

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
PUUWAAWAA WATERWORKS, INC. and )  
NAPUU WATER, INC. )  
For Approval of Asset Transfer. )  

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DOCKET NO. 05-0137

ORDER NO. 21996

Filed August 29, 2005  
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

2005 SEP - 1 A 8: 22

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

K. Higashi.

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Docket No. 05-0137  
Order No. 21996

ORDER

By this Order, the commission: (1) denies the June 23, 2005 Motion to Intervene filed jointly by WILLIAM HOOPER, EMMALINE HOOPER, LIWAI MITCHELL, CAROL LEINAALA LIGHTNER, SHIRLEY ANN KEAKEALANI, MAHANA GOMES, GORDON ALAPAI, SALLY ALAPAI, RALPH ALAPAI, BARBARA JEAN ALAPAI, SHANE ALAPAI, and MERCY ALAPAI (collectively referred to as, "Movants"); (2) permits Movants to participate in this proceeding to the degree set forth in this Order, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-56; and (3) amends Order No. 21868, filed on June 16, 2005 ("Order No. 21868"), consistent with the terms of this Order.

I.

Background

PUUWAAWAA WATERWORKS, INC. ("PWI") and NAPUU WATER, INC. ("NWI") (collectively, "Applicants") jointly filed an Application for commission approval of the sale of PWI's water

system, located on the island of Hawaii, to NWI. The Application was filed on June 3, 2005.

Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate is an ex-officio party in all proceedings before the commission.<sup>1</sup> The Consumer Advocate filed its Preliminary Statement of Position on June 23, 2005, informing the commission that it: (1) will participate in this proceeding; (2) has certain concerns and questions regarding Applicants' transfer request; and (3) will state its position regarding the matters of this docket upon the conclusion of its investigation.

On the same day, Movants filed their Motion to Intervene ("Motion") and requested a hearing on the Motion. The commission set the hearing on the Motion for 10:00 a.m., Tuesday, July 12, 2005, at the commission's hearing room in Honolulu, through the Notice of Hearing issued on June 30, 2005.<sup>2</sup> No filings were made in support or in opposition to the Motion. The hearing on the Motion was held on the date, time, and place set forth in the Notice of Hearing.<sup>3</sup>

A public hearing on the matters of this docket was held on Tuesday, August 9, 2005, in Kailua-Kona, Hawaii.

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<sup>1</sup>See, Hawaii Revised Statutes ("HRS") § 269-51 and HAR § 6-61-62(a).

<sup>2</sup>The Notice of Hearing was properly served on the Movants, Applicants, and the Consumer Advocate.

<sup>3</sup>The Consumer Advocate did not participate during the hearing on the Motion, while Applicants noted for the record that they "take no position" regarding the Motion.

II.

Movants' Motion

A.

Standard of Review

HAR § 6-61-55 governs the granting of intervention in commission proceedings. This rule requires a movant to, among other things, state the facts and reasons for the proposed intervention and the position and interests thereto. In particular, HAR § 6-61-55(d) specifies that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

Under HAR § 6-61-56(a), the commission has the discretion to allow participation in commission proceedings without intervention. An individual or entity allowed to participate without intervention under this rule "is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission."<sup>4</sup>

B.

Movants' Arguments

Movants represent that they are: (1) descendants of original homesteaders of PWI's service area (Puuanahulu and Puuwaawaa); (2) either or both residents and property owners in the PWI's service area; (3) ratepayers and consumers of PWI; and (4) either members or potential members of NWI. Due to their

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<sup>4</sup>See, HAR § 6-61-56(a).

status and interests listed above, Movants argue, among other things, that they possess a "statutory right" to participate in this proceeding since the outcome of the proceeding will affect their rights, duties, and privileges as current and future consumers of PWI's water service and as current and future members of NWI. While Movants state that they do not intend to broaden the issues or delay the proceeding, they represent that they currently cannot support Applicants' transfer request.

Specifically, Movants also contend that this proceeding may result in an order that may adversely affect some members of NWI and allege that new information came to light indicating that the members of NWI were misled or misinformed regarding NWI's future obligations. They state that it is critical that Movants "have an opportunity to present such information and recommendations in this proceeding in order for the [c]ommission to avoid creating unfair obligations and unreasonable hardship for NWI or its members."<sup>5</sup>

Movants also contend that their interest as members of NWI will not be represented by the Consumer Advocate "to the extent that NWI's internal decision-making and structure involves members' personal rights within NWI."<sup>6</sup> Moreover, they represent that their participation in this proceeding will ensure that the commission receives relevant information from the "viewpoint of

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<sup>5</sup>See, Motion at 5.

