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.)
)

ORDER NO. 23953

RECEIVED

2008 JAN -7 A 8:44

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

Filed January 3, 2008

At 1 o'clock p .M.

for Chief Clerk of the Commission

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.	)	Order No. 23953

ORDER

By this Order, the commission approves on short notice HAWAII SUPERFERRY, INC.'s ("HSF" or "Superferry") proposed tariff changes filed on December 17, 2007. The tariff changes seek to extend the promotional fares that are presently in effect from December 21, 2007 to March 12, 2008, for tickets purchased by January 7, 2008, such that the promotional fares would be in effect until June 5, 2008, provided that the tickets are purchased by March 31, 2008 ("Promotional Fares").[1]

I.

Short Notice Filing

HSF's passenger and vehicle fares are set forth in its Tariff No. 1A, as amended.

By Order No. 23839, filed on November 16, 2007, the commission approved on short notice HSF's proposed tariff changes governing promotional fares for travel during the periods from

[1]Peak rate promotional pricing will apply to eight travel dates (March 14, 15, 21, 22, and 23, and May 23, 24, and 26, 2008).

December 13, 2007, the date of re-launch, to and including December 20, 2007, and from December 21, 2007 to and including March 12, 2008.

Presently, HSF's promotional fares are subject to the promotional period from December 21, 2007 to and including March 12, 2008 (i.e., the "Second Promotional Period"). During the Second Promotional Period, the promotional fares and applicable terms are:

1. Passengers, except infants, $39, plus fees and tax. (No charge for infants.)

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

3. Vehicles up to and including 8 feet high and limited to vehicles up to 20 feet in length, $55, plus fees and tax.[2]

4. The fuel surcharge is 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.

5. The advance purchase, internet purchase, connecting route passenger discounts, and any other discounts do not apply to the promotional fares.

By letter dated December 17, 2007, HSF seeks the commission's approval on short notice to:

1. Extend from March 12, 2008 until June 5, 2008, the duration of the Second Promotional Period, provided that the tickets are purchased by March 31, 2008; and

---

[2]Vehicles over 20 feet in length will not be subject to any Promotional Fare.

2. Exclude eight travel dates (March 14, 15, 21, 22, and 23, and May 23, 24, and 26, 2008) during which peak rate promotional pricing of $49 per passenger, $65 per vehicle (up to 8 feet high and 20 feet in length), and $35 per motorcycle, scooter, or moped, plus applicable fees and taxes, will apply.[3] In addition, similar to the applicable terms that apply to the Second Promotional Period: (A) the fuel surcharge will be waived for the peak rate promotional pricing; and (B) no other discounts will apply.[4]

HSF requests that the commission approve its proposed tariff changes 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. HSF "intends to implement this change immediately upon approval by the Commission, so that it may

[3]No charge for infants.

[4]HSF states that its peak rate promotional pricing is still lower than the original fares set forth in its Tariff No. 1A. Moreover, in justifying its peak rate promotional pricing, HSF explains:

> Unlike most of the period when the promotional fares are in effect, the extension of the promotional fares from March 21, 2008 to June 5, 2008 covers certain weekends when travel is heavier than at other times. These are key periods where HSF would have imposed the Peak Rates under the original non-promotional fares. These dates include the beginning of spring break for many schools and three-day weekends that offer opportunities for potential customers to book travel. For many people, a three-day weekend lends itself to inter-island travel rather than mainland or international destinations. HSF needs to attract those travelers to use its service by offering a promotional fare but the fare need not be as deeply discounted as the off-peak promotional fare. For these reasons, HSF intends to offer the Peak Rate promotional fares at the rates and on the dates described[.]

