

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.)

DOCKET NO. 05-0137

ORDER NO. 22061

Filed Oct. 6, 2005
At 8 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

2005 OCT -7 A 10:16

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BARBARA JEAN ALAPAI, SHANE ALAPAI, and MERCY ALAPAI (collectively referred to as, "Movants" or "Participants") to participate in this proceeding without intervention, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-56(a), to the extent set forth in Order No. 21996.¹

The commission also directed the Joint Applicants, the Consumer Advocate (collectively, the "Parties"), and the Participants to informally meet and formulate for submittal a stipulated procedural schedule or order for the commission's review and approval within twenty (20) days of the date of Order No. 21996.²

On September 20, 2005, the Parties' filed their proposed Stipulated Procedural Order ("Stipulation") for our review and approval.³

¹By Order No. 21996, the commission concurrently denied Movants' June 23, 2005 Motion to Intervene.

²Alternatively, if unable to stipulate, the Parties and Participants were directed to each submit proposed procedural schedules or orders for the commission's consideration within twenty (20) days of the date of Order No. 21996.

³The filing of the Stipulation is proper under HAR §§ 6-61-22 and 6-61-21(e). HAR § 6-61-22, provides that when computing any period of time specified under any order, notice, or rule of the commission, the last day of the period is included unless it falls on "a Saturday, Sunday, or holiday in which event the period runs until the end of the next days which is not a Saturday, Sunday, or holiday." Under HAR § 6-61-21(e), two (2) days will be added to the prescribed time whenever a party has the right to do some act or take some proceeding within a prescribed period after the service of a notice or other document is served upon the party by mail.

II.

Parties' Stipulation

The Parties' Stipulation appears, on the most part, to be reasonable. The commission recognizes that the Stipulation is an agreement amongst the Parties regarding the issues, schedule, and procedures to govern the proceedings of this docket. The various parameters and provisions set forth in the Stipulation appear to also be generally consistent with similar stipulations approved by the commission in other commission proceedings.

However, while the Stipulation was signed by the attorneys for the Parties, Participants' attorney did not sign the document. Thus, at first glance, Participants appear to not have participated in the formulation of the Stipulation. Nonetheless, we will presume that Participants do not generally object to the Stipulation since Participants did not file: (1) a separate proposed procedural schedule or order in accordance with Order No. 21996; nor (2) an objection to or comments on the filed Stipulation.

In the Stipulation, the Parties acknowledge that the Participants are entitled to receive copies of submissions in accordance with Order No. 21996.⁴ However, we clarify that the participation granted under HAR § 6-61-56(a) permits Movants to participate in this proceeding to the extent and degree ordered by the commission in Order No. 21996. In that order, the

⁴See, Stipulation at 2.

commission directed Participants to participate in the formulation of the stipulation⁵ and further stated the following:

Movants' participation in this proceeding is limited; however, to: (1) acting jointly in all aspects of this proceeding through one [(1)] 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.⁶

Accordingly, we find it reasonable to amend the Stipulation to clarify the Parties' acknowledgement that Participants are entitled to participate in this proceeding to the extent set forth in Order No. 21669, as enumerated above.

Additionally, it appears that informal discovery between the Parties began prior to the filing of the Stipulation with the commission and that certain discrepancies and concerns exist with the current stipulated procedural schedule, at this time. For instance, under the Stipulations' Schedule of Proceedings, the Consumer Advocate issued Joint Applicants information requests ("IRs") on September 14, 2005, six (6) days **before** the filing of the Stipulation with the commission. However, our records indicate that the Consumer Advocate did not concurrently file, nor has it filed to date, its September 14,

⁵See, Order No. 21996 at 8.

⁶Id. at 6.

2005 IRs with the commission for the record. In addition, the Joint Applicants were to file their responses to the Consumer Advocate's issued IRs on September 28, 2005, under the Stipulation; however, our records indicate that the Joint Applicants did not complete filing their responses to the Consumer Advocate's IRs until September 29, 2005. Moreover, regardless of the level of Participants' involvement in the formulation of the Stipulation, the commission believes that Participants should be allowed an opportunity to provide input and be involved in this proceeding, as set forth in Order No. 21996.

