

ORIGINAL

Decision No. 87092

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
AIR SURFACE ASSOCIATES, a California
corporation, for a Certificate of
Public Convenience and Necessity to
Operate as a Highway Common Carrier.

Application No. 56045
(Filed November 3, 1975)

In the Matter of the Application of
PACIFIC SOUTHWEST AIRLINES, a
California corporation, for a
Certificate of Public Convenience and
Necessity to Operate as an "Express
Corporation" of General Commodities
Between Points in the State of
California.

Application No. 56571
(Filed June 18, 1976;
amended June 22, 1976)

Loughran & Hegarty, by Edward J. Hegarty, Attorney
at Law, for Air Surface Associates; and Brownell
Merrell, Jr., Attorney at Law, for Pacific
Southwest Airlines; applicants.

Russell, Schureman, Fritze & Hancock, by Carl H. Fritze,
Attorney at Law, for City Freight Lines, protestant
in A.56045 and interested party in A.56571.

Robert Schafer and Richard W. Smith, Attorneys at Law,
and H. Hughes, for California Trucking Association;
and Joseph MacDonald, for California Motor Express;
protestants.

Graham & James, by Boris H. Lakusta and Jerome J. Suich,
Attorneys at Law, for Air California, interested
party.

William J. Jennings, Attorney at Law, and Geoffrey W.
Meloche, for the Commission staff.

O P I N I O N

These applications were heard on a common record before
Examiner Mallory in San Francisco on July 27 and 28, 1976, and the
matters were submitted upon receipt of closing briefs on October 15,
1976.

Air Surface Associates (ASA), a corporation, performs local pickup and delivery of air freight shipments transported by Pacific Southwest Airlines (PSA) within a radius of approximately 50 air miles of airports served by PSA. In Application No. 56045 ASA seeks a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities having a prior or subsequent movement by air, in intra-state commerce, within a radius of 50 air miles of the following airports: Hollywood-Burbank, Fresno, Los Angeles International, Long Beach, Oakland, Ontario, Sacramento, San Diego, San Francisco International, San Jose, Stockton, and Lake Tahoe. During the course of the hearing ASA restricted its application to include a request to transport only individual shipments or pieces not exceeding 100 pounds, with the understanding that while no single piece could exceed 100 pounds, multiple, or aggregated shipments exceeding 100 pounds could be handled. ASA also seeks an order exempting it from minimum rates similar to the exemption orders currently authorized for other courier-air parcel carriers operating in California.

PSA operates as a passenger air carrier, and transports passengers and air freight between all of the airport locations described in the preceding paragraph. PSA and ASA jointly provide a through transportation service under separate freight bills for the combined surface and air transportation of general commodities between shippers and receivers located in the vicinity of airports served by PSA. In Application No. 56571, as amended, PSA seeks a certificate of public convenience and necessity to operate as an express corporation to transport general commodities over the lines of surface common carriers and by air between points within a radius of 50 air miles of the 12 airports now served by PSA as a passenger air carrier. As an express corporation, PSA would transport surface-air freight shipments under through rates with

single carrier responsibility. PSA has urged in prior proceedings before this Commission that it is not a common carrier or a public utility as those terms are defined in Division 1 of the Public Utilities Code.^{1/} In the application herein, it seeks the following alternative relief: (a) a finding that its projected express corporation activities are so de minimis as not to subject it to public utility status, or (b) an exemption from any provision of the Public Utilities Act that might apply to PSA's non-express corporation activities solely by virtue of accepting a certificate as an express corporation.^{2/} The application states that PSA proposes to assess as through rates, rates approximately on a level equal to the combination of PSA's present air freight rates and surface rates on the level of the small shipment charges in Item 149 of Minimum Rate Tariff 2 (MRT 2) or Minimum Rate Tariff 9-B (MRT 9-B). However, PSA seeks exemption from the provisions of those tariffs in connection with its proposed express corporation operations.

Protestant California Trucking Association (CTA) opposes the granting of exemption from minimum rates for the proposed operations of ASA and/or PSA, and contends that the proposed operations of PSA are not those of an express corporation as defined in the

^{1/} The terms "common carrier" and "public utility" as defined in Sections 211(a) and 216(a), respectively, of Division 1 of the Public Utilities Code, include "express corporation" as defined in Section 219.

^{2/} The amendment to the application cites Decision No. 80890 in Application No. 53633, wherein PSA was granted an exemption from Sections 816 through 852 of the Public Utilities Act.

