

Decision No. 88022 OCT 25 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC SEABOARD
 AIRLINES, INC., a California
 Corporation, dba: BAY AREA
 HELICOPTER AIRLINES, for a
 certificate of public convenience
 and necessity to provide scheduled
 air service between San Francisco
 International Airport, Oakland
 Airport, Marin County Heliport
 and Emeryville Heliport.
 (Amended Title)

Application No. 56814
 (Filed October 18, 1976;
 amended March 1, 1977)

(See Appendix A for Appearances)

O P I N I O N

Pacific Seaboard Airlines, Inc., doing business as Bay Area Helicopter Airlines (Pacific Seaboard), seeks a certificate to operate as a passenger air carrier between Oakland International Airport (OAK), San Francisco International Airport (SFO), and heliports to be located in downtown San Francisco, Marin County, and Emeryville, using helicopter equipment. Applicant proposes to operate from and to heliports formerly served by SFO Helicopter Airlines, Inc. at Sausalito (Marin County) and Emeryville. There is no heliport in downtown San Francisco.

The application of Pacific Seaboard was heard on a consolidated record with applications of fixed-wing air carriers seeking authority between OAK and SFO.^{1/}

^{1/} The applications consolidated for hearing were 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.

Following submission of the consolidated proceedings, Application No. 56814 was reopened for further hearing to receive evidence from protestants Marin Airporter and Airport Connection. Application No. 56814 was again submitted on June 21, 1977.

Decision No. 87180 dated April 5, 1977 denied the request of Pacific Seaboard for a temporary certificate authorizing it to provide scheduled air service between the following points: SFO, a downtown San Francisco Heliport, Marin County Heliport, and Emeryville Heliport.

The other applications heard on a consolidated record were decided by Decision No. 87056 dated March 9, 1977 (Application No. 55777) and Decision No. 87672 dated August 2, 1977 (Application Nos. 56744, 56757, and 56773). Stol Air, Inc. and Eureka Aero Industries, Inc. were granted temporary certificates in Decision No. 87672 to operate between SFO and OAK. Marin Aviation, Inc. was denied a certificate in Decision No. 87672 for service between SFO and OAK because its operations were under investigation in connection with the sale of its certificate to Nor-Cal Aviation, Inc., because its operations were not profitable, and because it was the least fit, willing, and able of the three fixed-wing applicants to render the proposed service. Air California was authorized in Decision No. 87056 to provide local service between SFO and OAK. ✓

SFO Helicopter Discontinuance

SFO Helicopter Airlines, Inc. (SFO Helicopter) formerly operated a helicopter air service between the points which Pacific Seaboard seeks to serve. SFO Helicopter ceased operations and its certificate was revoked by the Civil Aeronautics Board (CAB) in Orders 76-11-52 and 76-12-128 adopted November 9, 1976 and December 22, 1976 in Dockets 29936, 29937, and 25637. The CAB commented unfavorably in its order concerning the economic feasibility of scheduled helicopter operations.^{2/} The CAB no longer plans to

^{2/} The CAB order notes that "[t]he history of scheduled helicopter service in the United States is a bleak one." The CAB goes on to state that "...the economic viability of certificated helicopter service has proven to be questionable."

certificate helicopter operations. In its Order 77-3-106 adopted March 17, 1977, in Dockets 30433 and 30434, it denied Pacific Seaboard's request for a certificate exemption in order to provide scheduled helicopter services in the San Francisco and Los Angeles areas.^{3/}

Background of Pacific Seaboard

Pacific Seaboard is the successor to Los Angeles Helicopter Airlines, Inc. (LA Helicopter) which, in turn, is the successor to Birdie Airlines, Inc. (Birdie). Birdie operated a helicopter service in the Los Angeles area under a temporary certificate issued by this Commission. After ceasing operations it sought to reinstate its temporary certificate. That request was denied in Decision No. 87094 dated March 15, 1977 in Application No. 54554. Decision No. 87411 dated June 1, 1977 dismissed Application No. 55502 in which Birdie sought authority to provide service in the Los Angeles area.^{4/}

