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Decision No. 88968 JUN 13 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
PACIFIC SOUTHWEST AIRLINES for)
modification of Decision No. 82409)
and Decision No. 85992 regarding)
elimination of frequency restrictions))
on its service to the Long Beach)
Municipal Airport.)

Application No. 58006
(Filed April 17, 1978)

Brownell Merrell, Jr., Attorney at Law,
for applicant.
Reg Dupuy, for Edd Tuttle, Councilman,
City of Long Beach, and Cerritos
Park Association, protestants.
Leonard Putnam, City Attorney, by
Leslie E. Still, Jr. and David
Schaeter, Deputy City Attorneys,
for City of Long Beach; and H.
Douglas Lemons, for Long Beach
Area Chamber of Commerce;
interested parties.
Peter Fairchild, Attorney at Law,
and Arthur Nettles, for the
Commission staff.

INTERIM OPINION

Pacific Southwest Airlines (PSA), a corporation, holds a certificate of public convenience and necessity by Decision No. 82409 as amended by Decision No. 85992. PSA is a passenger air carrier with extensive operations in California, and it is authorized to provide passenger air service to and from Long Beach Municipal Airport (Airport) over several routes, including:

"Route 10. Nonstop between Long Beach Airport
and San Diego International Airport.

"Route 11. Between Long Beach Airport and Oakland International Airport via intermediate point of San Jose Municipal Airport; nonstop between Long Beach Airport and San Jose Municipal Airport; and nonstop between Long Beach Airport and Oakland International Airport.

"Route 12. Nonstop between Long Beach Airport and San Francisco International Airport.

"Route 13. Between Long Beach Airport and Sacramento Metropolitan Airport via intermediate point of San Francisco International Airport."

Application No. 58006 filed April 17, 1978 by PSA seeks an order by the California Public Utilities Commission (Commission) modifying Decision No. 82409 dated January 29, 1974 and Decision No. 85992 dated June 22, 1976 so as to authorize PSA to conduct a 90-day experiment beginning June 21, 1978 whereby PSA would be allowed to operate a maximum of 9 scheduled arrivals and departures (operations) per day, Monday through Thursday, and a maximum of 12 scheduled operations per day on Friday, Saturday, Sunday, and holidays at Airport. The referenced decisions sought to be modified presently limit PSA to 6 operations per day, Monday through Thursday, and 8 operations on Friday, Saturday, Sunday, and holidays.

Application No. 58006 was filed two days after the city council of Long Beach granted PSA's request for the 90-day period beginning June 21, 1978.

A public hearing was held before Administrative Law Judge Wright in Los Angeles on June 1, 1978. The evidence presented by the applicant was uncontradicted, although statements in support of the application and in opposition thereto were made. Mr. C. R. Chandler, director of aeronautics for the Airport, Mr. George J. Mitchell, vice president of regulatory affairs for PSA, and Mr. Lawrence A. Guske, vice president and controller for PSA, presented sworn testimony.

On April 11, 1978 the city council of Long Beach approved a motion that PSA be granted a 90-day trial period commencing June 21 with clear language that the additional flights would conclude after 90 days and that the city manager would evaluate commercial aviation at the Airport.

The record shows that the city council of the city of Long Beach has taken a very active concern in the environmental consequences of present and future air carrier flight activity at the Airport. Prior to its approval of PSA's proposal for a 90-day test, the Long Beach city council, sitting en banc, held a public hearing in which it heard the views of Long Beach residents, civic groups, and homeowners' organizations. The approval of PSA's request by the city council was specifically conditioned on the city manager's supervising an evaluation of commercial aviation at the Airport during the 90-day trial period. It was understood by the city council that during the period July 1, 1978 through October 31, 1978 the city, through independent consultants, will be conducting a comprehensive noise study at the Airport at a cost of between \$10,000 and \$15,000. The study will include aircraft noise monitoring in compliance with the California Noise Standards set forth in Title 4, Subchapter 6, California Administrative Code, and will require an evaluation and assessment of public reaction to the noise levels at the Airport, including community noise complaints.

