

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
SEA LINK OF HAWAII, INC. )  
For a General Rate Increase. )  
\_\_\_\_\_ )

DOCKET NO. 2008-0133

ORDER SUSPENDING APPLICATION FOR A GENERAL RATE INCREASE

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

PUBLIC UTILITIES  
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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)	
SEA LINK OF HAWAII, INC.	) Docket No. 2008-0133
For a General Rate Increase.	)
_____	)

ORDER SUSPENDING APPLICATION FOR A GENERAL RATE INCREASE

By this Order, the commission suspends the application for approval of a general rate increase filed by SEA LINK OF HAWAII, INC. ("Sea Link") on July 11, 2008, as supplemented, and opens an investigation to examine the merits of the Application for a General Rate Increase.<sup>1</sup>

I.

Background

Sea Link operates as a water carrier between Lahaina, Maui and Kaunakakai, Molokai.

On June 30, 2008, Sea Link filed its Application for a Temporary Rate Increase, seeking to revise its Tariff No. 2 by

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<sup>1</sup>Application for a General Rate Increase; Exhibits I - K; Verification; Affidavit of Deborah Daniels, CPA; Affidavit of Judith Neustadter Naone; and Certificate of Service, filed on July 11, 2008, as supplemented on July 28, 2008 (collectively, "Application for a General Rate Increase").

The Parties in this proceeding are Sea Link and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

establishing and assessing a temporary fuel surcharge.<sup>2</sup> On July 11, 2008: (1) the commission requested the Consumer Advocate to promptly comment on Sea Link's request to establish and assess a temporary fuel surcharge;<sup>3</sup> and (2) Sea Link filed its Application for a General Rate Increase, seeking to establish and assess on a permanent basis its requested fuel surcharge. On July 22, 2008, the Consumer Advocate filed its Statement of Position.<sup>4</sup> On August 1, 2008, the commission approved Sea Link's Application for a Temporary Rate Increase, thereby authorizing Sea Link to establish and assess a temporary fuel surcharge on all tickets, except for Employee Commuter Passengers, as that term is defined in Tariff No. 2.<sup>5</sup> In approving the implementation of Sea Link's proposed fuel surcharge on a temporary basis, the commission found that based on Sea Link's financial need and its potential abandonment of service, Sea Link was probably entitled to an increase in its rates, in the form of a temporary fuel surcharge. The commission also instructed Sea Link to comply with the refund provisions set forth in HRS § 271G-17(e), in the event that a partial or full refund is later ordered by the commission.

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<sup>2</sup>Application for a Temporary Rate Increase; Exhibits A - H; Verification; Affidavit of Deborah Daniells, CPA; Affidavit of Judith Neustadter Naone, Esq.; and Certificate of Service, filed on June 30, 2008 (collectively, "Application for a Temporary Rate Increase").

<sup>3</sup>Commission's letter, dated July 11, 2008.

<sup>4</sup>Consumer Advocate's Statement of Position; Exhibit A; and Certificate of Service, filed on July 22, 2008.

<sup>5</sup>See Order Approving Temporary Fuel Surcharge, filed on August 1, 2008.

## II.

### Discussion

HRS § 271G-16 provides in relevant part:

**Rates, fares and charges of common carriers by water.** (a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16 (boldface in original).

HRS § 271G-17 states in relevant part:

**Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or

property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increase in rates, fares, and charges; provided that the commission shall by order require the carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the person in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings.

HRS § 271G-17 (boldface in original) (emphasis added);<sup>6</sup> see also HAR §§ 6-61-94 (water carrier tariff changes); 6-65-5 (water carrier tariff change - posting); and 6-65-30 (water carrier tariff changes or revisions).

HAR § 6-65-40, governing the suspension and investigation of tariff changes proposed by a water carrier, provides in relevant part:

(a) Upon the filing of a tariff or tariff change, the commission may:

- (1) Allow the tariff or tariff change, or any portion thereof, to take effect forty-five days after publication, filing, and posting of the proposed tariff or tariff change have all been completed, in accordance with this chapter; or

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<sup>6</sup>In addition, HRS § 271G-23(a) provides:

**Hearings.** (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

HRS § 271G-23(a) (boldface in original).



- (2) Suspend the operation of the tariff or tariff change, or any portion thereof, for investigation. The commission may schedule and conduct a hearing to aid in its investigation of the justness and reasonableness of the proposed tariff or tariff change.
- . . . . .

(c) A tariff suspension ordered by the commission may not exceed six months from the date of the issuance of the commission's order suspending the operation of the tariff. The tariff or tariff change will take effect, if the commission fails to issue a final order within the six-month period.

HAR § 6-65-40 (emphasis added).

The Consumer Advocate, in its Statement of Position filed on July 22, 2008, notes that public hearings are not required by law in this instance. That said, Sea Link represents that with fuel costs presently at approximately \$4.25 per gallon, the fuel surcharge will be \$26 for a Regular Passenger one-way, \$40 ticket (\$40 base fare + \$26 fuel surcharge). Thus, to allow interested persons the opportunity to comment on Sea Link's request to implement its temporary fuel surcharge on a permanent basis, the commission will hold public meetings on Sea Link's Application for a General Rate Increase on the islands of Molokai and Maui.<sup>7</sup> Accordingly, consistent with HRS § 271G-17(d) and HAR § 6-65-40, the commission will suspend Sea Link's Application for a General Rate Increase for a period of up to six months from the date of this Order, and opens an investigation to examine the merits of Sea Link's Application for a General Rate Increase.

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<sup>7</sup>The commission provided the Parties copies of the Notice of Public Meetings.

To ensure the firsthand dissemination of the applicable Notice of Public Meetings to affected customers, and to provide them with the opportunity to submit written comments to the commission and attend the public meeting or meetings to express their views to the commission, the commission will direct Sea Link to prominently post copies of the Notice of Public Meetings at each of its port locations, and distribute copies of the Notice of Public Meetings to its customers at its port locations. Sea Link shall also submit to the commission, with copies served upon the Consumer Advocate, signed statements from an authorized representative, confirming compliance with the above-noted tasks.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Sea Link's Application for a General Rate Increase, filed on July 11, 2008, as supplemented, is suspended for a maximum period of up to six months from the date of this Order, and an investigation is instituted to examine the merits of Sea Link's Application for a General Rate Increase.

2. Sea Link shall, up to the date of the applicable public meetings: (A) prominently post copies of the applicable Notice of Public Meetings at its port locations; and (B) distribute copies of the Notice of Public Meetings to its customers at its port locations. Sea Link shall also submit to the commission, with copies served upon the Consumer Advocate, a

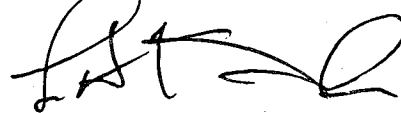
signed statement from an authorized representative, confirming compliance with the above-noted tasks.

DONE at Honolulu, Hawaii AUG - 7 2008.


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:

  
Michael Azama  
Commission Counsel

2008-0133.sl

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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