

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
AMAZON CONSTRUCTION CO., INC., dba )  
AMAZON TRUCKING )  
For Extension of Motor Carrier )  
Certificate. )  
\_\_\_\_\_ )

Docket No. 2009-0057

ORDER DENYING MOTIONS TO INTERVENE  
FILED BY R. REGO TRUCKING, LLC AND LANAI TRUCKING, INC.

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

PUBLIC UTILITIES  
COMMISSION

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By this Order, the commission denies the motions to intervene filed by R. Rego Trucking, LLC ("RRT") on April 24, 2009, and Lanai Trucking, Inc. ("LT") (collectively, "Movants") on April 27, 2009, in the matter of the application of AMAZON CONSTRUCTION CO., INC., dba AMAZON TRUCKING ("Applicant"), to extend its authority under certificate of public convenience and necessity number 1483-C ("Certificate 1483-C") to include the dump truck classification in the islands of Kauai, Maui, Lanai, Molokai, and Hawaii.

I.

Background

A.

Application

Applicant is a common carrier of property by motor vehicle over irregular routes on the island of Oahu in the dump

truck classification. On March 12, 2009, Applicant filed an application seeking commission approval to extend its authority under Certificate No. 1483-C to include the dump truck classification on the islands of Kauai, Maui, Lanai, Molokai, and Hawaii. The application was filed pursuant to Hawaii Revised Statutes § 271-12.

B.

Motions to Intervene

1.

RRT

On April 24, 2009, RRT filed a motion to intervene in this proceeding. RRT is authorized to transport property by motor vehicle over irregular routes on the island of Kauai in the dump truck and specific commodities (heavy machinery and equipment, and specialized equipment) classifications. RRT argues that intervention should be granted for the following reasons: (1) Applicant's proposed operations will negatively and directly impact RRT's sustainability; (2) there has been a dramatic slowdown and cessation of almost all major projects on the island of Kauai and RRT has been operating at a 50% production level for approximately eight [8] months; (3) Applicant has a fleet of trucks larger in number than other certificated common carriers on the island of Kauai and the approval of its application would only encourage and enable monopolistic operations by Applicant; (4) the services proposed by Applicant are already provided by RRT, and, thus, any

potential customer utilizing Applicant will ultimately be lost to current certificate holders on the island of Kauai, resulting in economic hardship to RRT; (5) RRT has no other means to protect its interests other than the commission denying Applicant's request for an extension of authority to include the island of Kauai; (6) RRT's participation can assist in the development of a sound record; (7) RRT's participation will not broaden the issues or unduly delay the proceeding; and (8) the consensus from the general public, as well as the construction and trucking community, is that no additional motor carriers are needed on the island of Kauai.

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

2.

LT

On April 27, 2009, LT filed a motion to intervene in this proceeding. LT is authorized to transport property over irregular routes on the island of Lanai in the general commodities, household goods, and dump truck classifications. LT argues that intervention should be granted for the following reasons: (1) the demand for dump truck services is currently met by LT; (2) there has been a decrease in demand for services to such an extent that LT has only used its dump trucks one time in the past month; (3) Applicant is targeting the business niche created and serviced by LT, and if the application is approved, Applicant will be in direct competition with LT, resulting in a

loss of revenue and threat to LT's viability; (4) LT has no other means to protect its interests; (5) LT's participation can assist in the development of a sound record; and (6) LT's participation will not delay the proceeding or broaden the issues.

On May 14, 2009, Applicant filed a statement in opposition to LT's motion to intervene. Hawaii Administrative Rules ("HAR") § 6-61-41(c) provides, in relevant part, "[a]n opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion]." As the opposition statement was untimely filed, it will not be considered in this 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).

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

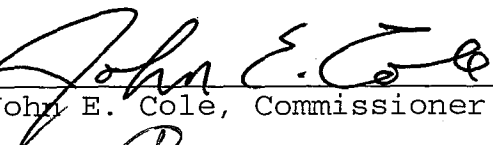
#### THE COMMISSION ORDERS:

Movants' motions to intervene, filed on April 24, 2009, and April 27, 2009, are denied.

DONE at Honolulu, Hawaii JUN - 1 2009.

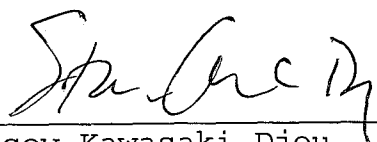
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

2009-0057.ps



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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