^{3/} The CAB order stated as follows:

"As a matter of general policy the Board has concluded that small aircraft operators should be free to inaugurate or discontinue service without close regulatory supervision. Part 298 of the Board's Economic Regulations (14 CFR Part 298) provides a blanket exemption to certain air carriers who do not operate large aircraft. Section 298.2(i) defines a large aircraft as one having a capacity of more than 30 seats or a maximum payload capacity of 7,500 pounds or more.

"The largest aircraft Pacific Seaboard proposes to use is a 14-passenger Alouette 360 Dauphin. Thus, the petitioner could inaugurate its proposed service upon compliance with the registration requirements of Part 298. Moreover, nothing in Part 298 prohibits interline agreements with certificated carriers. Therefore, the special exemptions sought by petitioner in these proceedings are unnecessary."

^{4/} That decision reads as follows:

"The application herein has been filed by Stephen B. Ellis, president of Los Angeles Helicopter Airlines. The application alleges Birdie Airlines, Inc., is a Delaware corporation authorized to do business under the fictitious name of Los Angeles Helicopter Airlines.

"Application No. 57011 filed January 17, 1977 was filed by Stephen Ellis, president of applicant Pacific Seaboard Airlines, Inc., doing business as Los Angeles Helicopter Airlines. Application No. 57011 states that air service

(Continued)

Application No. 57011 for a certificate to operate in the Los Angeles area filed in the name of Pacific Seaboard has not been decided. That application has been temporarily removed from the calendar. Case No. 10304 entered April 5, 1977 is an investigation to determine whether Pacific Seaboard is providing scheduled passenger air service in the Los Angeles area in violation of Section 2752 of the Public Utilities Code, or is violating any other section of said Code or Commission rule or regulation. That proceeding is under submission.

Decision No. 87180 dated April 5, 1977 in this proceeding denied Pacific Seaboard's request for a temporary certificate. The request was denied for the reason that Pacific Seaboard does not possess the equipment and facilities to immediately commence service between the points in question. The decision also pointed out that the presiding Administrative Law Judge had ruled that additional evidence should be received with respect to environmental issues pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure before the recommencement of helicopter services in the San Francisco area.

4/ (Continued)

between the points involved in Application No. 55502 by Los Angeles Helicopter Airlines, Inc., also known as Birdie Airlines, Inc., has been abandoned.

"Decision No. 87094 dated March 15, 1977 in Application No. 54554 found that applicant (Birdie Airlines, Inc., doing business as Los Angeles Helicopter Airlines) is prevented from being issued a certificate by reason of Section 704 of the Public Utilities Code (foreign corporation section).

"We conclude that Application No. 55502 has been superseded by Application No. 57011. Application No. 55502 is moot."

Pacific Seaboard's Evidence

The president of Pacific Seaboard and founder of Birdie testified and presented documentary evidence in support of the application.^{5/}

The following is a summary of the evidence adduced. The sole stockholder of Pacific Seaboard is Robert Terry (Terry). Pacific Seaboard is a different corporation from the former Birdie (LA Helicopter) corporation, although Pacific Seaboard owns or leases most of the equipment formerly operated by Birdie.

The witness presented Exhibit 1 which contains a three-year pro forma operating statement for the proposed San Francisco area operations. The analyses of helicopter maintenance and acquisition costs were prepared by Aero Spatial, a helicopter sales organization. The balance of the data was developed by the witness. The study contemplates that first-year operations will be conducted with two helicopters having a capacity of six passengers and a pilot. Traffic is estimated to increase in the second year, requiring use of a third helicopter. The exhibit shows that operating losses would be \$49,600 in the first month of operation, and such losses would continue on a decreasing scale until the end of the second year, before a profit is achieved. The total of such losses is estimated to be in excess of \$400,000.

