BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of
ROY SHIELDS, dba MAC Q
DOCKET NO. 05-0147
For Expedited and Temporary Authority for Extension of
Motor Carrier Certificate.

DECISION AND ORDER NO. 21879

Filed June 17, 2005
At 12:00 o'clock P.M.

Karen Higash
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
ROY SHIELDS, dba MAC Q ) Docket No. 05-0147)
For Expedited and Temporary ) Decision and Order No. 21879
Authority for Extension of )
Motor Carrier Certificate. )

DECISION AND ORDER

By this Decision and Order, the commission approves
ROY SHIELDS, dba MAC Q's ("Mac Q") June 16, 2005 request for
expedited and temporary authority to transport property in the
general commodities classification, on the island of Oahu, in
accordance with its agreement with Dependable Hawaiian Express,
Inc. dba DHX ("DHX"), as described further below, and subject to
certain conditions described herein.

I.

Expedited and Temporary Request for Approval

Mac Q seeks expedited and temporary commission approval
for an extension of its certificate of public convenience and
necessity ("CPCN") number 2063-C to include the general commodities
In support of its expedited and temporary request, Mac Q represents:

1. In January 2003, Mac Q completed an application from the commission to extend its CPCN to include the general commodities classification ("Application"). Mac Q requested the services of Pacific Academy & Accounting Services, Inc. ("Pacific Academy") to process its Application with the commission. Mac Q represents that after completing the Application, Mac Q was assured by Pacific Academy that the Application was approved by the commission and that the request for extension had been granted. Since that time,

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1Mac Q was granted its CPCN by the commission to operate as a common carrier of property over irregular routes in the dump truck classification by Decision and Order No. 18547, filed on May 16, 2001 in Docket No. 01-0020.

2The instant request, filed on June 16, 2005, and attached hereto as Exhibit "1", for temporary extension of its motor carrier authority applies only to the specific facts contained in this Decision and Order.

3A copy of the Application was submitted by Mac Q on June 16, 2005 as supporting evidence only to the assertion that Mac Q had indeed completed an application for extension of its CPCN and has been under the belief that its Application for extension of its motor carrier was approved by the commission.

4Per telephone conversation with a commission staff member on June 16, 2005, Mr. Bill Bathe of Pacific Academy stated that the Application had been submitted on behalf of Mac Q, and that "probably, Mac Q did not follow up on commission-requested documentation". The commission has no record of any application submitted by Pacific Academy on behalf of Mac Q. The commission also takes official notice, pursuant to Hawaii Administrative Rules § 6-61-48, of all commission records pertaining to Mac Q. In particular, the commission notes that on June 15, 2005, the commission’s enforcement officer issued Mac Q a citation (Citation No. 0718), and assessed Mac Q a civil penalty of $1,000 for
Mac Q has been under the impression that its authority under its CPCN had been extended and that it was lawful for it to transport property in the general commodities classification.

2. Mac Q is currently under an agreement with DHX, to haul general commodities, (i.e., bottled water) for DHX for ultimate transport to Japan ("Current Service"). To timely and adequately complete the Current Service, Mac Q needs approval from the commission, on an expedited basis, for temporary authority in the general commodities classification.

As such, Mac Q asserts that there is an immediate and urgent need for the Current Service so that it may honor its obligation to DHX.

II.
Discussion

HRS § 271-16 provides, in relevant part:

To enable the provision of service for which there is an immediate and urgent need to a

operating without the requisite authority. On June 16, 2005, our records indicate that Mac Q paid the assessed penalty in full. The commission staff has also issued a warning to DHX for violating Hawaii Revised Statutes ("HRS") § 271-27(h) for hiring a motor carrier without appropriate authority under commission regulations.

The Application was signed and notarized on January 23, 2003.

The agreement to provide transportation service to DHX appears to have been an oral agreement. On June 16, 2005, Mac Q provided the copy of a signed statement by Mac Q, witnessed by the Hawaii Regional General Manager for DHX, Mr. Timothy Forkner, confirming that Mac Q has contracted with DHX to provide transportation services for DHX (attached hereto as Exhibit "2").
point or points or within a territory having no carrier service capable of meeting the need, the public utilities commission may, in its discretion and without hearings or other proceedings, grant temporary authority for service by a common carrier or a contract carrier by motor vehicle, as the case may be. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time that the commission shall specify, but for no more than a period of one-hundred-twenty days for any one immediate and urgent need.

