

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

DECISION AND ORDER NO. 21428

RECEIVED
2004 OCT 26 A 9 16
HONOLULU
PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

Filed Oct. 25, 2004
At 3 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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)	
PUUWAAWAA WATERWORKS, INC.)	Docket No. 03-0369
For Review and Approval of Rate)	
Increases; Revised Rate Schedules.)	Decision and Order No. 21428
<hr/>	

DECISION AND ORDER

I.

Procedural Background

PUUWAAWAA WATERWORKS, INC. ("PWI") filed its Application for Approval of Rate Increase to increase its volumetric rate and change its rate schedule under Hawaii Revised Statutes ("HRS") § 269-16(b) on October 20, 2003 ("Application").

The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), *ex officio* party to any proceeding before the commission,¹ was served copies of the Application. The Consumer Advocate, pursuant to HRS § 269-16(d), filed the Division of Consumer Advocacy's Statement of Position Regarding Completeness of Application on November 10, 2003, informing the commission that PWI had not complied with the requirements of HAR §§ 6-61-86 and 6-61-88.

¹See, Hawaii Administrative Rules ("HAR") § 6-61-62.

The commission, pursuant to HRS § 269-16(d), set a hearing date of December 1, 2003, regarding the Consumer Advocate's objections to the sufficiency of the Application.²

PWI and the Consumer Advocate filed a joint letter dated November 26, 2003 ("November 26, 2003 Letter"), informing the commission that PWI and the Consumer Advocate would be able to resolve the concerns raised by the Consumer Advocate without a hearing and requested a waiver of the hearing. Moreover, PWI and the Consumer Advocate agreed that the "application completeness date" would be determined by the filing of an amended application. The commission approved the agreement memorialized in the November 26, 2003 Letter and canceled the December 1, 2003 hearing by Order No. 20697, filed on November 28, 2003.

PWI filed its Amended Application for Approval of Rate Increase on January 26, 2004 ("Amended Application"). In its Amended Application, PWI requested commission approval to increase its base volumetric rate by \$8.58 per thousand gallons ("TG") over its present volumetric rate of \$6.02 per TG, representing an increase in revenues of \$137,500 in the test year ending December 31, 2004 ("Test Year") or an increase of 103.54 per cent. Additionally, PWI requested that the commission accept its un-audited financial statements submitted as exhibits to its Amended Application in lieu of audited financial statements, as required under HAR § 6-61-75, through a waiver of this requirement under HAR § 6-61-92 ("Filing Waiver Request").

²See, Order No. 20641, filed on November 14, 2003.

The Division of Consumer Advocacy's Statement of Position Regarding Completeness of Amended Application ("Consumer Advocate's Completeness Statement") was filed on February 17, 2004, informing the commission that the Consumer Advocate does not object to the completeness of the Amended Application.

The commission held a public hearing on the matters of PWI's Amended Application on April 15, 2004, in Kailua-Kona, Hawaii, pursuant to HRS §§ 269-12(c) and 269-16(b) ("Public Hearing").³

No motion to intervene or participate was timely filed. Under HAR § 6-61-57, motions to intervene or participate without intervention in this proceeding are required to be filed by April 26, 2004.⁴ 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 their Motion to Enlarge Time to File Motion to Intervene ("Motion") and a memorandum in support of the Motion in this proceeding, under HAR §§ 6-61-23, 6-61-41 and 6-61-55. Movants' Motion was denied by Order No. 21021, filed on June 2, 2004, due to Movants' failure to meet the requirements of

³Approximately ten (10) individuals provided oral testimonies during the Public Hearing. All but one testifier opposed PWI's rate increase request. Additionally, various concerns and statements of opposition to PWI's rate increase request were received via U.S. Postal Service and through electronic mail.

⁴HAR § 6-61-57 requires motions to intervene or participate be filed no later than ten (10) days after the last scheduled public hearing.

HAR § 6-61-23(a)(2).⁵ Accordingly, the sole parties to this proceeding are PWI and the Consumer Advocate (the "Parties").

On April 26, 2004, PWI filed its *APPLICATION FOR APPROVAL OF TEMPORARY RATE INCREASE AND WAIVER OF PUBLIC HEARING* ("Temporary Application") in this docket. Specifically, PWI requested immediate approval of proposed temporary increase in rates ("Temporary Rate Increase Request") and a waiver of the public hearing requirement associated with the rate increase ("Public Hearing Waiver Request") (collectively, "Requests"). PWI's Requests were made pursuant to HRS § 269-16 and HAR §§ 6-61-41, 6-61-89, 6-61-92, and "such other rules and regulations as may govern herein."⁶

On May 17, 2004, the Consumer Advocate filed the Division of Consumer Advocacy's Statement of Position on Puuwaawaa Waterworks, Inc.'s Application for Approval of Temporary Rate Increase and Waiver of Public Hearing opposing PWI's Requests.

⁵On July 2, 2004, Movants (now known as "Appellants") appealed Order No. 21021 to the Circuit Court of the Third Circuit, State of Hawai'i (the "Court") through their Notice of Appeal to Circuit Court and named the commission and the Parties as Appellees. On July 22, 2004, the commission filed Appellee Public Utilities Commission's Motion to Dismiss Notice of Appeal to Circuit Court Filed on July 2, 2004 ("Motion to Dismiss") and a memorandum in support of the Motion to Dismiss. The commission's Motion to Dismiss was scheduled for hearing before the Honorable Ronald Ibarra on September 20, 2004. On August 31, 2004, the Court approved the Stipulation for Order Dismissing Appellants' Administrative Appeal Filed July 2, 2004, With Prejudice; which was filed jointly by Appellants; the commission; and Appellees, PWI and the Consumer Advocate. The commission filed a Notice of Withdrawal of its Motion to Dismiss with the Court on September 16, 2004.

