

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of----- )  
 )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 05-0002  
 )  
Instituting a Proceeding to )  
Investigate the Issues and )  
Requirements Raised by, and )  
and Contained in, Hawaii Revised )  
Statutes 486H, as Amended. )  
\_\_\_\_\_ )

DECISION AND ORDER NO. 22547

Filed June 21, 2006  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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

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

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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PUBLIC UTILITIES COMMISSION	)	Docket No. 05-0002
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Statutes 486H, as Amended.	)	
_____	)	

DECISION AND ORDER

By this Decision and Order, the commission terminates this investigation and closes this docket, given Act 78, Session Laws of Hawaii (2006), which indefinitely suspends the commission's duty to calculate and publish the maximum pre-tax wholesale price of gasoline ("Gas Price Caps").

I.

Background

By Order No. 21525, filed on January 4, 2005, the commission initiated an investigation in this docket pursuant to Hawaii Revised Statutes ("HRS") Chapter 486H and Hawaii Administrative Rules ("HAR") § 6-61-71, "to examine the issues and requirements raised by, and contained in," HRS Chapter 486H (2004).<sup>1</sup>

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<sup>1</sup>See Order No. 21525, filed January 4, 2005, at 1. The procedural background of this docket was extensively laid out in Decision and Order Nos. 21952 (filed August 1, 2005) and 22451 (filed May 3, 2006) and is hereby incorporated by reference. Chevron U.S.A. Inc. ("Chevron"), Tesoro Hawaii Corporation ("Tesoro"), Shell Oil Company ("Shell"), members of the Hawaii

Through this docket, the commission intended to examine the issues and requirements raised by, and contained in, HRS Chapter 486H, including but not limited to:

1. Examining the effect, impact, and appropriateness of the baseline price as defined in HRS § 486H-13(c) [(2004)], and examining options as to a more appropriate baseline or a more appropriate reporting service, if any.
2. Examining the effect, impact, and appropriateness of the location adjustment factor established by HRS § 486H-13(d) [(2004)], at \$.04 per gallon, and examining options as to a more appropriate location adjustment factor, if any.
3. Examining the effect, impact, and appropriateness of the marketing margin factor established by HRS § 486H-13(e) [(2004)], at \$.18 per gallon, and examining the options as to a more appropriate marketing margin factor, if any.
4. Examining the effect, impact, and appropriateness of the mid-grade adjustment factor established in HRS § 486H-13(f) [(2004)], at \$.05 per gallon, and examining options as to a more appropriate mid-grade adjustment factor, if any.
5. Examining the effect, impact, and appropriateness of the premium adjustment factor established by HRS § 486H-13(g) [(2004)], at \$.09 per gallon, and examining options as to a more appropriate premium adjustment factor, if any.
6. Determining the types of documents, data, and information manufacturers, wholesalers, or jobbers must furnish to the commission to make determinations

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Petroleum Marketers Association ("HPMA"), and the Division of Consumer Advocacy are parties to this proceeding (collectively "Parties").

on zone price adjustments.  
HRS § 486H-13(h) [(2004)].

7. Analyzing zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices and examining the effect, impact, and appropriateness on a zone by zone basis. HRS § 486H-13(i) [(2004)].
8. Determining the types of documents, data, and information necessary for the commission to determine whether the manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted, pursuant to HRS Chapter 486H. HRS § 486H(j) [(2004)].
9. Identifying any further adjustments necessary to establish [Gas Price Caps] that reflect and correlate with competitive market conditions. HRS § 486H-16(c) [(2004)].<sup>2</sup>

In Decision and Order No. 21952, the commission set forth:

- (1) the Gas Price Caps for non-ethanol conventional gasoline;
- (2) the procedures for filing petitions and complaints with the commission;
- (3) the procedures for publishing the Gas Price Caps; and
- (4) the risks identified in implementing HRS Chapter 486H.<sup>3</sup>

The commission concluded that the following factors should be used in determining the conventional (non-ethanol) Gas Price Caps:

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<sup>2</sup>See id. at 2-4.

<sup>3</sup>See Decision and Order No. 21952, filed Aug. 1, 2005, at 1-2.

- (a) the HRS Chapter 486H baseline price and location adjustment factor established by the Legislature;
- (b) the HRS Chapter 486H marketing margin factor established by the Legislature;
- (c) the HRS Chapter 486H Premium and Mid-grade adjustments established by the Legislature; and
- (d) the zone price adjustments recommended by ICF, except that the highest actual transportation costs would be used rather than the average transportation costs proposed by ICF.<sup>4</sup>

In Decision and Order No. 21952, the commission stated that it would establish the subsequent schedules and procedures in Docket No. 05-0002, including, but not limited to, "adjusting the maximum pre-tax wholesale price formula or factors to include ethanol."<sup>5</sup>

In Decision and Order No. 22451, the commission exercised its discretion under HRS Chapter 486H to modify the Gas Price Caps to reflect the requirements of HRS § 486J-10 and HAR § 15-35-3 (2004) (the "Ethanol Mandate").<sup>6</sup> The commission issued Decision and Order No. 22451 to set forth:

- (1) the maximum pre-tax wholesale price of E-10 gasoline ("E-10 Gas Price Caps"),
- (2) the commission's publication procedures for the E-10 Gas Price Caps; and

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<sup>4</sup>See id. at 2. ICF refers to ICF Consulting, LLC, who was retained by the commission to review and evaluate the issues and requirements raised by, and contained in, HRS Chapter 486H, as amended.

