

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
VIP TRANS, INC.)
)
For Extension of Motor Carrier)
Certificate.)
_____)

DOCKET NO. 2007-0307

ORDER NO. 23822

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed Nov. 9, 2007
At 11 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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
VIP TRANS, INC.)
For Extension of Motor Carrier)
Certificate.)
_____)

Docket No. 2007-0307
Order No. 23822

ORDER

By this Order, the commission denies the motions to intervene filed by Armijo, Inc., dba Kapalua Executive Transportation Service & Executive Shuttle, Katherine Barr, dba Town and Country Limousine Service, Platinum Management LLC, dba The Limo Company, and Wailea Limousine Service, Inc. (collectively, "Movants"), in the matter of the application of VIP TRANS, INC. ("Applicant") for an extension of its authority under certificate of public convenience and necessity number 534-C ("Certificate No. 534-C") to include the 1-to-7 and 8-to-25 passenger classifications on the islands of Kauai, Maui, and Hawaii, excluding Waipio Valley.

I.

Background

A.

Application

Applicant is a common carrier of passengers by motor vehicle on the island of Oahu in the (1) 1-to-7 and

8-to-25 passenger classifications over irregular routes, and (2) over-25 passenger classification, limited to providing transportation services (a) on a per passenger and charter basis over routes between Waikiki Hotels and the Honolulu International Airport, and Waikiki Hotels and the Arizona Memorial, and (b) on a charter basis over irregular routes without route or area restrictions.

On September 4, 2007, Applicant filed an application seeking commission approval to extend its authority under Certificate No. 534-C to include the 1-to-7 and 8-to-25 passenger classifications on the islands of Kauai, Maui, and Hawaii, excluding Waipio Valley ("Application"). Applicant served copies of the Application on the Hawaii Transportation Association, which consists of carriers that may be affected by Applicant's proposed service, and on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").¹

B.

Motions to Intervene

On October 10, 2007, Movants filed timely motions to intervene ("Motions to Intervene"), stating that they oppose the Application with respect to Applicant's request for authority to operate on the island of Maui. Movants allege, among other

¹On September 6, 2007, the Consumer Advocate informed the commission that it will not be participating in this docket.

things, that:² (1) Applicant will be in direct competition with Movants' current operations on the island of Maui; (2) Movants have invested substantial amounts of money in developing their business operations; (3) an additional need does not exist for another motor carrier on the island of Maui, which is currently experiencing a weak market and business climate; (4) allowing another carrier to enter the market would only further decrease gross revenues for existing carriers; (5) Movants have no other means to protect their interests; (6) Movants' participation can assist in the development of a sound record; and (7) Movants will not broaden the issues or unduly delay the proceeding. In addition, Movants state that the Application is general and non-specific, in that Applicant fails to state what type of services it will be providing; and that Applicant is applying for the 1-to-7 passenger classification, but does not list any motor vehicles with seating capacity of 1-to-7 passengers on its proposed vehicle inventory list.

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,

²Movants' Motions to Intervene are virtually identical in style and substance. Unless otherwise noted, all discussion relates to Movants collectively.

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;
 - (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, after reviewing the entire record, the commission finds that Movants' allegations are not reasonably pertinent to the resolution of the Application and that intervention by Movants will likely unreasonably broaden the issues presented. While it is apparent that Movants may have a financial interest in preventing unwanted competition, it does not necessarily follow that their business interests will suffer from Applicant's proposed expansion.

Movants, moreover, have other means by which to protect their market share. Movants, for example, could offer better service than their 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"). In addition, Movants' participation as intervenors 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 Motions to Intervene should be denied.

III.

Order

THE COMMISSION ORDERS:

Movants' Motions to Intervene, filed on October 10, 2007, are denied.

DONE at Honolulu, Hawaii NOV - 9 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

2007-0307.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23822 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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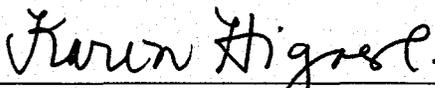
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CERTIFICATE OF SERVICE

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Karen Higashi

DATED: NOV - 9 2007