BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of

KAPOHOKINE ADVENTURES, LLC

for a Motor Carrier Certificate

or Permit.

DOCKET NO. 05-0074

ORDER NO. 21911

Filed ______, 2005
At ______ o'clock ______ A.M.

Karen Diglot
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Application of
KAPOHOKINE ADVENTURES, LLC
for a Motor Carrier Certificate or Permit.

Docket No. 05-0074
Order No. 21911

ORDER

By this Order, the commission denies Jack's Tours, Inc.'s ("Jack's") Motion to Intervene, filed on June 7, 2005, in the matter of the application of KAPOHOKINE ADVENTURES, LLC ("Applicant") for an extension of its motor carrier certificate ("Certificate") ("Application").

I. Background

By Application filed on March 22, 2005, Applicant requests approval from the commission for an extension of its Certificate to include the 8-to-25 passenger classification, on the island of Hawaii, excluding Waipio Valley.¹

Applicant served copies of the Application on the Hawaii Transportation Association, which consists of carriers that may be affected by Applicant's transfer, and on the Division

¹Applicant is presently authorized by the commission to operate its motor carrier services in the 1-to-7 passenger classification.
of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). On March 24, 2005, the Consumer Advocate informed the commission that it will not be participating in this docket.

On June 7, 2005, Jack's filed its Motion to Intervene, in which, in addition to assertions in support of its Motion to Intervene, it asked that the commission entertain oral argument on the matter. By Notice of Hearing filed on June 14, 2005, the commission notified Jack’s and Applicant that oral argument on the Motion to Intervene would be scheduled for June 28, 2005, at 1:00 p.m. in the commission’s hearing room.

On June 14, 2005 Applicant filed a memorandum in opposition to Jack’s Motion to Intervene ("Memorandum in Opposition").

On June 28, 2005, oral argument on the Motion to Intervene was heard by the commission. Jack’s was represented by Jeff Miyashiro, its President, and attorney Wray H. Kondo. Applicant was represented by two (2) of its three (3) partners, Anthony DeLellis and Gary Morrow II.

II.

Motion to Intervene

A.

Jack’s Position and Assertions

In support of its Motion to Intervene, Jack’s alleges, among other things, that its business is being threatened by motor carriers such as Applicant, notwithstanding that
Applicant's business primarily focuses on transporting smaller groups of tourists. Jack's contends that despite its reputation as a large motor carrier operation, a significant portion of its motor carrier business consists of transporting small groups, and that it would be hurt by Applicant's entry into the marketplace. Jack's asserts that it has invested substantial amounts of money upgrading its vehicles and equipment, and consequently, should have some say in the commission's determination of Applicant's request to extend its motor carrier authority. Although Jack's does not dispute numbers offered by Applicant showing an increase in the number of visitors to the island of Hawaii, Jack's contends that it simply wants some input in the instant proceeding because of the money it has invested in its vehicles and equipment.

B. Applicant's Position and Assertions

In response to Jack's Motion to Intervene, Applicant asserts in opposition, among other things, that current visitor industry numbers dispute Jack's assertion that Jack's would be hurt by Applicant's entry into the marketplace, i.e., visitor industry numbers show an increase in the number of visitors to the island of Hawaii, and that there are sufficient numbers to keep both Jack's and Applicant busy. Applicant represents that it focuses on small group tours, and

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1Jack's stated that its figures for the month of March 2005 show that its van movements exceeded motor coach movements.
asserts that because Jack's focus is on transporting larger groups, Applicant's entry does not pose an economic threat to Jack's. Additionally, Applicant states that it offers its customers transportation to locations and sites different from Jack's offerings.

C.

Discussion

Standard of Review

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." HAR § 6-61-55 sets forth the requirements to intervene in this proceeding. In particular, HAR § 6-61-55(d) 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."

Upon a review of the entire record, the commission is not persuaded that Jack's oral and written allegations are reasonably pertinent to the resolution of the issues already presented in the Application before us. Furthermore, the commission is additionally not convinced that Jack's allegations

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'Applicant said that one only has to visit Jack's web site to see that Jack's transportation offerings do not include locations to which Applicant takes its visitors.

and its participation as an intervenor in this proceeding will not unreasonably broaden these issues before us. The commission also finds that, in this proceeding Jack's participation as an intervenor would likely delay the proceeding and would not assist the commission in developing a sound record.

For the foregoing reasons, we conclude that Jack's Motion to Intervene should be denied.

III.

Order

THE COMMISSION ORDERS that Jack's Motion to Intervene, filed on June 7, 2005, is denied.

DONE at Honolulu, Hawaii JUL - 8 2005

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso, Chairman

By Wayne H. Kimura, Commissioner

By Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Commission Counsel
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21911 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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WRAY H. KONDO, ESQ.
EMI L.M. KAIMULOA, ESQ.
First Hawaiian Center
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DATED: JUL - 8 2005

Karen Higashi