

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate the Issues and)
Requirements Raised by, and)
and Contained in, Hawaii Revised)
Statutes 486H, as Amended.)
_____)

DOCKET NO. 05-0002

ORDER NO. 21994

Filed Aug. 23, 2005
At 2:30 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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

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Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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Statutes 486H, as Amended.)
_____)

ORDER

By this order, the commission: (1) denies Tesoro Hawaii Corporation's ("Tesoro"), Hawaii Petroleum Marketers Association's ("HPMA"), Chevron U.S.A., Inc.'s ("Chevron"), and Shell Oil Company's ("Shell") Motions for Reconsideration of Decision and Order No. 21952, filed on August 1, 2005; and (2) denies Shell's Motion for Stay.

I.

Introduction

On August 1, 2005, the commission issued Order 21952, which under Hawaii Revised Statutes Chapter 486H, sets forth: (1) the factors for determining the maximum pre-tax wholesale price of gasoline (aka gas price caps or gas caps); (2) the procedures for filing petitions and complaints with the commission; (3) the publication procedures of the commission regarding the maximum pre-tax wholesale price of gasoline; and (4) the risks identified in implementing HRS Chapter 486H.

On August 15, 2005, Tesoro, HPMA, Chevron, and Shell (collectively referred to as "Movants") each filed a timely motion for reconsideration of Order 21952, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-137. On August 15, 2005, Shell filed a motion for stay pursuant to HAR § 6-61-138.

II.

Discussion

The standard for granting a motion for reconsideration is established in HAR § 6-61-137, which provides that a movant must set forth specific grounds on which the movant considers the decision or order to be unreasonable, unlawful, or erroneous. We apply this standard to Movants' motions for reconsideration.

A.

Tesoro's Motion for Reconsideration

In seeking reconsideration of Order 21952, Tesoro argues that Order 21952: (1) unreasonably and erroneously implements the Twenty-Second State Legislature's Act 242 despite the unacceptably high risks associated with a maximum pre-tax wholesale price cap on the sale of gasoline in Hawaii; (2) unreasonably and erroneously implements the Twenty-Second State Legislature's Act 242 prices for maximum pre-tax wholesale price caps, prices which do not reflect and correlate with competitive market conditions; and (3) unreasonably and erroneously does not consider: (a) a mechanism to address supply disruptions in Hawaii where an upward price reaction is necessary

to increase supply; (b) a mechanism to correct subsequent errors in source data and inputs; and (c) a mechanism whereby market participants can recover the costs of compliance with Hawaii's gas cap law.

Upon careful consideration, the commission finds nothing in Tesoro's motion for reconsideration that merits reconsideration or reversal of Order 21952. First, Tesoro does not cite to any authority that gives the commission discretion not to implement the Hawaii Gas Cap Law because of high risks associated with a maximum pre-tax wholesale price cap on the sale of gasoline in Hawaii. Second, the commission was not required to, and did not make any findings as to the appropriateness of the gasoline price cap components and factors established by the Legislature in HRS Chapter 486H-13. In Act 242, the Legislature already found that the factors established in HRS §486H-13 were appropriate.¹

In Order 21952,² under HRS §486H-13, the commission did not find sufficient justification to deviate from the

¹"In furtherance of the objective of this Act, the legislature finds that a more appropriate basis for determining maximum gasoline prices to enhance consumer welfare is the use of the average of the spot prices for regular unleaded gasoline for the markets of New York Harbor, the United States Gulf Coast, and Los Angeles.

The legislature further finds that it is appropriate to set maximum pre-tax wholesale prices for mid-grade and premium gasoline to guard against unreasonable increases in the wholesale price of these grades of gasoline in the wake of the imposition of price limits on regular unleaded gasoline."

Order 21952 note 3, at 5-6, quoting Act 242, Hawaii Session Laws 2004.

²Order 21952 at 2.

HRS § 486H-13 factors as it did not find a more appropriate baseline or price information service,³ and did not otherwise determine a location adjustment factor,⁴ a marketing margin factor,⁵ a mid-grade adjustment factor,⁶ and a premium adjustment

³HRS § 486H-13(c) provides:

(c) The baseline price for regular unleaded gasoline referred to in subsection (b) shall be determined on a weekly basis and **shall be** equal to the average of:

(1) The weekly average of the spot daily price for regular unleaded gasoline for Los Angeles;

(2) The weekly average of the spot daily price for regular unleaded gasoline for New York Harbor; and

(3) The weekly average of the spot daily price for regular unleaded gasoline for the United States Gulf Coast;

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that **the commission, in its discretion, may determine a more appropriate** baseline or a more appropriate price information reporting service.

