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ORIGINAL

Decision No. 80318

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Air California for a modification in its certificate of public convenience and necessity in either direction between San Diego, on the one hand, and San Jose/Oakland, on the other hand.	Application No. 52165 (Filed August 27, 1970)
In the Matter of the Application of Pacific Southwest Airlines for a certificate of public convenience and necessity in either direction between San Diego and Sacramento, nonstop; San Diego and Sacramento via San Francisco/San Jose or Oakland; San Diego/Santa Ana/San Francisco/San Jose/Oakland; San Diego/Santa Ana/San Francisco or San Jose or Oakland and Sacramento; Santa Ana/San Francisco/San Jose/Oakland; Santa Ana and Oakland via San Jose; Santa Ana and Sacramento via San Francisco/San Jose or Oakland; Santa Ana and Sacramento, nonstop.	Application No. 51080 (Phase I) (Filed May 16, 1969)

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McInnis, Fitzgerald and Wilkey, by John W. McInnis, Attorney at Law; and Gates, Morris, Merrell and Stephens, by Brownell Merrell, Jr., Attorney at Law, for Pacific Southwest Airlines; applicant.
Robert F. Nuttman, Attorney at Law, for the County of Orange; and Dennis O'Neil, Attorney at Law, for the City of Newport Beach; interested parties.
Bernard A. Peeters, Attorney at Law, for the Commission staff.

O P I N I O N

In Application No. 51080 (Phase I) Pacific Southwest Airlines (PSA) seeks authority to conduct air passenger carrier service between San Diego International Airport (SAN), on the one hand, and San Jose Airport (SJC) and Oakland Metropolitan International Airport (OAK), on the other hand, via Orange County Airport (hereinafter referred to as OCA or Santa Ana). In Application No. 52165, Air California (Air Cal) requests that its present authority to operate nonstop air passenger carrier service between San Diego and Oakland, and between San Diego and San Jose, be permanently modified to allow service between these points via Santa Ana.

I. Introduction

In Apps. Pacific Southwest Airlines, Air California and Pacific Air Transport, 70 Cal. P.U.C. 122 (1969), Decision No. 76110, dated September 3, 1969, in Applications Nos. 50261, 50381, and 50438, Air Cal was authorized to conduct daily nonstop air passenger carrier service between San Diego and San Jose and between San Diego and Oakland.[1/] By Decision No. 77360, dated June 16, 1970, the final date for inauguration of Air Cal's nonstop San Diego service was extended until November 16, 1970. However, on August 27, 1970 Air Cal filed a petition, Application No. 52165, to modify its nonstop authority between these points so that it could operate from San Diego via Santa Ana to San Jose and Oakland. PSA filed a protest. Because an early hearing was not possible, as well as for other reasons set forth in the decision, the Commission temporarily granted Air Cal's request until March 1, 1971 (Decision No. 77768, dated September 22, 1970).

1/ In addition, Air Cal was authorized in Application No. 50381 to serve the Long Beach-San Jose market. In Application No. 50261 PSA received authority to operate between Long Beach-San Francisco, Long Beach-San Diego, and Long Beach-Oakland. In Application No. 50438 Pacific Air Transport was denied authority to operate as a passenger air carrier.

The modification consisted of temporarily removing one of the restrictions in Air Cal's certificate of public convenience and necessity issued in Decision No. 76110. This restriction prohibited any connecting service between the various points Air Cal was authorized to serve. The temporary removal of this restriction has been continued by various subsequent decisions, and Air Cal presently holds this temporary operating authority until July 31, 1972. (See Decision No. 78276, dated February 2, 1971; Decision No. 78299, dated February 9, 1971; Decision No. 79083, dated August 24, 1971; and Decision No. 79750, dated February 23, 1972.)

On November 1, 1970 Air Cal commenced one-stop service between SAN-SJC/OAK via OCA. It also instituted two nonstop round trip flights each week between SAN-SJC/OAK. Before this new service was commenced by Air Cal, however, PSA had initiated daily nonstop flights between San Diego and San Jose in September, 1970. After Air Cal filed a complaint against PSA concerning this nonstop service, the Commission held that PSA was operating without any certificate authority, and it ordered PSA to discontinue the nonstop flight. (See Decision No. 78619, dated April 27, 1971, in Case No. 9160, Air California v. Pacific Southwest Airlines.) After this decision was issued, Air Cal continued its two weekly nonstop flights on the route until September 8, 1971 when it expanded this service to one daily round trip. Air Cal never commenced San Diego-Oakland nonstop service and has not provided any such service at any time.

On January 13, 1971, Air Cal filed a petition to further modify its petition in Application No. 52165. This additional request sought permission to carry local passengers between San Diego and Santa Ana and between San Jose and Oaklend. Air Cal requested that this modification be granted ex parte, and that the matter be included in the hearing for final determination. PSA responded to Air Cal's petition by filing a protest on January 15, 1971 and requesting that it be consolidated for hearing with Application No. 51080. PSA contended that consolidation was required because as a result of Air Cal's petition for further modification, both carriers now sought to provide identical service between San Diego and Santa Ana, as well as between San Diego and San Jose/Oakland via Santa Ana.

By Decision No. 78276, dated February 2, 1971, the Commission recognized PSA's contentions. It continued the prior scheduled hearing in Application No. 52165, and consolidated that proceeding with PSA's Application No. 51080. This order also severed PSA's application into two phases; the part of PSA's proposal which is identical with Air Cal's request in Application No. 52165 was designated Phase I of Application No. 51080. Shortly thereafter, by Decision No. 78299, dated February 9, 1971, the Commission granted Air Cal's request to carry local origin and destination (O&D) passengers between San Diego and Santa Ana. This operation was permitted on a temporary basis similar to that granted in Air Cal's original petition. Air Cal started carrying SAN-OCA O&D passengers in February, 1971 at a one-way fare of $8.00, including tax.

A prehearing conference was held in these consolidated matters on February 10, 1971. Public hearing was held before Examiner Foley on September 7, 8, 10, 13 and 14, 1971 in San Diego. The matters were submitted subject to the mailing of concurrent opening briefs on December 6, 1971, and closing briefs on December 22, 1971.

II. Application No. 51080

A. PSA's Proposal

PSA commenced passenger air carrier operations in 1949. It serves San Diego, Los Angeles, Ontario, Hollywood-Burbank, Long Beach, San Jose, San Francisco, Oakland and Sacramento. It recently received authority to serve Fresno and Stockton. (Decision No. 79985, dated April 25, 1972 in Application No. 52291.) Its greatest growth dates from 1960 when it introduced Lockheed Electra aircraft on its Los Angeles-San Francisco route at a reduced fare of $12.99. At that time, over the same route, Western Airlines (Western) and United Airlines (UAL) were charging from $18.10 to $30.31

depending on service and type of aircraft. By mid-1962 PSA was carrying over 50 percent of the passengers in this market. At this point Western and UAL began to compete - reducing fares and offering service comparable to PSA's. By the end of 1965 PSA's share of the market had dropped to 40 percent. By 1970 it had recovered and increased its share to about 57 percent, and it is now the dominant carrier in the California corridor.

Today PSA has a fleet of seventeen Boeing 727-200 jet aircraft, one Boeing 727-100 jet aircraft, and ten Boeing 737-200 jet aircraft. PSA may purchase several Lockheed L-1011 Airbus jet aircraft in the near future.

