

ORIGINAL

Decision No. 84703

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
AIR CALIFORNIA for a modification of
its certificate of public convenience
and necessity between San Diego, on
the one hand, San Jose/Oakland, on
the other hand.

Application No. 54878
(Filed May 15, 1974)

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at Law, for Air California, applicant.
Brownell Merrell, Jr., Attorney at Law, for
Pacific Southwest Airlines, and Darling, Hall,
Rae & Gute, by Donald K. Hall, Attorney at Law,
for Western Air Lines, Inc., protestants.
James T. Quinn, Attorney at Law, for the Commission
staff.

O P I N I O N

This matter was heard on March 24 and 25, 1975 before
Examiner Thompson at Santa Ana and was submitted on briefs filed
April 7, 1975.

Air California (Air Cal) is a passenger air carrier with
operations over a number of routes in California. The certificated
routes pertinent to this proceeding include:

- Route 2: Between Orange County Airport and Ontario
International Airport, on the one hand,
and San Jose Municipal Airport and Oakland
International Airport, on the other hand,
with each of first two named airports and
each of the last two airports, respectively,
being either a terminal or intermediate
point for this route.
- Route 3: Nonstop service between San Diego
International Airport and San Jose
International Airport.

Route 4: Between San Diego International Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand, via the intermediate point of Orange County Airport, with San Jose Municipal Airport and Oakland International Airport being either a terminal or intermediate point for this route.

By this application Air Cal seeks a certificate of public convenience and necessity authorizing it to operate between San Diego International Airport (SAN), on the one hand, and San Jose Municipal Airport (SJC) and Oakland International Airport (OAK), on the other hand, via Ontario International Airport (ONT) without accepting passengers for local transportation between SAN and ONT.^{1/} It stipulated that any flight via ONT would be in substitution for a flight on its Route 4 via Orange County Airport (SNA). Air Cal operates five daily round-trip flights between SAN and SJC; one is nonstop and four are via SNA. If the authority is granted Air Cal proposes that, with respect to the five round trips, one will be nonstop, two will be via SNA, and two will be via ONT.

The authority sought is opposed by Pacific Southwest Airlines (PSA), Western Air Lines, Inc. (Western), and the Commission staff.

In Application of Swift Aire Lines (1973) Decision No. 82036 in Application No. 53861, mimeo. page 14, the Commission held:

^{1/} The authority sought is commonly called a closed-door right. In effect Air Cal proposes to operate scheduled flights over the route SAN-ONT-SJC-OAK with its door closed to any passenger purchasing a ticket for transportation between SAN and ONT.

"In our opinion the imposition of a closed-door limitation on a route to be operated by an airline merely to satisfy the interest of the affected airlines may not necessarily coincide with the interest of the public. Regulation of passenger air carriers is not for the protection of the interests of the airlines. Section 2739 of the Public Utilities Code states:

'The purpose of this chapter [Passenger Air Carriers Act] is to provide regulation of the transportation of passengers by air in common carriage within the State of California 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.' (Emphasis added.)

"Unless compelling reasons are set forth showing why it would not be in the interest of the people, the communities, or the State, the public should be entitled to be transported between any points on any route operated by an airline."

Subsequently in an application by Air Cal for authority to remove a closed door restriction on operations between Palm Springs and Ontario, the Commission cited the conclusion in Swift Aire Lines and stated:

"Such conclusion is even more appropriate at this time because of the fuel shortages and fuel price increases.' Decision 82985, mimeo page 11 (1974), Air California Application 53410."

Air Cal has also filed Application No. 55011 seeking, in part, authority to conduct passenger air carrier operations (open door) between SAN and ONT. Public hearings respecting that portion of Air Cal's application have been held.

The ultimate issues in this proceeding are:

1. Are there compelling reasons why it would be in the interest of the people, the communities, or the State that Air Cal should be authorized to operate closed door between SAN and ONT on the route SAN-ONT-SJC-OAK if following proceedings in Application No. 55011 the Commission determines that public convenience and necessity do not require open door service by Air Cal between SAN and ONT?

2. Are there compelling reasons why it would be in the interest of the people, the communities, or the State that Air Cal should be authorized to operate closed door between SAN and ONT on the route SAN-ONT-SJC-OAK pending determination by the Commission in Application No. 55011 of whether public convenience and necessity require the operation by Air Cal in open-door service between SAN and ONT?

