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ORIGINAL

Decision No. 78848

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC SOUTHWEST AIRLINES for a certificate of public convenience and necessity, in either direction between San Diego, Long Beach, Long Beach, San Jose/San Francisco/Oakland and San Diego to Sacramento via Long Beach and San Francisco.

Application No. 50261

In the matter of the Application of AIR CALIFORNIA for a certificate of public convenience and necessity to provide passenger air service between Long Beach, on the one hand, and San Jose and Oakland, on the other hand.

Application No. 50381

ORDER GRANTING PETITIONS TO REOPEN, DENYING EX PARTE TEMPORARY OR PERMANENT CERTIFICATES, AND SETTING PREHEARING CONFERENCE

Application No. 50261, filed May 22, 1968, by Pacific Southwest Airlines (PSA) sought a certificate to operate between Long Beach and San Francisco, Oakland, and San Jose. On July 8, 1968, Air California (Air Cal) filed Application No. 50381 by which it sought similar authority between Long Beach and only San Jose/Oakland. Pacific Air Transport, Inc., a new passenger air carrier applicant, filed Application No. 50438 on July 29, 1968, by which it sought the same authority as PSA.

By Decision No. 76110, dated September 3, 1969, the Commission concluded that PSA should be granted a certificate of public convenience and necessity to operate between Long Beach and San Francisco, Oakland, San Diego, and Sacramento via San Francisco; and that Air Cal should be granted a certificate of public convenience and necessity to operate between Long Beach and San Jose.^{1/} Pacific

1/ Air Cal also received authority to provide non-stop service between San Diego and San Jose, and between San Diego and Oakland.

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Air Transport's application was denied in its entirety. These certificates were temporarily denied by Decision No. 76110 until on or before July 1, 1970,^{2/} because the City of Long Beach had changed its position from support for to opposition against any new air passenger service at LGB. The City of Long Beach indicated that it would not make counter and gate space in the LGB terminal available to any new air carrier.

Decision No. 76110 provided that this proceeding would remain open for the receipt of additional evidence in order that PSA and Air Cal could proceed to acquire access rights for adequate terminal facilities. The decision further provided that upon receipt of notice that such access rights were granted, or denied, the Commission would give further consideration to the matter and would issue an appropriate final order.

On October 27, 1970, the Commission issued Decision No. 77874 after notification from the parties that leases, with restrictions on the daily number of flights, had been offered to both Air Cal and PSA. Decision No. 77874 granted operating authority to PSA and Air Cal as described above.

PSA commenced service between Long Beach and San Francisco and between Long Beach and San Diego on December 23, 1970. It did not, and has not, commenced service to Oakland. On May 5, 1971, it filed a petition for an extension of time in which to commence such operations.

Air Cal did not commence service between Long Beach and San Jose apparently because the City of Long Beach withdrew its offer

^{2/} By Decision No. 77447, dated June 30, 1970, this date was extended to January 1, 1971, at the request of PSA and Air Cal.

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of a lease for terminal facilities after Air Cal first refused to execute the lease without an upward revision in the number of daily authorized flights. Subsequently, Air Cal reversed its position and accepted the lease as originally offered, but then the City refused to act on Air Cal's acceptance.

Commencing in December, 1970 there have been a series of pleadings filed to reopen this proceeding. The series includes the following:

1. Air California Petition to Reopen and Modify Decisions Nos. 76110 and 77874, filed December 23, 1970.
2. Letter of City of Long Beach dated January 6, 1971, responding to above petition.
3. PSA Protest to the above petition, filed January 15, 1971.
4. PSA Petition to Reopen and Modify Decisions Nos. 76110 and 77874, filed January 21, 1971.
5. Reply by City of Long Beach to PSA Petition to Reopen, filed on February 1, 1971.
6. Reply by Air California to PSA Petition to Reopen, filed February 2, 1971.
7. PSA Petition for Extension of Time to Commence Service Between Long Beach and Oakland, filed May 5, 1971.
8. PSA Petition for Ex Parte Order Granting Route Authority, Either Temporary or Permanent, to Serve Long Beach and San Jose/Oakland, filed May 5, 1971.
9. Protest by Air California to PSA Petition for Ex Parte Authority, filed May 10, 1971.
10. Protest by Air California to PSA Petition for Extension of Time to Commence Service Between Long Beach and Oakland, filed May 11, 1971.

