

ORIGINAL

Decision 93388 AUG 4 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Southwest Airlines for authority to provide passenger air service between San Francisco/San Jose/Oakland and Sacramento, on the one hand, and Lake Tahoe, on the other hand, with connecting and direct service to Los Angeles, Hollywood-Burbank, Long Beach, San Diego and Ontario.

Application 54899  
(Filed May 17, 1974;  
amended May 30, 1974,  
February 13, 1975, and  
July 17, 1975)

Application of AIR CALIFORNIA for a Certificate of Public Convenience and Necessity to provide passenger air service between Lake Tahoe, on the one hand, and Sacramento, San Francisco, San Jose, Orange County, Ontario, Palm Springs, and San Diego, on the other hand, with the points other than Lake Tahoe being either terminal or intermediate points.

Application 55009  
(Filed July 2, 1974)

ORDER RESCINDING DECISION 88249 AND DISMISSING APPLICATIONS 54899 AND 55009

Decision (D.) 88249 in these proceedings granted authority to Pacific Southwest Airlines (PSA) and Air California (Air Cal) to provide passenger air service between South Lake Tahoe Airport (Lake Tahoe) and several other points.

PSA and Air Cal inaugurated service at Lake Tahoe under the certificates of public convenience and necessity granted in D.88249. Subsequently, both air carriers discontinued service at Lake Tahoe, and no service is now performed at Lake Tahoe by PSA or Air Cal.

The California Tahoe Regional Planning Agency (CTRPA) sought review by the California Supreme Court and annulment of D.88249 (CTRPA v PUC, SF 23897). CTRPA's objections were that D.88249 did not fully comply with the California Environmental Quality Act (CEQA). The Supreme Court remanded the matter to the Commission to determine whether "the application of real parties in interest for certificates of public convenience and necessity for passenger air service to Tahoe Valley Airport are moot..."

On October 24, 1978, the Federal Airline Deregulation Act of 1978 was signed into law. That act was tested in the federal court. Under the order of the U.S. District Court for the Northern District of California (Sierra Flite Service Inc. v PUC et al., Civil No. 079-0840 SW, June 1, 1979), this Commission is permanently enjoined from regulating the rates, routes, or services of any air carrier having authority or holding an exemption under Title IV of the Federal Aviation Act of 1958, as amended. The court has held that the sole authority to regulate the intrastate operations of such airlines lies with the Civil Aeronautics Board (CAB). The order was appealed by this Commission.

In Hughes Air Corp., et al. v Public Util. Comm. of Calif. and Sierra Flite Service et al. (May 11, 1981) \_\_\_ F 3d \_\_\_, the United States Court of Appeals, Ninth Circuit, found that this Commission has no jurisdiction to regulate the intrastate operations of certificated passenger air carriers.

*Original. Tab 4*

Article III, Section 3.5 of the Constitution of the State of California prohibits this Commission from refusing to enforce a state statute on the basis that federal law prohibits the enforcement of the statute unless an appellate court has made a determination that enforcement is prohibited by federal law.<sup>1/</sup>

On June 1, 1981, CTRPA filed a petition for rescission of D.88249, citing the federal court actions referred to above and related actions of the CAB. In the circumstances, the petition should be granted.

Findings of Fact

1. PSA and Air Cal were granted certificates of public convenience and necessity to provide air passenger service at Lake Tahoe. (D.88249.)

2. The air service initiated by PSA and Air Cal under such certificates has been discontinued, and no service at Lake Tahoe is now provided by those carriers.

3. Following an appeal of D.88249 to the California Supreme Court by CTRPA, that Court remanded the matter to this Commission. (SF 23897, October 24, 1979.)

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<sup>1/</sup> "3.5. An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- "(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- "(b) To declare a statute unconstitutional;
- "(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."

4. The remanded proceedings were held in abeyance because of the pending appeal of a Federal District Court decision finding that this Commission had no jurisdiction to regulate certificated passenger air service following passage of the Federal Airline Deregulation Act of 1978. (Sierra Flite, supra.)

5. The United States Court of Appeals, Ninth Circuit, in Hughes Air Corp., supra, has made a determination that this Commission may not enforce the provisions of Chapter 4, Part 2, Division of the Public Utilities Act (Passenger Air Carriers Act).

6. PSA and Air Cal now conduct their air passenger operations under certificates issued to them by the CAB.

Conclusions of Law

1. This Commission is prohibited by federal statute from regulating the intrastate operations of certificated passenger air carriers.

2. In view of the foregoing conclusion, and as PSA and Air Cal no longer provide air passenger service to Lake Tahoe, the issues remanded to this Commission for further consideration by the California Supreme Court are moot.

3. The proceedings in Application (A.) 54899 (PSA) and A.55009 (Air Cal) should be terminated; D.88249 should be rescinded, and A.54899 and A.55009 should be dismissed.

IT IS ORDERED that:

1. D.88249 is rescinded.
2. The proceedings in A.54899 and A.55009 are terminated.

3. A.54899 and A.55009 are dismissed.

This order becomes effective 30 days from today.

Dated AUG 4 1981, at San Francisco, California.

John E. Cayo  
President  
Michael D. ...  
Edward W. ...  
Antonia ...  
Pres. ...  
Commissioners