

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
)
 Instituting Proceedings)
 Relating to the Determination)
 Of the Appropriate Fees and)
 Assessments to Finance the)
 Administration and Operation)
 Of the One Call Center.)
 _____)

DOCKET NO. 05-0195

ORDER NO. 22019

Filed September 9, 2005
At 8 o'clock A.M.

Brooke K. Kane
for Chief Clerk of the Commission

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

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for Administrative Director
Public Utilities Commission
State of Hawaii

Michelle S.U.M. Kau

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
PUBLIC UTILITIES COMMISSION) Docket No. 05-0195
Instituting Proceedings) Order No. 22019
Relating to the Determination)
Of the Appropriate Fees and)
Assessments to Finance the)
Administration and Operation)
Of the One Call Center.)
-----)

Order

By this Order, the commission grants the motions to intervene of: (1) WAIKOLOA SANITARY SEWER COMPANY, INC., dba WEST HAWAII SEWER COMPANY ("Waikoloa Sewer Company"); (2) WAIKOLOA RESORT UTILITIES, INC., dba WEST HAWAII UTILITY COMPANY ("Waikoloa Resort Utilities"); (3) WAIKOLOA WATER COMPANY, INC., dba WEST HAWAII WATER COMPANY ("Waikoloa Water"); (4) HAWAIIAN TELCOM, INC. ("Hawaiian Telcom"); (5) SANDWICH ISLES COMMUNICATIONS, INC. ("Sandwich Isles"); (6) MAKENA WASTEWATER CORP. ("Makena Wastewater" or "Makena"); (7) SOUTH KOHALA WASTEWATER CORP. ("South Kohala Wastewater" or "South Kohala"); (8) BOARD OF WATER SUPPLY ("BWS"); (9) TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic Communications"); (10) TIME WARNER ENTERTAINMENT COMPANY, L.P., dba OCEANIC TIME WARNER CABLE ("Oceanic Cable"); (11) PACIFIC LIGHTNET, INC. ("Pacific LightNet"); and (12) HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC.

("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively the "HECO Companies" or "Companies") (collectively, "Movants"); and the motion for enlargement of time, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-23(a)(1), of HAWAII-AMERICAN WATER COMPANY ("Hawaii-American Water").

I.

Procedural History

On August 10, 2005, the commission, by Order No. 21976, instituted a proceeding to determine the appropriate fees and assessments necessary to finance the administration and operations of the One Call Center, pursuant to Hawaii Revised Statutes ("HRS") Chapter 269E.¹ Order No. 21976 also made the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") a party to this docket, and invited all interested public utilities, businesses, building or construction groups, trade or contractor associations and community or civic groups to participate in this docket as

¹HRS Chapter 269E calls for the establishment of a One Call Center to coordinate the location of subsurface installations, and to provide advance notice to operators of subsurface installations of proposed excavation work. In November 2004, the commission established the One Call Center Advisory Committee ("Committee"), pursuant to HRS § 269E-4, to advise the commission in the implementation of the One Call Center, including the establishment of fees and assessments to finance the administration and operation of the One Call Center.

intervenors, or participants without intervention, so long as these persons or entities satisfy and adhere to the commission's administrative rules, Hawaii Administrative Rules ("HAR") Chapter 6-61, *Rules of Practice and Procedure Before the Public Utilities Commission*, governing intervention and participation in commission proceedings.

On August 26, 2005, Waikoloa Sewer Company, Waikoloa Resort Utilities, Waikoloa Water and Hawaiian Telcom timely filed motions to intervene in this docket,² pursuant to HAR §§ 6-61-41 and 6-61-55 and Order No. 21976. On August 30, 2005, Sandwich Isles, Makena Wastewater, South Kohala Wastewater, BWS, Oceanic Communications, Oceanic Cable, Pacific LightNet and the HECO Companies also timely filed motions to intervene pursuant to HAR §§ 6-61-41 and 6-61-55 and Order No. 21976 (collectively, "Motion(s) to Intervene"). On August 30, 2005, Hawaiian-American Water filed a timely request with the commission for an extension of time to file a motion to intervene, which we will treat as a motion for the enlargement of time ("Motion for Enlargement of Time"), pursuant to HAR § 6-61-23(a)(1).³

²Order No. 21976 instructed persons to file motions to intervene or participate not later than twenty (20) days from the filing of Order No. 21976, or August 30, 2005.

