

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

-----In the Matter of the-----)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to)
Investigate the Reasonableness)
of Establishing Rate Flexibility)
for Motor Carriers of Passengers)
and Property.)
_____)

DOCKET NO. 03-0245

ORDER NO. 20409

Filed August 29, 2003
At 1:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

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OF THE STATE OF HAWAII

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Docket No. 03-0245

Order No. 20409

ORDER

I.

In accordance with Hawaii Revised Statutes ("HRS") chapter 271, aka the Motor Carrier Law, motor carriers of passengers and property are subject to the commission's regulation and jurisdiction. Passenger carriers are classified by the commission-designated seating capacities of the motor vehicles utilized: 1-to-7, 8-to-25, and over-25. Property carriers are classified by the type of commodities transported and the nature of the services performed: general commodities, household goods, commodities in dump trucks, and specific commodities. Under HRS chapter 271, motor carriers operate as common or contract carriers.

The commission's jurisdiction over the motor carrier industry includes the review and regulation of each carrier's rates and charges. The ratemaking process long observed by the commission for the motor carrier industry is the operating ratio methodology. Based on its past practice, the commission has

found reasonable a motor carrier's operating ratio of 90 to 93 per cent, under the carrier's "normalized" operational structure.

In general, it is the duty of every motor carrier to observe and enforce just and reasonable rates and charges. HRS §§ 271-20, 271-21, and 271-22. Each carrier's proposal to establish new rates or to increase or decrease its existing rates is subject to individual scrutiny by the commission. Rate notices seeking to establish initial rates or to change a carrier's existing rates are filed individually by the carrier, the carrier's authorized tariff agent, or by a tariff association or bureau acting on behalf of their member carriers that participate in a particular passenger or property service or classification.¹ The commission, upon its review, generally suspends, dismisses without prejudice, denies, or allows the rate proposal to take effect upon operation of law. HRS §§ 271-20, 271-21, and 271-22.

For the fiscal year ending June 30, 2002, 527 motor carriers of passengers and 373 motor carriers of property were subject to the commission's jurisdiction. Presently, approximately 568 motor carriers of passengers and 392 motor carriers of property are regulated by the commission. This trend of additional, interested persons entering the motor carrier business is reflected in the new applications for certificates of

¹Rate notices filed on behalf of member carriers utilize the financial data and information of certain sample member carriers, that purportedly comprise a "representative sample" of the participating member carriers.

public convenience and necessity ("CPCNs") filed with the commission on a regular basis, and the issuance of CPCNs to newly authorized carriers.

In essence, the available information and data suggests that the motor carrier industry today is a highly competitive industry statewide. As generally observed by the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), in a recent filing with the commission:

Given today's market for transportation services, the need for further review of the [carriers' pending request for a general rate increase] is mitigated by the availability of numerous carriers providing the regulated passenger carrier services at competitive rates. Furthermore, it does not appear that any of the carriers have sufficient market power to unilaterally exert control over the price of the service rendered given the current number of passenger carriers and lack of market barriers. Thus, there are a number of options available to the consumer at competitive prices.²

II.

Upon thorough review and consideration, the commission finds it ripe, at this time, to open an investigation to examine the feasibility of establishing a zone of reasonableness for motor carriers of passengers and property, whereby specific

²Consumer Advocate's Position Statement, filed on July 16, 2003, at 4, in Docket No. 03-0202, *In re Western Motor Tariff Bureau, Inc.*

The Consumer Advocate has long declined to actively participate in motor carrier proceedings before the commission, opting to focus its limited staff and resources on non-motor carrier matters.

percentage increases or decreases in a carrier's rates and charges within an established zone of reasonableness would be automatically approved, if the requested changes fall within the zone or range authorized by the commission for that carrier's operations.³ See HRS §§ 269-6, 269-7, and 271-9 (commission's general and investigative powers). A more streamlined and efficient regulatory review process should result, to the motor carrier industry's benefit.

Among other things, the commission intends to examine: (1) the feasibility of establishing a zone or some other mechanism to expedite the ratemaking and rate review procedures for regulated motor carriers; (2) whether a zone of reasonableness, if adopted, should apply to all motor carriers of passengers and property, and for what classifications or categories of service; and (3) what type of rates and charges will be subject to the zone.⁴ Given the multitude of motor carriers statewide, the commission envisions generating specific proposals for review and consideration by the industry.

The commission will name the Consumer Advocate, Hawaii State Certified Common Carriers Association, Hawaii Transportation Association, Inc., and Western Motor Tariff

³A zone of reasonableness for an industry's rates and charges is not without commission precedent. See, e.g., Docket No. 01-0255, *In re Young Bros., Ltd.* (zone of reasonableness established for Young Brothers, Limited, a water carrier of property, under a three-year pilot program).

⁴For example, whether the zone will apply to a carrier's fuel surcharge.

Bureau, Inc., as parties to this proceeding. In addition, interested persons, motor carriers in particular, are invited to intervene or participate in the commission's investigation, or to submit written comments on the carrier's behalf.

Finally, any inquiries on the commission's investigation should be directed to:

Mr. Paul Nakayama
Public Utilities Commission
465 S. King Street #103
Honolulu, Hawaii 96813

Telephone: (808) 586-3755

III.

THE COMMISSION ORDERS:

1. An investigation is instituted on the commission's own motion to examine the feasibility of establishing a zone of reasonableness for motor carriers of passengers and property, or some other mechanism to expedite the ratemaking and rate review procedures for regulated motor carriers.

2. The Consumer Advocate, Hawaii State Certified Common Carriers Association, Inc., Hawaii Transportation Association, and Western Motor Tariff Bureau, Inc., are named as parties to this proceeding.


3. Any interested person seeking to intervene or participate in this proceeding shall file by September 30, 2003, an appropriate motion with the commission, with copies served on each of the parties named in Ordering Paragraph No. 2, above. Motions to intervene or participate shall comply with the

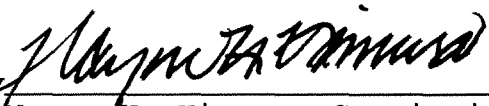
applicable requirements of Hawaii Administrative Rules §§ 6-61-55 and 6-61-56 of the commission's *Rules of Practice and Procedure*.

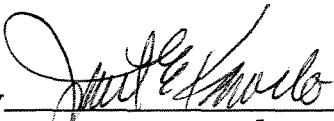
4. Further action from the commission will follow, including the issuance of specific proposals for review and consideration by the motor carrier industry.

DONE at Honolulu, Hawaii this 29th day of August,
2003.

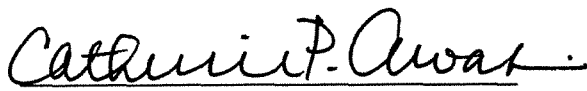
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


for Michael Azama
Commission Counsel

MC.01.sl

CERTIFICATE OF SERVICE

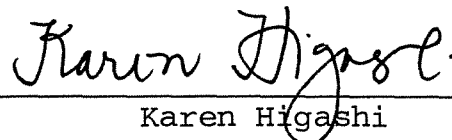
I hereby certify that I have this date served a copy of the foregoing Order No. 20409 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

HAWAII STATE CERTIFIED COMMON CARRIERS ASSOCIATION, INC.
P. O. Box 88692
Honolulu, HI 96830-8692

HAWAII TRANSPORTATION ASSOCIATION
2850 Paa
Suite 204
Honolulu, HI 96819

WESTERN MOTOR TARIFF BUREAU, INC.
P. O. Box 30268
Honolulu, HI 96820



Karen Higashi

DATED: August 29, 2003