

ORIGINAL

Decision No. 80894

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
VALLEY AIRLINES, INC.

Complainant,

vs.

GOLDEN PACIFIC AIRLINES, INC.

Defendant.

Case No. 9437
(Filed September 8, 1972)

In the matter of the application of VALLEY AIRLINES, INC., for immediate interim authority to restore air service between Oakland-Monterey and Monterey-Santa Barbara, California, and for a certificate of public convenience and necessity.

Application No. 53382
(Filed June 5, 1972;
amended August 10, 1972)

In the matter of the application of GOLDEN PACIFIC AIRLINES, INC., a California corporation, for a Certificate of Public Convenience and Necessity for Authority to Operate between Oakland and San Jose and between San Jose and Monterey.

Application No. 53553
(Filed August 28, 1972)

Application of STOL AIR, INC., for a certificate of public convenience and necessity and for issuance of a temporary certificate of public convenience and necessity to operate as a passenger air carrier between San Francisco and Santa Rosa and between San Francisco and Monterey with San Jose as an intermediate point.

Application No. 53489
(Filed August 1, 1972;
amended October 5, 1972)

Leander L. James, Attorney at Law, James H. Standhope, and Donald L. Klein, for Valley Airlines, Inc., applicant in Application No. 53382, protestant in Application No. 53553, and complainant in Case No. 9437.

Glenn A. Howard, Attorney at Law, for Golden Pacific Airlines, Inc., applicant in Application No. 53553, protestant in Applications Nos. 53382 and 53489.

Don R. Stephens, Attorney at Law, for Stol Air, Inc., applicant in Application No. 53489.

J. Kerwin Rooney, Port Attorney, and John E. Nolan, Assistant Port Attorney, for Port of Oakland, interested party in Applications Nos. 53553 and 53382.

William Figg-Hoblyn, Attorney at Law, and Richard Brozosky, for the Commission staff.

O P I N I O N

The above-entitled matters were consolidated for hearing and were heard October 16 and 18, 1972 before Examiner Thompson at San Francisco. Late-filed exhibits were filed November 3, 1972 and the matters are ready for decision.

On July 25, 1972 Golden West Airlines, Inc. filed notice under Section 2769.5 of the Public Utilities Code of its intention to discontinue service between San Francisco and Santa Rosa and between San Francisco and Monterey via San Jose. Pursuant to authority granted in Decision No. 80433 dated August 29, 1972 in Application No. 51216, Golden West discontinued service on the routes on September 10, 1972. Golden West's intention to discontinue service was not unknown and all of the proceedings herein are related in some degree to such discontinuance of service.

On June 5, 1972 Valley Airlines, Inc. filed Application No. 53382 for authority to conduct operations between Oakland and Santa Barbara via the intermediate points of San Jose and Monterey. At that time it was authorized to operate between Oakland and Santa Barbara with San Jose as an intermediate point. By interim order in Decision No. 80425 in this application, Valley's authority was

temporarily modified by adding Monterey as an intermediate point with the proviso that Valley not carry origin and destination passengers between Oakland and Monterey. The only remaining issues in Application No. 53382 are whether the restriction in the proviso should be removed so that Valley would be able to transport passengers between Oakland and Monterey and whether the temporary authority granted in Decision No. 80425 to serve Monterey should be made permanent. Valley's application is supported by Port of Oakland and by the Commission staff. It is protested by Golden Pacific Airlines, Inc.

On August 1, 1972 Stol Air, Inc. filed Application No. 53489 for authority to provide service on routes which were to be discontinued by Golden West, namely, San Francisco-Santa Rosa, and San Francisco-San Jose-Monterey. By interim order in Decision No. 80493 dated September 12, 1972 Stol was exempted for ninety days from the certificate provisions of the Public Utilities Code in connection with service between San Francisco and Santa Rosa. By amendment to its application on October 5, 1972, Stol withdrew its request for authority to serve the route San Francisco-San Jose-Monterey and asked that the authority sought for operations between San Francisco and Santa Rosa include service to San Rafael, Napa, and Concord. Stol does not hold a certificate of public convenience and necessity from the Commission as a passenger air carrier. The issue in this application is whether Stol should be granted a certificate authorizing passenger air carrier service between San Francisco and Santa Rosa with provisional stops for on call service at San Rafael, Napa, and Concord. The Commission staff supports the application in part. Golden Pacific Airlines, Inc. protests the application.

On August 28, 1972 Golden Pacific Airlines, Inc. filed Application No. 53553 requesting authority to operate scheduled air service between Oakland and San Jose and between San Jose and

Monterey. Golden Pacific holds a certificate authorizing passenger air carrier operations between a number of points in northern California, including between Monterey and Oakland. This application is protested by Valley and is opposed by the Commission staff.

On September 8, 1972 Valley filed a complaint, Case No. 9437, alleging that Golden Pacific holds a certificate authorizing passenger air carrier operations between Monterey and Sacramento with service to Oakland as an intermediate point and that it has abandoned such authority by reason of failure to provide any air service between Oakland and Monterey for over one year. Valley asks the Commission to revoke the authority of Golden Pacific to operate over the aforesaid route. Commission staff appeared in support of the complaint. Defendant Golden Pacific denies that it has abandoned its certificated authority.

Because of procedural considerations and in order to eliminate redundancy we will consider the matters in inverse order to that set forth above.

