

Revised Statutes ("HRS") § 269-16(f), and in response to the Application of Pukalani, filed on March 1, 2005.¹

The commission recommended approving a general rate increase of \$282,752, or 134 per cent over revenues at present rates for Pukalani, based on a total revenue requirement of \$493,310 for the test year. In so doing, the commission approved in part and denied in part the "Stipulation of Settlement Agreement in Lieu of [Pukalani's] Rebuttal Testimonies," jointly filed by Pukalani and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") (collectively, the "Parties"), on August 9, 2005 (the "Stipulation"). Specifically, the commission: (1) on its own motion, revised Paragraph 4(b) of the Parties' proposed Rule XIV, governing contributions-in-aid-of-construction ("CIAC"); and (2) denied the Parties' settlement terms set forth in Section III(G)(4), filed under confidential seal, of the Stipulation.

The commission, in approving the Parties' Stipulation: (1) authorized an increase in the monthly sewer assessment fee charged to Pukalani's residential and commercial customers, under a two (2)-year phase-in plan; (2) terminated Pukalani's replacement reserve surcharge; and (3) authorized the

¹Pukalani's Application, Exhibits PSTP 1 to PSTP 11, Verification, and Certificate of Service, filed on March 1, 2005 (collectively, the "Application"). See also Order No. 21639, filed on February 7, 2005 (authorizing Pukalani to use the 2005 calendar test year); and Pukalani's transmittal letter, dated March 8, 2005.

implementation of a power cost adjustment clause, to take effect from February 1, 2006.

II.

Pukalani's Notice of Acceptance

Pukalani accepts *in toto* Proposed Decision and Order No. 22015.² In addition, Pukalani submits its revised tariff sheets and rate schedules in compliance with the Proposed Decision and Order.³

Pukalani also discloses the confidential settlement terms set forth in Section III(G)(4) of the Stipulation: (1) previously filed by the Parties under seal; and (2) denied by the commission in its Proposed Decision and Order.⁴ In disclosing this information, Pukalani reasons:

[W]hile Pukalani believes that the portion of the Stipulation filed under Protective Order represented confidential analysis and information regarding Pukalani's plans to attempt to resolve and address the notice issue directly with the government agencies, the issuance of the Proposed Decision and Order renders the issue and the basis of these discussions moot.⁵

²Pukalani's Notice of Acceptance of Proposed Decision and Order No. 22015 and Related Matters, with two (2) enclosures, filed on September 19, 2005.

³See id., Enclosure No. 1.

⁴See id., Enclosure No. 2.

⁵Id. at 1.

III.

Consumer Advocate's Notice of Acceptance

The Consumer Advocate, likewise, accepts Proposed Decision and Order No. 22015.⁶ Concomitantly, the Consumer Advocate: (1) requests clarification of Ordering Paragraph No. 7; and (2) comments on certain aspects of the Proposed Decision and Order, including the commission's recommendation to revise Paragraph 4(b) of the Parties' proposed Rule XIV, governing CIAC.

A.

Ordering Paragraph No. 7

The Consumer Advocate, in its review of Ordering Paragraphs Nos. 5, 6, and 7, seeks clarification of the wastewater rates Pukalani is authorized to charge the two (2) government entities.

In essence, the Consumer Advocate notes that while Ordering Paragraph No. 6 terminates Pukalani's replacement reserve, Ordering Paragraph No. 7 states that "the County community center's and public elementary school's wastewater rates shall remain unchanged." Hence, the Consumer Advocate seeks clarification that the two (2) government entities will not be assessed the surcharge for the replacement reserve fund.

Pukalani, for its part, correctly implements the commission's ruling by deleting *in toto* all references to the

⁶Consumer Advocate's Notice of Acceptance of Proposed Decision and Order No. 22015, filed on September 19, 2005 (collectively, "Notice").

replacement reserve surcharge in its revised rate schedules filed on September 19, 2005 ("Revised Rate Schedules").⁷

Act 168, codified at HRS § 269-16(f), is silent as to whether a party's request for clarification is permissible in response to the commission's issuance of its *Proposed Decision and Order*.⁸ Nonetheless, in this instance, because Pukalani correctly implements the commission's ruling on this issue and the Consumer Advocate's interpretation is likewise correct, the commission, on its own motion, clarifies Ordering Paragraph No. 7.

Accordingly, Ordering Paragraph No. 7, which is now Ordering Paragraph No. 4 in this Decision and Order, is amended and clarified to read as follows:

4. Unless ordered otherwise, the County community center's and public elementary school's flat monthly wastewater rates shall remain unchanged; provided that, consistent with Ordering Paragraph No. 3, above, the two (2) government entities' wastewater rates shall not include a surcharge for Pukalani's replacement reserve, which is terminated.

As part of its request for clarification, the Consumer Advocate, citing to Ordering Paragraph No. 5, asserts that Pukalani should not be allowed to increase its wastewater rates charged to its other customers in order to "make up the

⁷Pukalani's Tariff Schedule, Exhibit B, in Pukalani's Enclosure No. 1.

⁸HRS § 269-16(f) states that each party to a proceeding under Act 168 shall notify the commission as to whether it: (1) accepts the Proposed Decision and Order; or (2) does not accept, either in whole or in part, the Proposed Decision and Order.

difference in revenues resulting from the Commission['s] ruling in Ordering paragraph 7."⁹

Pukalani, in its Revised Rate Schedules, correctly identifies the new wastewater rates authorized by the commission in Proposed Decision and Order No. 22015, thus rendering moot the Consumer Advocate's assertion.

