


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 OLOWALU WATER COMPANY, LLC)
)
 For an Amendment of its)
 Certificate of Public Convenience)
 and Necessity Pursuant to Section)
 269-7.5 to Provide Water Service)
 for 730 Acres at Olowalu, Maui and)
 for Approval of Additional Rules,)
 Regulations, and Rates)
)

DOCKET NO. 02-0350

DECISION AND ORDER NO. 20611

Filed Oct. 30, 2003
At 11:00 o'clock A.M.


 Chief Clerk of the Commission

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STATE OF HAWAII

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

Commissioner, State of Hawaii
H. Hignel.

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DECISION AND ORDER

I.

Introduction

OLOWALU WATER COMPANY, LLC ("Applicant") filed an application requesting commission approval to amend its certificate of public convenience and necessity ("CPCN"), pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5, to provide non-potable water utility services ("proposed non-potable water services") in the area of Olowalu, island of Maui, State of Hawaii ("proposed service area") on September 20, 2002.

Applicant served copies of the application on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). The Consumer Advocate served information requests upon Applicant on March 5, 2003, to which Applicant responded on March 19, 2003, April 7, and April 9, 2003. In addition, the Consumer Advocate issued supplemental information requests to Applicant on May 7, 2003, to

which Applicant responded on August 6, 2003. The Consumer Advocate, by its statement of position ("Statement of Position") filed on August 6, 2003, states that it does not object to our approval of the instant application, subject to certain qualifications.

II.

BACKGROUND

Applicant is a manager-managed Hawaii limited liability company, whose manager and sole member is Olowalu Elua Associates LLC ("Olowalu Elua"). Applicant is currently authorized to provide potable water utility services for approximately 730 acres of land in the area of Olowalu.¹

Historically, Pioneer Mill Company ("Pioneer Mill"), through a surface water system it owned and operated, provided potable water service to private owners situated in the Olowalu area. Olowalu Elua purchased approximately 730 acres in Olowalu from Pioneer Mill. The sale included the obligation to continue the provision of water service Pioneer Mill had been providing to the then existing users.

The Pioneer Mill system was replaced with a new well and chlorination system in 2000. The new system currently

¹The commission granted Applicant's request for a CPCN to provide potable water utility service to the Olowalu area, island of Maui, and approved its rates and proposed rules and regulations by Decision and Order No. 17953, filed on August 7, 2000, in Docket No. 99-0157.

serves the then existing users as well as the agricultural and agricultural/residential lots developed by Olowalu Elua. Olowalu Elua is developing the service territory into residential and agricultural lots, and expects to further subdivide the area into 250 additional lots within three to five years. Applicant now requests authority to provide non-potable water service within the proposed service area.

III.

Issues

Consistent with the requirements of HRS § 269-7.5, the issues in this proceeding are: (1) Whether Applicant is fit, willing, and able to provide the proposed non-potable water services and to conform to the terms, conditions, rules, and regulations adopted by the commission; (2) Whether the proposed non-potable water services are, or will be, required by the present or future public convenience and necessity; and (3) Whether the proposed rules, regulations, rates, and charges are just and reasonable.

IV.

Discussion

A.

CPCN

The existing non-potable water system is presently owned by Olowalu Elua and includes a watershed, which collects water at an elevation of 520 feet. The water is then dropped directly into the transmission ditch which enters reservoirs from which the water is filtered and distributed throughout the 700 acres utilizing a system of PVC lines. Individual service laterals for the non-potable water will be extended from the water source to each agricultural lot. The distribution system will include the existing system formerly used for sugar cane irrigation.

Applicant intends to take over the existing non-potable Olowalu water system ("Olowalu water system"), currently owned by Olowalu Elua. Olowalu Elua agreed to transfer the water system to Applicant upon approval of this application by the commission.

Applicant contends that the Olowalu water system is capable of providing an average of 4,080,000 gallons of non-potable water per day ("GPD"). Applicant estimates that its non-potable water sales will be approximately 273,000 GPD in 2007 when the approximate 600 acres of land owned by Olowalu Elua is fully developed. Thus, Applicant projects that demand, once fully developed, will equal approximately 7 per cent of the total available non-potable water supply.

Applicant will manage and operate the Olowalu water system after the transfer by Olowalu Elua. Applicant's field supervisor 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.

Applicant submitted unaudited financial statements and projected results for operations as evidence that it is financially fit to sustain the proposed non-potable water service. Based on the projected results of operations, Applicant's projected revenues would be exceeded by the projected expenses for 2003; however, Applicant expects to recover all operating expenses. By 2004, Applicant estimates that its revenues will surpass its total operating expenses.

If the actual operations do not provide sufficient revenues to cover the operating expenses, Applicant may not have the available financial resources to sustain operations on a going-forward basis; however, Applicant represents that in the event additional funds are needed to finance Applicant's operations, Olowalu Elua will continue to be a source of financial support for the Applicant.

Applicant also represents 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 non-potable water services.

We find that Applicant is fit, willing, and able to properly perform the proposed non-potable water services and to conform to the terms, conditions, rules, and regulations adopted by the commission, and that the proposed non-potable water services are, or will be, required by the present and future public convenience and necessity. Thus, we conclude that Applicant's CPCN should be amended, subject to certain conditions stated in Section V, below.

B.

