

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 KAPOHOKINE ADVENTURES, LLC)
)
 for a Motor Carrier Certificate)
 or Permit.)
 _____)

DOCKET NO. 05-0074

ORDER NO. 21911

DEPT. OF TRANSPORTATION AND
INFRASTRUCTURE
DIVISION OF CONSUMER AFFAIRS
STATE OF HAWAII

2005 JUL 11 A 7:52

RECEIVED

Filed July 8, 2005
At 9 o'clock A .M.

Karen Higashi.
Chief Clerk of the Commission

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

K. Higashi.

of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). On March 24, 2005, the Consumer Advocate informed the commission that it will not be participating in this docket.

On June 7, 2005, Jack's filed its Motion to Intervene, in which, in addition to assertions in support of its Motion to Intervene, it asked that the commission entertain oral argument on the matter. By Notice of Hearing filed on June 14, 2005, the commission notified Jack's and Applicant that oral argument on the Motion to Intervene would be scheduled for June 28, 2005, at 1:00 p.m. in the commission's hearing room.

On June 14, 2005 Applicant filed a memorandum in opposition to Jack's Motion to Intervene ("Memorandum in Opposition").

On June 28, 2005, oral argument on the Motion to Intervene was heard by the commission. Jack's was represented by Jeff Miyashiro, its President, and attorney Wray H. Kondo. Applicant was represented by two (2) of its three (3) partners, Anthony DeLellis and Gary Morrow II.

II.

Motion to Intervene

A.

Jack's Position and Assertions

In support of its Motion to Intervene, Jack's alleges, among other things, that its business is being threatened by motor carriers such as Applicant, notwithstanding that

Applicant's business primarily focuses on transporting smaller groups of tourists. Jack's contends that despite its reputation as a large motor carrier operation, a significant portion of its motor carrier business consists of transporting small groups, and that it would be hurt by Applicant's entry into the marketplace.² Jack's asserts that it has invested substantial amounts of money upgrading its vehicles and equipment, and consequently, should have some say in the commission's determination of Applicant's request to extend its motor carrier authority. Although Jack's does not dispute numbers offered by Applicant showing an increase in the number of visitors to the island of Hawaii, Jack's contends that it simply wants some input in the instant proceeding because of the money it has invested in its vehicles and equipment.

B.

Applicant's Position and Assertions

In response to Jack's Motion to Intervene, Applicant asserts in opposition, among other things, that current visitor industry numbers dispute Jack's assertion that Jack's would be hurt by Applicant's entry into the marketplace, i.e., visitor industry numbers show an increase in the number of visitors to the island of Hawaii, and that there are sufficient numbers to keep both Jack's and Applicant busy. Applicant represents that it focuses on small group tours, and

²Jack's stated that its figures for the month of March 2005 show that its van movements exceeded motor coach movements.

asserts that because Jack's' focus is on transporting larger groups, Applicant's entry does not pose an economic threat to Jack's. Additionally, Applicant states that it offers its customers transportation to locations and sites different from Jack's' offerings.³

C.

Discussion

Standard of Review

It is well established that intervention as a party in a commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the commission."⁴ HAR § 6-61-55 sets forth the requirements to intervene in this proceeding. In particular, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

Upon a review of the entire record, the commission is not persuaded that Jack's oral and written allegations are reasonably pertinent to the resolution of the issues already presented in the Application before us. Furthermore, the commission is additionally not convinced that Jack's allegations

³Applicant said that one only has to visit Jack's web site to see that Jack's transportation offerings do not include locations to which Applicant takes its visitors.

⁴See, *In re Application of Hawaiian Electric Company, Ltd.*, 56 Haw. 260, 262 (1975). See also, *In re Paradise Merger Sub, Inc. et al.*, Docket No. 04-0140, Order No. 21226 (August 6, 2004).

and its participation as an intervenor in this proceeding will not unreasonably broaden these issues before us. The commission also finds that, in this proceeding Jack's participation as an intervenor would likely delay the proceeding and would not assist the commission in developing a sound record.

For the foregoing reasons, we conclude that Jack's Motion to Intervene should be denied.

III.

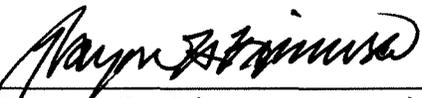
Order

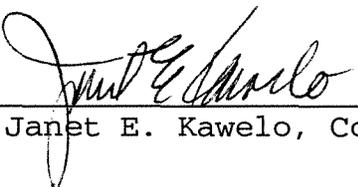
THE COMMISSION ORDERS that Jack's Motion to Intervene, filed on June 7, 2005, is denied.

DONE at Honolulu, Hawaii JUL - 8 2005.

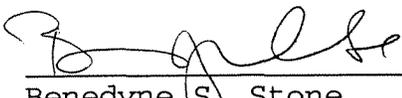
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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. 21911 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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Karen Higashi

DATED: JUL - 8 2005