On April 10, 1978 a certificate of exemption was executed by the manager of the Environmental Planning Division of the Long Beach City Planning Commission certifying the exemption of the 90-day plan as being a project categorically exempt from the California Environmental Quality Act (CEQA) based on Class 6, the preparation and filing of basic data, research, experimental management, and

resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. (Public Utilities Commission, Rules of Practice and Procedure, (m), (l), (F).) PSA's proposal is limited to a 90-day period and is avowedly designed as a basic data collection activity so that, among other things, PSA, the city, and its consultants can evaluate the economic and environmental results of the increase in flights.

Mr. Chandler testified that scheduled air carrier flight activity levels are substantially lower today at the Airport than they have been in recent years. Likewise, the number of jet aircraft operations flown by charter operators, the military, and McDonnell Douglas are far below previous levels. In prior years, both PSA and Western Airlines (Western) operated from the Airport, their combined operations totaling approximately 12 on weekdays and 16 on weekends. During this same period, another 6 to 8 operations of large jet aircraft a day were flown by charter operators, the military, and McDonnell Douglas.

During calendar year 1977, there were approximately 573,000 takeoffs and landings at the Airport. Of this total, an estimated 17,000 to 18,000 involved jet aircraft, the balance being either turboprop or piston-driven aircraft. PSA flew approximately 2,288 operations, thus averaging 6.27 operations per day. PSA's activity, therefore, constituted approximately 12 percent of total jet aircraft activity and ¹².008 percent of total air operations at the Airport.

The incremental 90-day increase applied for by applicant will amount to 1.33 additional operations per day, or less than 5 percent of the average jet activity. During the same test period, combined aircraft operations are estimated to average 900 per day.

The witness also testified that the city council's condition will be met; that during the calendar quarter commencing July 1, 1978 an independent qualified consultant will be conducting a comprehensive noise study which will, among other things, produce an objective assessment of PSA's additional temporary flight activity in relation to the total noise environment at the Airport. The specifications for this noise study shall require that it satisfy all requirements of a "Quarterly Report for Airports With Noise Problems", as defined in Title 4, Subchapter 6, California Administrative Code "Noise Standards". Pursuant to this study, the consultant will ascertain and evaluate the extent of noise impact resulting from increased flights flown by PSA during the period June 21, 1978 to September 19, 1978, and the consultant's report will include a discussion of relative qualitative and quantitative factors associated therewith.

During the 90-day trial period requested by PSA, applicant testified that it will cooperate with the city of Long Beach and its director of aeronautics to assess the economic impact of additional service on the city of Long Beach, the potential for traffic development at the Airport, and in the gathering of environmental data, all of the results of these studies to be submitted to the Commission for its evaluation and consideration.

The testimony of PSA's vice president for regulatory affairs is that a minimum of 4 round trips per day in a given market is necessary to provide an effective pattern of commuter service. Appendix B, incorporated herein, shows that the proposed 90-day experiment will provide 4 round trips per day in the Long Beach-San Jose/Oakland market to complement its present 4 round trips per day in the Long Beach-San Francisco market.

Appendix B, submitted by PSA at the hearing as the schedule PSA will adopt, subject to Commission approval, provides for only 8 operations per day, Monday through Thursday, 8 on Friday, Sunday, and holidays and 6 on Saturday. Appendix B was received as an amendment to the application.

While PSA's load factor on each route from and to the Airport is below the breakeven point, PSA believes the test period applied for will result in an improvement of load factors as travelers become aware of the wider spectrum of flights available at Long Beach. By the end of summer, according to the witness, PSA should have a better idea as to how Long Beach can be served, consistent with community desires and of the ability of PSA to provide these services on a profitable basis.

The Long Beach area chamber of commerce together with the Long Beach city attorney support the test period applied for and approved by the Long Beach city council.

Long Beach city council member-elect Edd Tuttle together with the Cerritos Park Association of homeowners opposed the application, basically because of the concomitant increase in noise and air pollution which inevitably occurs with any increase in air traffic.

