

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----))
))
 KEALOHALANI EQUIPMENT))
 & RENTAL, INC.))
))
 Notice of Failure to Comply))
 With Hawaii Revised Statutes))
 and Commission's Regulations))
 Order to Show Cause Why))
 Respondent's Operating))
 Authority Should Not Be))
 Suspended or Revoked.))
 _____))

Docket No. 02-0254
Decision and Order No. 20242

DECISION AND ORDER

I.

On May 14, 2003, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer (recommended decision) regarding the above-entitled matter. The recommended decision was served upon KEALOHALANI EQUIPMENT & RENTAL, INC. (Respondent) on May 14, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

On May 29, 2003, Respondent paid \$1,066.90 in civil penalties as set forth in the recommended decision. Based on the above, the commission finds that Respondent has fully complied, although belatedly, with the motor carrier laws, rules, and regulations, and concludes that the portion of the recommended decision that sought to affirm the civil penalty should be modified to acknowledge Respondent's compliance.

Accordingly, upon a review of the entire record in this matter and pursuant to Hawaii Revised Statutes § 269-6, we conclude that the recommended decision, except as modified herein and attached hereto as Exhibit A, should be adopted as the commission's final decision and order in this matter. Moreover, in light of Respondent's prompt payment of the civil penalty, we conclude that Order No. 19565¹ (Order No. 19565), filed on September 30, 2002, should be vacated and this matter should be closed.

II.

THE COMMISSION ORDERS:

1. The recommended decision regarding, except as modified herein and attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.
2. Order No. 19565, filed on September 30, 2002, is vacated.
3. This docket is closed.

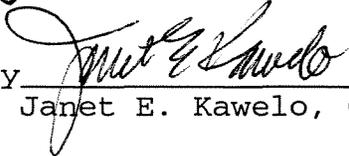
¹By Order No. 19565, filed on September 30, 2002, Respondent was ordered to show cause why Respondent's certificate of public convenience and necessity number 2091-C should not be suspended or revoked for failure to comply with Hawaii Revised Statutes § 271-25.

DONE at Honolulu, Hawaii the 19th day of June, 2003.

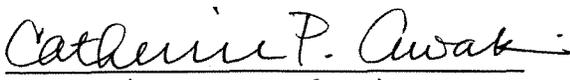
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

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Notice of Failure to Comply)	FINDINGS OF FACT
With Hawaii Revised Statutes)	CONCLUSIONS OF LAW, AND
and Commission's Regulations)	RECOMMENDED DECISION
Order to Show Cause Why)	AND ORDER OF
Respondent's Operating)	HEARINGS OFFICER
Authority Should Not Be)	
Suspended or Revoked.)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 19565 filed on September 30, 2002, KEALOHALANI EQUIPMENT & RENTAL, INC. (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity (CPCN) number 2091-C should not be suspended or revoked for failure to comply with Hawaii Revised Statutes (HRS) § 271-25.

An order to show cause hearing (hearing) was held at 9:00 a.m. on October 29, 2002, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Dave Zavas

EXHIBIT A

appeared on behalf of Respondent.¹ Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for Respondent's failure to timely file an annual financial report (AFR), in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations.

Having considered the testimony and other evidence presented at the hearing, and the entire record in this matter, the hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

II.

FINDINGS OF FACT

1. By letter postmarked April 30, 2002, Respondent filed a request with the commission for an extension to file its AFR. Respondent's request was approved, and it was given until May 31, 2002 to file its AFR (extended deadline).²

¹Members of the commission's audit staff were sworn in and remained present during the hearing in the event they would be called upon to testify in the instant matter.

²Pursuant to Hawaii Administrative Rules (HAR) § 6-61-48, this hearings officer takes official notice of certain facts contained in the commission's motor carrier records.

2. Respondent filed its AFR with the commission on November 15, 2002.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, this hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HRS § 271-25 provides that the commission may grant additional time for the filing of an AFR "in any case".³

3. HRS § 271-27(h) provides, in relevant part, that any motor carrier who fails or refuses to comply with any provision of chapter 271, HRS, or any rule, requirement, or order, may be assessed a civil penalty payable to the State.

4. Based on the above-stated findings of fact, this hearings officer concludes that because Respondent's AFR was received by the commission after the May 31, 2002 extended deadline, Respondent was in violation of HRS § 271-25.

³At the time of Respondent's request to extend the filing deadline, it was commission policy to grant those motor carriers with gross motor carrier revenues of over \$200,000.00 in a year an extension of 30 days to file AFRs where a request was made by April 30 of that year.

IV.

RECOMMENDED DECISION AND ORDER

1. Based on the foregoing, this hearings officer recommends that Order No. 19565 should be AFFIRMED.

2. While this hearings officer recognizes that Respondent has since filed its AFR, she also notes that Respondent owes \$1,066.90 to the commission in late penalties, pursuant to HAR § 6-62-42(d). Therefore, this hearings officer also recommends that Respondent shall pay this penalty to the commission within 15 days from issuance of the final commission order in this matter. Respondent shall pay the penalty in cash, or by cashier's check or money order. If Respondent does not make payment of its civil penalties under the conditions noted above, this hearings officer recommends that Respondent's CPCN should be suspended, or revoked.

DATED: Honolulu, Hawaii this 14th day of May, 2003.



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

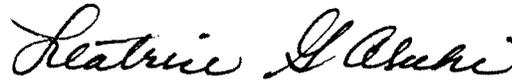
KEALOHALANI:la

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer 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 (VIA PICKUP)
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

KEALOHALANI EQUIPMENT & RENTAL, INC.
47-497 Hui Aeko Place
Kaneohe, HI 96744



Leatrice G. Asahi
Clerk

DATED: May 14, 2003

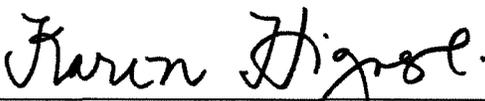
CERTIFICATE OF SERVICE

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

KEALOHALANI EQUIPMENT & RENTAL, INC.
47-497 Hui Aeko Place
Kaneohe, HI 96744

BENEDYNE S. STONE
HEARINGS OFFICER
PUBLIC UTILITIES COMMISSION
465 S. King Street, Room 103
Honolulu, HI 96813



Karen Higashi

DATED: June 19, 2003