

In the Matter of the Request of)
HAWAII SUPERFERRY, INC.)
For Approval on Short Notice.)
_____)

SECRET

2007 NOV 19 A 0:51

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

ORDER NO. 23839

Filed November 16, 2007
At 2 o'clock P.M.

for Broderick Kane
Chief Clerk of the Commission

In the Matter of the Request of)
HAWAII SUPERFERRY, INC.) Order No.
For Approval on Short Notice.)

By this Order, the commission approves on short notice HAWAII SUPERFERRY, INC.'s ("HSF" or "Superferry") proposed tariff changes filed on November 9, 2007, governing promotional fares for travel during the periods from the date of re-launch to and including December 20, 2007, and from December 21, 2007 to and including March 12, 2008 ("Promotional Fares").

1. The Promotional Fares will apply for travel during two periods: (A) from the date of re-launch to and including December 20, 2007 (the "First Promotional Period"); and (B) from

December 21, 2007 to and including March 12, 2008 (the "Second Promotional Period").

2. For the First Promotional Period, tickets will be sold as soon as possible up to and including December 20, 2007. For the Second Promotional Period, tickets will also be sold as soon as possible, but must be purchased by January 7, 2008.

3. The Promotional Fares are for one-way travel between Honolulu-Kauai/Kauai-Honolulu and between Honolulu-Maui/Maui-Honolulu by passengers and vehicles up to 20 feet in length.

4. During the First Promotional Period, the Promotional Fares are:

- A. Passengers, except infants, \$29, plus fees and tax. (No charge for infants.)
- B. Motorcycle, scooter, or moped (up to and including 8 feet high), \$35, plus fees and tax.
- C. Vehicles up to and including 8 feet high and limited to vehicles up to 20 feet in length, \$55, plus fees and tax.¹

5. During the Second Promotional Period, the Promotional Fares are:

- A. Passengers, except infants, \$39, plus fees and tax.² (No charge for infants.)

¹Vehicles over 20 feet in length will not be subject to any Promotional Fares.

²Under HSF's present Tariff No. 1A, the one-way passenger rate for children and senior citizens is listed at \$41.19, inclusive of fees and tax, for off-peak days, plus the applicable fuel surcharge. By its Promotional Fare for the Second Promotional Period from Honolulu to Maui or Kauai, the one-way rate for all paying passengers, including children and senior citizens, for both off-peak and on-peak days, is listed as \$43.46, inclusive of fees and tax, and with the fuel surcharge waived. While not specifically stated, HSF appears to reason

B. Motorcycle, scooter, or moped (up to and including 8 feet high), \$35, plus fees and tax.

C. Vehicles up to and including 8 feet high and limited to vehicles up to 20 feet in length, \$55, plus fees and tax.³

6. The fuel surcharge will be waived for passengers and vehicles to which the Promotional Fares apply, and there will be no distinction between peak and off-peak periods for the Promotional Fares.

7. "The Advance Purchase, Internet Purchase and Connecting Route Passenger Discounts and any other discounts [will] not apply to the promotional fares."⁴

HSF asserts that its promotional fare reductions are made pursuant to Sections II.B and II.K of its Tariff No. 1A, which state:

B. Prices

.

Carrier may offer, at its discretion, to carry Passengers and Vehicles at rates less than those specified in Appendix B for reasons related to marketing, promotional or other business relationships, including persons such as (1) Carrier's employees and their immediate family members, (2) travel and convention industry professionals and employees, and (3) persons affiliated with vendors, schools, nonprofit organizations, and others with business relationships or prospective business relationships with Carrier and (4) investors.

that the Promotional Rate of \$43.46 will be lower than the one-way passenger rate of \$41.19 for children and senior citizens (off-peak days), once the fuel surcharge is assessed to the \$41.19 amount.

³Vehicles over 20 feet in length will not be subject to any Promotional Fares.

⁴HSF's letter, dated November 9, 2007, at 4.

Carrier may also offer, at its discretion, to carry Passengers and Vehicles at rates less than those specified for one time or limited promotional events.

.

Tactical Sales

Carrier may conduct "Tactical Sales", which are tactical pricing discounts primarily used to address weak booking periods. The specific, published terms and conditions including the booking/ticketing dates and the travel dates will be published on Carrier's website. Tactical sales may be generally made available to all Customers or may be offered as targeted promotions, such as only available to members of Carrier's frequent traveler program.

