

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of the-----)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to)
Investigate Whether to Continue)
the Zone of Reasonableness Pilot)
Program for Motor Carriers, with)
or Without Modification, or to)
Terminate the Zone.)
_____)

DOCKET NO. 2007-0159

ORDER NO. 23502

Filed June 22, 2007
At 8 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

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

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of the-----))	
PUBLIC UTILITIES COMMISSION)	Docket No. 2007-0159
Instituting a Proceeding to)	
Investigate Whether to Continue)	Order No. 23502
the Zone of Reasonableness Pilot)	
Program for Motor Carriers, with)	
or Without Modification, or to)	
Terminate the Zone.)	
)	

ORDER

By this Order, the commission opens this docket to investigate whether it is in the public interest to continue the Zone of Reasonableness pilot program ("Zone") for motor carriers, with or without modification, or to terminate the Zone. The commission names the HAWAII STATE CERTIFIED COMMON CARRIERS ASSOCIATION, INC. ("HSCCCA"), HAWAII TRANSPORTATION ASSOCIATION, INC. ("HTA"), WESTERN MOTOR TARIFF BUREAU, INC. ("WMTB"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"),¹ as parties to this proceeding.

HSCCCA, HTA, and WMTB shall file comments, recommendations, and data, by August 31, 2007, on whether to

¹The Consumer Advocate is an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

continue, modify, or terminate the Zone.² The Consumer Advocate shall file comments and recommendations by September 28, 2007, on whether to continue the Zone, with or without modification, or to terminate the Zone.

Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty days from the date of this Order, with copies served on HSCCCA, HTA, WMTB, and the Consumer Advocate. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's Rules of Practice and Procedure.

I.

Background³

On January 1, 2004, in In re Public Util. Comm'n, Docket No. 03-0245, the commission implemented a one-year Zone pilot program governing the commission's rate review and approval process for motor carriers of passengers and property.⁴ The commission subsequently extended the Zone pilot program for an additional three years, from January 1, 2005 up to and

²Individual motor carriers must also submit their comments and data to the commission by August 31, 2007.

³The commission takes administrative notice of the information and data on file governing motor carriers of passengers and property.

⁴Docket No. 03-0245, Decision and Order No. 20704, filed on December 5, 2003. The parties in Docket No. 03-0245 are HSCCCA, HTA, WMTB, and the Consumer Advocate.

including December 31, 2007.⁵ In extending the Zone up to and including December 31, 2007, the commission held, in relevant part:

2. It reserves the right, at any time, to: (A) adjust or change the Zone of Reasonableness or its applicable requirements, in order to "fine tune" the Zone concept; or (B) terminate the Zone, upon a finding that the pilot program appears to adversely affect the public interest.

3. Upon the completion of the pilot period, the Zone of Reasonableness will continue with base rates being established on January 1 of each year under the same terms and conditions, unless otherwise terminated or modified by the commission.

Decision and Order No. 21490, at 12.

The terms, conditions, and parameters of the Zone are set forth in Section IV of Decision and Order No. 21490.

In sum:

For the Zone's fourth calendar year, from January 1, 2007 up to and including December 31, 2007 ("fourth year"):

1. A motor carrier's base rate is the applicable, approved tariff rate on file with the commission, effective as of January 1, 2007.

For a new motor carrier authorized or certificated by the commission after January 1, 2007, that carrier's base rate is its initial, approved tariff rate on file with the commission.

2. The Zone will consist of points within the range of plus or minus ten (10) per cent from a motor carrier's base rate. The total range of a carrier's Zone during the fourth year, thus, is twenty (20) per cent from its base rate.

⁵Docket No. 03-0245, Decision and Order No. 21490, filed on December 7, 2004.

A carrier's fuel surcharge rate is included in the Zone's range, i.e., is rolled into the carrier's Zone.

Also, a carrier's base rate is fixed, and does not fluctuate or compound with each new, approved rate change.

Decision and Order No. 21490, Section IV.C, The Fourth Year: January 1, 2007 to December 31, 2007, at 9 - 10; see also id., Section IV.D, Common Parameters, at 10 - 11.

II.

Discussion

A.

Investigation and Named Parties

HRS § 269-7 states, in relevant part:

- (a) The public utilities commission and each commissioner shall have the power to examine the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations . . .

.

- (c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.

HRS § 269-7(a) and (c) (emphasis added);⁶ see also HRS § 271-2 (the provisions of HRS chapter 271 and of HRS chapter 269, not inconsistent with HRS chapter 271, shall govern its administration).

