BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

In the Matter of)	
PUBLIC UTILITIES COMMISSION)	(NON-DOCKETED)
Emergency Filing and Service Procedures for Commission's Precautionary Response to COVID-19))	
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ORDER NO. 37046

REGARDING PENALTIES FOR MOTOR CARRIER ANNUAL FILINGS AND ANNUAL FINANCIAL REPORTS

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PUBLIC UTILITIES COMMISSION)	(Non-Docketed)
Emergency Filing and Service Procedures for Commission's))	Order No. 37046
Precautionary Response to COVID-19)	

REGARDING PENALTIES FOR MOTOR CARRIER ANNUAL FILINGS AND ANNUAL FINANCIAL REPORTS

By this Order, and consistent with the precautions and emergency policies set forth in Order No. 37043, filed March 13, 2020 (Non-Docketed)¹ in response to the global threat posed by COVID-19, the Public Utilities Commission ("commission") will defer the application and assessment of penalties and interest applied to motor carriers pursuant to Hawaii Administrative Rules ("HAR") §§ 6-62-24 and 6-62-42 until July 1, 2020, such that the application and assessment of penalties and interest will not begin until July 1, 2020. The commission

 $^{^{1}}$ Order No. 37043, "Setting Forth Public Utilities Commission Emergency Filing and Service Procedures Related to COVID-19," filed March 13, 2020 ("Order No. 37043").

may further defer the application and assessment of penalties and interest under these rules in its discretion.

I.

BACKGROUND

Α.

COVID-19

In 2019, the U.S. Centers for Disease Control announced that it was

[R]esponding to an outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in more than 100 locations internationally, including in the United States. The virus has been named "SARS-CoV-2" and the disease it causes has been named "coronavirus disease 2019" (abbreviated "COVID-19").

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern []."²

On March 5, 2020, Governor David Y. Ige issued an Emergency Proclamation, in effect through April 29, 2020, intended to prevent, contain, and mitigate the spread of COVID-19, to provide emergency relief if necessary, and authorize the

^{2&}quot;Coronavirus Disease 2019 (COVID-19) Situation Summary," at: https://www.cdc.gov/coronavirus/2019-ncov/summary.html (last visited on March 10, 2020).

expenditure of state funds on equipment and supplies as needed.³ The State of Hawaii began reporting two presumptive positive cases of COVID-19 on March 6 and 8, 2020, as well as a number of other individuals that are under investigation.⁴ As of March 17, 2020, there have been thirteen confirmed or presumed positive cases of COVID-19 reported in the State.⁵

On March 13, 2020, the commission issued Order No. 37043, in which it announced that, effective Monday, March 16, 2020, 7:45 a.m., the commission would be limiting access to its physical offices to commission employees and requiring all Parties, Participants, utilities, stakeholders, and/or any other person or entity that appears before the commission to conduct their business with the commission electronically (e.g., utilizing electronic filing ("eFiling"), electronic payment ("ePayment"), email, etc.).

Consistent with these policies and precautions, the commission hereby announces that it will defer the penalties

³Governor's Emergency Proclamation for COVID-19, issued on March 5, 2020, available at: https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-
Proclamation COVID-19.pdf.

⁴Coronavirus Disease 2019 (COVID-19), at: https://health.hawaii.gov/docd/advisories/novel-coronavirus-2019/#situation, (last visited on March 10, 2020).

⁵Coronavirus Disease 2019 (COVID-19), at: https://health.hawaii.gov/docd/advisories/novel-coronavirus-2019/#situation (last visited on March 17, 2020).

and interest that may be assessed against motor carriers arising from their annual filing of annual fees and Annual Financial Reports ("AFRs"), which are due by April 30 of each year, such that application and assessment of penalties and interest will be deferred through June 30, 2020. Further details are provided below.

В.

Brief Discussion Of Commission Rules Regarding Application And Assessment Of Penalties Against Motor Carriers

Hawaii Revised Statutes ("HRS") § 271-36 states:

(a) Every common carrier by motor vehicle and every contract carrier by motor vehicle shall pay to the commission, in April of each year, a fee equal to one-fourth of one per cent of the gross revenues from the carrier's business during the preceding calendar year, or the sum of \$20, whichever is greater. Gross revenues include all revenues received from services with or incidental connected to the transportation of persons or transportation of property, as defined under section 271-4.

Pursuant thereto, HAR \S 6-62-24 provides, in relevant part:

(b) A motor carrier failing to pay the gross revenue fee on or before April 30 may be assessed by the commission, in addition to the fee, a penalty of \$100 and, in case of continuing nonpayment, up to \$50 for each additional day during which the nonpayment continues.

(c) Fees not paid within fifteen days after April 30 may be assessed interest at a rate of ten per cent per annum. Failure to pay the fee, penalties, and interest may result in legal action to enforce payment.

In addition, HAR § 6-62-42 states, in relevant part:

Annual financial reports. (a) Each motor carrier shall file an annual financial report of its operations for the previous calendar year by April 30 of each year, in a form prescribed by the commission.

. . . .

- (d) A motor carrier failing to file annual financial reports as required by this section may be assessed a penalty up to the sum of one-sixteenth of one per cent of the gross revenues of the motor carrier's business during the preceding calendar year, if the failure is less than one month.
- (e) An additional one-sixteenth of one per cent of the gross revenues of the motor carrier's business during the preceding calendar year may be assessed for each additional month or fraction thereof during which the failure to file continues.
- (f) In no event shall the total civil penalty be less than \$50.