Mr. Forkner, of DHX, orally represented to commission staff that Mac Q was the only available motor carrier able to undertake the Current Service. Additionally, by e-mail correspondence dated June 16, 2005 (attached hereto as Exhibit "3"), DHX described the Current Service in more detail. DHX states that the Current Service involves Mac Q transporting to Pier One in Honolulu containers of bottled water that are shipped from Kona, Hawaii. The loads shipped from Kona average as much as thirty (30) to fifty (50) containers per barge. DHX states that this amount is projected to at least double in the next several months.

DHX asserts that it is unable to keep up with the existing work load associated with the Current Service without the transportation services of Mac Q and further, that there is an urgent need to maintain the efficient shipment of the bottled water to avoid causing shipping problems and to prevent detention charges to the customers. While it has used other truckers in the past, DHX states that such truckers are not available for the

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7By telephone call with commission staff on June 16, 2005.
Current Service and in particular, drivers holding a commercial drivers license are in great demand.\footnote{In this regard, DHX states that it has started its own in-house commercial drivers license training process, including covering the cost of such training, however, it remains unable to keep a full staff of qualified drivers.}

For its part, Mac Q relied on Pacific Academy and its assurances that Mac Q’s Application had been submitted for approval to the commission and that, in fact, it had been approved by the commission and its motor carrier authority had been extended to include the general commodities classification. While this is no excuse for violating regulatory requirements, it indicates at least an attempt to comply with applicable regulations.

Based on the above and Mac Q’s representations, we find Mac Q’s June 16, 2005 request for expedited and temporary authority to be reasonable and consistent with the public interest. We also find that Mac Q has adequately complied with the requirements set forth under HRS § 271-16. However, in light of the facts and circumstances of this matter, we will only grant Mac Q temporary authority to transport property in the general commodities classification on the island of Oahu in accordance with its agreement with DHX for the Current Service, and subject to the following conditions:

1. Mac Q’s temporary authority to transport property in the general commodities classification on the island of Oahu, in accordance with its agreement with DHX for the Current Service shall not exceed
one hundred twenty (120) days from the date of this
Decision and Order. Consistent with HRS § 271-16,
Mac Q shall file an application for permanent
authority to extend its motor carrier authority
within ten (10) days from the date of this
Decision and Order.

2. Mac Q shall ensure that the Current Service
performed for DHX is being performed at
DHX’s approved tariff rates filed with the
commission in accordance with HRS §§ 271-20 and
271-21.

3. Mac Q shall comply with the safety requirements of
the Motor Vehicle Safety Office, Department of
Transportation, State of Hawaii ("Motor Vehicle
Safety Office").

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Mac Q presently has filed tariff rates for its dump truck
operations only. Should Mac Q ultimately receive commission
approval for a permanent extension of its motor carrier authority,
Mac Q will, at that time, be required to submit tariff rates for
the general commodities classification. DHX itself is a regulated
motor carrier under Chapter 271, HRS and is the holder of
CPCN number 95-C, authorizing it to operate as a common carrier of
general commodities over irregular routes, on the island of Oahu.
See Decision and Order No. 11608, filed on May 5, 1992, in
Docket No. 7180.
III.

Orders

THE COMMISSION ORDERS:

1. Mac Q's June 16, 2005 request for expedited and temporary authority to extend its current motor carrier authority is approved, subject to the following conditions:

   a. Mac Q's temporary authority to transport property in the general commodities classification, in accordance with its agreement with DHX for the Current Service, shall not exceed one hundred twenty (120) days from the date of this Decision and Order. Consistent with HRS § 271-16, Mac Q shall file an application for permanent authority to extend its motor carrier authority within ten (10) days from the date of this Decision and Order.

   b. Mac Q shall ensure that the Current Service performed for DHX is being performed at DHX's approved tariff rates, filed with the commission in accordance with HRS §§ 271-20 and 271-21, and shall provide the commission evidence of same within ten (10) days of this Decision and Order.

   c. Mac Q shall comply with the safety requirements of the Motor Vehicle Safety Office.

Mac Q's decision to perform the Current Service for DHX, as authorized by this Decision and Order, constitutes acceptance and
agreement with the conditions and requirements of our approval, as set forth above.

