

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAII SUPERFERRY, INC.)

DOCKET NO. 04-0180

For a Certificate of Public)
Convenience and Necessity to)
Engage in Operations as a)
Water Carrier.)
_____)

DECISION AND ORDER NO. 21524

Filed December 30, 2004
At 1 o'clock P.M.

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

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DECISION AND ORDER

I.

Procedural History

On July 22, 2004, HAWAII SUPERFERRY, INC. ("Hawaii Superferry" or "Applicant") filed an application for a certificate of public convenience and necessity ("CPCN") to operate as a water carrier of passengers and property between the islands of Oahu and Kauai, Maui and Hawaii, pursuant to Hawaii Revised Statutes ("HRS") § 271G-10 and Hawaii Administrative Rules ("HAR") § 6-61-81 ("Application").¹

Pursuant to HAR § 6-61-82, copies of the Application were served that same day on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer

¹On August 3, 2004, Applicant filed Exhibit 17 to the Application pursuant to Protective Order No. 21190. Protective Order No. 21190 was filed on July 29, 2004, to govern the treatment of confidential documents filed in this docket. On September 9, 2004, Applicant filed a revised page 1 of Exhibit 17.

Advocate"),² Mayor Jeremy Harris, City and County of Honolulu, Mayor Harry Kim, County of Hawaii, Mayor Brian Baptiste, County of Kauai, Mayor Alan Arakawa, County of Maui, and Director Rodney Haraga, Department of Transportation.

On July 23, 2004, Applicant and the Consumer Advocate (collectively, referred to as "Parties") submitted a proposed stipulated procedural order ("Proposed Procedural Order") for commission approval. On August 3, 2004, the commission issued Order No. 21194 approving the Parties' Proposed Procedural Order, subject to certain modifications stated in the aforesaid order and "further modifications, particularly in the event that persons are granted intervenor or participant status in this docket."

Order No. 21194 also set forth the Parties' stipulated issues to be addressed in this matter, as follows: (1) whether Applicant's proposed service is or will be required by the present or future public convenience and necessity; (2) whether Applicant's proposed service is consistent with the public interest and transportation policy of the State of Hawaii ("State") as set forth in the declaration of policy in HRS § 271G-2; and (3) whether Applicant is fit, willing and able to properly perform the proposed service and to conform to the provisions of Chapter 271G, HRS, and the requirements, rules and regulations of the commission.

²Pursuant to HAR § 6-61-62, the Consumer Advocate is an *ex officio* party to any proceeding before the commission.

On August 16, 2004, the Consumer Advocate submitted information requests ("IRs") to Applicant. Applicant provided responses to these IRs on September 8, 2004 ("September 8, 2004 Responses").³ Applicant provided a supplemental response to the Consumer Advocate's IR-6 on September 14, 2004.

On August 19, 2004, YOUNG BROTHERS, LIMITED ("YB") filed a timely motion to participate ("Motion to Participate"), pursuant to HAR §§ 6-61-56 and 6-61-57.

On August 27, 2004, Applicant filed a memorandum in opposition to the Motion to Participate. On September 2, 2004, YB filed a reply memorandum in support of its Motion to Participate.

The Consumer Advocate issued supplemental IRs to Applicant on September 27, 2004. Applicant provided responses to these supplemental IRs on October 11, 2004.

³Pursuant to Order No. 21194, Hawaii Superferry's responses to the Consumer Advocate's IRs were due September 7, 2004. By letter dated September 7, 2004, Hawaii Superferry requested an extension of time to file its responses, to September 8, 2004, to allow additional time to complete making copies of exhibits to the responses. The commission granted Hawaii Superferry's request for this extension of time. Additionally, on September 10, 2004, Applicant provided copies of Exhibit 10 to the September 8, 2004 responses that had been enhanced for easier reading.

On October 1, 2004, the commission issued Order No. 21391 granting YB the right to participate in the instant docket, subject to certain limitations.⁴ Order No. 21391 also provided for public hearings to be held on the instant matter on all affected islands: Oahu, Kauai, Maui and Hawaii.⁵

On October 29, 2004, the Consumer Advocate and YB each submitted their respective Statements of Position.

On November 30, 2004, the commission issued IRs to Applicant. Applicant filed responses to the commission IRs on December 10, 2004 ("Applicant's Response to Commission IRs").

By letter dated November 30, 2004, Applicant requested an extension of time, to December 8, 2004, in which to file its Reply Statement of Position.⁶ The commission granted this request and on December 8, 2004, Applicant filed its Reply Statement of Position.