PSA's net income has increased from $3.6 million in 1969 to over $4.9 million in 1970. During the first six months of 1971 PSA's net income was $2.1 million. System passengers and operating revenue are set out below:

Year	Passengers	Operating Revenue (Millions)
1960	621,000	$ 8,130
1965	1,363,000	24,051
1966	2,713,000	38,139
1967	3,346,000	48,825
1968	3,998,000	51,139
1969	4,488,000	59,840
1970	5,162,000	72,950

PSA's financial statements disclose that as of June 30, 1971 it has a stockholders' equity of $55 million, working capital of about $6 million, and $9.4 million in cash. (Exh. No. 18.)

PSA's application seeks for the second time to attain authority to operate between Santa Ana and the Bay Area in direct competition with Air Cal. Its first application, involving authority to operate between Santa Ana and San Francisco, was denied by the Commission after rehearing. (App. of Pacific Southwest Airlines, 68 Cal. P.U.C. 410 (1968), Decision No. 74271, dated June 19, 1968 in Application No. 49001, setting aside Decision No. 73487, dated

December 19, 1967.) The Commission based its conclusion in Decision No. 74271 on the fact that if PSA was permitted to operate from OCA, Air Cal would suffer serious financial difficulties, and that PSA had failed to establish the size of the particular market involved. (68 Cal. P.U.C. 410, 412-13.)

Now PSA proposes to operate one daily round trip flight between SAN-OCA and a minimum of four OCA-SJC/OAK daily round trips. It proposes reduced fares between Santa Ana and the Bay Area, but not between San Diego and the Bay Area:

One-Way Fares Including Tax

	Air California	PSA
SAN-OCA	$ 8.00	$ 8.00
SAN-SJC	24.50	24.50
SAN-OAK	24.50	24.50
OCA-SJC	21.60	18.00
OCA-OAK	21.60	18.00

A traffic consultant and PSA's vice president for finance testified in support of its application. The traffic forecast is based upon Air Cal's 1970 O&D traffic results between OCA-SJC and between OCA-OAK. PSA's witness increased this 1970 traffic some 4 percent for normal growth each year, thereby arriving at a 1972 traffic forecast of about 202,000 OCA-SJC passengers, and 157,000 OCA-OAK passengers. (Exh. No. 8, pg. 10.) He than added a 32 percent increase in each market for 1972 in consideration of the presence of PSA's new service (10 percent stimulation) and of its lower fare (22 percent stimulation). The fare stimulation partly results from the assumption that Air Cal will reduce its fares to meet PSA's. In this manner, the total 1972 traffic forecast is almost 267,000 OCA-SJC passengers and a little over 207,000 OCA-OAK passengers. The witness assigned 40 percent of each market to PSA, leaving the balance with Air Cal. Under this division of the traffic forecast, PSA could be expected to carry about 107,000 Santa Ana-San Jose passengers and almost 83,000 Santa Ana-Oakland passengers.

Insofar as traffic between San Diego and Santa Ana is concerned, PSA's witness does not forecast any significant traffic on this route. It would be flown only as entry mileage and for the purpose of equipment placement. It is expected to be a loss operation.

Adopting this forecast, PSA's financial witness estimated that the carrier would achieve operating income of about $12,000 per month on the OCA-SJC/OAK service before considering interest expense or income taxes. The SAN-OCA service is expected to result in a $7,291 loss per month. (Exh. No. 17.) The net result would be an operating profit of $4,709 per month before interest or income taxes.

PSA recognizes that its proposal would place it in direct competition with Air Cal at Santa Ana. It contends, however, that there will not be any serious diversion. It estimates Air Cal would carry in 1972 some 27,000 fewer OCA-SJC passengers, and 21,000 fewer OCA-OAK passengers, than it did in 1970. This amounts to the diversion of a little over $1 million in gross revenues at Air Cal's present fares.

PSA argues that Air Cal's San Diego-San Jose/Oakland service results in destructive competition with its own operations in this market. It complains that the Commission has permitted Air Cal to enter its markets but denied PSA the opportunity to enter Air Cal's, particularly at Santa Ana. PSA estimates that it has suffered a diversion of over $480,000 in revenues as a result of Air Cal's San Diego operations. It also complains that Air Cal has scheduled its San Diego flights within 15 minutes of PSA's departures to San Jose and/or Oakland via Los Angeles or Burbank, which has resulted in destructive wing-tip to wing-tip competition. Therefore, PSA concludes that Air Cal has accepted the challenge of direct competition with PSA at San Diego. Consequently Air Cal should be prepared to accept competition in the Santa Ana-Bay Area market, which is ready for "free enterprise competitive airline service". (Tr. 396.)

B. Protestants' Positions

1. Orange County

Orange County opposes PSA's application. A resolution to this effect was unanimously adopted by the Board of Supervisors on August 3, 1971.

A supervisor and the director of aviation testified on the county's behalf. They explained that there is no space available in the terminal at OCA; that the county has a policy of not granting any space to additional airlines; that two such carriers, Continental Airlines and Aeronaves de Mexico Airlines, have operating rights at OCA granted by the Civil Aeronautics Board, but have not been provided terminal space; and that the county has no plans to expand the terminal or construct a new airport.

These witnesses also related that the county is opposed to any increase in noise levels at OCA unless absolutely necessary; and it considers duplicative service, such as proposed by PSA, as unwelcome. They indicated that Orange County residents would prefer higher fares rather than added noise levels at the airport. In furthering this interest in noise suppression and control, the county has limited the number of departures Air Cal may operate to 24.6 per day; and it has imposed a night curfew, permitting landings from 7 a.m. to 11 p.m. and departures from 7 a.m. to 10 p.m. In addition, the county has restricted Air Cal to the operation of aircraft no noisier than the Boeing 737 jet aircraft or the Douglas DC-9 jet aircraft. Finally, these witnesses relate that the noise problem has resulted in litigation involving claims by homeowners totaling $28 million. This litigation has not gone to trial, they stated, partly because the county has taken action to control any increase in the noise level. They fear that any operations by a new carrier at OCA would provoke the complainants in these actions. They urge the Commission to weigh the environmental impact of PSA's proposal with its duplicative nature and then reject the application.

2. Air Cal

Air Cal commenced service between Santa Ana and San Jose and/or Oakland in 1967. Its O&D traffic results have been as follows:

	OCA-SJC	OCA-OAK
1967	19,938	15,970
1968	153,652	127,923
1969	179,942	145,807
1970	185,121	142,249
1971*	183,500	147,000

*Estimate based on first six months results annualized. (Source: Exh. No. 21, AC-R-3.)

Air Cal operates seven round trip flights between Santa Ana-San Jose on weekdays and five Santa Ana-Oakland round trips. The flights serving Oakland are one-stop flights via San Jose, except that during the summer peak travel season Air Cal provides nonstop round trip flights between Oakland and Santa Ana.

In urging denial of PSA's application, Air Cal advances two reasons. The first is that given the position of Orange County and the situation at its airport, PSA cannot acquire terminal space at OCA in the foreseeable future. The second is that there is no need for competitive service by PSA at OCA, and that such service would inflict serious financial harm upon Air Cal. Air Cal asserts that if PSA's request is granted the former would probably be destroyed as a viable competitor in the California intrastate markets.

Furthermore, Air Cal asserts that PSA's authority to operate between San Diego and San Jose and/or Oakland via Los Angeles or Burbank, and its authority to operate nonstop service between San Diego and Oakland, provides it with adequate authority to serve these markets. PSA's true purpose in this application, Air Cal alleges, is to gain the right to operate at Santa Ana to compete directly against Air Cal.

The assistant vice-president of Air Cal testified that PSA's proposed operations would not be profitable, and at the same time they would divert about $2.4 million in revenues from Air Cal.

