

ei

ORIGINAL

Decision No. 82411

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 FURTHER
SUPPLEMENT TO 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. By Decision No. 81959 dated October 2, 1973 the Commission denied this second petition to reopen.

On November 15, 1973 Air Cal filed a "Second Further Supplement" to its second petition which asserts that subsequent developments require reopening this proceeding. The Commission is not persuaded by this latest supplement. Air Cal's argument is that PSA will not be able to institute Long Beach-San Jose/Oakland service because of the present fuel shortages, but that Air Cal could despite these shortages. Air Cal also asserts that, since the prepared testimony of a PSA witness in Application No. 51058 indicates that PSA is not financially able to add a second nonstop flight on the Burbank-Sacramento route, PSA will not be able to institute new service at Long Beach and should not be authorized to do so.

In light of the fact that the air carriers' fuel supply situation is essentially under the control of the Federal Government through the allocation program of the Federal Energy Office, reopening this proceeding for the purpose of determining which carrier may have sufficient fuel to serve the route does not appear conducive to producing any reliable or firm conclusions. The fact also remains that, even if Air Cal could show that it has sufficient fuel to commence operations at LGB and that PSA does not, the city of Long Beach has not indicated any change in its willingness to lease terminal space to Air Cal. With respect to PSA's financial condition, the cited testimony, which has not been formally introduced in Application No. 51058, relates primarily to the question of whether PSA should be required to add a second nonstop flight between Burbank and Sacramento, and is based on the experience of 17 months of unprofitable nonstop service between the two points. In any event, the Commission can proceed to remove any route from PSA's certificate if it fails to institute service within the prescribed period for commencement of operations.

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Therefore, IT IS ORDERED that the second further supplement to Air California's petition for further reopening of Applications Nos. 50261 and 50381, filed by Air California on November 15, 1973, is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th
day of JANUARY, 1974.

Hermon L. Sturgeon
President
William Symons, Jr.

[Signature]
[Signature]
Commissioners

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