

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
KEAUHOU COMMUNITY SERVICES, INC. )  
For Approval of Changes to its )  
Tariff, Transmittal No. 05-01. )  

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DOCKET NO. 05-0186

DECISION AND ORDER NO. 21951

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

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Karen Higashi  
Chief Clerk of the Commission

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 05-0186  
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DECISION AND ORDER

The commission allows KEAUHOU COMMUNITY SERVICES, INC.'s ("KCSI" or "Applicant") tariff changes to take effect as proposed, effective from July 31, 2005, except for the changes proposed to Section 3.6(b), which are denied.

I.

Background

KCSI proposes certain changes to its existing tariff rules, by Transmittal No. 05-01, filed on July 1, 2005. KCSI makes its request in accordance with Hawaii Revised Statutes § 269-16 and Hawaii Administrative Rules § 6-61-111. KCSI proposes an effective date of July 31, 2005.

KCSI served copies of its transmittal upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy. No persons protested or objected to KCSI's transmittal.

## II.

### Tariff Revisions

KCSI is a public utility that provides wastewater collection and treatment services to customers within its service territory of Keauhou, North Kona, island of Hawaii.<sup>1</sup>

KCSI explains that it seeks to amend its tariff rules as follows:

1. Add an introductory section.
2. Add a definition of "Service," to mean the provision of wastewater treatment service and the sale of effluent.
3. Describe when billings for the provision of effluent will be issued.
4. Clarify KCSI's rights and remedies in the case of non-payment by customers and non-customers.
5. Add a provision to ensure that KCSI has all necessary easement and/or access rights in order to provide service to customers; and
6. Add a new section, Section 15, to address the provision and handling of effluent.<sup>2</sup>

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<sup>1</sup>Decision and Order No. 12820, filed on November 8, 1993, in Docket No. 7291.

<sup>2</sup>In describing its proposed Section 15, KCSI states:

While Applicant's rate schedule, like several other sewer utility companies in Hawaii, includes a charge for effluent sales, Applicant's proposed inclusion of rules and regulations related to the provision of effluent should not be construed to mean that Applicant believes that effluent service is regulated by the Commission.

KCSI's Transmittal No. 05-01, at 3, footnote 1.

In addition, KCSI represents that its proposed tariff changes are for clarification and updating purposes, and will not result in any material change in KCSI's currently approved procedures or change in KCSI's rates, and will not impact KCSI's customers or operations. Thus, "the public benefit will be served or at least not harmed by this request."<sup>3</sup>

### III.

#### Discussion

The commission expresses concern with KCSI's proposed changes to Section 3.6(b), which read as follows:<sup>4</sup>

When an application for [sewer] service is made by (a) a Consumer who was responsible for and failed to pay all bills previously rendered by the Company[,] or (b) a successor-in-interest to a property that was previously provided service and in which the prior property owner failed to pay all bills previously rendered by the Company, the Company may refuse to furnish [wastewater] service to such applicant until the outstanding bills are paid.

Subsection (b) would unfairly penalize the successor-in-interest, who may have had no prior notice or knowledge of the previous property owner's delinquency, by refusing service to the delinquent owner's successor-in-interest. Accordingly, the commission: (1) finds that KCSI's proposed changes to Section 3.6(b) are inconsistent with the public

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<sup>3</sup>Id. at 4.

<sup>4</sup>Proposed deletions are bracketed, proposed additions are underscored.

interest, and neither just nor reasonable; and (2) denies said changes to Section 3.6(b).<sup>5</sup>

The commission will allow KCSI's other tariff changes to take effect, except for the changes to Section 3.6(b), which are denied.<sup>6</sup>

#### IV.

#### Orders

##### THE COMMISSION ORDERS:

1. KCSI's proposed tariff changes, as reflected in its Transmittal No. 05-01, filed on July 1, 2005, are allowed to take effect, effective from July 31, 2005; except for the changes to Section 3.6(b), which are denied, consistent with the terms of this Decision and Order.

2. Within three (3) business days from the date of this Decision and Order, KCSI shall file its tariff sheets, including the approved Section 3.6, incorporating the applicable issued and effective dates.

3. KCSI shall conform to the commission's order set forth, above. KCSI's failure to adhere to the commission's order

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<sup>5</sup>KCSI's proposed Section 15 includes waiver of liability (Section 15.1), duty to defend, indemnity, and hold harmless (Section 15.5) provisions. The commission notes that in the event of a conflict between any provision of KCSI's tariff (including KCSI's newly revised tariff sheets) and State of Hawaii ("State") law, State law shall prevail.

<sup>6</sup>Section 3.6's textual changes to "service" are allowed to take effect, as proposed. The commission, in allowing KCSI's tariff changes to take effect, should not be construed as necessarily approving or concurring with KCSI's statement at page 3, footnote 1, of its transmittal. See footnote 2, above.

shall constitute cause for the commission to void this Decision and Order, and may result in further regulatory action as authorized by law.

4. In the event of a conflict between any provision of KCSI's tariff (including KCSI's newly revised tariff sheets) and State law, State law shall prevail.

DONE at Honolulu, Hawaii JUL 28 2005.


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:

  
Michael Azama  
Commission Counsel

kcsi05-01.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21951 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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Karen Higashi

DATED: JUL 28 2005