

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MAKENA WASTEWATER CORP.)
For a Certificate of Public)
Convenience and Necessity to)
Provide Sewage Services on the)
Island of Maui, County of Maui and)
For Approval of Rates, Rules and)
Regulations)
_____)

DOCKET NO. 02-0133

DECISION AND ORDER NO. 21352

Filed Sept. 16, 2004
At 12 o'clock P.M.

for Brooke K. Kane
Chief Clerk of the Commission

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

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BROOKE K. KANE
Administrative Director
Public Utilities Commission
State of Hawaii

Brooke K. Kane

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Docket No. 02-0133
Decision and Order No. **21352**

DECISION AND ORDER

I.

Introduction

On May 17, 2002, MAKENA WASTEWATER CORP. ("Applicant" or "MWC") filed an application, as amended, requesting a certificate of public convenience and necessity ("CPCN") to provide wastewater treatment services for a master-planned development project ("Project") developed by Makena Resort Corporation ("MRC") in the Makena area on the island of Maui, as further depicted in MWC-Exhibit A attached to Applicant's amended application.¹

Applicant served copies of the amended application on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). The Consumer Advocate, by its statement of position ("Statement of Position") filed on January 9, 2004, states that it does not object to our approval

¹On March 28, 2003, Applicant filed its first amended application.

of the instant application, subject to certain conditions, to be discussed further below.

II.

Background

Applicant is the owner of a newly constructed wastewater treatment system that consists of collection lines, three (3) wastewater pump stations and a single water reclamation facility (hereinafter, jointly referred to as the "Facility"). Through its Facility, Applicant proposes to provide wastewater treatment services for a portion of a Project, currently being developed by MRC. MRC is a sister corporation to Applicant's parent, Moani Corporation ("Moani"). MRC and Moani are both wholly-owned by Lokelani Resort Corporation ("Lokelani"). Since the application was filed, Kohola Corp. was added to the corporate structure. Applicant continues to be wholly-owned by Moani, however, Moani is now a wholly-owned subsidiary of Kohola Corp.

The Project is scheduled to be completed in two (2) separate increments that will be referred to hereinafter as "Increment 1" and "Increment 2", respectively. Portions of the Increment 1 phase of the Project have already been developed, but the entire Increment 1 phase has not been completed. The developed portions of Increment 1 include the Maui Prince Hotel, two (2) 18-hole golf courses, a golf course clubhouse, and a 6-court tennis complex. The Increment 2 phase of the Project has not reached development stage.

Project-owner MRC now wishes to complete the development of the Increment 1 phase of the Project. Applicant asserts that the pre-Facility wastewater treatment infrastructure that was in-place and serving the developed portions of Increment 1 has become obsolete, and cannot accommodate the proportional increase in wastewater infrastructure requirements that will occur with the completion of the Increment 1 phase of the Project. Applicant states that the pre-Facility wastewater infrastructure served only the Maui Prince Hotel and could not be upgraded or expanded due to the limited land space at its current location. Other developed components of Increment 1 such as the golf course clubhouse, tennis complex, and the existing homes have used cesspools for wastewater disposal. Applicant's desire to complete Increment 1 phase of the Project necessitated the construction of the Facility in order to allow the Project to move forward and to meet the increased wastewater infrastructure requirements that will result from said expansion.

The Facility has been designed and constructed to meet all wastewater infrastructure requirements for the completion of the Increment 1 phase of the Project. It has also been designed to accommodate anticipated future modifications to the Facility that may be required to meet the projected future increase in wastewater infrastructure requirements for the Project, once increment 2 is commenced and completed.

Under MRC's plan for the completion of the Increment 1 phase of the Project, the following units may be added to the

existing components: 108 multi-family units and 896 multi family units in two (2) areas: 23 single family units; and 2 business districts. The proposed Increment 2 phase of the project calls for the addition of 1,760 single-family units; 207 multi-family units; and 1 business district. The maximum number of residential units in the Project for the Increment 1 and Increment 2 phases of the development are 1,027 units and 1,967 units, respectively.

Applicant now seeks authority to operate as a public utility to service the wastewater requirements of the Increment 1 phase of the Project, at full-capacity.

III.

Issues

Consistent with Stipulated Procedural Order 20636, filed on November 13, 2003, the issues in proceeding are: (1) Is Applicant fit, willing, and able to properly perform the wastewater treatment services proposed in the amended application, and to conform to the terms, conditions and rules adopted by the commission regarding said service? (2) Are the proposed services set forth in the amended application required, or will said services be required by the present or future public convenience and necessity? (3) Are Applicant's proposed rates, charges, and tariff rules and regulations for the proposed services in the amended application just and reasonable?

IV.

Discussion

A.