Case No. 9437

By Decision No. 77731 dated September 15, 1970 in Application No. 52037, a temporary certificate of public convenience and necessity was granted to Golden Pacific authorizing it to transport passengers by air in either direction between Sacramento and Monterey, direct or with an intermediate stop at Oakland. By Decision No. 78148 dated January 5, 1971 this temporary certificate was made permanent. Service was initiated by Golden Pacific on said route and a lease arrangement was entered into with Monterey Peninsula Airport District for facilities at Monterey Airport. Golden Pacific failed to meet its schedules during June 1971 and ceased providing any air passenger service out of Monterey Airport in July 1971. Since said date it has not provided any passenger air service to or from Monterey Airport. In a letter dated August 24, 1971 addressed to the Commission and signed by the District Manager of the Monterey

Peninsula Airport District, it is stated that the lease entered into with Golden Pacific is in default and terminated. At no time did Golden Pacific file an application to the Commission for authority to discontinue operations between Monterey, Oakland, and Sacramento; nor did it notify the Commission of its intention to discontinue such operations because of their being unprofitable.^{1/} At no time did defendant file an application for suspension of the certificated point Monterey.^{2/}

The president of Golden Pacific testified that at no time has defendant abandoned its authority to operate between Monterey, Oakland, and Sacramento. He said that at the time of discontinuance of service defendant had a financial problem such that it was apparent to defendant that some services between the various points it served would have to be temporarily curtailed. It was his opinion at the time that the market at Monterey comprised passengers accustomed to large aircraft of the type operated by the major airlines, and that Beech 99 aircraft then operated by defendant would not be accepted by that market. He stated that Golden Pacific has repeatedly informed the Commission and the Monterey Peninsula Airport District that it intends to serve the route as soon as the requisite authority is granted it to operate Convair 600 aircraft.

On March 1, 1972 the president appeared personally before the Board of the Monterey Peninsula Airport District and explained Golden Pacific's intention to phase out its fleet of 15-passenger Beech 99 aircraft in favor of 40-passenger Convair 600 aircraft, informed them that authority to operate the CV 600 aircraft was expected by mid-summer and that Golden Pacific felt that it was in the public interest to wait until the CV 600 aircraft were operational to reintroduce service on this route rather than to reintroduce limited service at an earlier date with the Beech 99 aircraft because of the far greater speed, comfort, and public acceptance of the larger aircraft.

^{1/} See Section 2769.5, Public Utilities Code.

^{2/} See Section 2766, Public Utilities Code.

In a letter dated July 6, 1972 addressed to Mr. R. Brozosky of the Commission's Transportation Division, the president of Golden Pacific stated that it intended to reintroduce service on the route when the CV 600 aircraft were operational.

A group of defendant's stockholders, under the style of Golden Pacific Airlines Joint Venture II, purchased six CV 600 aircraft and had them refurbished. The precise date of purchase is not of record but the evidence indicates that it occurred during 1971. On March 17, 1972 Golden Pacific made application to the Civil Aeronautics Board for an exemption to permit the use of CV 600 aircraft. On April 17, 1972 it filed a petition in Application No. 51212, now pending before the Commission, for authority to utilize CV 600 aircraft in its operations.

Abandonment in its general sense is the voluntary, intentional relinquishment of a known right, absolutely and without reference to any particular person or purpose. It includes the intention to abandon and the external act by which such intent is carried into effect. (Torrance Unified Sch. Dist. v. Alway, 145 CA 2d 778.) There can be no abandonment without intention to abandon, Wiltsee v. Utley, 79 CA 2d 71, or if there is any intention to repossess or reclaim that right (Greif v. Dulles, 66 CA 2d 986).

While the statement of the president of Golden Pacific that defendant at no time has abandoned its authority to operate between Monterey, Oakland, and Sacramento can be considered a self-serving declaration, the course of conduct of defendant demonstrates an intention to reintroduce service with CV 600 aircraft under the authority granted by the certificate issued in Decision No. 78148. Under the circumstances there has not been an abandonment in the general sense of that term.

We now look to determine whether the term abandonment used in Section 2755^{3/} has a special application in connection with the facts in this case. Section 2755 provides that the Commission may revoke an air passenger certificate only after making one of the following findings: (1) the holder has abandoned such rights, (2) the holder is no longer able to perform all or part of the certificated services, or (3) is unable to conform to the law and to the rules and regulations of the Commission. Section 2769.5 of the Public Utilities Code provides that no passenger air carrier shall discontinue operations between any two or more terminals without authority of the Commission, unless such operations are unprofitable in which case operations may be discontinued on sixty days' notice to the Commission. The cessation of operations by defendant was a violation of that section. The Commission's order in Decision No. 78148 which granted Golden Pacific the certificate to operate as a passenger air carrier between Monterey, Oakland, and Sacramento states:

"3. On each route each airport shall be served with a minimum of one flight in each direction on each of five days a week."

The cessation of service by Golden Pacific is not in conformance with that regulation. The cessation of service by a passenger air carrier without authority from the Commission constitutes nonconformance to the law and to the rules and regulations of the Commission, and therefore is proper grounds under Section 2755 for the revocation or suspension of the rights conferred by a certificate granted to the carrier. To hold that the cessation of service by Golden Pacific was an abandonment of its rights under the certificate, notwithstanding its intention to reactivate service under those rights, would make the phrase "that the holder has abandoned such rights" a redundancy.

^{3/} Section 2755: "The rights conferred by a certificate issued pursuant to Section 2754, 2754.1, or 2757 may not be revoked or suspended absent a finding by the commission, after notice and hearing, that the holder has abandoned such rights, or is no longer able to perform all or part of the certificated services, or to conform to the law and to the rules and regulations of the commission."

