

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
LAUNIUPOKO WATER COMPANY, LLC )  
For a Certificate of Public )  
Convenience and Necessity Pursuant )  
to Section 269-7.5 to Provide Water )  
Service for 6,000 acres at )  
Launiupoko, Maui; and for Approval )  
of Rule, Regulations, and Rates. )  
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DOCKET NO. 02-0196

DECISION AND ORDER NO. 20274

Filed June 27, 2003  
At 3:00 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
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K. Higashi

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DECISION AND ORDER

I.

By an application filed on July 30, 2002, LAUNIUpoko WATER COMPANY, LLC ("Applicant") requests a certificate of public convenience and necessity ("CPCN"), pursuant to Hawaii Revised Statutes § 269-7.5, to provide water utility services in the area of West Maui, State of Hawaii<sup>1</sup>.

Applicant served copies of the application on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On February 7, 2003, the Consumer Advocate served information requests upon Applicant, to which Applicant responded on February 20, 2003. In addition, the Consumer Advocate issued supplemental information requests to Applicant on March 24, 2003, and Applicant filed its responses on April 4, 2003. By statement of position filed on June 16, 2003,

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<sup>1</sup>The geographical scope of the proposed service is depicted in Exhibit B attached to the application (hereinafter "Proposed Service Area").

the Consumer Advocate stated that it does not object to our approval of the instant application.

## II.

The issues in this proceeding are as follows:

- A. Whether Applicant is fit, willing, and able to provide the proposed services and to conform to the terms, conditions, rules, and regulations adopted by the commission.
- B. Whether the proposed services are, or will be, required by the present or future public convenience and necessity.
- C. Whether the proposed rules, regulations, rates, and charges are just and reasonable.

## III.

### A. CPCN

Applicant is a member-managed Hawaii limited liability company, whose members are: Peter Martin (52 per cent ownership), Maui Land Ventures, LLC (25 per cent ownership), James Riley (21 per cent ownership), and Glenn Tremble (2 per cent ownership). Applicant was formed on March 13, 2002 for the purpose of acquiring, holding, and operating potable water systems to serve certain existing and future developments located and to be located on approximately 6,000 contiguous acres in West Maui, Hawaii.

Applicant's members, together with other investors, formed three development companies ("Developer Members")<sup>2</sup> to

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<sup>2</sup>The Developer Members are: Launiupoko Associates, LLC, Makila Land Company, LLC, and Kauaula Land Company, LLC.

develop several agricultural subdivisions and to seek the rezoning of several hundred acres to rural and urban classifications. The Developer Members intend to subdivide the development area into approximately 115 agricultural lots in 2002, an additional 105 agricultural lots by 2006, and, after the rezoning, an additional 300 rural lots by 2008. Accordingly, growth in the number of users for Applicant's water utility services is expected, and there is no competing public utility or county services for the Proposed Service Area.

Applicant intends to take over a water system developed by Launiupoko Water Development LLC ("Developer"), a company jointly formed by the Developer Members. The water system consists of Wells "#1" and "#2," pumps, and storage tanks. Drilling is presently underway for a third well. Developer, pursuant to a letter agreement, agreed to transfer the existing water system, together with all necessary easements, to Applicant upon approval of the instant application. In addition, Developer agreed to develop and transfer additional improvements to the existing water system (i.e., the third well), together with all necessary easements.

At present, daily demand on Well #1 is approximately 150,000 gallons per day ("GPD") and the daily demand on Well #2 is 5,700 GPD. Well #1 has an allowable draw of up to 500,000 GPD and the pump's capacity is 700,000 GPD. Well #2 has an allowable draw and pump capacity of 140,000 GPD. Well #2 is presently used as a backup and will continue to serve as a backup for the foreseeable future. Since Applicant expects that its daily

demand will reach 444,000 GPD in 2008<sup>3</sup> and its current maximum output is 640,000 GPD, Applicant's water system will have sufficient capacity to provide water services for which the CPCN is sought.

Applicant retained the services of Pural Water Specialty Co., Inc. ("Pural") who will staff the facilities with qualified water treatment and water distribution facility operators.<sup>4</sup> Pural employs grades one through four water treatment and water system operators and contends that it is a qualified plant operator possessing the necessary qualified staff of management and service technicians to operate Applicant's facilities. In addition, Applicant retained Tom Nance Water Resources Engineering to advise Applicant on maintenance for the older plantation infrastructure and Austin Tsutsumi & Associates, Inc. to design the water system and prepare engineering reports, as needed.