On December 12, 2004, Applicant filed a supplemental response to the September 8, 2004 Responses.

⁴In particular, Order No. 21391 provided that YB's participation was limited to receiving copies of all correspondence, filings and briefs not designated confidential under Protective Order No. 21190 and that YB would be allowed to submit a written Statement of Position on the issues established in Order No. 21194, to be due on October 29, 2004.

⁵The public hearings were held in Honolulu on November 10, 2004, Lihue, Kauai on November 16, 2004, Kahului, Maui on November 17, 2004 and Waikoloa, Hawaii on November 18, 2004.

⁶Pursuant to Order No. 21194, Applicant's Reply Statement of Position was scheduled to be filed on or before November 30, 2004.

II.

Description of Applicant

Applicant is a Hawaii corporation incorporated on September 22, 2002 as HSF, Ltd., which changed its name to Hawaii Superferry, Inc, on February 2, 2004. Applicant's principal place of business is at Pier 19, Ferry Terminal, Honolulu, Hawaii. The officers and directors of Hawaii Superferry are:

| <u>Name</u> | <u>Office</u> |
|-------------------------|---|
| Timothy W. Dick | Chairman of the Board of Directors/President |
| John L. Garibaldi | Chief Executive Officer/Director |
| Robert E. "Terry" White | Executive Vice President-Operations/Chief Operating Officer |
| John C. Dean | Director |
| Dr. Daniel I. Okimoto | Director |
| Brian Nishida | Director |

III.

Background

A.

Description of Proposed Service

Applicant proposes to develop and operate a high-speed, roll-on/roll-off ferry service, using two vessels, capable of carrying up to 866 passengers and 282 cars, or 26 trucks/buses and 65 cars per trip, between the port of Honolulu, Oahu and the ports of Nawiliwili Harbor on Kauai, Kahului on Maui and Kawaihae on the island of Hawaii, subject to the availability of adequate

port facilities.⁷ When both vessels are in service, Applicant anticipates making daily round trips between Oahu and Maui, Kauai and Hawaii.⁸ Applicant expects its ferry service to cost about fifty (50) per cent of the price of flying,⁹ and is viewed as an alternative to the airlines and inter-island barge service for residents, visitors and businesses.

Applicant proposes to operate year-round, except for ten (10) days during the year for scheduled maintenance, drydocking, overhaul of the vessels and unscheduled interruptions due to weather and other unforeseen events.¹⁰

B.

Description of Vessels

Applicant proposes to use two (2) 105-meter, "semi-SWATH" aluminum catamaran vessels in its service, now being constructed by Austal USA LLC, in Mobile, Alabama.¹¹ Applicant initially expected delivery and commencement of service of the first vessel in late 2006, with the second vessel delivered in mid-2008. However, due to time constraints related to use of the harbor facilities, the first vessel is expected to commence

⁷Application at 4.

⁸Application at 2.

⁹Id.

¹⁰Application at 6.

¹¹Id.

service in January 2007.¹² The time frame for delivery and commencement of service of the second vessel remains unchanged.

Applicant states that the vessel design and diesel-powered water jet propulsion system engines to be used on the vessels are proven technologies that have been in operation for years on a variety of ocean-going vessels.¹³ The vessels will be powered by four (4) marine diesel engines, driving its own water jet propulsion system and is expected to travel at speeds on the ocean of 35 knots.¹⁴

C.

Use of State Harbor Facilities

The Applicant has received a Letter of Intent ("LOI") from the Department of Transportation, Harbors Division, State of Hawaii ("DOT") dated December 9, 2004, and filed with the commission on December 12, 2004, which "outlines the general terms, arrangements and conditions under which the DOT intends to enter into the formal agreement" for "the use of harbor facilities at Honolulu Harbor, Kahului Harbor, Nawiliwili Harbor, and Kawaihae Harbor."¹⁵ The DOT represents to Applicant that the harbor facilities at Honolulu, Kauai and Maui will be ready for

¹²Applicant's Reply Statement of Position, n.1.

¹³Applicant's Reply Statement of Position at 3.

¹⁴Application at 6-7.

