

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HOH UTILITIES, LLC, OBAYASHI)
HAWAII CORPORATION, and)
MARRIOTT OWNERSHIP OPERATING)
RESORTS, INC.)
Application for Approval for HOH)
Utilities, LLC to (a) Acquire)
the Interests of the Poipu Water)
Reclamation Facility Owned by)
Marriott Ownership Resorts, Inc.;)
(b) Modify its CPCN to Expand its)
Service Territory; and)
(c) Establish Initial Rates.)

DOCKET NO. 04-0094

DECISION AND ORDER NO. 21334

Filed Sept. 3, 2004
At 2:30 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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

2004 SEP -7 A 8:39

RECEIVED

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)
HOH UTILITIES, LLC, OBAYASHI)
HAWAII CORPORATION, and)
MARRIOTT OWNERSHIP OPERATING)
RESORTS, INC.)
Application for Approval for HOH)
Utilities, LLC to (a) Acquire)
the Interests of the Poipu Water)
Reclamation Facility Owned by)
Marriott Ownership Resorts, Inc.;)
(b) Modify its CPCN to Expand its)
Service Territory; and)
(c) Establish Initial Rates.)

Docket No. 04-0094

Decision and Order No. **21334**

DECISION AND ORDER

I.

Introduction

On May 6, 2004, HOH UTILITIES, LLC ("HOH"), OBAYASHI HAWAII CORPORATION ("OHC"), and MARRIOTT OWNERSHIP RESORTS, INC. ("MORI") (collectively, "Applicants") jointly requested commission approval of the following: (a) the proposed transfer of OHC's and MORI's respective interests in the Poipu Water Reclamation Facility ("PWRF") located at Poipu, Kauai, to HOH; (b) amendment of HOH's certificate of public convenience and necessity ("CPCN") to expand HOH's service territory to cover the geographic areas comprising the properties controlled or previously controlled by OHC and MORI; and (c) the establishment of initial rates for the provision of wastewater treatment services for hotel properties (collectively, "Proposed Transactions"). Applicants make the request in

accordance with Hawaii Revised Statutes ("HRS") §§ 269-7.5 and 269-16.

Applicant served copies of the application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). On June 24, 2004, the Consumer Advocate filed a preliminary statement of position stating that it had concerns regarding the instant application, and that it would be issuing information requests ("IRs").

On July 12, 2004, the commission ordered¹ Applicants and the Consumer Advocate (collectively "Parties") to meet informally to formulate the issues, procedures and schedule with respect to the instant proceeding, to be set forth in a stipulated prehearing order or their own prehearing order, to be filed for the commission's consideration within 30 days of the order.

On July 27, 2004, the Consumer Advocate submitted its statement of position ("SOP") in which it stated that it did not object to the commission's approval of the instant application, with certain qualifications, to be discussed below.² No persons moved to intervene in this proceeding.

¹Order No. 21114

²Applicants and the Consumer Advocate did not file any proposed prehearing order to formulate, among other things, a procedural schedule, as directed in Order No. 21114, ostensibly in light of the filing of the Consumer Advocate's SOP on July 27, 2004 and the Consumer Advocate's decision not to issue IRs. Accordingly, because it appears the issuance of a prehearing order at this time would not aid in the efficient and timely disposition of the matters in this docket, we conclude that Order No. 21114 should be vacated.

II.

Description of Applicants

HOH is a Hawaii limited liability company. It is authorized by the commission to provide wastewater treatment services pursuant to its CPCN, granted in Decision and Order No. 17562, filed on February 25, 2000, in Docket No. 99-0343.³ HOH owns an undivided one-third interest in the PWRF and currently provides regulated wastewater treatment services to approximately 74 customers in the Poipu area, including Kiahuna Shopping Village, Kiahuna Tennis Club, Kiahuna Golf Clubhouse, the Kiahuna Golf Village Subdivision, the Kiahuna Plantation condominium, Plantation Gardens Restaurant and the Poipu Kapili condominium.

OHC is a Hawaii corporation, which until recently was the owner of the Kauai Sheraton Resort ("Kauai Sheraton").⁴ OHC is also the owner of an undivided one-third interest in the PWRF and presently provides unregulated wastewater treatment services to the Kauai Sheraton.

MORI is a Delaware corporation and the owner of the Marriott Resort ("Marriott"). It is the holder of an undivided one-sixth interest in the PWRF and presently provides unregulated wastewater treatment service to the Marriott.

