

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
PACIFIC TRUCKING, INC.)
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. 02-0259

DECISION AND ORDER NO. 20244

Filed June 19, 2003
At 2:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.
K. Higashi

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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PACIFIC TRUCKING, INC.) Docket No. 02-0259
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Notice of Failure to Comply) Decision and Order No. 20244
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

I.

On May 12, 2003, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer (recommended decision) regarding the above-entitled matter. The recommended decision was served upon PACIFIC TRUCKING, INC. (Respondent) on May 12, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

Upon a review of the entire record in this matter and pursuant to Hawaii Revised Statutes § 269-6, we conclude that the recommended decision, attached hereto as Exhibit A, should be adopted as the commission's final decision and order in this matter and Order No. 19570,¹ filed on September 30, 2002, should be vacated.

¹By Order No. 19570, filed on September 30, 2002, Respondent was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity number 2081-C should not be suspended

II.

THE COMMISSION ORDERS:

1. The recommended decision, attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.


2. Order No. 19570, filed on September 30, 2002, is vacated.

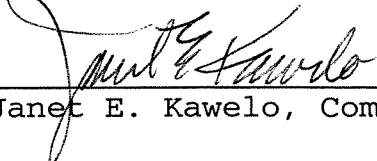
3. This docket is closed.

DONE at Honolulu, Hawaii the 19th day of June , 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII


By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

Pacific Trucking:la

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

or revoked for failure to timely comply with Hawaii Revised Statutes §§ 271-25 and 271-36.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)		
)	DOCKET NO. 02-0259
PACIFIC TRUCKING, INC.)	
)	
Notice of Failure to Comply)	FINDINGS OF FACT
With Hawaii Revised Statutes)	CONCLUSIONS OF LAW, AND
and Commission's Regulations)	RECOMMENDED DECISION
Order to Show Cause Why)	AND ORDER OF
Respondent's Operating)	HEARINGS OFFICER
Authority Should Not Be)	
Suspended or Revoked.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 19570, PACIFIC TRUCKING, INC. (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity (CPCN) number 2081-C should not be suspended or revoked for failure to comply with Hawaii Revised Statutes (HRS) §§ 271-25 and 271-36 before the April 30, 2002 deadline for compliance had passed.¹

¹HRS § 271-25 requires Respondent to file an annual financial report with the commission, while HRS § 271-36 requires Respondent to pay an annual motor carrier gross revenue fee. Hawaii Administrative Rules (HAR) § 6-62-42 provides that the annual financial report must be filed with the commission by April 30 of each year. Section 6-62-24, HAR provides that the motor carrier gross revenue fee must be paid to the commission on or before April 30 of each year.

An order to show cause hearing (hearing) was held at 9:00 a.m. on October 29, 2002, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Respondent's president, Misty Monalim, was present at the hearing. Testifying on behalf of Respondent was Stephen Lee, Respondent's accountant.² Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for Respondent's failure to timely file an annual financial report (AFR) and to pay its annual motor carrier gross revenue fee (Fee), in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations.

Having considered the testimony and other evidence presented at the hearing, and the entire record in this matter, the hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

²Members of the commission's audit staff were sworn in and remained present during the hearing in the event they would be called upon to testify in the instant matter.

II.

FINDINGS OF FACT

1. On July 19, 2002, Respondent filed its AFR and paid its Fee.³

2. On July 22, 2002, the commission notified Respondent of penalties owed due to the delinquent filing of its AFR and late payment of its Fee.

3. Respondent's accounting firm submitted a letter on Respondent's behalf, dated July 29, 2002 and filed with the commission on August 5, 2002, wherein it requested that the commission abate the penalties assessed against Respondent because the firm was responsible for the late filing and payment.

4. At the hearing, Mr. Lee represented that his accounting firm was responsible for Respondent's delinquency.

5. Within the last five years, Respondent has made timely filing and payment of its AFR and Fee.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

³Pursuant to HAR § 6-61-48, this hearings officer takes official notice of those facts contained in the commission's motor carrier records.

1. HAR § 6-62-24 provides that every motor carrier shall pay its Fee to the commission on or before April 30 of each year.

2. HAR § 6-62-42 provides that each motor carrier shall file with the commission an AFR by April 30 of each year.

3. HRS § 271-27(h) provides, in relevant part, that any motor carrier who fails or refuses to comply with any provision of chapter 271, HRS, or any rule, requirement, or order, may be assessed a civil penalty payable to the State.

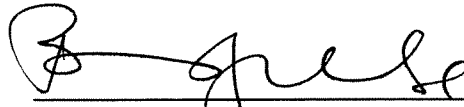
4. Based on the above-stated findings of fact, this hearings officer concludes that because Respondent's AFR and Fee were received by the commission after the April 30 deadline, Respondent was in violation of HRS §§ 271-25 and 36, and HAR §§ 6-62-24 and 6-62-42.

IV.

RECOMMENDED DECISION AND ORDER

1. Based on the foregoing, this hearings officer recommends that Order No. 19570 and the civil penalty imposed upon Respondent pursuant to HRS § 271-27(h) and HAR §§ 6-62-24 and 6-62-42, be VACATED. There was mitigating evidence presented which showed that but for the accountant's inadvertent lapse, Respondent's paperwork would have been filed in a timely manner.

DATED: Honolulu, Hawaii this 12th day of May, 2003.

A handwritten signature in black ink, appearing to read "Benedyne S. Stone", written over a horizontal line.

Benedyne S. Stone
Hearings Officer
Public Utilities Commission

Docket No. 02-0259


Pacific Trucking : la

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (VIA PICKUP)
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

PACIFIC TRUCKING, INC.
Misty Monalim, President
91-165 Kalaeloa Boulevard
Kapolei, HI 96707



Leatrice G. Asahi
Clerk

DATED: MAY 12, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20244 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

PACIFIC TRUCKING, INC.
91-165 Kalaeloa Boulevard
Kapolei, HI 96707

BENEDYNE S. STONE
HEARINGS OFFICER
PUBLIC UTILITIES COMMISSION
465 S. King Street, Room 103
Honolulu, HI 96813



Karen Higashi

DATED: June 19, 2003