¹⁵Applicant's Supplemental Response to Division of Consumer Advocacy's Information Request CA/HSF-IR-1, filed December 12, 2004, at 2-3. Applicant filed the LOI as confidential information pursuant to Protective Order No. 21190.

the commencement of Hawaii Superferry's operations by the anticipated commencement date of January 2007.¹⁶ The harbor facility at Kawaihae, Hawaii, however, may be delayed beyond the January 2007 date. To prepare for that possibility, Applicant and the DOT continue to explore options for the Kawaihae site.¹⁷

IV.

Consumer Advocate's Statement of Position

A.

Whether there is Sufficient Demand for Applicant's Proposed Ferry Service

The Consumer Advocate determined that, while it had concerns over the results of a market study by Market Scope, Inc., which was commissioned by Applicant (the "Market Study"),¹⁸ and which results were designated confidential pursuant to Protective Order No. 21190, overall, there appeared to be a sufficient demand for Applicant's proposed ferry service to conclude that the proposed ferry service is required by the present or future public convenience and necessity.¹⁹ The Consumer Advocate believes that the enticement of lower fares combined with reliable service could persuade sufficient numbers of passengers to use the new ferry service, enough to allow

¹⁶Applicant's Reply Statement of Position at 4.

¹⁷Applicant's Reply Statement of Position at 4-5.

¹⁸Applicant's Reply Statement of Position at 6.

¹⁹In reaching this determination, the Consumer Advocate also conducted its own analysis of Applicant's proposed service. See, Consumer Advocate's Statement of Position at 12.

Applicant to generate revenues to meet its financial obligations. The Consumer Advocate speculates that the proposed ferry service would have the added economic benefit of placing competitive pressure on more traditional carriers, such as airlines, to lower rates on existing airfares and cargo rates.²⁰

B.

Whether Applicant's Proposed
Ferry Service Serves the Public Interest

The Consumer Advocate believes that the proposed ferry service is consistent with the declaration of policy as set forth in chapter HRS § 271G-2. In particular, HRS § 271G-2 reads, in relevant part, that the transportation of persons and property by water within the State "constitutes a business affected with the public interest."

The Consumer Advocate further states that the proposed ferry service would provide more options and opportunities for inter-island travel at an anticipated lower cost than present air fares.²¹ It would also encourage the use of alternative transportation systems and promote statewide economic growth. The Consumer Advocate, therefore, concludes that Applicant's proposed ferry service is also in the public interest.

²⁰Consumer Advocate's Statement of Position at 12.

²¹Applicant also foresees possible use by the military for certain transportation needs. Application at 20.

C.

Whether Applicant is Financially Fit,
Willing and Able to Perform the Proposed Service

In reviewing Applicant's fitness, the Consumer Advocate considered the following: (1) whether Applicant is able to obtain adequate financing to commence the new ferry service and will it be able to generate sufficient funds to sustain operations; (2) whether Applicant has the managerial skills and technical knowledge to successfully operate the proposed ferry service; and (3) whether Applicant will be able to secure the necessary government approvals for its use of the harbor facilities at its anticipated ports.

i.

Financial Fitness

Applicant has issued \$3.3 million worth of equity in the form of Series A convertible preferred stock and has a commitment for the purchase of \$55 million additional equity in the form of Series B convertible preferred stock.²²

Applicant is in the process of securing additional financing through a loan guaranty from the Maritime Administration of the United States Department of Transportation ("MarAd"). To qualify for the MarAd loan, Applicant must prove that its proposed ferry service is economically sound. Applicant must demonstrate no more than a 2:1 debt to equity ratio, and

²²Applicant's Reply Statement of Position at 3.

must show positive working capital and demonstrate a certain minimum worth.²³

Applicant has yet to consummate any of the above financial guarantees. Thus, the Consumer Advocate advises that it will withhold its full recommendation until such time that Applicant consummates the above-noted loans, and further recommends that Applicant submit documentation confirming that it has secured the appropriate financing for its proposed ferry service.²⁴

ii.

Managerial Fitness

Based upon Applicant's representations in its Application, the Consumer Advocate finds that Applicant has the appropriate managerial experience to successfully operate the proposed ferry system. In particular, the management team of Hawaii Superferry has extensive professional experience in the transportation industry (including the airline industry and maritime operations) and corporate management.

iii.

Technical Skills to Operate a Ferry System

Applicant has entered into a contract with HMS-Hawaii, Inc., a subsidiary of Hornblower Marine Services, Inc. ("HMS"), to provide marine management and crew services. HMS currently

²³Application at 13.

