

Decision No. 82985**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
 (Filed June 19, 1972)

McDonald & Pulaski, by Edward J. Pulaski, Attorney
 at Law, for Air California, applicant.
Ernest T. Kaufmann and Donald K. Hall, Attorneys
 at Law, for Western Air Lines, Inc., protestant.
Edward L. Colby, for City of Palm Springs, inter-
 ested party.
Robert T. Baer, Attorney at Law, and Richard
Brozosky, for the Commission staff.

O P I N I O N

Public hearing was held in this application on November 12, 1973 before Examiner Thompson and was submitted November 19, 1973 on the receipt of late-filed Exhibit 3.

Air California is a passenger air carrier with operations between points and over various routes in the State of California, including:

"ROUTE 5

Between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport and San Francisco International Airport, on the other hand, with each of the last three named airports being either a terminal or intermediate point for this route. Either Orange County Airport or Ontario International Airport may be an intermediate point for this route."

Passenger service over the aforementioned route is subject to a number of conditions and restrictions, including:

"No passengers shall be accepted for transportation solely between the following pairs of points:

* * *

f. Palm Springs Municipal Airport - Ontario International Airport."

Applicant seeks a certificate of public convenience and necessity to conduct passenger air carrier operations, with local sell rights over all segments, between Palm Springs Municipal Airport and San Jose Municipal/Oakland International Airports via the intermediate point of Ontario International Airport. Reduced to simple terms, what applicant is seeking is authority to transport passengers between Palm Springs and Ontario on its existing certificated Route 5. A grant of the authority would be accomplished by the cancellation of the restriction (f) quoted above.

The application is protested by Western Air Lines, Inc. (Western), a trunk line common carrier by air presently providing passenger service between Palm Springs and Ontario.

Air California was first certificated as a passenger air carrier by Decision No. 71310 dated September 20, 1966 in Application No. 48406 for operations between Orange County Municipal Airport and San Francisco International Airport. By Decision No. 73172 in Application No. 49522 it was authorized to expand that operation from Orange County Municipal Airport to San Francisco International Airport, Oakland International Airport, and San Jose Municipal Airport. By Decision No. 74248 in Application No. 50072 it was authorized to conduct passenger air carrier operations between Hollywood-Burbank Airport and Ontario International Airport, on the one hand, and Oakland

International Airport and San Jose Municipal Airport, on the other hand.^{1/} On November 15, 1968 Air California petitioned for a modification of its certificates so as to permit it to operate flights between any pair of points between which it is authorized to serve, provided, however, that the modification not authorize the tacking of pairs of points not authorized as origin and destination points. It stated that such authority was necessary for it to eliminate certain ferry flights, to increase passenger loads, and otherwise operate efficiently. That authority was granted by Decision No. 75473 dated March 25, 1969. By Decision No. 76397 dated November 4, 1969 in Application No. 51194 Air California was granted a certificate authorizing direct service between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport, and/or San Francisco International Airport, on the other hand. It was restricted against accepting any passengers for transportation solely between or conducting operations by way of Palm Springs and Orange County Municipal Airport, Ontario International Airport, or Hollywood-Burbank Airport. On March 23, 1970 Air California filed a petition for modification of that decision requesting that it be authorized to make operational flights between Ontario, Orange County, and Palm Springs airports for a period of six weeks while its aircraft were undergoing modification. That authority was granted by Decision No. 77098. On May 1, 1970 it filed further petition for modification asking that the temporary modification be made permanent. By Decision

^{1/} Air California discontinued operations to and from Hollywood-Burbank Airport March 10, 1970 pursuant to Decision No. 76780.

No. 77278 the temporary modification was extended until the Commission could hold hearings and decide the merits of the petition together with the protest of Western. Hearings were scheduled for October 19, 1970. On October 8, 1970 Air California filed an amendment to its petition for modification requesting that the modification be made permanent and that it be granted an amended certificate authorizing it to serve Orange County Municipal Airport as an intermediate point only on the Palm Springs-Bay Area route. The authority sought was granted by Decision No. 78185 dated January 15, 1971. The foregoing are the proceedings that form the background of the instant application. Air California holds authority to conduct passenger air carrier operations between other points; however, the proceedings involving those routes are not material to the issues here.

