

ORIGINAL

Decision No. 79170

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of PACIFIC SOUTHWEST AIRLINES )  
for an order authorizing it to )  
issue and sell 750,000 shares )  
Common Stock and use the proceeds )  
thereof for the purpose stated )  
in this petition. )

Application No. 52856  
Filed September 13, 1971

O P I N I O N

Pacific Southwest Airlines, a passenger air carrier as defined in the Passenger Air Carriers' Act (Secs. 2739, et seq., of the Public Utilities Code) seeks an order of the Commission authorizing it to issue and sell 750,000 shares of common stock without par value.

In view of a jurisdictional question pertaining to this Commission's regulatory authority over applicant's security issues, by Decision No. 64865, dated January 29, 1963, in Application No. 45122, the Commission ordered that "to the extent this Commission may now have jurisdiction, Pacific Southwest Airlines hereby is exempted from the provisions of Article 5, Chapter 4, Part 1, Division 1, of the California Public Utilities Code." However, in Decision No. 78804, dated June 22, 1971, in Case No. 9160, this Commission characterized applicant as a public utility as defined in Section 216(a) of the Public Utilities Code. Applicant petitioned for modification.

of said decision by the deletion of said characterization. On August 31, 1971, the Commission by Case No. 9267 instituted an investigation into the public utility status of passenger air carriers. Under the circumstances a continuation of the exemption is not justified.

Applicant herein, while alleging that it does not believe itself to be a public utility, and solely to prevent question as to the validity of the issuance, sale and delivery of its said common stock, filed its application for authorization of the described common stock. In order that there may be no doubt as to its validity pending hearing and decision in Case No. 9267, the Commission will authorize the issue and sale of said common stock.

Applicant reports that for the purpose of paying a portion of the purchase price of two Boeing 727-200 aircraft and one Boeing 737-200 aircraft, it has borrowed \$9,000,000 which it intends to repay from a portion of the proceeds to be derived from the proposed offering of 750,000 shares of its common stock. The balance of the proceeds would be added to working capital, and expended as required for the payment of a portion of the purchase price of five Lockheed L-1011 aircraft from Lockheed Aircraft Corporation or a similar type of aircraft from another manufacturer.

The carrier intends to have the common stock offering underwritten by a nationwide group of underwriters represented by E. F. Hutton & Company Inc. Applicant expects to complete negotiations this month with the underwriters concerning the price to be paid to it for the 750,000 shares of common stock and the underwriting commission. The initial public offering

price would be no higher than the last reported sale price (regular way) or asked price for the common stock on the New York Stock Exchange immediately prior to the determination. On September 10, 1971, the closing price of the carrier's common stock was \$26-3/4 per share, which for 750,000 shares would aggregate \$20,062,500 before allowances for expenses or commissions.

As of May 31, 1971, the carrier reports long-term debt and common stock equity amounting to \$101,589,140 and \$55,016,439, respectively.

After consideration the Commission finds that:

1. On June 22, 1971, the Commission characterized Pacific Southwest Airlines as a public utility as defined in Section 216(a) of the Public Utilities Code.
2. On July 8, 1971, applicant's Board of Directors approved the proposed stock offering.
3. On August 31, 1971, the Commission instituted an investigation into the public utility status of passenger air carriers.
4. On September 13, 1971, applicant filed the application herein with this Commission.
5. The application indicates that on or about September 20, 1971, the carrier expects to complete price and commission negotiations regarding the proposed stock issue.
6. The proposed stock issue is for proper purposes.
7. The money, property or labor to be procured or paid for by the issue of the common stock herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that: (1) the exemption granted by Decision No. 64865, dated January 29, 1963, in Application No. 45122, should be rescinded; and (2) the application herein should be granted. A public hearing is not necessary.

In issuing our order herein, we place applicant and its shareholders on notice that we do not regard the number of shares outstanding, the total stated value of the shares nor the dividends paid as measuring the return it should be allowed to earn on its investment in plant, and that the authorization herein granted is not to be construed as a finding of the value of the company's stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The exemption granted by Decision No. 64865, dated January 29, 1963, in Application No. 45122, is hereby rescinded.

2. Pacific Southwest Airlines, for the purposes specified in the application, may issue and sell not exceeding 750,000 shares of its common stock without par value, at a price to be fixed as set forth in this proceeding.

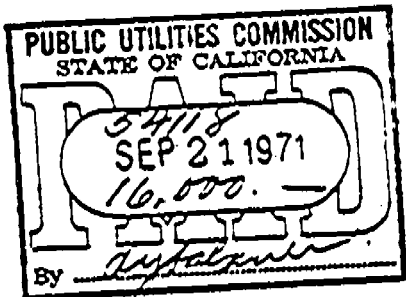
3. Promptly after Pacific Southwest Airlines ascertains the price to be paid to it for the common stock herein authorized, together with the underwriting commission, the carrier shall notify the Commission of each in writing.

4. As soon as available, Pacific Southwest Airlines shall file with the Commission three copies of its prospectus relating to the common stock herein authorized.

5. Pacific Southwest Airlines shall file with the Commission monthly reports as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

6. Ordering Paragraph No. 1 shall become effective ten days after the date hereof. In all other respects this order shall become effective when Pacific Southwest Airlines has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$16,000.

Dated at San Francisco, California, this 21st day of SEPTEMBER, 1971.



*[Signature]*  
Chairman

*[Signature]*

*[Signature]*  
Commissioners

*I will file a concurring opinion*  
*[Signature]*  
*[Signature]*

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

J. P. VUKASIN, JR., CHAIRMAN, AND  
DAVID W. HOLMES, COMMISSIONER, CONCURRING:

We concur in this decision because, on the merits, it appears correct.

However, this application by Pacific Southwest Airlines was not filed with the Commission sufficiently early to afford the Commissioners and our staff the normal time for processing. It is apparent on the face of the application that PSA has been considering a stock offering of 750,000 shares for several months. The sale of such common stock was authorized at a special meeting of PSA Board of Directors on July 8, 1971. A preliminary prospectus for this stock issue, dated July 13, 1971, was registered with the Securities and Exchange Commission.


Finally on September 13, 1971 PSA requested approval from the California Public Utilities Commission for the sale of 750,000 shares of stock, indicating that the issuance of the said stock would be on or about September 20, 1971, that is, one week later. Thus, two months after PSA had initiated action for the sale of these securities, and seven days before the proposed issuance, authorization was formally requested from this Commission.

Any applicant before this Commission or before any governmental agency has a responsibility to make its request known at the earliest possible time to afford a reasonable period to review the application and make whatever determinations are necessary in the

public interest. In the preparation of this decision other work of the staff has been curtailed to meet the deadline imposed by the applicant. Innocent parties affected by our regulations have suffered unknowingly because of priority given this applicant.

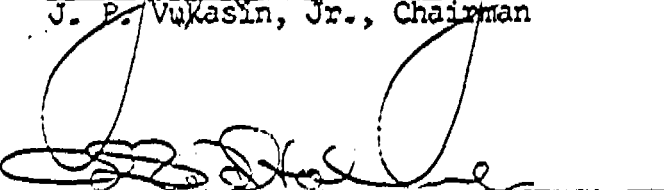
This Commission does not take its responsibility of regulation lightly. While it is prepared to respond readily in emergencies, dilatory applicants should not expect preferential treatment.

Fortunately, there appears to be no conflict on the merits of the application. Our expressed concern goes only to the questionable judgment of the applicant in its time of filing.



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J. P. Vukasin, Jr., Chairman



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David W. Holmes, Commissioner

San Francisco, California

September 21, 1971