<sup>6</sup>Ibid.

kama`aina native Hawaiian families with generations of history on the land within the service area.”<sup>7</sup>

C.

Discussion

The Supreme Court of the State of Hawaii established that intervention as a party in a commission proceeding “is not a matter of right but is a matter resting within the sound discretion of the commission.”<sup>8</sup>

The commission is not convinced that Movants’ allegations are reasonably pertinent to and will not unreasonably broaden the issues of this proceeding. While Movants interests as members of NWI are important, NWI interests, as a whole, are already being represented as a party to this proceeding. Moreover, Movants membership (or future membership) in NWI is inexorably linked to Movants status as present and future consumers of PWI’s water system. The Consumer Advocate, a party to this proceeding, is statutorily required to represent and protect the interest of all consumers of utility service, including those that are descendants of native Hawaiian homesteaders.<sup>9</sup> Thus, we do not find nor are we convinced that

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<sup>7</sup>See, Motion at 6.

<sup>8</sup>See, *In re Application of Hawaiian Electric Company, Ltd.*, 56 Hawai`i 260, 262 (1975). See also, *In re Citizens Communications Company, dba The Gas Company*, Docket No. 00-0309, Order No. 18512 (May 2, 2001) and *In re Maui Electric Company, Limited*, Docket No. 7000, Decision and Order No. 11668, (June 5, 1992).

<sup>9</sup>See, HRS § 269-51.

Movants' interests in this proceeding cannot be represented by the Consumer Advocate. Additionally, while certain aspects of NWI's structure and organization may be relevant to the issues of this docket, general internal decision-making of the organization is a matter not within the commission's purview. We note that Movants do recognize that their interests can be addressed through intra-corporate means.<sup>10</sup> Moreover, we are not convinced that Movants' intervention in this proceeding would not unreasonably delay the proceedings. Based on the above, Movants' Motion is denied.

Nonetheless, the commission believes that Movants' views and insights do have merit and they should have an opportunity to voice their concerns in this proceeding. Thus, the commission finds it reasonable to permit Movants to participate in this proceeding without intervention, pursuant to HAR § 6-61-56. Movants' participation in this proceeding is limited; however, to: (1) acting jointly in all aspects of this proceeding through one authorized representative or attorney of record; (2) the ability to monitor this proceeding by receiving all pleadings, decisions, orders, and other documents filed with the commission in this docket; (3) an opportunity to issue a total maximum of twenty-five (25) information requests on Applicants, inclusive of any subparts; (4) an opportunity to present their views through the submission of a single Statement of Position; and (5) other matters that the commission will expressly order from time to time.

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<sup>10</sup>See, Motion at 5.

Furthermore, we caution Movants that the commission will preclude any efforts that will unreasonably broaden the issues or unduly delay the proceedings. The commission will reconsider Movants' participation in this proceeding if, at any time during the proceeding; the commission determines that Movants' efforts: (1) unreasonably broaden the pertinent issues in this docket; or (2) unduly delay the proceedings.

### III.

#### Stipulated Procedural Filing

The commission ordered Applicants and Consumer Advocate to meet and formulate a stipulated procedural filing for the commission's review in Order No. 21868. Order No. 21868, which as issued prior to the filing of Movants' Motion, noted that if any interested person is granted intervenor or participant status, the schedule will be amended, as necessary. Accordingly, in light of the commission's decision above, the commission finds good cause, at this time, to amend Order No. 21868 by directing Applicants, the Consumer Advocate, and Movants to informally meet and formulate a stipulated procedural schedule or order for submittal to the commission for its review and approval within twenty (20) days of the date of this Order. If unable to stipulate, Applicants, the Consumer Advocate, and Movants shall each submit proposed procedural schedules or orders for the commission's consideration within the same period prescribed above. In all other respects, Order No. 21868 remains unchanged.

IV.

Orders

THE COMMISSION ORDERS:

1. Movants' June 23, 2005 Motion to Intervene is denied. Instead, Movants are permitted to participate in this proceeding without intervention, pursuant to HAR § 6-61-56, subject to the specific limitations set forth in Section II.C of this Order.

2. Applicants, the Consumer Advocate, and Movants are directed to informally meet and formulate a stipulated procedural schedule or order for submittal to the commission for its review and approval within twenty (20) days of the date of this Order. If unable to stipulate, Applicants, the Consumer Advocate, and Movants shall each submit proposed procedural schedules or orders for the commission's consideration within the same period prescribed above.

3. Order No. 21868 is amended as set forth in Section III of this Order. In all other respects, Order No. 21868 remains unchanged.

DONE at Honolulu, Hawaii                     AUG 29 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:

  
Ji Sook Kim  
Commission Counsel

05-0137.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21996 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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Karen Higashi

DATED: AUG 29 2005