Code.^{3/} PSA, in its closing brief, asks that the Commission take official notice that PSA's application herein was filed subsequent to a letter dated March 8, 1976 to PSA from the Executive Director of the Commission directing PSA to cease performing the operations proposed herein, i.e., a joint through service with ASA, until PSA had obtained "proper operating authority".^{4/} PSA contends that the operations proposed by it in conjunction with ASA do not come within the provisions of any other codified definitional provisions relating to public utilities, common carriers, or passenger air carriers. PSA argues that if the Commission should adopt the arguments of CTA, the Commission must then come to the unavoidable conclusion that PSA's proposed activities are not subject to Commission jurisdiction and that such operations may be offered to the public without the burden of regulation. PSA has no objection to such a finding.

Protestant City Freight Lines (City) urges that the proposed operations of ASA do not fit within the statutory

^{3/} Section 219 of the Public Utilities Code reads as follows:
"219. 'Express corporation' includes every corporation or person engaged in or transacting the business of transporting any freight, merchandise, or other property for compensation on the line of any common carrier or stage or auto stage line within this State."

^{4/} Official notice is taken of the letter in question. No brief was filed by the staff nor explanation made on the record of the rationale that an express corporation certificate is required by PSA for door-to-door air freight service.

definition of a highway common carrier,^{5/} because ASA will use so-called contracting carriers to perform some of the proposed transportation and because ASA will not operate between fixed termini or over a regular route. City also urges that no showing of public convenience and necessity was made by ASA in support of its application. City operates as a highway common carrier in the Los Angeles Basin area, and performs surface transportation in that area in connection with air freight shipments having prior or subsequent air transportation in interstate commerce.

5/ Section 213 of the Public Utilities Code reads as follows:

"213. 'Highway common carrier' means every corporation or person owning, controlling, operating, or managing any auto truck, or other self-propelled vehicle not operated upon rails, used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route, except passenger stage corporations transporting baggage and express upon passenger vehicles incidental to the transportation of passengers.

"'Highway common carrier' does not include any such corporation or person while operating within lawfully established pickup and delivery limits of a common carrier in the performance for such carrier of transfer, pickup, or delivery services provided for in the lawfully published tariffs of such carrier insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any city or three miles from the post office of any unincorporated point."

Evidence in Support of ASA Application

ASA's president, who is also the president of All American Cab doing business as American Parcel Express, Huntington Park, was the principal operating witness presented by ASA. The witness testified substantially as follows.

ASA was incorporated in 1971 expressly for the purpose of providing surface transportation for air cargo shipments handled by PSA. Its shareholders are permitted carriers (one shareholder is a certificated carrier) each conducting an individual motor carrier business in an area of one or more airport cities served by PSA. The purpose of incorporating ASA was to organize and coordinate the operations of each of the individual carriers into one entity for the purpose of providing local pickup service for shipments destined to airports and local delivery service of shipments from airports served by PSA.

At the time of hearing shareholders of ASA provided such pickup and/or delivery service at airports located at Hollywood-Burbank, Los Angeles, Long Beach, Oakland, Sacramento, San Diego, San Francisco, and San Jose. At the airports in Fresno, Ontario, Stockton, and Lake Tahoe, surface pickup and/or delivery operations were not provided by shareholders of ASA, but such operations were by other permit carriers as agents of ASA.

Since the inception of ASA's operations, shipments are picked up from consignors by the appropriate ASA shareholder or agent, taken to PSA's airport facility for movement in PSA's air freight service, and then delivered to the consignee destination subsequent to movement in PSA's air freight service. Other types of movement include (1) origin door to destination airport, at which point consignee itself, or through its designated trucker, provides delivery service, or (2) origin airport to consignee destination in the case where the consignor itself, or through its trucker, accomplishes the pickup and tenders the freight to PSA for air movement and ASA delivery.

Exhibit 1 demonstrates the scope and type of service ASA has been providing. That exhibit is an abstract of all shipments transported by ASA at each of the airport cities for five representative days during the period from May 3, 1976 to July 2, 1976. During these five days ASA handled approximately 1,000 shipments. Traffic was handled at each of the twelve airport areas except Lake Tahoe where both the air service of PSA and the ASA operator are new. A wide range of commodities including film, printed matter, numerous parts and instruments, clothing, electronics, lab specimens, data processing materials, art work, castings, mail, glass, pulleys, hardware, tubes, and hundreds of other general commodity items were handled. By relating the origin or destination city to the airport to or from which the shipment moved, it was shown by Exhibit 1 that the requested 50-mile radius from each airport reflects actual service which has been provided. ASA has established zones related to distance from the airport. For example, Zone A is the area within 15 miles of the airport, Zone B, 25 miles, Zone C, 35 miles, and Zone D, 45 miles. Beyond 45 miles the shipment is rated as an "SP" or special. The testimony indicated that some 80 percent of all shipments move within Zones A and B (within 25 miles); however, some 15 percent moved in a 35- to 50-mile zone to or from the airport served. Generally the shipments handled by ASA fall in the 100-pound or less category.

Evidence was received regarding each operator within the ASA corporate structure. Each operates a taxicab business along with a small parcel freight service. Each operates radio dispatched equipment on a 7-day-a-week, 24-hour-a-day basis. The service here in question is performed principally with small vans suitable for the handling of parcel or courier type shipments. From one to forty-three vans are operated in performing the ASA service, depending on the volume of business available at a particular airport or

combination of airports served by each operator. The operators each maintain terminal and office facilities in close proximity to the involved airports. In the aggregate, the operators of ASA employ over 1,000 people, operate approximately 775 vehicles, and gross approximately \$14 million annually in their combined taxicab and parcel delivery businesses. Of this total, approximately 100 people and 100 vans are utilized and \$500,000 in revenue is derived from air parcel business, principally in connection with PSA. The evidence shows that in 1972, the first full year of operation, the ASA individual operators derived \$238,139 in gross revenue. In 1975 the gross revenue of the ASA operation doubled to \$473,030.

The witness testified that ASA was formed to handle the type of business described in Exhibit 1, and originally secured a radial highway common carrier permit to accomplish the surface transportation. There appeared to ASA, however, that there is no applicable statutory provision which clearly permits the contemplated service. Therefore, upon advice of counsel and the Commission staff, each shipment handled by PSA-ASA since the inception of service in 1971 has involved the preparation of individual freight bills by PSA covering the air movement, and, by the ASA operators, in their individual carrier status, covering the surface pickup and/or delivery service. The witness stated that upon a grant of its application, ASA would continue the same basic operation as it has provided in the past except that ASA would be the carrier utilized rather than individual stockholders. ASA, in turn, would contract with each of the present operators to act as subhaulers to provide the underlying transportation. ASA would bill PSA for its service and, upon collection, pay its subhaulers an agreed upon division of the ASA revenue. While ASA at this time does not propose to own vehicles, it will manage and control the vehicles of

its subhaulers by specific subhaul agreements. Although all of the ASA service in the past has been in connection with shipments handled by PSA, ASA has processed its application independently from PSA, and ASA seeks authority to handle traffic completely unconnected with PSA.

ASA submitted a proposed rate schedule which it would file in tariff form to cover surface transportation for shipments not moving on a through, door-to-door basis in connection with PSA. This rate proposal, contained in Exhibit 5, adopts a simplified rate schedule which, purportedly, is aimed at making ASA competitive with the courier and small parcel carriers with which it now competes. That rate proposal does not, however, conform to applicable minimum rate tariffs and, for this reason, an exemption from the provisions of those tariffs is required and is requested in this proceeding.

Public Witness Testimony in ASA Application

The application is supported by five shippers who collectively utilize the ASA-PSA service between all airport areas requested, except Lake Tahoe.

Health Application Systems (Health) is located in Burlingame with additional facilities in San Diego, Los Angeles, and Sacramento. A witness appearing for Health testified that approximately 15 times per month Health ships computer magnetic tapes and computer records ranging in weight up to 50 pounds between its California facilities. It uses ASA so it can obtain "rush" or "same-day service." Pickups are provided within a half an hour from call for pickup. The witness stated that although Health has a contract with Loomis Courier Service for most of its computer freight, it often uses ASA in preference to Loomis because of the necessity for same-day service. The witness testified Health receives origin to destination service between its facilities at Burlingame, Los Angeles, San Diego, or Sacramento in less than three hours and that no other such expeditious service is available in California.