PSA's proposal presents unique questions as to the Commission's responsibility under Rule 17.1 of the Commission's Rules of Practice and Procedure.^{1/} The situation is distinctive partly because the only restriction set forth on PSA's certificate of public convenience and necessity limiting the maximum number of permissible flights at any airport relates to service at the Airport. This special circumstance is complicated by the fact that Long Beach is the only station on PSA's system that has in its terminal lease set forth limits on the number of departures permissible on a daily basis. Accordingly, the application is not a matter of a routine quarterly schedule change or an upgrade of service caused by peak demands at a major airport served by PSA. Instead it represents a request to alter a service restriction that has been fixed by the Commission and a local agency, albeit for different reasons.

The Applicable Law Pursuant to CEQA

In deciding the application before us for a temporary increase in operations at Long Beach by PSA we must, at the threshold, determine whether the Commission or Long Beach is the lead agency. If the Commission is the lead agency, we must decide whether:

^{1/} Rule 17.1 was developed and promulgated pursuant to the California Environmental Quality Act, Public Resources Code § 21000, et seq. (hereinafter referred to as CEQA) and the Guidelines for Implementation of the California Environmental Quality Act, Title 14, Chapter 3, Section 15000, et seq., Cal. Admin. Code (hereinafter referred to as the "Guidelines").

1. The project falls within a category exempt by administrative regulation pursuant to Rule 17.1(m)(1)(F);^{2/}
2. We should adopt Long Beach's determination that the temporary project is categorically exempt. (We could do this despite a determination that the Commission is the lead agency); or
3. ". . . It can be seen with certainty that the activity in question will not have a significant effect on the environment." (Section 15060, California Administrative Code.)

If we can make none of the three determinations listed above, and the Commission is the lead agency, we must require and undertake initial environmental study on the proposed project. (Section 15080, California Administrative Code.)

2/ Section 21084 of the California Public Resources Code provides that the Guidelines include a list of classes of projects which have been determined not to have a significant effect on the environment and are accordingly exempt from the provisions of CEQA. This list of exempt projects appears in Article 8, Section 15100, et seq., of the Guidelines and has its counterpart in Section 17.1(m) of the Commission's Rules of Practice and Procedure.

The Class 6 exemption appears in the Guidelines as Section 15106 of Title 14 of the California Administrative Code, which provides as follows:

"Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded."

Discussion on Environmental Issues

We conclude that the Commission is the lead agency. According to CEQA "...the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole". (Section 15065, California Administrative Code, subd. (b)). Article XIII, Section 3, of the California Constitution, and the Passenger Air Carriers Act (particularly Section 2751 (d) of the Public Utilities Code) together are clear that the Commission was expressly granted exclusive jurisdiction over intrastate air carrier operations. Given that legislative and constitutional mandate, we are of the opinion that the enacted regulatory scheme makes the Commission's determinations in matters involving Passenger Air Carriers controlling. It is inescapable that the Commission is, therefore, the lead agency. This application does not pose the situation contemplated in Section 15065(b) of the California Administrative Code where two agencies equally meet the criteria of lead agency. Therefore, the fact that Long Beach made some CEQA findings prior to our determination does not render Long Beach the lead agency for this project. We understand Long Beach's concern and desire to insure that some agency appropriately consider environmental issues and CEQA.

PSA made the following contentions at the opening of Commission hearings, viz: (1) that CEQA has no application to PSA's proposal since PSA is requesting no greater authority for itself than that permitted to PSA and Western at the time CEQA was enacted; and (2) even if CEQA is found to apply, the Commission should defer to the determination of the city of Long Beach that the proposal is categorically exempt, or, in lieu thereof, issue its own categorical exemption under Section 17.1(m)(1)(F) of the Commission's Rules.

With respect to PSA's assertion that its request does not fall within the purview of CEQA, we recognize that Section 21169 of the Public Resources Code validates any "project" undertaken or approved before the effective date of the Act (December 5, 1972). We also recognize that the city of Long Beach approved a maximum number of departures at the Airport for Western and PSA, which total exceeded the number proposed by PSA in its present application. But, we are not convinced that PSA can now combine the number of departures allowable to Western, which ceased service to Long Beach in 1973, with those currently permitted to PSA for purposes of asserting grandfather rights under Section 21169. Moreover, as stated by the court in Bresnahan v City of Pasadena (48 Cal App 3d 297, 306; 121 Cal Rptr 750):

"...the purpose of Section 21169, the grandfather clause, appears to have been to grant relief from hardship engendered by requiring environmental impact reports on projects already approved by the appropriate governmental bodies upon which other parties have acted to their detriment."