⁶See, Temporary Application at 1.

The commission issued Order No. 21354, on September 17, 2004, denying PWI's Temporary Rate Increase Request for failing to meet the requirements of HRS § 269-16(c) for a temporary increase in rates, and dismissed PWI's Public Hearing Waiver Request as moot.

An evidentiary hearing regarding PWI's Amended Application was held on September 23, 2004, pursuant to the requirements of HRS § 269-16(b) and HRS Chapter 91 ("Evidentiary Hearing").⁷ The Evidentiary Hearing was conducted in accordance with Prehearing Order No. 21333, filed on September 3, 2004 ("Prehearing Order") and HAR Chapter 6-61, Rules of Practice and Procedure Before the Public Utilities Commission.

On October 8, 2004, PWI filed Puuwaawaa Waterworks, Inc.'s Post-Hearing Brief ("PWI's Brief") and the Consumer Advocate filed the Post-Hearing Brief of the Division of Consumer Advocacy ("Consumer Advocate's Brief") on October 11, 2004, in accordance with the Prehearing Order. Puuwaawaa Waterworks, Inc.'s Rebuttal Brief ("PWI's Rebuttal") and the Reply Brief of the Division of Consumer Advocacy ("Consumer Advocate's Reply") were simultaneously filed on October 14, 2004.

⁷The Notice of Evidentiary Hearing was timely and properly served on the Parties on September 7, 2004, in accordance with HRS §§ 91-9 and 91-9.5 and HAR § 6-61-30.

II.

Description of PWI

PWI is a corporation organized under the laws of the State of Hawaii providing water service to residential and commercial customers in the Puuwaawaa and Puuanahulu areas of the island of Hawaii. It is a public utility, as defined by HRS § 269-1, and as such, is subject to the requirements of HRS Chapter 269. PWI was first incorporated in 1988; however, it did not receive its certificate of public convenience and necessity ("CPCN") to operate as a water utility until January 2003.

PWI received its CPCN, and its initial water rates were established by Decision and Order No. 19980, filed on January 22, 2003, in Docket No. 00-0005 ("D&O No. 19980"). PWI's current commission-approved rates ("Present Rates"), established by D&O No. 19980, are as follows:

Base (volumetric) Rate:	\$6.02 per TG
Customer (fixed) Charge:	\$37.83 per month for all customers
Power Fluctuation Factor ("PFF"):	(Actual kwh ⁸ cost - \$0.22/kwh) x 19.25 kwh per TG x 1.06385

PWI's infrastructure consists of, among other things, two (2) water wells, one (1) each located in Puuwaawaa and Puuanahulu, with submersible pumps; a 100,000-gallon concrete water tank; over five (5) miles of main water lines; and various valves, meters, and distribution lines. At the time of the filing of the Amended

⁸The acronym for kilowatt-hours is "kwh".

Application, PWI provided water service to roughly 80-85 customers;⁹ however, PWI estimates that it will be serving approximately 108 customers by the end of the Test Year.¹⁰

PWI entered into an agreement with Island Utility Services, Inc. ("IUS") in March 2003 for professional accounting, operations, and management services. On May 7, 2003, PWI voluntarily filed for Chapter 11 bankruptcy reorganization.¹¹ PWI filed for bankruptcy reorganization based on its opinion that the Present Rates, particularly the volumetric rate of \$6.02 per TG, generated insufficient revenues for PWI to, among other things, cover operating costs.

III.

Rate Increase Issues

The Prehearing Order established the issues of this docket as follows:

1. Are the proposed tariffs, rates, and schedules just and reasonable?
2. Are the revenue forecasts for the Test Year at present and proposed rates reasonable?
3. Are the projected operating expenses for the Test Year reasonable?
4. Is the requested rate of return fair?

⁹See, Amended Application at 2 and Transcript of Evidentiary Hearing held on September 23, 2004 on Docket No. 03-0369 ("Transcript") at 24.

¹⁰See, Transcript at 24.

¹¹See, Amended Application at 3.

IV.

Filing Waiver Request

PWI requests a waiver, under HAR § 6-61-92, of the HAR § 6-61-75 requirement that audited financial statements accompany the filing of applications before the commission. In lieu of filing audited financial statements with its Amended Application, PWI filed un-audited statements. PWI contends that, as a small public utility with annual revenues of less than \$2,000,000, it does not readily have audited financial reports to submit. It further contends that preparing audited financial reports for its Amended Application would delay the filing of its rate increase request and unjustly impose additional financial burdens on PWI. The Consumer Advocate did not object to PWI's Filing Waiver Request.¹²

HAR § 6-61-92 provides the commission with discretion to modify the filing requirements under the subsection, if the requirements would impose a financial hardship on the applicant or be unjust or unreasonable. PWI is a small utility with annual revenues of less than \$2,000,000. Under D&O No. 19980, revenues of \$122,335 were found to be just and reasonable to determine rates in Docket No. 00-0005.¹³ Commissioning the production of audited financial statements could be costly and the costs would be borne by PWI and its ratepayers. Thus, PWI's contention that requiring

¹²See, Consumer Advocate's Completeness Statement at 2.

¹³See, D&O No. 19980 at 12.

it to submit audited financial statements in this docket would result in financial hardship appears to be reasonable.

Based on the above, we find good cause to grant PWI's Filing Waiver Request under HAR § 6-61-92.¹⁴

V.

PWI's Rate Increase Request

The issues of this proceeding all pertain to rates. Under HRS Section 269-16(b), the commission must find that the rates being proposed by PWI are just and reasonable.

A.