During recent times passenger air transportation between Ontario and Palm Springs was provided by Western and by Golden West Airlines (Golden West). On August 16, 1973 Golden West discontinued service between those points. Table 1, below, sets forth the number of flights scheduled between the points on January 1st for each year 1969 through 1974.^{2/}

^{2/} 1969 through 1973 as shown on Exhibit 1, AC-101. We take official notice of the schedule of Western for January 1, 1974.

TABLE 1
 Scheduled Flights Between
 Ontario and Palm Springs
On January 1 for Years Shown^{1/}

	<u>ONT to PSP</u>	<u>PSP to ONT</u>
<u>1969</u>		
Western	4	4
Golden West ^{2/}	2	5
<u>1970</u>		
Western	2	2
Golden West	1	2
<u>1971</u>		
Western	2	2
Golden West	2	2
<u>1972</u>		
Western	3	3
Golden West	2	2
<u>1973</u>		
Western	2	2
Golden West	1	1
<u>1974</u>		
Western	2	2

^{1/} Official Airline Guide.

^{2/} Cable Commuter, predecessor to
 Golden West.

Palm Springs and its environs, including the Coachella Valley, is an agricultural area and a winter recreational area. Due to its climate vacation and pleasure travel is highly seasonal; the on-season that starts in October and ends in May is a period of high traffic, with the balance of the year, called the off-season, having very little vacation traffic. During the on-season applicant operates its Route 5 between the Bay Area and Palm Springs with one daily round-trip flight via Orange County Municipal Airport and one daily round-trip flight via Ontario and, during the peak of the on-season (January through April), one nonstop flight on Fridays and Sundays. Regulations promulgated by the Orange County Municipal Airport limit the number of departures from that airport by applicant to 24.6 per day and require that takeoffs and landings be made during certain times of day. Applicant asserts that those regulations, the requirements of its certificates that it provide at least one flight daily between the Bay Area points and Ontario, Santa Ana, and Palm Springs, the traffic demands between the aforesaid points, and the efficient utilization of aircraft to meet those requirements are the considerations that resulted in the above-mentioned schedules of operations on Route 5, and the reasons why it deems it necessary to operate flights between the Bay Area and Palm Springs via Ontario. The thrust of applicant's presentation is that efficient operations require it to conduct flight operations between the Bay Area and Palm Springs via Ontario, it has seats available on the aircraft on the Ontario-Palm Springs segment, its present and proposed operations of that flight are at times of day different from Western's schedules between the points and correspond more closely to the schedule which had been discontinued by Golden West, there is passenger traffic between the points, and whatever passenger traffic it does obtain would be profitable to applicant because it already incurs the flying, station, and maintenance costs involved in the operation of aircraft between the points.

Section 2753 of the Public Utilities Code sets forth circumstances the Commission is to consider in applications for certificates authorizing passenger air carrier operations.^{3/} We consider those circumstances now.

Applicant has conducted air operations in the State of California for over seven years under certificates of public convenience and necessity granted by the Commission. Its record in conducting such operations is not unfavorable.

Applicant incurred operating losses during its first five years of operation. In 1972 it earned a modest profit, and for each month for the first ten months of 1973 it had a very favorable profit margin. It presently is in a reasonably healthy financial condition. General Order No. 120-C requires all passenger air carriers to provide and continue in effect protection against liability imposed by law upon such operators for the payment of damages for personal bodily injuries and damage to or destruction of property. The general order specifies minimum limits for insurance coverage and requires that evidence thereof be filed with the Commission. Applicant has on file evidence of adequate protection against such liability.

3/ Section 2753, in part:

"In awarding certificates of public convenience and necessity pursuant to Section 2752, the commission shall take into consideration, among other things, the business experience of the particular passenger air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest."

Applicant operates B-737 aircraft and proposes to transport passengers on that type of aircraft between Ontario and Palm Springs on its schedules of flights operating between the Bay Area and Palm Springs via Ontario (Route 5). This service would be provided during the on-season (October 1 through April 30). During the off-season applicant may only operate Route 5 via Orange County Municipal Airport and not via Ontario, in which case service would not be provided.