According to his traffic forecast, PSA has overstated the 1972 OCA-SJC traffic by 13,480 passengers and the OCA-OAK traffic by 8,386 passengers. After applying this adjustment, he disputed the block time for the SAN-OCA segment which PSA had utilized in its financial forecast. He also adjusted PSA's forecast for an alleged error in the number of days of service in 1972 because it is a leap year. Finally, he made an adjustment to PSA's revenues to account for some self-diversion of San Diego-Bay Area passengers from PSA's present service (via Los Angeles or Burbank) to its new flights via Santa Ana. With these adjustments he estimated that PSA would lose about $10,000 per month, assuming that it captured 40 percent of the Santa Ana-San Jose/Oakland traffic with its four daily round trips. (Exh. No. 21, AC-R-5.)

This witness provided Air Cal's load factor data for all its OCA-SJC and OCA-OAK flights operated in 1970. It shows that the total on board 1970 load factor was 59.7 percent. It was 54.2 percent during the first six months of 1971. These load factor figures, he concluded, demonstrate that Air Cal is providing adequate seats in the market.

Next he criticized PSA for not supplying its proposed flight schedule for its OCA operations. He attempted to construct a daily schedule of PSA's service based upon how PSA scheduled its operations between San Diego and San Francisco via either Ontario or Long Beach. He concluded that under a similar schedule PSA would be operating three of its four proposed daily round trips at virtually the same time as Air Cal operates its flights, thereby resulting in wing-tip to wing-tip competition.

If PSA's application is granted, the witness estimated that the total revenue diverted from Air Cal would be $2.4 million. This figure is based upon the lost fares of 74,691 passengers diverted to PSA's flights, plus an additional loss of about $950,000 in reduced fares from Air Cal's remaining passengers. (Tr. 553.) This amount of diverted revenue equals 15 percent of Air Cal's total 1970 systemwide revenues. He concluded that the loss of this much revenue could result in financial disaster for Air Cal.

3. Position of the Commission staff

The Commission staff opposes PSA's application. It adopts Air Cal's position that competitive service at Santa Ana would be financially disastrous for the incumbent carrier. It urges that weight be given to the fact that there is no evidence showing that Air Cal's present service is unsatisfactory.

C. Discussion

In resolving passenger air carrier route proceedings, Section 2739 of the Public Utilities Code describes the objective of the Passenger Air Carrier Act is "an orderly, efficient, economical and healthy intrastate passenger air network". Specifically, Section 2753 of the Public Utilities Code states that the Commission shall take into consideration, among other things, in awarding certificates:

> "...the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest."

The factors listed in Section 2753 are not exclusive, nor is any one factor controlling. All factors must be considered and weighed along with any other factors that affect the public interest, including the effect upon competition, and any other relevant antitrust issues. (Northern California Power Agency v. Public Utilities Commission, 5 Cal. 3rd 370 (1971).)

The established successful record of PSA in rendering passenger air carrier service in California leaves no doubt that it has the business experience, financial stability, insurance coverage, and type of aircraft necessary and adequate for commencement of the proposed operations. Indeed, PSA is one of the few airlines which has continued to experience an increase in traffic and profits during the current recessionary period when most airlines have suffered declines in revenues.

The remaining questions provoked by PSA's application relate to whether, in our judgment, the introduction of competitive operations at Santa Ana would assist in attaining an orderly, efficient, economical and healthy intrastate passenger air network. In particular, we must weigh and balance the interests of the public, the incumbent carrier, and the applicant.

At the present time, the public has available frequent service between Santa Ana and San Jose and/or Oakland. It is provided with the identical type of aircraft which PSA proposes to utilize. The only significant benefit to the public which PSA offers is a lower fare, but we conclude that this one benefit is outweighed by the adverse effect certification would have on the incumbent carrier's entire operations and by the impossibility of acquiring terminal space.

Addressing ourselves first to the latter point, it is incontrovertible that our certification of PSA would be an idle act. Orange County opposes PSA's application, and it will not, and apparently cannot, provide the carrier with terminal space at OCA. Two CAB certificated carriers have recently been denied space, and there are no plans to enlarge the present terminal or to construct a new airport in the near future. Where environmental matters are concerned, we are aware that local views are important and deserve consideration in balancing utility interests and the public interest. (See e.g. Orange County Pollution Control District v. Public Utilities Commission, 4 Cal. 3rd 945 (1971).) Moreover, the local authorities do not support PSA's application even though direct competition would produce lower fares. Indeed, these authorities have expressed a willingness to forego promised lower fares in order to avoid increased air carrier traffic and noise in their community.[2/] PSA did not present any support from the community contrary to the position adopted by these representatives.

2/ The promised fare reduction is undoubtedly less than that presented at the hearing because PSA has a fare increase application (Application No. 52970, dated November 3, 1971) pending before the Commission.

With regard to the effect on Air Cal, it is well known that it is not a financially strong carrier. Since it commenced operations in 1967, Air Cal has never achieved a net profit. In Decision No. 76110, supra, the Commission noted that Air Cal's financial condition was serious at that time, and it expressed the hope that the route expansion authorized in that decision would help reduce its fixed costs.[3] During 1970, Air Cal suffered a net loss before extraordinary items of nearly $448,000. Moreover, during the first six months of 1971, it sustained an operating loss of over $675,000. (Tr. 257.) During this period Air Cal sold at a discount of about 30 percent an additional 441,000 shares of its stock to its parent, Westgate California Corp., in order to retire debt and to increase working capital. (Tr. 237.) It can readily be seen, therefore, that the introduction of direct competition at Santa Ana would present Air Cal with a serious threat to its survival.

The importance of the Santa Ana routes to Air Cal can be seen in the fact that out of total 1970 systemwide traffic of 801,000 passengers, some 328,000 or 41 percent of these passengers were carried on the Santa Ana-San Jose and/or Oakland routes. These two routes and the Santa Ana-San Francisco route are Air Cal's only profitable operations, and they are in effect subsidizing the loss operations in its other markets. Along with the San Francisco route, they form the backbone of Air Cal's entire system. (Tr. 290.) If all three routes are considered, Santa Ana traffic accounted for about 75 percent of Air Cal's total 1970 traffic. (Tr. 550.) Authorization of direct competition by a financially strong carrier against a financially weak carrier on the latter's backbone routes is not justified in the absence of compelling factors required in the public interest.

3/ For further discussion regarding Air Cal's poor financial condition, see App. Westgate-California Corp., Decision No. 78399, dated March 2, 1971, in Application No. 52036; Apps. of Air California and Pacific Southwest Airlines to serve Sacramento, Decision No. 79085, dated August 24, 1971, in Applications Nos. 51007 and 51058, pp. 32-3 mimeo; Proposed Report of Examiner William N. Foley, App. of Air California to serve Eureka, dated December 6, 1971, pp. 24-6 mimeo.

The traffic forecasts introduced by both carriers are not in substantial disagreement as to the expected 1972 traffic levels, assuming PSA entered the Santa Ana market. PSA's 1972 forecast is 267,000 passengers between Santa Ana and San Jose, compared to Air Cal's projection of 232,825 passengers. PSA's Santa Ana-Oakland forecast is 207,000 passengers; Air Cal's is 186,575 passengers.

However, PSA did not make adjustments for longer block times in operating the SAN-OCA segment or for self diversion of some San Diego passengers it is already carrying. These adjustments are reasonable since the former is based on Air Cal's actual operating experience, and the latter seems obvious, since some PSA passengers now traveling to San Jose or Oakland via Los Angeles or Burbank would utilize PSA's flights via Santa Ana some of the time. Air Cal further revised PSA's cost estimates to reflect a 30.5 day month, which occurs during 1972. This adjustment places PSA's costs on the same basis as its estimate of revenues. (Exh. No. 21, AC-R-5.)