Parties' Positions

PWI seeks to increase its base monthly volumetric charge from \$6.02 per TG to \$14.60 per TG--an increase of \$8.58 per TG over its current volumetric rate. PWI contends that it is unable to produce sufficient revenues to: (1) fund its ordinary operations, (2) pay taxes, or (3) fund essential reserves for pump replacement and other capital requirements under Present Rates. PWI asserts that its proposed rate increase is "necessary" to: (1) make it solvent by "raising funds sufficient to pay prepetition debts for unpaid taxes and postpetition debts that must be paid for

¹⁴PWI is reminded that our approval of the submittal of un-audited financial statements in lieu of audited ones is not a substantive finding regarding the merits of PWI's financial statements. Our approval on this matter is procedural in nature, applying solely to the HRS 269-16(d) determination of application completeness.

[PWI] to emerge from bankruptcy"; (2) "cover the day-to-day costs of operations"; and (3) to fund a reserve.¹⁵

PWI represents that it is currently able to survive by billing its customers an insolvency surcharge of \$7.50 per TG ("Insolvency Charge"), which is being voluntarily paid by "most" of PWI customers.¹⁶ PWI contends that this situation is unfair since a segment of the customers pay the Insolvency Charge while a segment does not.¹⁷

The Consumer Advocate opposes PWI's rate increase request. It asserts that PWI has not carried "its affirmative burden of proving to the [c]ommission that PWI's proposed rate increases are just and reasonable and should be approved."¹⁸ The Consumer Advocate's objection to PWI's rate increase is primarily based on PWI's "lack of support for the established test year water sales, electricity, contract labor and professional fees."¹⁹ The Consumer Advocate states that PWI's intent to create a pump replacement reserve is unreasonable and inconsistent with the promotion of PWI's long-term viability. Moreover, the Consumer Advocate reiterates its arguments regarding PWI's

¹⁵See, Amended Application at 3.

¹⁶See, PWI's Brief at 2.

¹⁷In a letter dated July 25, 2003, the commission informed PWI that the Insolvency Charge is invalid and an unauthorized charge, and advised PWI that it should not be imposing such a charge on its customers. During the Evidentiary Hearing, PWI acknowledged that the Insolvency Charge is an illegal charge. See, Transcript at 7.

¹⁸See, Consumer Advocate's Brief at 1-2.

¹⁹See, Consumer Advocate's Brief at 2.

Temporary Rate Increase Request, which is that PWI failed to explain why the Present Rates are insufficient to recover a normalized level of operating expenses. The Consumer Advocate urges the commission to rely on the analysis and formulae in D&O No. 19980 and to determine that PWI fails to meet its burden to demonstrate that its proposed rate increase is just and reasonable.

Accordingly, it recommends that the commission deny PWI's rate increase request.

In its rebuttal, PWI asserts that it has "furnished more than an adequate record to support the much-needed rate increase" and contends that the voluntary payment of the Insolvency Charge by a "majority" of its customers is "evidence of the direction that PWI's rates must go."²⁰ Moreover, PWI appears to contend that rate-setting principles should not be applied to its practices.

In its reply, the Consumer Advocate reiterates its position that PWI has not met its affirmative burden of proving that its proposed rates are just and reasonable. It contends that the commission "must refrain from relying only on the unsupported representations that the utility's revenues have decreased, or that the reasonable and legitimate expenses have increased over the levels upon which the existing rates were based."²¹

²⁰See, PWI's Rebuttal at 2.

²¹See, Consumer Advocate's Reply at 3.

B.

Findings and Conclusions

As we expressed in D&O No. 19980, PWI, as the applicant, has the burden to demonstrate that its proposed rates are just and reasonable.²² This burden lies with PWI.²³ "Reliable, probative, and substantial evidence, as the term is used in HRS § 91-10(1), refers to both the sufficiency and quality of the evidence presented. The evidence must be relevant and credible, probative and of material value, and of a quality and quantity sufficient to justify a reasonable man to reach a conclusion on a tendered issue."²⁴

Based on our review of the entire record, we conclude that PWI has failed to meet its burden. The record is almost devoid of evidence sufficient and credible to support PWI's rate increase request and PWI's post hearing briefs were inadequate and did not explain how PWI derived any of its Test Year figures and cost items. We specifically find PWI's proffered expense figures and accounts, and its estimates for water sales and revenue requirements to be inconsistent, unreliable, and insufficient.

²²See, D&O No. 19880 at 8 (quoting In re Matter of Hawaiian Electric Company, Inc., 56 Hawai'i 260, 270 (1975)).

²³HRS § 91-10(5) states, "[e]xcept as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."

²⁴See, In re GTE Hawaiian Telephone Company Incorporated, Docket Nos. 7579, 7524, 7523, 7193 and 6404 (consolidated), Decision and Order No. 13950 (June 9, 1995) ("D&O No. 13950") at 14.

While the commission is not limited to specific procedures or fixed formulas when determining just and reasonable rates, and is "empowered to exercise sound discretion in its review and evaluation of the evidence"²⁵ the commission cannot determine rates based primarily on unsupported assertions and conclusory statements. PWI's claim that it provided "more than an adequate record to support" its rate increase request is simply false. For example, the Amended Application, the testimony of PWI's witnesses, PWI's Brief, and PWI's Rebuttal provide no credible and reliable evidentiary support for its electricity, insurance, supplies, and telephone expenses for the Test Year. We seriously question the credibility and reliability of PWI's submittals in this docket particularly because these documents contain no discussion regarding PWI's Test Year water sales, which is critical to any rate case. PWI's attempts to justify the increase in contract labor expense (i.e., IUS contract for operations, management, and accounting services) and the inclusion of a reserve expense are conclusory and unpersuasive, to say the least, as discussed further below in detail.

