

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 MAUI ROLLS ROYCE)
 CLASSIC COLLECTION, LLC)
)
 for a Motor Carrier Certificate)
 or Permit.)
 _____)

Docket No. 05-0299

ORDER NO. 22322

Filed March 15, 2006
At 10 o'clock A.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

OF THE STATE OF HAWAII

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ORDER

By this Order, the commission denies ABC Rider, Inc., dba Coastline Limousine's ("Movant") motion to intervene in the matter of the application of MAUI ROLLS ROYCE CLASSIC COLLECTION, LLC ("Applicant") for a certificate of authority to operate as a motor carrier on the island of Maui.

I.

Background

A.

Application

By Application filed on November 28, 2005, Applicant requested approval from the commission to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Maui in the 1-to-7 passenger classification ("Application"). As more particularly described in its Application, Applicant seeks to provide "exclusive limousine type service" utilizing five (5) classic Rolls Royce automobiles to provide services such as "VIP pickup at Kahului

airport," wedding transportation and transportation between business and other special functions.¹ According to Applicant, it has "determined that certain market segments on Maui are looking to be chauffeured in a luxurious and well appointed classic Rolls Royce."² Applicant has leased space in the Emerald Plaza building in Lahaina, Maui, where it plans to store and maintain its vehicles, and "is able to secure sufficient amounts of surety bonds, policies of insurance, or other securities for the protection of the public in such reasonable amounts as the Commission may require."³

B.

Motion to Intervene

On February 8, 2006, Movant filed a Motion for Intervention in this proceeding ("Motion to Intervene"). According to the motion, Movant is a "common carrier authorized to transport passengers on the island of Maui in the 1-to-7 passenger classification."⁴ Movant seeks to intervene on the grounds that: 1) "as a duly authorized common carrier, Movant has a direct and substantial interest in the Application"; 2) "the number of licensed carriers on the island of Maui has increased, but the total gross revenues for all carriers have decreased"; 3) "[i]f the Application to Transfer is approved by the

¹Application at 3-4.

²Application at 6.

³Application at 4.

⁴Motion to Intervene at 3.

Commission, the addition of five vehicles will further dilute the gross market for existing carriers who have been in operation"; 4) "[t]he proposed service of Applicant will be in direct competition with Movant who already operates a similar program as the proposed service"; 5) "given the well-established practical reality of the Commission's limited resources due to budgetary restrictions, Movant can assist the Commission in ensuring that its interest is fully protected"; 6) "Movant has complied with all laws," has "local experience on the island of Maui" and "has expertise, knowledge and experience in regard to the operation of a limousine and tour service on the island of Maui"; 7) "[t]he proceeding will not be delayed if Movant is allowed to make its position known" and Movant's participation "will not broaden the issues"; 8) Applicant's members lack "experience [in] operating a passenger motor carrier company"; 9) Applicant "failed to provide any facts or figures" to substantiate its assertion that there is a current or future need for Applicant's services; 10) Applicant's letters from prospective customers do not demonstrate a need for Applicant's services; and 11) the supporting exhibits in Applicant's Application contain calculation errors and "unrealistic" estimations of costs.⁵

C.

Applicant's Opposition to the Motion to Intervene

On February 16, 2006, Applicant filed a memorandum in opposition to Movant's Motion to Intervene ("Memorandum in

⁵Motion to Intervene at 4-8.

Opposition").⁶ In its Memorandum in Opposition, Applicant contends that: 1) "Movant's allegations are not reasonably pertinent to the issues of this proceeding, and its participation would unreasonably broaden the issues already presented"; 2) "many of Movant's allegations are identical or substantially similar to allegations made by other movants who sought intervention in other motor carrier proceedings, but were denied intervention because the Commission found these allegations to be not reasonably pertinent to the issues of obtaining a CPCN under HRS Chapter 271"; 3) "Movant's claims that Applicant would be in direct competition with Movant's business and its business would suffer are purely speculative in nature and should not be viewed as allegations that are reasonably pertinent to the issues of this proceeding"; 4) "unlike larger carriers that may have large fleets and the financial wherewithal, Applicant, as described in the Application, is a small carrier with a unique fleet consisting initially of five classic Roll[s] Royce automobiles and proposed services that should encourage fair and healthy competition and constrain otherwise monopolistic operations in the passenger carrier market on the island of Maui consistent with HRS § 271-1"; 5) "Movant should not be permitted to use this process and forum as a means to raise general, broad and unfounded allegations that would unreasonably broaden the issues already presented in this proceeding"; 6) "[b]ecause Movant's

⁶Applicant's Memorandum in Opposition was timely filed pursuant to HAR §§ 6-61-21, 6-61-22, 6-61-41.

allegations and/or representations are misleading or inaccurate,⁷ its participation would unduly delay the proceedings and not assist the Commission in developing a sound record"; and 7) Applicant has provided sufficient information to satisfy the CPCN requirements under HRS § 271-12."⁸

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 (Aug. 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:

⁷Applicant alleges that Movant has failed to comply with the rule governing payment of annual motor carrier fees, has either misstated the number of vehicles in its inventory or must amend its vehicle inventory list, and contrary to Movant's assertion, its gross operating revenues have increased from 2002 to 2004. See Memorandum in Opposition at 7-8.

⁸Memorandum in Opposition at 4-9.

- (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;
- (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.)

Here, Movant's allegations do not appear to be reasonably pertinent to the resolution of the Application. Intervention by Movant, moreover, would unreasonably broaden the issues already presented. While it is apparent that Movant may have a financial interest in preventing unwanted competition, Movant's claim that its business operations will be harmed by a small motor carrier operator like the Applicant with a niche business plan, is purely speculative. Movant, moreover, has

other means by which to protect its market share. Movant, for example, could offer better service than its competitors or more competitive pricing. See In re Robert's Tours & Transp., Inc., 104 Hawai'i 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"). Movant'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, the commission concludes that the Motion to Intervene should be denied.

III.

Order

THE COMMISSION ORDERS:

1. ABC Rider, Inc., dba Coastline Limousine's Motion for Intervention, filed on February 8, 2006, is denied.

DONE at Honolulu, Hawaii MAR 15 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22322 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE
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Karen Higashi

DATED: MAR 15 2006