

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

LEVEN R. YAMAZAKI-GRAY, dba)
MOLOKAI TRANSPORTATION)

For a Motor Carrier Certificate or)
Permit.)

DOCKET NO. 2008-0265

ORDER DENYING MOTIONS TO INTERVENE

FILED BY MOLOKAI INDEPENDENT DRIVERS, INC. ON NOVEMBER 24, 2008
AND MOLOKAI OUTDOOR ACTIVITIES, LLC ON NOVEMBER 25, 2008

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By this Order, the commission denies the motions to intervene filed by Molokai Independent Drivers, Inc., dba Molokai Off-Road Tours & Taxi ("MID"), on November 24, 2008, and Molokai Outdoor Activities, LLC, dba Molokai Outdoors ("MOA") (collectively, "Movants"), on November 25, 2008, in the matter of the application of LEVEN R. YAMAZAKI-GRAV, dba MOLOKAI TRANSPORTATION ("Applicant"), for a certificate of public convenience and necessity ("Certificate") in the 1-to-7 passenger classification on the island of Molokai.

I.

Background

A.

Application

On October 16, 2008, Applicant filed an application requesting a Certificate to operate as a common carrier of passengers by motor vehicle over irregular routes on

the island of Molokai in the 1-to-7 passenger classification. The application was filed pursuant to Hawaii Revised Statutes § 271-12.

B.

Motions to Intervene

1.

MID

On November 24, 2008, MID filed a motion to intervene in this proceeding. MID argues that intervention should be granted for the following reasons: (1) MID is the holder of Certificate No. 4586-C and has the immediate ability and authority to provide the services proposed by Applicant;¹ (2) there is not enough revenue available to support another certificated motor carrier on the island of Molokai, and, thus, MID's existence will be jeopardized if another motor carrier is granted a certificate; (3) MID has no other means to protect its interests; (4) MID's participation can assist in the development of a sound record; and (5) MID's participation will not broaden the issues or unduly delay the proceeding.

On November 28, 2008, Applicant filed a statement in opposition to MID's motion to intervene. Applicant argues that MID's motion should be denied because Applicant proposes to provide unique services which are currently not available on the island of Molokai. Applicant plans to utilize a vehicle that

¹Certificate No. 4586-C authorizes MID to transport passengers by motor vehicle over irregular routes on the island of Molokai in the 1-to-7, 8-to-25, and over-25 passenger classifications.

runs on recycled non-petroleum fuel, which will appeal to eco-tourists, and provide a tour with increased appeal and accessibility to Japanese speaking tourists, as Applicant's wife is from Japan and is fluent in Japanese with strong ties and sensitivity to Japan. Applicant asserts that his proposed operations will have a positive impact on tourism, i.e., bring more tourists to the island of Molokai.

2.

MOA

On November 25, 2008, MOA filed a motion to intervene in this proceeding. MOA argues that intervention should be granted for the following reasons: (1) MOA is the holder of Certificate No. 4849-C and has the immediate ability and authority to provide the services proposed by Applicant;² (2) MOA has expended substantial sums of money to provide ground transportation on the island of Molokai; (3) income generated by shuttles has dramatically dropped over the last year due to the influx of taxis, the current economic crises, rising fuel costs, the closing of ATA and Aloha Airlines, and the reduced visitor count; (4) Applicant will be in direct competition with MOA and allowing another carrier to enter the market would only further decrease revenues for the existing carriers and jeopardize their operations; (5) MOA has no other means to protect its interests;

²Certificate No. 4849-C authorizes MOA to transport passengers by motor vehicle over irregular routes on the island of Molokai in the 1-to-7, 8-to-25, and over-25 passenger classifications.

(6) MOA's participation can assist in the development of a sound record; and (7) MOA's participation will not broaden the issues or unduly delay the proceeding.

No statement in opposition to MOA's motion to intervene was filed by Applicant.

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;
- (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."

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 would unreasonably broaden the issues already 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 operation. Movants, moreover, have other means by which to protect their market share. Movants, 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"). Movants' participation as intervenors is only likely to delay the proceeding and will not assist the commission in developing a sound record. Based on the foregoing, the commission concludes that the motions to intervene should be denied.

III.

Order

THE COMMISSION ORDERS:

Movants' motions to intervene, filed on November 24, 2008 and November 25, 2008, are denied.

DONE at Honolulu, Hawaii JAN - 8 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

2008-0265.laa

By John E. Cole
John E. Cole, Commissioner

Leslie H. Kondo
By Leslie H. Kondo, Commissioner

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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