²⁴Consumer Advocate's Statement of Position at 16.

manages ferry systems throughout the United States and the Bahamas. HMS also provides marine management for ferry operations chartered by the United States Marines in Okinawa, Japan.²⁵ Based upon representations made by Applicant, the Consumer Advocate has determined that HMS has sufficient technical expertise to support Applicant in its ferry operations.

iv.

Whether Applicant has the Necessary
Facilities to Provide the Proposed Ferry Service

Applicant requires harbor infrastructure not presently in place at the ports where it plans to dock its ferries. The Consumer Advocate notes that other State government agencies, primarily the DOT, are responsible for the development of such infrastructure as is necessary to accommodate the ferries and its employees and passengers at the respective ports. The Consumer Advocate, thus, will rely on the representations made by Applicant that Applicant is working closely with the DOT as it pertains to procuring the necessary harbor infrastructure.²⁶

Moreover, the Consumer Advocate recommends that Applicant provide (1) progress reports on the construction of its vessels to assess Applicant's ability to commence operations in early 2007 and (2) a copy of its certification from the

²⁵Application at 11.

²⁶Consumer Advocate's Statement of Position at 19.

United States Coast Guard for Applicant's vessels attesting to the vessels seaworthiness.²⁷

D.

Whether Applicant's Proposed Rules,
Regulations and Rates are Reasonable

The Consumer Advocate reviewed Applicant's proposed Tariff No. 1 to determine (1) whether Applicant's proposed rates are reasonable and (2) whether the rules and regulations are just and reasonable in their protection of the consumer.

The Consumer Advocate notes that there is no historical data on which to make a determination as to the reasonableness of the proposed rates, since Applicant has not commenced service. Nonetheless, Applicant will have to abide by HRS § 271G-17(b) and provide notice to the commission and the Consumer Advocate regarding any proposed rate change, giving the Consumer Advocate and the commission an opportunity to review any proposed rate changes.²⁸ Thus, the Consumer Advocate concludes that it does not oppose Applicant's proposed rates. Additionally, the Consumer Advocate recommends that Applicant post its tariff on Applicant's website as an accommodation to those passengers purchasing tickets from the website.²⁹

²⁷Consumer Advocate's Statement of Position at 18-19.

²⁸HRS § 271G-17(b) provides, in relevant part, that any rate change shall not be made until forty-five (45) days after a water carrier files a notice of rate change with the commission.

²⁹Consumer Advocate's Statement of Position at 20-21.

Upon reviewing Applicant's proposed rules and regulations, the Consumer Advocate asserts that it is satisfied that Hawaii Superferry's customers will be protected with regard to trip cancellations and complaints and dispute resolution. Applicant appears to have set up reasonable notification procedures for unscheduled cancellations and for the refund of customer fees. To monitor the number of unscheduled cancellations, the Consumer Advocate recommends that Applicant be required to submit quarterly reports on the number of cancellations and the reasons for each cancellation.³⁰

The Consumer Advocate also recommends that Applicant's proposed tariff include information on resolving customer complaints, including Applicant's and the commission's mailing address, telephone numbers and in the case of the commission, its facsimile number.³¹

V.

YB's Statement of Position

In its Statement of Position ("YB Statement of Position"), YB states that although it does not oppose Applicant's Application for ferry service, it has various concerns, such as ensuring that the requirements of Chapter 271G, HRS, will be applied fairly and impartially to all water

³⁰Consumer Advocate's Statement of Position at 22.

³¹Consumer Advocate's Statement of Position at 22-23.

carriers. YB was present at each public hearing³² and expressed its concerns about issues such as the crowding of the harbor facilities with the addition of Applicant's proposed ferry service and its ability to load and unload its barges with the proposed ferry service and accompanying passengers and vehicular traffic.

VI.

Applicant's Reply to the Consumer Advocate and YB's Issues

In its Reply Statement of Position, Applicant asserts that it has responded to the Consumer Advocate's concerns. Applicant is prepared to provide all documentation regarding its financial commitments upon the receipt of its equity funding and loan guaranty. Applicant represents that it will provide semi-annual progress reports on the construction of the vessels, along with its certificate of inspection from the U.S. Coast Guard showing compliance with the International Code of Safety for High Speed Craft (2000). Applicant also intends to comply with the Consumer Advocate's recommendations by posting its tariff on its website and providing information on the number of cancellations and the reasons for the cancellations.³³

Finally, Applicant will revise its tariff consistent with the Consumer Advocate's recommendation that it include a customer complaint provision in its tariff for those customers

³²YB was present at the public hearing held on Oahu, but did not provide public or written testimony.