CPCN

Applicant's Facility utilizes an aerated lagoon system as the principal treatment process and five (5) ultra violet reactors in a single channel to disinfect the filtered effluent to achieve a quality level of R-1. Applicant's Facility has a design daily average wastewater flow capacity of 0.72 million gallons per day ("mgd"). Applicant expects an initial average daily flow of approximately 0.114 mgd, which is expected to reach 0.51 mgd when Increment 1 is fully developed. Applicant states that the Facility has the capability of expanding to accommodate the projected increase in wastewater flows when Increment 2 of the Project is completed. The estimated cost to design and construct the Facility is \$18.9 million.

On August 3, 2000, Applicant received authorization from the State of Hawaii Department of Health Wastewater Branch ("Wastewater Branch") to begin operation and startup of the Facility. Applicant also received its certificate of occupancy from the County of Maui on April 29, 2002. In addition, Applicant represents that the Wastewater Branch inspected its Facility on April 29, 2002 and received an acceptable rating.

Daily operations of the Facility will be the responsibility of the Plant Manager, Thomas Johnson. According to Applicant, Mr. Johnson has over 15 years of experience in operating and supervising wastewater treatment

facilities and currently holds a Hawaii Department of Health Grade IV Wastewater Treatment Plant Operator License. Previously, the Plant Manager was the Operations and Maintenance Supervisor IV for the County of Maui, Department of Public Works.

Applicant is a Hawaii corporation formed on November 17, 1999 and is authorized to issue 10,000,000 shares of common stock and pay dividends. Applicant asserts that it has not paid any dividends or issued preferred stock. Furthermore there are no security agreements, or mortgages, which presently affect Applicant's property and Applicant has no outstanding bonds or notes.

As evidence of its financial fitness, Applicant submitted its income statement for the year ended December 31, 2001, an unaudited balance sheet with pro forma information dated December 31, 2001, a projected income statement for the year ended May 31, 2003, a statement of actual revenues and expenses for the period ending September 30, 2003 and a balance sheet as of September 30, 2003. Based on the projected results of operations, Applicant's projected revenues would be exceeded by the projected expenses for 2003.

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, Applicant's affiliates will provide financial assistance to Applicant.

Applicant also represents that the County of Maui does not provide municipal sewage services to the proposed service territory. Additionally, Applicant states that there are no competing facilities for the proposed services.

Based on the foregoing, we find that Applicant is fit, willing, and able to properly perform the proposed wastewater treatment service and to conform to the terms, conditions, rules, and regulations adopted by the commission, and that the proposed wastewater treatment services are, or will be, required by the present and future public convenience and necessity. Thus, we conclude that Applicant's CPCN should be granted, subject to certain conditions stated in Section V, below.

B.

Rate Base and Proposed Rates and Charges

1. Rate Base. MRC has contributed the Facility to Applicant. Applicant acknowledges that the Facility does not constitute a regulatory rate base for ratemaking purposes. In the future, however, Applicant intends to seek rate base treatment of required plant additions to the Facility. The Consumer Advocate recommends that MWC reconcile the \$107,923 Fixed Facilities and Expenses ("FF&E") with the cost of the contributed Facility to ensure that the contributed Facility is not included in plant in service in its first rate proceeding. The commission agrees and will require MWC to reconcile the \$107,923 FF&E with the cost of the contributed Facility in its balance sheet.

2. Operating Expenses. The Consumer Advocate does not propose any adjustments to Applicant's forecasted expenses in this proceeding; however, the Consumer Advocate intends to consider the available support in its review of each forecasted test year expense, in Applicant's next rate proceeding.

3. Proposed rates and charges. Applicant proposes the following initial monthly rates: Hotels (per guest room) \$63.25/mo.; residential (per unit) \$61.51/mo.; Other Commercial \$6.32/thousand gallons ("TG").² In addition, Applicant is proposing a charge of \$0.55/TG for effluent to be reused within the Project, including usage on Applicant's two (2) golf courses. Applicant believes its rates are non-compensatory and does not expect to recover all of its operating expenses for a few years. In establishing its proposed rates and charges, Applicant considered three (3) development situations in determining its proposed rates and charges. Situation 1 assumes that only the existing developed parcels in Increment 1 are connected to the wastewater system; Situation 2 assumes only a portion of the Increment 1 development is connected; while Situation 3 assumes the total build out of Increment 1. Applicant's proposed rates and chargers are based on Situation 2, which assumes that only a portion of the Increment 1 development is connected to its system.

²MWC also proposes to add 10 per cent operating reserve to each of these rates, which is discussed below.

In its Statement of Position, the Consumer Advocate advises that it will not object to the approval of Applicant's proposed rates and charges at this time, but it intends to consider the available support in its review of each forecasted test year expense.

Applicant's proposed rates and charges are slightly higher than the rates currently assessed by most other wastewater utilities regulated by the commission; however, the commission finds that Applicant's proposed rates and charges are close to the monthly breakeven rate based on the number of customers connected to Applicant's Facility. We also agree with the Consumer Advocate's statement of position that "given the lack of historical experience and the nascent nature of Applicant's customer base, the more traditional review of the derivation of Applicant's proposed rates and charges is difficult and impractical at this time. Thus, the initial rate schedules, as proposed by Applicant and summarized in this decision and order, are accepted for purposes of this application. We do expect, however, to carefully scrutinize the reasonableness of Applicant's rates and charges in its next rate proceeding.