Towards the end of this proceeding, PWI filed its quarterly financial reports in Docket No. 00-0005 for the quarters ending December 31, 2003; March 31, 2004; June 30, 2004; and September 30, 2004. These reports were filed on October 8 and 12, 2004. Under D&O No. 19980, PWI was required to file quarterly financial reports for the 2003 calendar year no later than the last

²⁵See, D&O No. 19980 at 6 (quoting D&O No. 13950 at 12, quoting In re Hawaiian Tel. Co., 67 Hawai'i 370, 379 (1984)).

day of the month following the end of each quarter. Accordingly, quarterly financial reports should have been filed for the quarters ending, March 31, June 30, September 30, and December 31, 2003; on April 30, July 31, and October 31, 2003, and January 31, 2004; respectively.

The quarterly financial reports that PWI chose to file on October 8, and 12, 2004, are undeniably late and filed in contradiction to the requirements of D&O No. 19980. Had PWI timely filed its quarterly financial reports in accordance with D&O No. 19980, the information contained in the reports may have been sufficiently reliable and credible to support PWI's rate case.

However, because PWI decided to file quarterly financial reports after the Evidentiary Hearing, the information in the reports are not credible and are unreliable, particularly since the Consumer Advocate was not provided with, at the very minimum, an opportunity to present rebuttal evidence or to conduct cross-examination as may be required for a full and true disclosure of the facts. Accordingly, we question the reliability and veracity of the information contained in these reports to the extent that it does not carry probative weight for purposes of this rate case.

Aside from the quarterly financial reports, D&O No. 19980 also required PWI to, among other things, file its annual financial report in compliance with HRS § 269-8.5 ("Annual Financial Report") and provide its plan for capital improvements over the next five (5) years ("CIP Report"). To date, PWI has not filed its 2003 Annual Financial Report and CIP Report in compliance with

D&O No. 19980.²⁶ These required submissions, if found credible and reliable, may have assisted the commission in determining whether PWI's proposed rate increase was just and reasonable.

PWI's claim that its Amended Application is supported by the year-end 2000, 2001, and 2002 financial statements, the financial statements from January through June 2003, and its profit and loss statements is inadequate to justify the rate increase requested by PWI. While historical costs are often important and helpful in establishing trends, averages, and comparisons, they are not in and of themselves, sufficient to justify increases in rates without an explanation of how they relate to Test Year figures and cost items. Additionally, PWI must prove that the figures and expense items for the Test Year are representative of its on-going normal operations through reliable, probative, and substantive evidence. PWI's implication that a "majority" of its customers are paying this unauthorized Insolvency Charge is also not credible or indicative to justify the rate increase requested by PWI.

As we stated above, and will detail below in our review of the specific rate elements, our review of the whole record indicates that PWI has not carried its burden of proof by a preponderance of the evidence to demonstrate that its proposed rate

²⁶Moreover, the docket's record indicates that PWI failed to provide proof of notification of the scheduled Public Hearing in accordance with HRS § 269-12(c). HRS § 269-12(c) requires applicants to "notify their consumers or patrons of the proposed change in rates and of the time and place of the public hearing not less than one week before the date set, the manner[,], and the fact of notification to be reported to the commission before the date of the hearing." The commission advised PWI of its obligations under HRS § 269-12(c) in a letter addressed to the parties dated March 11, 2004.

increase is just and reasonable. The whole record established in this docket is simply inadequate for the commission to determine that the proposed rates are just and reasonable and consistent with well-established ratemaking principles. Accordingly, we find and conclude that PWI's proposed rate increase request should be denied.

VI.

Rate Elements

A.

Water Sales

PWI's projection for Test Year water sales is 16,022 TG. The Consumer Advocate does not recommend a water sales projection for the Test Year, nor does it discuss it in length. However, the Consumer Advocate does point out that PWI's Test Year water sale projections of 16,022 TG is inconsistent with its water sale projection set forth in Exhibit PWI-8 of its Amended Application; wherein PWI projects water sales of 16,500 TG for the same year.²⁷

Upon review, we find PWI's Test Year water sales projection to be inconsistent and unreliable. Aside from the above-described inconsistency, PWI admits that its water sales projection for the Test Year is "far-off-the-mark" and that its requested \$14.60 volumetric rate will not generate its requested increase in revenues for the Test Year. Specifically, PWI contends that its water sales for the year-ended September 30, 2004 are

²⁷See, Consumer Advocate's Brief at 20.

approximately 13,397 TG and projects that if annual water sales are consistent with the last twelve (12) months, its requested volumetric rate increase of \$14.60 will only result in approximately \$14,468 in additional revenues.²⁸ Additionally, we find that the water sales data filed on October 14, 2004, in response to the commission's October 7, 2004 letter request, do not support PWI's Test Year water sales projection.

Based on the above, we conclude that PWI has not demonstrated that its projected water sales of 16,022 TG for the Test Year are just and reasonable.

B.

Revenues

For its Test Year, PWI's revenues under proposed rates are \$270,300. This represents an increase of \$137,500 over Present Rates derived through PWI's requested increase in its volumetric rate by \$8.58 per TG over its present volumetric rate of \$6.02 per TG. The Consumer Advocate states that PWI failed to normalize its Test Year revenues and that it failed to recognize the additional increase in revenues from the additional customers served since PWI's initial rates were determined.

We find PWI's Test Year revenue projections are not just and reasonable. PWI's projected increase in revenues is based on its proposed increase in its volumetric rate. Thus, its Test Year projected revenues are highly correlated to its projected Test Year

²⁸ See, PWI's Brief at 4.

water sales. As we determined above, PWI's projected Test Year water sales are unreasonable and unreliable. As discussed further below, we also find that most of PWI's Test Year expense figures do not support PWI's revenue projections.

Accordingly, the commission finds that PWI's Test Year revenue projections are unreasonable and unjust, and conclude that the projections should not be considered to have any probative value for purposes of this rate case.

C.

