

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
AIKANE INTERPACIFIC CORPORATION)
 dba MAIKA`I OHANA TOURS)
)
for a Motor Carrier Certificate)
or Permit.)
_____)

DOCKET NO. 05-0095

ORDER NO. 21912

Filed July 8, 2005
At 9 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

BY: CT. CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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Docket No. 05-0095

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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 AIKANE INTERPACIFIC CORPORATION dba MAIKA`I OHANA TOURS ("Applicant") for a motor carrier certificate of public convenience and necessity ("Certificate").

I.

Background

By Application filed on April 19, 2005 ("Application"), Applicant requests commission approval for a Certificate to operate as a common carrier of passengers in the 8-to-25 passenger classification, on the island of Hawaii, excluding Waipio Valley.

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 of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). On April 21, 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 23, 2005 Applicant, through its legal counsel, filed a motion for the enlargement of time to file a reply to the Motion to Intervene ("Motion for Enlargement of Time"). By Order No. 21893, filed on June 24, 2005, the commission denied Applicant's Motion for Enlargement of Time. On June 24, 2005, Jack's filed a memorandum in opposition to Applicant's Motion for Enlargement of Time.

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 attorney Shah J. Bento.

II.

Motion to Intervene

A.

Jack's Position and Assertions

In support of its Motion to Intervene, Jack's asserts that much of its transportation business is derived from small

group transportation and that its livelihood is being threatened by motor carriers such as Applicant whose business appears to focus primarily 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.¹ Jack's argues that it would not be sound transportation policy to saturate the motor carrier market with unstable carriers who would be unable to survive a catastrophic event such as the events of September 11, 2001.

B.

Applicant's Position and Assertions

Applicant asserts in opposition, among other things, that Jack's' focus on Applicant's fitness and ability to perform the proposed transportation service is misplaced. Applicant emphasizes that the commission's focus at this point should be considering the factors stated under Hawaii Administrative Rules ("HAR") § 6-61-55 that permits the commission, in its discretion, to grant or deny a Motion to Intervene, and not whether Applicant's is fit, willing or able to operate as a motor carrier. Moreover, Applicant claims that its proposed motor

¹Jack's stated that its figures for the month of March 2005 show that its van movements exceeded motor coach movements.

carrier service is unique and not duplicative of Jack's current transportation offerings. Citing to HAR § 6-61-55(d), Applicants claim that Jack's Motion to Intervene should not be granted because Jack's allegations are not pertinent to and do broaden the issues presented in this proceeding.

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."² 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, including the oral and written allegations, the commission is not persuaded that a grant of intervention to Jack's in the instant proceeding will be reasonably pertinent to the resolution of the issues already presented in the instant Application. Furthermore, the commission is additionally not convinced that Jack's allegations

²See, *In re Application of Hawaiian Electric Company, Ltd.*, 56 Haw. 260, 262 (1975). See also, *In re Paradise Merger Sub, Inc. et al.*, Docket No. 04-0140, Order No. 21226 (August 6, 2004).

and its participation as an intervenor in this proceeding will not unreasonably broaden these issues. 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
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21912 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

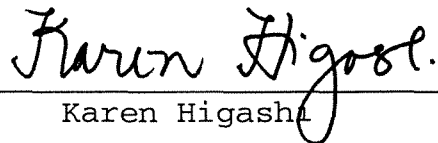
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DATED: JUL - 8 2005