It appearing that the cessation of operations by Golden Pacific is grounds for action under Section 2755, we should now determine whether its certificate can be, and should be, revoked in this proceeding prayed for by complainant. The complaint only alleges abandonment by defendant and does not assert that defendant did not conform to the law and to the rules and regulations of the Commission. In California pleadings are to be liberally construed and a tribunal may amend the pleadings to conform to proof. Section 2755 provides, however, that the rights conferred by a certificate may not be revoked or suspended absent a finding by the Commission (e.g., that the holder failed to conform to the law), after notice and hearing. It follows that before the Commission may suspend or revoke a certificate issued to a passenger air carrier the carrier must be provided notice of charges specifying the factual circumstances and the grounds upon which the certificate may be revoked or suspended, and that the carrier be accorded opportunity to be confronted with the evidence supporting the charges and to make its defense. The complaint alleges that defendant holds a certificate to operate between Oakland and Monterey and in paragraph IV thereof specifies the charges upon which complainant asks for revocation of the certificate.^{4/} The complaint alleges that defendant has not provided air service between Oakland and Monterey for over one year. It does

^{4/} "IV. The Defendant has abandoned the route Oakland-Monterey, as evidenced by the fact that they have provided no air service between Oakland-Monterey for over one year. (See attached Exhibits A, B, C & D of Monterey Peninsula Airport District) Abandonment (sic) of service by the Defendant, has deprived the public of this needed service. And, for the Defendant to continue to retain such abandoned rights, is not in the public interest."

not charge defendant with discontinuing service without authorization nor does it make reference to any obligation on the part of defendant to provide service other than that defendant holds a certificate authorizing such operations. At the hearing complainant held to its theory of abandonment.^{5/} Defendant met the charge of abandonment by presenting evidence that it ceased service to Monterey because of inability to meet service requirements over all routes and the necessity therefore to curtail service on some; and that it was and is its intention to provide service between Oakland and Monterey when the CV 600 aircraft are operational. It did not state why it had discontinued service without authorization from the Commission, and it was not asked why prior authorization was not sought. The lack of any authorization from the Commission is an essential part of the offense which would be grounds for revocation of the certificate. While the evidence in this proceeding will support a finding that defendant did not conform to the law and the rules and regulations of the Commission by its discontinuance of service without authority and by its failure to maintain minimum service at Monterey of one flight in each direction on each of five days a week as required by Decision No. 78148, defendant was not provided notice as required by Section 2755 that its certificate would be subject to revocation on those grounds.

After consideration of all of the facts and circumstances we conclude that defendant's certificate may not be revoked or suspended in this proceeding.

^{5/} The Commission staff attempted to adduce evidence in this complaint intended to support a finding that defendant is no longer able to perform all or a part of the certificated services. This was prevented by the Examiner on the ground that it was not within the scope of the complaint and would unduly broaden the issues.

Application No. 53382, Valley Airlines, Inc.

At the time of the filing of this application, and until August 29, 1972 when the Commission issued Decision No. 80425 in this application, Valley Airlines held a certificate authorizing it to operate as a passenger air carrier between certain points and it performed service between those points along the general route of Bakersfield, Fresno, San Jose, Oakland, San Jose, Santa Barbara, and return. By this application it seeks authorization to operate between Oakland, San Jose, Monterey, and Santa Barbara. By interim order in Decision No. 80425 Valley Airlines' certificate was temporarily modified by adding Monterey Peninsula Airport as an intermediate point to be served on its Oakland-San Jose-Santa Barbara route with the proviso that it not carry origin and destination passengers between Oakland and Monterey.

Applicant operates three aircraft with capacity of eight or nine passengers each. Applicant had a deficit from operations for its fiscal year ended October 31, 1971. During the period November 1971 through August 1972 it had a profit from operations. The sales manager of applicant testified that Valley operated its Oakland-Santa Barbara route at about 40 percent load factor. It commenced providing service on that route between Monterey and Santa Barbara and between Monterey and San Jose at the beginning of September pursuant to Decision No. 80425. During September it averaged between one and two O & D passengers per day between San Jose and Monterey and about two per day between Santa Barbara and Monterey. The traffic has been increasing since September to the date of hearing. No additional aircraft were required to provide service pursuant to Decision No. 80425.

The Director of Air Traffic Development for the Port of Oakland, which owns and operates Oakland International Airport, testified that the airport operates a "Fly Oakland Desk" at which information is provided the public and flight reservations are taken.

During the period January through September 1972, the desk received 549 inquiries from the public regarding passenger air service to Monterey; 71 of those inquiries were received during the month of September. The number of inquiries received were fewer than the desk had in 1971 and during the time that Golden Pacific operated flights between Oakland and Monterey. The Board of Directors of the Port of Oakland urge the Commission to authorize Valley Airlines to provide passenger air service between Oakland and Monterey.

There is presently no direct air service between Oakland and Monterey. Golden Pacific holds a certificate authorizing such operations but has not provided service since July 1971. Valley Airlines proposes a fare of \$12.96. At the time it operated Golden Pacific's fare was \$14.81. Persons desiring to travel by air between Oakland and Monterey may do so by utilizing two airlines connecting at San Francisco at much higher fares. Origin and destination statistics developed by the Civil Aeronautics Board and presented by the Commission staff in Exhibit 4 in this proceeding indicate that during the first six months of 1971 (the most recent sample) 30 such passengers were carried by Hughes Airwest and 840 by United Airlines. Both airlines provide service between Monterey and San Francisco; they do not maintain fares between Monterey and Oakland.

