

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
 BREWER ENVIRONMENTAL INDUSTRIES, )  
 INC., dba HT&T COMPANY )  
 )  
 For Temporary Authority to )  
 Transfer Certificate No. 5016-C to )  
 Tri-K Investments, LLC, dba )  
 HT&T Hauling & Repair Services. )  
 \_\_\_\_\_ )

DOCKET NO. 02-0388

DECISION AND ORDER NO. 19873

Filed Dec. 12, 2002  
At 3:30 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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OF THE STATE OF HAWAII

In the Matter of the Application of)	
BREWER ENVIRONMENTAL INDUSTRIES, )	
INC., dba HT&T COMPANY )	Docket No. 02-0388
For Temporary Authority to )	
Transfer Certificate No. 5016-C to )	Decision and Order No. 19873
Tri-K Investments, LLC, dba )	
HT&T Hauling & Repair Services. )	
_____ )	

DECISION AND ORDER

I.

By an application filed on October 30, 2002, and amended on December 6 and 11, 2002 (application), BREWER ENVIRONMENTAL INDUSTRIES, INC., dba HT&T COMPANY (Transferor), seeks approval for temporary authority to transfer certificate of public convenience and necessity no. 5016-C (Certificate No. 5016-C) to TRI-K INVESTMENTS, LLC, dba HT&T HAULING & REPAIR SERVICES (Transferee) (collectively, Applicants), through Transferee's purchase of substantially all of the assets of Transferor used in connection with Transferor's motor carrier operations.<sup>1</sup> Upon reviewing the amendments, we will treat this application as Applicants' request for temporary approval for Transferee to operate Transferor's motor carrier properties under Certificate No. 5016-C pending the disposition of Applicants' transfer of motor carrier properties and certificate applications

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<sup>1</sup>The proposed purchase and sale was formally announced over three months ago.

in Dockets No. 02-0376 and No. 02-0387 (transfer applications)<sup>2</sup>, pursuant to Hawaii Revised Statutes (HRS) § 271-18(f).<sup>3</sup> Certificate No. 5016-C allows Transferor to operate as a common carrier in the general commodities and dump truck classifications, on the island of Hawaii.

Copies of the application were served on the Hawaii Transportation Association, which consists of carriers that may be affected by the proposed service, and on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate). On November 18, 2002 the Consumer Advocate submitted its statement of position stating that it would not participate in the instant proceeding.

## II.

In order to be granted temporary operating authority pursuant to HRS § 271-18(f), Applicants must show that the failure to grant temporary authority: (1) may result in the destruction of or injury to the motor carrier properties sought to be acquired; or (2) will interfere substantially with the

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<sup>2</sup>The transfer applications in Dockets No. 02-0376 and No. 02-0387 were filed on October 16, 2002 and October 30, 2002, respectively, pursuant to Hawaii Revised Statutes (HRS) § 271-18(b).

<sup>3</sup>In relevant part, HRS § 271-18(f) provides that, with regard to applications for the purchase to operate the properties of one or more motor carriers, the commission may, "in its discretion and without hearings or other proceedings" grant temporary approval for not more than 120 days, or for additional time as may be required for the operation of the motor carrier properties sought to be acquired.

properties' future usefulness in the performance of adequate and continuous service to the public.

Upon our review, we find that Applicants satisfied the criteria for temporary authority, as set forth in HRS § 271-18(f). Specifically, Transferee represents that the failure to transfer the grant of temporary authority to Transferee may result in the further destruction of motor carrier property sought to be acquired and essential to Transferee's ability to operate in the future.<sup>4</sup> In addition, because of the uncertain closing date for the transfer of properties, certain employees of Transferor (who will not be rehired by Transferee) have refused to maintain the existing work schedule, thereby interfering substantially with the properties' future usefulness and the existing and future provision of adequate and continuous transportation service to the public.<sup>5</sup>

We, thus, conclude that Applicants' application should be granted without hearings or other proceedings in this docket.

### III.

#### THE COMMISSION ORDERS:

1. The application requesting a grant of temporary authority for Transferee to operate Transferor's motor carrier properties under Certificate No. 5016-C pending the disposition

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<sup>4</sup>In its amendment, Transferee attests to, among other things, the removal from the premises of property sought to be acquired, which is essential to the operation of its proposed motor carrier operations since the proposed sale was announced.

<sup>5</sup>See Matson's letter, dated November 20, 2002 and filed on December 11, 2002.

of Dockets No. 02-0376 and No. 02-0387, is approved. Unless otherwise ordered by the commission, the temporary authority shall be valid for no more than 120 days from the date of this decision and order, in accordance with HRS § 271-18(f). However, the temporary authority may be terminated for good cause including, but not limited to, Transferee's failure to comply with the motor carrier laws or the commission's rules or orders.

2. Transferor shall surrender Certificate No. 5016-C, and an amended certificate reflecting the authority granted by this decision and order shall be issued to Transferee.

3. Transferee shall comply with all of the commission's requirements for motor carriers by motor vehicle, including, but not limited to, filing a lawful tariff, paying a fee of \$20 for motor carrier gross revenues, filing the appropriate insurance documents, registering and marking the appropriate motor vehicles, and complying with the safety requirements of the Motor Vehicle Safety Office, Department of Transportation, State of Hawaii.

4. Transferor shall file an annual financial report for its operations covering the period from January 1, 2002, to the date of this decision and order. Transferor shall also pay the appropriate motor carrier gross revenue fee for the period January 1, 2002, to the date of this decision and order.


5. Transferor and Transferee shall comply with the foregoing requirements within 15 days after service of this decision and order. Failure to comply within the time specified

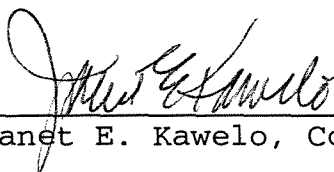
constitutes cause for this commission to void this decision and order.


6. Transferee shall not commence operations under this decision and order until it has received written confirmation from the commission that all requirements have been met.

DONE at Honolulu, Hawaii this 12th day of December, 2002.

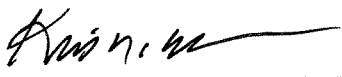
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Wayne H. Kimura, Chairman

By   
Janet E. Kawelo, Commissioner

By   
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

  
for Benedyne S. Stone  
Commission Counsel

02-0388.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19873 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

BREWER ENVIRONMENTAL INDUSTRIES, INC., dba  
HT&T COMPANY  
P. O. Box 4190  
Hilo, HI 96720

TRI-K INVESTMENTS, LLC, dba  
HT&T HAULING & REPAIR SERVICES  
P. O. Box 5461  
Hilo, HI 96720

STEVEN HO, ESQ.  
TORKILDSON, KATZ, FONSECA, JAFFE,  
MOORE, & HEATHERING  
700 Bishop Street, 15<sup>th</sup> Floor  
Honolulu, HI 96813

  
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Karen Higashi

DATED: December 12, 2002