Electricity Expense

PWI's electricity expense estimate for the Test Year is \$96,200. The Consumer Advocate contends that PWI merely claims an increase in its electricity Test Year costs without an explanation about how this cost amount was derived. The Consumer Advocate contends that it is insufficient to "compare the test year electricity expense to the expense incurred in prior years to purpose (sic) a reasonable test year projection" since "the recorded expense reflects changes in the price per kwh, as well as the kwhs consumed."²⁹

The commission determined that electricity expense of \$73,544 for determining rates is just and reasonable in D&O No. 19980.³⁰ Electricity expense is a variable expense related to the volume of water sold. The commission recognized the

²⁹See, Consumer Advocate's Brief at 10.

³⁰See, D&O No. 19980 at 15.

importance of electricity expense and how it affects PWI's operations by approving the PFF, allowing PWI to automatically adjust its volumetric rate on a quarterly basis to account for the fluctuation in electricity costs.³¹

We find that PWI did not provide any credible evidence or even a narrative in support for its Test Year electricity expense estimate of \$96,200. Thus, we are uncertain how PWI derived this cost figure, which is approximately thirty (30) per cent higher than the electricity expenses approved in Docket No. 00-0005.

Based on the above, we conclude that PWI failed to establish that its Test Year expense estimate for electricity is just and reasonable.

D.

Other Utility or Telephone Expense

PWI's Test Year estimate for telephone expense is \$100. In D&O No. 19980, the commission approved telephone expense of \$636, which is \$536 more than PWI's Test Year telephone expense estimate. PWI again does not provide any credible evidence or narrative regarding its Test Year telephone expense estimate. However, PWI's un-audited financial statements for the years 2000, 2001, and 2002 record telephone expenses of \$309.40; \$735.83; and

³¹We note that our review of the quarterly financial reports submitted on October 8 and 12, 2004 indicates that PWI may be improperly applying the PFF. It appears that the PFF is being applied on a monthly basis as opposed to a quarterly basis, as required under D&O No. 19980.

\$614.79, respectively.³² PWI's Test Year telephone expense is significantly lower than the recorded amounts set forth in its financial statements. Thus, we find PWI's Test Year telephone expense estimate of \$100 to be unsupported and questionable.

Based on the above, the commission concludes that PWI did not establish that its Test Year telephone expense is just and reasonable.

E.

Professional Legal Fees

PWI estimates Test Year legal fees to be \$29,900. PWI's witness Newell Bohnett ("Witness Bohnett") testified during the Evidentiary Hearing that the figure was a "guess" of the cost of legal fees and that it represented costs associated with dealings with the commission and the Consumer Advocate's office.³³

The Consumer Advocate argues that PWI's Test Year legal fees are "not reasonable for rate setting purposes because there is no evidence that the fees are representative of normal on-going operations."³⁴ The Consumer Advocate also contends that there is no explanation or breakdown of the activities performed or the cost of such activities in the Test Year estimate. Specifically, the Consumer Advocate states that there is no evidence that PWI's legal counsel spends a certain numbers of hours on commission matters,

³²See, Amended Application Exhibit PWI-2, Schedules 7-2, 7-4, and 7-6.

³³See, Transcript at 21-22.

³⁴See, Consumer Advocate's Brief at 10.

and also argues that PWI failed to demonstrate that such work is representative of a reasonable level of on-going activities related to commission matters. The Consumer Advocate points out that when asked to elaborate on what Witness Bohnett meant regarding "dealings" with the commission and the Consumer Advocate's office, Witness Bohnett referred to one (1) meeting and a letter written to the Chairman of the commission. The Consumer Advocate argues that one (1) meeting and a letter do not constitute on-going "dealings" with the commission and the Consumer Advocate's office.

Moreover, the Consumer Advocate contends that it is not possible to determine the reasonableness of the Test Year projection by comparing the estimated amount with historical levels for multiple reasons. First, the historical figures would include costs for legal fees related to PWI's bankruptcy filings which should be excluded from the determination of test year revenue requirements since these costs are non-recurring and should not be borne by ratepayers. Second, the Consumer Advocate contends that historical legal costs may include costs incurred to process Docket No. 00-0005 and the applications filed in this proceeding. The Consumer Advocate states that costs associated with Docket No. 00-0005 should be removed when determining test year projections for this proceeding to prevent PWI from double recovery of these expenses--once in Docket No. 00-0005 and then again in this proceeding. Lastly, the Consumer Advocate contends that the PWI's estimate for Test Year legal fees are overstated since PWI filed multiple applications in this proceeding for the same purpose

and did not amortize its cost figure over the period that the rates established in this proceeding will be in effect.

Upon review, we find the Consumer Advocate's arguments to have merit. PWI did not discuss or explain its Test Year legal fees expense in its Amended Application or briefs. Witness Bohnett's admission that the estimated amount is a "guess" of legal fees incurred due to dealings with the commission and the Consumer Advocate's office, and his explanation that such "dealings" consisted of one (1) meeting and a letter to the commission, do not sufficiently support PWI's estimate of legal fees for the Test Year. Adjustments are necessary to normalize PWI's Test Year legal fees estimate of \$29,900; however, any attempts to do so would be insufficient and impractical since PWI failed to provide any credible and reliable evidence to justify such adjustments.

Accordingly, we find that PWI has not demonstrated that its Test Year legal fees expense estimate of \$29,900 is just and reasonable.

F.

