

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
LEE PETERS, dba)
LEE'S EXCAVATION)
)
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations;)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DOCKET NO. 2008-0203

DECISION AND ORDER

RECEIVED

2009 MAR -4 A 9:18

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

PUBLIC UTILITIES
COMMISSION

2009 MAR -3 A 9:48

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----))
LEE PETERS, dba) Docket No. 2008-0203
LEE'S EXCAVATION))
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations;)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DECISION AND ORDER

By this Decision and Order, the commission revokes certificate of public convenience and necessity number 4124-C ("Certificate No. 4124-C") held by LEE PETERS, dba LEE'S EXCAVATION ("Respondent").

I.

Procedural History

By Notice of Violation, Order to Show Cause, and Notice of Hearing ("Notice"), filed on October 14, 2008, the commission ordered Respondent to appear at 465 South King Street, Room B-3, Honolulu, Hawaii 96813, at 9:00 a.m., on November 19, 2008, to show cause why Respondent's Certificate No. 4124-C should not be suspended or revoked for failure to file an annual financial report and pay an annual motor carrier gross revenue fee for the year 2007, pursuant to Hawaii Revised Statutes ("HRS") §§ 271-25,

271-36, and Hawaii Administrative Rules ("HAR") §§ 6-62-42(a), 6-62-24(a).¹ In the Notice, the commission notified Respondent that Certificate No. 4124-C would be revoked if he failed to appear at the scheduled hearing.

On November 19, 2008, Respondent failed to appear before the commission's hearing officer. As a result, the hearings officer recommended that the: (1) Respondent be found in default for failure to appear at the hearing, and (2) Respondent's Certificate No. 4124-C be revoked.

II.

Findings and Conclusions

Based on the entire record, the commission finds that Respondent's failure to appear at the November 19, 2008 hearing constitutes a default in accordance with HAR § 6-68-23. Accordingly, because the commission can assume the facts alleged in the Notice are true in the event of a default, and such facts are in violation of the applicable laws, rules, and regulations noted above, the commission concludes that Respondent's Certificate No. 4124-C should be revoked.

¹The commission notified Respondent of the November 19, 2008 hearing by serving the Notice upon Respondent by certified mail, return receipt requested, at Respondent's last known address. Pursuant to HAR § 6-61-21, service is deemed complete upon properly stamping, addressing, and mailing the order to Respondent's last known address, or to Respondent's attorney. Additionally, pursuant to HRS § 91-9.5, the commission provided Respondent with notice of hearing via statewide publication in newspapers of general circulation on October 28, 2008 and November 4, 2008.

III.


Order

THE COMMISSION ORDERS:

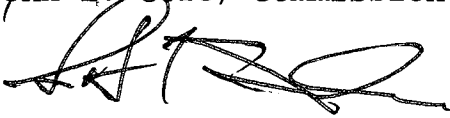
Certificate No. 4124-C is revoked, and this docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii MAR - 3 2009.


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

2008-0203.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:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

LEE PETERS, dba
LEE'S EXCAVATION
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