

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 ROY SHIELDS, dba MAC Q)
)
 For Expedited and Temporary)
 Authority for Extension of)
 Motor Carrier Certificate.)
 _____)

DOCKET NO. 05-0147

DECISION AND ORDER NO. 21879

RECEIVED
2005 JUN 20 A 7:57
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed June 17, 2005
At 12:00 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

classification.¹ In support of its expedited and temporary request,² Mac Q represents:

1. In January 2003, Mac Q completed an application from the commission to extend its CPCN to include the general commodities classification ("Application").³ Mac Q requested the services of Pacific Academy & Accounting Services, Inc. ("Pacific Academy") to process its Application with the commission. Mac Q represents that after completing the Application, Mac Q was assured by Pacific Academy that the Application was approved by the commission and that the request for extension had been granted.⁴ Since that time,⁵

¹Mac Q was granted its CPCN by the commission to operate as a common carrier of property over irregular routes in the dump truck classification by Decision and Order No. 18547, filed on May 16, 2001 in Docket No. 01-0020.

²The instant request, filed on June 16, 2005, and attached hereto as Exhibit "1", for temporary extension of its motor carrier authority applies only to the specific facts contained in this Decision and Order.

³A copy of the Application was submitted by Mac Q on June 16, 2005 as supporting evidence only to the assertion that Mac Q had indeed completed an application for extension of its CPCN and has been under the belief that its Application for extension of its motor carrier was approved by the commission.

⁴Per telephone conversation with a commission staff member on June 16, 2005, Mr. Bill Bathe of Pacific Academy stated that the Application had been submitted on behalf of Mac Q, and that "probably, Mac Q did not follow up on commission-requested documentation". The commission has no record of any application submitted by Pacific Academy on behalf of Mac Q. The commission also takes official notice, pursuant to Hawaii Administrative Rules § 6-61-48, of all commission records pertaining to Mac Q. In particular, the commission notes that on June 15, 2005, the commission's enforcement officer issued Mac Q a citation (Citation No. 0718), and assessed Mac Q a civil penalty of \$1,000 for

Mac Q has been under the impression that its authority under its CPCN had been extended and that it was lawful for it to transport property in the general commodities classification.

2. Mac Q is currently under an agreement with DHX, to haul general commodities, (i.e., bottled water) for DHX for ultimate transport to Japan ("Current Service").⁶ To timely and adequately complete the Current Service, Mac Q needs approval from the commission, on an expedited basis, for temporary authority in the general commodities classification.

As such, Mac Q asserts that there is an immediate and urgent need for the Current Service so that it may honor its obligation to DHX.

II.

Discussion

HRS § 271-16 provides, in relevant part:

To enable the provision of service for which there is an immediate and urgent need to a

operating without the requisite authority. On June 16, 2005, our records indicate that Mac Q paid the assessed penalty in full. The commission staff has also issued a warning to DHX for violating Hawaii Revised Statutes ("HRS") § 271-27(h) for hiring a motor carrier without appropriate authority under commission regulations.

⁵The Application was signed and notarized on January 23, 2003.

⁶The agreement to provide transportation service to DHX appears to have been an oral agreement. On June 16, 2005, Mac Q provided the copy of a signed statement by Mac Q, witnessed by the Hawaii Regional General Manager for DHX, Mr. Timothy Forkner, confirming that Mac Q has contracted with DHX to provide transportation services for DHX (attached hereto as Exhibit "2").

) ()

point or points or within a territory having no carrier service capable of meeting the need, the public utilities commission may, in its discretion and without hearings or other proceedings, grant temporary authority for service by a common carrier or a contract carrier by motor vehicle, as the case may be.

The temporary authority, unless suspended or revoked for good cause, shall be valid for the time that the commission shall specify, but for no more than a period of one-hundred-twenty days for any one immediate and urgent need.

Mr. Forkner, of DHX, orally represented to commission staff that Mac Q was the only available motor carrier able to undertake the Current Service.⁷ Additionally, by e-mail correspondence dated June 16, 2005 (attached hereto as Exhibit "3"), DHX described the Current Service in more detail. DHX states that the Current Service involves Mac Q transporting to Pier One in Honolulu containers of bottled water that are shipped from Kona, Hawaii. The loads shipped from Kona average as much as thirty (30) to fifty (50) containers per barge. DHX states that this amount is projected to at least double in the next several months.

