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Decision No. 78571

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
VALLEY AIRLINES, INC., a California )  
corporation, for a certificate of )  
public convenience and necessity to )  
maintain and operate passenger and )  
cargo airline service by and between )  
San Jose, California, and other )  
points noted in this application. )

Application No. 51211  
(Filed July 1, 1969)

Leander L. James, Attorney at Law, and  
James H. Stanhope, for applicant.  
Caditz, Howard, and Garcia, by Glenn A. Howard,  
Attorney at Law, for Golden Pacific  
Airlines, protestant.  
B. A. Peeters, Attorney at Law, and Clyde Neary,  
for the Commission staff.

O P I N I O N

This application of Valley Airlines, Inc. (Valley), seeks a prescriptive certificate of public convenience and necessity, pursuant to Section 2754.1 of the Public Utilities Code, to operate as an air passenger carrier between San Francisco, San Jose, Fresno, and Lake Tahoe.

Golden Pacific Airlines (GPA) filed a protest opposing the issuance of a prescriptive certificate insofar as it included any service into or out of San Francisco. After two prehearing conferences were held before Examiner Gilman on November 24 and 28, 1969, and after two amendments to the application and study by the Commission staff, the Commission issued Interim Decision No. 77424, dated June 30, 1970.

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This decision granted Valley a grandfather certificate for operations between San Jose-Lake Tahoe, San Jose-Fresno, and Fresno-Lake Tahoe. It left the question of Valley's right to serve San Francisco for resolution after further public hearings. Valley was free, therefore, to operate from San Francisco under Section 2754.1 until final determination of its grandfather rights. In conducting any operations between San Francisco and San Jose, Valley and SFO Helicopter Airlines, Inc. agreed in writing that Valley would not carry local passengers between San Francisco and San Jose.

On August 14, 1970 Valley filed Application No. 52133, in which it seeks a certificate to carry local passengers on this route in view of the discontinuance of this service by SFO Helicopter Airlines, Inc. Various other airlines filed similar applications.<sup>1/</sup> On August 21, 1970 the Commission issued Decision No. 77644 granting Valley a temporary certificate for this route and consolidating these applications in order to resolve which carrier or carriers should be certificated permanently.

Since at the time that Application No. 52133 was filed Valley's right to a prescriptive certificate in Application No. 51211 had not been determined, a public hearing was held in this matter before Examiner Foley on November 17, 1970 in order to resolve this question. The matter was heard and submitted subject to filing briefs. GPA filed its brief in opposition on December 23, 1970. Valley did not file any responding brief on January 8, 1971 as scheduled. Likewise GPA did not file a closing brief on January 29, 1971. The Commission staff did not take any position.

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<sup>1/</sup> GPA, by filing a petition for modification in Application No. 51212; Golden West Airlines, by filing Application No. 52104; and Swift Aire Lines, by filing a petition for modification in Application No. 50642. Each carrier was granted temporary authority to serve the San Francisco-San Jose route.

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Valley's initial position in this matter was that it qualified under Section 2754.1 for a certificate to carry local passengers between San Francisco and San Jose. However, at the hearing Valley reduced its claim to one seeking a grandfather certificate to serve San Francisco from San Jose only on a flag stop basis as part of its service from either Fresno or Lake Tahoe.

Valley's president stated that from April to October, 1969, it operated regularly between San Francisco and San Jose as part of its service to other points. Pursuant to the stipulation with SFO Helicopter Airlines, Inc., Valley did not carry local passengers between the Bay Area points. In November, 1969, Valley initiated its flag stop service, operating into or out of San Francisco only if there were confirmed passengers destined for or originating from there.

Valley introduced a summary of its operations from San Francisco for the period April-December, 1969 in support of its claim. This summary shows that during the period April-December, 1969 operations at San Francisco were irregular in that daily operations were not conducted. Furthermore, no operations at all were conducted from November 22 through December 3, 1969, and from December 14 through December 30, 1969, which in each instance is for longer than one week. It also appears that as of November, 1970, Valley has abandoned operations into or out of San Francisco completely. Although Valley did not file a brief, apparently its position is that it qualified under Section 2754.1<sup>2/</sup> for a "grandfather flag stop

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<sup>2/</sup> Section 2754.1 reads as follows:

"Notwithstanding any other provision in this chapter, the commission shall issue a certificate of public convenience and necessity to any passenger air carrier as to the airports in this state between which it was actually operating in good faith and doing business as of April 1, 1969, and continuously thereafter, with or without hearing, provided application therefor shall have been filed with the commission on or before July 1, 1969. The passenger air carrier may continue operation until its application is either granted or denied by the commission."

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certificate" because it was continuously conducting a flag stop service to San Francisco on and after April 1, 1969 if there was demand for such service.

GPA vigorously opposes the issuance of any such authority to Valley. It argues that the legislative history of Section 2754.1 shows that the section was intended to relate to scheduled air carriers, and that since Valley was admittedly not operating a scheduled service to San Francisco it is not entitled to any operating authority. GPA maintains that there is no public need for an "on call" service; finally, GPA contends that granting such authority would be unfair to GPA because under its certificate it must provide regularly scheduled service between the two points five days per week; and that the result of such a "flag stop" authorization is to award greater rights than issued in the normal certificate because Valley would be free to operate the service as it pleases.

Section 2754.1 is silent with regard to whether it applies only to scheduled air carrier operations. However, it is clear that the service conducted as of April 1, 1969 must be provided "continuously thereafter." Valley has not done so; it has in fact conducted three different types of service to and from San Francisco: frequent but irregular service from April to October, 1969; flag stop or on call service from November, 1969, to November, 1970; and no service from the latter date to the present.

The Commission has held in Inter-City Airways, Inc., 66 Cal. P.U.C. 291 (1966), that an applicant carrier conducting an "on call" air passenger carrier service does not qualify for a certificate of public convenience and necessity because such operations are not being conducted regularly. If Valley's request herein was

granted the result would be anomalous, in that it would be issued permanent authority to conduct operations impermanently.

Furthermore, Valley has not advanced any reasons how the public interest is served by granting it the casual operating authority claimed herein. In view of the actual results experienced while Valley provided such service, combined with the fact that GPA operates six daily round trip flights five days per week between San Francisco and San Jose, the Commission concludes that there is not any public need for flag stop operations.

By Application No. 52133, filed by Valley on August 14, 1970, it will have the opportunity to present its case for a certificate to carry local passengers permanently between San Francisco and San Jose.

Findings of fact

1. Valley Airlines, Inc. is an air passenger carrier duly certificated by the Commission to transport passengers between San Jose and Fresno, Fresno and Lake Tahoe, and between San Jose and Lake Tahoe.

2. Valley has conducted irregular service between San Jose and San Francisco for the period April 1, 1969 through October, 1969. Commencing in November, 1969 Valley conducted flag stop or on call service between these two points until November, 1970. In November, 1970 Valley ceased operations into and out of San Francisco entirely. Therefore, Valley has not conducted any one type of service continuously or regularly since April 1, 1969.

The Commission concludes that Valley is not entitled to receive a grandfather certificate under Section 2754.1 to conduct air passenger carrier operations between San Jose and San Francisco.

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ORDER

IT IS ORDERED that the application of Valley Airlines, Inc. for a certificate of public convenience and necessity pursuant to Section 2754.1 of the Public Utilities Code is denied.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of APRIL, 1971.

William Sproule Jr. Chairman  
[Signature]  
Vernon L. Sturgeon  
[Signature] Commissioners

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