

**ORIGINAL**Decision No. 81084

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
 of AIR CALIFORNIA and PACIFIC )  
 SOUTHWEST AIRLINES, for an order )  
 authorizing purchase by PACIFIC )  
 SOUTHWEST AIRLINES, a passenger )  
 air carrier, of control of Air )  
 California, a passenger air car- )  
 rier, and for authorization for )  
 the transfer by Air California )  
 to Pacific Southwest Airlines of )  
 certificate of public convenience )  
 and necessity. )

Application No. 53442

ORDER DENYING PETITION TO SET ASIDE  
SUBMISSION OR FOR A STAY OF DECISION

This proceeding involves the joint application of Pacific Southwest Airlines (PSA) and Air California (Air Cal) for the approval of the acquisition of Air Cal by PSA. Public hearings were completed in October 1972, and the matter has been under submission after the receipt of final briefs on November 30, 1972.

On December 29, 1972 Western Airlines, Inc. (Western) and Hughes Air West (Air West) jointly filed a petition to set aside submission of this matter or to stay any decision until a final decision is issued in United States v Pacific Southwest Airlines, et al., USDC, CD Cal Civil Action No. 72-2901-DWW, which is a federal antitrust action to permanently enjoin the acquisition. On January 4, 1973 PSA and Air Cal filed a response in opposition to the petition.

Western and Air West contend that since antitrust implications are one of the important issues in the proceeding the Commission should defer issuance of a decision until the federal court determines whether the acquisition is contrary to the federal antitrust laws.

The Commission considered delaying its decision on the merits. We conclude that the appropriate procedure is to resolve the matter promptly because a final decision in the federal anti-trust action might require many months, after allowing time for possible appeals. Any such delay in issuing our decision would inevitably result in motions by Western and other parties opposed to the acquisition for new hearings on the ground that the record was no longer current if the applicants prevailed in federal court. Furthermore, a continuance is currently in effect in the federal action pending the possible issuance of a decision in this proceeding. Finally, the Commission's decision takes into account antitrust considerations and finds they are outweighed by the public benefits provided by the acquisition. Therefore, no valid reason exists to delay issuance of our determination.

For the above stated reasons, the Commission concludes that a delay in issuing our decision is not warranted and that the petition involved herein should be denied.

Wherefore, the Commission orders that the petition of Western Airlines, Inc. and Hughes Air West is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 23rd  
day of FEBRUARY, 1973.

I abstain



Commissioner

Samuel L. Sturgeon  
President

William J. ...

[Signature]

Commissioners

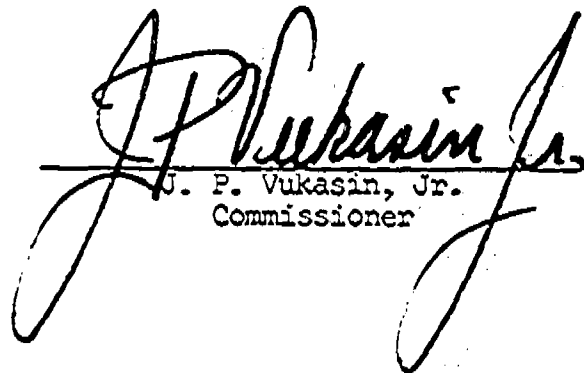
I concur

[Signature] Commissioner

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COMMISSIONER J. P. VUKASIN, JR., CONCURRING.

While the majority unfortunately arrive at an erroneous conclusion in their disposition of the merger application of PSA and Air Cal, nevertheless I concur that the Commission should carry out its duties and responsibilities regardless of whether related matters may be pending before other governmental agencies or the courts. Therefore, this petition to stay our decision because of pending litigation elsewhere should be denied.



J. P. Vukasin, Jr.  
Commissioner

San Francisco, California

February 23, 1973