(Emphasis added.)

⁴HRS § 486H-13(d) provides:

(d) The location adjustment factor referred to in subsection (b) **shall be** \$.04 per gallon **or as otherwise determined by the commission** and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(Emphasis added.)

⁵HRS § 486H-13(e) provides:

(e) The marketing margin factor referred to in subsection (b) **shall be** \$.18 per gallon **or as otherwise determined by the commission** and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(Emphasis added.)

⁶HRS § 486H-13(f) provides:

(f) The mid-grade adjustment factor **shall be** \$.05 per gallon **or as otherwise determined by the commission** and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(Emphasis added.)

factor.⁷ Therefore, the commission is implementing the statutory factors established by the law as codified in HRS Chapter 486H.

Under HRS §486H-16, the Legislature established a procedure by which the commission is authorized (upon petition or in its own discretion) to make further adjustments to gasoline price caps. Such adjustments could be used to address Tesoro's concerns for (a) a mechanism to address supply disruptions in Hawaii where an upward price reaction is necessary to increase supply; (b) a mechanism to correct subsequent errors in source data and inputs; and (c) a mechanism whereby market participants can recover the costs of compliance with Hawaii's gas cap law, if sufficiently proven or justified under HRS § 486H-16.

Accordingly, Tesoro has not met its burden of showing that the commission's decision in Order 21952 is unreasonable, unlawful, or erroneous. We, thus, conclude that Tesoro's Motion for Reconsideration should be denied.

B.

HPMA's Motion for Reconsideration

In seeking reconsideration and modification of Order 21952, HPMA requests that the commission modify the Kauai Zone Price Adjustment based on the actual trucking costs provided by Senter Petroleum, Inc. ("SPI") in the revised confidential response to PUC-IR-41, attached to its motion.

⁷HRS § 486H-13(g) provides:

(g) The premium adjustment factor ***shall be*** \$.09 per gallon or ***as otherwise determined by the commission*** and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(Emphasis added.)

Upon careful consideration, the commission finds nothing in HPMA's Motion for Reconsideration that merits reconsideration or reversal of Order 21952. HPMA has not met its burden of showing that the commission's decision is unreasonable, unlawful, or erroneous. SPI and Kauai Petroleum Co. Ltd ("KPC") are the two petroleum jobbers operating on the island of Kauai. HPMA admits in its motion that KPC did not participate in the Informational Requests ("IRs") process. HPMA further admits that SPI responded to the commission's initial IR-5 and IR-6 with an average per gallon operating cost. HPMA further states that SPI responded by informing the commission that at such time it did not have these costs broken out separately, and that its fuel sale trucking costs were simply accounted for as part of its total operating costs. While HPMA argues that SPI had no further opportunity to provide actual trucking costs to the commission, we note that it is the practice before the commission for the Parties in a proceeding to update their discovery throughout the proceeding. In addition, SPI could have updated its information in HPMA's final position statement in this docket. We, thus, conclude that HPMA's Motion for Reconsideration should be denied. Moreover, the commission notes that HPMA or SPI, or any other manufacturer, wholesaler, or jobber, may petition the commission to adjust the value of the zone price adjustment in effect at the time the petition is filed pursuant to HRS § 486H-16(a)(5).

C.

Chevron's Motion for Reconsideration

In seeking reconsideration of Order 21952, Chevron (1) urges the commission to reconsider the entire price cap mechanism with a view to adopting price caps which will reduce the risk of market distortions and other adverse consequences that can be expected to flow from this legislation; (2) requests that the commission adjust the location adjustment factor upward; and (3) requests that the commission reconsider and upwardly adjust the zone price adjustment applicable to the island of Kauai.

Upon careful consideration, the commission finds nothing in Chevron's motion for reconsideration that merits reconsideration or reversal of Order 21952. Chevron has not met its burden of showing that the commission's decision is unreasonable, unlawful, or erroneous. We, thus, conclude that Chevron's Motion for Reconsideration should be denied. Moreover, the commission notes that Chevron, or any other manufacturer, wholesaler, or jobber, may petition the commission to adjust the value of the location adjustment factor or any zone price adjustment in effect at the time the petition is filed, pursuant to HRS § 486H-16(a)(2), and HRS § 486H-16(a)(5).