The compelling reasons advanced by Air Cal in support of the authority sought center about certain restrictions on scheduled flight operations imposed by the county of Orange at SNA. Apparently the normal flight pattern for departures from SNA is over the city of Newport Beach, and apparently because of complaints by the people of the city, the county of Orange established limitations on the number of scheduled departures of jet aircraft by Air Cal at SNA to no more than 24.6 per day averaged over a 12-month period. The departures are required to be made during the period from 7:00 a.m. to 10:00 p.m. There is a difference of opinion between Air Cal and the city of Newport Beach regarding the actual limitations that have been imposed which apparently the county of Orange has not yet resolved. The differences of opinion concern mainly whether departures of second sections of scheduled flights, departures of scheduled flights of Electra aircraft, charter flights, and training flights should be counted and included in the 24.6 average departure limitation. A vice president of Air Cal testified that the county of Orange is awaiting an environmental impact report anticipated to be completed this summer before it attempts to resolve that conflict. He stated that Air Cal has been, and is, interpreting the limitation on departures to apply only to scheduled flights of jet (B-737) aircraft and not to second sections, charter flights, training flights, or flights with Electra aircraft.

Air Cal changes its schedules four times during the year. During January, February, and March its schedule calls for an average of 22.7 daily departures from SNA; during April, May, and June the scheduled daily departures from SNA average 24.5; during July, August, and the first half of September the departures from SNA average about 26.5; and during the last half of September, October, November, and December the scheduled departures from SNA average about 24.5 per day. The average scheduled daily departures over the year come very close to the maximum.

The 1974 on-board load factors of Air Cal on segments having origin or destination at SNA were as follows:

SNA-SJC	79.3%
SNA-SMF	71.9%
SNA-SFO	73.3%
SNA-SAN	30.9%
SNA-OAK	70.8%
SNA-ONT	25.9%
SNA-PSP	34.9%

During 1974 Air Cal had 68,200 passengers in its SAN-SJC/OAK service of which 29,470 utilized the nonstop service between SJC and SAN, leaving 38,730 passengers that traveled on flights via SNA. During that same period Air Cal had 516,046 passengers on board between SJC and SNA on flights totaling 651,082 seats (which provide the 79.3 percent load factor shown above). That means that on all of the flights operated on the SAN-SNA-SJC-OAK route only 5.95 percent of the seats on the SNA-SJC long-haul segment were occupied by passengers ticketed between SAN-SJC/OAK; or, looking at it another way, on SNA-SJC segment of the SAN-SNA-SJC-OAK route, out of every 200 passengers all but 12 had origin or destination at SNA.

While there is a mass of data in the record, the statistics set forth above disclose Air Cal's real problem and its attempt to solve the authority sought herein. Air Cal is the only carrier providing direct airline service between SNA and SJC. The demand for this service is such that the traffic almost sells out every flight during peak hours. Persons regularly traveling between the points are aware of that circumstance and book reservations well in advance leaving very few seats available for traffic between SAN and SJC/OAK. There is less tendency for advance bookings for transportation between SAN and SJC/OAK because PSA also provides transportation between those points. Air Cal's vice president made the following statement concerning operations between SAN and SJC:

"If Air California were to eliminate the San Diego-Orange County flights, that would then proceed to San Jose, we would be unable to compete directly with PSA.

"At the present time we offer about 42 percent of the flights and about 36 percent of the seats, carrying about 30 percent of the traffic."

That statement would be accurate if the total seats on the flights were actually available for SAN-SJC traffic. While the SAN-SJC/OAK passenger has equal opportunity with a SNA-SJC/OAK passenger to make an advance booking for an Air Cal flight on the SAN-SNA-SJC-OAK route, that passenger does not avail himself of that opportunity because of the alternative available in the form of service via PSA. In fact the seats are not actually available on Air Cal flights between SAN and SJC via SNA. It would be more accurate to state that Air Cal carries about 30 percent of the traffic between SAN and SJC with less than 10 percent of the seats; and therein lies Air Cal's problem. It's proposed solution to route two of its SAN-SJC flights via Ontario will provide additional seats for SAN-SJC traffic and at the same time alleviate the pressure of the demand for additional seats for SNA-SJC and SNA-SFO traffic.

We point out here that Air Cal contends, and its vice president testified affirmatively, that the curtailment of flights between SAN and SNA from four daily round trips to two daily round trips would not adversely affect public transportation between those points and would have very little effect upon Air Cal's O&D traffic between those points. That is what Air Cal proposes to do in order to acquire two departures from SNA that it can use for flights to SJC and SFO. It does not desire to drop the two SAN-SNA flights without being able to substitute SAN-ONT flights because it would then also be offering two fewer flights between SAN and SJC which, according to Air Cal, would make it unable to compete directly with PSA.