Tariff No. 1A at 7 and 12.

In the alternative, HSF requests that the commission approve the Promotional Fares on short notice, pursuant to Hawaii Revised Statutes § 271G-17(b) and Hawaii Administrative Rules §§ 6-65-5, 6-65-30, and 6-65-41.

In support of its request, HSF states:

HSF provides a new mode of transportation, in furtherance of the State's policy of varied modes of transportation. However, a new mode of transportation must gain public acceptance, regardless of any other controversy. As stated in Tariff No. 1A, HSF anticipated that there might be a need for pricing discounts to address weak booking periods and the new, start-up nature of its service. The need for pricing discounts was compounded by the negative publicity generated as a result of the lawsuits in the state and federal courts, the injunction issued with respect to Kahului Harbor, and the protests at Nawiliwili, all of which forced HSF into a rolling cancellation of service and an uncertain date for recommencement of service. In addition to the need for pricing discounts to overcome the uncertainty that affects any new business and to address weak booking periods, HSF is faced with an emergency situation caused by the litigation, protests, and resulting delays. Finally, HSF desires to relaunch service as quickly as

possible, which will allow for a very short window for advance ticket sales, requiring an attractive price point to stimulate . . . demand. HSF must attempt to avoid substantial hardship by offering reduced fares in an effort to increase use of the service.

.

As HSF approaches the relaunch of service, the number of passengers booked will be minimal. A number of factors contributed to this, including negative publicity, uncertainty of the public regarding the service start date, pressure from the interisland airline airfare war, and a majority of the sale period is a traditionally weak leisure travel period. As a result, HSF is making a business decision to relaunch service with an attractive promotional fare to encourage people to try the new service and build strong word of mouth. Low launch fares are common in the leisure travel business HSF is a start-up business in competition with the interisland airlines, whose fares are not regulated and are under intense downward pressure. Because it is a new entrant into the marketplace and a new mode of transportation, HSF needs to be able to offer initial fares lower than its "rack rate" in order to attract potential customers, build a customer base, and generate interest and publicity. HSF also needs to be able to offer such promotional fares quickly to respond to the market and generate interest. As the current fare wars between the interisland airlines have shown, the airlines are able to respond to competitors' pricing changes and other market forces almost immediately, and HSF needs to respond as well. Failure to do so will result in weak sales, negative publicity and a dwindling customer base, all resulting in substantial financial harm to the business.

.

. An emergency exists in HSF's business and delay in implementing the changes will result in substantial damage to HSF. Reduced fares will increase the public's use of the service, which in turn will expose more people to the positive aspects of the service, including the new method of transportation, and will generate positive word of mouth regarding HSF's service. HSF needs to offer the reduced fares in order to make its service a success. If it cannot offer the reduced

fares, use of the service will suffer, resulting in substantial financial hardship for HSF.

.

HSF was ready to commence full operations on August 26, 2007. HSF has been bearing the tremendous burden of the expense of having its infrastructure in place while having to be idle pending resolution of the various controversies. As testified by John Garibaldi, HSF's president and chief executive officer, in the evidentiary proceeding in the Second Circuit [Court], HSF's cash burn rate was approximately \$650,000 per week during the Maui hearing while the vessel was idle and employees were kept on, in the hopes of resuming service, without receiving revenue from the service. HSF was forced to furlough the majority of its workforce, and a vibrant recommencement of service will allow HSF to call those workers back to their jobs. HSF was unable to sell tickets and now has the opportunity to do so. This creates financial urgency to open reservations at rates that are compelling for passengers to book. While HSF will have lower average fares with the promotional rates, it is believed that total revenue will increase with a jump in passenger volumes.

HSF's letter, dated November 9, 2007, at 5-7.