The Commission staff recommends that Valley Airlines be granted the certificate as prayed for, asserting that Valley Airlines already has the aircraft and ground facilities to provide the service and that the transportation of passengers between Oakland and Monterey will not have any effect upon the schedules between other points it serves because applicant's schedules presently call for stops at both Oakland and Monterey.

Golden Pacific asserts that the Oakland-Monterey segment is a one-airline market, that it holds a certificate to operate between the points, and that the CV 600 aircraft which it proposes to operate will be acceptable to that market, whereas the nine-passenger aircraft operated by applicant will not.

Golden Pacific has not operated this segment for over sixteen months. It is not presently ready or able to institute service with CV 600 aircraft as it states it intends to do. Valley Airlines is ready, able, and willing to provide service immediately. The Port of Oakland promotes air traffic for the Oakland International Airport and is cognizant of the markets to and from that airport. It desires the Oakland-Monterey market to be served by Valley Airlines. We take note that Monterey Peninsula Airport District is not desirous of having Golden Pacific serve the Monterey Airport; it has requested the Commission to revoke Golden Pacific's authority to serve Monterey Airport.

After giving due consideration to all of the factors listed in Section 2753 of the Public Utilities Code, to the fact that Golden Pacific has not exercised its authority to provide passenger air service between Monterey and Oakland for the past sixteen months, and to the fact that Valley Airlines is ready, willing, and able to institute service immediately so as to fulfill the public need, whereas Golden Pacific is not yet ready or able to provide such service, we find that public convenience and necessity require the granting of a permanent certificate to Valley Airlines authorizing it to operate as a passenger air carrier between Oakland, San Jose, Monterey, and Santa Barbara.

Application No. 53553, Golden Pacific Airlines, Inc.

As previously indicated, applicant presently holds a certificate authorizing operations between Monterey and Sacramento with Oakland as an intermediate stop, and it has not operated pursuant to that authority since July 1971. It here seeks authority to operate scheduled service between Oakland and San Jose and between San Jose and Monterey.

The route Oakland-San Jose is presently served by Western Airlines, Hughes Airwest, and Valley Airlines. The Monterey-San Jose route is served by Valley Airlines which protests this application. Evidence presented by the Commission staff shows that for the Oakland-San Jose segment during the period January-June 1972, Valley Airlines had 41 passengers originating and destined to said points. For the year ending June 1971 Hughes Airwest had 80 origin-destination passengers between those points. Statistics regarding Western Airlines were not made available by the staff. Valley Airlines' weekly schedule calls for 27 flights from Oakland to San Jose, 27 flights from San Jose to Oakland, 11 flights from Monterey to San Jose, and 10 flights from San Jose to Monterey. Valley has provided service between Monterey and San Jose only since September 1972. During the period January through August 1972 Golden West Airlines had 377 origin-destination passengers between San Jose and Monterey, an average of 47.1 passengers per month. It is apparent that with respect to local traffic moving between the points, the routes Oakland-San Jose and San Jose-Monterey are adequately served.

Golden Pacific asserts that public convenience and necessity would be served by permitting it to stop at San Jose as a connecting point between routes that it serves and as a connecting point for interlining of passenger traffic with other airlines. At this time Golden Pacific is not conducting any air passenger operations because of a strike by its mechanics. Prior to the strike, however, it ceased providing service to a number of points and had curtailed service as to others. While it proposes to serve San Jose as an intermediate stop on its certificated route Sacramento-Oakland-Monterey, it has not operated on that route for over a year.

Golden Pacific has been in the passenger air carrier business for a number of years. Its experience has not altogether been successful. It has sustained losses from operations over the past several years. Its preliminary income statement for the fiscal year

1971 shows total operating revenues of \$1,266,554 and operating expenses of \$3,179,667 of which \$1,201,205 is related directly to flying operations costs. At the time of hearing herein applicant was nine weeks in arrears in payment of wages to its pilots, and one of the causes of the strike by mechanics was the failure by applicant to pay accrued wages. Applicant's financial statement as of December 31, 1971 shows loans and advances by Directors and Associates in the amount of \$2,115,381. The record shows that the financial stability of applicant, and its working capital, is almost wholly dependent upon a group of stockholders organized as Golden Pacific Airlines Joint Venture II and to two persons styled as guarantors of the joint venture. The president of applicant testified that Joint Venture II has negotiated a sale of the six CV 600's to Systems Energy Corporation of Pennsylvania and a lease back to applicant of the aircraft. The sale of the aircraft will net the joint venture about one million dollars which will be turned over to applicant for necessary working capital.

Applicant intends to serve San Jose as a part of its Oakland-Monterey route. It has stated that it has deferred operating that route until the CV 600 aircraft are operational. In its application it is stated that Golden Pacific plans to initiate service on the route with 15-passenger Beech 99B turbo-prop aircraft and as the market develops it will introduce service with the 40-passenger CV 600 aircraft. Applicant presently has possession of two Beech 99B aircraft leased from Systems Energy Corporation. The CV 600 aircraft have not yet been cleared with the Federal Aviation Authority although applicant expects to receive that clearance within 45 days.

The Commission's staff asserts that Golden Pacific's record of service has not been satisfactory and that it has not demonstrated ability to expand its present authority. The Board of Supervisors of the County of Sonoma has informed the Commission that Golden Pacific has failed to deliver service as promised to the citizens of Sonoma County in accordance with its published schedules. The

Board of Supervisors of Contra Costa County has informed the Commission that Golden Pacific has not been providing service to Buchanan Field nor complying with conditions under which they rented office space in the lobby of the terminal building at Buchanan Field.

