors, prior to the time Westgate entered the picture, had not taken any formal steps to enforce the provisions of their notes (arguably because formal steps would have been useless as there was no money to pay off these notes). However, apparently the creditors felt themselves insecure and wanted to liquidate as they accepted $2,103,800 in payments on notes whose principal and interest totalled $2,412,000.

4. As soon as Westgate made its tender offer to purchase shares of Air California, Boeing and Air California entered into a supplemental agreement which, without any penalty to Air California, reduced Air California's contractual obligation to purchase three aircraft to two, and treated Air California's advance payments in the amount of $455,000 to apply to each of the two aircraft in equal amounts of $227,500. Boeing waived all claims and rights to interest charges, penalties, costs, expenses, and charges of any kind arising under the original agreement. The supplemental agreement was specifically conditioned upon Westgate's election to purchase the shares tendered to it in acceptance of its forthcoming tender offer. After

Westgate purchased the shares Westgate assumed Air California's position in the two airplanes by paying to Air California $455,000 in cash and purchasing the two aircraft for Westgate's account to be leased to Air California on terms at least as favorable as the terms Air California now leases its aircraft from GATX-BOOTHE, the company that supplies all of Air California's other aircraft.

5. After Westgate acquired control Air California felt financially secure enough to pay the remaining balance on the Pratt & Whitney engine.

F. <u>The Lockheed Electra Purchase</u>

At the first meeting of the Air California board of directors held after the tender offer, Mr. Smith proposed to the general manager of Air California that Air California look into the purchase of a Lockheed Electra that was used to transport the San Diego Padres to various points in the United States to play baseball. Pursuant to that request, the general manager entered into negotiation for the purchase. On July 21, 1970, Air California purchased the Electra from Golden West Air Terminals, formerly Aztec Aircraft Corporation, for a price of $950,000, payable $190,000 on execution of the agreement and the balance of $760,000 by demand promissory note. On the same date, the Electra was "dry leased" by Air California to the San Diego Padres at a rental of $11,000 a month for a two-month period ending on September 28, 1970. On July 22, 1970, Air California borrowed $760,000 from USNB, executing a note in that amount secured by a chattel mortgage on the Electra. The note is due August 22, 1975, with interest at the rate of 9-1/2 percent per year and with principal and interest payable in monthly installments of $11,333.33 commencing August 22, 1970. The loan was arranged by an officer of Westgate and the money was used to pay off the $760,000 demand note.

At the time the negotiations for the purchase of the Electra were proceeding the Air California negotiator knew that he was negotiating with Golden West Air Terminals which was controlled by Smith, and that the plane was used to transport the San Diego Padres, also known by the negotiator to be controlled by Smith. Air California made no investigation of the price of any other Lockheed Electras on the market.

The Federal Aviation Authority's records show that the Electra was sold by Northwest Airlines on February 19, 1969, to Aztec Aircraft Corporation for $650,000. Evidence of Western shows that since late 1968 and early 1969 Western had for sale four surplus Lockheed Electra aircraft. Western's as-is asking price for its aircraft as of July 1970 was $250,000 per aircraft, and $450,000 per aircraft at zero time. There are approximately 90 Lockheed Electras on the market for sale. Western's expert testified that a Lockheed Electra with the configuration, equipment, and airframe and engine times of the aircraft purchased by Air California had a market value in July 1970 of $450,000.

At the hearing, Air California's treasurer testified that even with Westgate's participation Air California will have a financial emergency at the end of 1970. In this situation it was imprudent for Air California to saddle itself with additional payments of over $11,000 a month for an airplane to be used in charter service when there was no binding commitment that charters would be available to cover the costs of operation.

