

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
PUUWAAWAA WATERWORKS, INC. )  
For Review and Approval of Rate )  
Increases; Revised Rate Schedules. )  
\_\_\_\_\_ )

DOCKET NO. 03-0369

ORDER NO. 21021

Filed June 2, 2004  
At 11:00 o'clock A.M.

*Haron Higashida*  
Chief Clerk of the Commission

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



this docket. Under Hawaii Administrative Rules ("HAR") § 6-61-57, motions to intervene or participate in this proceeding must "be filed not later than ten [(10)] days after the last public hearing held pursuant to the published notice of the hearing[.]" to be considered timely. For this proceeding, motions to intervene or participate must be filed by April 26, 2004.<sup>3</sup>

On May 6, 2004, EMMALINE HOOPER, LEWI MITCHELL, CAROL LEINA'ALA LIGHTNER, SHIRLEY ANN KEAKEALANI, MAHANA GOMES, KAMUELA BERTELMANN, DEEDEE BERTELMANN, GORDON ALAPAI, DEBBIE KAILIWAI-RAY, SHANE ALAPAI, and MERCY ALAPAI (collectively, "Movants") jointly filed a motion to enlarge time to file a motion to intervene ("Motion") in this proceeding. Movants filed their Motion under HAR §§ 6-61-23, 6-61-41, and 6-61-55.

## II.

### Motion

Movants contend that they attempted to timely file a request for an extension of ten (10) days to file a motion to intervene in this proceeding through the efforts of Ms. Mahana Gomes ("Ms. Gomes"), a member of the Movants, in a letter dated April 23, 2004 ("Letter Request"). The Movants concede that the Letter Request was not received by the commission by April 26, 2004. Movants contend that their failure to meet this requirement is due to excusable neglect. Movants assert that the

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<sup>3</sup>The commission indicated the filing deadline for a motion to intervene or participate in this proceeding in the Notice, as required under HAR § 6-61-57.

Letter Request clearly indicates their intent to intervene and that an intervention fee was enclosed with the Letter Request. Movants contend that while they attempted to comply with the commission's filing rules three (3) days prior to the deadline, they failed due to "an underestimation of the time it would take for mail to reach Honolulu from Kailua-Kona."<sup>4</sup> They state that "neglect", in this case, is due to this underestimation, and suggest that finding excusable neglect in this case is in the sound discretion of the commission. Moreover, Movants request that the commission consider their interest in this docket as residents, landowners, and ratepayers of Applicant's service area of Pu'uanahulu.<sup>5</sup>

In support of their Motion, Movants attached the affidavit of their attorney of record, R. Ben Tsukazaki ("Affidavit") and a copy of their Letter Request with a certified mail receipt, postmarked April 23, 2004. Through the Affidavit, Movants assert, among other things, the following: (1) the Letter Request was received in the commission's Hawaii District Office on April 26, 2004; (2) the Letter Request was filed to provide Movants with the necessary time to retain representation in this matter; and (3) if the Motion is granted, Movants' motion to intervene can be filed expeditiously and will not significantly delay this proceeding.

### III.

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<sup>4</sup>See, Motion at 4.

<sup>5</sup>The Letter Request and the Motion will be viewed collectively as Movants' motion to enlarge time to file a motion to intervene in this proceeding.

### Discussion

HAR § 6-61-23(a)(2) states that the commission, upon a motion made after the expiration of the specified period, may, at its discretion, enlarge the period in which to act "where the failure to act was the result of excusable neglect." Thus, because the commission received the Letter Request after the specified period, in order to exercise its discretion to enlarge time under HAR § 6-61-23(a)(2), the commission must first find that Movants' failure to act within the required time constitutes excusable neglect.

The commission in Order No. 17942, filed on August 2, 2000, in Docket No. 00-0017 (*In re Laie Water Company, Inc.*) ("*Laie*") stated that ignorance of the rules governing the practice and procedure before the commission or mistakes construing such rules do not constitute excusable neglect.<sup>6</sup> In *Laie*, the commission denied a motion to enlarge time to file a motion to intervene of movants who represented that their failure to timely act was due, among other things, to an illness four (4) days before the deadline and was not represented by counsel.<sup>7</sup> In Order No. 18114, filed on October 4, 2000, in Docket No. 00-0063 (*In re Soltur, Inc.*) ("*Soltur*"), the commission denied the enlargement of time request of a movant who claimed that its failure to act was due to a

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<sup>6</sup>See, *Laie* at 4, citing *Enos v. Pacific Transfer & Warehouse, Inc.*, 80 Haw. 345, 350, 351-54, 910 P.2d 116, \_\_\_, 122-25 (1996) ("Under the majority approach, 'excusable neglect' is a strict standard").