Channel 100, Inc. is located in El Cajon and ships video tapes utilizing the combination ASA-PSA service. A witness for that company testified that while Channel 100, Inc. normally uses United Parcel Service, when time-in-transit is important it uses ASA-PSA. Shipments are made by ASA-PSA from El Cajon to Stockton and Concord on a frequency of about once per week. These shipments each weigh approximately 20 pounds. On an occasional basis shipments are returned by ASA-PSA from these points to El Cajon and also from Los Angeles to El Cajon. In addition, shipments from El Cajon to Los Angeles occur about twice per month. The ASA-PSA combination service provides same day delivery for Channel 100, Inc. Late-night deliveries are sometimes required and ASA has provided this service as late as 1:00 a.m. The witness stated that ASA service has always been available immediately upon request and Channel 100, Inc. supports the continuation of this service by a grant of this application.

Gray, Cary, Ames and Frye (GCA&F) is a San Diego law firm. It uses the ASA-PSA service to transport various materials, documents and exhibits from San Diego to San Francisco, Los Angeles and Sacramento. The witness for GCA&F testified that it is critical that these shipments are delivered on a timely basis. The ASA-PSA service has been used for the past four or five years and normally door-to-door, same-day delivery service is required. The witness indicated that ASA-PSA service has never resulted in a complaint and a shipment has never been lost. The weight range of these shipments is from one to fifteen pounds. GCA&F supports these applications because it feels there is a need for the service proposed.

Shappel Industries has offices in Beverly Hills, San Diego, Sunnyvale, and Sacramento. Shappel's witness testified that it ships printed matter and computer reports with a frequency of about 10 shipments a week via ASA-PSA between all its California offices. Shipments average 15 or 20 pounds each but some shipments weigh as

much as 100 pounds. The witness stated that Shappel uses ASA-PSA service to meet emergency shipping needs and supports these applications to continue this service at the same level as it is presently used.

The witness appearing for Fresno Community Hospital testified that the hospital receives radioactive isotopes from Los Angeles or the San Francisco area. ASA-PSA handles three to four shipments per week and provides same-day service. This is of critical importance since these isotopes are for the purpose of medical testing and have a short "half-life," of six to thirteen hours. Surface transportation does not meet the need for same-day service. ASA-PSA service has been used for about three years and Fresno Community Hospital is satisfied with the service and requires its continuance for up to 16 air shipments a month.

Protestant's Evidence in ASA Application

ASA's application is opposed by City. The evidence of City was received by stipulation. City holds a certificate of public convenience and necessity and provides a service in the transportation of general commodities, including interstate air freight shipments, along U.S. Highway 101 from San Diego to San Luis Obispo with principal operations in the Los Angeles Basin. As here pertinent, City is capable of providing surface transportation for air shipments moving to or from airports located at San Diego, Long Beach, Los Angeles, Hollywood-Burbank, and a portion of a 50-mile radius of the Ontario Airport. As here pertinent, all of City's terminals are located in the Los Angeles Basin. According to the stipulation, all of its equipment is also located in the Basin territory. City has no certificated operations comparable to ASA's requested authority to provide service within a 50-mile radius of airports located at San Francisco, Oakland, San Jose, Sacramento, Fresno, Stockton, or Lake Tahoe.

City apparently publishes an interstate air freight tariff covering its operations but it publishes no equivalent tariff covering intrastate movement of air freight. City introduced no evidence demonstrating any past or present participation in the surface transportation of intrastate air freight shipments.

California Trucking Association (CTA) introduced no evidence in connection with ASA's application.

PSA's Application

The director of cargo of PSA testified on behalf of PSA and presented documentary evidence consisting of PSA air freight bills showing a prior or subsequent surface movement by ASA (Exhibit 1), a summary of ASA transactions with PSA for the month of June 1976 (Exhibit 2), the total air freight station revenue of PSA for the month of June 1976 (Exhibit 3), air cargo delivery areas based on a survey of December 1975 deliveries (Exhibit 4), a comparison of revenues and expenses of PSA's air freight operations for the year ended April 30, 1976 to show that such operations are compensatory (Exhibit 5) and a Western Airlines Inc. (WAL) advertisement in the Wall Street Journal indicating that WAL offers through door-to-door service in connection with motor carriers in interstate commerce.

Exhibit 1 shows the manner in which billing is currently made on PSA air freight shipments when ASA performs pickup and/or delivery. The exhibit shows that separate bills are cut by ASA and PSA and that the ASA bill contains reference to the air bill number.

