

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 TRI ISLE, INCORPORATED, dba)
 VALLEY ISLE EXPRESS, and dba)
 HALEAKALA TRANSPORTATION)
 & WAREHOUSING)
)
 For a Motor Carrier Certificate or)
 Permit.)
 _____)

DOCKET NO. 2009-0035

ORDER DENYING MOTION TO INTERVENE
FILED BY LANAI TRUCKING, INC. ON APRIL 27, 2009

RECEIVED

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

PUBLIC UTILITIES
COMMISSION

2009 MAY 28 A 11:33

FILED

I.

Background

A.

Application

By application filed on February 12, 2009, and amended on March 23, 2009, Applicant requests a contract carrier permit, pursuant to a contract with ATSI, in the specific commodities (windmill parts, components, blades, nacelles, towers, etc.) classification, on the islands of (1) Lanai and Molokai, (2) Oahu, limited to providing transportation services between Kalaeloa Harbor and Kahuku, and (3) Hawaii, limited to providing transportation services between Hilo Harbor and South Point Road, Naalehu. The application was filed pursuant to Hawaii Revised Statutes § 271-13.

B.

Motion to Intervene

On April 27, 2009, Movant filed a motion to intervene in this proceeding. Movant argues that intervention should be granted for the following reasons: (1) Movant is the holder of Certificate No. 4073-C and operates a similar business as that proposed by Applicant on the island of Lanai, and, thus, is in direct competition with Applicant and will be deprived of the opportunity to provide the proposed service;¹ (2) the demand for services on the island of Lanai is currently met by Movant and

¹Certificate No. 4073-C authorizes Movant to transport property by motor vehicle over irregular routes on the island of Lanai in the dump truck, household goods, and general commodities classifications.

Applicant failed to state why the resources already on the island will fail to meet the future demand; (3) Applicant did not present a contract or agreement for the proposed operations on the island of Lanai; (4) Movant has no other means to protect its interests; (5) Movant's participation can assist in the development of a sound record; and (6) Movant's participation will not broaden the issues or unduly delay the proceeding.

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 Movant's allegations are not reasonably pertinent to the resolution of the Application and that intervention by Movant will unreasonably broaden the issues already presented. While it is apparent that Movant may have a financial interest in preventing unwanted competition, it does not necessarily follow that its business interests will suffer from Applicant's proposed operation. In addition, Movant's participation as an intervenor is only likely to delay the proceeding and will not assist the commission in developing a sound record.

Movant alleges that Applicant failed to state why the resources already on the island of Lanai will fail to meet the future demand, but Movant makes no mention or claim that it has any expertise or prior experience in transporting wind components. Applicant claims that it acquired the expertise and knowledge to safely transport wind components when it transported all of the windmill components for the Kaheawa Wind Power project on the island of Maui. ASTI also indicates in its Letter of Commitment that it selected Applicant as its agent for all wind projects in the State of Hawaii and notes that Applicant's experience, expertise, and knowledge acquired during previous wind projects is a tremendous asset to the successful completion of future projects.

Regarding the absence of a contract with ASTI for the proposed operations on the island of Lanai, if Applicant's application is approved, the commission will require that Applicant provide an executed contract that includes the island of Lanai as a condition of its approval.

Based on the foregoing, the commission concludes that the motion to intervene should be denied.

III.

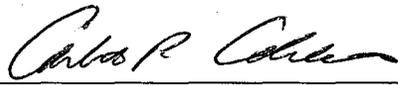
Order

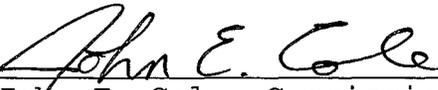
THE COMMISSION ORDERS:

Movant's motion to intervene, filed on April 27, 2009,
is denied.

DONE at Honolulu, Hawaii MAY 28 2009 .

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2009-0035.cp

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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