

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
GRACE PACIFIC CORPORATION)
)
To Transfer a Motor Carrier)
Certificate or Permit.)
_____)

DOCKET NO. 05-0020

ORDER NO. 21757

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

2005 APR 21 A 7:54

RECEIVED

Filed April 20, 2005
At 3:00 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
GRACE PACIFIC CORPORATION)
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Docket No. 05-0020
Order No. 21757

ORDER

By this Order, the commission approves the request by the Operating Engineers Local Union No. 3 ("Local 3") for an enlargement of time, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-23, to file a motion to intervene in or participate in the instant proceeding.

I.

Background

By an application filed on January 31, 2005, GRACE PACIFIC CORPORATION ("Applicant") (together with Local 3, the "Parties"), requests approval from the commission for a transfer of its certificate of public convenience and necessity number 222-C ("Certificate No. 222-C") to Ace Trucking, Inc. ("Application").¹ Applicant's request is made pursuant to Hawaii Revised Statutes ("HRS") § 271-18.

¹Certificate No. 222-C allows Applicant to operate in the dump truck classification on the island of Oahu.

On April 4, 2005, Local 3 filed a motion to enlarge time to file a motion to intervene or participate in proceedings ("Motion to Enlarge Time"), in accordance with HAR § 6-61-23.²

On April 8, 2005, Applicant filed a memorandum in opposition to the Motion to Enlarge Time ("Memorandum in Opposition").

On April 13, 2005, Local 3 filed a reply memorandum to Applicant's Memorandum in Opposition in which it requested that the commission grant the Motion to Enlarge Time or otherwise give Local 3 an opportunity to brief the commission of the potential negative consequences on Applicant's employees should the commission approve the Application ("Local 3 Reply").

On April 18, 2005, Applicant filed a supplemental opposition memorandum to the Motion to Enlarge Time ("Supplemental Opposition").³

II.

HAR §§ 6-61-23 and 6-61-57

HAR § 6-61-23(a)(1) provides that the commission may, at any time and in its discretion, on a showing of good cause, enlarge the period of time for any act that is required to be

²Local 3's Motion to Enlarge Time; Exhibits "A" and "B"; Verification of Allan Parker; Certificate of Service.

³We will not consider the Local 3 Reply or the Supplemental Opposition. The commission's rules do not provide for replies to opposing memoranda. The Parties should refrain from filing replies unless the commission has requested or given a party leave to do so. In this instance, the commission did not request, nor did the Parties seek leave to file the replies.

done when a written request for the enlargement of time is filed before the expiration of the originally prescribed period.

In the instant proceeding, the originally prescribed period is set forth in HAR § 6-61-57(2). In relevant part, it provides that motions to intervene, to be timely, shall be filed and served not later than twenty (20) days after a notice of the pending application has been published in the newspaper. In the instant case, thus, twenty (20) days after the published notice of the pending Application is April 4, 2005.⁴ Local 3's Motion to Enlarge Time was filed with the commission on April 4, 2005. Thus, Local 3's Motion to Enlarge Time is timely, as it was filed before the expiration of the prescribed period.

III.

Discussion

HAR § 6-61-23 gives the commission discretion, upon a showing of good cause, to grant a motion for enlargement of time if a written request is made prior to the expiration of the prescribed period.

Local 3 represents that it became aware of the Application on March 30, 2005, and of the deadline for filing a motion to intervene on April 4, 2005.⁵ In its Memorandum in Opposition, Applicant questions Movant's failure to timely file either a motion to intervene after March 30, 2005, or a motion to

⁴The notice of Applicant's pending application was published on March 15, 2005.

⁵Motion to Enlarge Time at 2.

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enlarge the time to file prior to April 4, 2005. Applicant also questions the timing of Local 3's awareness of relevant filing deadlines and the veracity of Local 3's assertions in its Motion to Enlarge Time.⁶

Upon review, the commission finds that Local 3 has established good cause for the commission to approve its Motion to Enlarge Time, pursuant to HAR § 6-61-23(a)(1) and, thus, concludes that the Motion to Enlarge Time should be approved. Local 3 is required to file any motion to intervene or participate in the instant proceeding within ten (10) days from the date of this Order.

IV.

Orders


THE COMMISSION ORDERS:

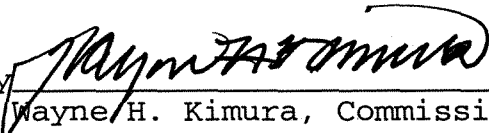
1. Local 3's Motion to Enlarge Time, filed on April 4, 2005, is approved.
2. Local 3 shall file any motion to intervene or participate within ten (10) days from the date of this Order.

⁶Memorandum in Opposition at 2-3.

DONE at Honolulu, Hawaii APR 20 2005.

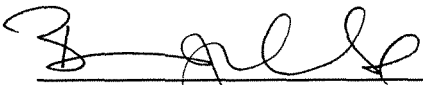
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21757 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: APR 20 2005