Exhibit 2 shows that PSA had 4,019 air freight transactions in June 1976 on which ASA performed surface transportation to or from the consignee or consignor and the airport. PSA's estimated revenue on such shipments was \$32,754.85. Exhibit 3 shows that in June 1976 PSA had total air freight revenue of \$244,950.84 and the proportion that ASA's transactions (\$32,754.85) bears to that total is 13 percent.

Exhibit 4 shows that most pickups and deliveries are made from or to points within 30 miles of the airports served by PSA. For example at LAX 5 percent are over 30 miles, at HWB, 8 percent are over 30 miles, and at SFO, 3 percent are over 30 miles.

In Exhibit 5, the witness allocated the direct expenses associated with performance of air freight operations and compared that summation with the revenue from air cargo (excluding over-the-counter air freight revenues) for the year ended April 30, 1976. That comparison shows total revenues of \$2,735,000, total direct expenses of \$1,571,000, and an excess of revenue over direct expenses \$1,164,000.

Position of Protestants Concerning ASA's Application

City contends that the proposed operations of ASA are not common carrier operations, inasmuch as ASA proposes nothing that would fit in the statutory definition of highway common carrier (Footnote 5, infra), in that ASA does not propose to operate any motor vehicles of its own and would not operate between fixed termini and over a regular route. City contends that all ASA proposes is to act as an underlying carrier for an express corporation.

City also contends that the showing of public convenience and necessity made by ASA is weak at best, and the showing was limited solely to operations in conjunction with PSA. City urges that if any authority is granted, it should be limited to services performed as an underlying carrier for PSA.

City strongly challenges the application of ASA because subhaulers, either stockholders or agents, will actually perform the transportation, and the necessary equipment and personnel will not be directly in the control of the corporation.

CTA contends that ASA's proposed rates, in total, are below the level of the minimum rates established by the Commission for highway carriers, that such rates contain long- and short-haul

violations (Section 460 of the Public Utilities Code) and do not fully cover all operating costs experienced by ASA. CTA moved that should the Commission grant a certificate of public convenience and necessity in Application No. 56045 of ASA, the rates authorized be no lower than the rates and charges in Minimum Rate Tariffs 1-B, 2, and 9-B unless and until applicant makes an affirmative showing under the provision of Sections 451-454 of the Public Utilities Code that the rates are just, reasonable, and nondiscriminatory.

Position of Protestant CTA with
Respect to PSA Application

CTA contends that PSA is a common carrier by air of passengers and freight, and as such is a public utility within the generally accepted meaning of that term and contemplation of the Constitution of the State of California (People v Western Air Lines Inc., et al. (1954) 42 Cal 2d 621).^{6/} For that reason CTA contends that the proposed express corporation operations are those of a public utility as defined in the Public Utilities Code and the Commission may not declare that an express corporation's operations are not those of a public utility on any basis, particularly not on the basis that the expected revenue from such express corporation operations are de minimis to PSA's total revenues. CTA also argues that once ownership or control over a public utility operation is established, the entity exercising such control is a public utility (Westgate-California Corp. (1971) 72 CPUC 26, 38, citing Key System Transit Lines (1953) 53 CPUC 687, 689).

^{6/} The operation as an air carrier of freight does not require a certificate and is regulated under the Commission's general authority to regulate common carrier transportation (Golden West Airlines (1968) 67 CPUC 770, 783). Operations may be commenced by the filing of a tariff with the Commission.

CTA contends that PSA's proposed operations are not those of an express corporation because they do not fit the definition of express corporation as heretofore construed by the Commission. CTA states that express corporations operate over the lines of other common carriers, except for pickup and delivery service, the limits of which do not include territory in excess of three miles from the corporate limits of any city or from the post office on an unincorporated point (Loomis Courier Service, Inc. (1973) 75 CPUC 440, 448). Where express corporations conduct air-ground operations in excess of such three-mile limit, it is necessary that surface operations be conducted by a common carrier. (Ibid.)

CTA moved that Application No. 56571 of PSA be denied on the ground that it contemplates unlawful operations; violates Sections 211, 216, and 219 of the Public Utilities Code; has not exhibited public convenience and necessity, in that applicant has not offered any public support for its proposed operation; and does not offer the means for parties to determine the charges for its proposed operation.

