

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Transmittal of)
HAWAII SUPERFERRY, INC.)
Filed on April 18, 2008.)
_____)

ORDER APPROVING IN PART AND REJECTING
IN PART PROPOSED TARIFF CHANGES

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By this Order, the commission approves in part and rejects in part the proposed tariff changes filed by the HAWAII SUPERFERRY, INC. ("HSF") on April 18, 2008, governing its sailing schedule, i.e., its Appendix A-3 (Revised).

I.

Background

HSF is a water carrier that presently provides transportation service between the islands of Oahu and Maui.

On April 18, 2008, HSF filed its notice of proposed tariff changes regarding its sailing schedule. Consistent with the forty-five day notice period set forth in Hawaii Revised Statutes ("HRS") § 271G-17 and Hawaii Administrative Rules ("HAR") § 6-65-5, the effective date of HSF's proposed tariff changes is June 3, 2008.¹

¹See also Commission's letter, dated May 5, 2008, to HSF's counsel (HSF's April 18, 2008 filing is subject to the forty-five day notice period set forth in HRS § 271G-17 and HAR § 6-65-5).

II.

Discussion

HAR §§ 6-65-20, 6-65-39, and 6-65-40(a) state:

§6-65-20 Sailing schedules. (a) The cargo sailing schedule, with departure and arrival dates and with time of departure and arrival, must be published in an appropriate section of each tariff. The publication does not alter the water carrier's duties with respect to the receipt and delivery of cargo as established by statutory or common law.

(b) The passenger sailing schedule with departure dates and times must be published in an appropriate section of each tariff.

§6-65-39 Tariff - rejection. The commission, at its discretion, may reject any proposed tariff change if lawful notice of the proposed change has not been given or if the proposed change fails to meet the requirements of the commission's rules or violates any commission order.

§6-65-40 Tariff - approval; suspension and investigation. (a) Upon the filing of a tariff or tariff change, the commission may:

- (1) Allow the tariff or tariff change, or any portion thereof, to take effect forty-five days after publication, filing, and posting of the proposed tariff or tariff change have been completed, in accordance with this chapter; or
- (2) Suspend the operation of the tariff or tariff change, or any portion thereof, for investigation. The commission may schedule and conduct a hearing to aid in its investigation of the justness and reasonableness of the proposed tariff or tariff change.

.

HAR §§ 6-65-20, 6-65-39, and 6-65-40(a).

By its filing, HSF proposes certain changes to the second sailing for its Summer and Winter Schedules, as follows:²

Summer Schedule (See below re start date for second daily voyage)
May 1 - December 31

<u>Departs</u>	<u>Time</u>	<u>Arrives</u>	<u>Time</u>	<u>Days</u>
.				
Honolulu	[3:00 PM] <u>3:30 PM</u>	Kahului	[6:00 PM] <u>7:00 PM</u>	[Exclude Saturday] <u>See Below</u>
Kahului	[7:00 PM] <u>8:00 PM</u>	Honolulu	[10:00 PM] <u>11:00 PM</u>	[Exclude Saturday] <u>See Below</u>

Winter Schedule (Starting January 1, 2009)
January 1 - April 30

<u>Departs</u>	<u>Time</u>	<u>Arrives</u>	<u>Time</u>	<u>Days</u>
.				
Honolulu	3:15 PM	Kahului	7:00 PM	[Exclude Saturday] <u>See Below</u>
Kahului	8:00 PM	Honolulu	11:00 PM	[Exclude Saturday] <u>See Below</u>

In support of its proposed changes to the arrival and departure times for the Summer Schedule second sailing, HSF explains:

. . . For reasons of safety and availability of harbor resources, HSF needs to modify the schedule for the second voyage on the summer schedule. HSF was recently notified by the Harbors Division, Department of Transportation, that a cruise ship is scheduled to leave Kahului Harbor at 6:00 p.m. every Monday The Alakai will arrive in Kahului Harbor at 7:00 p.m. instead of 6:00 p.m. to avoid the conflict with the cruise ship. For convenience of scheduling for HSF, its customers, and Harbors Division, HSF

²Proposed deletions are bracketed, proposed additions are underscored.

will make this change on all days of service, not only Monday.

HSF's notice of proposed tariff changes, filed on April 18, 2008, at 1.

Meanwhile, with respect to the proposed changes to its days of service, HSF explains:

We have also deleted the reference to "daily" with respect to the afternoon voyage, as that was inconsistent with the frequency of six days per week. We have also modified the notation "exclude Saturday" as the maintenance schedule may change.

HSF's notice of proposed tariff changes, filed on April 18, 2008, at 1; see also HSF's letter, dated April 28, 2008 (commencing May 9, 2008, HSF's second sailing will operate on Sunday, Monday, Wednesday, and Friday).

HSF's proposed changes to the arrival and departure times for the Summer Schedule second sailing arise out of the need to avoid having HSF, on Monday evenings, arriving in Kahului Harbor at approximately the same time that a cruise ship is departing the harbor. Based on HSF's representations, the commission approves the proposed changes to the arrival and departure times for the Summer Schedule second sailing.

HSF's proposed changes to its days of service from "exclude Saturday" to "see below," meanwhile, appears inconsistent with HAR § 6-65-20, which provides in part that the "departure and arrival dates" and "departure dates" must be published in an appropriate section of each tariff. Accordingly, consistent with HAR § 6-65-40(a)(2), the commission rejects this portion of HSF's notice of proposed tariff changes, and instructs HSF to promptly revise this portion of the sailing schedule by:

- (1) removing all of the references to "see below" and the paragraph that HSF refers to when it states "see below;" and
- (2) insert in its place Sunday, Monday, Wednesday, and Friday.

III.

Orders

THE COMMISSION ORDERS:

1. HSF's notice of proposed tariff changes, filed on April 18, 2008, governing its sailing schedule, is approved in part and rejected in part, consistent with the terms of this Order.


2. HSF's proposed changes to the arrival and departure times for the Summer Schedule second sailing will take effect, effective from June 3, 2008.

3. HSF's proposed changes to its days of service from "exclude Saturday" to "see below," are rejected. Instead, HSF shall promptly revise this portion of the sailing schedule by:
(A) removing all of the references to "see below" and the paragraph that HSF refers to when it states "see below;" and
(B) insert in its place Sunday, Monday, Wednesday, and Friday. Said revisions will take effect, effective from June 3, 2008.


4. By May 30, 2008, HSF shall file its revised sailing schedule, with the applicable issued and effective dates. The revised sailing schedule shall incorporate: (A) the changes to the arrival and departure times for the Summer Schedule second sailing approved by this Order; and (B) the changes to the days of service required by this Order.

DONE at Honolulu, Hawaii MAY 21 2008.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

HSF.Order.05-08.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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