

September 9, 2005, Applicant amended his Application to remove the islands of Maui and Kauai, instead proposing to conduct motor carrier operations only on the island of Hawaii.

B.

Motion to Intervene

On August 24, 2005, Jack's filed a Motion to Intervene in this proceeding ("Motion to Intervene"). According to the Motion, Jack's is a "duly certificated common carrier by motor vehicle in the 1 to 7, 8 to 25, and over 25 passenger categories on the island of Hawaii, excluding Waipio Valley." Jack's sought intervention on the grounds that: 1) the services proposed to be rendered by Applicant are already provided by Jack's; 2) Applicant fails to provide "reliable evidence" to support his claim that his services as a common carrier are necessary for the convenience of foreign tourists and that approval will benefit the local economy; 3) Applicant's letters of support do not show a public need for Applicant's motor carrier services; 4) Jack's and other currently licensed motor carriers on the island of Hawaii have "more than sufficient vehicle capacity to serve the present and future public need"; 5) "[d]espite the more than sufficient capacity of authorized motor carriers, in the past year, the PUC has authorized numerous carriers to enter the market or expand their authorities on the island of Hawaii"; 6) the September 11, 2001 terrorist attacks, the war in Iraq, and the SARS epidemic "demonstrate the need for the Commission to avoid further economic harm to the authorized motor carriers

through the unnecessary entry of additional motor carriers at this time"; 7) Applicant has no experience in "operating a charter service in Hawaii"; 8) Applicant fails to state how many vehicles he proposes to use; 9) Applicant claims that his vehicles will be garaged at an address on the island of Hawaii, but seeks approval to perform services on the islands of Kauai, Maui and Hawaii; 10) Applicant's plans to operate from a residence may violate county zoning, traffic, and parking regulations; 11) Applicant lacks sufficient financial knowledge to comply with his reporting obligations; 12) "[e]xcept for the investigation of this application by the Commission's staff there are no other means available whereby the interests of Jack's Tours may be protected"; 13) "[Jack's] participation will not broaden the issues or unduly delay this proceeding"; and 14) "[Jack's] interest in this proceeding differs from that of the general public because, if the application filed herein is granted, Applicant will be in direct competition with [Jack's]."¹

In its Motion to Intervene, Jack's requested oral argument should the commission be inclined to deny its Motion to Intervene. By Notice of Hearing filed on September 2, 2005, the commission notified Applicant and Jack's that oral argument on the Motion to Intervene was scheduled for October 13, 2005, at 1:00 p.m., in the commission's hearing room.

No written response to the Motion to Intervene was filed by the Applicant.

¹Motion to Intervene at 2-9.

C.

Hearing on the Motion to Intervene

On October 13, 2005, the commission heard oral argument on the Motion to Intervene. Chong S. Kim appeared pro se. Wray H. Kondo, Esq. appeared on behalf of Jack's. Also present was Jeff Miyashiro, President of JT Holding, owner of Jack's.

At the hearing on the Motion to Intervene, Jack's repeated the assertions it made in its Motion arguing that Applicant does not have experience in the transportation industry, that Applicant failed to indicate the number of vehicles he proposes to use, that Applicant proposes to provide service on Maui, Kauai, and Hawaii with vehicles garaged on the island of Hawaii, that use of a residence for a business violates county zoning laws, and that Applicant failed to provide proper financial information in support of his Application.²

In response, Applicant acknowledged at the hearing that he lacks experience in operating a motor carrier business. Applicant, however, indicated that he had since withdrawn his request for authority to operate on the islands of Maui and Kauai, and had consulted with an accountant regarding his finances. Applicant disagreed that his services would compete with Jack's because Applicant only intended to provide "services for Korean tourists and Korean tourists only, and this service[] is not provided by Jack's Tours at this time." According to Applicant: "I have a number of Korean travel agencies that are located in Oahu and Korea willing to support me, and [the] only

²Transcript of Proceeding at 44-45.

Korean tour company that is operating in entire island of Hawaii is Hawaiian Adventure Tours."³

II.

Discussion

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." See In re Application of Hawaiian Elec. Co., Ltd., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975). See also In re Paradise Merger Sub, Inc. et al., Docket No. 04-0140, Order No. 21226 (August 6, 2004).

Hawaii Administrative Rules ("HAR") § 6-61-55 sets forth the requirements for intervention. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;

³Id. at 46.

(5) The extent to which the applicant's interest will not be represented by existing parties;

(6) The extent to which the applicant's participation can assist in the development of a sound record;

(7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;

(8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and

(9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). Section 6-61-55(d), however, 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." (Emphasis added.)

After reviewing the entire record, including Jack's written submission and oral argument, the commission finds that Jack's allegations are not reasonably pertinent to the resolution of the Application and that intervention by Jack's would unreasonably broaden the issues already presented. While it is apparent that Jack's may have a financial interest in preventing unwanted competition, its claim that its sizeable business operations will be harmed over time by the cumulative effect of several small motor carrier operators like the Applicant, is purely speculative. Jack's, moreover, has other means by which to protect its market share. Jack's, for example, could offer better service than its competitors or more competitive pricing. See In re Robert's Tours & Transp., Inc., 104 Hawaii 98, 109, 85 P.3d 623, 634 (Haw. 2004) (affirming the commission's decision

to grant a motor carrier authority to operate where "it would encourage competition and constrain otherwise monopolistic operations"). Jack's participation as an intervenor, moreover, is only likely to delay the proceeding and will 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

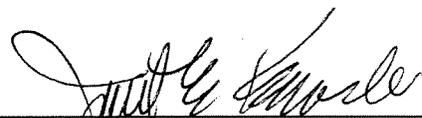
THE COMMISSION ORDERS that Jack's Motion to Intervene, filed on August 24, 2005, is denied.

DONE at Honolulu, Hawaii November 16, 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22124 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: November 16, 2005