Because Applicant is a newly formed Hawaii limited liability company, it has no financial history, current income statement, or balance sheet. Applicant has, however, submitted pro forma results of operations for the years ending December 31, 2003 through 2008. Based on the projected results of operations, Applicant's projected revenues (based on the proposed meter charge and water use rates) would be exceeded by the projected

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<sup>3</sup>In its Exhibit E to the application, Applicant estimates its 2008 annual demand at 162,060,000 gallons. This amount, divided by 365 days equals 444,000 GPD.

<sup>4</sup>Pural operated the existing water system over the past four years under a gentleman's agreement.

expenses for 2003. By 2004, however, Applicant is expected to recover all operating expenses. By 2005, the monthly meter charge is expected to generate almost enough revenue to offset the estimated administrative costs.

Applicant emphasizes that in the event additional funds are needed to finance Applicant's operations, Applicant's members committed to provide Applicant with a line of credit up to \$500,000.

Applicant asserts that it presently has no security agreements, mortgages, or deeds of trust against it. Additionally, it states that no bonds, notes, or other forms of indebtedness have been issued or incurred by Applicant or affect Applicant's property.

Upon careful review of the record, we find that Applicant is fit, willing, and able to properly perform the proposed services as a water utility and to conform to the terms, conditions, rules, and regulations adopted by the commission, and that the proposed services are, or will be, required by the present and future public convenience and necessity. We, thus, conclude that a CPCN should be granted to Applicant, subject to certain conditions stated in Section IV, below.

#### B. Rate Base and Proposed Charges

1. Rate base. Since Developer was responsible for developing the initial water system needed to serve existing customers in the Proposed Service Area, Applicant has no rate base in the present application. As stated previously, upon

Applicant's receipt of a CPCN and the commission's approval to operate as a private water utility, Developer will transfer ownership of the existing system to Applicant. Applicant states that although it would have \$2,000,000 in plant-in-service upon commencement, it does not expect rate base treatment for that amount. Further, Applicant acknowledges that the Developer Members will not be compensated twice for the costs of constructing the existing water facilities that will be transferred upon receipt of the CPCN.

2. Proposed rates and charges. Applicant proposes an initial monthly water rate of \$1.42 per 1,000 gallons of consumption up to 10,000 gallons, \$1.91 per 1,000 gallons of consumption between 10,000 gallons and 25,000 gallons, and \$2.25 per 1,000 gallons of consumption greater than 25,000 gallons. In addition, Applicant proposes standby charges per month based upon meter size ranging from \$20 to \$100 per month.<sup>5</sup> Applicant explains that the monthly meter charge was based on the costs associated with the general and administrative expenses shown in Exhibit E to its application and the consumption charge should recover all operating expenses.

In its statement of position, the Consumer Advocate advises that it will not object to the approval of Applicant's proposed rates at this time and proposes to review the reasonableness of the proposed facilities reserve charges and the

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<sup>5</sup>Applicant stated that the difference in the monthly charge for each meter size is due to costs associated with the replacement of the actual meter. It explains that the larger meters are more expensive to replace than the smaller meters.

water service rate tiers in the next rate proceeding. In addition, the Consumer Advocate recommends that Applicant be required to provide copies of its annual financial statements to the commission and the Consumer Advocate to allow monitoring of Applicant's earnings during the interim period before the next rate case.

We find that the proposed rates and charges are in line with the rates and charges approved for comparable private water utilities and the rates and charges of the County of Maui. The initial rate schedules, as proposed by Applicant and shown in the water rate schedules attached to the application, are accepted for purposes of this application.

Additionally, we find that the Consumer Advocate's recommendation that we review the reasonableness of the proposed facilities reserve charges and the water service rate tiers, and its request that Applicant provide the commission and the Consumer Advocate with annual financial statements are reasonable.<sup>6</sup> Accordingly, we conclude that Applicant should provide the commission and the Consumer Advocate with annual financial statements on or before March 31 for the immediate past calendar year.

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<sup>6</sup>We agree that after a period of operation, the commission and the Consumer Advocate will be better able to review Applicant's water consumption patterns to determine whether Applicant's water service rate tiers are reasonable.