³³Applicant's Reply Statement of Position at 8-10.

with complaints. Specifically, Applicant will include in its tariff information to contact Applicant and the commission for any customer unable to resolve a dispute.³⁴

As with the issues raised by the Consumer Advocate, Applicant asserts that it has addressed the concerns raised by YB in its Statement of Position. For example, Applicant asserts that it will comply with all tariff requirements, including those with respect to any change in sailing schedule.³⁵ Applicant also clarifies several statements included in its Application that were incorrect or misleading (including matters related to total sailing time, total time to move a military battalion and the cost for ferry service).³⁶

Finally, regarding YB's concern over harbor space on the neighbor islands for berthing and cargo staging, Applicant assures the commission that it is working with the DOT on necessary improvements for the facilities.³⁷ Applicant represents that it will work to ensure the full use of existing facilities by all parties to maintain the flow of passengers, cargo and vehicles.³⁸

³⁴Applicant's Reply Statement of Position at 11.

³⁵Applicant's Reply Statement of Position at 12.

³⁶Applicant's Reply Statement of Position at 13.

³⁷Applicant's Reply Statement of Position at 14.

³⁸Id.

VII.

Discussion

HRS § 271G-10(c) provides that:

A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation covered by the application if it is found that the applicant is fit, willing, and able, properly to perform the service proposed and to conform to [chapter 271G, HRS] and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied.

Thus, Applicant must satisfy the conditions set forth in HRS § 271G-10(c) before the commission can grant it the authority to operate as a common carrier by water.

A.

Applicant's Fitness, Willingness and Ability to Perform the Proposed Ferry Service

Applicant's financial transactions have yet to be consummated. It is in the process of finalizing its loan guaranty with MarAd³⁹ and has a commitment for the purchase of \$55 million additional equity in the form of Series B convertible stock. Applicant's combination of funding arrangements appears

³⁹Applicant represents that a letter of commitment from MarAd remains pending, as MarAd is waiting for the results of Applicant's discussions with the DOT regarding use of the DOT's harbor facilities. Applicant expects to successfully conclude its discussions with the DOT regarding use of the harbor facilities, and shortly thereafter to receive the loan commitment from MarAd. See, Applicant's Response to Commission IRs, PUC-IR-6.

sufficient to provide adequate financing for start-up costs, maintenance of operations and the construction of both vessels.

Any finding of financial fitness, however, is contingent upon the receipt by the commission of all executed financial documents relating to the \$55 million equity funding and the MarAd loan guaranty, including any other loan commitments which Applicant may enter into with relevance to its proposed ferry service. Thus, the commission finds that Applicant should be required to submit documentation of the: (1) receipt of the commitment for the \$55 million equity funding; (2) MarAd loan guaranty; and (3) any other funding commitments regarding Applicant's proposed ferry service prior to commencing its operations.

Applicant's team of professionals from the airline and maritime industries along with the corporate management experience of its directors appears to provide Applicant with the ability to efficiently and safely manage its proposed ferry service. Likewise, technical support for Applicant will be carried out by HMS which has experience in ferry operations throughout the world. We, thus, find that Applicant has the appropriate managerial and technical support to operate its proposed ferry service.

Applicant's vessels are being constructed by Austal USA, an experienced shipbuilder. The vessels will be inspected and certified by the United States Coast Guard, in compliance with the requirements of the International Code of Safety for High Speed Craft (2000). Applicant states that it will maintain

the status of its certification and will provide copies of new or renewal certificates as they are received.⁴⁰

Applicant will be utilizing harbor facilities, under the jurisdiction of the DOT. Applicant will dock its ferries in DOT's harbor facilities and utilize DOT's terminal space and associated infrastructure for its related ferry services, including the handling of arriving and departing passengers and their vehicles, and associated ticketing and security services.

As noted above, Applicant has negotiated the general terms and conditions with the DOT for the use of its harbor facilities through an LOI.⁴¹ The DOT represents to Applicant that, except for the Kawaihae harbor, all harbors will be ready for Hawaii Superferry's commencement of operations in January 2007.⁴² With regard to readiness of the harbor facility sites, Applicant states that its negotiations with the DOT

⁴⁰See, Applicant's Reply Statement of Position at 10. Applicant also represents that it will obtain all necessary insurance coverage upon the delivery of each vessel. In addition, Applicant represents that it will obtain sufficient amounts for the protection of the public, and in such amounts as the commission may require. See, Application at 14.

