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Decision No. 87056

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AIR CALIFORNIA, a California corporation, for the removal of restriction "b" from its existing Certificate of Public Convenience and Necessity permitting AIR CALIFORNIA to carry passengers between San Francisco International Airport and Oakland International Airport.

Application No. 55777  
(Filed June 30, 1975)

(Appearances are listed in Appendix B.)

O P I N I O N

Air California (Air Cal) seeks a new route between San Francisco and Oakland or, in the alternative, removal of restriction "b" from its existing certificate of public convenience and necessity which prohibits it from carrying local passengers between San Francisco International Airport (SFO) and Oakland International Airport (OAK). Air Cal operates between those points as part of Routes 1 and 5 of its existing certificate.

On September 21, 1976, Air Cal filed its Petition for Immediate Ex Parte Relief. That petition alleges that the Commission had delayed any action on Application No. 55777 because of a protest filed by SFO Helicopter Airline, Inc. (SFO Helicopter), and that SFO Helicopter had terminated operations between SFO and OAK.

Air Cal's application was consolidated for hearing with other applications seeking to provide air passenger service between SFO and OAK.<sup>1/</sup> Public hearing was held before Examiner Mallory at San Francisco on November 23 and 24, 1976 and January 4, 5, 6, and 7, 1977. The matters were continued to February 28, 1977.

The Commission takes official notice of Orders 76-11-52 and 76-12-128 of the Federal Civil Aeronautics Board (CAB) adopted November 9, 1976 and December 22, 1976 in Dockets 29936, 29937, and 25637.<sup>2/</sup> Among other things, those orders terminated the certificate of public convenience and necessity issued to SFO Helicopter for CAB Route 103; denied the transfer of that certificate to Cal-Tex Helicopter Airlines; and granted approval of the purchase of SFO Helicopter's aircraft by British Airways.

Applicants, other than Air Cal and Pacific Seaboard Airlines, Inc. (Pacific Seaboard), operate under the air-taxi exemption from CAB certificate requirements. Those applicants maintain joint interstate fares with CAB certificated airlines, under

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1/ The applications consolidated for hearing are the following:

- A.55777 - Air California
- A.56744 - Marin Aviation, Inc., dba California Commuter Airline
- A.56757 - Stol Air, Inc.
- A.56767 - W. L. Murphy and H. C. Murphy, dba Yosemite Airlines
- A.56773 - Eureka Aero Industries, Inc.
- A.56814 - Pacific Seaboard Airlines, Inc.

2/ Docket 29936 is the application of SFO Helicopter for temporary suspension of service on Route 103; Docket 29937 is the joint application of British Airways Helicopters, Ltd. and SFO Helicopter for approval of aircraft purchase transaction; and Docket 25637 is the joint application of SFO Helicopter, Trans World Airlines, Inc., and United Aircraft Corporation pursuant to Section 408 of the Federal Aviation Act of 1958.

which the local airlines receive a portion of the trunk-line carriers' fares. Such applicants cannot commence operation over a route operated by a CAB certificated airline without losing their air-taxi exemption. Air Cal operates only in intrastate service within California, and, thus, is not subject to CAB jurisdiction.

Evidence in the consolidated hearings was presented by each of the applicants, by officials of the Port of Oakland (operator of OAK) and the city and county of San Francisco (operator of SFO), by a representative of the Federal Aviation Administration (FAA), by the Commission staff, and by Marin County protestants to Pacific Seaboard's proposed helicopter operations between a heliport on Richardson Bay and SFO.

The operators of SFO and OAK testified that terminal and counter space is limited at those airports and neither airport is in a position to accommodate new third-level airline operations. Air Cal now has counter and terminal space at both airports. Other applicants (except Pacific Seaboard) operate only from one of the two airports and would need to acquire counter and terminal space at the other airport. Pacific Seaboard has no current operations.

A representative of the FAA's Bay Air Traffic Terminal Radar Control Facility (BAY TRACON) testified that if the Commission authorizes the total number of transbay flights proposed to be operated by the fixed-wing applicants (other than Air Cal), all flights from and to SFO and OAK would be delayed in inclement weather. Air Cal proposes no additional flights; the service proposed by Air Cal would be performed with equipment operated between SFO and OAK on routes now subject to a "closed door" restriction.

The Commission staff objected to the granting of a new route to Air Cal. The staff report reads, in part, as follows:

"Air California does not plan to offer turnaround service on a scheduled basis. It wants authority to carry local passengers while ferrying aircraft from San Francisco to its maintenance base in Oakland and does not want to be precluded from offering a single segment flight once or twice a year.

"Authorizing the carrier to carry local passengers on the routes it is presently authorized to fly would meet an existing need to travel between the two airports and increase the carrier's load factor and profitability.

"Granting a new route, however, may provide a service between other points not presently authorized under Air California's CPCN under the tacking provisions of Section 2762 of the Public Utilities Code. Section 2762 reads:

'Unless prohibited by the terms and conditions of any certificate that may be involved, any one passenger air carrier may establish through routes and rates, charges and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it.'

". . . The interpretation of Section 2762 is to be the subject of briefs to be filed in Application 56566 (the Fresno-San Jose Application).