Professional "Other" Fees

Under professional "other" fees (or contract labor costs), PWI lists a cost of \$60,400 for the Test Year. This amount is attributable to PWI's contract with IUS who was retained in March 2003 to provide accounting, operations, and management services. PWI states that: (1) IUS provides PWI with "experienced personnel and regulatory compliance"; and (2) since PWI is now

regulated by the commission, "it is essential that the day-to-day operations" of PWI be handled by an entity with experienced utility management.³⁵

The Consumer Advocate argues that PWI has once again failed to meet its burden of proof to support the reasonableness of the Test Year expense for contract labor costs. The Consumer Advocate contends that \$50,400 of the requested amount is for operations and maintenance while \$10,000 of the annual amount paid to IUS is for accounting services. The Consumer Advocate reminds the commission that \$21,264 (\$4,800 for accounting and \$16,464 for operations and maintenance) was approved for contract labor expenses for ratemaking purposes in Docket No. 00-0005. The Consumer Advocate states that PWI claims to have retained IUS to address concerns that only one (1) employee performed the operations and maintenance of PWI's system with no back-up. However, it notes that the same employee, Craig Nichols ("Nichols"), who provided operations and maintenance services under employment with PWI, provides the same services under employment with IUS. The Consumer Advocate argues that the Test Year proposal of \$50,400 for operations and maintenance of the water system is more than three (3) times higher than the amount deemed reasonable for rate setting purposes in Docket No. 00-0005 and that PWI has not justified these higher costs. The Consumer Advocate contends that "[t]here has been no change in operations for the water

³⁵See, Amended Application Exhibit PWI-9 at 10.

system, increase in service territory, or need to retain personnel with higher qualifications or certifications."³⁶

With regards to costs associated with accounting services, the Consumer Advocate argues that PWI has not provided any support to demonstrate the reasonableness of the \$10,000 annual amount paid to perform accounting and billing functions. It contends that the increase in the number of customers from sixty (60) in Docket No. 00-0005 to eighty (80) in this proceeding is not sufficient to support a 100 per cent increase for costs associated with accounting and billing.

The Consumer Advocate states that providing an executed contract for IUS services by itself is insufficient, and specifically, states that: (1) "PWI failed to show that its proposed level of salaries or contractual agreements were reasonable or justifiable;" (2) the record indicates that PWI historically compensated employees, doing similar or identical services, at levels less than that proposed in this proceeding; and (3) "PWI has not confirmed that contractual agreements with IUS does not include or allocate services to any other entity operated by PWI, its subsidiaries or" Mr. Bohnett, its president.³⁷

The commission is also troubled with PWI's Test Year expense for professional "other" fees of \$60,400. As noted by the Consumer Advocate, the commission approved collective contract labor fees of \$21,264 for ratemaking purposes in

³⁶See, Consumer Advocate's Brief at 15.

³⁷See, Consumer Advocate's Brief at 16-17.

Docket No. 00-0005. The overall increase in contract labor costs of \$39,136 (i.e., \$60,400 - \$21,264) has not been adequately explained by PWI and we find its estimate for this cost category to be unreasonable and unsupported in the record. Aside from simple assertions that IUS provides professional utility management services, PWI has not explained what additional services IUS provides PWI that reasonably justifies an increase in contract labor costs as PWI proposes. It appears that Nichols, who was once an employee of PWI is now basically conducting the same types of service under employment with IUS, and PWI's briefs and other submissions are void of any discussion with regards to contract labor services under IUS. Moreover, PWI's witness, Mr. Bohnett stated on the record that aside from Nichols, PWI has the services of two (2) part-time individuals from IUS who "do a lot of little in-house -- not in-house, but sort of maintenance things that don't require a great deal to do."³⁸

Additionally, while Dan Bowles ("Bowles") of IUS provided written testimony with regards to PWI's daily operations,³⁹ PWI failed to make Bowles available for cross-examination during the Evidentiary Hearing. This is a violation of requirements of the Prehearing Order which specifically requires witnesses providing written testimony to be available for cross-examination,⁴⁰ and a violation of the Consumer Advocate's right to conduct cross-

³⁸See, Transcript at 37.

³⁹See, Amended Application Exhibit PWI-10 at 1-2.

⁴⁰See, Prehearing Order at 3.

examination under HRS § 91-10(3).⁴¹ Accordingly, we find the testimony sponsored by Bowles is untested and cannot be considered credible and reliable.

Furthermore, while PWI represents that IUS brings it "experienced personnel and regulatory compliance" and individuals with utility management experience,⁴² PWI under IUS management is in noncompliance with state laws and commission orders and requirements. As we mentioned before, PWI failed to: (1) file its 2003 Annual Financial Report in violation of HRS § 269-8.5, and (2) failed to file its quarterly financial reports for the calendar year 2003⁴³ and CIP Report, all in noncompliance with D&O No. 19980. Thus, the commission seriously questions IUS's ability to provide PWI with effective utility management and regulatory compliance services.

Based on the above, we conclude that PWI has not demonstrated that its professional "other" fees of \$60,400 are just and reasonable for setting rates.

⁴¹HRS § 91-10(3) states, that "[e]very party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence."

⁴²See, Amended Application Exhibit PWI-9 at 10.

⁴³For calendar year 2003, PWI only filed its quarterly financial report for the last quarter, which it chose to file on October 12, 2004--almost nine (9) months after the filing deadline.

G.

Insurance Expense

PWI proposes Test Year insurance expense of \$800. In D&O No. 19980, insurance expense of \$450 was found to be just and reasonable for ratemaking purposes. PWI recorded insurance expenses of approximately \$450; \$858; and \$885 in its un-audited financial statements for the years 2000, 2001, and 2002, respectively.⁴⁴ PWI fails to provide an explanation of the differences in its Test Year estimate for this cost category and the costs recorded in its un-audited financial statements, nor does it provide any reliable and credible evidence for the \$350 (or 78 per cent) increase for this cost category over the amount approved in D&O No. 19980. Thus, we find PWI's estimate for Test Year insurance expense to be unsupported and questionable.

Based on the above, we conclude that PWI has not established that its Test Year insurance estimate is just and reasonable.

H.