⁴¹As discussed above, the LOI between the State and Applicant includes terms and conditions for the assignment of costs by the State to Applicant for certain temporary accommodations and initial and later improvements at the harbor facilities. The LOI was submitted to the commission pursuant to Protective Order No. 21190, as it contains confidential information. The commission will require that the Applicant provide the commission with all costs for accommodations and improvements at the harbor sites expended by Applicant and that Applicant include such costs in Applicant's financial statements provided to the commission for review. Additionally, Applicant shall apprise the commission of the construction timetable for any accommodations and improvements at the harbors in its quarterly reports to the commission, required herein.

⁴²Applicant's Reply Statement of Position at 4.

include a Facility Layout Study, dated November 22, 2004, ("Facility Layout Study") prepared for Applicant by outside consultants.⁴³ The Facility Layout Study presents layout proposals for the terminal facilities to be used by Applicant for its proposed ferry service.⁴⁴

In addition to the terms and conditions negotiated with the DOT in the LOI, Applicant states that it will need the following additional permits, licenses or approvals: (1) Certificates of Inspection from the U.S. Coast Guard; (2) a permit for wastewater disposal from the City and County of Honolulu ("City")⁴⁵; (3) licenses from the Federal Communications Commission for radio and electronic equipment; (4) National Oceanic and Atmospheric Administration ("NOAA") registration for emergency locator beacons; and (5) other approvals, as necessary.⁴⁶

The commission notes that concerns were voiced during the public hearings regarding potential conflicts with existing harbor uses, including the lack of harbor space, traffic concerns and the use of the waterways surrounding the harbors. However, because the use of the harbor facilities is under the

⁴³Applicant's Reply Statement of Position at 5. The Facilities Layout Study was submitted to the commission pursuant to Protective Order No. 21190.

⁴⁴See, Applicant's Reply Statement of Position at 5.

⁴⁵If Applicant discharges its wastewater into a facility owned by the DOT, Applicant will likely be covered under an existing Industrial Wastewater Discharge Permit, issued by the City to the DOT. Should Applicant discharge its wastewater into its own facility, Applicant will have to obtain all necessary discharge permits from the City.

⁴⁶See, Applicant's Response to Commission IRs, PUC-IR-3.

jurisdiction of the DOT, the commission expects Applicant to work closely with the DOT to address these concerns and obtain all necessary harbor approvals to conduct its proposed ferry service.

Based on Applicant's representations, and with the condition that Applicant submits to the commission all necessary approvals for use of the harbor and its related infrastructure, including a final LOI, and any and all leases, licenses, permits, and agreements for the use of such harbor facilities, the commission finds that Applicant is fit, willing and able to perform the proposed ferry service. The commission also finds that Applicant will be able to conform to all applicable laws, rules and regulations relevant to its proposed ferry operations.

B.

Applicant's Proposed Service is or Will be Required by the
Present or Future Public Convenience and Necessity

Presently, the record indicates that the options for inter-island travel and transportation are limited primarily to the airline industry, for passenger travel, and barge service for transportation of other goods and vehicles.⁴⁷ As with the limited options for travel, pricing options are limited as well.

Applicant contends that "Hawaii is a market that is ideal for fast ferries for passengers and vehicles."⁴⁸ Applicant submits that the Market Study "showed a high acceptance level of

⁴⁷Application at 2.

⁴⁸Applicant's Reply Statement of Position at 5.

the ferry service concept and the prices proposed by Applicant."⁴⁹ The Consumer Advocate's own analysis supports Applicant's contention of an unmet demand for alternative travel.⁵⁰ We agree with the Consumer Advocate that there appears to be a latent demand for Applicant's proposed ferry service sufficient to justify the grant of a CPCN to Applicant. Applicant's proposed fares for inter-island travel and transportation will be approximately half the current cost of an airline ticket, thus giving travelers an attractive option to air travel, for either leisure or business travel. Smaller groups, especially, such as schools and athletic teams, will now have affordable alternatives to the airlines for inter-island travel.

We, thus, find that Applicant's proposed ferry service is or will be required by the present or future public convenience and necessity.

C.

Applicant's Proposed Service is Consistent with the Public Interest and the State's Transportation Policy

HRS § 271G-2 sets forth the declaration of policy recognized by the legislature of the State with regard to transportation by water. Specifically, the legislature recognizes that the transportation of persons and property by water "constitutes a business affected with the public interest". HRS § 271G-2. In addition, the legislature has expressed its

⁴⁹Applicant's Reply Statement of Position at 6.