4. Operating Reserves. Applicant requests authorization to establish a ten (10) per cent operating reserve, funded by Applicant's customers through the rates charged for the services. Applicant has not provided any information in support of its proposed ten (10) per cent operating reserve. In addition, Applicant has represented that it has other sources of funding other than the utility service revenue. In particular,

Applicant represents that in the event additional funds are needed to finance Applicant's operations, its affiliates will provide the necessary financial assistance. Accordingly, the commission concludes that Applicant's request to establish a ten (10) per cent operating reserve should be denied.³

C.

Proposed Rules and Regulations

Applicant's proposed rules and regulations governing the rate schedules and the provision of wastewater treatment services to Applicant's customers are attached as amended MWC-Exhibit K to the amended application. Based on our review of Applicant's proposed rules and regulations, and except as modified below, we find that Applicant's proposed rules and regulations are reasonable. In particular, we agree with the Consumer Advocate's recommendations, and therefore, conclude that Applicant's proposed rules and regulations should be amended as follows:

1. Rule 7.2. Amend this rule by moving the reference to "Special Contract" to Section 8 rather than Section 7.

³In light of our denial of Applicant's request to establish an operating reserve, we deem the Consumer Advocate's recommendation to require Applicant to adhere to strict accounting of the operating reserve account as prescribed in Decision and Order No. 16079, filed on November 14, 1997, in Docket No. 7265 to be moot.

2. Rule 9.2. Amend this rule by inserting the phrase "related to the operation of the sewage system" at the end of the first sentence to read:

The Company reserves the right at any and all times to shut off service without notice for purpose of making repairs, extensions, alterations or for other reasons related to the operation of the sewage system.

3. Amend Applicant's rules and regulations by including MWC-Exhibit J of the amended application as Attachment 3.

4. Amend its rate schedule whereby Applicant's Proposed \$0.55/TG effluent sales charge shall be included in Applicant's tariff sheet.

5. Rule 14.1. Amend this rule by inserting the criteria set forth in response to CA-IR-11 to ensure that Contributions in Aid of Construction ("CIAC") rules are applied in a fair and nondiscriminatory manner.

6. Amend Applicant's rules and regulations by changing the term "Consumer" to "Customer" in its Rules and Regulations.

Finally, we agree with the Consumer Advocate that prior to establishing a CIAC rate, if any, Applicant should be required to submit its proposed CIAC rate for the commission's review and approval.

V.

Orders

THE COMMISSION ORDERS:

1. Applicant's amended application, filed on March 28, 2003, for a CPCN to provide wastewater treatment services for the Project, as described in further detail in its amended application, is approved, subject to the conditions discussed herein and specified below.

2. Applicant's proposed initial rates and charges for its wastewater treatment services, as set forth herein, are accepted for the purposes of this application.

3. Applicant's request to collect a ten (10) per cent operating reserve is denied.

4. Applicant's proposed rules and regulations are approved, subject to the amendments required by this decision and order.

5. Applicant shall submit revised tariff sheets reflecting, among other things, the rates and charges, and rules and regulations authorized by this decision and order. The revised tariff sheet 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 wastewater treatment service until the revised tariff sheets are approved by the commission.

6. Pursuant to HRS § 269-8.5, Applicant shall file with the commission, with service to the Consumer Advocate, an annual financial report in accordance with the

National Association of Regulatory Utility Commissioners covering its wastewater treatment utility services commencing with the calendar year ending December 31, 2004, and each year thereafter. The reports shall be filed not later than March 31 for the immediate past calendar year.

7. Applicant shall remit, within thirty (30) days of the date of this decision and order, a public utility fee of \$60, pursuant to HRS §269-30. Additionally, on July 31, 2005 and December 31, 2005, and each year thereafter, Applicant shall pay a public utility fee which shall be equal to one-fourth of one per cent of the gross income from its public utility business during the proceeding year, or a sum of \$30, whichever is greater, in accordance with HRS § 269-30.


8. Upon commencement of its wastewater treatment 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 wastewater treatment services.

9. Applicant shall timely conform to all of the commission's orders, as set forth above. Failure to adhere to our orders constitutes cause for the commission to void this order, and may result in further regulatory actions as authorized by law.

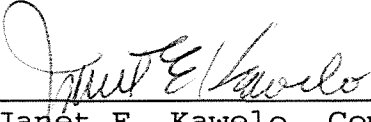
DONE at Honolulu, Hawaii

SEP 16 2004

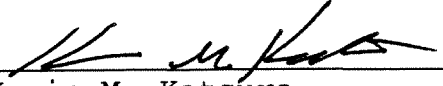
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kevin M. Katsura
Commission Counsel

02-0133.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21352 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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5415 Makena Alanui
Kihei, Maui, HI 96753

DATED: SEP 16 2004


for Karen Higashi