HSF's letter, dated December 17, 2007, at 6.

advertise the extension of the promotional fares, including the peak fares, and the extension of the sale deadline date."[5]

HSF asserts that the commission, in Order No. 23839, cited to the reasons, as described by HSF, as to why HSF's Promotional Fares are necessary for it business operations. In addition to those reasons:

> . . . HSF will need to stimulate demand for its second daily voyage. HSF has filed . . . with the Commission a request for approval on short notice for a change in its schedule to conduct the second daily voyage between Honolulu and Kahului due to the suspension of Nawiliwili [Kauai] service. HSF hopes to start the second daily voyage on December 27, 2007. The original company business plan included two voyages per day [for] Honolulu to Maui. However, the second voyage was planned to be launched in 2009 with the second vessel, allowing demand to build. With the acceleration of the launch of the second voyage to be nearly concurrent with the first, price stimulation is needed.
>
> The negative publicity and uncertainty about the new service still exists and was exacerbated by the delay in relaunch from December 1, 2007 to December 13, 2007. The delay in relaunch generated additional negative publicity and uncertainty about HSF's service, which needs to be countered by pricing discounts, which 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. HSF also needs to build demand for the second daily voyage. While HSF will have lower average fares with the promotional fares, it is believed that total revenue will increase with an increase in passenger volumes. For these reasons, HSF needs to extend the time during which promotional fares are offered from March 21, 2008 to June 5, 2008.
>
> . . . .
>
> HSF is still faced with an emergency situation caused by the litigation, protests, and

[5]HSF's letter, dated December 17, 2007, at 5.

> resulting delays, and now the delay in its relaunch caused by the damage to the Kahului barge. Promotional fares will increase the number of people who experience the ferry service, which will create positive word-of-mouth and generate business.
>
> . . . . All of these reasons also substantiate that an emergency exists and that delay in implementing the change will result in substantial damage to HSF . . . . Additional uncertainty has been generated by the problems in restarting service between Oahu and Kauai. HSF also needs to respond to the loss of business and the negative publicity generating by having to postpone its relaunch twice for a total of almost two weeks due to reasons outside of its control.
>
> Allowing additional time for promotional reduced fares, including the peak travel periods, is necessary to encourage people to try the new service and build strong word of mouth. This will attract potential customers, build a customer base, and generate interest and publicity. An increase in sales will in turn generate positive revenue for HSF and help to stabilize the number of employees. The reduced fares will also provide a benefit to customers who choose to try the new, alternative mode of inter-island transportation. HSF needs to be able promote the extension of the time for the reduced fares, including the fares available at the peak rate dates, which are still at a discount from the original fares, as soon as possible to avoid weak sales, negative publicity and a dwindling customer base, all resulting in further substantial financial harm to the business.

HSF's letter, dated December 17, 2007, at 6-8.

By supplemental letter dated December 21, 2007, HSF, in support of its request, also asserts:

1. HSF is experiencing bookings at numbers that are much lower than projected. Bookings are averaging approximately 150 passengers per voyage, while the planned passenger load is about 410 passengers per voyage.

2. HSF has high fixed expenses, including ownership costs of its vessel, the annual minimum guarantee to the State of Hawaii, and staffing. HSF needs to generate additional revenues with the use of its Promotional Fares in order "to contribute to payment of the current level of fixed expenses. If the promotional fares cannot be implemented imminently, then HSF will continue to carry substantial losses as a result of the level of fixed expenses."[6]

3. HSF intended to launch its vessel service during the summer, when the weather conditions were better and the travel market was more robust. "The winter start has caused the initial voyages to be undertaken in rough weather, which may negatively impact public perception. The winter start has also caused HSF to miss the greater levels of travel by residents and tourists in the summer."[7]

The commission, in its order approving the Promotional Fares, including the fares presently offered by HSF during the Second Promotional Period, noted:

> 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

---

[6]HSF's letter, dated December 21, 2007, at 2.

[7]HSF's letter, dated December 21, 2007, at 2.

> 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.

Order No. 23839, at 7-8.

In addition, to highlight the emergency nature of its request, by supplemental letter dated December 31, 2007, HSF requests that the commission consider its request in two parts: one, to extend the January 7, 2008 deadline for purchasing tickets for the promotional fare period ending March 12, 2008, which expires on January 7, 2008; and two, to extend the existing promotional fares past March 12, 2008 to June 5, 2008, with peak rate promotional fares on certain dates.

