

In the Matter of the Application of)  
 )  
 HONE HEKE CORPORATION, )  
 dba EXPEDITIONS )  
 )  
 For Authority to Sell Assets )

DECISION AND ORDER NO. 24087

2008 MAR 12 A 8:53

Karen Higrot.  
Chief Clerk of the Commission

H. Hignel.

In the Matter of the Application of)  
HONE HEKE CORPORATION,  
dba EXPEDITIONS  
For Authority to Sell Assets

Decision and Order No. 24087

<sup>1</sup>Decision and Order No. 10833, filed on November 5, 1990, in Docket No. 6736.

\$150,000.<sup>2</sup> According to Hone Heke, it owns five vessels and operates eighty six (86) voyages per week between Lahaina Small Boat Harbor ("Lahaina") and Maalaea Small Boat Harbor ("Maalaea") on the island of Maui and Manele Bay Small Boat Harbor ("Manele Bay") on the island of Lanai using the M/V Expeditions 4 and M/V Expeditions 5, with the M/V Expeditions 2 serving as a backup vessel. Hone Heke states that the M/V Expeditions 3 is capable of making the route, but is unsuitable for meeting the required passenger capacity, as it is limited to carrying thirty six (36) passengers.

According to Hone Heke, the M/V Expeditions 3 has been out of service since November 2004, and since 2003, Hone Heke has been aggressively marketing the M/V Expeditions 3 through three different boat brokers. The current offer from Buyer is the first offer that Hone Heke has received for the vessel. Hone Heke states that it will use the \$150,000 purchase price to reduce debt owing to Bank of Hawaii

As set forth in the Application, Hone Heke states that approval of the sale is in the public interest as it will allow it to reduce its debt load and "apply additional monies to those vessels in its fleet which currently serve the public on the approved routes."<sup>3</sup> It will also allow Hone Heke "to cease paying drydock fees as well as insurance premiums, which will allow [it]

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<sup>2</sup>Hone Heke served copies of the Application on 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).

<sup>3</sup>Application at 5.

to use the savings for operating capital and continued contributions to its Capital Construction Fund, so that, when carrying capacities require the construction of a new vessel, [it] will be prepared to meet this need."<sup>4</sup>

Hone Heke seeks expedited commission approval of the Application to meet the shipping timeline of the Buyer. If the sale to Buyer is not consummated, Hone Heke requests commission approval to sell M/V Expeditions 3 for any price in excess of \$125,000 without being required to file another application.

B.

Consumer Advocate's Statement of Position

On February 28, 2008, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of Hone Heke's request to sell the M/V Expeditions 3; provided that Hone Heke is "required to furnish the Commission and the Consumer Advocate with copies of documentation to support the proposed sales price of \$150,000 for the instant proposed sale, or the \$125,000 floor set forth in the application of the sale to [Buyer] is not consummated."<sup>5</sup>

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<sup>4</sup>Id.

<sup>5</sup>Consumer Advocate's Statement of Position at 6. By letter dated and filed on March 10, 2008, the Consumer Advocate reserved the right to take a position on the ratemaking treatment of any gain on the sale of the M/V Expeditions 3 in Hone Heke's rate case, Docket No. 2008-0026.

C.

Hone Heke's Supplemental Filing

In response to the Consumer Advocate's concern that Hone Heke failed to provide support for the proposed sales price of \$150,000, or the \$125,000 floor set forth in the application if the sale to Buyer is not consummated, Hone Heke filed a supplement to its Application on March 10, 2008 ("Supplement").

In its Supplement, Hone Heke explains that the M/V Expeditions 3 was taken out of service in November 2004 because of efficiency issues, as it was consuming in excess of 700 gallons of fuel per day to operate. In comparison, the M/V Expeditions 4 consumes approximately 430 gallons per day for the same routes resulting in a savings of 270 gallons per day. Because of its fuel inefficiency, the M/V Expeditions 3's resale value is reduced.

According to Hone Heke, it has utilized three different brokers to sell the M/V Expeditions 3. Hone Heke first listed the vessel in October 2003 with Pinnacle Marine Corporation for \$750,000, but received no offers. It also listed the vessel with Marcon International from April 2006 to November 2007, for \$550,000. Marcon International also received no offers for the vessel. Hone Heke utilized a third broker, Maui Boat Brokers, between October 2004 and the present. The vessel was originally listed for \$750,000, was reduced to \$350,000 in January 2007, and was reduced once more to \$150,000 in December 2007. According to Hone Heke, "[d]espite the brokers' best efforts using both international and national written and electronic marketing, and

personal efforts of the principals of [Hone Heke], it was not until January of 2008 that a legitimate offer resulted in a sales contract."<sup>6</sup> Hone Heke reasons that "[d]espite the fact that the appraised value may be higher than \$150,000.00, if there is no market for the vessel at that price, the vessel simply sits in drydock, costing [Hone Heke] in excess of \$1500.00 a month in drydock fees and insurance."<sup>7</sup>

Hone Heke states that the M/V Expeditions 3 has been depreciated to a value of zero and that its current net book value is \$0.82.