We find that on July 21, 1970, the fair market value of the Electra purchased by Air California for $950,000 was $650,000. The $650,000 includes expenditures for modifications such as long-range fuel tanks, automatic power unit, and changes in seating capacity. The purchase was imprudent. Air California paid $300,000 in excess of the fair market value of the Electra. The sale was from a Westgate affiliate (Golden West Air Terminals) to a Westgate subsidiary (Air California); was paid for through financing arranged by a Westgate affiliate (USNB); and was done through the instigation of C. Arnholt Smith, the person who controls Westgate and USNB. Golden West Air Terminals made an unreasonable and excessive profit on this transaction. Westgate, the responsible entity, should relieve Air California of the consequences of this imprudent investment by either paying to Air California the sum of $300,000 or rescinding the transaction. The methods by which the $300,000 shall be repaid or the transaction rescinded are set forth in the ordering paragraphs of this opinion.

Transactions between affiliates have the inherent danger that the nonregulated affiliate will benefit at the expense of the regulated affiliate to the detriment of the public. The Commission has been alert to these possibilities and has taken corrective measures when needed. Affiliated relationships are not improper as such and when abuses are found they can be corrected. While we have no illusions concerning possible regulatory problems in supervising a conglomerate such as Westgate, those problems are essentially Commission problems and not the public's problems. The public interest, insofar as Air California is concerned, is that Air California renders good service at reasonable rates. If we are convinced that a particular entity will provide good service at reasonable rates, then any problems of Commission regulation become secondary. The proper rule was set forth in Asbury Truck Co. (1933) 38 CRC 887, 892, wherein the Commission said ". . . . An applicant whose operations have been illegal will not, in the absence of excusable mistake or of a clear and convincing public necessity or other special circumstances, be granted new or additional rights to legalize that which have been done illegally." That is, when public necessity requires authorization, authorization will be made despite drawbacks.

Westgate itself recognizes that apprehension can arise from transactions between Air California and Westgate or Westgate-related interests, and Westgate has no objection to this Commission's conditioning its approval of this acquisition as the Civil Aeronautics Board did in a comparable case.

In Hughes Tool-Air West Acquisition, CAB Order 69-7-102, July 15, 1969, p. 6, the CAB imposed, as a condition of approval of the acquisition, a provision "for the reporting of all transactions between the Air West Division and other Toolco divisions and affiliates; for prior Board approval of such transactions which aggregate $100,000, or more; for prior Board approval with respect to utilization of aircraft manufactured by Toolco or its affiliates; and for retention of jurisdiction to take such other actions as may be required under the circumstances."

In our opinion a provision requiring prior Commission approval for affiliated transactions, while on its face salutary, appears to be too burdensome for both the Commission and Air California. However, because affiliated transactions might be called into question, we will require that all transactions between Air California, on the one hand, and Westgate and each of its affiliated or related interests, on the other hand, be accounted for by both parties to such transaction, separately and clearly, by use of clearing accounts. The notice and reporting provisions of Decision No. 67098, dated April 14, 1964, in Case No. 7372 (Competitive Bidding) shall also be observed.

In this case, although we have found that there has been a benefit to a related interest in the amount of $300,000 at the expense of Air California, it is clear that such transactions work to the detriment of Westgate and cannot continue for long. Westgate has invested $2 million in Air California, a company whose total assets are substantially less than its liabilities. In addition, Westgate has purchased two Boeing 737 airplanes at a cost in excess of $8 million, which will be leased to Air California. The evidence shows that there is no other market for these airplanes. In these circumstances, there is one way, and only one, in which Westgate's investment in Air California can be recouped, and that is for Air California to become a viable and profitable carrier. We assume that the Lockheed Electra transaction was an aberration that will not be repeated.

In the light of this discussion, and considering Westgate's financial ability, and weighing the public interest in Air California's continued operation (discussed below), we cannot say that Westgate is unfit to control Air California.

G. Public Interest

The public interest requires that the application of Westgate to acquire a controlling interest in Air California be granted subject to certain terms and conditions.

The public need for Air California's service has not been disputed in this proceeding. Air California holds certificates of public convenience and necessity from this Commission, the last issued in 1969. During its short business life, Air California's traffic statistics show an increase from 294,000 in 1967 to 835,000 in 1969. Projections for 1970, as revised downward because of the current business slump, show that Air California will carry about 850,000 passengers. The public is utilizing the services of Air California in ever increasing numbers.

In order to meet the public demand for Air California's service, we should assist Air California in its search to obtain the funds necessary to maintain its operations. We have already shown that at the time of Westgate's take-over Air California was in critical financial condition. Creditors were in a position to enforce contractual obligations. As the staff brief puts it, "A closer examination of Air California's balance sheet reflects the obvious, that is, the attempted enforcement of any penalty or obligation by Bankers or Allstate would have a "domino effect" setting off the attempted enforcement of all obligations by other Air California creditors causing severe loss to all, with little possibility of future recovery. ... The recent balance sheet of Air California shows assets realizable in liquidation are far less than valid claims of creditors, depending on the actual operation of prior liens (wages, taxes, material, etc.) and subordination clauses related to certain debt obligations. It is estimated that a default precipitated liquidation would result in losses averaging over 50 percent to nonpriority and unsecured creditors." What the brief does not say, but what we find as a fact, is that if Air California's creditors had attempted to enforce their agreements, Air California would have been forced into either bankruptcy or reorganization.

It is in the public interest that Air California stays in business. Air California was in need of additional financing to stay in business; Westgate provided that financing. Westgate's participation in the financial affairs of Air California caused elimination of all obligations that were in default. It has invested such substantial sums in Air California, and in airplanes to be leased to Air California, that the most feasible way it can realize a profit on its investment is to do all in its power to keep Air California in business.

To require Westgate to divest at this point would signal the demise of Air California. PSA states, "There is nothing in the record to indicate that Air Cal would not be at least as attractive today to potential investors as it was on May 18, 1970, when the PSA acquisition proceedings were terminated. ... A potential investor today will find many of the same attractions in considering Air Cal." Western states, "Given time and management desire, there is every reason to believe Air California could have secured adequate refinancing." These comments are nothing but micawberisms. Air California was in no position to wait for "something to turn up".

So, despite Westgate's failure to make timely application; despite the possibility of affiliated interest problems; despite the Lockheed Electra imprudency; despite possible regulatory difficulties; we have a choice of approving Westgate's acquisition or letting Air California fail. This is no choice.[10/] There is a public need for Air California's service and the Commission would be doing a disservice to the public to deny the application and order Westgate to divest. We find that the acquisition is in the public interest.

10/ Yet, we cannot abdicate regulation to Westgate just because Air California is in financial difficulty. We are imposing conditions as a prerequisite to authorizing the acquisition and we will continue to scrutinize affiliated transactions, as well as all other aspects of Air California's operations.

Public Utilities Code Section 2758 gives us the power to authorize this application "upon such terms and conditions as [the Commission] shall find to be just and reasonable." We will make such findings to require a $300,000 contribution to capital or rescission to rectify the Lockheed Electra imprudence, and to require the reporting of affiliated transactions. The staff recommends that authorization be granted by interim decision with final approval to be conditioned upon Westgate presenting to the Commission a proposal detailing a firm commitment to the reconstruction of Air California's financial structure. In our opinion, interim authority at this stage of the proceedings would be detrimental to Air California as it would surely slow down Westgate's participation and could cause problems concerning the retention of employees. Rather than condition our order upon some future commitment by Westgate, we will recommend that Westgate consider additional equity financing. In particular, we recommend that Air California issue at least $1.9 million in common stock and use the proceeds of that sale to retire the $1.9 million note relating to the purchase of the Allstate and Bankers Life obligations, and convert its convertible debentures in an orderly program to preserve the available discount.

Western asserts that certain directors of Air California are also directors of Westgate or common carrier subsidiaries of Westgate in violation of Public Utilities Code Section 2759.[11/] Assuming there is a violation, it is immaterial to the result in this case. In our opinion, the authorization of a person controlling a common carrier to control a passenger air carrier would be sufficient to exempt common directors and officers, but to be perfectly clear, we will grant a specific exemption from Section 2759.