Essentially this is an application by a passenger air carrier with a record of providing poor service to serve an intermediate point already adequately served by other carriers on a route that it has not operated for over a year, and discontinued without authorization for reasons of financial problems, with aircraft that are not now operational and with employees that have not been paid accrued wages. After giving due consideration to all of the factors listed in Section 2753 of the Public Utilities Code which the Commission must consider in awarding certificates of public convenience and necessity, we find that public convenience and necessity do not require the operation by applicant between Oakland and San Jose and between San Jose and Monterey.

Application No. 53469, Stol Air, Inc.

Stol Air, Inc. requests authority to operate nonstop between San Francisco and Santa Rosa, between San Francisco and Santa Rosa with a flag stop at San Rafael, and between San Francisco and Santa Rosa with flag stops at Concord and Napa. It has been granted a temporary exemption from the certificate provisions of the Public Utilities Code by the Commission pursuant to Section 2767 thereof in connection with non-stop operations between San Francisco and Santa Rosa. It has been operating under that exemption since September 1972.

Stol is a California corporation wholly owned by its president, William Connelly, with principal place of business in San Rafael. It holds a certificate as an air taxi operator from the Civil Aeronautics Board. Its name is an acronym of short-take-off-and-landing and designates a type of aircraft having such flying characteristics. The president is a pioneer in the promotion of Stol aircraft in Northern California. In 1970 the San Francisco

Chamber of Commerce sponsored the forming of a non-profit corporation, Norcalstol, Inc., for the purpose of conducting studies of various aspects of the operations of Stol aircraft in Northern California. The studies were made in cooperation with the Federal Aviation Agency, the State Department of Aeronautics and with the financial support of NASA. Norcalstol, Inc. contracted with applicant to operate Stol aircraft for the studies, and in connection therewith the Commission in its Decision No. 77945 dated November 10, 1970 in Application No. 52255 granted Stol Air, Inc. a temporary certificate authorizing passenger air carrier operations between the San Francisco STOLport at Candlestick Park Parking Lot and the Sacramento STOLport at Cal Expo Parking Lot for a period of thirty days.

Applicant owns one Britten-Norman Islander aircraft which is shown on its balance sheet as having a value of \$150,000, which appears to be an overvaluation. The aircraft is owned free and clear of any obligations. As of July 31, 1972 the corporation had cash on hand of \$13,451 and no liabilities other than to its sole shareholder. At the hearing the sole shareholder testified that he personally had \$40,000 cash he could put into applicant immediately if need arose.

The aviation director for Sonoma County Airport testified that Santa Rosa is served by Hughes Airwest with two flights per day, that prior to its discontinuance of service Golden West operated four or five flights on weekdays, and that for a short while Golden Pacific operated on weekdays and then reduced its service to a few flights on Saturdays and Sundays.^{6/} He said that applicant has been providing six flights on weekdays and two or three flights on Saturdays and Sundays. He stated that the service provided by Stol is good and that the service that has been provided by Golden Pacific has been poor. On September 5, 1972, the Board of Supervisors of Sonoma County by resolution urged the Commission to provide a hearing to determine what route or combination of routes would enable a fit, willing, and able airline to provide economically sound scheduled air

^{6/} Golden Pacific does not now provide service to Santa Rosa.

transportation service. The resolution asserts there was then great dissatisfaction with commercial and tourist airline service to and from Sonoma County Airport, and Golden Pacific Airlines has failed to deliver service in accordance with published schedules.

There is presently no passenger air carrier service to or from Napa County Airport. For a while service was provided by Golden Pacific. It discontinued all service to Napa County Airport around September 1971. By Decision No. 80417 dated August 7, 1972 in Application No. 50279 the authority of Golden Pacific to serve Napa was revoked.

There is presently no passenger air carrier service to or from Concord (Buchanan Field). Until fairly recently Golden Pacific provided some service to and from Concord which ceased as a result of a labor dispute. By Decision No. 80418 dated August 29, 1972 in Application No. 50279 the Commission revoked Golden Pacific's authority to serve Concord and stated therein that the service that had been provided was minimal with frequent cancellations resulting in considerably less than the minimum number of flights as required by Golden Pacific's certificate. The revocation order in Decision No. 80418 did not become effective in that Golden Pacific requested hearing thereon and the matter is currently pending.

Applicant proposes to initiate service to Concord (Buchanan Field) and Napa (Napa County Airport) as flag stops on one scheduled flight between San Francisco and Santa Rosa in either direction daily at least five days per week. The airports would be overflown or bypassed if there is no passenger aboard the flight destined to the flag stop and if there are no passengers with tickets or reservations desiring to enplane at the flag stop. The flight time between San Francisco and Santa Rosa is 35 minutes. At times when there would be passengers at both flag stops the enroute time between San Francisco and Santa Rosa would be approximately doubled.

Applicant proposes to serve San Rafael as a flag stop on one scheduled flight at least five days per week between San Francisco and Santa Rosa. The flag stop would be overflown when there are no passengers originating or destined to the flag stop on the scheduled flight. A stop at San Rafael would add about 15 minutes to the enroute time between San Francisco and Santa Rosa.

The Commission staff recommended that applicant be granted a temporary certificate for one year for operations between San Francisco and Santa Rosa, and that it be granted a temporary certificate for six months for routes involving Concord and Napa.