³Pursuant to Decision and Order No. 17562, filed on February 25, 2000 in Docket No. 99-0343, the commission approved Poipu Wastewater Corporation's transfer of its CPCN to HOH.

⁴On November 20, 2003, OHC's parent, Obayashi Corporation ("OC"), entered into a Purchase and Sale Agreement with Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"), by which OC agreed to sell, and Starwood agreed to purchase, the Sheraton Kauai. Starwood designated Kauai Blue, Inc. as its designee to receive title to the Sheraton Kauai.

CTF Hotel Sewage Treatment Corporation ("CTF") owns the remaining undivided one-sixth interest in the PWRF to provide unregulated wastewater treatment service to the old Poipu Beach Hotel. Although CTF has reserve capacity to serve the old Poipu Beach Hotel, it has not rebuilt the hotel since its destruction from Hurricane Iniki in 1992.

The PWRF is presently jointly owned by HOH, OHC, MORI and CTF. These joint owners are subject to agreements as tenants in common pursuant to: (1) the Amended and Restated Agreement for Design, Construction, Maintenance and Operation of Wastewater System for the Poipu Beach Area, Koloa, Kauai, Hawaii, originally dated September 4, 1974, as amended; (2) that certain Management Agreement (Sewage Treatment Facilities), dated February 1, 1984; and (3) that certain Indemnity Agreement, dated February 1, 1984 (collectively, "Wastewater Agreements").

III.

Proposed Transactions

A.

Proposed Transfer of Ownership Interest of PWRF

Pursuant to the Wastewater Agreements, OHC and MORI presently provide unregulated wastewater treatment service to the Kauai Sheraton and Marriott, respectively (collectively referred to as "Hotels"). Applicants assert, among other things, that due to the complexities of complying with the various rules, regulations and laws governing wastewater treatment plant operations, OHC and

MORI desire to divest their interests in the PWRF.⁵ It is in this regard that Applicants make their request for commission approval for the transfer of ownership interest in the PWRF from OHC and MORI to HOH for nominal consideration, and for the subsequent expansion of HOH's service territory to include the Hotels as part of its regulated provisioning of wastewater treatment services.

Subject to commission approval, on March 4, 2004, OHC assigned, transferred and conveyed to HOH all of OHC's right, title and interest in and to the Wastewater Agreements, including OHC's one-third interest in the PWRF. Likewise, on February 15, 2001, MORI assigned and transferred its interest in the PWRF to HOH, also subject to commission approval.

B.

Proposed Expansion of HOH's Service Territory

HOH currently provides wastewater treatment services to 65 single family customers, five (5) condominium customers with approximately 399 units and four (4) commercial customers. HOH's authority pursuant to its CPCN does not currently authorize it to provide wastewater treatment services to the Hotels, which it proposes to assume from OHC and MORI, as described above. Thus, commission approval of Applicants' instant request to amend HOH's CPCN to expand HOH's service territory to include the Hotels would allow the continued provision of wastewater treatment services to the Hotels.

⁵See Application at 4.

IV.

HOH's Proposed Initial Rates

Applicants request commission approval for the establishment of proposed initial rates for the provision of wastewater treatment service to the Hotels. HOH proposes to provide the wastewater treatment services to the Hotels at the same rates currently being charged by the PWRF to OHC and MORI.⁶ Applicants assert that HOH and the PWRF are currently operating at a "break-even" level, which they maintain will continue under the Proposed Transactions.⁷ In addition, in the instant application, HOH commits to filing a general rate case by the end of 2004 to allow the commission to establish new rates for all of HOH's customers, including its new customers, Kauai Sheraton and Marriott.⁸

V.

Consumer Advocate's Position

The Consumer Advocate does not object to the commission's approval of Applicants' Proposed Transactions. It has determined

⁶The PWRF currently charges the following rates for wastewater treatment services to Applicants:

HOH: Single Family	\$28.00 per unit
2-Bedroom Condo	\$23.00 per unit
1-Bedroom Condo	\$21.00 per unit
Commercial	Estimate based on usage
Marriott	\$17.00 per unit
CTF Holdings	\$17.00 per unit
Sheraton (OHC)	\$21.00 per unit
Village Properties	\$1,300.00 per month

⁷See Application at 7.

⁸Id.

that the proposed transfer of interest in the PWRF from OHC and MORI to HOH is reasonable, in that both OHC and MORI want to leave the business of wastewater treatment services. The continued provision of wastewater treatment services to the Hotels is, thus, essential to the protection of the public health and welfare.