⁵⁰Consumer Advocate's Statement of Position at 11.

support for the Applicant to establish an inter-island fast ferry service and specifically requested the commission to "expeditiously process any required certification" for the Applicant.⁵¹

Applicant's proposed ferry service will provide more transportation options for persons and property at an expected lower cost than the existing modes of transportation. Applicant states that its proposed ferry service is expected to create new job growth in the form of approximately three hundred (300) full-time or part-time jobs to support the operation and maintenance of the ferries.⁵²

Ferry travel may also encourage more families and independent business persons to travel to the neighbor islands, with the resultant positive effect on the economy. Ferry travel would also allow individuals and groups (where air travel for a group may be cost prohibitive) an opportunity to make neighbor island trips. The legislature and governor of the State of Hawaii have both formally expressed their support for the proposed ferry service,⁵³ along with other government, community and business leaders.⁵⁴

⁵¹Haw. S. Con. Res. 149, 22nd Leg. 2004.

⁵²Application at 19.

⁵³Application, Exhibits 24 and 25.

⁵⁴Application, Exhibit 26.

Based on the above, the commission finds that the proposed ferry service is consistent with the public interest and the transportation policy set forth in HRS § 271G-2.⁵⁵

The commission recognizes that issues were raised by some at the public hearings about the impact of the proposed ferry system on the environment and suggesting that an environmental assessment be done on the proposed ferry services' effect on the surrounding environment. We believe that although these are important issues that should be addressed, they need not be addressed in this particular decision and order, since the determination of whether the proposed ferry service and its effect on the harbors and surrounding areas require an environmental assessment is currently being reviewed and

⁵⁵In addition to the transportation policy set forth in HRS § 271G-2, Applicant's proposed ferry service is also consistent with the objectives set forth in HRS § 226-17, which states, in relevant part, that transportation objectives for the State shall be directed toward developing:

- (1) An integrated multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe, and convenient movement of people and goods.
- (2) A variety of carriers to offer increased opportunities and advantages to interisland movement of people and goods.
- (3) Increased capacities of airport and harbor systems and support facilities to effectively accommodate transshipment and storage needs.
- (4) Encouragement of the development transportation systems and programs which would assist statewide economic growth and diversification.

addressed by the DOT,⁵⁶ and the legislature has determined that this Application should be processed expeditiously.⁵⁷

We find it necessary, however, to condition our authorization in this docket upon Applicant's showing, to the satisfaction of the commission, that Applicant has complied with all applicable federal and state laws, rules and regulations, including, without limitation, matters relating to the Environmental Impact Statement Law ("EIS"), under Chapter 343, HRS, to the extent applicable to ensure that all such requirements are appropriately addressed.

D.

Applicant's Proposed Rules, Regulations and Rates

We agree with the Consumer Advocate that there is no historical data to determine whether the proposed rates are just and reasonable. In light of this, and the nascent nature of Applicant's proposed service, we will not render any findings regarding the reasonableness of Applicant's proposed rates in this proceeding. The commission reserves its right, however, to review the reasonableness of Applicant's rates in its next rate case proceeding.

In addition, upon a review of Applicant's proposed rules and regulations, along with a consideration of the Consumer Advocate's recommendations that were not opposed by Applicant, (i.e., that Applicant be required to submit quarterly

⁵⁶Applicant's Reply Statement of Position at 19.

⁵⁷Haw. S. Con. Res. 149, 22nd. Leg. 2004.

reports to the commission and Consumer Advocate regarding the number of cancellations and that Applicant's proposed tariff include contact information for dispute resolution), the commission finds Applicant's proposed rules and regulations to be reasonable, subject to the terms and conditions noted below.

E.

Request for Waiver of HAR § 6-61-75(b)(1)

Applicant requests that the requirements of HAR § 6-61-75(b)(1), which requires that, in general, an applicant must submit an audited balance sheet along with a financial statement, be waived because Applicant has not yet begun day-to-day operations, and thus does not have an audited balance sheet.⁵⁸ Applicant proposes to submit its reviewed balance sheet in place of the audited balance sheet. Applicant represents that it has filed the same financial statements to satisfy MaRad requirements, which usually requires audited financial statements, for the same reason.

