

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
NUI POHAKU, LLC)
For Temporary Common Carrier)
Authority.)
_____)

DOCKET NO. 2006-0389

DECISION AND ORDER NO. 22954

Filed Oct. 18, 2006
At 1 o'clock P.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

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In the Matter of the Application of)
NUI POHAKU, LLC)
For Temporary Common Carrier)
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Docket No. 2006-0389
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DECISION AND ORDER

By this Decision and Order, the commission grants NUI POHAKU, LLC ("Applicant"), temporary authority to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Hawaii, excluding Waipio Valley, in the 8-to-25 passenger classification, limited to utilizing motor vehicles with a maximum manufacturer's seating capacity of 15 passengers, and subject to certain conditions, as described herein.

I.

Application for Temporary Common Carrier Authority

On September 25, 2006, Applicant filed an application requesting temporary authority to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Hawaii, excluding Waipio Valley, in the 8-to-25 passenger classification, limited to utilizing motor vehicles with a maximum manufacturer's seating capacity of 15 passengers.

The application is made pursuant to Hawaii Revised Statutes ("HRS") § 271-16.

II.

Findings and Conclusions

For a grant of temporary operating authority pursuant to HRS § 271-16, an applicant must satisfy two conditions. First, the applicant must establish that there is "an immediate and urgent need" for the proposed service. Second, the applicant must demonstrate "[an] absence of carrier service capable of meeting the need between points or in the territory where the temporary service will be instituted." See In re Robert's Tours & Transportation, Inc., Docket No. 06-0437, Decision and Order No. 15274, filed on December 23, 1996. Moreover, the commission may, at its discretion, grant temporary authority without hearings or other proceedings. HRS § 271-16.

Upon review, the commission finds that Applicant meets the criteria for temporary authority set forth in HRS § 271-16. First, there is an immediate and urgent need for Applicant's service. Applicant proposes to provide the Kilauea Volcano Bike Adventure Tour that is offered by the cruise ships arriving in Hilo, Hawaii to their passengers.¹ Atlantis Adventures ("Atlantis"), which coordinates ground tours for the cruise ships

¹The commission's records indicate that the Kilauea Volcano Bike Adventure Tour is presently operated by Banyan Bicycles, an entity that is not certificated by the commission to operate as a common carrier of passengers by motor vehicle. Banyan Bicycles provides bicycle tours from the Hawaii Volcanoes National Park in Kilauea. See Applicant's letter, dated October 6, 2006, filed on October 10, 2006, at 1 - 2.

and their passengers: (1) recognizes that Banyan Bicycles is not authorized by the commission to operate as a common carrier of passengers by motor vehicles; and thus (2) has contracted with Applicant to replace Banyan Bicycles as the operator of the Kilauea Volcano Bike Adventure Tour.² Likewise, Norwegian Cruise Lines America ("NCLA"), a cruise ship operator that "currently has three ships stop in Hilo every week all year long," intends to cease its relationship with Banyan Bicycles due to its lack of a commission-issued certificate of public convenience and necessity ("CPCN").³ NCLA requests that Applicant be up and running by the end of October 2006 to provide a smooth transition for NCLA and its passengers.⁴

Second, Applicant is the only motor carrier capable of providing the proposed service. Applicant represents that there are no other bicycle tour companies on the east side of the island of Hawaii (i.e., the Hilo area) that can provide the proposed service.⁵ Thus, Atlantis has contracted with Applicant to provide the Kilauea Volcano Bike Adventure Tour, and NCL

²Applicant's letter, dated September 22, 2006, filed on September 25, 2006, at 1; and Applicant's letter, dated October 6, 2006, filed on October 10, 2006, at 1 - 2.

³Applicant's letter, dated October 6, 2006, filed on October 10, 2006, at 2.

⁴Id.

⁵Id. at 1. The record also includes a statement by KapohoKine Adventures, LLC, a common carrier of passengers by motor vehicle over irregular routes on the island of Hawaii, excluding Waipio Valley, in the 1-to-7 and 8-to-25 passenger classifications, to the effect that there are no fully licensed operators of biking tours for the Hawaii Volcanoes National Park in Kilauea. See KapohoKine Adventures, LLC's letter, dated August 2, 2006, at 1.

likewise intends to utilize Applicant for the same tour services.⁶ In addition, Applicant intends to pick-up the cruise ship passengers directly from Hilo Pier for transport "to the bike venue for [the] tour."⁷

Pursuant to HRS § 271-16, the commission may grant temporary authority to an applicant for no more than one hundred and twenty (120) days. The commission concludes, therefore, that since Applicant satisfies the requirements for a grant of temporary authority pursuant to HRS § 271-16, it should be granted temporary authority for a period of one hundred twenty (120) days.

⁶Applicant's letter, dated September 22, 2006, filed on September 25, 2006, at 1; and Applicant's letter, dated October 6, 2006, filed on October 10, 2006, at 1 - 2. Applicant's co-owner is presently employed as the Hilo Cruise Ship Tour Coordinator for Atlantis. After exploring and finding no other Hilo-based operators that provide bicycle tours from the Hawaii Volcanoes National Park, Applicant's co-owner decided to form Nui Pohaku, LLC and commence its proposed operations, "doing everything by the book[,] " including the filing of its application for temporary authority with the commission. Applicant's letter, dated October 6, 2006, filed on October 10, 2006, at 1 - 2. Applicant's request is affirmatively supported by Atlantis and KapohoKine Adventures, LLC. See Atlantis' letter, dated July 31, 2006; and KapohoKine Adventures, LLC's letter, dated August 2, 2006.

⁷Atlantis' letter, dated July 31, 2006, at 1. See also Applicant's letter, dated September 22, 2006, filed on September 25, 2006, at 1; and Atlantis' letter, dated September 20, 2006, filed on September 25, 2006, at 1. Applicant represents that due to Banyan Bicycles' lack of a CPCN, Banyan Bicycles is not authorized to enter the Hilo Pier premises, and instead, must pick-up and drop-off patrons in the public street, creating a safety hazard. See Applicant's letter, dated October 6, 2006, filed on October 10, 2006, at 1.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant is granted temporary authority to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Hawaii, excluding Waipio Valley, in the 8-to-25 passenger classification, limited to utilizing motor vehicles with a maximum manufacturer's seating capacity of 15 passengers. The temporary authority shall be valid for no more than one hundred twenty (120) days from the date of this Decision and Order, in accordance with HRS § 271-16. However, the temporary authority may be terminated for good cause, including, but not limited to, Applicant's failure to comply with the motor carrier laws or the commission's rules or orders.

2. Applicant shall comply with all of the commission's requirements for common carriers by motor vehicle including, but not limited to, filing a lawful tariff, paying a fee of \$20 for motor carrier gross revenues, and filing the appropriate insurance documents.

3. Applicant shall comply with the foregoing requirements within fifteen (15) days after service of this Decision and Order. Failure to comply within the time specified constitutes cause for this commission to vacate this Decision and Order.

4. Applicant shall not commence operations under this Decision and Order until it has received written confirmation from the commission that all requirements have been met.

DONE at Honolulu, Hawaii OCT 18 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

for Michael Djou
Stacey Kawasaki Djou
Commission Counsel

2006-0389.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22954 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

NUI POHAKU, LLC
13-647 Pohoiki Road
Pahoa, HI 96778



Karen Higashi

DATED: OCT 18 2006