DHX asserts that it is unable to keep up with the existing work load associated with the Current Service without the transportation services of Mac Q and further, that there is an urgent need to maintain the efficient shipment of the bottled water to avoid causing shipping problems and to prevent detention charges to the customers. While it has used other truckers in the past, DHX states that such truckers are not available for the

⁷By telephone call with commission staff on June 16, 2005.

Current Service and in particular, drivers holding a commercial drivers license are in great demand.⁸

For its part, Mac Q relied on Pacific Academy and its assurances that Mac Q's Application had been submitted for approval to the commission and that, in fact, it had been approved by the commission and its motor carrier authority had been extended to include the general commodities classification. While this is no excuse for violating regulatory requirements, it indicates at least an attempt to comply with applicable regulations.

Based on the above and Mac Q's representations, we find Mac Q's June 16, 2005 request for expedited and temporary authority to be reasonable and consistent with the public interest. We also find that Mac Q has adequately complied with the requirements set forth under HRS § 271-16. However, in light of the facts and circumstances of this matter, we will only grant Mac Q temporary authority to transport property in the general commodities classification on the island of Oahu in accordance with its agreement with DHX for the Current Service, and subject to the following conditions:

1. Mac Q's temporary authority to transport property in the general commodities classification on the island of Oahu, in accordance with its agreement with DHX for the Current Service shall not exceed

⁸In this regard, DHX states that it has started its own in-house commercial drivers license training process, including covering the cost of such training, however, it remains unable to keep a full staff of qualified drivers.

one hundred twenty (120) days from the date of this Decision and Order. Consistent with HRS § 271-16, Mac Q shall file an application for permanent authority to extend its motor carrier authority within ten (10) days from the date of this Decision and Order.

2. Mac Q shall ensure that the Current Service performed for DHX is being performed at DHX's approved tariff rates⁹ filed with the commission in accordance with HRS §§ 271-20 and 271-21.
3. Mac Q shall comply with the safety requirements of the Motor Vehicle Safety Office, Department of Transportation, State of Hawaii ("Motor Vehicle Safety Office").

⁹Mac Q presently has filed tariff rates for its dump truck operations only. Should Mac Q ultimately receive commission approval for a permanent extension of its motor carrier authority, Mac Q will, at that time, be required to submit tariff rates for the general commodities classification. DHX itself is a regulated motor carrier under Chapter 271, HRS and is the holder of CPCN number 95-C, authorizing it to operate as a common carrier of general commodities over irregular routes, on the island of Oahu. See Decision and Order No. 11608, filed on May 5, 1992, in Docket No. 7180.

III.

Orders

THE COMMISSION ORDERS:

1. Mac Q's June 16, 2005 request for expedited and temporary authority to extend its current motor carrier authority is approved, subject to the following conditions:

a. Mac Q's temporary authority to transport property in the general commodities classification, in accordance with its agreement with DHX for the Current Service, shall not exceed one hundred twenty (120) days from the date of this Decision and Order. Consistent with HRS § 271-16, Mac Q shall file an application for permanent authority to extend its motor carrier authority within ten (10) days from the date of this Decision and Order.

b. Mac Q shall ensure that the Current Service performed for DHX is being performed at DHX's approved tariff rates, filed with the commission in accordance with HRS §§ 271-20 and 271-21, and shall provide the commission evidence of same within ten (10) days of this Decision and Order.

c. Mac Q shall comply with the safety requirements of the Motor Vehicle Safety Office.

Mac Q's decision to perform the Current Service for DHX, as authorized by this Decision and Order, constitutes acceptance and

agreement with the conditions and requirements of our approval, as set forth above.

2. Failure to adequately comply with the requirements set forth in this Decision and Order may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

3. This docket is closed unless otherwise ordered by the commission.

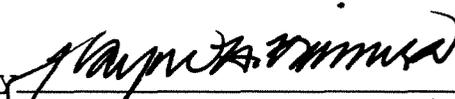
DONE at Honolulu, Hawaii JUN 17 2005.

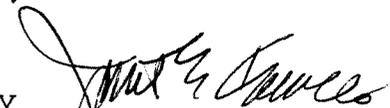
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

shields.rpr

6/16/2005

Public Utilities Commission

To whom it may concern.

We are Mac-Q Trucking owner Roy Shields
we have PUC 2063 for dumping and we applied
for an extension for general commodities
a year ago through Mr Bill Bathe our book keeper
He assured us that we received an extension
for our PUC this year in January.

