

Decision No. 82041

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of AIR CALIFORNIA for a Certificate
of Public Convenience and Necessity
as a Passenger Air Carrier between
Ontario and Palm Springs.

Application No. 53410

ORDER GRANTING MOTION TO STRIKE
AMENDMENT TO APPLICATION

By this application filed June 16, 1972, Air California seeks "a certificate of public convenience and necessity as a passenger air carrier to transport by air with local sell rights over all segments as listed below:

Between Palm Springs Municipal Airport and San Jose/
Oakland Airports via the intermediate point of
Ontario Airport."

Prehearing conference was held in this application along with several other applications of Air California and Pacific Southwest Airlines before Examiner Thompson at San Francisco on September 27, 1973 for the purpose of determining whether any or all of the matters should be consolidated for hearing, and for the further purpose of determining hearing dates and other procedural matters, including the exchange of exhibits before hearing. It was determined that Application No. 53410 would be set for public hearing for November 12 and 13, 1973, that applicant would distribute its exhibits to the parties by October 12, 1973, and that parties other than applicant would distribute their exhibits at the opening of the hearing on November 12, 1973. Pacific Southwest Airlines was represented at the prehearing conference and declared that it was not appearing or participating in the proceedings in Application No. 53410.

On October 9, 1973, applicant filed an amendment to its Application No. 53410 requesting that it be issued a certificate authorizing passenger air carrier operations between Palm Springs and San Diego.

On October 15, 1973, Western Air Lines, a party to this proceeding, filed a motion to strike the amendment to the application. By letter dated October 17, 1973, counsel for Pacific Southwest Airlines asserts that it received a copy of the motion filed by Western Air Lines, that it has not been served with the amendment to the application, and that the proposed service would be directly competitive with that presently provided by PSA under certificate issued by the Commission. It joins in the motion and asserts Rule 21F of the Commission's Rules of Practice and Procedure as grounds therefor. Borrego Springs Airlines was not served with the original application and did not participate at the prehearing conference. Its counsel has informed the Commission that it provides passenger air carrier service between San Diego and Palm Springs, that it would be adversely affected by the service proposed in the amendment to the application, and that it protests the granting thereof.

The amendment to the application seeks additional authority which has little or no relation to the subject matter of the original application. PSA did not participate at the prehearing conference concerning hearing dates, exchanges of exhibits, or other procedural matters involving this application and stated it was not a participant with respect to any proceedings in that application. It was not served with a copy of the amendment to the application even though it is a common carrier with which the service proposed in the amendment would compete. Borrego Springs Airlines has not had opportunity to participate in the disposition of procedural matters, including the setting of hearings, in this matter although it is a common carrier with which the proposed service would compete.

We conclude that the taking of evidence on the amended issues at hearings scheduled in this application on November 12 and 13, 1973 would deprive necessary parties involved of fair and equal participation in the proceedings. The inclusion of the issues presented in the amendment with those in the application would necessitate the removal of the application from the Commission's hearing calendar and further prehearing conference. The issues in the amendment are not included in, nor are they a necessary part of, the issues presented in the original application. The striking of the amendment will in no way affect or prejudice applicant as to the issues in the original application nor will it prejudice Air California in any future application with respect to the matters presented in the amendment. The motion to strike should be granted.

IT IS ORDERED that the motion to strike the amendment filed by Air California on October 9, 1973 is granted.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 24th
day of OCTOBER, 1973.

Thomas L. Stinson
President
William J. Lyons
L. M. F. Lyons
Paul M. Lyons
Edgar
Commissioners