

Decision No. 88343 JAN 17 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 55777
(Filed June 30, 1975)

(Appearances are listed in Appendix B to Decision No. 87056.)

FINAL OPINION

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

Decision No. 87056 dated March 9, 1977 granted the alternate relief sought (removal of restriction "b").^{1/} In its brief filed March 31, 1977 Air Cal again requests that it be authorized to operate a separate new SFO-OAK route. The Commission staff opposes that authority. The primary reason is that the granting of the new route would permit Air Cal to tack the SFO-OAK route to existing

1/ Air Cal's Route 1 authorizes service between Orange County Airport, on the one hand, and OAK/SFO/SJO, on the other hand. Route 5 authorizes service between Palm Springs (with intermediate stops at Orange County Airport and Ontario), on the one hand, and OAK, SFO, and SJO, on the other hand. Removal of restriction "b" permitted local service between SFO and OAK on Routes 1 and 5. Such routes are not directly competitive with Pacific Southwest Airlines.

routes to provide a through service which it is not authorized to provide under its existing certificate. The staff pointed out that Section 2762 of the Passenger Air Carriers Act permits such tacking unless expressly prohibited by the Commission.^{2/} The secondary

reason is that there would be limited use of the new route if it is not linked with points on routes other than those on Routes 1 and 5.

The evidence shows that Air-Cal, initially at least, would use the authority to carry local passengers while ferrying aircraft from SFO to its maintenance base in Oakland. It seeks authority to provide regularly scheduled flights between SFO and OAK in addition to operations in connection with its Routes 1 and 5.^{3/}

The restriction against local operation between SFO and OAK was to prevent competition over that route between SFO Helicopter Airline, Inc. (SFO Helicopter) and Air Cal. SFO Helicopter ceased operations in 1976 and its certificate was revoked by the Civil Aeronautics Board. Two other carriers (Eureka Aero Industries, Inc. (Eureka Aero) and STOL Air, Inc. (STOL Air)) have been granted temporary certificates to operate between SFO and OAK to replace the service discontinued by SFO Helicopter. Eureka Aero and STOL Air oppose Air Cal's request for a certificate between SFO-OAK.

2/ § 2762. Unless prohibited by the terms and conditions of any certificate that may be involved, any one-passenger (air) carrier may establish through routes and rates, charges, and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it.

3/ Air Cal's Routes 1 and 5 are as follows:

Route 1 - Between Orange County Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport, and San Francisco International Airport, on the other hand, with each of the last three named airports being either a terminal or intermediate point for this route.

Route 5 - Between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport, and San Francisco International Airport, on the other hand, with each of the last three named airports being either a terminal or intermediate point for this route. Either Orange County Airport or Ontario International Airport may be an intermediate point for this route.

Discussion

Analysis of Air Cal's present route structure as set forth in its certificate shows that it is not possible to tack the proposed SFO-OAK route to existing routes to create new routes pursuant to Section 2762. Apparently the tacking the staff opposes is in connection with proposed Monterey routes, which have been applied for, but not granted. The effect of tacking of the SFO-OAK route to any routes granted in the Monterey application can be considered therein.

The staff contends that Air Cal made no showing of public convenience and necessity for the SFO-OAK route. We determined in Decision No. 87056 and in Decision No. 87672 in Application No. 56773, et al., that Air Cal, Eureka Aero, and STOL Air should share the SFO-OAK route formerly operated by SFO Helicopter. No additional showing of public convenience and necessity is required herein. The granting of a separate certificate to Air Cal for an SFO-OAK route would not change the ability of any of the three carriers to compete in the SFO-OAK market as long as Air Cal's operations are conducted with the same type of aircraft (737's and L-188's) that are operated over its long-haul route segments. Air Cal should be required to use that type of aircraft on the SFO-OAK route.

The staff opposes the granting of the certificate because of its limited use. The potential for use is limited because regular operations connecting SFO to points beyond OAK can be made only via Routes 1 and 5, and because it is not economically feasible to assign a multi-engine aircraft exclusively to turn-around service

between SFO and OAK. Air Cal seeks a separate SFO-OAK route so that it can carry passengers between those points in connection with positioning of aircraft and ferrying of aircraft to its Oakland maintenance base when the aircraft are not operated over its Routes 1 and 5. Unless a certificate is granted, Air Cal would be prevented from carrying passengers on the positioning and ferrying flights. Such flights are conducted for operating convenience, and generally would be flown whether or not revenue passengers are carried. The granting of the certificate would promote fuel economy and reduce the empty seat miles flown by Air Cal.