Golden Pacific protests the granting of authority to Stol. It asserts that it intends to reestablish service between San Francisco and Santa Rosa and between San Francisco and Concord with CV 600 aircraft in the near future. It points out that such aircraft will provide greater speed and comfort for the convenience of the public than will the aircraft operated by Stol. The evidence shows that for the past several years the service provided by Golden Pacific to Santa Rosa and to Concord has deteriorated to such extent as to become unreliable. As previously noted, the County of Sonoma has expressed dissatisfaction with the service of Golden Pacific and supports the application of Stol so as to replace the void in service that resulted from the discontinuance of operations by Golden West Airlines. The resolution of the Board of Supervisors of Contra Costa County expressing dissatisfaction with the service provided by Golden Pacific to Buchanan Field has previously been referred to herein. In the resolution the Commission is requested to order Golden Pacific to discontinue advertisement of Buchanan Field as a scheduled passenger stop. With respect to Golden Pacific's intention to provide service to Concord with CV 600 aircraft, hearing was held October 25, 1972 in Application No. 51212 of Golden Pacific to amend its certificate so as to authorize operations with 40-passenger aircraft (CV 600's). We take

official notice of the appearances at that hearing. The cities of Concord, Walnut Creek, and Pleasant Hill appeared as interested parties in opposition to the operation of CV 600 aircraft by Golden Pacific to and from Buchanan Field.

The evidence shows a need for additional passenger air service between San Francisco and Santa Rosa particularly during the commute hours. It also shows that there is a demand for service and potentially viable markets at San Rafael, Concord, and Napa which could develop so as to be able to support regularly scheduled passenger air service. Applicant has experience in passenger air carrier operations. It has one aircraft and sufficient working capital. It asserts that it has available to it from charter carriers another aircraft in case its own aircraft is not operational. It also has the financial ability to acquire an additional aircraft if and when one is needed. The BN-2A Islander airplane that it operates is suitable for the operations it proposes to conduct.

We cannot fail to take note that Golden West Airlines discontinued service to Santa Rosa because of unprofitable operations and that Golden Pacific has not found operations to Santa Rosa, Napa, and Concord to be profitable. Stol has shown from its operations since September that its operation between Santa Rosa and San Francisco is economically justified. While it does not appear that the present market will support independent regularly scheduled service between San Francisco on the one hand and Napa, Concord, and San Rafael on the other, the service to those points as flag stops on schedules between San Francisco and Santa Rosa appears to be economically feasible. Whether applicant's present resources will permit the maintenance of reliable service between San Francisco and Santa Rosa adequate to meet the public needs and at the same time provide reliable on-call service to the flag stops of Concord and Napa will depend upon the ability of applicant to schedule flights with its aircraft so as to have an economically sound operation and at the same time obtain optimum load factors by providing service at the times of day when the public desires air transportation.

Discontinuances of service, curtailments of schedules, failure to meet schedules, and lack of on-time performance such as have been experienced at Santa Rosa, Napa, and Concord inconvenience the public and have an adverse effect upon passenger air carrier transportation generally. Service that is undependable and unreliable is no better than no service at all. Dilution of resources by carriers attempting to serve too many uneconomical routes may have been a contributing cause to the aforesaid untowards circumstances. The recommendation of the staff that Stol be granted a temporary certificate has merit in that it would require the applicant, and permit the Commission, to review the several months' experience by Stol in serving the flag stops of Concord and Napa to determine whether such operation contributes or detracts from its ability to provide adequate and reliable service between San Francisco and Santa Rosa, and would permit a review of Stol's experience in providing service between San Francisco and Santa Rosa and the flag stop San Rafael so that the Commission can be assured that Stol can economically provide adequate and reliable service before it grants a permanent certificate. Outweighing the desirability of reviewing Stol's experience in providing service to Santa Rosa is that the issuance of a temporary certificate to applicant, rather than a permanent one, may impair its ability to obtain outside financing quickly in the event it is needed. We conclude that the authority to serve between San Francisco and Santa Rosa should be in the form of a permanent certificate. With respect to service to Concord, Napa, and San Rafael we conclude that the authority should be made temporary for one year.

Findings

1. Golden Pacific holds a certificate of public convenience and necessity authorizing operations as a passenger air carrier between Monterey and Sacramento with service to Oakland as an intermediate point with the condition therein that each airport shall be served with a minimum of one flight in each direction on each of five days a week.

2. Golden Pacific failed to meet its schedules at Monterey during June 1971 and ceased providing any passenger air service out of Monterey in July 1971.

3. Golden Pacific did not provide notice as provided in Section 2769.5 to the Commission that it was discontinuing operations because such operations were unprofitable, nor was it authorized at any time by the Commission to discontinue such operations or to provide service to Monterey with less than one flight in each direction on each of five days a week.

4. At the time of discontinuance of service and thereafter Golden Pacific intended to reestablish service when CV600 aircraft which it had entered into arrangements to acquire became operational.

5. Golden Pacific has not abandoned the rights conferred by the Commission in the certificate of public convenience and necessity authorizing passenger air operations between Monterey and Sacramento with service to Oakland as an intermediate point.

6. Golden Pacific was not provided notice that at hearing in this proceeding the Commission would consider whether the rights conferred by said certificate should be revoked by reason of Golden Pacific being no longer able to perform all or part of the certificated services, or to conform to the law and to the rules and regulations of the Commission.

7. Golden Pacific has been engaged in the business as a passenger air carrier since prior to 1969. In recent years its business experience has included discontinuance of service without authorization, curtailment of schedules to fewer than required by its certificate, and failure to adhere to its published schedules.

