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Decision No. 84627

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }
APOLLO AIRWAYS, INC., a corporation, }
for authorization to operate as a }
passenger air carrier and freight }
air carrier, between Santa Barbara - }
San Jose, and return. }

Application No. 55439
(Filed January 15, 1975)

Quentin Cedar and Terry Cedar, for Apollo
Airways, Inc., applicant.
Donald Klein, for Valley Airlines, Inc., dba
Pacific Airlines, Inc., protestant.
Henry R. Voss, for Golden West Airlines, Inc.,
interested party.
Richard Brozosky and Fred K. Hendricks, for
the Commission staff.

O P I N I O N

Applicant Apollo Airways, Inc. requests a certificate to operate as a passenger air carrier between the Santa Barbara Municipal Airport (SBA) and the San Jose Municipal Airport (SJC) restricted to the operation of propeller aircraft having a maximum certified gross weight of 12,000 pounds or less. The application was protested by Valley Airlines, Inc., dba Pacific Airlines, Inc. (Pacific). A hearing was held on the application at Santa Barbara before Examiner Pilling on May 6 and 7, 1975.

The evidence shows that there is currently no passenger air carrier service between SBA and SJC nor has there been service since approximately February 1975 at which time protestant Pacific, holder of the only passenger air carrier certificate authorizing service between those points, ceased operations. Applicant contends that it

is ready, willing, and able to institute the requested service, and in support of its contention showed that it possesses a Handley-Page 137 Jetstream 18-passenger aircraft and a PA-31 Navajo Chieftain 8-passenger aircraft with which it intends to institute two round-trip flights a day between SBA and SJC five days a week, a schedule that will cater to the business traveler with one round trip in the morning and one in the late afternoon. Applicant has been in the aviation business and businesses connected with aviation since 1966. It operates a charter airline service transporting some 300 passengers per month, several U.S. air mail routes, and air transportation for the U.S. Forest Service. It operates a pilot training school, an aircraft selling and leasing business, and an aircraft repair and maintenance center, all headquartered at SBA. It employs 60 persons and represents that it had a gross revenue of \$1,025,726 for the eight months ending January 31, 1975 and on that date had a net worth of \$87,198. It estimates that it costs \$107 per hour to operate the Jetstream and \$62 per hour to operate the Navajo. It predicts that during the first year of the proposed operation it will transport in the neighborhood of 6,120 passengers and will lose \$19,165 on the operation. However, during the second year of operation it expects to transport 7,676 passengers at a profit of \$32,075.

The application is supported by the city of Santa Barbara whose Mayor appeared at the hearing and spoke on the need for the proposed service. A resolution by the City Council of that city supporting the application was introduced into evidence. The SBA airport manager also spoke in support of the application as did a representative of the Santa Barbara Chamber of Commerce. Letters from numerous companies whose personnel would use the proposed service attested to the need for the service. A representative of

State Senator Omer L. Rains, in whose district SBA is located, appeared at the hearing and urged on behalf of the senator our favorable consideration of the application.

A representative of the Commission's Transportation Division testified that he made a field inspection of applicant at its facilities at SBA and generally confirmed the testimony of applicant about its facilities. Based on the prior operations of Pacific and the existing traffic between SBA and San Francisco the witness estimated that the traffic potential on the route at the level of service to be offered by applicant was 6,000 the first year and 7,500 the second year. The witness stated that the Transportation Division believes the one way fare of \$35 is too high when compared to existing fares between SBA and San Francisco of \$27.54 by United Airlines and \$25.43 by Hughes Airwest, both of which offer jet service. The witness stated that applicant should be encouraged to lower its proposed fare to \$28 as it originally proposed. The witness stated that the Transportation Division recommends that applicant be granted a temporary certificate for a year to allow sufficient time for the Commission to evaluate applicant's service and to determine the need for an additional carrier in the market. The witness also stated that applicant has evidence of insurance as required by General Order No. 120-C.

