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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
LAUNIUPOKO IRRIGATION COMPANY, LLC)
)
For a Certificate of Public)
Convenience and Necessity Pursuant)
to Section 269-7.5 to Provide)
Non-Potable Water Service for 7,000)
Acres at Launiupoko, Maui; and for)
Approval of Rules, Regulations, and)
Rates.)
_____)

DOCKET NO. 02-0203

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

DECISION AND ORDER NO. 20424

Filed Sept. 10, 2003
At 10:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LAUNIUPOKO IRRIGATION COMPANY, LLC)
For a Certificate of Public Convenience and Necessity Pursuant to Section 269-7.5 to Provide Non-Potable Water Service for 7,000 Acres at Launiupoko, Maui; and for Approval of Rules, Regulations, and Rates.)
_____)

Docket No. 02-0203

Decision and Order No. 20424

DECISION AND ORDER

I.

By an application filed on August 1, 2002, LAUNIUPOKO IRRIGATION COMPANY, LLC ("Applicant") requests a certificate of public convenience and necessity ("CPCN"), pursuant to Hawaii Revised Statutes § 269-7.5, to provide non-potable water utility services in the area of West Maui, State of Hawaii¹.

Applicant served copies of the application on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On February 11, 2003, the Consumer Advocate served information requests upon Applicant, to which Applicant responded on February 25 and 26, 2003. In addition, the Consumer Advocate issued supplemental information requests to Applicant on April 11, 2003, and

¹The geographical scope of the proposed service is depicted in Exhibits B through E attached to the application (hereinafter "Proposed Service Area").

Applicant filed its responses on April 23, 2003. By statement of position ("Statement of Position") filed on August 4, 2003, the Consumer Advocate stated that it does not object to our approval of the instant application, subject to certain qualifications.

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 sole member is Makila Land Co., LLC ("Makila"). Makila was founded by Peter Martin, James Riley, and Steve Goodfellow. Applicant, formed on March 13, 2002, intends to acquire, hold, and operate a non-potable water system to serve

certain existing and future developments located and to be located on approximately 7,000 acres in West Maui, Hawaii.² Applicant emphasizes that its customers will be served by an irrigation water distribution system for irrigation purposes, only, and not for human consumption.

Applicant intends to take over an existing non-potable water system developed by Makila ("Water System"). The Water System consists of ditches, reservoirs, tunnels, and PVC lines that draw water from the Launiupoko and Kauaula Streams.³ Makila agreed to transfer the Water System to Applicant upon completion of the subdivision improvements.

Applicant contends that the Launiupoko and Kauaula Streams are capable of providing approximately 100,000 and 2,000,000 gallons per day ("GPD") of non-potable water, respectively. Applicant estimates that its non-potable water sales will be approximately 1,331,000 GPD in 2008 when the 6,000 acres of land is fully developed. Thus, Applicant projects that the demand, once fully developed, will equal approximately 63 per cent of the total available non-potable water supply.

²Peter Martin, James Riley, and Steve Goodfellow, along with other investors, own approximately 6,000 contiguous acres on West Maui and formed three development companies to develop several agricultural subdivisions and to seek the rezoning of several hundred acres to rural and urban classifications. As stated above, Applicant intends to service customers on approximately 7,000 acres of land, which consists of the 6,000 acres discussed above and 1,000 acres of agricultural land owned by AMFAC/JMB Hawaii Inc. and Kamehameha Schools.

³Both streams collect their water from watersheds from two separate valleys on conservation land owned by Makila.

Applicant will manage and operate the Water System after transfer by Makila. Applicant's field supervisors will be tasked with scheduling the maintenance on all areas of the Water System, performing inspections of all ditches, intakes, reservoirs, filter station, and water line, and preparing weekly and monthly reports on the metered use of stream flows and rain gauges. In addition, Applicant will have field labor personnel to assist Applicant in maintaining all system components, intakes, ditches, filters, lines, reservoirs, and breaks.⁴

Applicant advises that it retained William L. Pyle, P.E., Civil & Agricultural Engineering, Austin Tsutsumi & Associates, Inc., and Water Resources Engineering to design a new infrastructure system for the distribution of the non-potable water within the Proposed Service Area, and to advise Applicant on the maintenance of the older plantation infrastructure. Furthermore, National Testing Laboratories Ltd. will test the water samples periodically.

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,

⁴In its Statement of Position, the Consumer Advocate notes that it contacted Department of Health and the Department of Agriculture, State of Hawaii, and was informed that the agencies have no established qualifications or standards for operators of privately owned non-potable water systems. As a result, it appears that Applicant's employees must possess the technical ability to operate a non-potable water facility, but need not have the specialized training to maintain the water qualities necessary for a potable water system.

Applicant's projected revenues would be exceeded by the projected expenses for 2003. By 2004, however, Applicant is expected to recover all operating expenses. By 2005, Applicant estimates that its revenues will surpass its total expenses.

Applicant emphasizes that in the event additional funds are needed to finance Applicant's operations, Makila is 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.

