

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

WESTERN MOTOR TARIFF BUREAU, INC. )

DOCKET NO. 02-0362

To Increase Rates and Charges )  
on Behalf of Motor Carriers )  
Participating in WMTB's Passenger )  
Carrier Tariff No. 8-C, Island )  
of Oahu. )  
WMTB Rate Notice No. 4322-8-C. )

ORDER NO. 19741

Filed Oct. 29, 2002  
At 8:00 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

RECEIVED

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ORDER

I.

On September 20, 2002, WESTERN MOTOR TARIFF BUREAU, INC. (WMTB) filed Rate Notice No. 4322-8-C, on behalf of motor carriers of passengers authorized to operate on the island of Oahu, and that participate in WMTB's Passenger Carrier Tariff No. 8-C. Specifically, WMTB seeks a five per cent across-the-board increase in its rates and charges for these Oahu-based member carriers.

WMTB supports its request with a cost study, dated September 20, 2002. WMTB utilizes the 2001 revenues and expenses of three sample/member carriers in its cost study: (1) Polynesian Adventure Tours, Inc.; (2) PHT, Inc., dba Polynesian Hospitality (Polynesian Hospitality); and (3) Robert's Tours and Transportation, Inc.

By Order No. 19692, filed on October 3, 2002, the commission: (1) suspended the tariff changes proposed by WMTB in

Rate Notice No. 4322-8-C, pending investigation; and (2) named the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate), as a necessary party to the docket.

On October 10, 2002, PC Services, Inc. and Polynesian Cultural Center (collectively, Movants) timely filed a joint motion to intervene in this proceeding. Movants filed their motion in accordance with Hawaii Administrative Rules (HAR) §§ 6-61-55 and 6-61-57. The existing parties did not file any responses to the joint motion to intervene.<sup>1</sup>

This order addresses Movants' joint motion to intervene.

## II.

### A.

#### PC Services, Inc.'s Position

PC Services, Inc. is a Hawaii corporation that owns and operates the visitor attraction known as the Paradise Cove Luau, in Ko Olina, on the island of Oahu.

In support of its intervention, PC Services, Inc. asserts:

1. It has a five-year transportation service agreement with Robert's Hawaii Tours, Inc. This written agreement, dated March 1, 2002, expires in February 2005. Pursuant to this agreement, PC Services, Inc. is required to utilize Robert's Hawaii Tours, Inc. as its exclusive ground

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<sup>1</sup>Based on Movants' certificate of service, the deadline dates for the Consumer Advocate and WMTB to respond to the joint motion to intervene were October 17 and 21, 2002, respectively.

transportation agent. A copy of the written agreement is attached as Exhibit 3 to the joint motion to intervene.

2. Robert's Hawaii Tours Transportation, Inc. is a member of WMTB.<sup>2</sup>

3. Under the terms of the written agreement, PC Services, Inc. pays Robert's Hawaii Tours, Inc. directly for ground transportation services. Thus, PC Services, Inc., and not the patrons of Paradise Cove Luau, "bears the full burden of any tariff increases."

4. Accordingly, it is unable to "shop around for the best price." Instead, it is "locked into using Robert's [Hawaii Tours, Inc.] as its carrier."

#### B.

##### Polynesian Cultural Center's Position

Polynesian Cultural Center, a Hawaii corporation, operates a cultural center known as the Polynesian Cultural Center (PCC), located in Laie, on the island of Oahu.<sup>3</sup>

In support of its intervention, Polynesian Cultural Center asserts:

1. Of all customers requiring ground transportation to the PCC: (A) approximately 20 per cent are transported by

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<sup>2</sup>The commission notes that Robert's Tours and Transportation, Inc. is a member of WMTB.

<sup>3</sup>Upon the commission's review of the joint motion to intervene, it appears that a distinction exists between Polynesian Cultural Center, the entity and operator, and PCC, the visitor attraction.

Furthermore, although not stated in the docket record, the commission takes administrative notice of the fact that the PCC is located in Laie, on the island of Oahu.

Robert's Hawaii Tours, Inc.; (B) another 20 per cent are transported by Polynesian Adventure Tours, Inc.; and (C) approximately 10 per cent are transported by Polynesian Hospitality and Travel Plaza Transportation, LLC, combined.

2. Polynesian Adventure Tours, Inc., Polynesian Hospitality, and Travel Plaza Transportation, LLC, are members of WMTB.

3. Accordingly, Polynesian Cultural Center utilizes the services of WMTB member carriers "for about half of its customers that need transportation." In addition, for special events, 30 - 40 buses are required, and Polynesian Cultural Center must rely more heavily upon the services of WMTB member carriers.

4. Like PC Services, Inc., Polynesian Cultural Center pays these WMTB member carriers directly for these ground transportation costs, and "suffers a direct adverse impact from tariff increases."

#### C.

##### Movants' Joint Position

Movants jointly contend as follows:

1. Both PC Services, Inc. and Polynesian Cultural Center are members of the Hawaii Attractions Association.

2. PC Services, Inc. is required to utilize the services of Robert's Hawaii Tours, Inc. exclusively, while Polynesian Cultural Center relies heavily upon the services of WMTB member carriers. Movants "do not have the option, like the general public, of shopping for the best value."

3. On January 1, 2002, an 8 per cent increase in rates for WMTB passenger carriers statewide took effect. This increase "had a significant negative economic impact" on Movants' operations.

4. A second increase in rates, within the same year, as proposed by WMTB, will severely and negatively impact Movants' operations, as Movants will have to directly absorb these increased costs.

5. Because of its limited staff and resources, the Consumer Advocate is unable to: (A) adequately represent Movants' specific interests in this proceeding; or (B) thoroughly investigate the requested increase in rates.

6. Movants are "institutional, corporate consumers of WMTB's transportation services." The information and data Movants are able to submit in this proceeding "will supplement [the] evidence pertaining to individual consumers and will be critical to developing a comprehensive and complete record."

7. Movants oppose WMTB's requested increase in rates, and their participation in this proceeding will not unduly broaden the issues.

### III.

HAR § 6-61-55(d) provides that "intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Moreover, intervention as a party in a proceeding before the commission is not a right; rather, it is a matter resting within

the commission's sound discretion. In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 535 P.2d 1102 (1975).

We begin by addressing PC Services, Inc.'s intervention request, followed by Polynesian Cultural Center's.

A.

PC Services, Inc.

For the island of Oahu, Robert's Tours and Transportation, Inc. is duly authorized to operate as a motor carrier of passengers in the 1-to-7, 8-to-25, and over-25 passenger classifications. It is the holder of certificate of public convenience and necessity (CPCN) number 821-C, and a member of WMTB.<sup>4</sup>

By contrast, Robert's Hawaii Tours, Inc.: (1) does not hold a CPCN; and (2) is not authorized by the commission to operate as a motor carrier of passengers. The relationship, if any, between Robert's Tours and Transportation, Inc. and Robert's Hawaii Tours, Inc., is not explained by PC Services, Inc.

Furthermore, the ground transportation fees specified in paragraph 6 of the written agreement between PC Services, Inc. and Robert's Hawaii Tours, Inc., do not appear consistent with WMTB's tariff rates in effect at the time the agreement was signed on March 1, 2000. In addition, nothing in the written agreement appears to corroborate PC Services, Inc.'s allegations that on January 1, 2002, the ground transportation fees set forth in paragraph 6 were: (1) increased; (2) increased by 8 per cent; or (3) passed through to PC Services, Inc.

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<sup>4</sup>See footnote 2, supra.

Likewise, under the circumstances, the commission is unable to credit PC Services, Inc.'s allegation that, because it pays directly for ground transportation services under the terms of the written agreement, *a fortiori*, PC Services, Inc. "bears the full burden of any tariff increases."

For these reasons, the commission will deny PC Services, Inc.'s motion to intervene.

B.

Polynesian Cultural Center

As previously stated, Polynesian Cultural Center: (1) utilizes the services of Polynesian Adventure Tours, Inc., Polynesian Hospitality, and Travel Plaza Transportation, LLC;<sup>5</sup> (2) pays these passenger carriers directly for the transport costs incurred; and (3) states that it will have to absorb any increase in rates granted to WMTB in this proceeding.