1. With respect to the extension of the January 7 deadline, HSF asserts that "[t]he deadline for purchasing tickets for the promotional fare period ending March 12, 2008 expires on January 7, 2008, which is about a week away." "If HSF is not allowed to sell tickets at the promotional fares, it will have to sell tickets at the original prices stated in its tariff [even though the commission approved the promotional fares until March 12, 2008]. At the non-promotional rate, a peak round trip ticket on HSF would be $154, compared to a round trip airfare which is now about $90. This is a 70% difference. The promotional fares make travel with HSF more competitive with the airlines. The January 7 deadline is one week away, and HSF

needs to extend that deadline in order to sell tickets at the promotional fares for the period through March 12 already approved by the Commission. When that January 7 date was set, HSF could not have anticipated the delays in re-launch."[8]

2. "Exhibit C shows future passenger bookings as of December 28, 2007. This demonstrates two things. Future bookings are significantly low, which means that HSF needs to stimulate sales by having promotional fares available for purchase past January 7. More importantly, this graph reinforces the conclusion that customers book travel within days of their actual travel."[9]

3. "The foregoing demonstrates that, for HSF to take advantage of the full period of promotional fares to March 12, 2008, which was intended to increase its sales and generate interest during its start-up period, it will need to be able [to] sell the promotional fares after January 7. If HSF cannot sell the promotional fares after January 7, sales will decrease and substantial economic harm to HSF will occur."[10]

4. With respect to HSF's request to extend the promotional fare period beyond March 12, 2008 to June 5, 2008, "HSF needs to be able to market and sell those fares at least four to six weeks prior to the travel dates, and therefore cannot wait for the 45 day tariff posting period."[11]

---

[8]HSF's letter, dated December 31, 2007, at 2.

[9]HSF's letter, dated December 31, 2007, at 3.

[10]HSF's letter, dated December 31, 2007, at 3.

[11]HSF's letter, dated December 31, 2007, at 3.

5. "At the time that the March 12, 2008 date was established for the end of the promotional fares, HSF could not have anticipated that its re-launch would be delayed past December 1, 2007, that the interisland airlines would still be engaged in fare wars, that the negative publicity surrounding the Maui litigation and Kauai incidents would continue to the extent that it has, and that the recent cancellations due to weather conditions would occur."[12]

6. "HSF needs the approval to market the promotional fares for the March 12 through June 5 period sooner than in 45 days. Wholesalers (tour packagers) historically book travel about six weeks prior to the travel date. Tour packagers for the Asia market will be booking travel, to begin in April, about three to six months prior. HSF needs advance time to market and sell to these packagers and the ability to market the promotional fares past March 12 is essential."[13]

Here, HSF seeks to extend the Second Promotional Period, which is presently scheduled to end on March 12, 2008, for another twelve weeks, until June 5, 2008, in order to: (1) increase passenger volumes, which are currently lower than projected; and (2) generate a positive revenue stream for its business, including, at a minimum, meeting its fixed expenses. Concomitantly, HSF reasons that because of the anticipated increase in demand to travel during the eight specified exclusion

[12]HSF's letter, dated December 31, 2007, at 3.

[13]HSF's letter, dated December 31, 2007, at 3-4.

dates,[14] the Promotional Fares for these particular dates need not be as "deeply discounted" as the Promotional Fares that are presently offered for the Second Promotional Period.

In addition, though not explicitly stated, HSF appears to have concluded that after five days of operating its vessel, from December 13, 2007 to December 17, 2007, an extension of the Second Promotional Period for twelve more weeks and its ability to actively promote such an extension is necessary to "avoid weak sales, negative publicity and a dwindling customer base, all resulting in further substantial financial harm to [its] business."[15]

Based on HSF's representations, the commission finds good cause to grant HSF's request for approval on short notice.[16] The reduced fares, the commission notes, will benefit passengers that choose to utilize the Superferry as an alternative mode of inter-island transportation. As noted by HSF, "[w]hile the extension of the promotional fares means less revenue per passenger, HSF believes it will result in greater usage of the service and exposure of the public to the service."[17]

---

[14]By this Order, the commission only approves the peak rate promotional pricing for the eight dates specified in HSF's December 17, 2007 letter.

[15]HSF's letter, dated December 17, 2007, at 8.

[16]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).

[17]HSF's letter, dated December 21, 2007, at 3.

II.

Order

THE COMMISSION ORDERS:

HSF's proposed tariff changes, filed on December 17, 2007, as described therein, are approved on short notice, effective from the date of this Order.

DONE at Honolulu, Hawaii JAN - 3 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

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. 23953 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

Counsel for HAWAII SUPERFERRY, INC.

Karen Higashi

DATED: JAN - 3 2008