With these adjustments, and under PSA's traffic forecast, its slim estimated overall monthly net profit of $4,709, or about $56,000 per year, before interest and income taxes, disappears. According to Air Cal's study, the result is to reverse PSA's forecast from a small profitable one to a loss operation in the amount of about $118,000 per year, assuming that PSA carries no more than 40 percent of the market. (Exh. No. 21, AC-R-5.)

As a consequence, PSA would undoubtedly operate more than its proposed minimum of four daily flights in order to attain a larger share of the total market. This in turn could result in a period of destructive competition until the carrier which fails to operate with a successful load factor reduces its service to cut the operating losses. Ultimately, the carrier which suffers losses would probably be forced to cease operations at OCA. Later it might have to seek increased fares on its other routes in order to recover. In other words, the end result may be that the traveling public pays the cost of destructive competition, and one carrier replaces the other in providing an identical service. On the other hand, if the new carrier fails to operate successfully, it in turn must absorb the losses or reduce service, and perhaps seek fare relief. None of the above described results are in the public interest. We are convinced that direct competition by PSA against Air Cal in the latter's backbone market is not in the public interest at this time.

If PSA was authorized to compete directly on two of these three routes, substantial gross revenues would be diverted from Air Cal. PSA estimates the total diversion of 74,691 passengers between OCA-SJC/OAK in 1972. (Exh. No. 8, p. 14.) This results in the loss of $1.4 million in gross revenues. In addition, although Air Cal would carry over 284,000 passengers in the OCA-SJC/OAK market in 1972, it would sustain an additional loss of $947,000 if it reduced its fare level $3.33 from $20.00, excluding tax, to meet PSA's fare. Thus the total diverted gross revenue would be over $2.4 million. This sum equals 15 percent of Air Cal's 1970 gross passenger revenue of $16 million. Any such severe loss of revenues would undoubtedly provoke another financial crisis for Air Cal. (Tr. 550, 551, 575.)

In addition to the above considerations, Air Cal's present service is adequate. It is operating between six and seven daily round trip flights. No complaints about it were brought out by PSA. According to Air Cal's data, its total 1970 load factor for the various routings of the OCA-SJC/OAK service was 59.7 percent; and for the first half of 1971 it was 54.2 percent, although the routing produced an 86 percent load factor in February, 1971, and a 73 percent load factor in March. (Exh. No. 21, AC-R-1 and 2.) Except for these exceptions, the load factor results are not extremely high.

We conclude that there are no compelling public interest considerations which justify the authorization of direct competition. PSA would have obvious advantages in any such competition. During 1970 Air Cal carried 801,783 passengers systemwide compared to PSA's 5.1 million passengers; and Air Cal's gross revenues were $16.1 million compared to PSA's $72.9 million. These differences in size alone suggest that PSA would soon dominate the Santa Ana market.

PSA apparently fails to recognize that by our decision authorizing it to operate between Long Beach-San Francisco, we have permitted it to engage in indirect competition against Air Cal's Santa Ana-San Francisco operations. Furthermore, PSA operates in the highest volume market in the California corridor; between San Francisco International Airport (SFO) and Los Angeles International Airport (LAX). Air Cal does not and its application to enter this market has been dismissed after it requested further delay in considering it. The Los Angeles-Sacramento market is likewise dominated by PSA. In the Burbank-Bay Area market, PSA has virtually monopoly power. And as we have noted in Decision No. 79085, supra, PSA holds the more heavily traveled Ontario-San Francisco authority in the Ontario-Bay Area market. Under these circumstances, equitable division of the major intrastate markets does not call for admission of PSA to the Santa Ana-Bay Area market.

III. Application No. 52165

A. Air Cal's Proposal

Air Cal received permanent authority in 1969 to conduct nonstop service between SAN-SJC and between SAN-OAK. Under the certificate granted, it is required to operate a minimum of two daily nonstop round trips on each route. Air Cal seeks to retain this nonstop authority and to add to its certificate as a separate route the one-stop service it is presently conducting between SAN-SJC/OAK via OCA with the right to establish SJC or OAK as either a terminal or an intermediate point. It also seeks authority between SAN-OCA and between OAK-SJC so that it can carry whatever local traffic occurs over these two short segments. Finally, it requests authority to carry OAK-SJC passengers on all flights it operates between these points in conducting operations on any of its routes. (Exh. No. 12.)

Air Cal requested the modification involved herein because it discovered that with nonstop operations it would have to engage in costly positioning flights; overnight one aircraft at SJC; leave one aircraft on the ground for long periods each day at SAN. More significant, there had been a large increase in the number of one-stop flights being provided on the routes between 1968, when it originally applied for the authority, and 1970. (Exh. No. 6, AC-102, 115.)

Under these operating conditions Air Cal concluded that nonstop service would not prove profitable. The Commission temporarily granted the carrier's request for modification of its operating authority by removing the restriction in its certificate which prevented tacking its San Diego-Bay Area routes with its Santa Ana-Bay Area routes under Section 2762 of the Public Utilities Code. In granting Air Cal's request, the Commission recognized the carrier's weak financial position and the fact that a prompt hearing was impossible. (Decision No. 77768, supra, p. 2.)

Two witnesses testified for Air Cal: its treasurer and the assistant vice-president for economic planning. The latter explained that the facts underlying Air Cal's original application for only nonstop authority (Application No. 50381) had dramatically changed. The base traffic year utilized in the original hearings was 1967 when the general economic conditions of the airline industry were optimistic. There was less one-stop service operating at that time than in 1970. After studying the current situation, the witness concluded that nonstop service would be uneconomic for the carrier because the traffic volume between SAN-SJC/OAK was insufficient without the ability to serve an intermediate point, and add the relatively few San Diego passengers to its profitable Santa Ana-San Jose and Oakland flights. In this manner it could substantially increase the number of daily flights offered at San Diego and capture a greater share of the total San Diego-San Jose/Oakland market. He calculated that if all the flights operated by PSA and Air Cal between SAN-SJC/OAK during the first half of 1971 had been flown as nonstop flights, the resulting load factor would have been about 17 percent. If Air Cal could operate one-stop flights via its base terminal at OCA, considerable cost savings would be possible. Since San Diego receives so many one-stop flights because it is convenient to serve it with flights which operate between Los Angeles and the Bay Area, he stated that nonstop service at SAN would not attract enough traffic for Air Cal to achieve an economical result. Air Cal's two daily nonstop round trips to each Bay Area point would carry 25 percent of the SAN-SJC traffic and only 15 percent of the SAN-OAK market (Exh. No. 6, AC-108); but by operating one-stop flights Air Cal can be expected to capture 45 and 30 percent of the respective markets in 1972. This increase in market participation will result because the carrier will be able to offer an average of almost six daily round trips. (Exh. No. 6, AC 108-109.) Moreover, with this one-stop service, Air Cal could substantially reduce its added costs of operation because it would merely be extending already existing Bay Area-Santa Ana flights to San Diego. It would also provide commuter service in the SAN-OCA market for the first time, and thereby derive some additional revenue to offset the costs of its San Diego operations.