^{5/} The witness, Stephen Ellis, testified that he was asked to resign by the sole owner (Robert Terry) purportedly for the reason that the Commission staff "had advised [Terry] that they would never recommend approval on any application insofar as [Ellis] was employed by the airline." When the severity of his allegation regarding bias on part of the staff was explained, witness Ellis withdrew that allegation. The record indicates that Ellis was dismissed as president of Pacific Seaboard and now acts as consultant to that carrier.

The witness testified that Terry had firmly committed \$175,000 to Pacific Seaboard. Additional financing purportedly would be available through a loan of \$500,000 from Terry, and from common stock sales made through a security broker. During the course of the hearing evidence was introduced to show that Terry had deposited \$500,000 to the account of Pacific Seaboard.

The witness testified that Pacific Seaboard would acquire either Alouette-III helicopters, which could be acquired at a cost of approximately \$200,000 each, or Sikorsky S-62 helicopters, which could be purchased at a cost of \$460,000 each. At least two such aircraft would need to be acquired by Pacific Seaboard before the proposed San Francisco area operation could commence.

The witness presented letters from the county of Marin and the city of Emeryville in support of a renewal of helicopter operations in the San Francisco area.

Evidence of the Commission Staff

The evidence of the Commission staff was presented through a financial examiner from the Finance Division and by two transportation engineers from the Transportation Division.

The following is a summary of the testimony of the financial examiner. A financial statement prepared from the records of Pacific Seaboard is shown in Exhibit 22. The balance sheet shows that Pacific Seaboard had total assets of \$210,000, which consisted of \$45,620 current assets, \$153,939 property and equipment, and \$10,441 organizational costs and pre-operating expenses. The total capital consisted of \$205,000 of capital stock and \$5,000 of long-term debt. The above figures exclude the item of \$500,000 representing debentures which were not issued, but which appeared on the financial statement.

A transportation engineer presented a study concerning Pacific Seaboard's operation contained in Exhibit 3 in Application No. 55777. That exhibit outlines the regulatory history of Pacific Seaboard and its predecessors. That exhibit indicates that Birdie (LA Helicopter) ceased operations because of financial problems. In connection with the sought reinstatement of the Los Angeles area operative right, allegations purportedly were made in prior proceedings which the staff believed to be untrue.^{6/} For that reason that the staff believes that Pacific Seaboard has consistently misinformed the Commission and because it is unlikely that Pacific Seaboard can conduct profitable operations, the staff recommended that Pacific Seaboard's application be denied.

A staff witness presented evidence that Pacific Seaboard was conducting intrastate operations in the Los Angeles area without operating authority from the Commission (Exhibit 24). That evidence caused the Commission to initiate the investigation in Case No. 10304.

^{6/} Those allegations concern the ownership of aircraft purportedly transferred from Birdie to LA Helicopter and then to Pacific Seaboard; the financial status of Birdie, LA Helicopter, and Pacific Seaboard; the number of passengers carried by Birdie; and approval of local authorities for service to points requested in certificates.

Staff Exhibit 3 (A.55777) states Pacific Seaboard's proposed operations in Emeryville, SFO, and OAK will not have a significant effect on the environment. However, the staff believes the noise from helicopter flights over the narrow inlet between Belvedere Island and Sausalito may cause an adverse noise impact on residents on either shore.

The staff study indicates that helicopter flights do not have to be sequenced in order to take off or land at SFO and OAK and, therefore, will not cause delays to other aircraft at such airports.

Evidence of Other Parties

A witness appearing for the Federal Aviation Administration, Bay Terminal Radar Approach Control Facility (TRACON) presented Exhibit 4 (in Application No. 55777) which is a report on air traffic control systems related to SFO and OAK. That exhibit indicates that no interference with other aircraft would result from the proposed helicopter operations.

