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Decision No. 87252

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC SOUTHWEST AIRLINES for a certificate of public convenience and necessity, in either direction between San Diego, Long Beach, Long Beach, San Jose/San Francisco/Oakland and San Diego to Sacramento via Long Beach and San Francisco.

Application No. 50261

In the Matter of the Application of AIR CALIFORNIA for a certificate of public convenience and necessity to provide passenger air service between Long Beach, on the one hand, and San Jose and Oakland, on the other hand.

Application No. 50381

ORDER DENYING MODIFICATION OF DECISION NO. 85992

Pacific Southwest Airlines (PSA) and Air California (Air Cal) are intrastate carriers, as defined in the Passenger Air Carrier Act (Section 2739 et seq. of the Public Utilities Code), engaged in the business of carrying passengers by air between points within the State of California under authority of certificates of public convenience and necessity granted by this Commission authorizing such operations within the state. Competition between the two carriers has been intense, and repeatedly has been marked by acrimony and contentiousness.

After a five-year struggle to obtain certificated authority between Long Beach and San Jose-Oakland, by Decision No. 82409 dated January 19, 1974 in Application No. 50261, the Commission granted the

markets to PSA, subject to certain maximum flight frequency restrictions. By a schedule change made thereafter on June 1, 1976, PSA eliminated direct service (1 stop-single plane) between Long Beach and Sacramento, causing passenger inconvenience and complaints to this Commission. By letter dated June 3, 1976, PSA formally requested elimination of frequency restrictions in connection with service at Long Beach. Following public hearing, the Commission on June 22, 1976 issued Decision No. 85992, making therein the following finding of fact relevant here:

"Finding No. 6. Public convenience and necessity require that PSA be authorized to discontinue the uneconomical Long Beach-San Diego operation and be authorized to add a flight from Long Beach to San Francisco-Sacramento."

By the order contained in Decision No. 85992, the Commission denied elimination of frequency restrictions at Long Beach to PSA. However, it also authorized PSA to discontinue an unprofitable San Diego-Long Beach service, and to add a flight from Long Beach to San Francisco-Sacramento. This latter authorization derived out of the Commission staff position at the hearing, a position adopted by the Commission, that the "...Commission staff did not oppose a modification that would permit PSA to have the option of retaining its operation between Long Beach and San Diego or replacing that operation with an additional operation between Long Beach and San Francisco in order that PSA would be able to reinstate its operation between Long Beach-San Francisco-Sacramento and return without the necessity of passengers being compelled to change airplanes at San Francisco."

(Emphasis added.) Notwithstanding this intent of direct service, in the order as issued, Appendix A, which amended PSA's certificate of public convenience and necessity by incorporating a Fifth Revised Page 4 in revision of the preceding Fourth Revised Page, did not specify "direct service".

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PSA did not respond by providing the intended direct service both ways; rather it provided a connecting flight for northbound Long Beach-Sacramento passengers with one flight per day leaving Long Beach at 7:00 a.m., arriving at San Francisco at 8:00 a.m., with connecting service to Sacramento departing San Francisco at 8:30 a.m. Direct service is provided for southbound passengers with one flight per day departing Sacramento at 4:40 p.m. and arriving in Long Beach (via San Francisco) at 6:30 p.m.

By this petition, Air Cal seeks Commission modification of Decision No. 85992 to assure that PSA provide direct daily round-trip service between Long Beach and Sacramento. Air Cal seeks addition of the following language to PSA's certificate restriction No. 4 regarding Routes 12 and 13:

"In the event that PSA discontinues service between Long Beach and San Diego, it shall be required to provide at least one daily round-trip single plane service between Long Beach and Sacramento via San Francisco."

PSA opposes the petition for modification of Decision No. 85992 contending that it has upgraded its connecting service to Sacramento on its northbound flight while providing direct service on the return southbound flight, and that to force PSA to reroute aircraft presently being used in PSA's Ontario-Sacramento and San Diego-Sacramento markets would be uneconomical.

We would be more impressed by PSA's contentions were they not obfuscated by its argument that consideration of such a petition should be afforded based only on either new facts or changed circumstances, and its assertions thereto that "...not one new fact or circumstance bearing on the Commission's Finding No. 6 of its Decision No. 85992 has been presented by Air Cal in its petition for modification." Obviously, the new fact or circumstance added has

been PSA's evasion of the clear intention of Decision No. 85992 in its provision of connecting service Long Beach-San Francisco-Sacramento rather than the direct one-plane service intended by the order.

In determining what action, if any, we should take, we must be guided by Section 2739 of the Public Utilities Code which describes the objective of the Passenger Air Carrier Act as "an orderly, efficient, economical, and healthy intrastate passenger air network." Progress toward that objective would not be advanced by forcing PSA to expiate its cavalier compliance to the letter of our intention in Decision No. 85992. Furthermore, while we do not condone PSA's action, we do not approach the problem with any spirit of vindictiveness or spitefulness, rather we are interested in the result attained by that action and whether or not it has contributed to attaining the objective of the Act. The record shows that PSA's on-board load factor in 1975 between San Francisco and Sacramento was only 35.8 percent, and for the four months ending April 30, 1976, only 34 percent. Thus, there is no problem in making connections and obtaining continuous service from Long Beach to Sacramento via San Francisco. It is also very clear that the general public is not very perturbed. Despite the fact that this connecting service was instituted by PSA last September, the Commission has received not one complaint from anyone apart from Air Cal.

We believe that the public convenience and necessity are being adequately served by the present service. There appears to be no indication of any disruptment of the intrastate passenger air network or that any destructive competition has been unleashed. Accordingly, we will let matters rest and deny the petition for modification.

We are concerned, however, over continued attempts to use this Commission as a forum for petty harassments in pursuit of competitive advantages. As we noted before in Decision No. 83613 dated October 22, 1974 in Case No. 9643 involving these same parties:

"We do not deny the right of the litigants to bring legitimate matters to our attention. We do resent the use of the Commission as a forum for the exercise of childlike petulance. Too often we have seen our procedures attempted to be turned into playgrounds for ill-tempered competitors. This is wasteful of the State's limited resources and a violation of the ethical constraints of Rule 1 of the Commission's Rules of Practice and Procedure."

Finding

No compelling reason requiring modification of Decision No. 85992 has been presented by this petition.

Conclusion

Air California's petition for modification of Decision No. 85992 should be denied.

IT IS ORDERED that this petition for modification is denied.

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

Dated at San Francisco, California, this 20th day of APRIL, 1977.

Robert Bateman
President
William J. ...
Vernon L. ...
Richard D. ...

Commissioners