11/ Section 2759. It is unlawful, unless such relationship has been authorized by order of the commission:

(a) For any passenger air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any other common carrier.

(b) For any passenger air carrier, knowingly and willingly, to have and retain an officer or director who has a representative or nominee who represents such officer, director, or member as an officer, director, or member, or as a stockholder holding a controlling interest, in any other common carrier.

(c) For any person who is an officer or director of a passenger air carrier to hold the position of officer, director, or member, or to have a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any common carrier.

Findings of Fact

1. On May 22, 1970, Westgate began its attempts to acquire Air California and acquired control as of June 27, 1970. On July 14, 1970, this application was filed. As of June 27, 1970, Air California's financial position was critical. It could not fulfill its contract with the Boeing Company for the purchase of three 737 aircraft at a total price of $12,300,000 upon which it had made advance payment of $455,000; it was in default with respect to the net worth requirements of $2,150,000 worth of notes with Allstate Insurance Company and Bankers Life Insurance Company of Nebraska; it could not pay the balance due on its agreement to purchase a Pratt & Whitney engine for $245,000 on which it had made a down payment of $48,000; and it was finding it difficult to keep experienced personnel.

2. Westgate is a conglomerate holding company having diverse business interests in transportation, seafood processing, produce, real estate, insurance, hotels, and related services. Westgate owns Yellow Cab Company and operates taxicabs in Los Angeles, San Francisco, Oakland, San Jose, Daly City, Beverly Hills, and Palm Springs. It also operates, through subsidiaries, airport buses to and from Los Angeles International Airport, Hollywood-Burbank Airport, Ontario Airport, Oakland International Airport, and San Jose International Airport. It operates Atlantic Transfer Company, a common carrier which provides air freight trucking service. Its Airport bus subsidiaries are passenger stage corporations and common carriers. Westgate owns approximately 17 percent of the shares of USNB.

3. Mr. C. Arnolt Smith is president and chairman of the board of directors of Westgate, Air California, and USNB. He owns or controls approximately 52 percent of the outstanding voting securities of Westgate. He owns 37.5 percent of the outstanding stock of USNB. His stock ownership in USNB, combined with Westgate's holdings, gives Mr. C. Arnolt Smith the controlling interest in USNB.

4. Westgate and C. Arnolt Smith have affiliated and related interests with USNB, Westgate-California Products, Inc., San Diego Padres, Western Skyways, Inc., and Golden West Air Terminals, Inc., formerly Aztec Aircraft Corporation.

5. Westgate controls the common carriers, Airportransit, Inc., Airportransit of California, and Atlantic Transfer Company. Westgate is a person controlling a common carrier. Westgate controls passenger stages over the public highways in this State.

6. Air California has never shown a fiscal year profit and had gross revenues in 1969 of $13.5 million; PSA had gross revenues in 1969 of $75 million; and Western had gross revenues in 1969 of $240 million. Westgate's acquisition of Air California, coupled with Westgate's control of taxicabs and airport buses, will not jeopardize existing carriers.

7. The financial ability of Westgate to provide the needed support for Air California's continued existence cannot be determined solely from an examination of Westgate's books. Westgate has the ability to secure funds for Air California from outside sources such as USNB. Westgate has assisted Air California in borrowing $1.9 million to purchase the Allstate and Bankers Life notes; has secured for Air California a line of credit of

$3.5 million with USNB and at least $1.5 million with other banks; has assumed Air California's position in the Boeing contracts; has purchased two Boeing 737s at a price in excess of $8 million; and will provide the airplanes and the financial support necessary to permit Air California to provide service at San Diego. In addition, the morale of Air California's employees has risen because of Westgate's presence.

8. We incorporate by reference as Finding of Fact No. 8 pages 29, 30, and 31 of this opinion starting with paragraph F on page 29.