As noted in Ordering Paragraph No. 2 of Decision and Order No. 21490, upon the completion of the pilot period on December 31, 2007, the Zone "will continue with base rates being established on January 1 of each year under the same terms and conditions, unless otherwise terminated or modified by the commission."⁷ Before making any decision on the future status of the Zone, the commission opens this docket to solicit comments and data to determine whether to continue, modify, or terminate the Zone.⁸ This is the same approach previously undertaken by

⁶Commission investigatory authority is also set forth in HRS § 269-15 and HAR § 6-61-71.

⁷Decision and Order No. 21490, Ordering ¶ 2, at 12.

⁸As stated in Decision and Order No. 21490:

Upon the completion of the pilot period, the Zone will be continued, unless otherwise terminated or modified by the commission.

During the fourth (4th) quarter of 2005, 2006, and 2007, the commission intends to solicit comments and data to determine whether to continue, modify, or terminate the program.

Decision and Order No. 21490, at 11.

the commission that resulted in its decision to extend the Zone for three years, up to and including December 31, 2007.⁹

The commission names HSCCCA, HTA, WMTB,¹⁰ and the Consumer Advocate as parties to this proceeding.

Attached as Exhibit 1 is a copy of the commission's request for comments and data the commission sent to the parties and individual motor carriers, seeking responses by August 31,

⁹See Request for Comments: Zone of Reasonableness, dated July 30, 2004; and Decision and Order No. 21490, Section II, Industry Comments, at 2 - 5, and Section III, Zone of Reasonableness: Review and Findings, at 6 - 7.

¹⁰As described by the commission in Decision and Order No. 20704:

HTA is a private, non-profit trade organization dedicated to serving and assisting the ground transportation industry in Hawaii. It comprises approximately 350 regulated carriers, private carriers, and allied industry members. HTA serves as a central source of information by conducting research and education programs for its members. It also represents the industry's interests before local, state, and federal agencies.

HSCCCA operates as a tariff agent on behalf of its member carriers of passengers, with a maximum seating capacity of twenty-five (25), for the purpose of filing tariffs with the commission. Its membership is limited to Oahu-based carriers.

WMTB operates as a tariff bureau on behalf of its member carriers of passengers and property, for the purpose of filing tariffs with the commission. WMTB's membership is statewide, and it has on file with the commission numerous tariffs with statewide application, including its household goods, dump truck, and passenger carrier tariffs.

A motor carrier's participation and membership in these respective organizations is voluntary. Carriers have the option of filing their individual tariffs [directly] with the commission.

Decision and Order No. 20704, at 7 - 8.

2007.¹¹ HSCCCA, HTA, and WMTB shall file any comments, recommendations, and data by August 31, 2007, on whether to continue, modify, or terminate the Zone. The Consumer Advocate shall then file comments and recommendations by September 28, 2007, on whether to continue the Zone, with or without modification, or to terminate the Zone. Following its review of the data and comments submitted, the commission will decide on whether to continue the Zone, with or without modification, or to terminate the Zone.

The commission notes that in implementing the Zone in January 2004 and subsequently extending the Zone for an additional three years (up to and including December 31, 2007), the commission found that:

1. "The available information and data continues to suggest that the motor carrier industry today is a highly competitive industry statewide."¹²

2. "HSCCCA, HTA, WMTB, and the individual motor carriers that responded to the commission's information requests [in Docket No. 03-0245], overwhelmingly support the continuation of the Zone."¹³ "Other than the comments of one (1) motor

¹¹The commission specifically seeks input on: (1) whether the Zone program should be continued, and if so, whether any modifications or conditions are necessary or desirable to protect the public interest; or (2) whether the Zone should be terminated, upon a finding that the Zone program appears to adversely affect the public interest. See Exhibit 1, attached.

¹²Decision and Order No. 21490, at 7; see also Decision and Order No. 20704, at 16.

¹³Decision and Order No. 21490, at 7.

carrier, the Parties and other motor carriers did not voice any affirmative opposition to the continuance of the Zone."¹⁴

3. "The factors cited by the Parties [in Docket No. 03-0245] and carriers in continuing the Zone include: timely rate relief in response to rising operating costs (fuel, personnel, equipment, insurance) and other changes in market conditions; opportunity for additional operating revenues; level playing field; a good balance by protecting the consumers while enabling the carriers to earn a reasonable return on their investment; and eliminating the need for costly and time consuming documentation to support their proposed changes in rates and charges."¹⁵

The commission intends to examine whether the Zone continues to promote and facilitate a highly competitive and efficient market and is in the public interest, or conversely, whether the Zone has adversely affected the public interest. Moreover, the commission will accept written comments and feedback from the general public on the effects of the Zone.¹⁶

B.

