BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Request of HAWAII SUPERFERRY, INC. For Approval on Short Notice.	TRANSMITTAL NO. 08-0022

ORDER APPROVING PROPOSED TARIFF CHANGES ON SHORT NOTICE

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ORDER APPROVING PROPOSED TARIFF CHANGES ON SHORT NOTICE

By this Order, the commission approves on short notice HAWAII SUPERFERRY, INC.'s ("HSF" or "Superferry") proposed tariff changes filed on July 30, 2008, to implement volume discount rates for certain large volume customers that provide a consistent high volume of traffic for vehicles over 8 feet high and 9 feet or less in width.

I.

Short Notice Filing

By letter dated July 30, 2008, HSF seeks the commission's approval on short notice to implement volume discount rates for certain large volume customers that provide a consistent high volume of traffic for vehicles over 8 feet high and 9 feet or less in width.[1] HSF makes its request pursuant to HRS § 271G-17 and HAR §§ 6-65-5, 6-65-30, and 6-65-41.

[1]HSF served copies of its request upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY, an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

HSF specifically proposes to implement the following new Volume Discount section in Appendix B of its Tariff No. 1A ("Volume Discount"):

HAWAII SUPERFERRY
VOLUME DISCOUNT

Carrier will extend a discount from the fare of the vehicle and driver for each customer transporting vehicles over 8 feet high and 9 feet or less wide with high monthly volumes as follows.

All Department of Transportation fees, PUC fees, taxes and fuel surcharge will be added to the discounted fares. No other discounts apply. No other promotional fares or fare reductions apply. This volume discount does not apply to Wholesalers, Tour Conductors, Retail Travel Agents, or other persons who might purchase tickets for resale.

Two ports. During the period when Carrier serves only two ports:

Customer who travels 75 or more one-way segments per calendar month receives a thirty percent (30%) discount on the vehicle fares and the driver fares for that month.

Customer who travels 35-74 one-way segments per calendar month receives a ten percent (10%) discount on the vehicle fares and the driver fares for that month.

Three or more ports. During the period when Carrier serves three or more ports:

Customer who travels 150 or more one-way segments per calendar month receives a thirty percent (30%) discount on the vehicle fares and the driver fares for that month.

Customer who travels 70-149 one-way segments per calendar month receives a ten percent (10%) discount on the vehicle fares and the driver fares for that month.

HSF's Proposed Page No. 39B, of Appendix B, Tariff No. 1A.

In support of its request for approval on short notice, HSF represents:

1. HSF needs to implement this change as soon as possible, as it will be adversely affected if this proposed change requires a forty-five day notice period. HSF's largest single customer ("Customer A"), who will qualify for the Volume Discount, informed HSF last week that it is being offered deeply discounted, fixed rates for a period of six months by an alternative carrier. If HSF is able to offer Customer A an attractive discount immediately, Customer A will continue to use HSF for its Honolulu to Maui business. Conversely, if HSF is not able to offer the discount, Customer A will likely shift its business to the alternative carrier, and HSF will also forgo the opportunity of Customer A's Honolulu to Kauai and Honolulu to Hawaii business in the future.

2. The Volume Discount "is intended to increase the number of high-volume commercial users of the ferry service, which will create positive word-of-mouth and generate business. HSF operates in a highly competitive market with competitors that transport goods by air that are not subject to the Commission's jurisdiction or regulation. There are also competitors that transport by water, under the Commission's jurisdiction, who offer discounted rates for volume shippers."[2]

3. The Volume Discount "will result in greater usage of its service by large volume customers because the availability of the discount will provide a more competitive transportation

[2]HSF's letter, dated July 30, 2008, at 3.

option for current and new customers who have existing or potential business opportunities on other islands."[3] Presently, HSF has three customers that meet the Volume Discount criteria, including Customer A. "These three customers have been a valuable source of revenue to HSF, as well as a good example of service that HSF can provide to the commercial, large vehicle sector of the market. However, with the pricing being offered to Customer A, and perhaps other existing customers of HSF, these customers may decide to use another carrier. HSF wants and needs to keep this business and therefore needs to implement this Volume Discount."[4] Conversely, the loss of business from Customer A and other customers of similar volume will have a tremendous negative impact on HSF's revenues.[5]