As noted in Order No. 37043, "The commission recognizes that parties, participants, utilities, stakeholders, and/or other entities or individuals may be experiencing disruptions of their usual business functions during this time." The commission further recognizes that certain Parties, Participants, utilities,

⁶Order No. 37043 at 12-13.

stakeholders, and/or other entities or individuals that conduct business before the commission, including motor carriers, may not be familiar with commission's eFiling and ePayment processes, and may also be adjusting to communicating with the commission by email.

The commission observes that the timing of these events coincides with the April 30 deadline for annual fees and AFRs set forth in HAR §§ 6-62-24 and 6-62-42. The commission expects that all motor carriers will strive to complete the submission of their annual fees and AFRs by April 30, 2020, as required by the commission's rules set forth above; however, in order to avoid confusion and in recognition of the unique circumstances currently facing the State as a result of COVID-19, the commission will defer the application and assessment of penalties and interest under HAR $\S\S$ 6-62-24 and 6-62-42 through June 30, 2020, such that penalties may only be applied and assessed and begin to run against motor carriers who have not filed their annual fees and AFRs as of July 1, 2020. Motor carriers who have filed their annual fees and AFRs on or before June 30, 2020, while beyond the April 30, 2020 deadline, will not be assessed penalties and interest under either HAR § 6-62-24 or 6-62-42. Motor carriers who are not compliant as of July 1, 2020, may begin to have penalties assessed against them beginning as of July 1, 2020, pursuant to HAR §§ 6-62-24 and

6-62-42, as applicable. The commission may further defer the application and assessment of penalties and interest under these rules in its discretion, based on the circumstances.

The commission reminds all motor carriers that the filing of their annual fees and AFRs must be consistent with Order No. 37043 and be submitted through the commission's eFiling system. Motor carriers are encouraged to register with the eFiling system and familiarize themselves with it as soon as possible to avoid delay and confusion. Information regarding eFiling and electronic payment of fees is provided below.

Electronic Filing. The commission's website contains information how on to eFile (https://puc.hawaii.gov/filing/efiling/). As set forth on the commission's website, any entity seeking to eFile with eFiling Terms of agree the DMS Use (https://puc.hawaii.gov/wp-content/uploads/2013/06/DMS-EFiling-Terms-of-Use.pdf) and register online.

The commission's website (https://puc.hawaii.gov/ filing/efiling/) contains technical requirements regarding eFiling, as does the accompanying DMS eFile "General Information" document, available at https://puc.hawaii.gov/wpcontent/uploads/2013/06/DMS-eFile-General-Information.pdf.⁷ As set forth in Order No. 37043, during this emergency period, the commission will not accept hard copies of eFiled documents to be submitted to the commission, and the commission's eFiling guidance documents have been amended to reflect that.

Filing Fees. All commission filing fees required pursuant to HAR § 16-601-24 (for applications, motions, etc.) shall be submitted through the commission's eFiling system (https://puc.hawaii.gov/filing/efiling/). Hawaii One Call Center Payments, Motor Carrier Penalties & Interest, and Public Utility Fees shall be submitted through the commission's ePayment system (https://puc.hawaii.gov/filing/payments/).

Any payments submitted after normal commission business hours, i.e., 7:45 a.m. to 4:30 p.m. except Saturdays, Sundays, and State of Hawaii holidays, shall not be deemed "filed" until the start of the next Commission business day.

Service of Documents That Parties, Participants,

Utilities, Stakeholders, and/or Other Entities eFile With the

Commission. Service of all documents filed by any parties,

participants, utilities, stakeholders and/or other entities or

⁷In any instances where filing instructions on the commission's website conflict with the instructions in this Order, this Order supersedes the filing instructions on the website until further notice is given by commission order.

the commission will be required to supply an email address that can be used for service. Any Certificates of Service for docketed or other matters that previously had listed the entity's name and the physical address where a document was served via first-class mail, shall instead reflect the entity's representative's name, entity name, email address where served, as well as the date of service.

In the event a party, participant, utility, stakeholder, entity, or individual changes their email address or changes their designated agent of service, they shall promptly notify the commission of this change and provide a new email address for purposes of effectuating service.

Any applications, petitions, tariff transmittals, etc., filed while Order No. 37043 is in effect shall list the "name, title, and address of the person to whom correspondence or communications in regard to the application are to be addressed[,]" as well as the e-mail address for that person.

Service of Documents By the commission. The commission will serve all docketed and non-docketed documents (for example, orders, decisions and orders, information requests, letters,

 $^{^{8}}$ HAR § 16-601-74(B).

notices, etc.) that the commission generates on parties, participants, utilities, stakeholders, and/or other entities or individuals electronically while this Emergency Procedures set forth in Order No. 37043 are in effect. Service of docketed documents will be effectuated through the commission's DMS electronic distribution list. Parties must subscribe to the Docket Distribution List with a valid email address and will be automatically notified via email when a new filing is made in the docket. Service of non-docketed documents by the commission will be done by email. Within five (5) business days of the filing of this Order, parties, participants, utilities, stakeholders, and/or other entities, shall notify the commission at puc@hawaii.gov if they prefer a different email for service than the one(s) where the Emergency Procedures Order was served.

III.

ORDERS

THE COMMISSION ORDERS:

1. The commission will defer the application and assessment of penalties and interest for motor carrier annual fees and Annual Financial Reports, as set forth in HAR $\S\S$ 6-62-24 and

⁹See https://dms.puc.hawaii.gov/dms/Subscribe.jsp.

6-62-42, through June 30, 2020, such that the application and assessment of penalties and interest will not begin until July 1, 2020.

2. The commission may further defer the application and assessment of penalties and interest under these rules in its discretion.

DONE at Honolulu, Hawaii _ MARCH 19, 2020

PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

By James P. Griffin, Chair

Jennifer M. Potter, Commissioner

Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:

Mark Kaetsu

Commission Counsel

Non-Docketed Order.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing electronically to the following entities:

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