Motions to Intervene or Participate

Interested persons have the opportunity to file timely motions to intervene or participate in this proceeding, within

¹⁴Decision and Order No. 21490, at 7 (footnote and text therein omitted).

¹⁵Decision and Order No. 21490, at 5 (footnote and text therein omitted).

¹⁶See Decision and Order No. 21490, at 11.

twenty days from the date of this Order, pursuant to HAR § 6-61-57(3)(B), with copies served on HSCCCA, HTA, WMTB, and the Consumer Advocate. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's Rules of Practice and Procedure.

III.

Orders

THE COMMISSION ORDERS:

1. This docket is opened to investigate whether it is in the public interest to continue the Zone pilot program for motor carriers, with or without modification, or to terminate the Zone.

2. HSCCCA, HTA, WMTB, and the Consumer Advocate are named as parties to this proceeding.

3. HSCCCA, HTA, and WMTB shall file any comments, recommendations, and data by August 31, 2007, on whether to continue, modify, or terminate the Zone, with copies served on the other parties. Individual motor carriers must also submit their comments and data to the commission by August 31, 2007, consistent with Exhibit 1, attached.

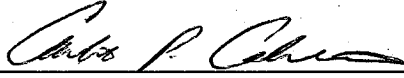
4. The Consumer Advocate shall file comments and recommendations by September 28, 2007, on whether to continue the Zone, with or without modification, or to terminate the Zone, with copies served on the other parties.

5. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with

the commission, within twenty days from the date of this Order, with copies served on HSCCCA, HTA, WMTB, and the Consumer Advocate. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's Rules of Practice and Procedure.

DONE at Honolulu, Hawaii JUN 22 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:



Michael Azama
Commission Counsel

2007-0159.eh

LINDA LINGLE
GOVERNOR



CARLITO P. CALIBOSO
CHAIRMAN

JOHN E. COLE
COMMISSIONER

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STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

e-mail: Hawaii.PUC@hawaii.gov

June 22, 2007

To: All Motor Carriers

Dwight Takahashi, President
Hawaii State Certified Common Carriers Association, Inc.

Gareth K. Sakakida, Managing Director
Hawaii Transportation Association

Robert E. Lewis, Manager
Western Motor Tariff Bureau, Inc.

From: Carlito P. Caliboso
Chairman

A handwritten signature in black ink, appearing to read "Carlito P. Caliboso".

Subject: Docket No. 2007-0159, Investigation on Whether to Continue the Zone of Reasonableness Pilot Program for Motor Carriers, With or Without Modification, or to Terminate the Zone

REQUEST FOR COMMENTS

On January 1, 2004, the Hawaii Public Utilities Commission ("Commission") implemented a one-year Zone pilot program (from January 1, 2004 up to and including December 31, 2004) whereby motor carriers were provided with the flexibility to adjust their rates by maximum annual increases of ten percent and maximum annual decreases of ten percent, without the need to provide detailed supporting financial information. The Commission subsequently extended the Zone pilot program for an additional three years, from January 1, 2005 up to and including December 31, 2007.

The Commission solicits comments and data to determine whether to continue, modify, or terminate the Zone. To assist the Commission in its review, all motor carriers, the Hawaii State Certified Common Carriers Association, Inc., Hawaii Transportation Association, and Western Motor Tariff Bureau, Inc., are requested to provide responses to the enclosed information requests. Accordingly, please submit your responses to the Commission at 465 S. King Street, Room 103, Honolulu, HI, 96813, by August 31, 2007.

Should you have any questions, please contact Mr. Paul Nakayama of the Commission's Honolulu Office, at (808) 586-3755 or by electronic mail, Paul.M.Nakayama@hawaii.gov.

CPC:MA:ac

Enclosure

c: Division of Consumer Advocacy (w/enc.)

Exhibit 1

**Docket No. 2007-0159,
Investigation on Whether to Continue the Zone of Reasonableness
Pilot Program for Motor Carriers, With or Without Modification,
or to Terminate the Zone**

Information Requests

For all motor carriers, the Hawaii State Certified Common Carriers Association, Inc. ("HSCCCA"), Hawaii Transportation Association, and Western Motor Tariff Bureau, Inc. ("WMTB"), please respond to PUC-IR-101 to PUC-IR-104, below.

PUC-IR-101 Please provide a detailed discussion on whether the Zone should be continued, modified, or terminated, and explain how your position is consistent with the public interest.