D.

Shell's Motion for Reconsideration

In seeking reconsideration of Order 21952, Shell argues that: (1) that this proceeding is a contested case under HRS

Chapter 91; (2) Order 21952 is not supported by the evidentiary record of this case; (3) Order 21952 is incomplete and too unclear; and (4) Order 21952 creates practical concerns that are unavoidable.

Upon careful consideration, the commission finds nothing in Shell's motion for reconsideration that merits reconsideration or reversal of Order 21952. As discussed in detail above,⁸ the commission was not required to, and did not make any findings as to the appropriateness of the gasoline price cap components and factors established under HRS Chapter 486H-13, as the Legislature already determined that such factors were appropriate.⁹ Under Order 21952, the commission is implementing the statutory factors established by the law as codified in HRS Chapter 486H. HRS Chapter 486H is the applicable law in this matter, which includes the factors specified in HRS § 486H-13.

The commission finds that Shell's argument that Order 21952 is incomplete and too unclear also does not merit reconsideration as the commission has already demonstrated how gasoline price caps will be determined under HRS Chapter 486H and Order 21952 with a sample calculation determined on August 10, 2005.¹⁰ Furthermore, Shell may also obtain the exact data used by the commission directly from the Oil Price Information Service to

⁸Infra, Section III.A.

⁹Shell argues that this proceeding is a "contested case" under Chapter 91. However, because the commission did not make a finding ("de facto" or otherwise) that the gasoline price cap factors in HRS § 486H-13 were appropriate, the commission need not address this argument in this order.

¹⁰See, Shell Oil Company's Motion for Reconsideration at 22, citing commission letter dated August 10, 2005.

evaluate and confirm the data used by the commission in implementing HRS Chapter 486H.

Finally the unavoidable practical concerns and risks identified by Shell were also recognized by the commission in Order 21952.¹¹ As also indicated by Shell, however, such concerns and risks are unavoidable, as they are inherent in the gasoline price cap framework under HRS Chapter 486H.

Thus, Shell has not met its burden of showing that the commission's decision is unreasonable, unlawful, or erroneous. We, thus, conclude that Shell's Motion for Reconsideration should be denied.

E.

Shell's Motion for Stay

On August 15, 2005, Shell filed a motion requesting the commission stay the effect and enforcement of Order 21952, pending Shell's Motion for Reconsideration filed simultaneously on August 15, 2005. By this order, the commission rules on Shell's motion for reconsideration; accordingly, Shell's motion for stay pending its Motion for Reconsideration is moot. Thus, the commission will deny Shell's Motion for Stay.

III.

THE COMMISSION ORDERS:

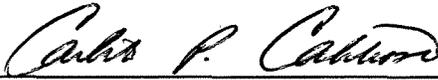
1. Tesoro's Motion for Reconsideration is denied.
2. HPMA's Motion for Reconsideration is denied.

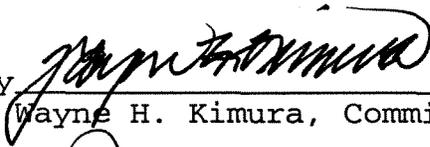
¹¹See, Order 21952, at 34-39.

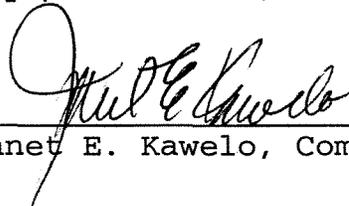
3. Chevron's Motion for Reconsideration is denied.
4. Shell's Motion for Reconsideration is denied.
5. Shell's Motion for Stay is denied.

DONE at Honolulu, Hawaii AUG 23 2005 .

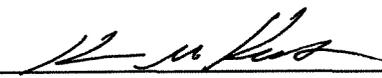
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kevin M. Katsura
Commission Counsel

05-0002.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21994 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

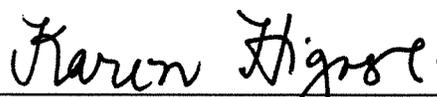
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DATED: AUG 23 2005