11. PSA Petition for Immediate Ex Parte Temporary or Permanent Order to Serve Long Beach/San Jose By Reason of Air California's Abandonment of Its Authority, filed May 17, 1971.
12. PUC Staff Statement in Opposition to PSA Petition for Immediate Ex Parte Action, filed May 24, 1971.
13. Reply of Air California to PSA's Newest Petition for Authority to Serve Between Long Beach and San Jose, filed May 25, 1971.

By its various pleadings, Air Cal requests that the Commission reopen this proceeding, revoke or cancel the authority of PSA to serve Oakland, and grant Air Cal this authority so that it can combine service to San Jose and Oakland, with the former serving as either a terminal or intermediate point. This relief is sought by an ex parte order.

Air Cal contends that circumstances have changed since Decision No. 76110 was issued in that since Western Airlines has discontinued its Long Beach-Oakland service the Commission's reason for denying this authority to Air Cal is invalid. Air Cal also points to the fact that PSA is already using five of its six authorized daily flights on weekdays from Long Beach to serve San Francisco and San Diego, thereby leaving only one such daily flight on weekdays to serve Oakland. Finally, Air Cal requests that the Commission order PSA not to institute service to Oakland until Air Cal has received a terminal lease from the City of Long Beach.

PSA requests that the Commission also reopen this proceeding and grant it a certificate to serve San Jose from Long Beach on the ground that Air Cal cannot institute such service because it lacks a terminal lease from the City of Long Beach. PSA further asserts that Air Cal has abandoned any operating rights it held to serve San Jose by its failure to request an extension of time in which to commence service. PSA also requests that this relief be granted by an ex parte order.

The City of Long Beach apparently supports PSA's request for authority to serve San Jose. The Commission staff opposes any such ex parte relief for PSA, and it charges that the Commission has permitted the City of Long Beach to determine which air carrier will serve Long Beach over these particular routes (Staff Statement, p. 8). The staff urges that a comparative hearing be held at once.

It seems clear that the purpose of Decision No. 77874 has not been achieved. Instead of air carrier service from Long Beach to the three Bay Area points in the interest of providing further convenience to the public and some relief of the traffic congestion at the Los Angeles and San Francisco airports, while at the same time attempting to accommodate the wishes of the City of Long Beach, the result is that no service to Oakland has been commenced by PSA, and Air Cal has not been able to secure terminal access rights to commence service to San Jose.

As a matter of policy, the Commission will not grant the modification requested by either carrier without a further hearing in this proceeding. The various issues raised by the aforementioned pleadings can best be resolved only in this manner. The primary question will be which carrier should be authorized to provide service between Long Beach and San Jose/Oakland. The staff may present its position on the question of paramount jurisdiction, if it wishes. A prehearing conference will be scheduled in August.

In the meantime, we will maintain the status quo between the carriers by ordering PSA not to commence service to Oakland and Air Cal not to commence service to San Jose until further order by the Commission.

Therefore, IT IS ORDERED that:

1. The petitions by Pacific Southwest Airlines and Air California to reopen Applications Nos. 50261 and 50381 are granted for the purpose of determining which air carrier should be authorized to operate between Long Beach and San Jose/Oakland, or whether both carriers should be granted such authority, and any other relevant questions.

2. Pacific Southwest Airlines is ordered not to commence service between Long Beach and Oakland until further order by the Commission.

3. Air California is ordered not to commence service between Long Beach and San Jose until further order by the Commission.

4. A prehearing conference will be held in this reopened proceeding on August 12, 1971, in San Francisco at 10 a.m. ✓

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of JUNE, 1971.

[Signature]
Chairman
[Signature]
[Signature]
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Commissioners