Port of Oakland, as operator of OAK, presented evidence through its director of aviation in opposition to additional scheduled air passenger service between OAK and SFO. The principal reason advanced by the witness was that availability of such airline service diverts long-haul airline traffic from OAK to SFO and thus diminishes the requirements for service at OAK by CAB trunk carriers. More flights are available to and from out-of-state points from SFO than from OAK. OAK has encouraged trunk carriers to provide more flights at OAK, but the airlines will not do so unless existing service at OAK is more heavily patronized. The ready availability of air service between SFO and OAK encourages East Bay passengers to use SFO instead of OAK. The former helicopter fares applicable between SFO and OAK were partially absorbed on flights between SFO

and points west of Chicago and fully absorbed on flights east of Chicago by the trunk air carriers. Port of Oakland contends that if no new transbay air service is authorized, East Bay passengers will not be encouraged to use SFO; therefore, more service will be made available at OAK by trunk air carriers. Port of Oakland believes that the continued absence of frequent OAK-SFO air service will stimulate an effort by the trunk airlines to compete for the substantial market available in the East Bay by providing service at OAK.

The assistant port attorney testified that no counter, gate, or ramp space is available at OAK for any airline which does not already have operations at OAK, unless such space can be made available under sublease from a carrier now operating at OAK.

The assistant deputy director of SFO presented testimony concerning the availability of facilities at SFO. The witness testified that no counter, gate, or ramp space is available at SFO for any airline which does not have operations at SFO, unless such space can be acquired under sublease from another air carrier operating at SFO. If space is made available under sublease, SFO will require the new carrier to execute a hold-harmless agreement against lawsuits arising from the new airline operations. Such agreement may require the posting of a bond. The witness indicated that helicopter service is less likely to interfere with airline operations at SFO than fixed-wing flights.

Four witnesses residing in the vicinity of the Richardson Bay heliport in Marin County testified that SFO helicopter operations were noisy because of low flights over the narrow water area between Sausalito and the Belvedere Peninsula. They objected to reintroduction of helicopter service at that heliport because of the expected noise from Pacific Seaboard's proposed operations.

Operators of two airport bus lines appeared in opposition to the proposed service from Marin County and from Emeryville. The owner of Marin Airporter testified that bus operations from Marin County points to SFO were begun in 1970 when SFO Helicopter had

temporarily ceased operations. The bus operations assertedly are in competition with helicopter operations from Marin County on a time and fare basis. Bus operations have increased from the time SFO Helicopter ceased operations. A new helicopter service would adversely affect Marin Airporter's operations. The proposed service assertedly is not necessary to serve the public because adequate public transportation between SFO and Marin County is provided by Marin Airporter.

The operator of Airport Connection (formerly Berkeley Airport Connection) testified that his carrier provides a scheduled bus operation between SFO and Berkeley. Fifteen round trips are operated daily. Operations began in 1976 after SFO Helicopter ceased operations. Approximately 1,800 passengers per month are carried. If the proposed helicopter service is inaugurated between Emeryville (which is adjacent to Berkeley) such operations would adversely affect Airport Connection.

The city manager of Emeryville stated that the city council of Emeryville supports the application of Pacific Seaboard.

Discussion

We have carefully weighed the evidence in this proceeding, especially in view of the allegations that our staff seeks to prevent the proposed operations. The preponderance of the evidence causes us to conclude that the application should be denied. Applicant's own study indicates that it would not operate at a profit for a period of at least two years during which it would lose \$400,000. The financial statement of applicant (including the \$500,000 deposited by Terry to the account of Pacific Seaboard during the course of the hearing) shows total assets in the neighborhood of \$710,000.

Two aircraft would need to be purchased to initiate the proposed service at a cost of \$200,000 each. The total of the projected operating losses (\$400,000) and the minimum purchase price

of two helicopters (\$400,000) exceeds the total capitalization of the airline. Additional expenditures are necessary for ground facilities, insurance, and other start-up costs. Pacific Seaboard indicated that it could acquire additional capital through the sale of securities. Considering the financial situation presented at the hearing, the ability to acquire public equity financing is, at best, speculative. The evidence clearly indicates that applicant does not have the financial ability to conduct the proposed operations.

