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ORIGINAL

Decision No. 84348

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MARIN AVIATION, INC.)
for a Certificate of Public Con-)
venience and Necessity.)

Application No. 54604
MOTION FOR AN ORDER PURSUANT
TO SECTION 2767
(Filed February 27, 1975)

ORDER DENYING MOTION

By Application No. 54604 Marin Aviation, Inc. seeks a certificate of public convenience and necessity authorizing it to conduct passenger air carrier operations between points and over routes extending along the Pacific coast from Eureka to San Jose, along the central valley from Sacramento to Bakersfield, and across the central part of the State from San Francisco Bay area points to Lake Tahoe. On August 1, 1974 the portion of this application seeking authority to operate over routes to Lake Tahoe was consolidated with Applications Nos. 54852, 54899, 54953, and 55009 on which hearings are currently being held. The balance of the application was taken under submission August 23, 1974 and with respect to it a decision is now pending.

On February 6, 1975 Holiday Airlines discontinued service over its authorized routes between South Lake Tahoe and Oakland, San Jose, Burbank, Los Angeles, and San Diego. On February 19, 1975, pursuant to Section 2767 of the Public Utilities Code, the Commission entered its Decision No. 84138 exempting Air California from the certificate provisions of Section 2752, 2754, and 2754.1 in the performance of passenger air carrier service between South Lake Tahoe, Oakland, and San Jose, and exempted Pacific Southwest Airlines in performance of air carrier service between South Lake Tahoe, Burbank, and Los Angeles. The exemptions require the carriers to conduct operations with the same type of aircraft as had been operated by Holiday Airlines, namely Lockheed L-188 Electra aircraft.

By this motion Marin Aviation seeks an exemption under Section 2767 to conduct passenger air carrier service on routes extending from Fort Bragg to San Jose and from San Francisco to Lake Tahoe serving: Fort Bragg, Ukiah, Santa Rosa, Novato, San Francisco, Palo Alto, San Jose, Oakland, Sacramento, Truckee, and Tahoe Valley. Applicant alleges that the length of time in this proceeding imposes an undue burden upon applicant in retaining and utilizing employees needed for air carrier service, and in obtaining revenue with which to pay the costs of financing its application. It also asserts that there is no air service to Fort Bragg, Ukiah, or Truckee, which imposes an undue burden upon those cities.

Section 2767 provides:

"Upon application by a passenger air carrier or other interested party, the commission may, following a determination of necessity, exempt the passenger air carrier from the certificate provisions of Sections 2752, 2754 and 2754.1 upon a finding that such provisions impose an undue burden upon the carrier, a community, or area because of the immediate need for service including, but not limited to, conditions of national emergency, natural disaster or cessation of existing service by another carrier, except a cessation of existing service caused by a labor dispute, and that enforcement of such provisions would be contrary to the public interest. Exemptions issued pursuant to this section may be issued for a maximum of 90 days and may be renewed for the same or a lesser period."

In addition to the exemptions granted by Decision No. 84138 the Commission has granted exemptions under Section 2767 on two other occasions. Following the cessation of operations by Golden West Airlines between Santa Rosa and San Francisco the Commission entered its Decision No. 80493 in Application No. 53489 in which, on petition of Sonoma County Airport, it exempted Stol Air in the conduct of passenger air carrier operations between San Francisco and Santa Rosa under fares and schedules that had been maintained by

Golden West Airlines. Subsequently, following proceedings in that application Stol was granted a certificate to conduct passenger air carrier service between San Francisco, Santa Rosa, Napa, Concord, and Novato. In October 1973 Valley Airlines was required to cease operations pursuant to an order of the Federal Aviation Administration. That resulted in a cessation of air carrier service between San Jose and Fresno. By Decision No. 82036 dated October 24, 1973 the Commission exempted Swift Aire Lines, Inc. for a period of 90 days from the certificate provisions in connection with service between San Jose and Fresno. The exemption was not renewed after Valley Airlines restored its service between the points.

The Commission has granted exemptions under the provisions of Section 2767 only to maintain service between points following an abrupt discontinuance of service by another air carrier, and has granted those exemptions only in connection with the same service that was discontinued. While the provisions of Section 2767 empower the granting of exemptions for causes other than conditions of national emergency, natural disaster, or cessation of existing service by another carrier, the language of the statute imports that such exemptions shall be granted only by reason of an emergency, and then only temporarily.

There has been no recent cessation of air transportation service at Fort Bragg, Ukiah, or Truckee. While the length of time involved in this proceeding may be burdensome upon applicant, that does not constitute an emergency envisioned in Section 2767. Furthermore, the granting of an exemption under Section 2767 may be made only following a determination of necessity. The issue of whether public convenience and necessity require the establishment of passenger air carrier service by applicant to Fort Bragg, Ukiah, and Truckee, among other places, and over the routes proposed by applicant are contested issues in the proceeding. Making such a finding prior to consideration of those issues in the application would be premature.

IT IS ORDERED that the motion filed by Marin Aviation Inc. on February 27, 1975 for an exemption pursuant to Section 2767 of the Public Utilities Code is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 22nd day of APRIL, 1975.

Vernon L. Stinson
President
William Sykes, Jr.
Donald
Leonard Ross
James Butler
Commissioners