³HAR § 6-61-23(a)(1) provides that the commission may, for good cause shown, and in its discretion, enlarge a specified period of time, if written request is made before expiration of the period of time. Hawaiian-American Water filed its request to enlarge the time to submit a motion to intervene in this proceeding on August 30, 2005, twenty (20) days from the filing of Order No. 21976.

II.

Motions to Intervene

A.

Waikoloa Sewer Company

In support of its Motion to Intervene Waikoloa Sewer Company contends, among other things, that it supplies sewer service to the greater Waikoloa Village area utilizing subsurface installations and that, pursuant to HRS § 269E-6, the One Call Center is to be funded by operators of subsurface installations in the State of Hawaii. As such, Waikoloa Sewer Company states that it has significant business and financial interests at stake which can best be represented by making it a party to the instant proceeding.

B.

Waikoloa Resort Utilities

Waikoloa Resort Utilities is a public utility, regulated by the commission, providing water, wastewater and irrigation services to the Waikoloa Beach Resort area. Waikoloa Resort Utilities utilizes subsurface installations to supply its public utility services to its customers, and thus, contends, among other things, that it has considerable business and financial interests at stake to be determined by the outcome of this proceeding. Waikoloa Resort Utilities states that as an intervenor, it can best represent its interests in the development of policy, financing and operation of the One Call Center.

C.

Waikoloa Water

Waikoloa Water provides water services to the residences, condominiums and commercial establishments in the greater Waikoloa Village area. In providing water service, Waikoloa Water utilizes subsurface installations. As such, Waikoloa Water states, among other things, that it has significant interests at stake in the outcome of the instant proceeding and that the determination of fees and assessments for funding of the One Call Center will directly impact its service to current and future customers. Moreover, in support of its request for intervenor status, Waikoloa Water contends that no other party will be able to represent its interests in this proceeding.

D.

Hawaiian Telcom

Hawaiian Telcom is a Hawaii corporation authorized by the commission to provide telecommunications services in the State of Hawaii. In its Motion to Intervene, Hawaiian Telcom asserts that, as the largest telecommunications provider in Hawaii, it will be greatly affected by the results of the instant proceeding. For the year ending December 2004, Hawaiian Telcom represents that its underground facilities were valued at \$248 million, representing a significant investment in its

underground facilities.⁴ As such, it states that it has an interest in ensuring that the fees and assessments for the One Call Center are reasonable and in protecting its ratepayers from "wasteful or inequitable funding mechanisms".⁵ Accordingly, Hawaiian Telcom maintains that its interests can only be represented if it is allowed to intervene and fully participate as a party in this proceeding.

E.

Sandwich Isles

Sandwich Isles is a Hawaii corporation authorized to provide intrastate telecommunications services within the State of Hawaii on Hawaiian Home Lands which are administered by the State Department of Hawaiian Home Lands. Sandwich Isles has constructed, and placed in service, telecommunications switching and local distribution infrastructure to serve residents of Hawaiian Home Lands on the islands of Hawaii, Maui, Molokai, Oahu, and Kauai. Sandwich Isles represents that its telecommunications infrastructure consists of subsurface installations and, thus, Sandwich Isles may be subject to the operational and funding requirements of the One Call Center, pursuant to HRS § 269E-6. Sandwich Isles contends that its interests in the funding aspects of the One Call Center can best be represented if it is granted intervenor status by the

⁴Hawaiian Telcom's Motion to Intervene at 3.

⁵Id.

commission so that it may substantively participate in the instant proceeding.

F.

Makena Wastewater

Makena Wastewater is a Hawaii corporation authorized by the commission to provide sewage services to the Makena area on the island of Maui. Makena states that it is the only public utility wastewater company authorized to provide wastewater service in its approved service area.

Makena Wastewater represents that a significant portion of its wastewater system involves subsurface installations and contends that its property, financial and operational interests will likely be affected by the determination of fees in the instant docket. In addition, Makena contends that because it is the only public utility providing wastewater service in its approved service area, its interest in the instant proceeding is unique and cannot be properly protected or addressed by other parties to this proceeding, and thus, the commission should grant its request for intervenor status.

G.

