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ORIGINAL

Decision No. 87408 JUN 1 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GOLDEN WEST )  
AIRLINES, INC. for ex parte )  
approval of transfer of its )  
certificate to a newly formed )  
corporation (NUEVO ORIENTE )  
DORADO, INC.) seeking to do )  
business as GOLDEN WEST )  
AIRLINES, INC. )

Application No. 57197  
(Filed April 4, 1977)

O P I N I O N

Golden West Airlines, Inc. (GWA) is a passenger air carrier engaged in commuter type air service between airports in Southern California. It seeks approval, pursuant to California Public Utilities Code Section 2756, to transfer its certificate of public convenience and necessity to a newly formed corporation incidental to the transaction hereinbelow described. Alternatively, GWA seeks an order that the Commission lacks jurisdiction over the transfer of its certificate.

GWA utilizes a fleet of ten DHC-6 Twin Otter aircraft. The maintenance base for its system is located at the Los Angeles International Airport. Approximately two-thirds of GWA's business is in interstate commerce due to the nature of the feeder/connection short-haul service it provides between Los Angeles International Airport (LAX) and local city airports located within 24 and 130 miles of LAX. Its basic competition is the private automobile or bus. Its operations could best be described as primarily an airborne rapid transit service to and from LAX for passengers who are connecting at LAX with other airlines.

GWA is allegedly indebted to the Federal Deposit Insurance Corporation (FDIC) as receiver of the United States National Bank for approximately \$10 million. The FDIC has, as collateral for such indebtedness, a security interest in substantially all the assets of GWA. The FDIC has filed lawsuits for the sale of the collateral in the United States District Court for the Southern District of California (Action No. 76-919-T), and to foreclose on a trust deed on the real property owned by GWA in the United States District Court for the Central District of California (Action No. 76-3973-IH). It filed a motion in the first lawsuit for the appointment of a receiver for the assets of GWA. GWA allegedly has no substantial defenses to these lawsuits.

Because of the FDIC's power to dispose of GWA's assets and cause its day-to-day operations, pending such disposition, to be in the hands of a receiver, GWA, its controlling shareholder, Hollis B. Roberts, and the FDIC entered into negotiations contemplating the continued and uninterrupted operation of GWA's airline business without resort to a receivership and foreclosure. As a result of these negotiations, on February 4, 1977 GWA entered into an option agreement to sell its assets.

Under the agreement, GWA has granted to Hollis B. Roberts and entities controlled by him the option to purchase substantially all the assets of GWA. The assets will include all the airline operating assets, GWA's name, and GWA's certificate of public convenience and necessity; the purchaser of the assets will assume all of GWA's liabilities incurred in the course of the day-to-day conduct of its airline business.

Hollis B. Roberts is the registered owner of approximately 70.6 percent of the issued and outstanding shares of common stock of GWA. Roberts Farms, Inc., a California corporation, is the registered owner of approximately 28.6 percent of the issued and outstanding shares of common stock of GWA. Roberts Farms, Inc. is wholly owned by Roberts Farms, a partnership composed of Hollis B. Roberts and his spouse, Manon E. Roberts.

The purchaser of GWA's assets will be Nuevo Oriente Dorado, Inc., a California corporation formed on March 15, 1977, which will be a wholly owned subsidiary of Roberts Farms, Inc.

The purchase price for the assets of GWA will be \$5 million. \$1.5 million will be paid in cash. The balance will be in the form of a promissory note to be executed by the new corporation for \$3.5 million. Under the note, GWA is obligated to pay interest only at the rate of 8 percent per annum until August 1, 1980, at which time the full principal amount is due and payable. The note will be secured by a security agreement covering substantially all the assets to be transferred by GWA to the new corporation. As additional security, the note will be guaranteed by Hollis B. Roberts and corporations controlled by him, and it will also be secured by the pledge of various assets owned by such entities and unrelated to GWA's business. The security agreement will replace the existing security agreements now held by the FDIC on GWA's assets. The deed of trust held by the FDIC on GWA's real estate will continue to encumber such real estate after its transfer to the new corporation. Under the agreement, the \$1.5 million will be paid over to the FDIC, and the \$3.5 million note and security agreement will be assigned to the FDIC. The FDIC will thus receive \$5 million total consideration as payment on the approximate \$10 million owed it by GWA, instead of proceeding to a receivership and foreclosure on GWA's assets.

The FDIC's rights against the new corporation will be limited to those contained in the \$3.5 million note and security agreement; it cannot enforce any rights it may have with respect to the remaining balance of the \$10 million debt against the new corporation.

The net effect of the transfer of GWA's assets to a new corporation will be to eliminate from its balance sheet the liability to the FDIC for approximately \$10 million. In place of such present liability, there will be the \$3.5 million of debt and \$1.5 million of equity and/or debt in the new corporation's capital structure. This significant change in the balance sheet will improve the ability of Nuevo Oriente Dorado, Inc. to obtain financing and conduct its airline business on a sound financial basis.