The witness first estimated the total 1972 traffic in the SAN-SJC and SAN-OAK markets. Then he divided each market in accordance with the level of service provided by each carrier (i.e., the quantity of flights offered). The witness considered the 1968-1970 historical traffic after adjusting the last two years for an interruption of PSA's service via Burbank. He selected the 1971 fiscal year as the base period for his 1972 forecast. Traffic figures for this base period were about 121,000 passengers in the SAN-SJC market, and about 162,500 SAN-OAK passengers. After applying the 1967-1971 average annual growth rate of 25 percent and a stimulation of 8.5 percent for a half year of first competitive service, he derived a projection of 1972 total SAN-SJC traffic at 184,400 passengers, and total 1972 SAN-OAK traffic at 232,800 passengers. Allocating this forecast in accordance with the type of service Air Cal could offer, he estimated Air Cal's San Diego-Bay Area traffic results and their effect on the carrier's revenue production as follows:

Traffic Results

	Total 1972 Traffic Forecast	Air Cal Passengers Nonstop Service	Air Cal Passengers One-stop Service
SAN-SJC	184,400	46,100 (25%)	82,980 (45%)
SAN-OAK	232,800	34,920 (15%)	69,840 (30%)
SAN-OCA	47,100	None	47,100 (100%)

Gross Revenue Results

	Fare	Nonstop Service	One-stop Service
SAN-SJC	$22.68	$1,045,548	$1,881,986
SAN-OAK	$22.68	$ 791,985	$1,583,971
SAN-OCA	$ 7.41	None	$ 349,911
	Total Gross Revenue	$1,873,533	$3,814,968

(Source: Exh. No. 6, AC 105-110.)

According to this forecast, one-stop service would give Air Cal a substantial share of the SAN-SJC/OAK market, but nonstop service would produce minimal results. Furthermore, Air Cal would more than double its gross revenue if it operates the one-stop service. Under its financial forecast, utilizing fully allocated costs and including the full SAN-SJC/OAK fares in its revenues, the one-stop service will produce operating income of $750,000, but the nonstop service would produce a loss of almost $1,400,000. (Exh. No. 6, AC 113, p. 2.)

In estimating the effect of Air Cal's operations on PSA, the witness calculated that PSA would not suffer any loss of passengers. On the contrary, Air Cal's study foresees PSA increasing its 1972 SAN-SJC/OAK traffic to a level of 264,000 passengers from an estimated 250,000 such passengers in 1971. (Exh. No. 6, AC 114.) PSA would remain the dominant carrier in the market, carrying 55 percent of the SAN-SJC passengers and 70 percent of the SAN-OAK traffic. Therefore, he concluded that Air Cal would derive needed benefits and PSA would not suffer any financial harm.

B. PSA's Position

PSA opposed Air Cal's original request for San Diego-Bay Area authority on the grounds that the market would not support nonstop service and that the Commission should not issue new authority to an unprofitable carrier. It now opposes the modification requested on three grounds: (1) As shown by Air Cal's failure to produce an operating profit at San Diego since it commenced operations in November, 1970, its service is uneconomic and unnecessary; (2) its 1972 traffic forecast is too optimistic and unattainable; and (3) PSA has suffered diversion of over $480,000 in revenues from traffic lost to Air Cal's flights while it is providing far more capacity in the market than is necessary.

It maintains that if the temporary modification is made permanent, the Commission will be permitting destructive wing-tip to wing-tip competition on the SAN-SJC/OAK routes. It complains that a decision favorable to Air Cal is not in the public interest for these reasons, and will constitute a willingness on the Commission's part of permitting Air Cal to expand into PSA's markets while denying PSA entry into its competitor's.

Two witnesses testified for PSA: its vice-president for finance and a traffic consultant. Their testimony criticizes Air Cal's operating results achieved during the November, 1970 - July, 1971 period. According to the traffic consultant, who emphasized that Air Cal failed to introduce the financial results of its first eight months of San Diego operations, Air Cal's direct flight costs probably exceeded its total revenues produced at San Diego by over $200,000. He further estimated that under the add-on cost basis a total operating loss of over $1 million resulted during this period. (Exh. No. 14.) In another exhibit, he considered Air Cal's reported second quarter 1971 results of 9,397 O&D passengers between SAN-OCA, and of 9,404 SAN-SJC/OAK O&D passengers. From this data he forecast total Air Cal 1972 San Diego traffic of about 95,000 passengers.

With this level of traffic, he concludes that Air Cal would lose over $1.4 million under fully allocated costs. (Exh. No. 16.) On the other hand, if Air Cal's traffic forecast is adopted, the witness maintains that PSA will sustain a loss of 108,864 passengers. This loss of traffic translates into a revenue diversion of $2,469,000. (Exh. No. 16.)

PSA emphatically rejects Air Cal's traffic forecast of 152,000 SAN-SJC/OAK passengers as excessively optimistic. Based upon Air Cal's actual traffic results of only 21,000 O&D SAN-SJC/OAK passengers carried through June, 1971, PSA projects that Air Cal will carry 38,000 O&D passengers on the route in 1971. Therefore, Air Cal's traffic would have to increase over 300 percent to reach its forecast level for 1972. (Tr. 401, Exh. No. 16.) The traffic witness maintains that PSA is providing more than enough seats in this market. He analyzed the empty seats flown during the second quarter of 1971, and projected that in 1971 PSA would fly 423,000 empty seats between San Diego and Burbank, and 972,000 empty seats between San Diego and Los Angeles. These empty seats, it is asserted, demonstrate the over capacity of service on the route. He concluded that Air Cal's San Diego operations constitute needless destructive wing-tip to wing-tip competition which should be abandoned in order to save revenues for both carriers. He defined wing-tip to wing-tip competition as initiating flights on the same route with same equipment, fares, transit time, virtually the same schedules at off-peak hours which results in a level of service greatly exceeding market demand, and which has no reasonable possibility of operating profitably. (Tr. 380.) Under this definition he recommended that Air Cal's petition be denied. Furthermore, he suggested that since nonstop service would also be unprofitable, Air Cal should abandon San Diego altogether.

PSA's financial witness presented a different cost study of Air Cal's San Diego operations. (Exh. No. 20.) It shows an operating loss of about $1.9 million on a fully allocated cost basis. It is derived by considering the costs and passenger revenue of

Air Cal's operations between SAN-OCA and SAN-SJC/OAK, but it excludes the revenue produced by northbound passengers boarding at OCA or passengers from the Bay Area traveling to Santa Ana. If Air Cal had not conducted any service to San Diego, he estimated that its entire system would have produced an operating profit during the first half of 1971. (Tr. 476.) With working capital of about $1 million as of June 30, 1971 and a deficit of $1.3 million, the witness expressed the view that Air Cal lacks the financial resources to continue its San Diego service. (Tr. 478-9.)

With regard to the effect of diversion, the witness estimated that the $480,000 in revenue which Air Cal has obtained since commencing operations at San Diego represents 31 percent of PSA's airline pretax profits produced during the first half of 1971. (Tr. 458.) He observed that this level of diversion is very significant for PSA.

C. Position of the Commission Staff

The Commission staff's position is divided. The Transportation Division supports Air Cal's petition for modification, but the Legal Division recommends that Air Cal's petition be denied in the hope that it will cease operations at San Diego.

The Transportation Division agrees with Air Cal that nonstop San Diego service would be unprofitable. It supports the carrier on the ground that only one carrier can operate economically between San Diego and San Jose/Oakland via Santa Ana. It expects Air Cal's aircraft utilization factor to be increased, and it recommends continued protection of Air Cal's operations at Santa Ana. It does recommend, however, that a restriction be placed in the carrier's certificate denying it any authority to carry San Diego-San Francisco O&D passengers via Santa Ana and San Jose, since Air Cal does conduct some Santa Ana-San Francisco service via San Jose.

The Legal Division's opposition is based upon several considerations: (1) There is no reasonable expectation that Air Cal can operate its San Diego service profitably; (2) since its traffic projections in the original application for nonstop authority were inaccurate, its present ones are equally suspect; and (3) direct competition should not be permitted between the two carriers, given their obvious different financial positions.

D. Discussion

The record is clear that if Air Cal operated nonstop San Diego-Bay Area service as originally authorized, it would suffer an operating loss. This loss was estimated to be about $671,000. (Tr. 76.) This view is unrefuted, and it conforms to PSA's position taken in the original application that the traffic volume in these two markets does not justify service at the level of two daily nonstop round trip flights. It also conforms to PSA's actual practice, which has been to offer nonstop SAN-OAK service on the weekends only. It did not offer any nonstop flights between SAN-SJC until Air Cal was preparing to commence its nonstop flights to San Jose in late 1970. This service was discontinued by the order of the Commission because PSA lacked the authority to operate nonstop to San Jose. (Air California v. Pacific Southwest Airlines, Decision No. 78619, dated April 27, 1971, in Case No. 9160.) Subsequently, Air Cal commenced one daily nonstop round trip flight to San Jose in September, 1971.

Although Air Cal did not present a study of the operating results for its modified San Diego service via Santa Ana, there is no doubt that it has produced a considerable operating loss. It could not provide a load factor figure exclusively for its SAN-SJC/OAK operations, but it did report the load factor for its weekend nonstop SAN-SJC flight for the period April-June, 1971 at 33 percent, and for its flights between SAN-SJC/OAK via OCA it reported a 47 percent load factor. (Tr. 114-15.) This latter figure includes those passengers traveling between OCA-SJC/OAK. At the same time, it reported its SAN-OCA O&D load factor to be about 11 percent, or 144 passengers per day. (Tr. 96.) All these traffic results are below the break even point for Air Cal.

Turning to the question of whether future operations at San Diego can be profitable requires consideration of Air Cal's traffic forecast. It has been derived by applying to the traffic figures for fiscal 1971 a 25 percent normal growth rate to the SAN-SJC market, a 20 percent rate to the SAN-OAK market, and an 8.5 percent stimulation rate for first competitive service in both markets. In this manner, Air Cal forecasts 184,400 SAN-SJC passengers in 1972 and 232,000 passengers in the SAN-OAK market, as follows:

Historical O&D Traffic

	SAN-SJC	Increase-Decrease	SAN-OAK	Increase-Decrease
1968	48,558		108,575	
1969	65,670	+33%	105,075	- 2.7%
1970	106,708	+62%	148,421	+41%
FY 1971 4/	120,856	+13%	162,546	+ 9%
1972	184,400	+53%	232,000	+43%

The 1972 forecast projects dramatic increases in the two markets. The application of a stimulation rate to 1971 traffic is not justified when Air Cal has actually been operating in the market since November, 1970. However, the use of 25 percent growth rate in the SAN-SJC market is reasonably conservative. We will also accept the use of a 20 percent increase in the SAN-OAK market, although it is a little over the average experienced growth rate of 16 percent. With this adjustment, a reasonable estimate of the 1972 total traffic is 151,070 SAN-SJC passengers and 195,055 SAN-OAK passengers.

4/ If the actual traffic figures for the first half of 1971 are annualized the SAN-SJC total traffic would be 122,484 passengers, and the SAN-OAK total traffic would be 159,996 passengers. Therefore, it is reasonable to utilize the fiscal year figures as the 1971 calendar year results. (Exh. No. 6, AC 102.)

Air Cal expects to carry 45 percent and 30 percent of the SAN-SJC and SAN-OAK markets, respectively. Even though Air Cal has not been able to carry more than 16 percent of the SAN-SJC total traffic between November, 1970 and July, 1971, it expects to capture almost half the market in the immediate future. This expectation is not justified in light of its actual performance even though it will be offering the only nonstop daily round trip on the route. In our judgment Air Cal can expect to carry no more than 35 percent of this traffic, or 52,875 passengers, in the near future because PSA has a far greater number of flights to San Jose, and because San Diego is its base terminal.

With respect to SAN-OAK, Air Cal projects participation at 30 percent, but it has achieved only 9.6 percent by June, 1971. At the very most its participation can be expected to reach 20 percent, or about 39,000 passengers, because it offers only two-stop service to Oakland most of the year compared to PSA's one-stop service and its weekend nonstop flights. In addition, Air Cal does not intend to commence any non-stop service in this market in the foreseeable future. With these reduced levels of participation, which may themselves prove to be high, Air Cal can reasonably expect to carry a total of 91,875 SAN-SJC/OAK passengers in the near future. This represents a 100 percent increase over Air Cal's probable 1971 traffic results at San Diego.

In the SAN-OCA market, we will adjust Air Cal's forecast of 47,100 O&D passengers to reflect annualized partial 1971 results plus 10 percent growth, and not include 8.5 percent growth for stimulation. This reduces the forecast traffic to 41,360 passengers.

The total Air Cal traffic at San Diego is thereby reduced from almost 200,000 San Diego passengers to 133,235. This forecast must be considered optimistic, but it is not as low as PSA's, which is derived by annualizing Air Cal's second quarter 1971 results. This method requires adjustment since Air Cal did not commence its daily SAN-SJC nonstop service until September, 1971.

With this revised forecast of 133,000 San Diego passengers, Air Cal's total operating revenue is reduced from $3.6 million to $2.4 million, and its expenses from $2.2 million to $1.9 million. The overall result is a reduction in estimated operating income from $750,000 to about $500,000.

It must be recognized, however, that this estimate is derived by applying all San Diego revenues, including San Diego-Bay Area revenues in their entirety, to the costs of operating only between San Diego and Santa Ana. If the San Diego-Bay Area revenue is reduced to reflect only the revenue for the San Diego-Santa Ana segment of the route, the operating results on the short San Diego-Santa Ana segment show a loss of over $900,000. In other words, if the San Diego service is viewed as two separate segments, SAN-OCA on the one hand, and OCA-SJC/OAK on the other, and if the SAN-SJC/OAK revenues are divided accordingly, the profit level of the OCA-SJC/OAK flights is further increased by the presence of San Diego O&D passengers on these flights, but the SAN-OCA segment will result in a loss. If Air Cal can achieve the forecast traffic adopted herein, the overall effect will be beneficial to Air Cal. If it cannot achieve sufficient traffic at San Diego to offset the total costs of operating between SAN-OCA, the overall effect will be a further drain on Air Cal's financial resources.

Standing alone as a new application, Air Cal's proposed operations would be doubtful, given its continued weak financial condition. However, there are special circumstances involved in this particular case. Air Cal has actually conducted operations on the route since November, 1970; and it is the only intrastate carrier with terminal rights at OCA. Moreover, PSA has been permitted to engage in indirect competition with Air Cal for Orange County-San Francisco passengers by operating between Long Beach-San Francisco in accordance with Decision No. 76110, supra. By Air Cal's petition for modification of its nonstop authority issued in Decision No. 76110, supra, responsible regulation requires that we review the entire situation and recognize these special circumstances; and then revise the past issued operating authority as required by the public interest.

Keeping these considerations in mind, PSA's arguments in opposition to Air Cal's request are not persuasive. The fact that Air Cal has suffered losses on its San Diego service is not controlling. The Commission has recognized that short route segments at the ends of the California corridor, such as San Jose-Sacramento, Oakland-Sacramento, and San Diego-Ontario, will not be profitable standing alone, but that they can benefit a carrier's "overall operating results by contributing additional passengers on long haul routes currently being served." (Apps. Air California and Pacific Southwest Airlines to serve Sacramento, Decision No. 79085, dated August 24, 1971, in Applications Nos. 51007 and 51058, pp. 23, 30.) Undoubtedly this partly explains why PSA continues operating between San Diego-Long Beach, even though it carried only 2,338 O&D passengers between the points in the first half of 1971. (Exh. No. 3, Table 1.) These short segments are unprofitable, but they serve as entry mileage for long haul operations.

