

*** NOT FOR PUBLICATION ***

NO. 27496

IN THE SUPREME COURT OF THE STATE OF HAWAII

NORMA I. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 JAN 23 PM 2:07

FILED

In the Matter of
PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate the Issues and
Requirements Raised by, and Contained in
Hawai'i Revised Statutes 486H, as Amended.

APPEAL FROM THE HAWAII PUBLIC UTILITIES COMMISSION
(DOCKET NO. 05-0002)

ORDER DISMISSING APPEAL

(By: Nakayama, J., for the court¹)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the Public Utilities Commission opened Docket No. 05-0002 to examine whether the Legislature's gasoline price cap factors should be adjusted. The commission filed Decision and Order No. 21952 determining that the commission would initially use and not adjust the Legislature's factors to calculate the gasoline price caps. The determination that the Legislature's factors would be initially used to calculate the gasoline price caps did not determine any legal right, duty or privilege of appellant Shell Oil Company or any other party and HRS § 486H-13 did not require the commission to conduct a hearing prior to decision making on whether the commission would use or adjust the Legislature's factors to initially calculate the gasoline price caps. Therefore, Docket No. 05-0002 was not a proceeding in which the legal rights, duties or privileges of specific parties were required by law to be determined after an opportunity for agency hearing and was not a contested case from which an appeal could be taken pursuant to

¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

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HRS §§ 91-14(a) and 269-15.5. See HRS § 91-1(5). The commission's public meetings were not required by constitutional due process inasmuch as the commission, in Docket No. 05-0002, did not determine any legal right, duty or privilege of appellant Shell Oil Company. See HRS § 91-1(5).

IT FURTHER APPEARS that Decision and Order No. 21952, which gave notice of further proceedings in the docket to adjust and refine the gasoline cap formula and which was followed by the commission's September 28, 2005 directive to submit proposals on adjustment and refinement of the gasoline cap formula, did not end Docket No. 05-0002 and was not a final decision and order appealable pursuant to HRS §§ 91-14(a) and 269-15.5. The decision and order was not appealable as a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant Shell Oil Company of adequate relief inasmuch as appellant can petition the commission pursuant to HRS § 486H-16 for an adjustment of the gasoline cap formula. For the same reasons, Order No. 21994 was not appealable. Thus, we lack jurisdiction over this appeal. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 23, 2006.

FOR THE COURT:

Anna C. Rowland

Associate Justice