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Decision No. 85787

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SWIFT AIRE LINES, INC., a California
Corporation, for a Certificate of
Public Convenience and Necessity to
operate as a passenger air carrier
between San Jose and Fresno, or in
the alternative, for an order,
pursuant to Section 2767 exempting
SWIFT AIRE LINES, INC., from the
certificate provisions of the
Public Utilities Code.

Application No. 54327

Application of MARIN AVIATION, INC.,
for a Certificate of Public
Convenience and Necessity.

Application No. 56095

ORDER GRANTING REHEARING AND
PARTIAL STAY OF
DECISION NO. 85517

By Decision No. 85517, dated March 2, 1976 we granted a temporary certificate of public convenience and necessity to Swift Aire Lines, Inc. (Swift), a California corporation, authorizing it to operate as a passenger air carrier between Fresno and San Jose pursuant to Application No. 54327 and consolidated said application with Application No. 56095, Marin Aviation, Inc. (Marin), filed November 28, 1975 to provide air carrier service over the same route.

On March 19, 1976 Marin filed a petition for rehearing of D. 85517. The petition for rehearing was not filed in sufficient time to stay D. 85517. Having considered each and every allegation set forth in said petition, we find that good cause has been shown to grant rehearing of Decision No. 85517.

The petition for rehearing by Marin herein is tantamount to a formal objection of a person or party possessing standing to object pursuant to Section 2754 of the Public Utilities Code. Therefore we can not issue a temporary or permanent certificate without a hearing with respect to the applications herein. We have previously held that the issuance of a temporary certificate to one applicant under Public Utilities Code Section 2754 is not justified when competitive applications and protests have been made. Decision No. 75015, A. 50261, A. 50381, and A. 50438 Pacific Southwest Airlines 69 Cal. PUC 147 (1968). Compare Ashbacker Radio Corp. v. FCC 326 US 327, 90 Law Ed. 108; (1945) Delta Airlines v. CAB 228 Fed 2d 17, 21 (1955).

Accordingly, we will on our own motion stay Ordering Paragraphs 1 and 2 of Decision No. 85517 until further order of the Commission.

IT IS ORDERED:

(1) Rehearing of Decision No. 85517 is hereby granted, said rehearing to be held as part of the further hearing on a consolidated record pursuant to Ordering Paragraph 3 of Decision No. 85517. Said rehearing and further hearing on a consolidated record shall be held before Commissioner Symons and/or Examiner Daly on July 15 and 16, 1976, in a Commission Courtroom, State Building, 350 McAllister Street, San Francisco, California, at 10:00 a.m.

(2) Ordering Paragraphs 1 and 2 of Decision No. 85517 are hereby stayed until further order of the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California this 14th day of MAY, 1976.

I abstain

[Signature] Commissioner

President

[Signature]

[Signature]

[Signature]

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