

**ORIGINAL**

Decision No. 8926S AUG 22 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AIR CALIFORNIA and of CURTIS B. DANNING, Trustee in Bankruptcy of HOLIDAY AIRLINES CORPORATION for an Order Authorizing Transfer of the Certificate Authority of the Latter to the Former, and for an Order Removing the Suspension of said Certificate.

Application No. 55949  
(Filed September 22, 1975;  
amended November 18, 1975)

In the Matter of the Application of HOLIDAY AIRLINES, INC., a California corporation, for authority to transport local passengers between all airports on Holiday's system where flights can be operated subject to the condition that all flights shall originate or terminate at Lake Tahoe.

Application No. 53266  
(Filed April 14, 1972)

- Graham & James, by Boris H. Lakusta and David J. Marchant, Jr., Attorneys at Law, for Air California, applicant in A.55949.
- Lawrence Bass, Attorney at Law, for Curtis B. Danning, Trustee in Bankruptcy of Holiday Airlines Corporation, applicant in A.55949.
- Brownell Merrell, Jr., Attorney at Law, for Pacific Southwest Airlines, Inc., protestant in A.55949 and petitioner for revocation of certificate in A.53266.
- Robert B. White and John A. Bottorff, for Air Nevada, protestant in A.55949.
- George S. Smith, for himself and other former common stockholders of Holiday Airlines Corporation, protestant.
- Kenneth H. Lounsbey, Attorney at Law, for City of South Lake Tahoe, interested party.
- Walter Kessenick, Attorney at Law, Richard Brozosky, and Milton De Barr, for the Commission staff.

ORDER DISCONTINUING PROCEEDING

Application No. 55949 seeks the transfer to Air California of the passenger air carrier certificate of Holiday Airlines Corporation (Holiday). Protests to the granting of the application have been filed by Pacific Southwest Airlines (PSA) and by Air Nevada.

By a petition filed September 29, 1975, PSA seeks revocation of Holiday's certificate.

The above matters were consolidated and a prehearing conference was held on December 8, 1975 at San Francisco before Commissioner Symons and Administrative Law Judge Mallory following the filing of the pleadings by PSA and a motion by the Commission staff which sought clarification of the issues to be considered in the consolidated proceedings.

On February 2, 1976 a Prehearing Conference Order was filed in which the presiding officer ruled as follows:

1. The governing provisions of the Passenger Air Carriers Act (Division Chapter 4 of the Public Utilities Code) are §§ 2757 and 2758.
2. Section 2758 requires that in determining whether acquisition of one passenger air carrier by another should be approved the Commission must find that:
  - (a) The acquisition is in the public interest.
  - (b) The conditions, if any, which should be attached to the acquisition are justified and reasonable.
  - (c) The granting of the acquisition will not create a monopoly and thereby restrain competition.
  - (d) The granting of the acquisition will not jeopardize the operations of another passenger air carrier not a party to the transaction.
3. Public convenience and necessity is not an issue in air proceedings seeking approval of the acquisition of a passenger air carrier certificate.

4. The (then) current Tahoe Valley route proceedings<sup>1/</sup> should be concluded before evidence is taken in Application No. 55949, in order that the Commission may properly consider the effect of the proposed acquisition of Holiday's certificate by Air California on the air carriers that are awarded certificates in the Tahoe Valley route proceeding.

5. Pending completion of the Tahoe Valley route proceeding, that portion of the public desiring air transportation to and from Tahoe Valley would be adequately served by PSA and Air California under the temporary operating authorities for service to and from TVL.

6. The evidence which bears on whether Holiday's certificate should be revoked is generally the same as that which will be adduced in the certificate acquisition proceeding, and both proceedings should be heard on a common record.

By Decision No. 88249 dated December 13, 1977 in Applications Nos. 54604, 54899, 55009, and 55157, PSA and Air California were granted permanent authority to serve between Tahoe Valley Airport and other California airports.<sup>2/</sup>

Following the issuance of Decision No. 88249, Air California was requested to advise the Commission when it would be prepared to proceed to hearing in Application No. 55949. Following oral communications that Air California did not wish to set a hearing date, Air California was advised, because of the length of time the matter had been on file, that unless it would be ready to promptly prosecute Application No. 55949, it would be recommended to the Commission that the matter be dismissed without prejudice to any future application seeking authority for service between points covered by the Holiday certificate.

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<sup>1/</sup> In Applications Nos. 54899, 55009, and 55157, Air California, PSA, and Air Nevada applied for certificates of public convenience and necessity to operate as passenger air carriers between airports in the San Francisco Bay area and/or Metropolitan Los Angeles area, on the one hand, and Tahoe Valley Airport, on the other hand.

<sup>2/</sup> Air California is authorized to serve between Tahoe and San Francisco, San Jose, Oakland, Sacramento, and Santa Ana. PSA is authorized to serve between Tahoe and Los Angeles, Hollywood-Burbank, San Diego, Sacramento, and San Francisco. In Decision No. 88971 entered on June 13, 1978 the Commission granted partial rehearing of Decision No. 88249.

On May 26, 1978, the Commission received the following letter from Air California's General Counsel:

"The Board of Directors of Air California on May 16, 1978 considered the question of Air California's position on the acquisition of the Certificate of Holiday Airlines. After consideration it was the consensus of the board not to proceed with the Holiday Airlines Certificate matter at this time, but to hold the acquisition question in abeyance pending further consideration. Therefore, Air California requests that Application No. 55949 be taken off calendar subject to being reset. Air California would object to a dismissal of this application."

In the circumstances, we believe Application No. 55949 should be dismissed.

#### Findings

We find that:

1. Holiday's certificate has been dormant since its suspension by Decision No. 84487 dated May 30, 1975.
2. Air service between Tahoe Valley Airport and all other points named in Holiday's certificate is now being performed with the same type of aircraft authorized to be operated by Holiday (Lockheed Electra, L-188) under permanent certificates granted to Air California and PSA.
3. The only service covered by Holiday's certificate other than Tahoe service is between Los Angeles International Airport and Hollywood-Burbank Airport, on the one hand, and Oakland International Airport and San Jose Airport, on the other hand. Air transportation service between those points is currently being provided by several major airlines operating Boeing 737, 727, and 749 equipment and with other pure jet aircraft superior to L-188 propjet aircraft.
4. Sufficient and adequate air service is provided between points covered by Holiday's certificate. Air California does not desire to proceed to hearing in Application No. 55949.

5. Holiday is no longer able to perform any of its certificated services inasmuch as all of its operating properties have been sold or disposed of.

6. Dismissal of Application No. 55949 will not adversely affect the public desiring to travel by air between points named in Holiday's certificate.

Conclusions

1. Application No. 55949 should be dismissed without prejudice for want of prosecution.

2. The motion of PSA to cancel Holiday's certificate to operate as a passenger air carrier should be granted, provided a hearing is not requested by Air California or Holiday within sixty days after the date of this order.

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Holiday Airlines Corporation (Holiday) in Appendix B to Decision No. 83962 in Application No. 53266 is hereby canceled and revoked on the sixty-first day after the date of this order, provided a hearing is not requested by Air California or Holiday within sixty days after the date of this order.

2. Tariff filings made by Holiday as a passenger air carrier are canceled concurrently with the revocation of the certificate described in the preceding Ordering Paragraph 1. ✓

3. Application No. 55949 is dismissed.

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

Dated at San Francisco, California, this 22nd day of AUGUST, 1978.

Robert Bateman  
President  
William J. ...  
Vernon S. ...  
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Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire E. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.