In addition, by letter dated November 15, 2007, HSF provides the following supplemental information in support of its request:

Yesterday, in Sierra Club v. Department of Transportation, Civil No. 05-01-0114(3), Judge Cardoza of the Circuit Court of the Second Circuit granted the motions by the State of Hawaii Department of Transportation . . . and HSF to dissolve the injunction and vacate the order voiding the operating agreement that had been previously issued by the Court regarding Kahului Harbor. As a result, the prohibition on using the barge and the facilities at Kahului Harbor was dissolved effective as of the filing of the Court's order yesterday

Now that HSF may relaunch its Honolulu-Kahului service, it needs to do so as soon as possible to avoid substantial economic harm. An essential part of the relaunch is being able to

offer the promotional fares requested, in order to attract customers to the new service and to counter the negative publicity generated by recent events. In addition, the relaunch will occur during a traditionally weak travel period, between the Thanksgiving and Christmas holidays. In addition to the need for pricing discounts to overcome the uncertainty that affects any new business and to address weak booking periods, HSF is faced with an emergency situation caused by the litigation, protests, and resulting delays

The window for selling tickets is very short. The sooner that HSF can sell tickets at the promotional fares, and the more advance time there is to sell the tickets prior to the first voyage, the greater the probability that the relaunch is a success. In addition, because of the short window for ticket sales, an attractive price point is necessary to stimulate immediate demand.

. . . . HSF was forced to furlough the majority of its workforce. The workforce of 300 was reduced to 60 by the furloughs. Establishing a date for relaunch, which depends of the ability to sell the promotional fare tickets, will allow the furloughed employees to be called back. If HSF is not able to relaunch service soon, and not longer than within the next four to six weeks, then HSF will need to find an alternative use for the vessel and will be forced to reduce its workforce further to the number of crew needed to transport the vessel to a new location, which is about ten, and minimal staff to wind down operations.

In addition, the longer the furlough lasts, the more employees are forced to move on to other jobs. The training investment will be lost if employees decide to take other employment.

HSF's letter, dated November 15, 2007, at 1-2.

HSF represents that an array of factors has led to the rolling cancellation of the start-up of its inter-island water carrier service, and it is incurring expenses without generating any revenues as its ferry sits idle. Now, as it sets to re-launch its service, the number of passengers booked is minimal. Thus, as a start-up business, HSF has made a business

decision to re-launch service with an attractive Promotional Fare to encourage people to try the new service and build strong word of mouth to generate future interest and demand in this alternative mode of inter-island transportation. Moreover, HSF represents that its inability to immediately respond to the inter-island airline pricing changes and other market changes will result in weak sales, negative publicity and a dwindling customer base, all resulting in substantial financial harm to the business.

In essence, HSF reasons that the Promotional Fares and positive word of mouth generated from passengers who travel on the Superferry should increase passenger volumes, resulting in the "calling back" of its furloughed employees, and a positive revenue stream for HSF.

Based on HSF's representations, the commission finds good cause to grant HSF's request for approval on short notice.⁵ The reduced fares, the commission notes, will benefit passengers that choose to utilize the Superferry as an alternative mode of inter-island transportation.

⁵Cf. In re Young Bros., Ltd., Docket No. 02-0028, Order No. 19176, filed on January 31, 2002 (approval on short notice of the water carrier's request to offer a fifteen percent discount for its 40-foot refrigerated cargo container rates in order to better respond to the competitive nature and pricing of the intrastate transport market, and to avoid long-term loss of revenues and profitability).

II.

Order

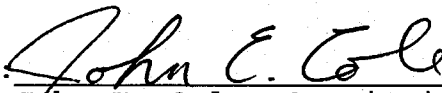
THE COMMISSION ORDERS:


HSF's proposed tariff changes, filed on November 9, 2007, governing Promotional Fares for travel during the periods from the date of re-launch to and including December 20, 2007, and from December 21, 2007 to and including March 12, 2008, is approved, effective from the date of this Order.

DONE at Honolulu, Hawaii NOV 16 2007.

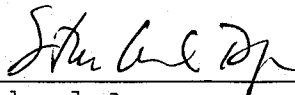
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

for 
Michael Azama
Commission Counsel

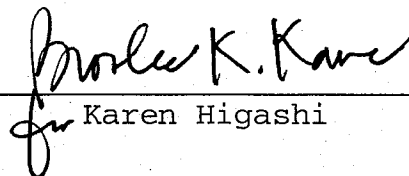
HSF Short Notice.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23839 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

AUDREY E. J. NG, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813



for Karen Higashi

DATED: NOV 16 2007