8. The unaudited financial statement of Golden Pacific as of December 31, 1971 shows stockholder's equity capital to be in a deficit position and also shows loans and advances by directors and associates in the amount of \$2,115,381. Its working cash capital, its ability to acquire aircraft, and indeed its financial ability to conduct operations are wholly dependent upon the willingness and ability of a group of its stockholders organized as a partnership under the style of Golden Pacific Airlines Joint Venture II, and to two other individuals styled as guarantors of the joint venture, to advance or contribute capital to the corporation or to guarantee its credit. As of the date of hearing it was nine weeks arrears in payment of wages to its pilots, and its mechanics were on strike for, among other things, failure by Golden Pacific to pay accrued wages.

9. There is presently adequate passenger air carrier service provided by Western Airlines, Hughes Airwest, and Valley Airlines between Oakland and San Jose, and by Valley Airlines between Monterey and San Jose. Need for service by Golden Pacific has not been shown.

10. Public convenience and necessity do not require the operation by Golden Pacific proposed in its Application No. 53553.

11. Valley Airlines has been engaged for a number of years in operations as a passenger air carrier pursuant to certificates granted by the Commission. It holds a permanent certificate authorizing operations between Oakland and Santa Barbara via the intermediate point San Jose. By Decision No. 80425 dated August 29, 1972, said authority was temporarily modified by adding Monterey Peninsula Airport as an intermediate point with the proviso that it will not carry origin and destination passengers between Oakland and Monterey. It is successfully conducting operations pursuant to said authority.

12. There is presently no direct passenger air carrier service between Oakland and Monterey. Golden Pacific holds a certificate authorizing passenger air carrier operations between said points;

however, in July 1971 it discontinued providing service. There is a need for service between Oakland and Monterey.

13. Valley Airlines presently serves the points Oakland and Monterey on one of its routes. It has the facilities at both of said points to receive and discharge passengers. The carrying of origin and destination passengers between Monterey and Oakland by Valley Airlines will not require any additional aircraft or ground facilities nor will it necessitate additional flight hours or block time in providing said service.

14. Valley Airlines is ready, willing, and able to provide direct passenger air carrier service between Oakland and Monterey. Golden Pacific is not ready and able to provide service between said points pursuant to its certificate.

15. Public convenience and necessity require the operations by Valley Airlines as a passenger air carrier as proposed in its Application No. 53382, as amended.

16. Stol Air, Inc. is a passenger air carrier engaged in operations between San Francisco and Santa Rosa pursuant to an exemption ordered by the Commission in Decision No. 80493 following the discontinuance of operations by Golden West Airlines between those points.

17. At present the only passenger air carrier service to or from Santa Rosa consists of flights operated by Stol under the aforesaid exemption and two daily flights by Hughes Airwest. Golden Pacific holds a certificate from the Commission authorizing passenger air carrier operations between San Francisco and Santa Rosa. It recently ceased operations because of a labor strike; however, prior thereto it provided service to Santa Rosa only on weekends. There is a need for the service, particularly during the commuter hours, being provided by Stol in its operations pursuant to the aforesaid exemption.

18. There is presently no passenger air carrier service to or from Napa County Airport. Golden Pacific discontinued operations to and from Napa and its certificate authorizing passenger air carrier operations to Napa County Airport has been revoked.

19. At least since August 28, 1972 there has been no passenger air carrier service to or from Concord (Buchanan Field). Golden Pacific holds a certificate authorizing passenger air carrier operations between San Francisco and Concord. By Decision No. 80418 dated August 29, 1972, that authority was revoked by the Commission. The order of revocation has not become effective and the matter is presently pending.

20. There has been no passenger air carrier service to or from San Rafael.

21. The operation proposed by Stol in providing flag-stop service to Napa, Concord, and San Rafael on schedules between San Francisco appears to be economically feasible. Whether or not flag-stop service to Napa, Concord, and San Rafael will detract from, or interfere with, the providing of reasonable and adequate passenger air carrier service between San Francisco and Santa Rosa, and whether or not such flag-stop service will enhance or dissipate Stol's resources and ability to provide service between San Francisco and Santa Rosa will depend in large measure upon the ability of Stol to schedule flights with its aircraft so as to have an economically sound operation and at the same time obtain optimum load factors by providing service at the times of day when the public desires air transportation.

22. Operations between Santa Rosa and San Francisco by Golden West Airlines and by Golden Pacific Airlines have been unprofitable, and passenger air carrier service to Napa and Concord has been unprofitable for Golden Pacific Airlines. Stol has been operating between San Francisco and Santa Rosa with very few ground personnel and when under VFR conditions with only a single pilot. The cost per flight hour of operating the Islander aircraft is relatively

low. Stol has a reasonable opportunity to conduct its proposed operations at a profit. It has the financial ability to exploit that opportunity.

23. Public convenience and necessity require the granting of the certificate to Stol Air, Inc. provided in the ensuing order.

Conclusions

1. The revocation of the certificate of Golden Pacific sought by Valley Airlines in its complaint should be denied.

2. The application of Golden Pacific for a certificate authorizing passenger air carrier operations between Oakland and San Jose and between San Jose and Monterey should be denied.

3. Valley Airlines should be granted a permanent certificate authorizing it to operate as a passenger air carrier as proposed in its application, and the rights conferred therein together with its existing certificated rights should be restated in Appendix A of Decision No. 77965.

4. A certificate, in appendix form, should be issued to Stol Air, Inc., as provided in the ensuing order.

5. Concurrently with the establishment of service by Stol Air, Inc., pursuant to the certificate issued to it, the exemption ordered in Decision No. 80493 and in Decision No. 80798 should be canceled.