In that perspective, the reason for PSA's opposition to the application is readily apparent. It does not desire Air Cal to obtain the flexibility of flight scheduling that would result from operating between SAN and SJC via ONT and the resulting additional available seats in the SAN-SJC market.

Western's opposition stems from another circumstance. It does not provide service between SAN and SJC. It provides scheduled service between SAN and ONT. Western was a participant in Air California Application No. 53410, cited above, in which the Commission removed the closed door restriction of Air Cal between Ontario and Palm Springs. In that proceeding Western contended that Air Cal was attempting to obtain through the back door a certificated right to transport passengers between Palm Springs and Ontario. It pointed out that Air Cal had originally obtained a temporary authority to route Palm Springs traffic to northern California points via ONT rather than via SNA because of a temporary equipment problem and later had that temporary closed door authority made permanent without ever having made a showing that public convenience and necessity required its service between Palm Springs and Ontario. It is here concerned

that Air Cal will again utilize a route authorized for the purpose of carrier operating convenience for a foothold of obtaining a right to transport passengers between SAN and ONT. It points out that Air Cal presently has before the Commission Application No. 55011 requesting such authority.

The Commission has heretofore set forth the reasons why closed door routes ordinarily are not in the best interests of the public. In its brief the Commission staff has ably pointed out why the requested closed door authority should be denied to Air Cal and we quote a portion of that brief.

"The already noted Decisions 82036 and 82985, make it evident that only 'compelling reasons' are considered by the Commission to be adequate justification for the granting of closed-door rights. Air California has attempted to establish that the departure restrictions imposed at Orange County Airport, combined with an expected high level of summer passengers at that airport present a 'most urgent situation' sufficient to justify the granting of Ontario closed-door rights.

"The Staff does not agree. The Staff submits that compelling reasons (or a 'most urgent situation') do not exist when there are reasonable existing alternatives to a closed-door route. Moreover, the Staff submits that in order to rank as an acceptable solution to a claimed emergency, the available alternatives need not be shown to be necessarily a better remedy than the requested closed-door authority. As seems clear from recent decisions, closed-door authority is viewed as an unusual remedy, granted only when other solutions are not viable. Therefore, merely the presence of reasonable alternatives is sufficient to negate an attempted showing that compelling reasons exist."

As was pointed out by the staff and by protestants there are alternatives. The alternatives may not provide the best solution to the problem from Air Cal's point of view, but nevertheless they are alternatives. In its proposal Air Cal would reduce service between

SAN and SNA from four daily round trips to two. It asserts that such reduction in service will not adversely affect the public. We make no such finding nor is it necessary that we do so. Under existing regulations Air Cal is required only to provide the minimum service specified in its certificates of public convenience and necessity and the two daily round trips would meet that requirement. One alternative is to merely make that proposed reduction. Air Cal claims that this is not a viable alternative because it would reduce its offering of service between SAN and SJC so that it could not remain competitive with PSA for traffic between SAN and SJC. In light of the facts disclosed above with respect to the availability of seats for SAN-SJC/OAK traffic on those flights, any impairment of the ability of Air Cal to compete with PSA for that traffic would appear to result from its having to advertise that it would only have three round-trip flights daily between SAN and SJC rather than five. Assuming that the persons making advance bookings for those Air Cal flights between SAN and SJC would not utilize other flights of Air Cal and would shift to PSA flights, the amount of traffic that would be lost by Air Cal would be on the order of 19,000 passengers annually.

But there is a second alternative if Air Cal does not desire to reduce service between SAN and SJC. It could add an additional nonstop round trip between SAN and SJC. That one additional nonstop would provide 115 additional seats each way in that market to replace the 26 to 30 available seats each way on the two round trips it proposes to cancel. Air Cal asserts that while it intends to add nonstop flights in this market in the future, it believes that it is undesirable at this time because it would not be economical. It attributes that to the fact that it has not been able to penetrate the SAN-OAK market in competition with PSA. The staff points out, however, that if Air Cal is unable to penetrate the SAN-OAK market it could increase the on-board load factor on the SAN-SJC nonstop segment by routing the aircraft to Sacramento rather than to Oakland. That is another alternative.

PSA has pointed out a number of other alternatives, such as routing ONT-Bay Area traffic direct instead of via SNA or routing all traffic to Palm Springs either direct or via ONT instead of via SNA.