C. Proposed Rules and Regulations

Except as provided below, Applicant's proposed rules and regulations are reasonable. Applicant must amend its rules and regulations as stated below.<sup>7</sup>

1. Rule I. Amend this rule to include the phrase "Notice of discontinuance" to clarify what Applicant considers proper notice. The definition should read:

"Notice of discontinuance" means oral or written notice to the Company by a customer that the customer wishes to discontinue service. Oral or written notice will be received only during business hours, Monday through Friday not including holidays."

2. Rule III. Amend the first sentence of paragraph 3 of this rule to include the words "only if related to the operation of the water system" at the end of "for other reasons."

3. Rule V. Amend paragraph 4 of this rule to require Applicant to refund the deposit with interest within thirty (30) days after the final bill is paid or twelve (12) months of timely payment, whichever comes first.

4. Rule VII. Amend this rule as follows:

a. Paragraph 5(a) should use the word "customers" instead of "privilege holders."

b. Paragraph 6 should state that unresolved disputes will be submitted to the commission instead of the

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<sup>7</sup>In its response to CA-IR-23, Applicant agreed to amend its rules and regulations in the manner requested by the Consumer Advocate. The amendments requested in Section III.C. of this decision and order are identical to those requested by the Consumer Advocate in CA-IR-23.

Boards of Directors. Paragraph 6 should also include the commission's address and telephone number.

c. Paragraph 7 should include a period of up to one (1) year in determining the average bill.

5. Rule IX. Amend paragraph 3 to include a period of sixty (60) days instead of thirty (30) days to allow part-year residents sufficient time to pay their bills and resolve billing discrepancies.

6. Rule XII. Amend the rule to add the following verbiage to the last sentence:

"except that if the Applicant's business office is closed (for weekend, holiday, or over night) at the time the 24-hour expires, shut-off will not occur until any earlier than 10:00 a.m. on the morning that the Applicant's business office is next open."

7. Rule XXII. Amend paragraph 7(c) to read "Alterations to Company System" instead of "Alternations to Company System."

#### IV.

##### THE COMMISSION ORDERS:

1. Applicant's request for a certificate of public convenience and necessity is granted.

2. Applicant's proposed initial rates and charges for its water services (as set forth in Exhibit E of the application) are accepted for purposes of this application.

3. Applicant's proposed rules and regulations are approved, subject to the amendments required in this decision and order.

4. Applicant may begin operations and impose the rates and charges as proposed by Applicant and as set forth in the Schedule of Rates attached to the application.

5. Applicant shall submit revised tariff sheets reflecting, among other things, the rates and charges and rules and regulations authorized and required by this decision and order. The revised tariff sheets shall be filed with the commission not later than 20 days from the filing of this decision and order.

6. Pursuant to HRS § 269-8.5, Applicant shall file with the commission an annual financial report in accordance with the Uniform System of Accounts - 1984, covering its water utility services commencing with the year ending December 31, 2003, and each year thereafter. The reports shall be filed no later than March 31 for the immediate past calendar year.

7. Applicant shall file with the commission and the Consumer Advocate its annual financial statements, covering its water utility services commencing with the year ending December 31, 2003, and each year thereafter until Applicant's next rate proceeding. Unless ordered otherwise, the annual financial statements shall be filed no later than March 31 for the immediate past calendar year.

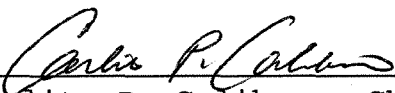
8. Applicant shall remit, within 30 days of this decision and order, a public utility fee of \$60, pursuant to HRS § 269-30. Additionally, beginning July 31, 2004 and December 31, 2004, and each year thereafter, Applicant shall pay a public utility fee which shall equal one-fourth of one per cent of the gross income from its public utility business during the preceding year, or a sum of \$30, whichever is greater, in accordance with HRS § 269-30.

9. Upon commencement of its private water services, Applicant shall notify each of its customers of its certification as a public utility and the availability of its published rates and charges and rules and regulations for their water utility service.

DONE at Honolulu, Hawaii this 27th day of June, 2003.

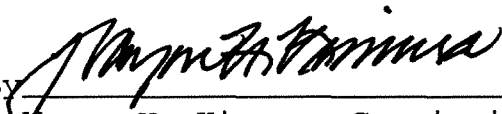
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By



Carlito P. Caliboso, Chairman

By



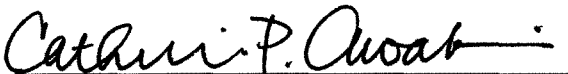
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By



Janet E. Kawelo, Commissioner



Catherine P. Awakuni  
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20274 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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Karen Higashi

DATED: June 27, 2003