The Palm Springs-Ontario segment is a very short one.^{4/} The communities are connected by freeway and highway accommodating high-speed vehicle traffic with a distance of less than 90 miles. Ontario International Airport is a major air terminal serving major international and domestic air carriers, and it is, as is Los Angeles International Airport, a normal gateway for traffic to Palm Springs from points throughout the state, nation, and the world. As is the case with most short segments from a major air terminal, much of the traffic between Ontario International Airport and Palm Springs consists of passengers that have air transportation to or from points beyond Ontario. Businessmen with offices or residences in the Los Angeles Basin in the vicinity of Ontario might find it convenient to use air transportation to or from Palm Springs, particularly in that the Palm Springs Municipal Airport is just across the street from the civic center. Considering the time required to drive an automobile between the points, air transportation between Ontario and Palm Springs ordinarily would be more convenient to a person living or working in the Los Angeles Basin area only if he lives or works within one-half hour away to the north or west of the airport at Ontario, and then only if he does not require automobile transportation at Palm Springs.

^{4/} Sixty-seven miles according to the mileage chart of the Division of Aeronautics, Department of Transportation, State of California.

The Ontario-Palm Springs segment could be called a convenience market; that is to say that a passenger will take air passage between the points only if there is an Ontario flight schedule to and from Palm Springs more convenient to the passenger than driving between the points or taking air passage by way of Los Angeles International Airport or Orange County Municipal Airport. The passenger statistics of record are corroborative. They show that traffic is largely influenced by the number of flights between the points. It is not the type of market as that between major air terminals or between points on a long-haul segment where passengers are drawn from a wide radius of the airports. It seems unlikely that air transportation between Palm Springs and Ontario would be considered by a person desiring a round trip from Palm Desert or Coachella to San Bernardino or Pasadena, whereas air transportation via Palm Springs Municipal Airport would normally be a consideration by a person desiring to travel between Palm Desert or Coachella and San Francisco or Fresno, and air passage via Ontario International Airport would be a normal consideration by a person desiring to travel between Pasadena or San Bernardino and San Francisco or Sacramento.

Insofar as a need for the service is concerned, it is not that type of market that can, or could be, feasibly served other than by flights operating between the segment as a part of a longer flight; however, there is a need for air transportation service by those persons using air transportation to or from Ontario International Airport as a means of passage to or from Palm Springs and points in the Coachella Valley. Air transportation between Ontario and Palm Springs provides a convenience and a substantial benefit to the public in the immediate environs of Ontario International Airport. It is to be noted that Western serves that segment only on flights to or from other major airline terminals.

Western presented evidence and argument that applicant's operations on Route 5 via Ontario are unprofitable and therefore it cannot economically give adequate service between Palm Springs and Ontario. The cost to applicant of ticketing passengers between the points is negligible. It already incurs the costs of operating the segment. Applicant can economically provide service between the points to the extent that it operates the segment only in connection with the service between the Bay Area and Palm Springs on its Route 5. That is all it offers to do.

Applicant's proposed service should not have any adverse effect upon the traffic of Western. In the first place, applicant's proposed flights are at times different from those scheduled by Western, and as indicated above, if Western's schedules are not convenient to persons desiring passage to or from Palm Springs they do not have to wait for them; there are air transportation routings via Los Angeles International Airport and Orange County Municipal Airport. Secondly, if applicant ever establishes flights on the segment at the same times as scheduled by Western, it would be applicant that would be the loser, not Western. Western has interline fares, interline baggage handling agreements, and interline ticketing agreements with other domestic and international airlines that applicant does not have. Insofar as ticketing and baggage services are concerned, Western's service is much more convenient than would be the service of applicant to passengers traveling by air between Palm Springs and points on the routes of other airlines via Ontario.

Western points to the series of decisions by which applicant obtained authority to make operational flights between Ontario and Palm Springs and applicant's prior avowals that it was not seeking passenger air carrier rights between the points. It asserts that applicant is attempting to enter this local market through the back door by virtue of previous representations of some temporary mechanical problems with its B-737 aircraft. Whether applicant's course of conduct represents an attempt to enter the market via the back door, front door, or a side door is of little moment in this particular case. The legislature has determined that regulation of the transportation of passengers by air in common carriage within the State of California should be provided in order that an orderly, efficient, economical, and healthy intrastate passenger air network may be established to the benefit of the people of this State, its communities, and the State itself (Section 2739 of the Public Utilities Code). In Application of Swift-Aire Lines, Inc. (1973), Decision No. 82036 in Application No. 53861, we held that, unless compelling reasons dictate otherwise, the public should be permitted to take passage from a point on a passenger air carrier's established route to any other point on that established route. Such conclusion is even more appropriate at this time because of the fuel shortages and fuel price increases. The granting of authority to applicant to transport passengers between Palm Springs and Ontario on its Route 5 will not impair the ability of Western to provide service and will benefit the community of Palm Springs, passengers desiring to make connections with other airlines at Ontario International Airport, passengers who live in the immediate environs of Ontario International Airport, and the State itself.