2. Failure to adequately comply with the requirements set forth in this Decision and Order may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

3. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii JUN 17 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso, Chairman

APPROVED AS TO FORM:

By Wayne H. Kimura, Commissioner

By Janet E. Kawelo, Commissioner

Benedyne Stone
Commission Counsel

shields.rpr
To whom it may concern,

we are Mac- Q Trucking owner Roy Shields.

we have PVC 2063 for dumping and we applied for an extension for general Commodities

a year ago through Mr. Bill Bathe our book keeper.

He assured us that we received an extension for our PVC this year in January.

We just found out that we do not have the authority to haul containers in the middle of a contract job. We need to complete the job according to the contract or we loose everything.

We will indirectly apply for the extension and would like a temporary Authority. We have held our PVC since 2001 and are currently in contract with DTHX and Offroad express, hauling 30 ton+ containers from NYK to YB. Our driver have 20+ years experience and this job takes tremendous skill and we are the only ones that know how to do the job. On 6/15/2007 one of our drivers recieved a citation and we were shocked to find out we do not have the authority to do our job.
According to our Agent Bill Bathe he Applied last year and This January he called us saying that we got the Extension. Due to this if we are not able to finish our Job we will be ruined and loose everything. we ask for permission to continue the work and we will apply for the new extension.

Sincerely

Mac - Q

Thank you.

Mr Roy Shield
94242 Leowahine St
Waipahu HI 96797
Ph#: 479-4401
Drivers that will lose their job and income

Mr Derek Leping
Peter Libin
John Saino

All three drivers are the sole source of income for their families and if we lose the account they are in trouble.

We have been trying to contact Mr Bill Biddle all day yesterday and today but he is not returning the calls.
AGREEMENT

I, Roy Stield, owner of Mac Q Trucking

hereby confirm that I have been contracted by DHX, Inc. as their outsource trucking company under verbal contract.

By signing below I agree to continue to provide my services as an independent contractor until further notified by DHX, Inc.

AGREED BY:       DATE:

Roy Stield
Print Name

Signature

WITNESSED BY:       DATE:

Timothy Forkner
Regional General Manager Hawaii

f:/scr/agreements/macq.doc
703 N. Nimitz Highway; Honolulu, HI 96817
Ph: 808-841-7311 ext. 112
Fax: 808-791-2786

To: PAUL NAKAYAMA - PUC
From: TIM F. - DHX HNL

Fax: 586-2066
Date: 06-16-05

Phone: 
Pages: 2 (COVER PAGE INCLUDED)

Re: MAC Q

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

PLEASE SEE ATTACHED AGREEMENT.

THANK YOU...

We currently provide domestic or international ocean service (containerload or LCL) or airfreight service from any point in the USA to any point in the world. Please call us with questions or requests for rate quotes. You'll appreciate the Dependable Difference - and so will your customers!
"Tammie Chang"
<tcchang@dhx.com>
06/16/2005 03:04 PM

To <paul.m.nakayama@hawaii.gov>
cc
bcc
Subject Mac Q

Paul,

See email below from Tim Forkner.

Please contact us should you have any questions.

Thank you,

Tammie Chang
Accounts Payable / Administrative Assistant
DHX Ocean/Air Freight - Oahu
703 N. Nimitz Highway
Honolulu, Hawaii 96817
Tel: 808-841-7311 ext. 120
Fax: 808-791-2786 or 310-868-5475
Email: tchang@dhx.com

www.dhx.com

~ You'll appreciate the Dependable Difference - and so will your Customers! ~

From: Tim Forkner [mailto:tforkner@dhx.com]
Sent: Thursday, June 16, 2005 2:58 PM
To: Tammie Chang
Subject: FW:

Paul, DHX has been using Mac Q. Trucking to help us haul containers of bottled water between Young Brothers and Pier one. These loads are being shipped from Kona and average as much as 30 to 50 containers on any given barge. This amount is projected to increase at least two fold in the next several months. We are unable to keep up with the current work load for this account. There is an urgent need that these moves continue to be transported on time or it will cause equipment problems for Young Brothers as well as huge detention charges to the customer(s).

We have hired truckers in the past which include A's trucking and Don's Makiki. However no truckers are available as everyone is extremely busy. CDL Drivers are in great demand. Our hiring efforts continue each and every week but it is a slow process. We have also started an in house CDL training process and are covering all the cost of the training but we are still are unable to keep fully staffed with drivers.
Call me if you have any question at 841-7311.

Thank you,

Tim
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No 21879 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

ROY SHIELDS, dba MAC Q
1317 Makiki Street, #101
Honolulu, HI 96822

DATED: JUN 17 2005

Karen Higash