Applicant's proposed operations would conflict with the existing ground transportation services offered by Marin Airporter between Marin and SFO and by Airport Connection between Berkeley (Emeryville) and SFO. These carriers expanded their operations to fill the void created by the cessation of operations of SFO Helicopter, and such operations appear to meet the public demand for airport transportation services between the involved points. We have authorized three fixed-wing carriers to provide service between SFO and OAK. While the proposed transbay helicopter service would cause less interference with four-engine jet operations at SFO than fixed-wing operations, the authorized fixed-wing operations will adequately serve the public need for service between SFO and OAK.

A review of the past operations and regulatory history of applicant and its predecessors shows that it is not fit and able to conduct the proposed operations. Birdie, applicant's predecessor in Los Angeles, ceased operations and its certificate was revoked (Footnote 4). Data furnished to the Commission by Birdie and its successor, LA Helicopter, proved inaccurate (see Footnotes 4 and 6). LA Helicopter operated between LAX and BUR without a certificate (Exhibit 24). Pacific Seaboard and its predecessors have consistently

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shown a complete lack of responsibility to the public and a disregard of regulatory authority so as to make them unfit for any grant of operating authority in this proceeding.

Findings

1. Pacific Seaboard seeks authority to operate a scheduled helicopter air service between SFO, OAK, and heliports located in Emeryville, Marin County, and San Francisco.

2. Pacific Seaboard is a successor to LA Helicopter and Birdie. Birdie formerly operated a scheduled helicopter service in the Los Angeles area under a temporary certificate from this Commission. That operation ceased and the request to reinaugurate the service was denied (Decision No. 87094). Case No. 10304, an investigation to determine whether Pacific Seaboard is providing scheduled service in the Los Angeles area without Commission authority, is under submission.

3. Pacific Seaboard seeks to provide similar service to that formerly provided by SFO Helicopter Airlines, Inc. SFO Helicopter discontinued service in 1976 and its CAB certificate was revoked.

4. Pacific Seaboard does not possess the equipment necessary to begin proposed operations in the San Francisco area.

5. Pacific Seaboard does not possess the financial resources necessary to cover the combined expenses of acquiring necessary flight and ground equipment, insurance, and other start-up costs, and its projected losses for its first two years of operation.

6. The need for scheduled public transportation service between southern Marin County points and SFO and between the Emeryville-Berkeley area and SFO is adequately met by the surface transportation services performed by Marin Airporter and Airport Connection.

7. The need for scheduled air transportation between SFO and OAK will be adequately met by the operations of fixed-wing airlines authorized by Decision Nos. 87056 and 87672.

8. Public convenience and necessity do not require the helicopter operations proposed in Application No. 56814.

Conclusion

The Commission concludes that Application No. 56814 should be denied.

O R D E R

IT IS ORDERED that Application No. 56814 filed by Pacific Seaboard Airlines, Inc. is hereby denied.

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

Dated at San Francisco, California, this 25th day of OCTOBER, 1977.

William J. Simon President
Joseph L. Stinson
Richard D. Howell
Clair L. Gabriel Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Applicants in Consolidated Proceedings: Wallace S. Fingerett and Stephen Ellis, Attorneys at Law, for Pacific Seaboard Airlines, Inc.; 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 Graham & James, by Boris H. Lakusta and David J. Marchant, Attorneys at Law; and Frederick R. Davis, for Air California.

Protestants: Joseph R. Parker and William Rothman, for themselves; Carol W. Fetterman and J. Martin Rosse, for Strawberry Area Community Council; Gerald J. Zanzinger, Attorney at Law, for Marin Airporter; and Clifford Orlott, for Airport Connection.

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.