Western moved for the preparation by the Commission of an environmental impact report which motion was denied by the presiding officer. We affirm the ruling. Rule 17.1 of the Commission's Rules of Practice and Procedure states in part:

"A. In General

This rule was developed and issued pursuant to the California Environmental Quality Act of 1970 (CEQA) and the Guidelines for Implementation of the California Environmental Quality Act promulgated by the Office of the Secretary for Resources (Guidelines). It shall be the general policy of the Public Utilities Commission to adopt and adhere to the principles, objectives, definitions, and criteria of the CEQA and of the Guidelines promulgated thereunder in its regulations under its constitutional and statutory authority."

Project means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is an activity involving the issuance to a person of a certificate by the Commission (Guidelines, Section 15037). Where it can be seen with certainty that the activity in question will not have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and the Guidelines concerning the evaluation of projects and the preparation and review of environmental impact reports do not apply (Guidelines, Section 15060). The project involved in this application is the selling of tickets for passage between Ontario International Airport and Palm Springs Municipal Airport on flights of aircraft that are presently authorized to operate between airports in the San Francisco Bay Area, on the one hand, and Palm Springs Municipal Airport, on the other hand, with an intermediate stop at Ontario International Airport. The only possible direct impact of that activity is a small increase in

the number of passengers boarding or deplaning aircraft at the airports in Ontario and Palm Springs. To some extent that small increase will result in a diversion of traffic from the public highways between Ontario and Palm Springs. A representative for the City Council and Airport Commission of the city of Palm Springs appearing in support of the application stated:

"With the question of environment in mind, I sit on the Environmental Impact Review Committee for the City of Palm Springs. And in reviewing this case, it appears that rather than negative environmental impact you have a favorable environmental impact by removing the restriction."

It may be that whatever direct impact the activity may have will be favorable; however, in any case it is of very minor significance considering the amount of traffic that is involved.

Western asserts that we must look to the ultimate effect of increasing particulate emissions and noise pollution levels because of the possibility of applicant increasing its flights. The certificate sought herein contemplates transporting passengers between Ontario and Palm Springs on aircraft operating to and from the San Francisco Bay Area airports. We have already pointed out that the 67-mile segment is a convenience market in that it is primarily entry mileage for transportation to and from points beyond Ontario. Any economical justification for increases in the number of aircraft operating the Bay Area-Ontario-Palm Springs route would have to result from an increase in the demand in the Bay Area-Ontario or Bay Area-Palm Springs markets. A parallel situation exists in connection with Western's operations between Ontario and Palm Springs. An increase in flights on that segment would be the result of increase in demand

in the markets between Palm Springs and other points served by Western beyond Ontario. In both instances, and even if applicant were not awarded the certificate, no additional certificate, license, or approval would have to be obtained, other than from the local airport authorities, to increase flight operations between the points involved.

We have given a very detailed discussion of the motion for a purpose. In virtually every protested proceeding involving an application brought under Sections 2752 and 2753 of the Public Utilities Code, competing airlines have filed pleadings and have made motions to the effect that proceedings in the application should be suspended until applicant has prepared and submitted an environmental data statement, and the Commission has prepared and filed an environmental impact report as provided in Rule 17.1 of the Commission's Rules of Practice and Procedure. In the instant case it is Western. In Application No. 54206 it was Air California, the applicant herein. In other applications it has been other airlines.

There are no general regulations, other than those prescribed by airport authorities, which prevent certificated airlines from increasing flight schedules between points that they serve and thereby adding particulate emissions into the atmosphere and increasing noise pollution levels (Inv. Sierra Pacific Airlines (1974) Decision No. 82718 in Case No. 9527, etc.).^{5/} It does seem somewhat incongruous that negative effects upon the environment do not exist when an air carrier decides to extend its operations or to increase its flight operations, but become cause of great concern when a competing carrier proposes to encroach upon its territory. The garb of defenders of the environment just does not seem to fit the airline protestants in proceedings involving Sections 2752 and 2753. The motions represent only attempts to protract and delay proceedings in which the protesting airlines have an interest.

5/ The Commission in Decision No. 82409 in Applications Nos. 50261 and 50381 prescribed maximum flights to be operated by Pacific Southwest Airlines and Air California at Long Beach airport.