Findings

1. Air Cal is authorized to provide service between SFO and OAK pursuant to Decision No. 87056.
2. That decision permits limited authority to carry local passengers in connection with operations over its Routes 1 and 5.
3. Air Cal seeks a certificate to operate as a passenger air carrier between SFO and OAK to permit it to ferry aircraft between SFO and Air Cal's maintenance base in OAK.
4. It is not economically feasible to assign one of Air Cal's 737 or L-188 aircraft exclusively to turn-around service between SFO and OAK. Therefore, regularly scheduled operations between SFO and OAK, in addition to operations via its Routes 1 and 5, would permit Air Cal to fill empty seats on aircraft positioning operations not associated with operations over its Routes 1 and 5. Such scheduled operations will promote fuel economy.
5. Under Air Cal's existing certificate it is not possible to create new routes to beyond points by tacking the proposed SFO-OAK certificate to existing certificates pursuant to Section 2762 of the Passenger Air Carriers Act. Therefore, the operation of the SFO-OAK route by Air Cal will not adversely affect the traffic and revenues of competing air carriers serving points other than SFO and OAK.

6. The Commission has determined in prior decisions that Air Cal, Eureka Aero, and STOL Air should share the SFO-OAK market formerly served by SFO Helicopter. The granting of a certificate to Air Cal will not materially change the existing competitive relationship between the three carriers in the SFO-OAK market, if Air Cal is required to operate the same type of aircraft in the SFO-OAK market that it operates on its major routes.

7. Air Cal has adequate facilities, aircraft, personnel, and financial ability to provide the service in issue.

8. Public convenience and necessity require the granting of a separate certificate to Air Cal for its operations between SFO and OAK.

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

Conclusion

Air Cal should be granted a permanent certificate of public convenience and necessity to operate as a passenger air carrier between SFO and OAK without tacking restrictions, as set forth in the attached appendix.

Air Cal 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.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Air-California, a corporation, authorizing it to operate as a passenger air carrier between San Francisco and Oakland, as defined in Section 2741 of the Public Utilities Code. Appendix A of Decision No. 80439 is amended by incorporating Third Revised Page 3, attached hereto, in revision of Second Revised Page 3, and First Revised Page 6, attached hereto, in revision of Original Page 6.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

(a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. By accepting the certificate applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with the requirements of the Commission's General Orders Nos. 120-Series and 129-Series.

(b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs, in triplicate, in the Commission's office.

(c) The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.

(d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 105-Series.

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

Dated at San Francisco, California, this 17th day of JANUARY, 1978.

President
William S. Gerson Jr.
Leon L. Steyer
Richard D. Lovell
Clair T. Deibel
Commissioners

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

Route 13

Between Ontario International Airport and Sacramento Metropolitan Airport via the intermediate point of Orange County Airport.

Route 14

Between San Diego International Airport and Orange County Airport.

Route 15

Nonstop service between San Diego International Airport and Oakland International Airport.

Route 16

Between Tahoe Valley Airport, on the one hand, and Sacramento Metropolitan Airport, San Francisco International Airport, Oakland International Airport, San Jose Municipal Airport, and Orange County Airport, on the other hand, with each of the last four named airports being either a terminal or intermediate point for this route with the exception that no nonstop flights shall be operated between Sacramento Metropolitan Airport and San Francisco International Airport. Operations at Tahoe Valley Airport shall be conducted with Lockheed L-188 Electra aircraft only.

#Route 17

Between San Francisco International Airport and Oakland International Airport.

Issued by California Public Utilities Commission.

#Added by Decision No. 88343, Application No. 55777.

Route 13

Between Ontario International Airport and Sacramento Metropolitan Airport via the intermediate point of Orange County Airport.

Route 14

Between San Diego International Airport and Orange County Airport.

Route 15

Nonstop service between San Diego International Airport and Oakland International Airport.

Route 16

Between Tahoe Valley Airport, on the one hand, and Sacramento Metropolitan Airport, San Francisco International Airport, Oakland International Airport, San Jose Municipal Airport, and Orange County Airport, on the other hand, with each of the last four named airports being either a terminal or intermediate point for this route with the exception that no nonstop flights shall be operated between Sacramento Metropolitan Airport and San Francisco International Airport. Operations at Tahoe Valley Airport shall be conducted with Lockheed L-188 Electra aircraft only.

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