The Consumer Advocate also does not oppose Applicants' proposal that HOH provide wastewater treatment service to the Hotels at the same rate which the PWRF currently charges OHC and MORI to provide these services. The Consumer Advocate adds, however, that because it has unresolved concerns regarding HOH's existing rate structure, HOH should be required to file a general rate case application by December 31, 2004 to give the commission and Consumer Advocate an opportunity to review the reasonableness of the existing rates and assess the impact, if any, of the Proposed Transactions on HOH's rate base and operating expenses.⁹

VI.

Findings and Conclusions

HRS § 269-7(a) provides the commission with the authority to, among other things, examine into a public utility's business relations with other persons, companies, or corporations, and all matters affecting the relations and transactions between the utility and the public or persons or corporations. Pursuant to HRS § 269-7(a) we find that the proposed transfer of ownership interests from OHC and MORI to HOH is reasonable and in the public interest. Given that OHC and MORI no longer desire to provide

⁹See Consumer Advocate's SOP at 9.

wastewater treatment service, we find it necessary for HOH, as a regulated public utility, to assume the provisioning of these services to the Hotels as regulated services. We agree with the Consumer Advocate that the continued provisioning of wastewater treatment services to the Hotels is essential to the public health and welfare.

The commission also finds, pursuant to HRS § 269-7.5, that HOH is fit, willing, and able to provide the expanded wastewater treatment service, including the properties of the Kauai Sheraton and the Marriott, as shown in Exhibit C to the application, and that the provisioning of these services is required by the present or future public convenience and necessity. Finally, the commission finds the proposed initial rates for the provision of wastewater treatment services to the Hotels, as described above, to be acceptable for now. We share the same rate structure concerns articulated by the Consumer Advocate. Thus, we agree with the Consumer Advocate that HOH should file its next general rate application by December 31, 2004 to allow the commission and Consumer Advocate an opportunity to review the reasonableness of the existing rate, and assess the impact, if any, of the Proposed Transactions on HOH's rate base and operating expenses.

Accordingly, in light of the above findings, the commission concludes that Applicants' request for approval of the Proposed Transactions should be approved, subject to the condition that HOH file its general rate case application by December 31, 2004.

VII.

Orders

THE COMMISSION ORDERS:

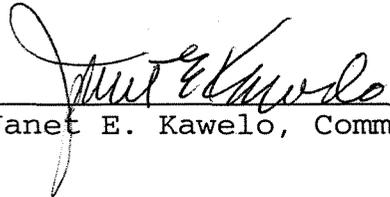
1. Order No. 21114 is vacated.
2. Applicants' application, filed on May 6, 2004, for commission approval of the: (1) transfer of OHC's and MORI's respective interests in the PWRP to HOH; (2) amendment to HOH's CPCN to expand HOH's service territory to cover the properties controlled, or previously controlled by OHC and MORI; and (3) establishment of initial rates for the Hotels, as represented in the application, is approved, subject to the conditions noted below. HOH's new service territory includes the Hotels, as reflected in Exhibit C attached to its application.
3. HOH shall promptly file with the commission its revised tariff sheets, incorporating its expanded service territory. The revised tariff sheets will take effect upon filing.
4. Unless otherwise ordered, HOH shall file its general rate case application by December 31, 2004.
5. HOH shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii SEP 03 2004.

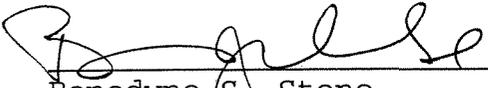
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

04-0094.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21334 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
P. O. Box 541
Honolulu, HI 96809

ALAN M. OSHIMA, ESQ.
MICHAEL H. LAU, ESQ.
OSHIMA CHUN FONG & CHUNG LLP
Davies Pacific Center, Suite 400
841 Bishop Street
Honolulu, HI 96813

Attorney for HOH UTILITIES, LLC

JON M. H. PANG, ESQ.
JAMIE Y. CHENG, ESQ.
IMANAKA, KUDO & FUJIMOTO
Topa Financial Center, Fort St. Tower
745 Fort Street, 17th Floor
Honolulu, HI 96813

Attorneys for OBAYASHI HAWAII CORPORATION

DAVID W. PROUDFOOT, ESQ.
BELLES GRAHAM PROUDFOOT & WILSON
4334 Rice Street, Suite 202
Lihue, HI 96766

Attorney for MARIOTT OWNERSHIP RESORTS, INC.



Karen Higashi

DATED: SEP 03 2004