The transfer of GWA's certificate and assets (including its name) to the new corporation, Nuevo Oriente Dorado, Inc., will not result in any change or interruption in the operation of the airline business as presently conducted by GWA, which will thereafter be conducted by the new corporation, Nuevo Oriente Dorado, Inc. No change in personnel will result because of the transfer of assets. Hollis B. Roberts, as the person in control of the new corporation, intends to retain all present management personnel. The officers of Nuevo Oriente Dorado, Inc. are also presently officers of GWA, holding the same positions, as follows:

James M. Harmon	President and Chief Operating Officer
Henry R. Voss	Executive Vice-President
Colleen R. Stuart	Vice-President-Finance, and Assistant Secretary- Chief Financial Officer (Treasurer)
Dennis J. Crabtree	Vice-President-Operations
Charles S. Robbins	Vice-President-Marketing
Maureen Michaud	Secretary

The Board of Directors of Nuevo Oriente Dorado, Inc. is the same as GWA's, which is composed of Hollis B. Roberts, James M. Harmon, who is presently GWA's president and chief operating officer, and Henry R. Voss, who is presently its executive vice-president. None of such officers or directors is an officer, director, or member, or a stockholder holding a controlling interest, in any common carrier other than GWA. Nor do any of such officers or directors have a representative or nominee who represents him as an officer, director, or member, or as a stockholder holding a controlling interest, in any other common carrier.

Jurisdiction

Curiously, the Passenger Air Carriers' Act (§§ 2739-2769.5, Pub. Util. Code) does not explicitly authorize the transfer of a certificate of public convenience and necessity, except that Section 2756 requires a fee for applications to "sell, mortgage, lease, assign, transfer or otherwise encumber any certificate." Based on this requirement, we can infer that the transfer of a passenger air carrier certificate is subject to the Commission's approval. (Cf. Sections 2757, 2758.)

There is an alternate ground for asserting jurisdiction. Hollis B. Roberts will be in control of the new corporation. He has not supplied a verified statement affirming that he is in fact in control of the existing corporation, despite the long controversy concerning this topic. Consequently, there is no support for a finding that Mr. Roberts was or is in control of GWA. We cannot therefore conclude that this is not an application for an acquisition of control, subject to the provisions of Section 2758 of the Public Utilities Code.

Because of the fact that the FDIC will foreclose if this matter is not approved on or before May 30, 1977, the Commission staff has not been able to fully investigate or consider whether all aspects of this proposal are in the best interests of the California consumer. Nevertheless, the verified statements supplied in support of the application support a finding that the transfer is in the public interest.

Since an order for further investigation or hearing would result in an immediate and indefinite termination of a service which has proven necessary for California consumers, we find that the public interest does not require a hearing. We will approve the transaction.

Economic Issues

Commission decisions of this type usually carry one of two stock caveats:

"The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred."

or

"In issuing this decision we place the issuer of the authorized stock and its shareholders on notice that we do not regard the number of shares outstanding, the total par (stated) value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates."

Such warnings are especially appropriate here because of the background<sup>1/</sup> of the underlying GWA debt, a portion of which has now been transformed into debt and equity of the new company.

Our action herein does not bind California ratepayers to accept any particular valuation for the property which the new carrier acquires which has been dedicated to public service; for example, our staff would not be estopped by this decision from contending in rate applications that part or all of the depreciated book value of applicant's assets and associated depreciation expense should be disregarded for ratemaking purposes.

Likewise, for ratemaking purposes, nothing in this decision will estop any person or entity acting on behalf of the California consumer from asserting equities against Nuevo Oriente Dorado, Inc. that otherwise would have been asserted against the FDIC, as the successor in interest of United States National Bank, which might otherwise have been asserted directly against the bank.

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<sup>1/</sup> We note that the FDIC has itself alleged that a major portion of the funds associated with such debt were not expended for consideration or for a proper corporate purpose (FDIC v GWA et al., Civ. No. 76-919-T, U.S. Dist. Ct., 5th Dist.).

Nuevo Oriente Dorado, Inc. 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.

Findings

1. Approving this order will not create a monopoly nor will it tend to restrain competition.
2. No person has requested a hearing.
3. The Commission has given notice of a possible ex parte determination.
4. This transaction will not produce a merger, consolidation, common management, or operation of any two passenger air carriers.
5. None of the officers or directors of Nuevo Oriente Dorado, Inc. is an officer, director, or member, or has a controlling interest in any other common carrier directly or by nominee.
6. The cancellation of the certificate of GWA and the reissuance of an identical certificate to Nuevo Oriente Dorado, Inc. will not be adverse to the public interest.
7. The acquisition of control of Nuevo Oriente Dorado, Inc. by Hollis B. Roberts is not adverse to the public interest.
8. The public interest does not require a hearing.



Conclusions

1. GWA should be authorized to transfer its certificate of public convenience and necessity to Nuevo Oriente Dorado, Inc.; the latter should be authorized to hold itself out to the public as a passenger air carrier under the name Golden West Airlines, Inc.

2. Hollis B. Robert's acquisition of Nuevo Oriente Dorado, Inc. is not unlawful.

O R D E R

IT IS ORDERED that:

1. Golden West Airlines, Inc. may sell and transfer the operative rights and property referred to in the application to Nuevo Oriente Dorado, Inc.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. 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 transfer.

