

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PASHA HAWAII TRANSPORT LINES LLC)
For Issuance of a Certificate of)
Public Convenience and Necessity)
and Approval of its Local Tariff)
No. 1 for Service Between and)
Among the Ports of Honolulu,)
Kahului, Hilo and Nawiliwili)

DOCKET NO. 2009-0059

ORDER DENYING YOUNG BROTHERS, LIMITED'S
MOTION FOR RECONSIDERATION AND DISMISSING AS MOOT
PASHA HAWAII TRANSPORT LINES LLC'S MOTION FOR LEAVE TO FILE REPLY

PUBLIC UTILITIES
COMMISSION

2009 NOV 10 P 12:14

FILED

("CPCN").¹ Pasha served copies of its Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), which is an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.² The Consumer Advocate subsequently filed its Preliminary Statement of Position on April 2, 2009.

On April 7, 2009, the commission approved the Stipulated Protective Order between Pasha and the Consumer Advocate ("Protective Order").³ On April 9, 2009, Pasha filed PHTL - Exhibit F under seal, pursuant to the Protective Order.

On April 27, 2009, YB filed a Motion to Intervene ("Motion to Intervene"). On May 28, 2009, over Pasha's opposition, the commission filed an order granting YB's Motion to Intervene.⁴

On July 31, 2009, YB filed a Motion to Clarify or Modify the Stipulation for Protective Order Filed on April 7, 2009 to Include Young Brothers, Limited as a "Qualified Person" ("Motion to Clarify"). In its Motion to Clarify, YB sought an order clarifying or modifying the Protective Order "to include

¹Pasha's Application; PHTL Exhibit A - F; Verification; and Certificate of Service, filed on March 13, 2009 ("Application").

²"Parties" collectively refers to Pasha, the Consumer Advocate, and YB.

³See Protective Order; Stipulation for Protective Order; Exhibit A; and Certificate of Service, filed on April 7, 2009 ("Stipulated Protective Order").

⁴See Order Granting Intervention, filed on May 28, 2009 ("Intervention Order").

[YB], its staff, counsel (including employees directly employed by such counsel) and any consultants retained by [YB] in this proceeding" as a "qualified person" under paragraph 12 of the Protective Order.⁵ In response, Pasha filed its opposition to Young Brothers' Motion to Clarify on August 7, 2009.

On September 15, 2009, the commission issued its Order Denying Young Brothers, Limited's Motion to Clarify or Modify the Stipulation for Protective Order Filed on April 7, 2009 to Include Young Brothers, Limited as a "Qualified Person" ("Order Denying Motion to Clarify"). In both the Intervention Order and the Order Denying Motion to Clarify, the commission indicated that YB's involvement in this proceeding was "to assist the commission in examining the state of the inter-island shipping market and the potential impacts of Pasha's proposed service overall."⁶

Given the limited scope of YB's role as intervenor, the commission denied YB's Motion to Clarify. As part of its reasoning, the commission stated the following:

Confidential information, such as Pasha's financial information, is not relevant to the specific issues with which YB, as intervenor, is concerned. Pasha's financial fitness, willingness and ability to properly perform the proposed service, in accordance with HRS Chapter 271G and the applicable requirements, rules, regulations and decisions of the commission thereunder, are issues that will be properly addressed by the Consumer Advocate. In light of this, the commission finds that YB, as an intervenor, has

⁵See Motion to Clarify, at 1-2, 7-8.

⁶See Intervention Order, at 7. See also Order Denying Motion to Clarify, at 6.

no reasonable need to obtain any confidential information that may be produced by Pasha in this proceeding.⁷

On September 28, 2009, YB filed its Motion for Reconsideration. On September 30, 2009, Pasha filed its Motion for Leave.

II.

Discussion

Under HAR § 6-61-137, a motion for reconsideration concerning any decision or order of the commission must be filed within ten days after the decision or order is served upon the party. The motion must also specifically state "the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**" HAR § 6-61-137 (emphasis added). Furthermore, under HAR § 6-61-140, the commission "may allow replies to a motion for rehearing or reconsideration or a stay, if it deems those replies desirable or necessary."