By reason of its recently granted authority to serve Lake Tahoe, Air Cal has obtained an additional Electra turbo-prop aircraft. If, as it contends, the departures of Electra aircraft are not included in the limitations imposed by the county of Orange, it can make use of that aircraft for flights between the Bay Area and SNA in between flights to Lake Tahoe.

The alternatives mentioned above which would reduce the number of present departures at SNA may not be as desirable to Air Cal as its proposal, nevertheless they are available and are reasonable alternatives. It may well be that the conduct of passenger air carrier operations between SAN and SJC/OAK via ONT would promote an orderly, efficient, economical, and healthy intrastate passenger network to the benefit of the people of this State, its communities, and the State itself and therefore be required by public convenience and necessity; that is an issue before the Commission in Application No. 55011. The operation of that route with a closed door between SAN and ONT would not be efficient or economical, particularly with respect to the usage of fuel.

Findings

1. Air Cal is a passenger air carrier authorized to conduct operations between certain points and over certain routes within California, among such points and routes are:

- Between SAN and SJC/OAK direct nonstop
- Between SAN and SJC/OAK via SNA
- Between ONT and SJC/OAK direct or via SNA
- Between PSP and SFO/SJC/OAK direct or nonstop
- Between PSP and SFO/SJC/OAK via SNA or ONT
- Between SNA and SFO/SJC/OAK direct
- Between SNA and SJC/OAK via ONT
- Between SNA and SAN
- Between SNA and SMF nonstop or via SJC
- Between SMF and SJC

2. By this application Air Cal seeks authority to operate between SAN and SJC/OAK via ONT with a closed door to traffic between SAN and ONT.

3. In its lease agreement with the county of Orange for operations at SNA, Air Cal is limited to the number of departures of jet aircraft at SNA to no more than 24.6 per day averaged over a 12-month period; and its departures have averaged at about that maximum.

4. Load factors of aircraft operating on route segments between SNA, on the one hand, and SFO, SJC, OAK, and SMF, on the other hand, have averaged between 70 and 80 percent with the more heavily traveled segment being SNA-SJC.

5. Air Cal anticipates an increase in traffic between SNA and northern California points. It desires to provide additional seats in those markets by substituting two scheduled round trips between SAN and SJC via ONT for two existing scheduled round trips between SAN and SJC via SNA, thereby reducing the number of departures at SNA by two which would permit it to schedule two additional flights from SNA to northern California points.

6. The operation by Air Cal's closed door between SAN and ONT would prevent passengers desiring transportation between those points from utilizing scheduled flights between the points resulting in an inefficient and uneconomical utilization of transportation and fuel resources.

7. There are reasonable alternatives by which Air Cal can increase the number of seats for traffic between SNA and northern California points without exceeding the 24.6 average daily departures at SNA.

8. Air Cal presently has before the Commission Application No. 55011 requesting a certificate of public convenience and necessity for additional routes, including authority to conduct passenger air carrier operations between SAN and ONT, which application has been heard and is under submission.

9. Public convenience and necessity do not require the operation by Air Cal between SAN and SJC via ONT with a closed door between SAN and ONT.

10. No emergency or urgency of conditions have been shown which would warrant the granting of temporary authority to Air Cal to route SAN-SJC traffic via ONT, with a closed door between SAN and ONT, pending decision in Application No. 55011.

Conclusions

1. The imposition of a closed door limitation on a route to be operated by an airline merely to satisfy the interest of the affected airlines may not necessarily coincide with the interest of the public. Regulation of passenger air carriers is not for the protection of the interests of the airlines but contemplates the establishment of an orderly, efficient, economical, and healthy intrastate passenger air network to the benefit of the people of this State, its communities, and the State itself. (Application of Swift Aire Lines (1973) Decision No. 82036 in Application No. 53861, mimeo page 14.)

2. Closed door restrictions conflict with the efficient and maximum utilization of fuel resources and unless compelling reasons are set forth showing why it would not be in the interest of the people, the communities, or the State, the public should be entitled to be transported between any points on any route operated by an airline. (Application of Air California (1974) Decision No. 82985 in Application No. 53410, mimeo page 11.)

3. An alternate routing with a closed door restriction requested to meet a specific operating problem is not justified where there are existing reasonable alternatives to a solution of that problem.

4. The application should be denied.

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O R D E R

IT IS ORDERED that Application No. 54878 is denied.

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

Dated at San Francisco, California, this 29th day of JULY, 1975.

I abstain
Leonard Ross

Commissioner

President

William J. ...

Vernon L. Sturgeon

Robert ...

Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.