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Mailed 1/20/99

Decision 99-01-024 January 20, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Airporter, Inc, doing business as Santa Rosa Airporter, to amend and modify its passenger stage certificate #9023, by removing the "reservation only restrictions" for five listed cities in Marin County, and to expand its authorized service to all points in the Cities of Novato, Marinwood, Terra Linda, San Rafael, Corte Madera, and Mill Valley for both routes 1 (SFO) and 2(OAK), with retention of the current "Half-mile proximity restriction" within these cities.	Application 98-08-001 (Filed August 3, 1998)

INTERIM OPINION

Summary

The Commission denies the appeal of Marin Airporter (MA) and affirms the categorization of this proceeding as a "ratesetting" proceeding, as previously determined in the Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo). According to MA, this proceeding should be categorized as a "quasi-legislative" proceeding pursuant to Rules 5 and 6.1 of this Commission's Rules of Practice and Procedure and Public Utilities (PU) Code § 1701.1.

Background

Under Senate Bill 960 (Leonard; Stats. 1996, Ch. 856), and Article 2.5 of the Commission's Rules of Practice and Procedure and PU Code § 1701.1 et seq., the procedures applicable to a particular proceeding are dependent on how the proceeding is categorized. Rule 5 and PU Code § 1701.1 define three categories

of Commission proceedings: adjudicatory, ratesetting, and quasi-legislative proceedings.

On December 16, 1998 Commissioner Neeper in the Scoping Memo categorized Application (A.) 98-08-001 as a "ratesetting" case. MA has filed a timely appeal of this categorization pursuant to Rule 6.4 of the Commission's Rules of Practice and Procedure.

Position of Marin Airporter

MA believes that this proceeding should not be categorized as a ratesetting proceeding because the case has no connection with rates. MA argues that the rates of applicant are not raised anywhere in the record as an issue for consideration. Further, MA believes that it is erroneous and contrary to the § 1701(c)(3) to hold that the application presents a ratesetting case.

According to MA, the correct categorization for the proceeding is quasi-legislative. MA believes that the application of Airporter, Inc., doing business as Santa Rosa Airporter (SRA), modifies or attempts to establish new policy concerning the need to establish fitness. In support of its position, MA argues that fitness issues of the application have been cast aside as irrelevant or not worthy of Commission consideration.

Discussion

First, we will address MA's argument that the proceeding should be categorized as quasi-legislative.

Rule 5 states:

> "d. 'Quasi-legislative' proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry."

And, PU Code Section 1701.1 states:

> "(c)(1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry." (Emphasis added).

The proceeding concerns SRA's request to amend its existing passenger state certificate by removing the "By Reservation Only" restriction for six cities and replacing the specific location within a City requirement for those six cities with a Full-City description.

The basic thrust of this proceeding is *not* to "establish policy" (or rules). Any policy formulation, if required, would be incidental. The basic thrust of this proceeding is to determine whether applicant's fitness conforms to existing Commission policy or rules. Thus, the proceeding cannot be categorized as quasi-legislative under either the definition in Rule 5 or Section 1701.1(c)(1).

The proceeding does not squarely fit into any one category. As discussed above, it cannot be categorized as quasi-legislative since its primary focus is not policy establishing or "forward looking" in the sense typical of a quasi-legislative proceeding. Rather, the proceeding has a mix of forward looking and backward looking elements, and it appears that the backward looking elements predominate.

Pursuant to Rule 6.1(c)

> "When a proceeding does not clearly fit into any of the categories as defined in Rules 5(b), 5(c), and 5(d), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until we determine that the rules applicable to one of the other categories, or some hybrid of those rules, are best suited to the proceeding."

As the Commission has said on a number of occasions:

> "Ratesetting proceedings typically involve a mix of policymaking and fact-finding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and fact-finding, we believe that ratesetting procedures are *in general* preferable for those proceedings as well." (Decision (D.) 97-06-071, slip op. at 6 (emphasis in original).)

Here, there are fact-finding issues dealing with whether SRA is fit to offer the proposed service consistent with previously-established Commission policies. This proceeding will involve an inquiry into whether SRA meets the Commission's existing requirements for fitness. MA's argument that the Commission has cast aside fitness issues as irrelevant is inconsistent with the language of the Scoping Memo which states that "[t]he scope of this proceeding concerns the fitness of applicant to offer the proposed service." Even if some incremental policy making will occur in this proceeding, the proceeding is still properly categorized as ratesetting under Rules 5 and 6.1(c). This categorization reflects the fact that the procedures applicable to the ratesetting category, are most appropriate for cases in which there is a mix of fact finding and policy making, especially where the policy setting aspects of the case are relatively minor.

As we have previously stated:

> "[A] proceeding that primarily implements policy, rather than establishing it, and looks at facts specific to a particular utilit[y] . . . as in this case is more appropriately handled under the procedure[s] applicable to ratesetting rather than those established for policy making." (D.97-06-071, slip. op. at 7.)

Due to the mandatory statutory deadline of PU Code Section 1701.1(a), there is a need to act on this matter before January 21, 1999, and this constitutes

an unforeseen emergency situation for purposes of PU Code Section 311(g)(2). (See Rule 81(g) of the Commission's Rules of Practice and Procedure.) Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. This proceeding involves the request of Airporter, Inc., doing business as Santa Rosa Airporter, to amend its existing passenger state certificate by removing the "By Reservation Only" restriction for six cities and replacing the specific location within a City requirement for those six cities with a Full-City description.

2. The primary focus of the Commission's inquiry will be into the fitness of Airporter, Inc., doing business as Santa Rosa Airporter, to provide service to six cities.

3. The policy for determining a carrier's fitness has already been established in prior Commission decisions.

4. Any policy determinations made in regard to the proceeding would be incidental to the review of applicant's fitness for compliance with prior Commission decisions.

5. The Scoping Memo in this proceeding identifies the fitness of applicant as within the scope of this proceeding.

6. The Scoping Memo in this proceeding does not attempt to modify or establish new policy concerning fitness.

Conclusions of Law

1. Since the proceeding is subject to Article 2.5 of the Commission's Rules of Practice and Procedure, it has to be categorized in one of three categories: adjudicatory, ratesetting, or quasi-legislative.

2. Ratesetting proceedings typically involve a mix of policy making and fact finding relating to a particular public utility.

3. Proceedings that do not clearly fall within a single category, that involve a mix of policy making and fact finding relating to a particular public utility or utilities are generally best handled under the procedures applicable to ratesetting.

4. Because this proceeding primarily implements existing policy, the proceeding should be handled under the ratesetting category rather than any of the other remaining categories.

5. The Assigned Commissioner's Ruling determining that the Application is a ratesetting proceeding should be affirmed.

6. MA's appeal of the Scoping Memo and Ruling of the Assigned Commissioner in this proceeding should be denied.

INTERIM ORDER

IT IS ORDERED that Marin Airporter's December 22, 1998 Appeal of the Scoping Memo and Ruling of the Assigned Commissioner is denied.

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners