

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
PASHA HAWAII TRANSPORT LINES LLC)
)
For Issuance of a Certificate of)
Public Convenience and Necessity)
and approval of its Local Tariff)
No. 1 for Service Between and Among)
the Ports of Honolulu, Kahului,)
Hilo and Nawiliwili)
_____)

DOCKET NO. 2009-0059

ORDER GRANTING INTERVENTION

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

PUBLIC UTILITIES
COMMISSION

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FILED

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ORDER GRANTING INTERVENTION

By this Order, the commission grants YOUNG BROTHERS, LIMITED's ("YB") Motion to Intervene, filed on April 27, 2009 ("Motion to Intervene").

I.

Background

On March 13, 2009, Pasha Hawaii Transport Lines LLC ("Pasha") filed an Application for issuance of a Certificate of Public Convenience and Necessity ("CPCN").¹ Copies of the Application were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. Copies of the Application were also served on the mayors of the counties in which Pasha proposes to service.

¹Pasha's Application; PHTL Exhibit A - F; Verification; and Certificate of Service, filed on March 13, 2009 ("Application").

On April 2, 2009, the Consumer Advocate filed its Preliminary Statement of Position. On April 7, 2009, the commission published a notice to interested persons in the following newspapers: West Hawaii Today, Honolulu Star-Bulletin, Hawaii Tribune-Herald, the Garden Island, and The Maui News.

On April 7, 2009, the commission filed a Protective Order; Stipulation for Protective Order; Exhibit A; and Certificate of Service. On April 9, 2009, Pasha filed, pursuant to the protective order, confidential PHTL Exhibit F.

On April 27, May 6 and 20, 2009, the commission sent letters to Pasha and the Consumer Advocate transmitting public comments regarding the Application.

On April 27, 2009 YB filed its Motion to Intervene. Based on the date of publication and pursuant to HAR § 6-61-57, the deadline for intervention was April 27, 2009; thus, YB's Motion to Intervene was timely filed. On May 4, 2009, Pasha filed an Opposition to the Motion to Intervene.

A.

YB's Motion to Intervene

YB, a Hawaii corporation, is a common carrier, transporting property by water between the islands of Oahu, Hawaii, Kauai, Maui, Molokai and Lanai. It is a regulated public utility authorized pursuant to HRS chapter 271G and Decision and Order No. 5682, filed on June 1, 1979, in Docket No. 3633.²

²Motion to Intervene, at 2.

Based on its CPCN, YB asserts that it has a regulatory compact with the State of Hawaii which obligates YB to serve its customers, employ persons, keep assets in service, and provide affordable and reliable service.³ YB states that in return, it has a right to a fair opportunity to earn a reasonable return on its investments.⁴

YB contends that it has a "substantial interest" in this docket because of the anticipated impact on its inter-island shipping business if Pasha is permitted to "cherry-pick" profitable routes. YB also claims an interest due to its involvement in the Hawaii Harbors Users Group which seeks to address the State's harbor infrastructure issues.⁵

YB claims to have documentary evidence that if the Application is granted, it may "eliminate" YB's opportunity to achieve its allowable rate of return.⁶ YB contends that this proceeding is the sole avenue for it to protect its business, financial and property interests.⁷

Additionally, YB states that its interest is not represented by the existing parties in that the Consumer Advocate lacks the perspective, statutory charge, and expertise to

³Motion to Intervene, at 7-8.

⁴Motion to Intervene, at 12.

⁵Motion to Intervene, at 13-14.

⁶Motion to Intervene, at 15-16.

⁷Motion to Intervene, at 18.

represent a regulated utility such as YB, and may have a conflict of interest if it does so.⁸

YB believes its intervention in this docket will assist in the development of a sound record since it has been providing shipping services in Hawaii for over one hundred years; has frequent round-trip departures weekly between the ports in question; and has retained Byron Gangnes, Ph.D., a local economist as an expert on the demands and needs for intra-state shipping.⁹

YB maintains that its intervention will not broaden the issues in this proceeding and it has a long history of involvement in commission proceedings. YB contends that its interest in this proceeding differs from that of the general public in that it is a service provider and not a customer.¹⁰

B.

Pasha's Opposition to YB's Motion

On May 4, 2009, Pasha submitted its opposition to YB's Motion to Intervene ("Pasha's Opposition"). Pasha states that the scope of the commission's inquiry is limited to whether Pasha is fit, willing, and able to properly perform the service

⁸Motion to Intervene, at 18-19.

⁹Motion to Intervene, at 19-20.

¹⁰Motion to Intervene, at 21-22.

proposed, will conform to the applicable laws, and whether the service is required by the public convenience and necessity.¹¹

Pasha believes that YB's Motion to Intervene contains allegations that are not reasonably pertinent to the issue of whether Pasha is fit, willing, and able to provide the proposed service, or whether the service will serve the public's convenience and necessity. Pasha states that "if YB is given permission to intervene in Pasha's Application, the issues before the [c]ommission will be unreasonably broadened, because YB has focused much of its Motion to Intervene on its service which is not reasonably pertinent to the question of whether [Pasha] should be granted a CPCN."¹²

In the event that the commission does not deny YB's Motion to Intervene, Pasha requests, as an alternative measure, that the commission grant YB participant status entitling YB to receive copies of all non-privileged filings and filing an opposition of no more than twenty pages (to which Pasha would like an opportunity to reply).¹³

¹¹Pasha's Opposition, at 2.

¹²Pasha's Opposition, at 3.

¹³Pasha's Opposition, at 3.

II.

Intervention

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. 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). HAR § 6-61-55(d) further 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."¹⁴

Upon review, the commission finds that YB's Motion to Intervene sufficiently satisfies the requirements of HAR § 6-61-55. Specifically, the commission finds that as a water carrier, YB may be impacted by the results of this proceeding. Also, because of its long-time involvement as a water carrier in Hawaii, YB is uniquely situated to provide evidence regarding the state of the inter-island shipping market to assist the commission in developing a sound record in this proceeding. Therefore, the commission grants YB's Motion to Intervene.

Nonetheless, YB is cautioned that its involvement as an intervenor in this docket will be limited to the issues raised in this docket. The commission will preclude any effort by YB to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider its participation in this docket if, at any time, during the course of this proceeding,

¹⁴See also In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (Haw. 1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

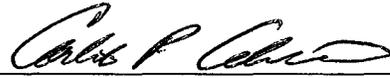
III.

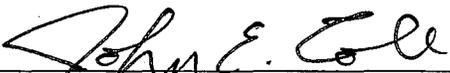
Order

YB's Motion to Intervene, filed on April 27, 2009, is granted.

DONE at Honolulu, Hawaii MAY 28 2009.

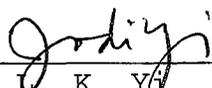
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:



Jodi L. K. Yi
Commission Counsel

2009-0059.laa

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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