Furthermore, even if PSA's view that Air Cal cannot conduct overall profitable operations at San Diego proves to be correct, there are public interest factors which justify a modification of its San Diego authority. As mentioned above, only Air Cal can provide immediate SAN-OCA service because it has terminal rights at OCA. PSA cannot attain such rights in the foreseeable future. There is little or no service in this market other than Air Cal's. If it is denied authority to operate on this route, the public will be left without any service. Second, Air Cal has already instituted operations at San Diego, thereby incurring considerable expense. Since it conceded that nonstop operations could not be profitable, a decision denying modification would virtually assure its abandonment of San Diego and the loss of any opportunity to benefit from these past expenditures. Despite Air Cal's weak financial condition, it is logical and financially prudent that for the present it continue its operations at San Diego rather than institute service in a new market in which it is entirely unknown. As we have stated before, we expect Air Cal to exercise its right to suspend operations, as it did at Burbank, in the event that it fails to carry the necessary traffic.

Nor do we agree with PSA that the result of Air Cal's operations is destructive wing-tip to wing-tip competition. It is true that PSA and Air Cal are competing directly for SAN-SJC/OAK passengers, but the competition is not exactly identical because Air Cal's flights move through a different intermediate point. We allowed this type of direct competition via different intermediate points when we authorized Air Cal to carry Ontario-Sacramento passengers via San Jose at the same time that PSA carries such traffic via San Francisco. And we have, of course, permitted indirect competition in the same general market area by permitting PSA to operate between Long Beach-San Francisco as related above.

Likewise we reject PSA's assertion that the large number of empty seats it is operating between San Diego-Los Angeles/Burbank demonstrates that Air Cal's service is unnecessary. PSA's empty seat figures between these points are for all of its flights between them, a great number of which are involved in flights from Los Angeles to San Francisco, Los Angeles to Sacramento, or Burbank to San Francisco. Secondly, many of the remaining seats which are flown to San Jose/Oakland are needed for Los Angeles and Burbank passengers. Therefore, the raw figure of total empty seats between these Southern California points is not meaningful.

Insofar as we can estimate, Air Cal's San Diego service will not produce serious diversion for PSA. The loss of about $500,000 in gross revenues to Air Cal between November, 1970 and

July, 1971 is certainly not a serious matter for PSA, since it has recorded increases in total traffic, operating revenues, and net income for the first half of 1971 compared to the like period of 1970. (Exh. No. 19.) Total traffic increased by 8.7 percent during this period, and passenger revenues increased from $34.7 million in 1971 to $39.2 million in 1970. The fact that its pretax profit was down by $1.1 million was not attributable to airline operations. Moreover, net income showed an increase of $268,000 in the first half of 1971.

Looking to the future, PSA faces diversion of about $2.1 million in gross revenues in the SAN-SJC/OAK market if Air Cal achieves the traffic forecast adopted herein. This level of diversion represents only 2.1 percent of its total consolidated revenues for the first half of 1971, $49.5 million, annualized for the full year. This magnitude of diversion is not serious, and it is partly offset by the traffic diverted from Air Cal's Santa Ana-San Francisco flights to PSA's Long Beach-San Francisco flights. Furthermore, the SAN-SJC/OAK route is not a substantial one for PSA in terms of traffic. Based upon first half 1971 traffic figures, the traffic carried on this route constituted only 4.6 percent of its systemwide traffic for the same period.

After considering all the factors involved, including the special circumstances present in this particular case, the Commission concludes that Air Cal's San Diego authority, designated as Routes 3 and 4 in its certificate of public convenience and necessity, should be modified to permit one-stop service via Santa Ana. Air Cal's Route 3, San Diego-San Jose nonstop service will be modified to require only one daily nonstop round trip flight; and Route 4, San Diego-Oakland will be restated to provide for one-stop service to San Jose and Oakland, with either point as a terminal or intermediate point, via Santa Ana. We will prohibit nonstop SAN-OAK service on this route because Air Cal has never commenced this service, and it does not intend to do so in the foreseeable future. Moreover, if it did, it would undoubtedly have to engage in wing-tip to wing-tip competition with PSA. Since Air Cal has not utilized this authority, we will delete it. We will also grant Air Cal authority to operate between San Diego and Santa Ana as a separate route so that it may operate turnaround service in this market if necessary or convenient. A restriction proposed by the staff to prohibit San Diego-San Francisco operations will be added to each route.

Air Cal has also requested authority to carry O&D San Jose-Oakland passengers on all its flights. It proposes a fare of $7.00, including tax. (Air Cal Petition for Modification of Authority in Application No. 52165, filed on January 13, 1971.)

By a petition for rehearing with respect to Decision No. 78276, filed on February 3, 1971, Air Cal withdrew its request for temporary authority to carry any San Jose-Oakland O&D passengers, although it stated that it had no objection if the Commission granted such authority to both PSA and itself.

By Application No. 53289, filed on April 25, 1972, PSA has applied to carry SJC-OAK passengers. Air Cal, contrary to its position taken in the petition for rehearing described above, and Valley Airlines have filed protests.

Very little testimony was presented regarding Air Cal's request for permanent authority during the hearing in these consolidated matters. There may be issues involved which have not been thoroughly heard. In light of PSA's application, and Air Cal's protest to it, the Commission concludes that it will deny Air Cal's request for this authority. It may file a new application for it and request that it be consolidated with Application No. 53289.

Findings of Fact

1. PSA and Air Cal are passenger air carriers as defined in the Passenger Air Carriers Act (Sections 2739 et seq. of the Public Utilities Code).

2. Air Cal is operating between six and seven daily round trip flights in the OCA-SJC/OAK market. No complaints about this service were presented by PSA. Its recent load factors in this market have averaged between 55 and 60 percent.

3. Orange County opposes PSA's application to serve the Santa Ana-Bay Area market. It does not have terminal space available for PSA at OCA and will not be able to provide such space to it in the foreseeable future. Its representatives expressed a willingness to forego promised lower fares offered by PSA in order to avoid increased air carrier activity and noise at OCA.

4. Adopting PSA's traffic forecast, the 1972 traffic between OCA-SJC will be 232,825 passengers, and OCA-OAK traffic will be 207,000 passengers. PSA's traffic between SAN-OCA would be minimal. Assuming that PSA carries 40 percent of this total traffic, and after adjusting its estimate of operating costs to account for longer block times between SAN-OCA, self-diversion, and a 30.5 day month during 1972, the financial result of its service between SAN-SJC/OAK via OCA would be an operating loss of about $118,000 per year. Consequently, PSA would undoubtedly seek to increase its share of market with the result that destructive wing-tip to wing-tip competition would occur in the OCA-SJC/OAK market.

5. If PSA instituted its proposed service at OCA, Air Cal would lose 74,691 passengers in the OCA-SJC/OAK market. This amounts to the loss of $1.4 million in gross revenues. It would suffer an additional decline of $947,000 in revenues from the traffic it did carry if it met PSA's proposed lower fares. This total gross revenue diversion of $2.4 million equals 15 percent of Air Cal's 1970 gross passenger revenue. Air Cal has never achieved

a net profit, and it continues to be a financially weak carrier. During the first half of 1971, it sustained an operating loss of $675,000. Diversion of $2.4 million in gross revenues could provoke another financial crisis for this carrier.

6. Air Cal holds authority to operate nonstop service between SAN-SJC and between SAN-OAK. Since November, 1970, it has been serving the San Diego-San Jose market with one-stop service via OCA and the San Diego-Oakland market with two-stop service via OCA and SJC under a temporary modification of its authority granted by the Commission. In September, 1971, it commenced daily nonstop service between SAN-SJC. It has never operated nonstop SAN-OAK service, and it does not have any plans to do so in the foreseeable future.