South Kohala Wastewater

South Kohala Wastewater is a Hawaii corporation authorized by the commission to provide sewage services in the Kamuela area of the island of Hawaii. South Kohala states that it is the only public utility wastewater company authorized by

the commission to provide wastewater service in its approved service area.

South Kohala's collection system includes subsurface installations for the transmission of wastewater from its customers to its treatment facilities. As such, South Kohala contends that the determination of fees and assessments in the instant proceeding to finance the administration and operation of the One Call Center will directly affect its property, financial and operational interests. Additionally, as South Kohala is the only wastewater company authorized by the commission to provide service in its approved service area, South Kohala contends that it is important that it be granted intervenor status so that it will be able to appropriately represent its interests in its service area.

H.

BWS

BWS is a semi-autonomous agency of the City and County of Honolulu and is the only municipal supplier of water for the island of Oahu. BWS states that it is an "operator" of subsurface installations, as defined by Chapter 269E, HRS, who would be subject to fees and assessments to finance the administration and operation of the One Call Center, and as such, has an interest in the instant proceeding.

The BWS estimates that its distribution system consists of approximately two thousand (2,000) miles of pipeline. It contends that, being the only municipal supplier of water on

Oahu, the water service it provides is unique, and there are no other groups that can adequately represent its interests in the instant proceeding.

Pursuant to HRS § 269E-4(a)(2), the mayor of the City and County of Honolulu ("City") designates one member, a representative of the City, to the One Call Center Advisory Committee. The BWS maintains that because it is a semi-autonomous agency of the City, there are no agencies within the City that can adequately represent its interests in the instant proceeding.⁶ BWS, thus, requests that the commission grant it intervenor status in the instant proceeding so that it may protect its interests and ensure that the fees and assessments imposed for the administration and operation of the One Call Center are not unduly burdensome.

I.

Oceanic Communications

Oceanic Communications is a Delaware limited partnership authorized to do business in the State of Hawaii. It is a provider of interstate and intrastate telecommunications services.

Oceanic Communications represents that it presently owns and operates some of its own subsurface installations, and

⁶BWS notes that its water service is separate and distinct from the City's sewer related functions, which are administered by the City Department of Environmental Services.

additionally, licenses the majority of its fiber cables, used as a part of its network, from Oceanic Cable. Oceanic Communications states that it relies upon Oceanic Cable for maintenance of the subsurface installations which it uses. As such, Oceanic Communications has an interest in this proceeding since it may be required to pay fees as an operator, and also to share in any costs assessed to Oceanic Cable to finance the Once Call Center.⁷ Oceanic Communications contends that unless it is allowed to intervene in this proceeding, its interests will not be fully represented.

J.

Oceanic Cable

Oceanic Cable is a Delaware limited partnership authorized to do business in the State of Hawaii as a provider of cable television, internet and related services. Oceanic Cable states that it owns, operates and maintains an extensive network of subsurface cables, and thus, has an interest in the instant proceeding.⁸

⁷Oceanic Communications acknowledges that Oceanic Cable may be able to represent its interests since it owns the majority of the subsurface infrastructure currently used by Oceanic Communications. However, Oceanic Communications maintains that it has its own interest in the amount of fees to be assessed and how those fees are assessed, and that Oceanic Cable may not be able to fully represent those interests.

⁸Oceanic Cable is a member of the Once Call Center Advisory Committee.

Oceanic Cable does not believe that there are any other parties that may adequately represent its interest. Moreover, Oceanic Cable asserts that as a member of the One Call Center Advisory Committee, if granted intervenor status, it can bring its knowledge to bear in the instant proceeding.

K.

Pacific LightNet

Pacific LightNet is a facilities-based provider of telecommunications services throughout the State of Hawaii. It states that it owns certain subsurface installations which it uses in the delivery of its telecommunications services.

Pacific LightNet contends, among other things, that as a facilities-based competitor operating solely in Hawaii, it can offer the commission the benefit of its experience in locating subsurface installations and the costs associated with providing such services. It also asserts that its interests fall entirely within the scope of the instant proceeding, i.e., determining the appropriate fees and assessments to finance the administration and operation of the One Call Center, and that the commission should grant its request for intervenor status so that Pacific LightNet may protect its interests as the instant proceeding develops.

L.

