

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
HAWAII WATER SERVICE COMPANY, INC. )  
For Approval of Rate Increases and )  
Revised Rate Schedules, and to )  
Enter into Financing Arrangements. )  

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DOCKET NO. 03-0275

ORDER NO. 21059

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

2004 JUN 17 P 3:44

RECEIVED

Filed June 17, 2004  
At 10:20 o'clock A .M.

Michelle S.U.M. Kau  
for Chief Clerk of the Commission

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ORDER

I.

Request to Enlarge Time

On April 16, 2004, the commission: (1) approved HAWAII WATER SERVICE COMPANY, INC.'s ("HWSCI") request to bifurcate its financing and rate increase requests; and (2) instructed HWSCI and the Division of Consumer Advocacy ("Consumer Advocate") (collectively, the "Parties") to file a stipulated prehearing order, setting forth the issues and procedural schedule for HWSCI's financing request.<sup>1</sup>

The Consumer Advocate, by its Motion filed on June 3, 2004, seeks to enlarge the time, until June 14, 2004 ("Motion"), for the Parties to file their stipulated prehearing order. The Consumer Advocate: (1) makes its request pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-23(a)(2) and 6-61-41; and (2) does not request a hearing on its Motion.

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<sup>1</sup>Order No. 20914, filed on April 16, 2004.

The Consumer Advocate's Motion is supported by its counsel's written declaration. HWSCI joins in the Motion.<sup>2</sup> If granted, the Consumer Advocate represents that it will expeditiously and timely file the required filing by June 14, 2004, which is the Parties' present deadline to file their separate stipulated prehearing order on HWSCI's rate increase request.

The commission, in Docket No. 03-0369, *In re Puuwaawaa Waterworks, Inc.*, recently denied the request of certain Movants to enlarge the time by which to timely file their joint motion to intervene in a general rate case.<sup>3</sup> There, the commission held that Movants' under-estimation of the time it takes for mail to travel from Kailua-Kona to the commission's Honolulu Office did not amount to excusable neglect, since Movants could have mailed its filing earlier, or opted for alternative service to ensure a timely filing, such as Express Mail or courier service.<sup>4</sup>

In the present case, counsel declares that "[d]ue to a high volume of docket deadlines, the recent unanticipated departure of the Division of Consumer Advocacy's Supervising

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<sup>2</sup>HWSCI's letter, dated June 4, 2004.

<sup>3</sup>Order No. 21021, filed on June 2, 2004.

<sup>4</sup>In Order No. 21021, the commission also referred to two (2) other commission orders that denied requests to enlarge time, finding the lack of excusable neglect in both instances. See Order No. 18114, filed on October 4, 2000, in Docket No. 00-0063, *In re Soltur, Inc.* (failure to act due to substitution of counsel did not constitute excusable neglect); and Order No. 17942, filed on August 2, 2000, in Docket No. 00-0017, *In re Laie Water Co., Inc.* (ignorance of the rules governing the practice and procedures before the commission or mistakes construing such rules did not constitute excusable neglect).

Attorney and sick leave requests by assigned analysts, numerous responsibilities and scheduling commitment have been affected."<sup>5</sup>

Based on the commission's past rulings governing requests filed under HAR § 6-61-23(a)(2), and its review of counsel's written declaration, the commission finds that counsel's reasons, while constituting good cause, do not rise to excusable neglect. HWSCI or the Consumer Advocate, in this instance, could have timely filed a request for an extension of time under HAR § 6-61-23(a)(1) ("good cause" standard). In addition, HWSCI, as the applicant with the overall burden of proof in this financing and rate case proceeding, does not appear to advance any excusable neglect on its part.

The commission denies the Consumer Advocate's Motion.

## II.

### Order No. 20914

Order No. 20914, Ordering Paragraph 5, filed on April 16, 2004, provides:

**Unless ordered otherwise,** within twenty (20) days after the date of this order, HWSCI and the Consumer Advocate shall submit to the commission a stipulated prehearing order setting forth the issues and procedural schedule for HWSCI's financing request.

Id. (boldface added)

Shortly following the commission's issuance of Order No. 20914, the Consumer Advocate, on April 26, 2004, issued

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<sup>5</sup>Declaration of Counsel, filed on June 3, 2004, at page 6, paragraph 5.

information requests to HWSCI on its proposed financing arrangements. On May 18, 2004, HWSCI responded to the Consumer Advocate's information requests.<sup>6</sup> The record reveals that the Parties in good-faith have commenced the discovery process on HWSCI's financing request, consistent with the intent of the commission's Order No. 20914, and in the absence of a stipulated prehearing order.

In addition, the commission notes that: (1) the submittal and issuance of a stipulated prehearing order is required for the efficient disposition of HWSCI's financing request; and (2) on June 14, 2004, the Parties submitted its proposed stipulated prehearing order.<sup>7</sup> Hence, the commission, on its own motion, amends Order No. 20914, Ordering Paragraph 5, by specifying a new due date of June 14, 2004, for the Parties to file a stipulated prehearing order setting forth the issues and procedural schedule for HWSCI's financing request.

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<sup>6</sup>HWSCI did not respond to one (1) information request, pending the issuance of a protective order. On June 4, 2004, the commission issued Stipulated Protective Order No. 21028. Hence, HWSCI's response to the Consumer Advocate's remaining information request is forthcoming.

<sup>7</sup>The Parties' proposed stipulated prehearing order: (1) incorporates the April 26, 2004 and May 18, 2004 discovery dates; and (2) establishes a deadline date of June 29, 2004 for the Consumer Advocate to file its position statement on HWSCI's financing request.

III.

Orders

THE COMMISSION ORDERS:

1. The Consumer Advocate's motion to enlarge time, filed on June 3, 2004, is denied.

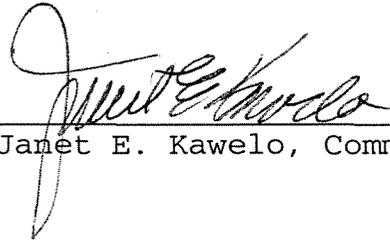
2. Order No. 20914, Ordering Paragraph 5, filed on April 16, 2004, is amended by specifying a new due date of June 14, 2004, for the Parties to file a stipulated prehearing order setting forth the issues and procedural schedule for HWSCI's financing request.

DONE at Honolulu, Hawaii this 17th 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:



Michael Azama  
Commission Counsel

03-0275.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21059 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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DIVISION OF CONSUMER ADVOCACY  
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*for* Karen Higashi

DATED: June 17, 2004