

05

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MEGUMI MATSUMOTO dba)
BIG BLUE HAWAII)
for a Motor Carrier Certificate)
or Permit.)
_____)

DOCKET NO. 05-0134

ORDER NO. 22122

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

Filed November 16, 2005

At 10:00 o'clock A .M.

for Michiru S.U.M. Kau
Chief Clerk of the Commission

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

Michiru S.U.M. Kau

BEFORE THE PUBLIC UTILITIES COMMISSION
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In the Matter of the Application of)	
MEGUMI MATSUMOTO dba)
BIG BLUE HAWAII)
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for a Motor Carrier Certificate)
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Docket No. 05-0134
Order No. 22122

ORDER

By this Order, the commission denies Jack's Tours, Inc.'s ("Jack's") motion to intervene in the matter of the application of MEGUMI MATSUMOTO dba BIG BLUE HAWAII ("Applicant") for a certificate of public convenience and necessity to operate as a motor carrier over irregular routes on the island of Hawaii, excluding Waipio Valley.

I.

Background

A.

Application

By Application filed on June 2, 2005, Applicant requested approval from the commission to operate as a motor carrier over irregular routes, in the 1-to-7 passenger classification on the island of Hawaii, excluding Waipio Valley ("Application"). By letter filed on July 7, 2005, Applicant amended its Application to request permission to operate in the 8-to-25 passenger classification ("Applicant's Amendment to

Application"). According to Applicant, it "erroneously stated that a 7-passenger vehicle will be used for our operation instead of a[n] 8-passenger vehicle. Accordingly, we hereby request that the vehicle classification be amended to a[n] 8-passenger classification."¹ Applicant seeks to provide transportation in connection with its dive tours.

B.

Motion to Intervene

On August 24, 2005, Jack's filed a Motion to Intervene in this proceeding ("Motion to Intervene"). According to the Motion to Intervene, Jack's is a "duly certificated common carrier by motor vehicle in the 1 to 7, 8 to 25, and over 25 passenger categories on the island of Hawaii, excluding Waipio Valley." Jack's sought intervention on the grounds that: 1) the services proposed to be rendered by Applicant are already provided by Jack's; 2) Applicant fails to provide "reliable evidence" to support its claim that its services as a common carrier are necessary to promote Hawaii "as one of the best free-diving areas in the world"; 3) Applicant's letters of support "amount to nothing more than personal references"; 4) Jack's and the other currently licensed motor carriers on the island of Hawaii have "more than sufficient vehicle capacity to serve the present and future public need"; 5) "[d]espite the more than sufficient capacity of authorized motor carriers, in the past year, the PUC has authorized numerous carriers to enter the

¹See Applicant's Amendment to Application.

market or expand their authorities on the island of Hawaii"; 6) the September 11, 2001 terrorist attacks, the war in Iraq, and the SARS epidemic "demonstrate the need for the Commission to avoid further economic harm to the authorized motor carriers through the unnecessary entry of additional motor carriers at this time"; 7) Applicant has no experience as a motor carrier operator; 8) Applicant does not have insurance coverage for its proposed motor carrier operation; 9) Applicant has not provided the commission with a proper proposed tariff; 10) Applicant fails to provide sufficient information about its office space and base yard; 11) the "financial information submitted by Applicant indicates that Applicant is not financially fit to operate as a motor carrier"; 12) "[e]xcept for the investigation of this application by the Commission's staff there are no other means available whereby the interests of Jack's Tours may be protected"; 13) "[Jack's] participation will not broaden the issues or unduly delay this proceeding"; and 14) "[Jack's] interest in this proceeding differs from that of the general public because, if the application filed herein is granted, Applicant will be in direct competition with Jack's."²

In its Motion to Intervene, Jack's requested oral argument should the commission be inclined to deny its Motion. By Notice of Hearing filed on September 2, 2005, the commission notified Applicant and Jack's that oral argument on the Motion to Intervene was scheduled for October 13, 2005, at 1:00 p.m., in the commission's hearing room.

²See Motion to Intervene at 2-9.

No written response to the Motion to Intervene was filed by the Applicant.

C.

Hearing on the Motion to Intervene

On October 13, 2005, the commission heard oral argument on the Motion to Intervene. Sumio Nakashima, Esq. appeared on behalf of Applicant. Also present was Megumi Matsumoto, Applicant's owner, Leo Muraoka, an employee of Applicant, and Matt Briseno, "an internationally known diving instructor."³ Wray H. Kondo, Esq. appeared on behalf of Jack's. Also present was Jeff Miyashiro, President of JT Holding, which owns Jack's.

At the hearing on the Motion to Intervene, Jack's argued, in addition to the issues raised in its Motion, that while Applicant's proposed motor vehicle operation may be small in size and projected revenues, it is the cumulative effect, over time, of each applicant that will have a significant impact on Jack's.⁴

In response, Applicant acknowledged at the hearing that it had no motor carrier service experience. In its Application, however, Applicant noted that its Assistant Manager, Mr. Muraoka, had ten years of transportation experience. In addition, at the hearing, Applicant stated that it had obtained appropriate insurance, arranged for storage and maintenance of its motor vehicle, and hired an accountant to assist it with its proposed

³Transcript of Proceeding at 7.

⁴Id. at 5-6.

motor carrier service's accounting concerns. Applicant also stressed at the hearing that it would not be competing with Jack's as it would be providing very "unique" services to "advanced free divers from Japan."⁵

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).

Hawaii Administrative Rules ("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;

⁵Id. at 7-12.

- (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." (Emphasis added.)

After reviewing the entire record including Jack's written submission and oral argument, the commission finds that Jack's allegations are not reasonably pertinent to the resolution of the Application and that intervention by Jack's would unreasonably broaden the issues already presented. While it is apparent that Jack's may have a financial interest in preventing unwanted competition, its claim that its sizeable business operations will be harmed over time by the cumulative effect of several small motor carrier operators like the Applicant, is purely speculative. Jack's, moreover, has other means by which to protect its market share. Jack's, for example,

could offer better service than its competitors or more competitive pricing. See In re Robert's Tours & Transp., Inc., 104 Hawaii 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"). Jack's participation as an intervenor, moreover, is only likely to delay the proceeding and will 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 August 24, 2005, is denied.

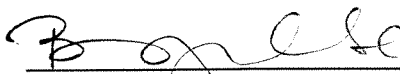
DONE at Honolulu, Hawaii November 16, 2005.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

By 
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22122 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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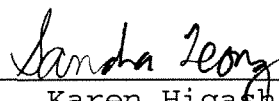
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for Karen Higashi

DATED: November 16, 2005