We have carefully reviewed the testimony (summarized on pages 4 and 5) and conclude that we can find with certainty that the temporary increase in PSA's operations will not have a significant effect on the environment. There are substantially fewer jet operations conducted at Long Beach than in prior years. The impact of PSA's increased operations for a temporary trial period will not significantly affect environmental quality in the urbanized area. We note in some ^{past} CEQA air carrier certification proceedings (requests of PSA and Air California to operate at Monterey) we could not make a finding that it could be seen with certainty that there would be no significant effect on the environment. But those areas were traditionally far less

urbanized and industrialized and had substantially fewer jet operations, and the impact of additional jet air carrier operations could have had significant environmental effects. This is an interim order. If the results of the environmental studies to be conducted by Long Beach produce significant data and conclusions that run contrary to our determination that there will be no significant impact on the environment, we will reconsider our determination before approving a permanent increase in PSA's Long Beach operations. We will be surprised if such data and conclusions result from Long Beach's study. We make our determination today because we have an obligation to reach a decision and, given the evidentiary record and our extensive experience regulating air carriers (fully weighing and evaluating environmental considerations), we are comfortable with our conclusion that it can be seen with certainty that PSA's proposed operations will not have a significant effect on the environment.

No other issues require discussion. The Commission makes the following findings of fact and conclusions of law.

Findings

1. PSA is a passenger air carrier with extensive experience in the field of air operations in the transportation of passengers, including terminal facilities at the Airport.
2. By certificates of public convenience and necessity, PSA is authorized to operate with specific frequency over a number of routes between points in California and the Airport as shown in Appendix A, incorporated herein.
3. PSA requests that the restriction of a maximum number of flights by route segment through the Airport be eliminated for 90 days beginning June 21, 1978 and that it be authorized to provide a total of 8 operations on Monday through Thursday, 6 on Saturday, and 8 operations on Friday and Sunday and on holidays at the Airport to points certificated to PSA.

4. The Long Beach City Council approved PSA's proposal on April 11, 1978.

5. An independent, objective noise study is planned by Long Beach during the calendar quarter commencing July 1, 1978 and will include an assessment of PSA's additional temporary flight activity, and the results thereof will be submitted to the Commission for its consideration.

6. The incremental 90-day increase in operations for which application is made will amount to 1.33 additional operations per day, or less than 5 percent of the average daily jet activity at the Airport.

7. The Commission is the lead agency under CEQA.

8. It may be seen with certainty that PSA's additional operations at Long Beach will not have a significant impact on the environment.

~~9. Long Beach was first to act on this project, and its exemption determination is adopted.~~

10. Public convenience and necessity require that PSA be authorized, for a limited test period of 90 days, to accumulate data looking to the improvement of its load factors and the profitability of its Long Beach operations by offering a wider spectrum of flight availability to Long Beach area travelers.

11. The following order should be effective the date of signature so PSA can initiate the experimental increased service to Long Beach at the earliest date.

The Commission concludes that PSA's request for temporary modification of Decisions Nos. 82409 and 85992 should be granted to the extent and as set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Pacific Southwest Airlines' certificate of public convenience and necessity is amended by revising Fifth Revised Page 4, as established by Decision No. 85992, by incorporating Sixth Revised Page 4, attached hereto as Appendix C and made a part hereof for ninety days only commencing June 21, 1978.

2. Upon the expiration of said ninety-day period commencing June 21, 1978, Fifth Revised Page 4, as established by Decision No. 85992, shall be in full force and effect without further order of the Commission.

3. In all other respects, Decisions Nos. 82409 and 85992 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th
day of JUNE, 1978.