"Decision 83476 dated September 17, 1976 in Application 54511 recognized the possibility of tacking when it removed Air California 'closed door' restriction between San Jose and Oakland. Deletion of Restriction 'b' would be the best way to accomplish the same result in the application.

"In addition, the proposed limited use does not warrant a separate route."

Other applicants also oppose the granting of a new route to Air Cal and indicated that evidence in opposition thereto may be adduced at subsequent hearings.

At the hearing on January 7, 1977, Air Cal moved that an order be issued authorizing the removal of restriction "b" in its present certificate, which would permit it to carry passengers between SFO and OAK without creating a new route between those termini. Other applicants and the staff had no objection to the removal of restriction "b".

Discussion

There is no opposition to removal of restriction "b" in Air Cal's present certificate. Air Cal now operates between SFO and OAK in connection with its Routes 1 and 5. Because restriction "b" requires closed-door operations between SFO and OAK, no local passengers between those points may be transported. Removal of the closed-door restriction would provide the only air passenger service between SFO and OAK. Inasmuch as Air Cal now operates at SFO and at OAK, the proposed service would place no additional burden on air traffic control facilities.

The issues concerning interpretation of the tacking provisions of Section 2762 of the Passenger Air Carriers' Act will be decided in other route proceedings nearing decision.

The relief requested by Air Cal should be granted.

Findings

1. Air Cal operates as a passenger air carrier under a certificate of public convenience and necessity issued by this Commission.
2. Routes 1 and 5 of that certificate authorize operations between SFO and OAK, but provide that no local passengers may be carried between SFO and OAK.
3. Air Cal seeks a certificate to provide service between SFO and OAK. Other applicants for service between SFO and OAK oppose the granting of that certificate, but such parties have no objection

to the removal of restriction "b" to the certificate which would permit local service between SFO and OAK in connection with operations over Air Cal's Routes 1 and 5.

4. SFO Helicopter, the only air carrier providing service between SFO and OAK, has ceased operations and the certificate issued to that carrier by the CAB has been revoked. Public convenience and necessity require the immediate commencement of air passenger service between SFO and OAK.

5. Air Cal has adequate terminal facilities and counter space at SFO and OAK, the necessary aircraft and personnel, and the financial ability to commence the proposed service.

6. Public convenience and necessity require the operation of air passenger service between SFO and OAK by Air Cal.

7. The removal of the restriction in Air Cal's certificate against transportation of local passengers between SFO and OAK will cause no additional flights to be flown by Air Cal between said points. Therefore, no added burden will be placed on air traffic control facilities in the San Francisco Bay Area.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

#### Conclusions

1. Air Cal's certificate should be restated to show the removal of restriction "b".

2. The effective date of this order should be the date on which it is signed because public convenience requires the prompt commencement of the proposed service.

#### 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 between San Francisco and Oakland, as defined in Section 2741 of the Public Utilities Code. Appendix A of Decision No. 80439 is amended by incorporating Sixth Revised Page 5, attached hereto, in revision of Fifth Revised Page 5.

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.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 9th  
day of MARCH, 1977.

Robert B. Brown  
President

Leonard P. Brown  
Commissioner

Richard D. Brown  
Commissioners

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



RESTRICTIONS

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

- a. Deleted.
- b. Deleted.
- c. San Francisco International Airport/Oakland International Airport - Sacramento 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.

Issued by California Public Utilities Commission.

Revised by Decision No. 87056, Application No. 55777.

APPENDIX B

LIST OF APPEARANCES

Applicant: Graham & James, by Boris H. Lakusta and David J. Marchant, Attorneys at Law, and Frederick R. Davis, for Air California.

Applicants in Consolidated Proceedings: W. J. Connolly and Neil A. Grosman, for Stol Air Inc.; Helen C. Murphy, for Yosemite Airlines; Joe McClaran, Attorney at Law, and John J. Flynn, for Eureka Aero Industries, Inc.; Jack Robertson, Attorney at Law, and Richard T. Duste, for Marin Aviation, Inc., doing business as California Air Commuter; and Wallace S. Fingerett, Attorney at Law, and Stephen Ellis, for Pacific Seaboard Airlines, Inc.

Protestants in Application No. 56814: Joseph R. Parker, Attorney at Law, and William Rothman, for themselves; and Carol W. Fetterman and J. Martin Rosse, for Strawberry Area Community Council.

Interested Parties: John E. Nolan, Attorney at Law, for Port of Oakland; James B. Brasil and David Kroopnick, Deputy City Attorneys, for City and County of San Francisco; Richard C. Lovorn, for SFO Helicopter Airlines, Inc.; Kenneth C. Nagel, Attorney at Law, and R. L. Kuhn, for Cal-Tex Helicopter Airlines; Kenneth D. Taylor, for DeHavilland Aircraft of Canada; Vincent J. Mellone and Brian E. Hauf, for Federal Aviation Administration, Bay Air Traffic Terminal Radar Control Facility (BAY TRACON); and Donald F. Morrissey, for Loomis Courier Service, Inc.

Commission Staff: Thomas F. Grant, Attorney at Law.