Valley Airlines, Inc. and Stol Air, Inc. are 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. The order of revocation of the certificate of Golden Pacific Airlines, Inc. sought by Valley Airlines, Inc. in its complaint is denied.

2. The application of Golden Pacific Airlines, Inc. is denied.

3. A certificate of public convenience and necessity is granted to Valley Airlines, Inc., a corporation, authorizing it to operate as a passenger air carrier, as defined in Section 2741 of the Public Utilities Code, between Oakland and Santa Barbara and the intermediate points San Jose and Monterey.

4. Appendix A of Decision No. 77965, as heretofore amended, is further amended by incorporating therein Fourth Revised Page 1 and Second Revised Page 2, attached hereto, in revision of Third Revised Page 1 and First Revised Page 2.

5. A certificate of public convenience and necessity is granted to Stol Air, Inc., a corporation, 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.

6. Concurrently with the establishment of service pursuant to the certificate granted in paragraph 5 hereof, the exemption granted to Stol Air, Inc. in Decision No. 80493, as modified and renewed by Decision No. 80798 is canceled.

7. In providing service pursuant to the certificates herein granted, Valley Airlines, Inc. and Stol Air, Inc. 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, applicants shall file written acceptances of the certificates herein granted. By accepting the certificates of public convenience and necessity herein granted, applicants are placed on notice that they will be required, among other things, to file annual reports of their 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, applicants 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.

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

Dated at San Francisco, California, this 29th day of DECEMBER, 1972.

Vernon L. Stenger
President
William J. Quisenberry
Alvin M. ...
Commissioners

Commissioner D. W. Holmes, 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.

The authority granted herein to Valley Airlines, Inc. supersedes the previously granted certificate of public convenience and necessity.

Valley Airlines, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a passenger air carrier over the routes and between points listed below:

Route 1 - OAKLAND - FRESNO - INTERMEDIATE POINT: SAN JOSE

OAK - SJC OAK - FAT
SJC - FAT

Route 2 - SOUTH LAKE TAHOE - FRESNO

TVL - FAT (Seasonal June 1 through September 30
each year)

Route 3 - SOUTH LAKE TAHOE - SAN JOSE

TVL - SJC (Seasonal June 1 through September 30
each year)

Route 4 - OAKLAND - BAKERSFIELD - INTERMEDIATE POINT: SAN JOSE

OAK - SJC OAK - BFL
SJC - BFL

Route 5 - OAKLAND - SANTA BARBARA - INTERMEDIATE POINTS:
SAN JOSE & MONTEREY

OAK - SJC OAK - SBA
SJC - SBA # OAK - MRY
SJC - MRY # MRY - SBA

Route 6 - FRESNO - BAKERSFIELD

FAT - BFL

Issued by California Public Utilities Commission.

#Added by Decision No. 80894, Application No. 52382.

Conditions:

1. Authority granted herein is limited to passenger air carrier operations over the specific routes and between the airport pairs listed thereunder as described above.
2. Operation between an airport on one route and an airport on any other route shall not be provided except through an airport that is common to the two routes.
3. On each route each airport shall be served with a minimum of one flight in each direction on each of five days a week.
4. No aircraft having more than 25 revenue passenger seats shall be operated.
5. Passengers shall be carried between Oakland and the Cities of Fresno, Bakersfield, and Santa Barbara on a non-stop basis, per temporary authority to expire June 30, 1973.
6. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
FAT	Fresno	Fresno Air Terminal
SJC	San Jose	San Jose Municipal Airport
TVL	South Lake Tahoe	Tahoe Valley Airport
BFL	Bakersfield	Bakersfield Meadows Field
SBA	Santa Barbara	Santa Barbara Municipal Airport
OAK	Oakland	Oakland International Airport
# MRY	Monterey	Monterey Peninsula Airport

Issued by California Public Utilities Commission.

#Added by Decision No. 80894, Application No. 53382.

Stol Air, Inc., by this certificate of public convenience and necessity, is authorized to operate as a passenger air carrier over the routes and between the points listed below:

Route 1 - San Francisco - Santa Rosa (nonstop)
SFO - STS

Route 2 - San Francisco - Santa Rosa - Intermediate Point:
San Rafael (1)
SFO - STS SRF - STS (1)
SFO - SRF (1)

Route 3 - San Francisco - Santa Rosa - Intermediate Points:
Napa (1) and Concord (1)
SFO - STS CCR - APC (1)
SFO - APC (1) CCR - STS (1)
SFO - CCR (1) APC - STS (1)

(1) Designates "flag stop" service.

Conditions:

1. No aircraft having more than 25 revenue passenger seats shall be operated.
2. Authority for Routes 2 and 3 is temporary and shall expire January 5, 1974, unless modified by further order of this Commission.
3. All routes shall be served with a minimum of one flight in each direction on each of five days a week.
4. On Route 2, San Rafael shall be served on a "flag stop" basis. On Route 3, Napa and Concord shall be served on a "flag stop" basis.
5. Carrier shall not overfly an airport designated as a "flag stop" if a passenger is in the possession of a purchased ticket and confirmed reservation one hour or longer before the scheduled departure time from that airport on the flight on which the passenger holds a confirmed reservation.

Issued by California Public Utilities Commission.

Decision No. 80894, Application No. 53489.

6. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
SFO	San Francisco	San Francisco International
STS	Santa Rosa	Sonoma County Airport
CCR	Concord	Buchanan Field
SRF	San Rafael	Smith Ranch Airport (Alter- nate San Quentin Airport)
APC	Napa	Napa County Airport

Issued by California Public Utilities Commission.

Decision No. 80894, Application No. 53489.