Office and Miscellaneous Expenses

For the Test Year, PWI proposes office and miscellaneous expenses of \$600. The commission approved \$690 for this cost category as just and reasonable for ratemaking purposes in D&O No. 19980. In making our determination in D&O No. 19980, the record was clear that this cost item accounted for expenses for

⁴⁴See, Amended Application Exhibit PWI-2, Schedules 7-2, 7-4, and 7-6.

fuel, licenses and permits, and office expenses. We note that PWI's estimate for the Test Year is \$90 (or 13 per cent) less than the amount approved in D&O No. 19980 and that PWI again did not provide any reliable and credible evidence justifying that this cost estimate is reasonable. Accordingly, we also find PWI's Test Year office and miscellaneous and expenses to be unsupported and questionable.

The commission concludes that PWI failed to demonstrate that its Test Year office and miscellaneous expense estimate is just and reasonable for rate setting purposes.

I.

Water System Supplies Expense

PWI estimates water system supplies costs of \$3,400 for the Test Year. An expense category for water system supplies was not separately recognized as a cost item in Docket No. 00-0005. A review of PWI's un-audited financial statements list water system supplies for the years 2000, 2001, and 2002 of \$4,423.70; \$3,764.53; and \$7,645.91, respectively, and \$5,349.45 for January through June 2003.⁴⁵ PWI fails to explain how it derived this cost estimate. Additionally, our review of PWI's historical recorded costs for water system supplies alone does not provide the commission with assurance that PWI's Test Year water system supplies estimate is reasonable. Accordingly, we find that PWI's

⁴⁵See, Amended Application Exhibit PWI-2, Schedules 7-2, 7-4, 7-6, and 8-2.

estimate for Test Year costs associated with water system supplies is unsupported and unreliable.

Based on the above, we conclude that PWI has not demonstrated that its cost estimate for Test Year water system supplies is just and reasonable.

J.

Revenue Tax Expense

PWI calculates revenue taxes of \$17,300 for the Test Year. This cost category is comprised of the public service company tax (5.885 per cent of gross revenues) and the public utility commission fee (0.50 per cent of gross revenues), and is derived by multiplying the total revenues by 6.385 per cent. It appears that PWI has not paid any taxes associated with its operations since it voluntarily filed for bankruptcy.⁴⁶

Since we determined that PWI's estimated revenues are not just and reasonable based on our review of PWI's water sales and expense figures for the Test Year, we cannot accept PWI's revenue tax expense estimate as just and reasonable.

K.

Reserves

PWI proposes to establish two (2) reserves, one for operations and maintenance ("O&M Reserve") and another for capital improvement ("Capital Reserve"), valued at \$80,800 for the

⁴⁶See, Amended Application at 3 and Amended Application Exhibit PWI-9 at 15.

Test Year. PWI contends that an O&M Reserve is needed to provide it a "cushion of funds" to sustain operations in case of an emergency or unexpected occurrence.⁴⁷ Additionally, it states that O&M Reserve funds would be used to pull PWI out of bankruptcy. PWI maintains that a Capital Reserve is needed to accumulate funds necessary to make major capital improvements (i.e., pump replacement), as necessary. PWI submitted a report prepared by IUS regarding the need for the establishment of the reserves.

The Consumer Advocate asserts that the commission did not allow PWI to establish any type of reserve in D&O No. 19980. The Consumer Advocate contends that PWI failed to recognize that its reserve proposal will not allow it to earn a profit in the future since there will be no rate base. Moreover, establishment of reserves will result in higher rates for ratepayers and may discourage investment in PWI's infrastructure and equipment since PWI will not be developing a rate base upon which investors can earn a fair rate of return. The Consumer Advocates states that if a reserve is authorized through an assessment of existing ratepayers, such monies should be kept separate and apart from operating funds and only be used for the intended purposes.

As the Consumer Advocate noted, the commission in D&O No. 19980 did not allow PWI to establish any type of reserve. The commission's decision was based on the unique and special circumstances of Docket No. 00-0005. Specifically, in that docket, the commission denied PWI's request to establish reserves for

⁴⁷See, Amended Application Exhibit PWI-9 at page 7-8.

operating contingency and pump replacement. We reasoned that establishment of reserves would be imprudent and unfair to ratepayers. We were mindful that establishing reserves may discourage investment towards the development of a rate base upon which a fair rate of return on investment may be made, and that establishment of reserves would increase already high rates. While we note that PWI has experienced a recent influx of customers, the same conditions and concerns which resulted in our denial of PWI's proposal for reserves in D&O No. 19980 still exist.

Additionally, while PWI commissioned IUS to study and report on the need for the reserves (submitted as Application Exhibit PWI-8) and submitted the written testimony of Bowles concerning the reserves, PWI failed to make Bowles available for cross-examination during the Evidentiary Hearing. Thus, the report and testimony submitted by Bowles are untested and unreliable. Furthermore, we find PWI's financial statements with regards to reserves to be inconsistent. PWI's "Profit and Loss" statements for the years 2001 and 2002, and January through June 2003 record "Pump Replacement Reserve" as \$18,700; \$22,100; and \$6,800,⁴⁸ while financial statements submitted to the bankruptcy court do not appear to contain records for "Pump Replacement Reserve".

Based on the above, the commission concludes that PWI has not established that its \$80,800 proposal for Test Year reserves is just and reasonable.

⁴⁸See, Amended Application Exhibit PWI-2, schedules 7-4, 7-6, and 8-2.

VII.