Robert R. Bostrom
President
William J. Symons Jr.
Veronica L. Stenberg
Robert D. Hall
Clare T. DeWitt
Commissioners

APPENDIX B

LONG BEACH DEPARTURESMONDAY THROUGH THURSDAY

<u>Current</u>	<u>Effective 6-21-78</u>
7:00 a.m. - SFO	7:00 a.m. - SFO
7:25 a.m. - SJC/OAK	7:25 a.m. - SJC/OAK
10:30 a.m. - SFO/SMF	10:20 a.m. - SFO/SMF
1:00 p.m. - SFO	10:55 a.m. - SJC/OAK
4:00 p.m. - SJC/OAK	2:15 p.m. - SJC/OAK
5:00 p.m. - SFO	3:45 p.m. - SFO
	5:45 p.m. - SJC/OAK
	6:30 p.m. - SFO

FRIDAY

<u>Current</u>	<u>Effective 6-21-78</u>
7:00 a.m. - SFO	7:00 a.m. - SFO
7:25 a.m. - SJC/OAK	7:25 a.m. - SJC/OAK
10:30 a.m. - SFO/SMF	10:20 a.m. - SFO/SMF
1:00 p.m. - SFO	10:55 a.m. - SJC/OAK
1:25 p.m. - SJC/OAK	2:15 p.m. - SJC/OAK
4:15 p.m. - SFO	3:45 p.m. - SFO
5:30 p.m. - SJC/OAK	5:45 p.m. - SJC/OAK
7:15 p.m. - SFO	6:30 p.m. - SFO

SATURDAY

<u>Current</u>	<u>Effective 6-21-78</u>
7:25 a.m. - SJC/OAK	7:00 a.m. - SFO
7:45 a.m. - SFO	7:25 a.m. - SJC/OAK
11:00 a.m. - SFO	12:00 noon - SJC/OAK
3:45 p.m. - SJC/OAK	1:00 p.m. - SFO
4:15 p.m. - SFO	5:15 p.m. - SFO
	5:45 p.m. - SJC/OAK

SUNDAY

<u>Current</u>	<u>Effective 6-21-78</u>
8:30 a.m. - SFO	8:00 a.m. - SJC/OAK
9:00 a.m. - SJC/OAK	8:45 a.m. - SFO
12:45 p.m. - SFO	12:00 noon - SJC/OAK
1:25 p.m. - SJC/OAK	1:00 p.m. - SFO
4:15 p.m. - SFO	3:30 p.m. - SJC/OAK
5:30 p.m. - SJC/OAK	4:15 p.m. - SFO
7:15 p.m. - SFO	6:30 p.m. - SJC/OAK
	7:15 p.m. - SFO

APPENDIX C

Appendix A
(Dec. 79085)

PACIFIC SOUTHWEST AIRLINES
(a corporation)

Sixth Revised Page 4
Suspend
Fifth Revised Page 4

Routes 10, 11, 12, and 13

1. Service between the points authorized on these routes shall not be connected, combined, or operated in combination with points or routes previously authorized, or with each other except as herein provided. Route 10 may be connected with Routes 11, 12, or 13 at Long Beach to provide through service to passengers as follows:

San Diego - Long Beach - Oakland
 San Diego - Long Beach - San Francisco
 San Diego - Long Beach - San Francisco (intermediate point per
 Route 13) - Sacramento
 San Diego - Long Beach - Oakland - Sacramento
 San Diego - Long Beach - San Jose - Oakland - Sacramento

The points herein authorized must be operated as specified; no over flights of points authorized shall be permitted.

2. Route 10

Passengers shall be transported in either direction at a maximum of one scheduled departure from Long Beach Airport and one scheduled arrival at Long Beach Airport on Monday through Sunday each week.

- #3. Route 11

Passengers shall be transported in either direction at a maximum of four scheduled departures from Long Beach Airport and four scheduled arrivals at Long Beach Airport on Monday through Sunday each week.

- #4. Routes 12 and 13

Passengers shall be transported in either direction at a maximum of four scheduled departures from Long Beach Airport and four scheduled arrivals at Long Beach Airport on Monday through Sunday each week for both routes combined.

- #5. Total number of scheduled departures from Long Beach Airport shall not exceed eight, and scheduled arrivals at Long Beach Airport shall not exceed eight on any day.

Route 14

Service between the points authorized on this route shall not be connected, combined, or operated in combination with points or routes previously authorized. The points herein authorized must be operated as specified; no over flights of points authorized shall be permitted.

Issued by California Public Utilities Commission.

Revised by Decision No. _____, Application No. 58006.