We just found out that we do not have the
authority to haul containers in the middle of
a contract job. We need to complete the job
according to the contract or we loose everything.
We will imidtetly apply for the extension and
would like a Temporary Authority. We have had our
PUC since 2001 and are currently in contract with
DHX and offroad express, hauling 30 ton + containers
from NYK to YB. Our driver have 20+ years experience
and this job takes tremendous skill and we are the only
ones that know how to do the job. On 6/15/2005 one of
our drivers received a citation and we were shocked to
find out we do not have the authority to do our job.

According to our Agent Bill Bathe he Applied last year
and This January he called us saying that we got the
extension. Due to this If we are not able to finish
our job we will be ruined and loose everything.
we ask for permission to continue the work
and we will apply for the new extension

Sincerely

Mac-Q

Thank you.

Mr Roy shield
94242 Leo wahine st
Waipahu HI 96797
Ph# 479-4401

PUBLIC UTILITIES
COMMISSION

2005 JUN 16 A 8:28

FILED

Drivers that will lose their job and income

Mr Derek Lepling

Peter Libin

John Saino

ALL three driver are the soul source of income for their families and if we lose the account they are in trouble.

We have been trying to contact Mr Bill Baathe all day yesterday and today but he is not returning the calls.

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2005 JUN 16 A 8:35

PUBLIC UTILITIES
COMMISSION

AGREEMENT

I Roy Shields, owner of **Mac Q Trucking**
(Print Name)

hereby confirm that I have been contracted by DHX, Inc. as their outsource trucking company under verbal contract.

By signing below I agree to continue to provide my services as an independent contractor until further notified by DHX, Inc.

AGREED BY:

DATE:

Roy Shields
Print Name

[Signature]
Signature

WITNESSED BY:

DATE:

[Signature]
Timothy Forkner

6/16/05

Regional General Manager Hawaii



703 N. Nimitz Highway; Honolulu, HI 96817

Ph: 808-841-7311 ext. 112

Fax: 808-791-2786

To: PAUL NAKAYAMA - PUC

From: TIM F. - DHX HNL

Fax: 586-2066

Date: 06-16-05

Phone:

Pages: 2 (COVER PAGE INCLUDED)

Re: MAC Q

Urgent
 For Review
 Please Comment
 Please Reply
 Please Recycle

•Comments:

PLEASE SEE ATTACHED AGREEMENT.

THANK YOU...

We currently provide domestic or international ocean service (containerload or LCL) or airfreight service from any point in the USA to any point in the world. Please call us with questions or requests for rate quotes. You'll appreciate the Dependable Difference - and so will your customers!



"Tammie Chang"
<tchang@dhx.com>
06/16/2005 03:04 PM

To <paul.m.nakayama@hawaii.gov>
cc
bcc
Subject Mac Q

Paul,

See email below from Tim Forkner.

Please contact us should you have any questions.

Thank you,

Tammie Chang

Accounts Payable / Administrative Assistant

DHX Ocean/Air Freight ~ Oahu

703 N. Nimitz Highway

Honolulu, Hawaii 96817

Tel: 808-841-7311 ext. 120

Fax: 808-791-2786 or 310-868-5475

Email: tchang@dhx.com

www.dhx.com

~ You'll appreciate the Dependable Difference - and so will your Customers! ~

From: Tim Forkner [mailto:tforkner@dhx.com]

Sent: Thursday, June 16, 2005 2:58 PM

To: Tammie Chang

Subject: FW:

From: Tim Forkner [mailto:tforkner@dhx.com]

Sent: Thursday, June 16, 2005 2:26 PM

To: Paul Nakayama (paulmnakayama@hawaii.gov)

Subject:

Paul, DHX has been using Mac Q. Trucking to help us haul containers of bottled water between Young Brothers and Pier one. These loads are being shipped from Kona and average as much as 30 to 50 containers on any given barge. This amount is projected to increase at least two fold in the next several months. We are unable to keep up with the current work load for this account. There is an urgent need that these moves continue to be transported on time or it will cause equipment problems for Young Brothers as well as huge detention charges to the customer(s).

We have hired truckers in the past which include A's trucking and Don's Makiki. However no truckers are available as everyone is extremely busy. CDL Drivers are in great demand. Our hiring efforts continue each and every week but it is a slow process. We have also started an in house CDL training process and are covering all the cost of the training but we are still are unable to keep fully staffed with drivers.

Call me if you have any question at 841-7311.

Thank you,

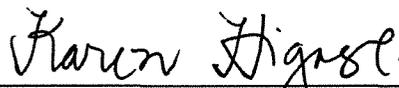
Tim

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21879 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

ROY SHIELDS, dba MAC Q
1317 Makiki Street, #101
Honolulu, HI 96822



Karen Higashi

DATED: JUN 17 2005