## II.

### Discussion

HRS § 271G-14(b) states:

No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same is void.

HRS § 271G-14(b).

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<sup>6</sup>Supplement at 4.

<sup>7</sup>Supplement at 4.

Here, the commission finds that the sale of the M/V Expeditions 3 is reasonable and in the public interest. As stated by Hone Heke, the vessel has not been in use since November 2004, and Hone Heke does not expect to utilize it in the future because of its thirty six (36) passenger capacity limitation and fuel inefficiency. In addition, Hone Heke has four other vessels available to provide service to its customers of which two vessels actively provide service and another operates as a backup vessel. Accordingly, the M/V Expeditions 3 appears to no longer be necessary for Hone Heke's operations.

Five years ago, Hone Heke initially sought approval to sell the M/V Expeditions 3, which the commission denied stating:

Upon review, we find that the record is insufficient to find that the proposed sale is reasonable and in the public interest at this time. Simply put, Hone Heke's application contains no relevant data and/or information relating to, among other things, the proposed purchase price, or even a statement indicating how and when Hone Heke[] plans to sell M/V Expeditions 3.

Decision and Order No. 20201, filed on May 28, 2003, in Docket No. 03-0061, at 6.

Since the filing of Decision and Order No. 20201, Hone Heke has aggressively marketed the vessel and the current offer from Buyer is the first offer it has received on the M/V Expeditions 3 since it first placed it on the market in October 2003. Given the history of Hone Heke's attempts to sell the M/V Expeditions 3, the sales price, and the asserted net book value of the vessel, the commission finds it appropriate to approve the sale of the M/V Expeditions 3 to Buyer for \$150,000.

As noted by Hone Heke, the sale of the M/V Expeditions 3 will allow it to cease paying drydock and insurance premiums on the vessel, reduce its debt load, and invest in the vessels in its fleet that currently provide service to the public on approved routes. Accordingly, the commission approves Hone Heke's request to sell the M/V Expeditions 3 to Buyer. The regulatory treatment of the sale of the vessel to Buyer, however, shall be considered in Hone Heke's next rate case, Docket No. 2008-0026, as proposed by the Consumer Advocate.

If the sale to Buyer is not consummated, Hone Heke requests commission approval to sell the M/V Expeditions 3 for any price in excess of \$125,000 without being required to file another application. Given the foregoing, the commission approves Hone Heke's request, provided that within fifteen days after finalizing the sale of the M/V Expeditions 3, Hone Heke files with the commission and the Consumer Advocate a copy of the sales documents; and a report that identifies the buyer, the agreed-upon sales price, the terms of the sale, and a computation of the net gain or loss, if any, from the sale, including the proposed period of amortization.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Hone Heke's request to sell the vessel, M/V Expeditions 3, to Buyer for \$150,000, is approved.



2. Hone Heke shall provide notice to the commission and the Consumer Advocate of the closing of the sale to Buyer.

3. If the sale to Buyer is not consummated, Hone Heke's request to sell M/V Expeditions 3 for any price in excess of \$125,000 is approved; provided that within fifteen days after finalizing the sale of the M/V Expeditions 3, Hone Heke shall file with the commission and the Consumer Advocate: (A) a copy of the sales documents; and (B) a report that identifies the buyer, the agreed-upon sales price, the terms of the sale, and a computation of the net gain or loss, if any, from the sale, including the proposed period of amortization.

4. If the sale to Buyer is not consummated, then until the documents set forth in Ordering Paragraph No. 3 are submitted, Hone Heke shall file annual status reports describing its progress on selling the vessel. Unless ordered otherwise, the status reports shall be due by December 31 of each year, with the first status report due by December 31, 2008.

5. The failure to comply with the Ordering Paragraphs above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law.


DONE at Honolulu, Hawaii

MAR 11 2008

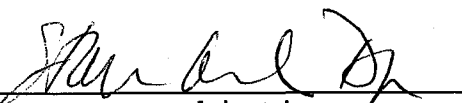
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

2008-0027.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24087 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: MAR 11 2008