Polynesian Cultural Center relies on the ground transportation services of all three passenger carriers in its operations of the PCC. Moreover, two of these passenger carriers

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<sup>5</sup>For the island of Oahu:

1. Polynesian Adventure Tours, Inc. is duly authorized to operate as a motor carrier of passengers in the 8-to-25 and over-25 passenger classifications. It is the holder of CPCN number 974-C, and a member of WMTB.

2. Polynesian Hospitality is duly authorized to operate as a motor carrier of passengers in the 1-to-7, 8-to-25, and over-25 passenger classifications. It is the holder of CPCN number 309-C, and a member of WMTB.

3. Travel Plaza Transportation, LLC is duly authorized to operate as a motor carrier of passengers in the 1-to-7, 8-to-25, and over-25 passenger classifications. It is the holder of CPCN number 563-C, and a member of WMTB.



are utilized as sample carriers by WMTB in its supporting cost study.

Upon review, it appears that WMTB's proposed increase in rates will directly impact Polynesian Cultural Center's operations. Thus, its allegations appear reasonably pertinent to the underlying issue in this proceeding. Accordingly, the commission will grant Polynesian Cultural Center's motion to intervene.

At the same time, to ensure that Polynesian Cultural Center's participation in this proceeding does not unreasonably broaden the issue already presented, the commission will limit Polynesian Cultural Center's role. Specifically, Polynesian Cultural Center's involvement shall be limited to: (1) its examination of the test year revenues and expenses of the two sample carriers it utilizes; (2) explaining the impact upon its operations of WMTB's proposed increase in rates; and (3) its assistance in developing a sound, evidentiary record on these matters.

#### IV.

##### THE COMMISSION ORDERS:

1. PC Services, Inc.'s motion to intervene is denied.

2. Polynesian Cultural Center's motion to intervene is granted. As a party intervenor, Polynesian Cultural Center's role in this proceeding, unless directed or ordered otherwise, shall be limited to: (A) its examination of the test year revenues and expenses of the two sample carriers it utilizes;

(B) explaining the impact upon its operations of WMTB's proposed increase in rates; and (C) its assistance in developing a sound, evidentiary record on these matters.

3. Unless directed or ordered otherwise:


(A) Polynesian Cultural Center shall adhere to the schedule of proceedings, terms, and conditions set forth in the Prehearing Order recently issued by the commission in this proceeding; and  
(B) the respective parties shall serve each other copies of all documents and pleadings filed with the commission in the instant proceeding, consistent with HAR §§ 6-61-18 and 6-61-21. As a non-applicant, Polynesian Cultural Center shall adhere to the same deadline dates set forth for the Consumer Advocate in the above-referenced schedule of proceedings.

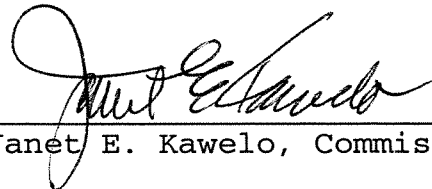
4. If, at any time, the commission finds that Polynesian Cultural Center's efforts duplicate those of the Consumer Advocate's, the commission will reconsider Polynesian Cultural Center's further involvement in this docket.


5. In compliance with HAR § 6-61-55, Polynesian Cultural Center shall not delay the instant proceeding.

DONE at Honolulu, Hawaii this 29th day of October,  
2002.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Wayne H. Kimura, Chairman

By   
Janet E. Kawelo, Commissioner

By   
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

43228C.sl

CERTIFICATE OF SERVICE

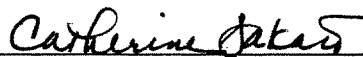
I hereby certify that I have this date served a copy of the foregoing Order No. 19741 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

WESTERN MOTOR TARIFF BUREAU, INC.  
P. O. Box 30268  
Honolulu, HI 96820

JONATHAN S. DURRETT, ESQ.  
VALERIE J. LAM, ESQ.  
1001 Bishop Street  
Pauahi Tower, Suite 808  
Honolulu, HI 96813

Attorneys for PC SERVICES, INC. and  
POLYNESIAN CULTURAL CENTER

  
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Catherine Sakato

DATED: October 29, 2002