Issues

The issues in this proceeding:

1. What operative right(s) are required by PSA and ASA?
 - a. To continue the operations now performed, and
 - b. To provide the operations proposed to be conducted in the applications herein.
2. Do public convenience and necessity require the proposed operations of ASA as a highway common carrier and PSA as an express corporation (if those operative rights are required)?
3. If additional operative rights are granted to ASA and/or PSA should operations under such additional rights be exempt from minimum rates?

Are Additional Operative Rights Needed?

The Commission has expressed in various types of operative right proceedings that it will not impose on regulated carriers burdensome entry requirements that are costly and unnecessary, particularly requirements that are not necessary to achieve its major regulatory goals and policies. A major goal of the Commission is the elimination of unnecessary regulation that impedes the operation of free market forces that encourage carriers to operate more effectively and efficiently than is now possible.

In line with the goals enunciated above, we should not impose on these applicants any additional regulation that is not absolutely required. The statutes administered by this Commission require that ASA obtain a certificate of public convenience and necessity as a highway common carrier because (a) within the scope of its present operations ASA is providing service to the public generally over regular routes within the air freight pickup and delivery zones of the airports it serves, and (b) ASA has unequivocally dedicated its services to the public with respect to such operations (Talsky v P.U.C. (1961) 56 C 2d 151). Moreover, such a certificate is required by ASA so that it may establish intermodal through routes and/or joint rates with other common carriers pursuant to Sections 486, 556, 559, and 732 of the Public Utilities Code.

The granting of ASA's application is required by the statutes administered by the Commission and does not impose an additional burden on ASA or the portion of the public that it serves which is not absolutely required by said statutes.

PSA's application for an express corporation certificate should be denied because the proposed express corporation operative right is not required. PSA and ASA may continue to conduct operations in precisely the same manner that such operations have been conducted in the past since ASA is being granted a highway common carrier certificate.

Denial of PSA's application will not adversely affect PSA. It can continue its operations as an air freight carrier without becoming subject to Division 1 of the Public Utilities Code, thus we need not resolve whether PSA should be exempted from any part of Division 1 in continuing its freight operations. As indicated in its pleading and argument, PSA is a reluctant applicant, having filed for an express certificate at the behest of the Commission staff. PSA seeks to continue the present surface-air freight operations without additional regulatory controls.

The record shows that ASA and PSA have established a through route for the movement of air freight shipments requiring a prior or subsequent surface movement. ASA and PSA may establish joint through rates for the transportation in question pursuant to Sections 486 and 732 of the Code.^{7/} Section 486 provides that if no joint rate over a through route has been established, the schedules of the several (common) carriers in such through route shall show the separately established rates, fares, charges, and classifications applicable to the through transportation. Upon commencing operations as a highway common carrier, ASA lawfully may establish a through route and through rates with PSA under the provisions of Section 486.

7/ The Public Utilities Code sections read as follows:

"486. Every common carrier shall file with the commission and shall print and keep open to the public inspection schedule showing the rates, fares, charges, and classifications for the transportation between termini within this State of persons and property from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate has been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges, and classifications applicable to the through transportation." (Underscoring supplied.)

"732. Whenever the commission, after a hearing finds that the rates, fares, or charges in force over two or more common carriers, between any two points in this State, are unjust, unreasonable, or excessive, or that no satisfactory through route or joint rate, fare, or charge exists between such points, and that the public convenience and necessity demand the establishment of such a through route and joint rate, fare or charge, the commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare, or charge which will be fair, just, reasonable, and sufficient, to be charged and collected in the future, and the terms and conditions under which such through route shall be operated. The commission may order that freight moving between such points shall be carried by the common carriers participating in such through route and joint rate, without being transferred from the originating cars."

Discussion of Issues of Public Convenience
and Necessity in ASA Application

The record shows that PSA had conducted airport-to-airport air freight operations for several years before ASA was formed to perform surface transportation in connection with PSA's air freight operations.

The record shows that the surface transportation service performed by ASA in conjunction with the air freight services of PSA serves a wide public need; that no other single carrier had the organization or resources to provide such integrated surface-air transportation at the time ASA was organized; and that ASA's stockholders will continue to make available to ASA the equipment, personnel, facilities, and financial resources necessary to perform the highway common carrier operations proposed herein in essentially the same manner that such facilities have been furnished in the past.