The Commission's Rules of Practice and Procedure are intended to promote expeditious handling of matters brought before it while protecting the substantial rights of all of the parties. We look with disfavor upon the use of the procedures for purposes of gamesmanship. Counsel for the air transportation companies are reminded to observe Rule 1 of our Rules of Practice and Procedure.

We find that:

1. Air California is a passenger air carrier with operations in the State of California over various routes, including Route 5 which provides for transportation between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport, and San Francisco International Airport, on the other hand, via the intermediate points of Ontario International Airport or Orange County Municipal Airport.

2. Passenger service over Route 5 is subject to a restriction that no passengers shall be accepted for transportation solely between Palm Springs Municipal Airport and Ontario International Airport.

3. During the on-season extending generally from October 1 through April 30, applicant operates flights on Route 5 via the intermediate point of Ontario International Airport.

4. By this application Air California seeks authority to transport passengers between Palm Springs Municipal Airport and Ontario International Airport on flights operated on Route 5.

5. During the on-seasons extending generally from October 1, 1972 to April 30, 1973 and from October 1973 to the present date, Western, a trunk line common carrier by air, had scheduled two round trips per day between Palm Springs Municipal Airport and Ontario International Airport on flights of interstate routings certificated by the Civil Aeronautics Board.

6. Applicant's present and proposed operations over the Palm Springs-Ontario segment are at times of day different from the flights operated by Western.

7. Applicant has sufficient experience in the field of air operations, financial stability, insurance coverage, and suitable aircraft to provide the proposed service.

8. Applicant can economically give adequate service to the communities involved on its established Route 5 with the minimum schedules applicable to said route, and such service will fill a public need.

9. The establishment of the proposed service will not impair the ability of Western to continue to provide service between the points, and it will improve the intrastate passenger air network to the benefit of the people of this State, its communities, and the State itself.

10. Public convenience and necessity require Air California to transport passengers as a passenger air carrier between Palm Springs Municipal Airport and Ontario International Airport on flights operated on its established Route 5 via Ontario International Airport.

11. It is reasonably certain that the project involved in this proceeding will not have a significant effect on the environment.

We conclude that the application should be granted and that the grant of such authority should be reflected in Appendix A of Decision No. 80439, as heretofore amended, by deleting the restriction (f) that no passengers shall be accepted for transportation solely between Palm Springs Municipal Airport and Ontario International Airport.

Applicant is 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. 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. A certificate of public convenience and necessity is granted to Air California, a corporation, authorizing it to operate as a passenger air carrier, as defined in Section 2741 of the Public Utilities Code, between Palm Springs Municipal Airport and Ontario International Airport in connection with flight operations conducted on its established route (Route 5) between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport, and/or San Francisco International Airport, on the other hand, via the intermediate point Ontario International Airport.

2. Appendix A of Decision No. 80439, as amended, is further amended by incorporating therein Third Revised Page 5. in revision of Second Revised Page 5, which revised page is attached hereto and by this reference made a part hereof.

3. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. By accepting the certificate applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with the requirements of the Commission's General Orders Nos. 120-Series and 129-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs, in triplicate, in the Commission's office.

- (c) The tariff 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 filings shall be concurrent with the establishment of the authorized service.
- (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-Series.

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

Dated at San Francisco, California, this 18th
day of JUNE, 1974.

Norman L. Stungen
President
William J. Brown
John J. Brown
William J. Brown
William J. Brown
Commissioners

Appendix A
(Dec. 80439)

AIR CALIFORNIA
(a corporation)

Third Revised Page 5
Cancels
Second Revised Page 5

RESTRICTIONS

No passengers shall be accepted for transportation solely between the following pairs of points:

- a. San Francisco International Airport - San Jose Municipal Airport.
- b. San Francisco International Airport - Oakland International Airport.
- c. Oakland International Airport - San Jose Municipal Airport.
- d. San Francisco International Airport - Ontario International Airport.
- e. San Diego International Airport and other airports already served by Air California, except as authorized by Routes 3, 4, 10, 14, and 15. No passengers traveling between San Diego International Airport and San Francisco International Airport shall be carried on flights operated on Routes 3, 4, 10, 14, and 15.
- #f. (Deleted)

Issued by California Public Utilities Commission.

#Deleted by Decision No. 82985, Application No. 53410.