Lastly, the Consumer Advocate, on Pukalani's behalf, requests that Pukalani be allowed to continue working with the two (2) government entities to reach agreement on assessing these entities the new commercial usage rate authorized by Proposed Decision and Order No. 22015. In the event such an agreement is reached, the Consumer Advocate states that: (1) Pukalani would seek the commission's approval to implement the agreed-upon rates through the transmittal process; or in the alternative (2) Pukalani could file a new rate increase application pursuant to Act 164, using the same information in this docket record.

The commission notes that a public utility's request to change its utility service rates, depending on the nature of the request, is generally subject to the statutory requirements of a public notice and public hearing under HRS §§ 269-12 and 269-16, unless the utility seeks to decrease its commission-authorized utility service rates, in which case a public hearing is not required. In addition, a public utility such as Pukalani is entitled to file an application for a rate increase pursuant to Act 168.

⁹Consumer Advocate's Notice, at 3. The Consumer Advocate's estimate of Pukalani's annual revenue shortfall is \$7,037.

B.

Rule XIV, CIAC

The commission, on its own motion, revised the Parties' stipulated Rule XIV, Paragraph 4(b), by replacing the stipulated formula with the cost per thousand gallons of the utility's latest capacity addition, multiplied by a Consumer Price Index ("CPI") adjustment factor formula.

The Consumer Advocate makes certain comments for the docket record in response to the commission's decision to revise the Parties' stipulated Rule XIV, Paragraph 4(b).

Namely:

1. The Parties' stipulated Rule XIV addresses a portion of the Consumer Advocate's concerns and represents a compromise for settlement purposes.

2. The reasonableness of a proposed tariff provision should not be based solely on existing provisions in other utility company tariffs.

3. In general, the application of the CPI to recover a portion of the cost of plant facilities may not be appropriate:

[T]he CPI inflates the cost of the existing plant, allowing a utility to collect more than the cost it incurred to construct the plant facilities. Based on this concern, the Consumer Advocate will be endeavoring to make similar changes in all other applicable tariffs in the future when the opportunity arises. Since this concern does not affect the revenue requirement and proposed rates in the instant proceeding, however, the Consumer Advocate **will not oppose** the Commission's ruling on this matter and reserves its right to raise this issue in future proceedings.¹⁰

¹⁰Id. at 9 (emphasis added).

IV.

Adoption of Proposed Decision and Order No. 22015

The Parties, subject to the Consumer Advocate's comments, accept Proposed Decision and Order No. 22015. Accordingly, the Parties are not entitled to a contested case hearing, and HRS § 269-15.5 does not apply.¹¹ HRS § 269-16(f)(3).

The commission adopts Proposed Decision and Order No. 22015 as its Decision and Order in this proceeding, subject to one (1) clarification in response to the Consumer Advocate's request.

In addition, the commission finds that Pukalani's revised tariff sheets and rate schedules comply with Proposed Decision and Order No. 22015, subject to certain revisions.¹²

V.

Orders

THE COMMISSION ORDERS:

1. Proposed Decision and Order No. 22015, filed on September 7, 2005, is adopted as the commission's Decision and Order in this proceeding; provided that the commission, on its

¹¹See Proposed Decision and Order No. 22015, at 42 - 43, Paragraph No. 1.

¹²Pukalani shall: (1) include in Rule II the sentence referred to in Section IX(A), Paragraph No. 6 of the Proposed Decision and Order; (2) change "No Consumer" to "No person" throughout Rule VII, consistent with Section IX(A), Paragraphs No. 15 and No. 17; (3) include the changes set forth in footnote 61, page 33, of the Proposed Decision and Order; and (4) for Rule XVI, change "law" to laws," consistent with Section IX(A), Paragraph No. 22.

own motion, amends Ordering Paragraph No. 7 of the Proposed Decision and Order, now codified as Ordering Paragraph No. 4, to read as set forth below.

2. Pukalani may increase its rates to produce a total annual revenue increase of \$282,752, or 134 per cent, as shown on Exhibit A of Proposed Decision and Order No. 22015, representing an increase in Pukalani's revenue requirement to \$493,310.

3. Pukalani's replacement reserve surcharge is terminated, effective from the implementation date of Pukalani's new rate schedule. Pukalani shall: (A) utilize the remaining balance from the replacement reserve fund to fund its sewer line replacement project; and (B) reflect said expenditure as CIAC.

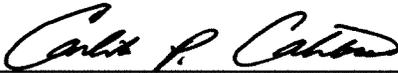
4. Unless ordered otherwise, the County community center's and public elementary school's flat monthly wastewater rates shall remain unchanged; provided that, consistent with Ordering Paragraph No. 3, above, the two (2) government entities' wastewater rates shall not include a surcharge for Pukalani's replacement reserve, which is terminated.

5. Pukalani shall undertake and complete a cost of service study for its next rate proceeding.

6. Pukalani's revised tariff sheets and rate schedules shall take effect from October 1, 2005. Pukalani shall promptly file its revised tariff sheets and rate schedules, consistent with the terms of this Decision and Order, with the applicable issued and effective dates.

DONE at Honolulu, Hawaii September 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

05-0025.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22052 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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DATED: September 28, 2005