We find Applicant's request in this instance to be reasonable. Accordingly, for the purposes of this decision and order only, the commission will grant Applicant's request to waive the HAR § 6-61-75(b)(1) requirement of an audited balance sheet and will accept its unaudited financial statements. The commission reserves its right, however, to request that Applicant provide the commission with audited financial statements in the future.

⁵⁸Application at 14.

VII.

Summary of Findings and Conclusions

Upon a review of the record, the commission finds that Applicant is fit, willing and able to properly perform the proposed service and to conform to Chapter 271G, HRS, and the requirements, rules and regulations of the commission. We also find that the proposed service is or will be required by the present or future public convenience and necessity and that such service is consistent with the public interest and the transportation policy of the State. Accordingly, we conclude that Applicant's request for operating authority, a CPCN, as set forth in the Application, should be granted, subject to the conditions discussed herein, and more specifically, in the ordering paragraphs below.⁵⁹

IX.

Orders

THE COMMISSION ORDERS:

1. Applicant is granted a CPCN to operate as a common carrier by water of passengers and property, between the islands

⁵⁹We find the Consumer Advocate's recommended conditions in its Statement of Position to be reasonable. Therefore, we conclude that such conditions should be adopted in their entirety and be incorporated as part of this decision and order.

of Oahu and Kauai, Maui and Hawaii, subject to the following conditions:

(a) Applicant shall submit to the commission and the Consumer Advocate documentation that it has secured the appropriate financing for the proposed ferry service;

(b) Unless ordered otherwise, Applicant shall submit quarterly status reports to the commission and the Consumer Advocate describing, among other things, the status of its progress in the construction and delivery of its vessels and in any improvements undertaken at the harbor facilities, the costs of such improvements, and the status of its progress in securing the appropriate financing,⁶⁰ described herein. The first quarterly status report is due within one hundred and twenty (120) days from the date of this decision and order, and each report filed thereafter shall subsequently be due within 120 days from the due date of the previous report;

(c) Applicant shall provide a copy of the certificate from the United States Coast Guard for each of its two (2) vessels;

(d) Applicant shall amend its tariff, as recommended by the Consumer Advocate, to include information on resolving customer complaints, including Applicant's and the commission's mailing address, telephone number, and the commission's facsimile number;

⁶⁰Any confidential information required to be reported to the commission may be submitted to the commission pursuant to Protective Order No. 21190.

(e) Applicant shall post its tariff on its website;

(f) Applicant shall provide evidence that it is in full compliance with all applicable EIS, NOAA, and the U.S. Coast Guard laws, rules, regulations and requirements, and any and all other applicable federal and state laws, rules and regulations and requirements that are necessary to operate its proposed ferry service within the State;

(g) Applicant shall provide evidence that it is in compliance with the City's permit process for wastewater disposal; and

(h) Applicant shall provide a copy of the final agreement between Applicant and the DOT, presently in the form of the LOI, and any and all leases, licenses, permits, and agreements for the use of harbor facilities from or with the DOT.

2. Applicant's request to waive the requirements of HAR § 6-61-75(b)(1) is granted. The commission will accept, for the purposes of this decision and order only, copies of Applicant's unaudited financial statements.

3. Applicant shall comply with all of the commission's requirements for common carriers by water, including, but not limited to, filing a lawful tariff, paying a fee of \$60 for water carrier gross revenues, and filing all appropriate insurance documents relating both to the vessels and to the harbor facilities, pursuant to the LOI and consistent with HRS § 271G-13.


4. Unless stated otherwise, the Consumer Advocate's recommended conditions in its Statement of Position are adopted in their entirety and incorporated as part of this decision and order.

5. Unless ordered otherwise, Applicant shall comply with the foregoing requirements no later than ninety (90) days prior to commencement of service, or October 31, 2006, whichever comes first. Failure to abide by any portion of this decision and order within the specified time constitutes cause for this commission to void this decision and order.

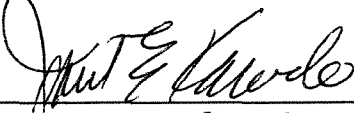
6. Applicant shall not commence operations under this decision and order until it has received written confirmation from the commission that all requirements and conditions stated herein have been met to the satisfaction of the commission.

DONE at Honolulu, Hawaii December 30, 2004.

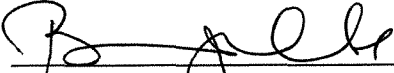
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

04-0180.s1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21524 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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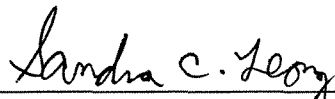
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DATED: December 30, 2004