City argued, albeit weakly, that public convenience and necessity was not shown by ASA, that the Commission cannot grant an "area" or "zone" type certificate, and that the proposed operative right should be denied because existing certificated carriers can perform the proposed service. Exhibit 1 amply demonstrates the scope and frequency of service performed by ASA, Exhibit 3 shows the

growth in revenues at each airport service area from March 1971 through May 1976, and public witness testimony shows that the expedited services ordinarily performed by ASA members are not offered by other carriers. The Commission has granted numerous "area" or "zone" type certificates to highway common carriers operating in the San Francisco Bay Cartage Zone and the Los Angeles Basin Area. The record is clear that the type of service offered by ASA is not regularly offered by other carriers, that although City has the requisite operative right and performs similar services in connection with air freight shipments of interstate airlines, City's operative rights and present services are limited to airports in southern California and that the principal need for the ASA/PSA service is between southern California and northern California points. In addition, we have consistently held that the public is best served in the field of transportation when there is competition subject to regulation and, when the needs and requirements of the shipping public vary from the norm, there is a corresponding need for a wide variety of carriers (Thompson Bros. Inc. (1972) 73 CPJC 195).

City argues that ASA does not have the financial ability to perform the proposed service and that it does not control the instrumentalities through which the service is to be performed. In effect, City is attacking the unique arrangements under which carriers operating in widely dispersed areas and noncontiguous pickup and delivery areas have banded together in the form of corporation to perform the surface portion of the through transportation service performed jointly by ASA/PSA. The record shows that stockholders, in the airport locations in which they operate, will continue to devote sufficient and adequate equipment and personnel to ASA under subhaul agreements and that at other airport locations, other carriers will furnish the necessary equipment and personnel under similar subhaul agreements. It is not

necessary for ASA to own the equipment and hire directly the personnel necessary to perform the proposed operations, so long as it executes firm subhaul agreements in conformance with General Order No. 102 - Rules To Govern Bonding Requirements In Connection With Subhauling Or Leasing of Equipment From An Employee. The record also demonstrates stockholders of ASA will provide ample financial resources to ASA to perform the surface transportation services here in issue.

City's protest has no merit.

Discussion of Issues Concerning Exemption From Minimum Rates

If ASA and PSA elect to establish a through route and to maintain separately stated rates for service over that route under Section 486, the rates applicable to PSA's service are those named in its freight tariff on file with the Commission.^{8/} In the absence of authority to depart from the minimum rates, the rates which must be applied by ASA are the minimum rates established by the Commission in MRTs 1-B, 2, 9-B, and 19 (Section 452); ASA has applied for such relief; CTA has moved that it be denied. In a separate proceeding (Decision No. 86342 dated August 31, 1976 in Case No. 5432) the Commission found that the minimum rates were not designed for express corporations and freight forwarders which operate via the lines of air carriers, and that it is in the public interest to exempt such carriers from the Commission's minimum rate program. The petition for rehearing of that decision filed by CTA was granted by Decision No. 86573 dated October 26, 1976 (Case No. 5432, OSH 922, et al). The surface-air transportation service involved herein is competitive with the operations of intrastate air freight forwarders and air express corporations. The preponderance of such carriers have been granted exemptions from minimum rates for so-called courier commodities. A similar exception should be granted to ASA, pending a final decision upon rehearing in Case No. 5432, OSH 922, et al.

^{8/} PSA's request for an exemption from minimum rates is extinguished through denial of Application No. 56571. PSA may reduce its airport-to-airport freight rates without specific authority from this Commission, subject to suspension.

Findings of Fact

1. Arrangements for the through movements of air freight shipments having a prior or subsequent surface movement have been instituted by ASA and PSA.

2. Under such arrangements PSA notifies the local contractor of ASA when pickup and/or delivery of an air freight shipment is requested.

3. Separate hand-tags or freight bills are issued for each part of the surface transportation performed by ASA. Such documents refer to PSA's air bill number for identification.

4. The rates currently assessed for the air movement are those set forth in PSA's air freight tariff filed with the Commission. The rates currently assessed by ASA for the surface transportation are the minimum rates in MRTs 1-B, 2, 9-B, and 19.