4. Finally, "Customer A is not only a high volume customer, but also is a critically important core customer for HSF's winter season business strategy. HSF anticipates that during the winter months and higher sea conditions, recreational travelers and other passenger traffic might weaken, whereas high volume customers such as Customer A will continue to travel on a consistent basis providing a steady revenue stream."[6]

Based on the foregoing reasons, "HSF seeks approval of this proposed tariff change on short notice in order to better respond to the competitive market in interisland transportation

[3]HSF's letter, dated July 30, 2008, at 1.

[4]HSF's letter, dated July 30, 2008, at 3.

[5]See HSF's confidential filing, dated July 30, 2008.

[6]HSF's letter, dated July 30, 2008, at 4.

and avoid the loss of revenue and the negative impact on profitability that would be caused by the loss of this Customer. HSF respectfully submits that the financial information set forth herein substantiates that an emergency exists and that delay in implementing the change will result in substantial damage to HSF."[7]

HSF's high volume customers provide the water carrier with a steady revenue stream, and it is anticipated that the loss of revenues from these customers will negatively impact the water carrier's operations. Accordingly, HSF seeks to promptly respond to the competitive market forces inherent in the inter-island transportation market by implementing its volume discount rate for certain large volume customers that provide a consistent high volume of traffic for vehicles over 8 feet high and 9 feet or less in width.

Based on HSF's representations, the commission finds good cause to grant HSF's request for approval on short notice.[8] The Volume Discount, the commission notes, is intended to benefit high volume customers that choose to utilize the Superferry as an alternative mode of inter-island transportation of goods. Concomitantly, given the nature of this request for approval on short notice, in lieu of the standard forty-day notice filing,

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[7]HSF's letter, dated July 30, 2008, at 5 (footnote and text therein omitted).

[8]Cf. 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).

the commission reserves the right to re-examine the Volume Discount rates at any time, including in a general rate case, consistent with the public interest.[9]

II.

Order

THE COMMISSION ORDERS:

1. HSF's proposed tariff changes, filed on July 30, 2008, to implement volume discount rates for certain large volume customers that provide a consistent high volume of traffic for vehicles over 8 feet high and 9 feet or less in width, is approved, effective from the date of this Order.

2. The commission reserves the right to re-examine the Volume Discount rates at any time, including in a general rate case, consistent with the public interest.

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[9] Cf. In re Public Util. Comm'n, Docket No. 2006-0497, Decision and Order No. 23229, filed on May 15, 2008, Ordering Paragraph No. 6, at 35 (as part of the commission's approval, the commission reserved the right to review anew the HECO Companies' Standby Service Tariffs at any time, consistent with the public interest); and Decision and Order No. 24159, filed on April 18, 2008, Ordering Paragraph No. 6, at 52 (as part of the commission's approval, the commission reserved the right to review anew the HECO Companies' Interconnection Tariff, also known as Rule 14H, at any time, consistent with the public interest); see also In re Public Util. Comm'n, Docket No. 2006-0498, Decision and Order No. 24238, filed on May 22, 2008, Ordering Paragraph No. 5, at 47 (as part of the commission's approval, the commission reserved the right to review anew Kauai Island Utility Cooperative's Interconnection Tariff at any time, consistent with the public interest).

DONE at Honolulu, Hawaii AUG - 8 2008.

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:

Michael Azama
Michael Azama
Commission Counsel

Transmittal No. 08-0022.laa

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Request of HAWAII SUPERFERRY, INC. For Approval on Short Notice.	Transmittal No. 08-0022

DISSENTING OPINION OF LESLIE H. KONDO, COMMISSIONER

I respectfully dissent. In my opinion, Hawaii Superferry, Inc. ("HSF") has not demonstrated that "an emergency exists," as required to change its tariff on less than 45 days' notice. HAR § 6-65-41 (1999).