7. Air Cal would suffer an operating loss of about $671,000 if it conducted nonstop flights between San Diego-San Jose and between San Diego-Oakland.

8. By conducting its San Diego service via Santa Ana, Air Cal can support the cost of its operations there by carrying SAN-OCA passengers, and by carrying SAN-SJC/OAK passengers on its OCA-SJC/OAK flights. In this manner it can offer more frequent flights at San Diego and attract a greater share of the total SAN-SJC/OAK market.

9. Applying average growth rates in these two markets results in a 1972 forecast of 151,000 SAN-SJC O & D passengers, and about 195,000 SAN-OAK passengers. Assuming that Air Cal can carry 35 percent of the former market with its one-stop service plus its one daily nonstop flight, and 20 percent of the latter market with its two-stop and some one-stop flights along with 41,000 passengers between SAN-OCA, Air Cal will achieve an operating profit of about $500,000 if all SAN-SJC/OAK revenues are included. On a fully allocated cost basis, its SAN-OCA service will result in a loss, but the SAN-SJC/OAK passengers carried between OCA-SJC/OAK will add revenues to this profitable service. In this manner Air Cal's San Diego operations will result in an overall benefit to the carrier.

10. The effect of Air Cal's operations at San Diego will divert about $2.1 in gross revenues from PSA. This revenue equals 2.1 percent of its total consolidated revenues. The traffic diverted equals 4.6 percent of its total traffic carried during the first six months of 1971. In light of PSA's 8.7 percent increase in systemwide traffic and its $4.4 million increase in passenger revenues and its $268,000 increase in net income during this period, this diversion is not serious. PSA is a financially strong carrier which can easily compete with Air Cal in the markets involved in these proceedings.

11. In addition to the facts set out in the above findings, two special circumstances exist which lend support to Air Cal's proposal. One is the fact that only Air Cal has operating rights at OCA, and, therefore, it is the only intrastate carrier able to provide SAN-OCA service. The second is that Air Cal has expended considerable effort and expense in operating the proposed service since November, 1970. It would only incur additional economic harm if a modification in its San Diego operating authority was denied.

12. In providing service between San Diego-Santa Ana, Air Cal will charge the following one-way fare, excluding tax:

San Diego International Airport and Orange County Airport .... $ 7.41

<u>Conclusions of Law</u>

Based upon the foregoing findings of fact, the Commission makes the following conclusions of law:

1. The application of PSA to serve Santa Ana-San Jose/Oakland and San Diego-Santa Ana should be denied.

2. The petition of Air Cal for modification of its Routes 3 and 4 set forth in its certificate of public convenience and necessity should be granted to the extent provided in our order herein. For convenience, Air Cal's entire certificate will be restated in Appendix A to our order herein.

Air California is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

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

2. In all other respects, Application No. 52165 of Air California is denied.

3. Condition "h" set forth in Appendix B, Original Page 3, of Decision No. 79085, dated August 24, 1971, in Applications Nos. 51007 and 51058, is deleted from Air California's certificate of public convenience and necessity.

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

   (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.

By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the requirements of the Commission's General Orders Nos. 120-Series and 129.

(b) Within one hundred and twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.

(c) The tariff and timetable filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.

(d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 105-A.

5. The application of Pacific Southwest Airlines for a certificate of public convenience and necessity to serve between San Diego and San Jose/Oakland via Santa Ana is denied.

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

Dated at San Francisco, California, this 25th day of JULY, 1972.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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

William Symons Jr.
President

Commissioners

jmd /nb *

Appendix A

AIR CALIFORNIA
(a corporation)

Original Page 1

The authority stated herein to Air California supersedes all previously granted certificates of public convenience and necessity granted in prior decisions.

Air California, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate over the routes described as follows:

Route 1

Between Orange County Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport and San Francisco International Airport, on the other hand, with each of the last three named airports being either a terminal or intermediate point for this route.

Route 2

Between Orange County Airport, Hollywood-Burbank Airport and Ontario International Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand, with each of the first three named airports and each of the last two airports, respectively, being either a terminal or intermediate point for this route.

Route 3

Nonstop service between San Diego International Airport and San Jose Municipal Airport.

Route 4

Between San Diego International Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand, via the intermediate point of Orange County Airport, with San Jose Municipal Airport and Oakland International Airport being either a terminal or intermediate point for this route.

Issued by California Public Utilities Commission.

Decision No. 80318, Application No. 52165.

Route 5

Between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport and San Francisco International Airport, on the other hand, with each of the last three named airports being either a terminal or intermediate point for this route.

Route 6

Nonstop service between Long Beach Airport and San Jose Municipal Airport.

Route 7

Between San Jose Municipal Airport and Sacramento Metropolitan Airport.

Route 8

Between Orange County Airport and Sacramento Metropolitan Airport.

Route 9

Between Orange County Airport and Sacramento Metropolitan Airport via the intermediate point of San Jose Municipal Airport.

Route 10

Between San Diego International Airport and Sacramento Metropolitan Airport via the intermediate points of Orange County Airport and San Jose Municipal Airport.

Route 11

Between Ontario International Airport and Sacramento Metropolitan Airport via the intermediate point of San Jose Municipal Airport.

Route 12

Between Palm Springs Airport and Sacramento Metropolitan Airport via the intermediate point of San Jose Municipal Airport.

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<u>Route 13</u>

Between Ontario International Airport and Sacramento Metropolitan Airport via the intermeidate point of Orange County Airport.

<u>Route 14</u>

Between San Diego International Airport and Orange County Airport.

Issued by California Public Utilities Commission.

Decision No. 80318, Application No. 52165.

CONDITIONS

Minimum number of round trip schedules daily between points shown shall be:

a. Orange County Airport and San Francisco International Airport 5

b. Orange County Airport and San Jose Municipal Airport 3

c. Orange County Airport and Oakland International Airport 4

d. Between Hollywood-Burbank Airport and Ontario International Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand 2

e. Between San Diego International Airport and San Jose Municipal Airport 1

f. Between San Diego International Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand, via the intermediate point of Orange County Airport, with San Jose Municipal Airport and Oakland International Airport being either a terminal or intermediate point for this route 2

g. Between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport and/or San Francisco International Airport, on the other hand 1

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Appendix A

AIR CALIFORNIA
(a corporation)

RESTRICTIONS

No passengers shall be accepted for transportation solely between the following pairs of points:

a. Orange County Airport - Ontario International Airport.

b. Orange County Airport - Hollywood-Burbank Airport.

c. Hollywood-Burbank Airport - Ontario International Airport.

d. San Francisco International Airport - San Jose Municipal Airport.

e. San Francisco International Airport - Oakland International Airport.

f. Oakland International Airport - San Jose Municipal Airport.

g. San Francisco International Airport - Ontario International Airport.

h. San Francisco International Airport - Hollywood-Burbank Airport.

i. San Diego International Airport and other airports already served by Air California except as authorized by Routes 3, 4 and 14. No passengers traveling between San Diego International Airport and San Francisco International Airport shall be carried on flights operated on Routes 3, 4 and 14. No nonstop service shall be operated between San Diego International Airport and Oakland International Airport.

The following restrictions relate to Route 5: No passengers shall be accepted for transportation solely between, nor shall operations be conducted by way of, the following pairs of points.

j. Palm Springs Municipal Airport - Orange County Airport.

k. Palm Springs Municipal Airport - Ontario International Airport.

l. Palm Springs Municipal Airport - Hollywood-Burbank Airport.

The following restriction relates to Route 6:

m. Long Beach International Airport and any other airports served by Air California, except as authorized by Route 6.

Issued by California Public Utilities Commission.

Decision No. 80318, Application No. 52165.