Applicant advises that the County of Maui is not capable of providing non-potable water service to the Proposed Service Area. Additionally, Applicant states that there are no competing non-potable water facilities for the proposed service.

Upon careful review of the record, we find that Applicant is fit, willing, and able to properly perform the proposed services as a non-potable 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 Makila 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 the completion of the subdivision developments, Makila will transfer ownership of the existing system to Applicant. Applicant states that it does not expect rate base treatment for the system being transferred, unless significant repairs are made, the costs of which are capitalized as plant in service.

2. Proposed rates and charges. At present,⁵ Applicant proposes an initial monthly non-potable water consumption charge of \$0.76 per 1,000 gallons of consumption for non-bulk water users and a discounted rate of \$0.38 per 1,000

⁵In its application, Applicant proposed a declining block rate structure as the volumetric charge for non-potable water sales. By its Statement of Position, the Consumer Advocate notes that it was concerned with Applicant's proposed rate structure, because it felt that the structure "may effectively discourage conservation by discounting the price of non-potable water as more water is used." Statement of Position at 14. In its responses to the Consumer Advocate's information requests, Applicant notes that it is willing to use the \$0.76 per 1,000 gallons rate (which is the average of the declining block rates proposed by Applicant and equal to the County of Maui's non-potable water rate) and requests that it be allowed to offer a discounted rate of \$0.38 per 1,000 gallons to a bulk user of non-potable water.

gallons of consumption for bulk users of non-potable water.⁶ The discounted rate for bulk users will be offered under a one-year term, with the opportunity to extend such term. Applicant defines a bulk user as an owner or lessee of at least 50 acres of land in Applicant's Proposed Service Area or one who uses over 1,000,000 gallons of non-potable water per month. In addition, Applicant proposes standby charges per month based upon meter size ranging from \$15 to \$35 per month.⁷

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 sales data and operating costs to determine whether the proposed rate is reasonable based on the actual cost to serve customers, as well as the consumption patterns to determine whether it might be

⁶Applicant asserts that there is justification for offering a lower price to bulk users. Among other reasons, it contends that since these customers will not use the same plant facilities that serve the non-bulk user of non-potable water, Applicant likely will incur lower costs to serve the bulk user of non-potable water. Applicant states that the bulk user of non-potable water will receive their water "directly from and/or as overflow from the ditch and/or the old Pioneer Mill irrigation system." Letter dated August 4, 2003 from Sandra-Ann Y.H. Wong to Cheryl Kikuta.

⁷The proposed standby charges are as follows:

<u>Meter Size</u>	<u>Standby Charge</u>
1"	\$15.00
1.5"	\$17.00
2"	\$20.00
3"	\$25.00
4"	\$27.00
6"	\$29.00
Over 6"	\$35.00

appropriate to use tier rate blocks."⁸ 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 water utilities providing non-potable water, and with the non-potable water rates and charges of the County of Maui. The initial rate schedules, as proposed by Applicant and summarized in this decision and order, are accepted for purposes of this application.

Additionally, we find that the Consumer Advocate's request that Applicant provide the commission and the Consumer Advocate with annual financial statements are reasonable. 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.

⁸Statement of Position at 17.

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.⁹

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 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.

3. Rule VII. Amend this rule as follows:

a. Paragraph 6 should include the commission's address and telephone number.

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

4. 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.

⁹In its response to CA-IR-13, 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-13.

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

"except that if the Company's business office is closed (for weekend, holiday, or over night) at the time the 24-hour period 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."

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 non-potable water services, as set forth herein, 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 herein.

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 non-potable 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 non-potable 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.

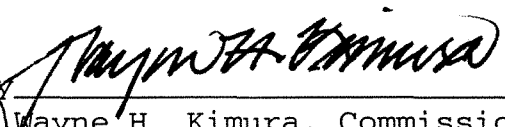
8. Applicant shall remit, within 30 days of this decision and order, a public utility fee of \$60, pursuant to HRS § 269-30. Additionally, beginning July 31, 2004 and December 31, 2004, and each year thereafter, Applicant shall pay a public utility fee which shall equal one-fourth of one per cent of 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.

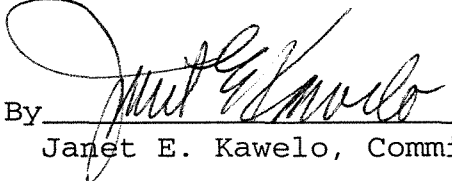
9. Upon commencement of its private non-potable water services, Applicant shall notify each of its customers of its certification as a public utility and the availability of its published rates and charges and rules and regulations for their non-potable water utility service.

DONE at Honolulu, Hawaii this 10th day of September,
2003.

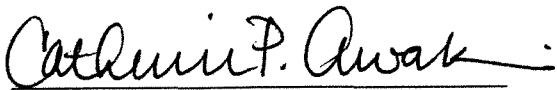
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

02-0203.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20424 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: September 10, 2003