5. ASA currently holds a permit to operate as a radial highway common carrier.

6. In Application No. 56045 ASA seeks a certificate of public convenience and necessity to operate as a highway common carrier. ✓

7. ASA's operations in connection with the surface transportation of shipments having a prior or subsequent movement by air are those of a highway common carrier as defined in the Public Utilities Code. ASA has unequivocally devoted its services to the public as a common carrier. ASA serves the public generally within the scope of operations it holds itself out to perform. ASA performs a service not generally offered by any single highway common carrier. ✓

8. Public-witness testimony and the abstracts of shipments transported by ASA/PSA show regular and frequent operations by ASA in connection with the pickup and/or delivery of shipments having a prior or subsequent air movement by PSA in a radius of 50 air miles of each of the airports served by PSA (except Lake Tahoe, from and to which PSA operates under temporary authority). Public convenience and necessity require the continued operations by ASA as a highway common carrier for the aforementioned transportation services. ✓

9. ASA has the experience and financial ability to perform the proposed service and, through subhaul arrangements with its shareholders and other contractors described in this opinion, ASA will have the equipment and other facilities necessary to perform the proposed transportation service.

10. ASA's shipments generally weigh 100 pounds or less, although some shipments in excess of that weight are transported. The highway common carrier operations certificated herein should embrace all service offered by ASA; therefore, ASA should be authorized to transport shipments of 10,000 pounds or less.

11. PSA is an intrastate common carrier of air freight shipments and, as such, PSA publishes and files with the Commission a tariff containing airport-to-airport rates for transportation of general commodities.

12. PSA seeks authority to operate as an express corporation in order to provide a through surface/air transportation service between points within 50 air miles of the airports served by it. PSA proposes to issue a single shipping document and to be responsible for the entire movement from origin to destination.

13. PSA was advised by letter from the Executive Director of the Commission that an additional (unspecified) operative right is necessary for it to perform the transportation service described in the preceding finding. In response to that directive PSA filed Application No. 56571.

14. The proposed operations of PSA in Application No. 56571 as an express corporation as defined in Section 219 of the Public Utilities Code are not required for PSA to continue the surface-air operations in conjunction with ASA since ASA is being certificated.

15. PSA may join with ASA (after ASA is granted authority as a highway common carrier) in establishing through routes and joint rates for the door-to-door transportation involved herein under provisions of Sections 486 and 732 of the Public Utilities Code.

16. The ASA/PSA operations involved herein are competitive with operations of air freight forwarders and air express corporations. The preponderance of those carriers have been exempted from minimum rates with respect to transportation of so-called "courier" items.

Conclusions of Law

1. ASA should be granted a certificate of public convenience and necessity as a highway common carrier as more specifically set forth in Appendix A hereof.

2. Application No. 56571, in which PSA seeks authority to operate as an express corporation, should be denied.

3. ASA should be authorized to depart from the established minimum rates for the transportation of so-called courier items, pending a final decision in Case No. 5432 (OSH 922).

4. All motions not heretofore ruled upon should be denied.

Air Surface Associates 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 Air Surface Associates, a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, Air Surface Associates shall comply with the following service regulations. Failure so to do may result in 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. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty 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. 80-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30, of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

3. In connection with the authority granted in Ordering Paragraph 1, Air Surface Associates is exempted from the otherwise governing provisions of Minimum Rate Tariffs 1-B, 2, 9-B, and 19 when engaged in the "courier type" transportation of:

- a. Human and animal blood, organs, specimens, medical and dental records and documents, x-ray photographs, medical and dental supplies and related equipment, drugs, prescription items, and pharmaceuticals; and
- b. Checks, drafts, money orders, transit items, mail, audit media, audit items, data processing materials, paper punch tapes, tabulating cards, film, video tapes, legal documents, title policies and documents, radioactive pharmaceuticals, printed or reproduced material, and business records

when transported in vehicles not exceeding a licensed weight of 4,500 pounds.

4. Application No. 56571 filed by Pacific Southwest Airlines is hereby denied.

A.56045, 56571 b1

5. All motions not heretofore ruled upon are denied.

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

Dated at San Francisco, California, this 15th day of MARCH, 1977.

Robert B. Brown
President
William J. Lyons, Jr.
James A. Sturgeon
Edward R. Ross
Richard D. Gravelle
Commissioners

/b1 *

Appendix A

AIR SURFACE ASSOCIATES
(a California corporation)

Original Page 1

Air Surface Associates, a California corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities having prior or subsequent movement by air, as follows:

Within a radius of 50 statute miles of the following airports:

Hollywood-Burbank
Fresno
Los Angeles International
Long Beach
Oakland
Ontario
Sacramento
San Diego
San Francisco International
San Jose
Stockton
Lake Tahoe

Restricted to shipments not exceeding a weight of 10,000 pounds.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 87092, Application 56045.