A witness from the Commission's Finance and Accounts Division presented an evaluation of the proposed operation's effect on applicant's financial position. The witness pointed out that applicant's financing comes primarily from long term debt and that there was no permanent common stock equity investment in applicant's net carrier operating property on January 31, 1975. The witness presented a pro forma operating statement for applicant for the 12 months ended January 31, 1975 with adjustments to reflect the costs estimated to be incurred in the proposed

operation but with total operating revenues unadjusted, and he concluded that the greatest net operating loss that applicant might incur by rendering the proposed service was \$102,904. The witness testified that individuals holding 95 percent of applicant's outstanding stock have submitted letters to the Commission in which they state their willingness to assume this loss in proportion to their stock interests and that letters obtained from banks and unaudited financial statements reflect the stockholders' financial ability to absorb this loss. The witness testified that applicant's books are not kept in the manner prescribed by the Civil Aeronautics Board Chart of Accounts for Class III carriers and that if any certificate is issued it should be required to do so. The witness stated that his division recommends that the application be granted on a one year temporary basis and that before the certificate be made permanent that his division be afforded the opportunity to review the completeness and accuracy of applicant's accounting and corporate records and operating results of the proposed service.

Protestant Pacific presented no evidence but requested that we take official notice of (1) its certificate issued in Decision No. 77965 dated November 24, 1970 authorizing it to perform service between SBA and SJC, (2) the dissent in that decision expressing concern over the Commission's authorizing wing-tip--to--wing-tip competition, and (3) the order in Case No. 9852 instituting an investigation into Pacific's possible unlawful merger with another and its alleged failure to pay refunds to passengers denied boarding and its failure to meet operating expenses at several airports. The order in Case No. 9852 was filed January 7, 1975.

Findings

1. Applicant requests a certificate to operate as a passenger air carrier between SBA and SJC.
2. There is currently no passenger air carrier service operating between SBA and SJC.
3. Pacific is authorized to operate as a passenger air carrier between SBA and SJC but has not operated since February 1975 and gives no indication when or if it will reinstitute service or whether it possesses equipment to operate the route.
4. Applicant possesses the appropriate personnel and airplane equipment to perform the proposed service.
5. Applicant possesses the necessary business experience in the field of air operations and financial stability to perform the proposed service.
6. Applicant has adequate insurance coverage on file with the Commission.
7. Applicant can economically give adequate service to the communities involved.
8. A public need for permanent service has been shown to exist. Full natural development of the proposed service would be stunted by the issuance of a certificate on a temporary basis.
9. Applicant can reasonably be expected to generate approximately 6,000 passengers in its first year of operation and approximately 7,500 passengers a year thereafter.
10. The Commission is formally investigating the operations of Pacific and as a result thereof may cancel some or all of Pacific's operating authority.
11. Public convenience and necessity require the granting of the requested certificate.

12. The project involved in the application will not with reasonable certainty have a significant effect on the environment.

13. Applicant should be directed to keep its books of account and financial records in accordance with the CAB Uniform System of Accounts for Class III Air Carriers. The change over to that system should take place at the beginning of applicant's accounting period which follows the effective date of this order.

14. While applicant's proposed fares between Santa Barbara and San Jose are higher than present fares charged by established airlines for jet service between Santa Barbara and San Francisco, applicant's operations will not be, as those other operations are, supported by fares from passengers carried through Santa Barbara in large capacity aircraft, which justifies, at least at the outset of the proposed operation, applicant's \$35 fare.

Conclusion

A certificate of public convenience and necessity should be issued to applicant as set out in the ensuing order.

Apollo Airways, Inc. 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 Apollo Airways, Inc., a corporation, authorizing it to operate as a passenger air carrier, as defined in Section 2741 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

2. 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.

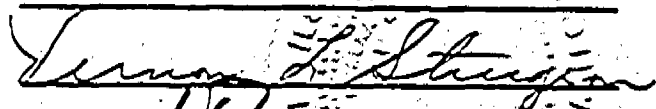

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. By accepting the certificate applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with the 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.

3. Applicant is directed to revise its accounting system for passenger air carrier service to conform to the Uniform System of Accounts for Class III Air Carriers promulgated by the Civil Aeronautics Board. Said change shall be made effective beginning with the next accounting period following the effective date of this order.

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

Dated at San Francisco, California, this 8th day of JULY, 1975.


President



Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Apollo Airways, Inc., by this certificate of public convenience and necessity, is authorized to operate as a passenger air carrier between the following airports only:

SJC - SBA

Conditions

1. No aircraft having more than 30 revenue passenger seats or a payload of more than 7,500 pounds shall be operated.

2. Service between SJC and SBA shall be provided with a minimum of one flight in each direction on each of five days a week.

3. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
SJC	San Jose	San Jose Municipal Airport.
SBA	Santa Barbara	Santa Barbara Municipal Airport.

Issued by California Public Utilities Commission.

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