Rate Base and Proposed Rate and Charges

1. Rate base. Since Olowalu Elua 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 approval of this application by the commission, Olowalu Elua will transfer ownership of the existing system to Applicant at zero cost. Applicant states that it does not expect rate base treatment for the system being transferred.

2. Proposed rates and charges. At present,²

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 gallons of consumption for bulk users of non-potable water.³ The discounted rate for bulk users will be offered under a one-year term, with the opportunity to extend such term.⁴ 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

²In 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 if more water is used." Statement of Position at 13. 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.

³Applicant 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 6, 2003 from Sandra-Ann Y.H. Wong to Cheryl Kikuta.

⁴Applicant should inform the commission and the Consumer Advocate of any extensions of such bulk rate contracts, to assist in the continued monitoring of such agreements.

upon meter size ranging from \$15 to \$35 per month.⁵

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, but it will review the reasonableness of the monthly meter standby rates in the next rate proceeding.⁶

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 the non-potable water rates and charges of the County of Maui.⁷ The initial rate schedules, as proposed by Applicant and summarized in this decision and order, are accepted for purposes of this application.

⁵The 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

⁶Statement of Position at 12-13.

⁷The commission recently granted a CPCN to Launiupoko Irrigation Company, LLC ("Launiupoko") by Decision and Order No. 20424, filed on September 10, 2003, in Docket No. 02-0203. Launiupoko's proposed rate schedules are identical to that proposed in the instant docket.

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.⁸

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 utilize the business savings account rate offered by the bank in which the funds are deposited.

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

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

⁸In 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.

event that a meter fails to register due to any cause except the non-use of water.

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 XI. Amend the rule to add the following verbiage to the end of 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.

7. Rule XII. Amend the rule to add the following:

All equipment belonging to the Company and installed upon the customer's premises for measurement, test, check or any other purpose, shall continue to be the property of the Company, and may be repaired, replaced or removed by the Company at any time without the consent of the customer. The Company shall make reasonable efforts to notify the customer of any necessary repairs. The customer shall exercise reasonable care to prevent damage to meters and other equipment of the Company upon said premises and shall in no way interfere with the operation of the same.

8. Applicant shall include rules on cross-connections, backflow protection and irrigation system anti-siphon valves as follows:

a. As a protection to the customer's piping system a suitable pressure relief valve must be installed and maintained by him at his expense when backflow devices are installed on the customer's side of the meter.

- b. Any device installed for the prevention of backflow as may be required under these Rules and Regulations, shall, unless the Company approves otherwise in writing, be located above ground and in such a manner as to be safe from flooding or submergence in irrigation water or other liquids, properly protected from external damage, freely accessible and with adequate working room for inspections, testing, and repairing.

All such devices shall be tested by the customer at least once every four months and inspected internally not less than once annually by the customer. Repairs, replacement of parts, etc., shall be made whenever necessary at the expense of the customer. Making of tests and annual inspections shall be the responsibility of the customer and shall be made by the customer or other qualified person or persons in accordance with methods acceptable to the Company. The customer is requested to maintain a log of tests and inspections made. Records of tests and inspections shall be made on forms prescribed by the Company and a copy of such records shall be furnished to the Company. Failure of the customer to make the proper tests and submission of records may, at the option of the Company, result in the Company's making the tests, needed repairs and replacements, and charging the costs thereof to the customer.

- c. The several conditions relative to the installation and maintenance of cross-connections and other physical connection referred to in this Section shall be subject to change to meet changing requirements of the State and Federal health authorities and of the County Building Code.

V.

Orders

THE COMMISSION ORDERS:

1. Applicant's request to amend its certificate of public convenience and necessity to provide non-potable water services in the area of Olowalu on the island of Maui, as described in its application, 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 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 for review and approval not later than twenty (20) days from the filing of this decision and order. Applicant shall not commence its non-potable water services until the revised tariff sheets are approved by the commission.


5. Upon commencement of its non-potable water services, Applicant shall notify each of its customers of its certification as a public utility to provide such services and

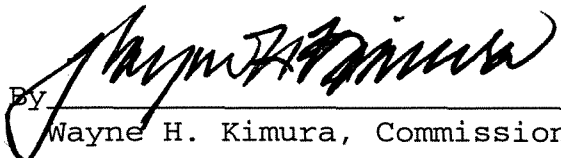
the availability of its published rates and charges, and rules and regulations for their non-potable water utility services.

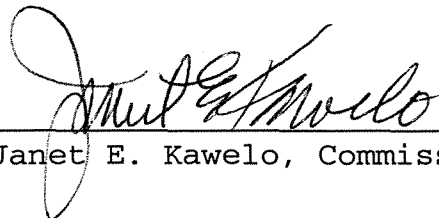
6. Applicant shall inform the commission and the Consumer Advocate of any extensions of bulk rate contracts within sixty (60) days of such extension.

DONE at Honolulu, Hawaii this 30th day of October, 2003.

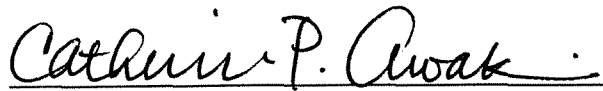
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


for Kevin M. Katsura
Commission Counsel
02-0350.eh

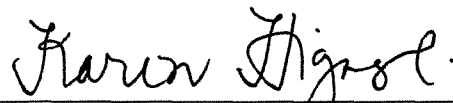
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20611 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: October 30, 2003