If your position is that the Zone should be terminated, please explain, based on your experience as a motor carrier, how the Zone program appears to have adversely affected the public interest.

PUC-IR-102 Please provide a detailed discussion on whether the Zone provides timely rate relief.

PUC-IR-103 If the Zone is continued with modification, please comment on whether the parameters of the Zone, currently set at maximum annual rate increases of ten percent and maximum annual rate decreases of ten percent, should increase or decrease.

PUC-IR-104 If the Zone is continued with modification, please comment on whether the parameters of the Zone should instead be set each year at a level (increases and decreases) that is tied to an economic index, such as the Honolulu Consumer Price Index.

For all motor carriers, please respond to PUC-IR-105 and PUC-IR-106, below.

PUC-IR-105 Please provide income statements for the twelve month periods ending 2004, 2005, and 2006, detailing, on a regulated basis only, your: (1) operating revenues; (2) operating expenses; and (3) operating ratio.

PUC-IR-106 Please provide an income statement for the six-month period ending June 30, 2007, detailing, on a regulated basis only, your: (1) operating revenues; (2) operating expenses; and (3) operating ratio.

PUC-IR-107 to PUC-IR-110, below, apply only to the two motor carrier tariff bureaus that operate in the State of Hawaii: HSCCCA and WMTB. HSCCCA and WMTB shall compile the requested information and data for submission to the Commission.

PUC-IR-107 For 2005, please provide the following information and data, in chart form, for passenger carriers and each property classification (general commodities; household goods; commodities in dump truck; and specific commodities), by an island or statewide basis: (1) the effective date of the rate increase or decrease filed by your tariff bureau under the Zone; (2) the percentage amount of the rate increase or decrease filed under the Zone; (3) the number of member carriers represented by the filing; and (4) the number of member carriers, if any, that chose to take independent action or otherwise "flag out" of the rate increase or decrease filed under the Zone. In addition, based on this information and data, explain how such action undertaken by your tariff bureau pursuant to the Zone continues to promote a highly competitive environment that is consistent with the public interest

Example 1:

Passenger carriers, Oahu.
Effective date: 01/01/05.
10% increase.
Number of member carriers : 100
Number of flag outs/member carriers: 3.
Public Interest Explanation:

Example 2:

Dump truck classification, statewide.
Effective date: 01/01/05.
8% increase.
Number of member carriers: 50
Number of flag outs/member carriers: 0.
Public Interest Explanation:

PUC-IR-108 For 2006, please provide the following information and data, in chart form, for passenger carriers and each property classification (general commodities; household goods; commodities in dump truck; and specific commodities), by an island or statewide basis: (1) the effective date of the rate increase or decrease filed by your tariff bureau under the Zone; (2) the percentage amount of the rate increase or decrease filed under the Zone; (3) the number of member carriers represented by the filing; and (4) the number of member carriers, if any, that chose to take independent action or otherwise "flag out" of the rate increase or decrease filed under the Zone. In addition, based on this information and data, explain how such action undertaken by your tariff bureau pursuant to the Zone continues to promote a highly competitive environment that is consistent with the public interest.

- PUC-IR-109 For 2007, please provide the following information and data, in chart form, for passenger carriers and each property classification (general commodities; household goods; commodities in dump truck; and specific commodities), by an island or statewide basis: (1) the effective date of the rate increase or decrease filed by your tariff bureau under the Zone; (2) the percentage amount of the rate increase or decrease filed under the Zone; (3) the number of member carriers represented by the filing; and (4) the number of member carriers, if any, that chose to take independent action or otherwise "flag out" of the rate increase or decrease filed under the Zone. In addition, based on this information and data, explain how such action undertaken by your tariff bureau pursuant to the Zone continues to promote a highly competitive environment that is consistent with the public interest.
- PUC-IR-110 For 2005, 2006, and the six-month period from January 1, 2007 to June 30, 2007, please identify: (1) the number of new member carriers that joined your tariff bureau, with the number of passenger carriers and property carriers separately identified; and (2) the number of member carriers that terminated membership in your tariff bureau, with the number of passenger carriers and property carriers separately identified.

CERTIFICATE OF SERVICE

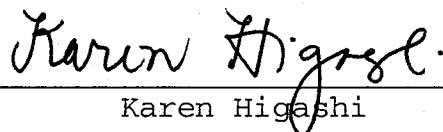
I hereby certify that I have this date served a copy of the foregoing Order No. 23502 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

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Karen Higashi

DATED: JUN 22 2007