

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HONE HEKE CORPORATION,)
dba EXPEDITIONS)
For a General Rate Increase.)
_____)

DOCKET NO. 2008-0026

ORDER SUSPENDING APPLICATION

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

PUBLIC UTILITIES
COMMISSION

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OF THE STATE OF HAWAII

In the Matter of the Application of))	
HONE HEKE CORPORATION,)	Docket No. 2008-0026
dba EXPEDITIONS)	
)	
For a General Rate Increase.)	
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ORDER SUSPENDING APPLICATION

By this Order, the commission suspends the application for approval of a general rate increase filed by HONE HEKE CORPORATION, dba EXPEDITIONS ("Hone Heke"), on June 27, 2008,¹ and opens an investigation to examine the merits of Hone Heke's Application.

I.

Background

Hone Heke is a water carrier authorized to transport passengers and property between the islands of Lanai and Maui.² Pursuant to its Tariff No. 2, Hone Heke provides water carrier transportation service between: (1) Lahaina Harbor, Maui, and

¹Application For General Rate Increase; Oath; Certificate of Service; Exhibits 1 to 14; and Verification (collectively, "Application"). The Parties are Hone Heke and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

²In re Hone Heke Corp., dba Expeditions, Docket No. 6736, filed on November 5, 1990 (certificate of public convenience and necessity granted to Hone Heke).

Manele Harbor, Lanai; and (2) between Maalaea Harbor, Maui, and Manele Harbor, Lanai. Hone Heke's water carrier operations are subject to the commission's jurisdiction.

On February 11, 2008, Hone Heke filed its Notice of Intent to file a general rate increase application, pursuant to HAR § 6-61-85(a).³ On June 27, Hone Heke filed its Application, seeking the commission's approval to: (1) increase its fares for certain of its passenger classifications; and (2) establish two new passenger classifications and corresponding fares, designated as Guest-Adult and Guest-Child, for passengers who are guests of the Four Seasons Hotels on Maui and Lanai. Hone Heke does not seek to increase any of its fares associated with the transportation of property.

Hone Heke's present and proposed fares for each passenger classification are as follows:

<u>Classification</u>	<u>Present Fare</u>	<u>Proposed Fare</u>	<u>Proposed Increase</u>	<u>Percentage Increase</u>
Regular Adult	\$25.00	\$30.00	\$5.00	20%
Regular Child	\$20.00	\$20.00	None	None
Resident Senior	\$10.00	\$10.00	None	None
Kamaaina Adult	\$20.00	\$25.00	\$5.00	25%
Kamaaina Child	\$10.00	\$10.00	None	None
Community/ Religious Group	\$10.00	\$10.00	None	None
Kamaaina Coupon	6 tickets/ Book	6 tickets/ \$125.00	6 tickets/ \$25.00	25%
Commercial Employer	\$15.00	\$20.00	\$5.00	33%
Guest-Adult* (Four Seasons Hotel)	\$25.00	\$30.00	\$5.00	20%
Guest-Child* (Four Seasons Hotel)	\$20.00	\$20.00	None	None

*Formerly a sub-set of the Regular Adult and Regular Child Passenger Classifications, respectively.

Note: Consistent with Hone Heke's tariff, its Present Fares are listed exclusive of the general excise tax it assesses per fare. As part of

³Notice of Intent; and Certificate of Service, filed on February 11, 2008.

its Application, Hone Heke seeks to list its Proposed Fares, above, inclusive of the general excise tax per fare.

Hone Heke notes that since the commencement of its water carrier operations in 1990, it has not increased its fares. Nonetheless, despite its best efforts throughout the ensuing years to improve its operational and fuel efficiencies, cost increases related to fuel, insurance, wages and benefits, and other operational expenses, together with the subsidization of its passenger operations by its other operations, necessitates an increase in certain of its passenger fares. In particular: (1) for the calendar year ending 2007, Hone Heke reported a net operating loss of \$103,830; and (2) for the calendar year ending 2008, Hone Heke projects a net operating loss of approximately \$113,670, without the requested increase in its fares.

II.

Discussion

HRS § 271G-16 provides in relevant part:

Rates, fares and charges of common carriers by water. (a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates,

charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe

classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16 (boldface in original).

HRS § 271G-17 states in relevant part:

Tariffs of water carriers. (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect.

The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed,

HRS § 271G-17 (boldface in original) (emphasis added);⁴ see also HAR §§ 6-61-94 (water carrier tariff changes); 6-65-5 (water carrier tariff change - posting); and 6-65-30 (water carrier tariff changes or revisions).

HAR § 6-65-40, governing the suspension and investigation of tariff changes proposed by a water carrier, provides in relevant part:

(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 all been completed, in accordance with this chapter; or
- (2) Suspend the operation of the tariff or tariff change, or any portion thereof,

⁴In addition, HRS § 271G-23(a) provides:

Hearings. (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

HRS § 271G-23(a) (boldface in original).

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.

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(c) A tariff suspension ordered by the commission may not exceed six months from the date of the issuance of the commission's order suspending the operation of the tariff. The tariff or tariff change will take effect, if the commission fails to issue a final order within the six-month period.

HAR § 6-65-40 (emphasis added).

A.

Suspension

To allow interested persons the opportunity to comment on Hone Heke's requests, the commission will hold public meetings on Hone Heke's Application on the islands of Maui and Lanai.⁵ Accordingly, consistent with HRS § 271G-17(d) and HAR § 6-65-40, the commission will suspend Hone Heke's Application for a period of up to six months from the date of this Order, and opens an investigation to examine the merits of Hone Heke's Application.

To ensure the firsthand dissemination of the applicable Notice of Public Meetings to affected customers, and to provide them with the opportunity to submit written comments to the commission and attend the public meeting or meetings to express their views to the commission, the commission will direct Hone Heke to prominently post copies of the Notice of Public

⁵The commission provided the Parties copies of the Notice of Public Meetings.

Meetings at each of its port locations, and distribute copies of the Notice of Public Meetings to its customers at its port locations. Hone Heke shall also submit to the commission, with copies served upon the Consumer Advocate, signed statements from an authorized representative, confirming compliance with the above-noted tasks.

B.

Proposed Stipulated Prehearing Order

The Parties shall submit a stipulated prehearing order to the commission for the commission's review and consideration. If the Parties are unable to agree on a stipulated prehearing order, each party shall submit its own proposed prehearing order.

III.

Orders

THE COMMISSION ORDERS:

1. Hone Heke's Application, filed on June 27, 2008, is suspended for a maximum period of up to six months from the date of this Order, and an investigation is instituted to examine the merits of Hone Heke's Application.

2. Hone Heke shall, up to the date of the applicable public meetings: (A) prominently post copies of the applicable Notice of Public Meetings at its port locations; and (B) distribute copies of the Notice of Public Meetings to its customers at its port locations. Hone Heke shall also submit to the commission, with copies served upon the Consumer Advocate, a

signed statement from an authorized representative, confirming compliance with the above-noted tasks.

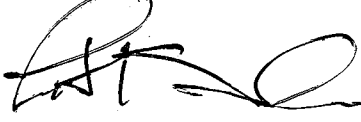
3. The Parties shall submit a stipulated prehearing order to the commission within thirty calendar days from the date of this Order, for the commission's review and consideration. If the Parties are unable to agree on a stipulated prehearing order, each party shall submit its own proposed prehearing order by the same date.

DONE at Honolulu, Hawaii AUG - 7 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:


Michael Azama
Commission Counsel

2008-0026.sl

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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