9. Westgate is not unfit to control Air California.

10. If, prior to the Westgate take-over, Air California's creditors had attempted to enforce their agreements, Air California would have been forced into either bankruptcy or reorganization.

11. It is in the public interest that Air California stays in business. Westgate has the financial resources to provide the support that Air California needs. No other person has come forward with an offer to supply this financing. Without Westgate's financial help there is a substantial likelihood that Air California would not be able to continue in business.

12. The public interest requires that the application of Westgate to acquire a controlling interest in Air California be granted subject to the following terms and conditions which we find to be just and reasonable:

a. Westgate shall make a contribution of capital to Air California in the amount of $300,000 or rescind the Lockheed Electra transaction, as more particularly set forth in Ordering Paragraph 1.

b. All transactions between Air California, on the one hand, and Westgate and each of its affiliated or related interests, on the other hand, shall be accounted for by both parties to such transaction, separately and clearly, by use of clearing accounts. Air California shall observe the notice and reporting provisions of Decision No. 67098.

13. Air California and any officer or director of Air California, or their representatives and nominees, should be exempt from the provisions of Public Utilities Code Section 2759 insofar as the relationship involves common carriers which are Westgate-California subsidiaries, or Westgate-California.

Conclusions of Law

1. This Commission has jurisdiction over the acquisition by Westgate of a controlling interest in Air California.

2. The application should be granted subject to the terms and conditions set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. Westgate-California Corporation is authorized to acquire a controlling interest in Air California subject to the following terms and conditions:

a. Westgate-California Corporation shall either make a contribution of capital to Air California in the amount of $300,000 within thirty days of the effective date of this order, or cause the Lockheed Electra transaction to be rescinded within thirty days of the effective date of this order. If the contribution to capital is made, it shall be done in the following manner:

> Upon receipt of the $300,000 by Air California, Westgate-California Corporation shall cause Air California to reduce the balance on its $760,000 note to USNB by $300,000 and to make the following journal entries on Air California's books: debit cash, $300,000, credit contribution to capital, $300,000; debit USNB $760,000 note payable, $300,000, credit cash, $300,000; debit contribution to capital, $300,000; credit property and equipment, $300,000.

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If rescission is made, all monies heretofore paid by Air California to Golden West Air Terminals including the $190,000 down payment and any amounts paid on the $760,000 note shall be returned by Golden West Air Terminals to Air California. In addition, all depreciation accrued on the aircraft by Air California shall be reversed by a credit to depreciation expense or surplus as appropriate.

If Air California has accrued amounts for airworthiness reserves for engine and airframe overhauls on the Electra, an additional entry shall be made to reverse and eliminate the amount of such accruals:

	Debit	Credit
Accumulated Provision for Overhaul	(a)	
Surplus		(b)
Provision for Overhaul		(c)

(a) Cumulative total provisions related to the Electra, less overhaul charges against such provision.

(b) Provisions charged to expense in a prior fiscal period.

(c) Provisions charged to expense in the current fiscal period.

The revenues, expenses, and interest relating to the operation and financing of the aircraft by Air California from purchase date to date of its return pursuant to this order shall be ignored.

b. All transactions between Air California, on the one hand, and Westgate and each of its affiliated or related interests, on the other hand, shall be accounted for by both parties to such transaction, separately and clearly, by use of clearing accounts. Air California shall observe the notice and reporting provisions of Decision No. 67098.

2. Air California and any officer or director of Air California, or their representatives and nominees, are authorized to enter into the relationships set forth in Public Utilities Code Section 2759 insofar as such relationships involve common carriers which are Westgate-California Corporation subsidiaries, or Westgate-California Corporation.

3. This authorization shall expire thirty days after the effective date of this order if by that date either the $300,000 contribution to capital is not made, or the Lockheed Electra transaction rescission is not completed with the mutual consent of all parties and the parties are placed in the status quo as of July 20, 1970.

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

Dated at San Francisco, California, this 2nd day of MARCH, 1971.

Chairman

Vernon L. Sturgeon

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.