

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 APPROVING THE REVISED TARIFF
SHEETS FOR THE EMPLOYEE COMMUTER PROGRAM

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

PUBLIC UTILITIES
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FILED

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

ORDER APPROVING THE REVISED TARIFF
SHEETS FOR THE EMPLOYEE COMMUTER PROGRAM

By this Order, the commission approves the revised tariff sheets filed by SEA LINK OF HAWAII, INC. ("Sea Link") on November 20, 2008, for the Employee Commuter Program.¹

I.

Background

Sea Link operates as a water carrier between Lahaina, Maui and Kaunakakai, Molokai. By Decision and Order filed on October 17, 2008 ("Decision and Order"), the commission: (1) authorized Sea Link to implement its fuel surcharge on a permanent basis (subject to the exemption of the fuel surcharge for Employee Commuter Passengers); and (2) instructed Sea Link to file its revised tariff sheets that incorporated the permanent fuel surcharge approved by the commission, and the fare charged

¹The Parties 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).

by Sea Link under the Employee Commuter Program.² The commission also instructed Sea Link to: (1) confer with the Consumer Advocate for the purpose of providing input on revised tariff language for the Employee Commuter Program, consistent with the public interest; and (2) file by November 21, 2008, its proposed revised tariff sheets for the Employee Commuter Program for the commission's review and approval.³

On November 20, 2008, Sea Link filed its proposed revised tariff sheets for the Employee Commuter Program.

II.

Discussion

Tariff changes proposed by water carriers must be just and reasonable.⁴

The commission, in instructing Sea Link to file proposed revised tariff sheets, described the Employee Commuter Program and its related concerns as follows:

Employee Commuter Program

Pursuant to Sea Link's Tariff No. 2:
(1) Employee Commuter Passengers are defined as residents of the island of Molokai who are traveling round trip on a daily basis between the

²On October 31, 2008, Sea Link filed its revised tariff sheets in this regard. See Commission's letter, dated November 3, 2008 (approving Sea Link's request for an extension of time, until October 31, 2008, to file its revised tariff sheets); and Sea Link's revised tariff sheets, filed on October 31, 2008.

³Decision and Order, Ordering Paragraph No. 5, at 18.

⁴See HRS §§ 271G-16 and 271G-17; see also HAR §§ 6-61-94, 6-65-5, and 6-65-30.

islands of Molokai and Maui for the purpose of verifiable employment; and (2) employees of participating employers are eligible for the Employee Commuter Program. Sea Link presently charges \$25 per round trip fare under the Employee Commuter Program).

The Employee Commuter Program traces its inception to the subsidy Sea Link received from the State for transporting Molokai residents to Maui for employment purposes at a discounted rate, from 1986 to 1995, when the subsidy was terminated by the State. It appears that Sea Link has continued to offer a discounted rate to Employee Commuter Passengers, pursuant to its Tariff No. 2.

The absence of specific and clear eligibility criteria (i.e., terms and conditions) for the Employee Commuter Program in Sea Link's tariff is a continuing concern for the commission. While its Tariff No. 2 defines Employee Commuter Passengers as commuters who travel round trip on a daily basis between the islands of Molokai and Maui for the purpose of verifiable employment, Sea Link is on record as stating that only full time employees who travel four or more days per week are eligible for the Employee Commuter Program. The four or more travel days per week criteria (which is not specified in Sea Link's current tariff) was a matter of concern that was raised by a full-time State firefighter who resides on Molokai but works on Maui, and due to his employment schedule as a firefighter, does not meet the "average 4 times a week usage" criteria imposed by Sea Link.

The commission recognizes Sea Link's difficulty in "drawing the line" and minimizing the potential for abuse from passengers who seek the discounted rate but are not necessarily traveling to Maui for "verifiable" full-time employment. Nonetheless, in the commission's view, the full-time State firefighter appears to meet the spirit and intent of the Employee Commuter Program of providing Molokai residents who work full-time on Maui with a discounted rate in order to provide Molokai residents with "verifiable" full-time employment opportunities on the island of Maui.

Given the absence of specific and clear eligibility criteria for the Employee Commuter Program in Sea Link's tariff, the commission hereby instructs Sea Link to collaborate with

the Consumer Advocate for the purpose of providing input on revised tariff language for the Employee Commuter Program, consistent with the public interest. Sea Link shall file its proposed revised tariff sheets for the commission's review and approval.

Decision and Order, Section II.B, at 15-17 (footnotes, text, and citations therein omitted).

Sea Link, in its revised tariff sheets timely filed on November 20, 2008, proposes to amend its eligibility criteria for Employee Commuter Passengers who qualify for the Employee Commuter Program by specifying that "[t]he employment on the Island of Maui must be for no less than four (4) days per calendar week (Sunday - Saturday)."⁵ In addition, Sea Link represents that the Consumer Advocate has approved the revised tariff language proposed by the water carrier.⁶

Here, the revised tariff sheets proposed by Sea Link, in essence codifies Sea Link's existing practice of limiting the Employee Commuter Program to Molokai residents who travel between the islands of Molokai and Maui for four or more days per week for purposes of verifiable employment. The Consumer Advocate, however, which represents, protects, and advances the interests of all consumers in matters of public utility services, concurs with the revised tariff sheets, as proposed by Sea Link.⁷ While the proposed revised tariff language does not address the situation of the full-time state firefighter, it does appear to

⁵Proposed Revised Tariff Sheet, at 5.

⁶Affidavit of Judith Neustadter Naone, dated November 18, 2008, with Exhibit S attached thereto.

⁷HRS § 269-51.

adequately respond to the commission's concern that the Employee Commuter Program lacks specific and clear eligibility criteria. The commission, thus, approves as reasonable the revised tariff sheets for the Employee Commuter Program.

III.

Orders

THE COMMISSION ORDERS:

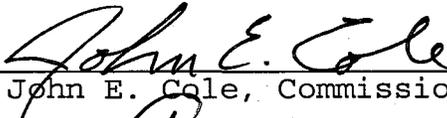
1. Sea Link's proposed revised tariff sheets for the Employee Commuter Program, filed on November 20, 2008, are approved, effective from the date of this Order.
2. Sea Link shall promptly file its revised tariff sheets for the Employee Commuter Program, with the applicable issued and effective dates.
3. Upon the filing of Sea Link's revised tariff sheets for the Employee Commuter Program, this docket shall be considered closed, unless ordered otherwise by the commission.

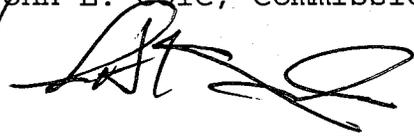
DONE at Honolulu, Hawaii

NOV 26 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.cp

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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