

ORIGINAL

Decision No. 81959

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 50261
(Filed May 22, 1968)

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

Application No. 50381
(Filed July 8, 1968)

ORDER DENYING SECOND PETITION TO REOPEN

By Decision No. 78848 dated June 22, 1971 the Commission reopened the above proceeding to determine whether Pacific Southwest Airlines (PSA) or Air California (Air Cal) should be authorized to operate between Long Beach and San Jose/Oakland. In addition to reopening the matter, the Commission directed that PSA not commence service between Long Beach and Oakland, and it also ordered Air Cal not to commence service between Long Beach and San Jose. After a prehearing conference was held, public hearing was held in the reopened proceedings on January 24, 25, 26, 27, and 28, and on March 1, 1972. Opening briefs were to be filed on May 15, 1972, but by agreement of the parties, they were mailed on May 22, 1972.

In July 1972 before the date for filing concurrent closing briefs, Air Cal and PSA signed an agreement under which the latter carrier would acquire the former. The two carriers filed an application for approval of the acquisition by the Commission, Application No. 53442 dated July 1972, and also requested that priority be given

to hearing the matter because of its complexity. Shortly thereafter the two carriers requested that the closing briefs in the reopened Long Beach proceeding be postponed pending the resolution of Application No. 53442. This joint request was granted.

After a public hearing the Commission determined that the acquisition did not violate Section 2758 of the Public Utilities Code and approved the transaction. (Decision No. 81080 dated February 23, 1973.) However, this agreement was terminated in July 1973 after the commencement of proceedings in federal court to determine if it failed to conform with federal antitrust laws.

Because both carriers expected that the acquisition would be consummated, they requested and obtained extensions of time to file closing briefs in the Long Beach proceeding. Upon termination of the acquisition agreement, closing briefs were duly filed. At the same time Air Cal filed a petition to reopen the proceeding on the ground of changed circumstances.

By Decision No. 81749 dated August 14, 1973, the Commission denied Air Cal's petition to reopen. On August 24, 1973 Air Cal filed a second petition to reopen the matter. In this petition Air Cal argues that a new materially changed circumstance has occurred in that Western Airlines has filed an application with the Civil Aeronautics Board (CAB) in Docket No. 25787 to temporarily suspend operations at Long Beach for a period of three years. Air Cal also attached declarations of its primary executive personnel which set forth recent traffic data and updated facts regarding its financial condition, including a statement of net income for the first six months of 1973 which shows that Air Cal's operations resulted in total net income of \$857,000, consisting of \$421,000 from air carrier operations, and extraordinary income of \$436,000.

The Commission concludes that Air Cal's second petition to reopen should be denied. The fact that Western Airlines has filed an application for temporary suspension before the CAB does not require reopening this proceeding. Official notice can be taken of this development and its effect can be evaluated by the Commission in its decision. Likewise, as we stated in Decision No. 81749, supra, official notice can be taken of the carriers' financial and traffic reports filed with the Commission since the hearings were concluded in this matter.

Therefore, IT IS ORDERED that the petition for further reopening of Applications Nos. 50261 and 50381, filed by Air California on August 24, 1973, is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 2nd
day of OCTOBER, 1973.

William S. Quinn President
Richard L. ...
... Commissioners

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.