

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HONE HEKE CORPORATION,
dba EXPEDITIONS

DOCKET NO. 2006-0448

For Authority to Create Preferred
Ships Mortgage and Authority to
Add Route.

ORDER NO. 23217

Filed Jan. 24, 2007

At 12 o'clock P.M.

Karen Higashi.

Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
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STATE OF HAWAII

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

Karen Higashi.

'Decision and Order No. 10833, filed on November 5, 1990, in Docket No. 6736.

commission approval to add a new route from the Maalaea Small Boat Harbor ("Maalaea") on Maui to the Manele Bay Small Boat Harbor ("Manele Bay") on Lanai.²

According to Hone Heke, the number of passengers that it carries between Maui and Lanai has increased steadily since 1990, and is expected to continue to increase such that by 2010, 200,000 passengers will be carried on its current Lahaina Small Boat Harbor ("Lahaina") to Manele Bay route. Given its projections, Hone Heke is convinced that "unless the proposed vessel is added, occasions may exist when some members of the public may not be able to travel at their desired times."³

The increase in passengers on the Lahaina to Manele Bay route, as well as increased airfare costs, the rebranding of two of Lanai's resort hotels, the increase in sales of Hone Heke's Lanai golf packages, and the increase in private home construction on Lanai, demonstrate the need for an additional vessel (M/V Expeditions 5) and a new route between Maalaea and Manele Bay.

The M/V Expeditions 5 is a hydrofoil supported catamaran that will be 55 feet in length, 21 feet in beam, will measure approximately 30 gross tons, and have two enclosed deck levels, and a passenger carrying capacity of 108 passengers. The lower enclosed deck is designed to carry 56 passengers and

²By telephone conversation on January 16, 2007, the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") informed the commission that it would not be participating in this proceeding.

³Application at 6.

baggage. The upper deck will be designed to carry 24 passengers in an enclosed area and 28 passengers in open air seating. The designed cruising speed will be approximately 20 knots.

With respect to the new route, it will eventually sail directly from Maalaea to Manele. However, as the Maalaea facilities have not been upgraded (utilities, upgraded mooring, parking, buildings), Hone Heke proposes a temporary route that will be a triangular route from Lahaina to Manele to Maalaea. The approximate travel time between Lahaina and Manele is approximately 45 minutes; between Manele and Maalaea is one-and-a-half hours; and between Maalaea and Lahaina is 45 minutes. The temporary route will include two sailings per day. The first sailing leaves Lahaina at 6:00 a.m.; arrives in Maalaea at 7:15 a.m.; arrives in Manele at 9:15 a.m.; and arrives in Lahaina at 10:00 a.m. The afternoon sailing leaves Lahaina at 2:30 p.m.; arrives in Manele at 3:45 p.m.; arrives in Maalaea at 5:45 p.m.; and arrives in Lahaina at 6:30 p.m.

Once the mooring facilities at Maalaea are improved, Hone Heke's sailing schedule will include a morning and afternoon sailing. The morning sailing will leave Maalaea at 7:00 a.m.; arrive in Manele at 9:00 a.m.; and arrive in Maalaea at 10:30 a.m. The afternoon sailing will leave Maalaea at 3:00 p.m.; arrive in Manele at 5:00 p.m.; and arrive in Maalaea at 6:30 p.m. As the number of passengers increase, Hone Heke will add a midday sailing that will leave Maalaea at 11:00 a.m.; arrive in Manele at 1:00 p.m.; and arrive in Maalaea at 2:30 p.m.

In the first year of operation, Hone Heke estimates that it will transport approximately 15 passengers per voyage or about 20,000 passengers in its first year on its Maalaea to Manele route. Hone Heke projects that it will transport approximately 33,785 passengers in the second year of operation; 48,140 passengers in the third year of operation; 58,057 passengers in the fourth year of operation; and 59,043 passengers in the fifth year of operation.