4. On or before the end of the third month after the transfer, purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports,

concerning the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Nuevo Oriente Dorado, Inc., a corporation, authorizing it to operate as a passenger air carrier, as defined in Section 2741 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 77323 and modified by Decisions Nos. 77612, 78156, 78538, 79244, 79398, 79899, 80008, 80167, 80604, 81241, 82991, 83353, 84192, 84255, 84359, and 85176 is revoked concurrently with the effective date of the tariff filings required by paragraph 3.

7. Nuevo Oriente Dorado, Inc. is authorized to hold itself out to the public as a passenger air carrier under the name of Golden West Airlines, Inc.

A.57197 ap

8. Hollis B. Roberts is authorized to control Nuevo Oriente Dorado, Inc.

The effective date of this order is June 1, 1977.

Dated at San Francisco, California, this 1st  
day of JUNE, 1977.

Robert B. Roberts  
President

William Aguirre Jr.

Leonard L. Steingart  
Richard D. Howell

Commissioners

## APPENDIX A

Nuevo Oriente Dorado, Inc.  
dba  
GOLDEN WEST AIRLINES, INC.

Original Page 1

Nuevo Oriente Dorado, Inc., dba Golden West Airlines, Inc. by this certificate of public convenience and necessity, is authorized to operate as a passenger air carrier over the routes and between the points listed below:

Route 1. Deleted

Route 2. Deleted

Route 3. Los Angeles - Riverside

Intermediate Points: Fullerton, Ontario,  
and Colton/San Bernardino

LAX - ONT	LAX - SET
ONT - RAL	ONT - SET
LAX - ONT (Via FUL)	RAL - SET
LAX - RAL	

Route 4. Los Angeles - Santa AnaIntermediate Point: Fullerton

LAX - SNA  
LAX - FUL  
FUL - SNA

Route 5. Los Angeles - Santa BarbaraIntermediate Point: Oxnard

LAX - OXR  
OXR - SBA  
LAX - SBA

Issued by California Public Utilities Commission.

Decision No. 87408, Application No. 57197.

## APPENDIX A

Nuevo Oriente Dorado, Inc.  
dba  
GOLDEN WEST AIRLINES, INC.

Original Page 2

Route 6. Los Angeles - Catalina IslandIntermediate Point: Long Beach

LAX - LGB  
LGB - SXC  
\*LAX - SXC (via LGB)  
LAX - SXC (seasonal, June 1 through September 15)  
LGB - AVX  
LGB - TWH

Route 7. Orange County/Santa Ana - Catalina Island

SNA - SXC (seasonal, June 1 through September 15 each year)

Route 8. Los Angeles - InyokernIntermediate Points: Palmdale, Mojave, Trona

LAX - INY	PMD - MHV (Closed door only)
LAX - MHV (f)	LAX - TRO (f)
INY - MHV (f)	INY - TRO (f)
LAX - PMD	PMD - TRO (f)
PMD - INY	MHV - TRO (f)

Conditions:

1. Authority granted herein is limited to passenger air carrier operations over the specific routes and between the airport pairs listed thereunder as described above.
2. Operation between an airport on one route and an airport on any other route shall not be provided except through an airport that is common to the two routes.
3. Airport pairs marked with "\*" shall be served only via intermediate point or points shown.
4. On each route each airport shall be served with a minimum of one flight in each direction on each of the five days a week except LAX-PMD which will be served with a minimum of two flights in each direction on each of the five days a week.
5. Points designated (f) receive flag stop service only.

Issued by California Public Utilities Commission.

Decision No. 87408, Application No. 57197.

## APPENDIX A

Nuevo Oriente Dorado, Inc.  
dba

Original Page 3

GOLDEN WEST AIRLINES, INC.

## Conditions: (cont.)

6. Carrier shall not overfly an airport designated as a flag stop (f) if a passenger is in possession of a purchased ticket and confirmed reservation one hour or longer before the scheduled departure time from that airport on the flight on which the passenger holds a confirmed reservation.
7. No aircraft having more than 30 revenue passenger seats or a payload of more than 7,500 pounds shall be operated.
8. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
SBA	Santa Barbara	Santa Barbara Municipal Airport
OXR	Oxnard	Oxnard/Ventura Airport
LAX	Los Angeles	Los Angeles International Airport
ONT	Ontario	Ontario International
RAL	Riverside	Riverside Municipal Airport
LGB	Long Beach	Long Beach International Airport
FUL	Fullerton	Fullerton Municipal Airport
SNA	Santa Ana	Orange County Airport
SXC	Catalina Island	Airport-In-The-Sky, Hilltop
TWH	Catalina Island	Two Harbors (Seaplane Operations)
AVX	Catalina Island	Avalon Bay (Seaplane Operations)
SBT	Colton/San Bernardino	(Airport to be determined in accordance with the provisions of Decision No.86525)
MHV	Mojave	Mojave Airport
INY	Inyokern	Kern County Airport No. 8
PMD	Palmdale	U.S. Air Force Plant No. 42
TRO	Trona	Trona Airport

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