<sup>7</sup>See, *Laie* at 3-5.

substitution of counsel.<sup>8</sup> The commission found that the facts and circumstances of *Laie* and *Soltur* did not constitute excusable neglect under HAR § 6-61-23(a)(2).

Upon review, we find Movants' arguments for excusable neglect to also be unpersuasive. Underestimating the time it takes for mail to travel from Kailua-Kona to Honolulu does not constitute excusable neglect. Movants appear to have mailed the letter on Friday, April 23, 2004, with the expectation that it would reach our Honolulu Office by Monday, April 26, 2004; however, the record shows that the Letter Request was filed with the commission on May 3, 2004. The neglect in this case is not excusable since Movants could have calculated a larger allowance of time for the Letter Request to reach our Honolulu Office and sent the Letter Request earlier, which Movants opted not to do. Movants could have also used "Express Mail" or a courier service to ensure that the Letter Request was timely received by the commission. Accordingly, Movants have not shown excusable neglect, without which this commission is not able to enlarge the applicable time period under HAR § 6-61-23(a)(2).

While the Letter Request appears to have reached the commission's Hawaii District Office by the prescribed deadline, the commission's rules (HAR §§ 6-61-3 and 6-61-15) specifically provide that all pleadings, briefs, and other required documents must be filed with the commission at 465 South King Street, Honolulu, Hawaii, 96813--the commission's Honolulu Office. Moreover, the Movants had ample notice regarding the filing deadline for a motion

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<sup>8</sup>See, *Soltur* at 2-3.

to intervene in this proceeding (or to qualify for an enlargement of time under HAR 6-61-23(a)(1)<sup>9</sup>) since, among other things, the Notice setting forth this deadline was published numerous times (i.e., March 22 and 29, and April 5 and 14, 2004) in various local newspapers, statewide, including West Hawaii Today and Hawaii-Tribune Herald, both Hawaii Island publications.

Movants also argue that we should consider their interests as residents, landowners, and ratepayers within Applicant's service area when considering its Motion. However, we remind Movants that under HAR § 6-61-55, persons intervening as a party to any proceeding before the commission must make reference to, among other things, how their interests: (1) will not be represented by an existing party to the proceeding; and (2) differs from that of the general public. We note that the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is already a party to this proceeding. The Consumer Advocate is statutorily tasked under HRS § 269-51 to "represent, protect, and advance the interests of all consumers, including small businesses, of utility services."

Moreover, we find that the commission's acceptance of the submittal fee for the Letter Request was inadvertent and inappropriate since the Letter Request, did not qualify as a motion

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<sup>9</sup>Under HAR § 6-61-23(a)(1), if a request to enlarge time was filed before the expiration of the originally prescribed time, the commission, at its discretion, is allowed to enlarge time for good cause.

to intervene under HAR §§ 6-61-55 and 6-61-57, among other things. Accordingly, Movants will be refunded the fee amount of \$15.00.<sup>10</sup>

Based on the above, we conclude that Movants' Motion should be denied.

#### IV.

#### Orders

##### THE COMMISSION ORDERS:

1. Movants' motion to enlarge time to file a motion to intervene in this proceeding, filed on May 6, 2004, is denied.
2. A refund check in the amount of \$15.00 will be processed and mailed to Movants.

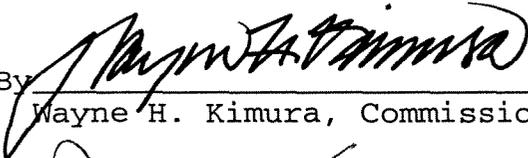
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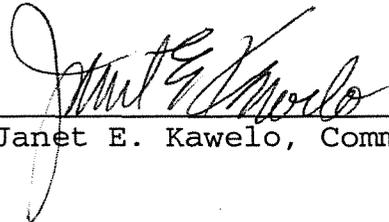
<sup>10</sup>Specifically, a refund check in the amount of \$15.00 will be processed; made payable to Ms. Gomes, the individual who submitted the Letter Request; and mailed to her attention at 74-4930 Palani Road, Kailua-Kona, HI, 96740.

DONE at Honolulu, Hawaii this 2nd day of June, 2004.

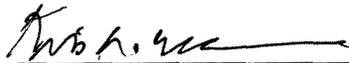
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
for Ji Sook Kim  
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21021 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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\_\_\_\_\_  
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DATED: