





islands of Kauai, Oahu and Maui." Ordering paragraph no. 3 further requires that Jack's "comply with the foregoing requirements within one hundred and twenty (120) days after service" of Decision and Order No. 22471, i.e., by September 15, 2006, and that "[f]ailure to comply within the time specified constitutes cause for this commission to vacate" Decision and Order No. 22471. Specifically, Jack's asks whether it is required "to actually secure formal commitments for baseyards facilities on the islands of Kauai, Oahu, and Maui."<sup>1</sup>

If it is required to secure formal commitments, Jack's moves in the alternative for reconsideration and modification of Decision and Order No. 22471. Jack's asserts that it "is not reasonable" to require it to secure baseyard facilities, "with street addresses for said facilities" on three islands within a 120 day deadline.<sup>2</sup>

## II.

### Discussion

At the outset, with respect to Jack's request for clarification, the commission reiterates its directive in ordering paragraph no. 2 that Jack's provide "the location of its baseyards on the islands of Kauai, Oahu and Maui." In requiring the locations of Jack's baseyards, the commission notes that a general

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<sup>1</sup>Motion for Reconsideration at 3-4.

<sup>2</sup>Id. at 5.

location such as Kahului is not sufficient, and that specific street addresses are required to satisfy the decision and order.

With respect to Jack's Motion for Reconsideration, the standard for granting a motion for reconsideration is established in Hawaii Administrative Rules ("HAR") § 6-61-137, which provides in relevant part:

A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137. Thus, to succeed on a motion for reconsideration, the movant must demonstrate that the commission's decision or order was "unreasonable, unlawful, or erroneous." See id.

Here, Jack's contends that "[g]iven the shortage of commercial property, having to operate under a strict 120 day deadline to secure . . . all three baseyard facilities, or have its authority revoked is not reasonable"; that it would be in danger of having its authority revoked by the commission if it were unable to secure only one or two locations prior to the deadline; and that the commission's time requirement is "against reasonable business prudence."<sup>3</sup> In support of its reconsideration motion, Jack's notes that the commission has previously granted motions for reconsideration in other dockets on the grounds of

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<sup>3</sup>Id. at 6.

unreasonableness.<sup>4</sup> Those dockets, however, involved entirely different circumstances where applicants were able to subsequently produce certain required motor vehicle insurance and registration, and tariff documents.

Instead, the commission finds more persuasive its prior decisions in In the Matter of Kalaka Nui, Inc., Docket No. 01-0116 ("Kalaka Nui"). In Kalaka Nui, the commission approved applicant's request to extend its authority to the islands of Kauai, Maui, and Hawaii by Decision and Order No. 18851, filed on August 21, 2001. As a condition of approval, the commission required applicant to provide evidence that applicant had established a place of business on the islands of Kauai, Maui and Hawaii within 120 days of issuance of the decision and order. After applicant failed to comply with the condition, the commission issued Order No. 19127 on December 31, 2001, which voided Decision and Order No. 18851 for failure to provide evidence that it had established a place of business on the islands of Kauai, Maui, and Hawaii within 120 days of the decision and order. By Order No. 19182, filed on February 4, 2002, the commission reconsidered its decision in Order No. 19127 based on applicant's representation that it had "misunderstood" the condition and was "ready and willing to immediately establish a place of business on the islands of Kauai, Maui, and Hawaii, and that it has employees prepared to operate

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<sup>4</sup>See In the Matter of Frank D. Duarte dba Duarte's Equipment Rental, Docket No. 03-0085, Order No. 20795, filed on February 4, 2004; In the Matter of West Hawaii Express, Inc. dba West Hawaii Freight Service, Docket No. 02-0069, Order No. 20423, filed on September 10, 2003.

from each of these islands."<sup>5</sup> Reconsideration, however, was contingent on applicant "meeting the commission's time frame to establish its place of businesses on the islands of Kauai, Maui, and Hawaii."<sup>6</sup> Thereafter, applicant submitted evidence of its compliance with respect to Kauai and Hawaii, but not Maui, and indicated that it would reapply for authority on Maui at a later date. Accordingly, by Order No. 19513, filed on August 14, 2002, the commission amended Decision and Order No. 18851 to authorize applicant to operate on Kauai and Hawaii, but not Maui.

Like Kalaka Nui, the commission is requiring that Jack's provide street addresses for its baseyards on each of the islands on which it has been granted authority to operate. This information, which should have been provided by Jack's in its Application, is required in all motor carrier applications.

Jack's claims that it had intended "to set-up and commence operations one island at a time."<sup>7</sup> However, if that were the case, Jack's should not have requested such broad authority as it did in its Application. There was no requirement that Jack's seek to extend its authority to three islands, Kauai, Oahu, and Maui, in all passenger classifications. Indeed, if Jack's lacks the facilities to perform its operations, then contrary to its representations, Jack's is not fit or able to perform the services described in its Application.

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<sup>5</sup>Order No. 19182 at 2, citing the motion for reconsideration of Kalaka Nui.

<sup>6</sup>Id.

<sup>7</sup>Motion for Reconsideration at 7.

While Jack's may be correct that its "initial start-up requirements are very different from the typical Applicant . . . that proposes to use one vehicle, has one employee-owner and is able to list the Owner's home address as its place of business,"<sup>8</sup> it was Jack's business decision to apply for such extensive authority. Notably, Jack's has advantages over the one employee-owner in that Jack's is a sophisticated business owner with extensive knowledge of the motor carrier industry, and has outside counsel.

As such, the commission finds nothing to merit the modification of Decision and Order No. 22471 by setting "an open-ended deadline to locate and secure adequate facilities," as requested by Jack's.<sup>9</sup> In essence, as we stated above, if Jack's lacks the ability to provide the services proposed in its Application, it should not have requested such broad authority.

We, thus, conclude that the commission's requirement that Jack's provide the location of its baseyards on the islands of Kauai, Oahu and Maui, by September 15, 2006, is not unreasonable and that the Motion for Reconsideration should be denied.

### III.

#### Order

THE COMMISSION ORDERS:

Jack's Motion for Clarification or Reconsideration of Decision and Order No. 22471, filed on May 30, 2006, is denied.

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<sup>8</sup>Id.

<sup>9</sup>Id. at 9.

DONE at Honolulu, Hawaii JUL 11 2006.

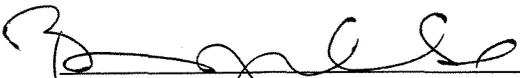
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Benedyne S. Stone  
Commission Counsel

05-0159.eh

CERTIFICATE OF SERVICE

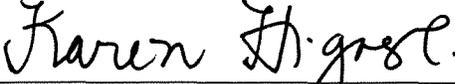
I hereby certify that I have this date served a copy of the foregoing Order No. 22596 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: JUL 11 2006