Hawaii law is clear and unambiguous concerning the circumstances under which a regulated water carrier, such as HSF, can change any rate, fare, charge or classification with less than forty-five days' notice:

> No change may be made in any rate, fare, charge, classification, or sailing or in any rule, regulation, or practice affecting the rate, fare, charge, classification, or sailing, except upon forty-five days' notice of the proposed change filed with the commission and published and posted at the water carrier's principal place of business and at each of the carrier's stations and offices; provided that:
>
> (1) A change in a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted as provided above; and
>
> (2) Any change or addition to a tariff, approved on short notice filed as provided in

> § 6-65-41, may be made on less than forty-five days' notice.

HAR § 6-65-5; see also HRS § 271G-17(b). Accordingly, the commission's authority to grant a request to change an existing tariff on less then forty-five days' notice is very limited.

HAR § 6-65-41 authorizes the commission to approve a proposed tariff change on less than forty-five days' notice only where the commission finds that "an emergency exists and the applicant carrier has proven that any delay in implementing the change or addition will result in substantial damage to the carrier[.]" HAR § 6-65-41(a) (emphasis added).[1] Moreover, the water carrier has the burden of providing sufficient information upon which the commission can make the necessary findings as required by the rule. Id.

Here, in support of the request to change its tariff on short notice and presumably to satisfy the "emergency" requirement of section 6-65-41, HSF represents that its largest commercial customer ("Customer A") will likely shift its business to an alternative carrier if HSF is not able to immediately offer

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[1]In full, HAR § 6-65-41(a) provides:

> The commission may grant a request for a change or addition to tariffs on less than forty-five days' notice if it finds that an emergency exists and the applicant carrier has proven that any delay in implementing the change or addition will result in substantial damage to the carrier or its shipper. The carrier shall include in its application a full statement of the need for implementing the change or addition on less than forty-five days' notice.

that customer a volume discount rate.[2] HSF further asserts that Customer A is "a critically important core customer for HSF's winter season business strategy" and the loss of Customer A's business "will have a severe negative impact on HSF's revenues."

In my opinion, the potential loss of a commercial customer's business, albeit HSF's largest customer, may demonstrate that HSF will suffer substantial harm if there is any delay in allowing the tariff change, but is not the type of "emergency" contemplated by HAR § 6-65-41. Based upon the numbers filed by HSF under protective order, the revenues from Customer A are not insubstantial; yet, loss of those revenues does not appear -- and HSF does not allege -- to be of such magnitude to irreparably harm or threaten HSF's ability to continue doing business.[3] Rather, it appears that HSF simply wishes to compete for Customer A's business in a manner that is not allowed by the current law.

Moreover, in early June, 2008, almost two months before HSF filed the instant request to change its tariff, Thomas Fargo, HSF's President and CEO, informed the Commission that the carrier wanted to offer certain large volume customers a volume discount rate. Clearly, HSF knew at that time that such

[2]HSF speculates that the two other commercial customers who qualify for the proposed volume discount rate may also decide to use another carrier.

[3]The Commission previously approved HSF's requests to change its tariff on short notice. However, in those instances, HSF represented that, without the immediate ability to offer promotional fares, it would likely be unable to continue its operations in the State.

volume discount rates might be necessary to maintain and increase its customer base. The fact that HSF, for whatever reason, delayed its request to change its tariff to include such a volume discount rate was HSF's choice; it does not create or support a finding of an "emergency," notwithstanding HSF's apparent need to immediately offer such rates.

In my opinion, to construe the "emergency" requirement of section 6-65-41 to include the potential loss of revenues from a single customer, as HSF requests the commission to do, renders the provision meaningless. I, therefore, would deny HSF's request.

DONE at Honolulu, Hawaii AUG - 8 2008.

By ______________________
Leslie H. Kondo, Commissioner

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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