Act 168, Session Laws of Hawaii 2004

Act 168, Session Laws of Hawaii 2004 ("Act 168") was enacted by the Legislature during the 2004 Legislative Session. Act 168 amends HRS § 269-16(f) by streamlining the process by which public utilities with annual gross revenues of less than \$2,000,000, such as PWI, file and apply for general rate increases, and shortens the statutory time in which general rate increase requests filed under this subsection are completed from nine (9) to six (6) months. Utilities filing under this subsection are required to: (1) file for rate increases through a standard form application developed by the commission; (2) follow the standard chart of accounts approved by the commission for financial reporting purposes; and (3) file certified annual financial statements and updated charts of accounts with the commission and the Consumer Advocate within ninety (90) days from the end of each calendar or fiscal year. If the utility abides with all the requirements of this subsection, the commission is required to make every effort to complete its deliberations and issue a proposed decision and order within six (6) months from the date the public utility files a completed application with the commission, provided that all parties to the proceeding strictly comply with the established procedural schedule and that no person intervenes.

The purpose of this law is to help reduce expenses associated with the filing of rate increase requests for small utilities and to expedite the review and processing of these requests. The commission recognized that small utilities do have

limited staff and resources, and would incur relatively substantial costs to file and undergo current procedures associated with rate increase requests. Thus, we fully supported this legislation during the 2004 Legislative Session. Nonetheless, notwithstanding this new law, we do expect all public utilities (small or large) to respect and abide by all applicable and existing public utilities laws, rules, and commission orders. PWI, as a public utility with annual gross revenues of less than \$2,000,000 would qualify under this new law and is encouraged to abide by the requirements of HRS § 269-16(f) and file future general rate increase requests under this subsection, if necessary.

In addition, the commission's staff is available to PWI and its staff to answer any procedural questions pertaining to ratemaking. Finally, the Parties are reminded that, with the approval of the commission, any procedure in a rate case proceeding may be modified or waived by stipulation of the parties and informal disposition may be made of any rate case proceeding by stipulation, agreed settlement, or consent order. See HRS § 91-9(d) and HAR § 6-61-35. In its efforts to assist utilities, particularly small utilities, from incurring unnecessary costs, the commission has historically and recently approved numerous settlements, stipulations, or agreements, between the utilities and the Consumer Advocate, resolving all issues of a rate proceeding without commencing any evidentiary hearings. In reviewing settlements, stipulations, or agreements entered into by the parties, the commission undertakes an independent review to, among other things, ensure that the interests of the public, particularly

the ratepayers, are protected, and to determine whether the basic underlying agreements by the parties are reasonable and in the public interest. See In re Puhi Sewer & Water Co., Inc., Docket No. 03-0383, Decision and Order No. 21312 (August 17, 2004); In re MOSCO, Inc., Docket No. 03-0400, Decision and Order No. 21193 (August 3, 2004); In re Mauna Lani STP, Inc., Docket No. 02-0392, Decision and Order No. 20405 (August 29, 2003); and In re Molokai Pubic Utilities, Inc., Docket No. 02-0371, Decision and Order No. 20342 (July 18, 2003).

VIII.

Ultimate Findings and Conclusions

The commission makes the following ultimate findings of fact and conclusions of law. Any findings of fact herein and made throughout this decision and order that are improperly designated as conclusions of law should be deemed or construed as findings of fact.

1. Under HRS §§ 269-6 and 269-16, the commission has general supervision over all public utilities and the authority to fix just and reasonable rates to be charged by public utilities.

2. In determining just and reasonable rates, the commission is not limited to specific procedures or fixed formulas, but is empowered to exercise sound discretion in its review and evaluation of the evidence and facts presented by the public utility.

3. The commission's determination must be based on specific findings of fact derived from reliable, probative, and substantial evidence on the record.

4. As the applicant, PWI has the burden to prove that its requested rate increase is just and reasonable.

5. Under HRS § 91-10(5), the burden of proof includes the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be by a preponderance of the evidence.

6. Under HRS § 91-10(1), the burden of producing evidence requires PWI to produce reliable, probative, and substantial evidence.

7. Substantial evidence, within the meaning of HRS § 91-10(1), refers to both the sufficiency and quality of the evidence. Substantial evidence possesses probative and material value, provides a basis of fact from which the tendered issues can be resolved, and is sufficient enough for a reasonable mind to accept that it would support a particular conclusion.

8. PWI's rate increase request is virtually unsupported, and the evidence in this docket is insufficient, unreliable, and inconsistent. The evidence presented by PWI fails to provide sufficient basis for the commission to render reliable findings on PWI's revenues, water sales, and expenses, and on its overall revenue requirement. PWI has failed to carry its burden of producing reliable, probative, and substantial evidence to support its rate increase as required under HRS § 91-10(1).

IX.

Orders

THE COMMISSION ORDERS:

1. PWI's Filing Waiver Request is granted.
2. PWI's request to increase its revenues by \$137,500 through an increase in its volumetric rate by \$8.58 per TG over its Present Rates is denied.
3. PWI's existing rates, rate schedules, and rules shall remain in affect until otherwise ordered by the commission in a future rate proceeding.
4. PWI shall file its 2003 Annual Financial Report, as required under HRS § 269-8.5.
5. PWI shall also file its CIP Report in compliance with the filing requirements of D&O No. 19980.

DONE at Honolulu, Hawaii OCT 25 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Ji Sook Kim
Commission Counsel

03-0369.ah

CERTIFICATE OF SERVICE

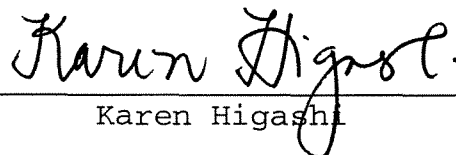
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21428 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JON S. ITOMURA, ESQ.
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

PHILIP J. LEAS, ESQ.
ELIJAH YIP, ESQ.
CADES SCHUTTE, LLP
1000 Bishop Street, Suite 1400
Honolulu, HI 96813-4216

F. NEWELL BOHNETT
44-600 Kaneohe Bay Drive
Kaneohe, HI 96744



Karen Higashi

DATED: OCT 25 2004