In its Motion for Reconsideration, YB states that it "is not asking the [c]ommission to reconsider its decision regarding Pasha's confidential information that is pertinent to Pasha's fitness or willingness to provide the proposed services."⁸ Instead, YB now contends that it is only seeking confidential information "related to Pasha's potential impact overall, Pasha's potential impacts on [YB's] ability to continue

⁷See Order Denying Motion to Clarify, at 6-7.

⁸See Memorandum in Support of YB's Motion for Reconsideration, at 2.

to serve its customers reliably, economically, and efficiently, and Pasha's potential impacts on the inter-island shipping market as these issues relate to the present and future public convenience and necessity."⁹

YB's request for reconsideration or clarification, however; essentially amounts to a second attempt to seek clarification on the same issues that were previously addressed by the commission. Since YB has already moved for clarification once before, it cannot continue to file motions on the same issues. HAR § 6-61-141 specifically prohibits parties from filing successive motions upon "substantially the same grounds as a former motion which has been considered or denied by the commission" ¹⁰

The denial of YB's request to reconsider or clarify the Order Denying Motion to Clarify, however, does not preclude YB from filing an appropriate motion to compel. Because YB's main concern appears to relate to certain categories of information that it does not believe should be designated as confidential by Pasha,¹¹ such issues should properly be addressed via a motion to compel, and not through a motion for clarification.

⁹Id. at 3.

¹⁰Furthermore, repeated filings on the same issue may be construed as an attempt to unduly delay this proceeding. In its Intervention Order, the commission specifically stated that it would reconsider YB's participation in this docket if the commission determines that YB was unduly delaying the proceeding. See Intervention Order, at 7-8.

¹¹See Memorandum in Support of YB's Motion for Reconsideration, at 2, 3, and 10.

Under Paragraph 24 of the Stipulated Protective Order, if any interested person disagrees with the designation of information as confidential, then the party claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis.¹² If the dispute cannot be resolved, then the person challenging the confidentiality of the information may file a motion to compel disclosure or any other appropriate motion with the commission.¹³ In such case, the party claiming confidentiality shall bear the burden of proof in supporting its claim, and the commission will then determine whether the information shall continue to be designated as confidential under the Stipulated Protective Order.¹⁴

In sum, to the extent that YB believes that certain types of information should not be designated as confidential and that it requires such information in order to be able to appropriately assist the commission in examining the state of the inter-island shipping market and the potential impacts of Pasha's proposed service overall, then YB may file a motion to compel responses to specific information requests.¹⁵

¹²See Stipulated Protective Order, at 10.

¹³Id.

¹⁴Id.

¹⁵This would thereby provide the commission with a more complete record on the issues in dispute.

Based on the foregoing reasons, the commission denies YB's Motion for Reconsideration and dismisses Pasha's Motion for Leave as moot.

III.

Orders

THE COMMISSION ORDERS:

1. YB's Motion for Reconsideration is denied. The denial of the Motion does not preclude YB from filing an appropriate motion to compel responses to specific information requests.

2. Pasha's Motion for Leave is dismissed as moot.

DONE at Honolulu, Hawaii NOV 10 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Bonita Y.M. Chang
Bonita Y.M. Chang
Commission Counsel

Leslie H. Kondo
By Leslie H. Kondo
Leslie H. Kondo, Commissioner

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CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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

CLIFFORD K. HIGA, ESQ.
BRUCE NAKAMURA, ESQ.
KOBAYASHI, SUGITA & GODA
999 Bishop Street, Suite 2600
Honolulu, HI 96813-4430

Attorneys for PASHA HAWAII TRANSPORT LINES LLC

CRAIG I. NAKANISHI, ESQ.
DEVON I. PETERSON, ESQ.
RUSH MOORE LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Attorneys for YOUNG BROTHERS, LIMITED