HECO Companies

The HECO Companies are the only franchised producers of electric power and retail sellers of electric service on the islands of Hawaii, Oahu, Maui, Molokai and Lanai, and as such, have extensive underground facilities and conduits throughout those islands. For example, the Companies state that, on Oahu alone, HECO has a substantial investment of almost \$395 million in underground conduits, conductors and devices. Consequently, the Companies contend that they have a significant interest in the implementation of fees and assessments for the operation and administration of the One Call Center. Further, the Companies assert that they can only be fully represented if the commission allows the HECO Companies to intervene on their own behalf.

M.

Discussion

HAR § 6-61-55, which governs intervention in our proceedings, requires, among other things, the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. HAR § 6-61-55 enumerates the references that a motion to intervene shall make. Furthermore, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

As the Movants have noted in their Motions to Intervene, the commission, in Order No. 21976, invited all interested persons to intervene or participate in this proceeding "to ensure a fair and objective process in the determination of the appropriate fees and assessments to finance the administration and operation of the One Call Center". The commission finds that the assertions in support of intervention put forth by Movants are reasonably pertinent to and do not unreasonably broaden the issues in this docket. All of the Movants appear to have a substantial interest in the setting of fees and assessments for the operation and administration of the One Call Center. All have subsurface installations and will be directly impacted by any determination made in this proceeding. Additionally, Movants must also be concerned about the impact additional fees and assessments will have upon their respective ratepayers. The commission, thus, concludes that Movants' Motions to Intervene should be granted, subject to the specific conditions discussed below.

The commission remains mindful, however, of the time frame to which the Committee must adhere in order to meet its statutory deadline of January 1, 2006 for the establishment of a One Call Center.⁹ With this in mind, the commission admonishes the Movants to work expeditiously with the Committee in determining the fees and assessments relevant to this proceeding. Additionally, all Movants shall adhere to the requirements of HAR Chapter 6-61, the commission's administrative rules, and no

⁹See HRS § 269E-5.

Movant shall unreasonably delay or broaden the issues before the Committee.¹⁰

III.

Motion for Enlargement of Time

Pursuant to HAR § 6-61-23(a), the commission may, in its discretion, grant a request for an enlargement of time upon a showing of good cause. Hawaii-American Water states that it is a public utility that owns, operates or maintains subsurface installations in the State of Hawaii.

Hawaii-American Water is currently assessing the impact, if any, of the instant proceeding upon its services and operations and requests that the commission grant it an enlargement of time, from August 30, 2005, to September 6, 2005 to either file a motion to intervene, or a motion to participate without intervention. Hawaii-American represents that the Consumer Advocate has verbally indicated to Hawaii-American that it does not object to the request for additional time.

The commission finds that Hawaii-American has made a showing of good cause sufficient to grant it an extension of time in which to file its motion to intervene or participate. Thus, the commission concludes that Hawaii-American's Motion for Enlargement of Time in which to file a motion to intervene or

¹⁰At its August 31, 2005 meeting, the Committee set a goal of September 21, 2005, the date of its next scheduled meeting, as the target date for setting forth proposed fees and assessments to the Committee members. Consequently, Movants must work closely with Committee Chairman, Steve Golden ("Committee Chairman"), to meet the September 21, 2005 goal.

participate in the instant proceeding, until September 6, 2005, should be granted.

IV.

Orders

THE COMMISSION ORDERS:

1. Movants' Motions to Intervene are granted, subject to the conditions set forth in this Order.

2. Movants shall meet with the Consumer Advocate, the Committee Chairman, and other members of the Committee, as appropriate, to propose the appropriate fees and assessments for the financing and administration of the One Call Center. Movants shall comply and adhere to all of the commission's administrative rules, HAR Chapter 6-61, and shall not unreasonably broaden or delay the instant proceeding. Movants shall work diligently to assist the Committee in meeting its September 21, 2005, goal for the proposal of fees and assessments relevant to this proceeding.

3. The Motion for Enlargement of Time of Hawaii-American Water is granted. Hawaii-American shall file any motion to intervene or participate by September 6, 2005.

DONE at Honolulu, Hawaii September 9, 2005.

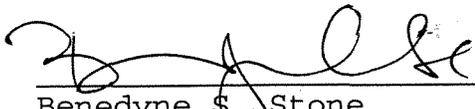
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

05-0195.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22019 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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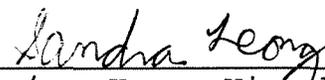
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DATED: September 9, 2005