<sup>5</sup>See id. at 40.

<sup>6</sup>See Decision and Order No. 22451, filed May 3, 2006, at 1.

- (3) the continued monitoring by the commission of matters related to HRS Chapter 486H.<sup>7</sup>

The commission ordered that the following factors shall be used in calculating the E-10 Gas Price Caps:

- (a) 90% of the HRS Chapter 486H baseline price and location adjustment factor established by the Legislature;
- (b) 10% of the one-week average daily OPIS ethanol spot prices for New York Harbor, Chicago, and Los Angeles, calculated consistent with HRS § 486H-13(c), plus the 4 cpg location adjustment factor established by the Legislature in HRS § 486H-13(d) and minus the 51 cpg Federal ethanol tax credit for so long as it is applicable;
- (c) the HRS Chapter 486H marketing margin factor established by the Legislature;
- (d) the following E-10 zone price adjustments recommended by ICF (with an 11 year capital recovery period, the expiration of which will result in the removal of certain applicable portions of the zone price adjustments): Zone 1: Oahu 7.6 cpg; Zone 2: Kauai 23.9 cpg; Zone 3: Maui, except the district of Hana 22.8 cpg; Zone 4: The district of Hana on the island of Maui 30.8 cpg; Zone 5: Molokai (none); Zone 6: Lanai (none); Zone 7: The districts of Puna, south Hilo, north Hilo, and Hamakua on the island of Hawaii 23.4 cpg; Zone 8: The districts of north Kohala, south Kohala, north Kona 26.1 cpg; and
- (e) the HRS Chapter 486H mid-grade and premium adjustments established by the Legislature.<sup>8</sup>

In footnote 2, the commission stated:

The commission is aware that HB 3115, if passed into law, would dramatically amend the

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<sup>7</sup>See id. at 1-2.

<sup>8</sup>See id. at 36.

Hawaii Gas Cap Law. At such time, the commission will make the necessary adjustments, including but not limited to issuing another Order or Decision and Order.<sup>9</sup>

The commission also stated that it would address any adjustment to the mid-grade and premium adjustment factors as raised by HPMA's members in their Motion for Adjustment of the Premium and Mid-Grade Adjustment Factors, filed on March 22, 2006 ("HMPA's Motion"), in a separate decision and order.

## II.

### Discussion

As a general rule, the commission will not expend resources on statutory duties that have been legislatively suspended. On May 5, 2006, HB 3115 was signed into law by Governor Lingle and became Act 78. Act 78 amends or repeals various sections of HRS Chapters 486J and 486H by, inter alia:

- (1) providing increased industry transparency;
- (2) indefinitely suspending the Gas Price Caps and the commission's duty to calculate the Gas Price Caps;
- (3) giving the governor the authority to reinstate the Gas Price Caps upon publication of a finding that its reinstatement is beneficial to the economic well-being, health, and safety of the people of the State;
- (4) revising the formula for calculating the Gas Price Caps if reinstated by the governor, by, inter alia,
  - (a) altering the baseline calculation;
  - (b) eliminating the location adjustment factor;
  - (c) reducing the marketing margin factor; and
  - (d) allocating

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<sup>9</sup>See id. at 2 n.2.

percentages of certain zone price adjustments;

- (5) giving the governor the authority, upon reinstatement of the Gas Price Caps, to increase the Gas Price Caps within a zone;
- (6) establishing the petroleum industry monitoring, analysis, and reporting program and special fund;
- (7) requiring the commission to develop and maintain the petroleum industry monitoring, analysis, and reporting program, including an automated petroleum industry information reporting system;
- (8) redelineating the types of information that the petroleum industry must submit to the commission;
- (9) prohibiting unfair trade practices by the petroleum industry; and
- (10) making appropriations.

In sum, pursuant to Act 78, the commission's duty to calculate and publish the Gas Price Caps has been indefinitely suspended, and any other adjustments to the Gas Price Caps will only take effect if the Gas Price Caps are reinstated. Because Act 78 suspends the commission's duty to calculate and publish the Gas Price Caps, any further investigation in this docket would be wholly ineffectual and would not benefit the public interest. Moreover, given that the commission has limited resources to dedicate to its duties and responsibilities under HRS § 486J,<sup>10</sup> it would be inappropriate to continue an investigation in this docket.

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<sup>10</sup>See, e.g., Act 78, Section 14.



Upon careful review of the full record in this proceeding and considering other matters including, but not limited to, Act 78, the commission finds good cause to terminate the investigation in this docket. In doing so, the commission also finds it appropriate to dismiss HPMA's Motion as moot. Accordingly, the commission concludes that HPMA's Motion should be dismissed, this investigation terminated, and this docket closed. Should the Gas Price Caps be reinstated the commission will entertain a motion to reopen the docket.

### III.


#### Orders

##### THE COMMISSION ORDERS:

1. HPMA's Motion for Adjustment of the Premium and Mid-Grade Price Adjustment Factors is dismissed.
2. This investigation is terminated.
3. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii JUN 21 2006.

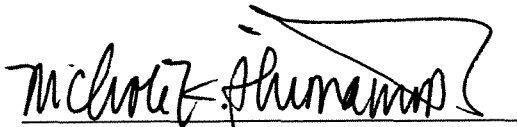
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Nichole K. Shimamoto  
Commission Counsel

05-0002.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22547 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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Karen Higashi

DATED: JUN 21 2006