To finance construction of the M/V Expeditions 5, Hone Heke proposes to use approximately \$300,000 in monies deposited in its capital construction fund.⁴ The remainder of the construction costs in the amount of \$1,665,000 will be obtained through a preferred ships mortgage arranged through the Bank of Hawaii. The mortgage will be repaid over a ten year period.⁵

II.

Discussion

Hawaii Revised Statutes ("HRS") § 271G-17.5 states, in relevant part:

A water common carrier may, on securing the prior approval of the public utilities commission, and

⁴By Decision and Order No. 11922, filed on October 21, 1992, in Docket No. 7262, the commission approved Hone Heke's request to create a capital construction fund under section 607 of the Merchant Marine Act of 1936.

⁵By letter dated December 29, 2006, filed on January 4, 2007, Bank of Hawaii notified the commission that it had approved the loan to finance construction of the M/V Expeditions 5.

not otherwise, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof and enter into long-term leases of more than three years and leverage leases, for the following purposes and no other, namely:

- (1) For the acquisition of property; or
- (2) For the construction, completion, extension, or improvement of or addition to its facilities or service; or
- (3) For the discharge or lawful refunding of its obligations; or
- (4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes, except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the water carrier has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

As used herein, "property" and "facilities" mean property and facilities used in all operations of a water carrier whether or not included in its regulated operations or rate base. A water carrier may not issue securities nor enter into long-term leases of more than three years and leverage leases, to acquire property or to construct, complete, extend or improve or add to its facilities or service, if the commission determines that the proposed purpose will have a material adverse effect on its operations. No carrier shall repurchase or reissue its own common stock without prior commission approval.

All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a water carrier not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void. In addition, all long-term leases of more than three years and all leverage leases entered into by a water carrier without an order of the commission authorizing the same then in effect shall be void.

HRS § 271G-17.5. As such, section 271G-17.5 allows a water carrier to incur debt payable at periods of more than twelve months, for the construction, completion, extension, or improvement of, or addition to, its facilities or services, only if the commission determines that the purpose of the long-term debt will not have a material adverse impact on the carrier's operations.

In addition, HRS § 271G-14(b) states:

No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same is void.

HRS § 271G-14(b).

Here, as with Hone Heke's prior applications to acquire M/V Expeditions 2, 3, and 4,⁶ it appears that Hone Heke requires a new vessel to meet anticipated increases in passenger load and to provide, safe, adequate, economical, and efficient service between Maui and Lanai consistent with the policies and duties set forth in HRS §§ 271G-1 and 271G-16, respectively. In addition, it appears reasonable for Hone Heke to finance construction of the M/V Expeditions 5 through a preferred ships mortgage of \$1,665,000 and its capital construction fund deposits of \$300,000, as the long term debt Hone Heke will incur through the proposed financing will not have a material adverse impact on its operations. As such, the commission finds that the proposed financing of the new vessel should be approved, pursuant to HRS §§ 271G-14 and 271G-17.5.

With respect to Hone Heke's request to approve a new route between Maalaea and Manele Bay, such request does not require express commission approval. Since Hone Heke is already authorized to transport passengers and freight between the islands of Maui and Lanai, a change to its tariff (rates, routes, rules, and regulations) is all that is required.

⁶See Decision and Order No. 11922, filed on October 21, 1992, in Docket No. 7262; Decision and Order No. 14608, filed on April 11, 1996, in Docket No. 95-0384; Decision and Order No. 20201, filed on May 28, 2003, in Docket No. 03-0061.

III.

Orders

THE COMMISSION ORDERS:

1. Hone Heke's request to finance the construction of a new vessel, M/V Expeditions 5, through a preferred ships mortgage from Bank of Hawaii, is approved.

2. Hone Heke shall file a revised tariff reflecting the addition of a new route between Maalaea and Manele Bay.

DONE at Honolulu, Hawaii JAN 24 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

2006-0448.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23217 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: JAN 24 2007