Accordingly, the commission finds it reasonable to amend the Schedule of Proceedings of the Stipulation, which governs the proceedings of this docket, to read as follows:

SCHEDULE OF PROCEEDINGS

Application filed for Approval of Asset Sale	June 3, 2005
CA's IRs to Joint Applicants	September 14, 2005 (filed with the commission by October 28, 2005)
Filing of Joint Applicants' Responses to CA's IRs	September 29, 2005
Filing of CA's Supplemental IRs ("SIRs"), if necessary	October 7, 2005
Filing of Participants' IRs to Joint Applicants, if any	October 13, 2005
Filing of Joint Applicants' Responses to CA's SIRs	October 14, 2005
Filing of Joint Applicants' Responses to Participants' IRs	October 20, 2005

Filing of CA's/Participants'
Statement of Position ("SOP")⁷

October 28, 2005

Filing of Joint Applicants'
Reply SOP, if necessary

November 11, 2005

The scheduling amendments set forth above, address the procedural concerns and discrepancies that currently exist regarding the proceedings of this docket. Moreover, the amendments allow the Participants to participate in this proceeding to the extent set forth in Order No. 21996 in a reasonable manner and within the scheduling parameters agreed-upon by the Parties. Accordingly, we conclude that the Parties' Stipulation, attached to this Order as Exhibit A, should be approved, subject to the amendments and clarifications set forth above.⁸ Additionally, we direct the Parties and Participants to adhere to the amended Schedule of Proceedings set forth in Section II of this Order.

⁷If the Participants' or the Consumer Advocate's position is to not take a position regarding the matters of this docket, they are directed to submit a Statement of No Position in lieu of a SOP, for the record, within the prescribed deadline.

⁸Aside from the specific scheduling matters set forth in this section of the Order, the various provisions, conditions, and notations set forth in the Stipulation including those expressed in Section II of the Stipulation (entitled "Schedule of Proceedings"), remain unchanged unless they are in direct conflict with any of the commission's amendments and clarifications set forth in this Order.

III.

Orders

THE COMMISSION ORDERS:

1. The Parties' Stipulation, filed on September 20, 2005 and attached to this Order as Exhibit A, is approved, subject to the amendments and clarifications set forth above.

2. The Parties and Participants are directed to adhere to the amended Schedule of Proceedings as set forth in Section II of this Order.

DONE at Honolulu, Hawaii OCT - 6 2005.

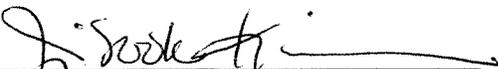
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of
PU'U WA'A WA'A WATERWORKS, INC.
and NAPU'U WATER, INC.
For Approval of Asset Transfer

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)
) DOCKET NO. 05-0137
)
)
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FILED
2005 SEP 20 A 11:50
PUBLIC UTILITIES
COMMISSION

STIPULATED PROCEDURAL ORDER NO. _____

Filed _____, 2005

At _____ o'clock ____m.

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
PU'U WA'A WA'A WATERWORKS, INC.) DOCKET NO. 05-0137
and NAPU'U WATER, INC.)
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For Approval of Asset Transfer)

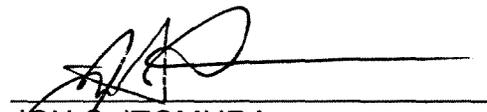
STIPULATED PROCEDURAL ORDER

Applicants Puuwaawaa Waterworks, Inc. and Napu'u Water, Inc., Joint Applicants and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate") hereby stipulate that the attached Stipulated Procedural Order is mutually acceptable to each respective party.

DATED: Honolulu, Hawaii, September 20, 2005.



BLAKE W. BUSHNELL
Attorney for Applicant Buyer
Napu'u Water, Inc.



JON S. ITOMURA
Attorney for the
Division of Consumer Advocacy
Department of Commerce and Consumer
Affairs



PHILIP J. LEAS
Attorney for Applicant Seller
Puuwaawaa Waterworks, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
PU'U WA'A WA'A WATERWORKS, INC.) DOCKET NO. 05-0137
and NAPU'U WATER, INC.)
)
For Approval of Asset Transfer)

STIPULATED PROCEDURAL ORDER

By an application filed on June 30, 2005, Puuwaawaa Waterworks, Inc. ("Seller") and Napuu Water, Inc. ("Buyer"), collectively referred to as "Joint Applicants" request Commission approval of an asset sale involving a water system located on the island of Hawaii that is currently owned and operated by Seller pursuant to Hawaii Revised Statutes ("HRS") § 269-19 ("Joint Application")

Copies of the application were served on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate"). By Order No. 21867, filed June 16, 2005, the Public Utilities Commission ("Commission") directed Joint Applicants and the Consumer Advocate to submit a stipulated procedural schedule for the Commission's consideration and approval by July 16, 2005 (thirty days from the date of Order No. 21867).

On June 23, 2005, William and Emmaline Hooper, Liwai Mitchel, Carol Leina'ala Lightner, Shirley Ann Keakealani, Mahana Gomes, Gordon and Sally Alapa'i, Ralph and Barbara Jean Alapa'i, and Shane and Mercy Alapa'i filed a Motion to Intervene. A hearing on such Motion was held on July 12, 2005. On August 29, 2005, the

Commission entered Order No. 21996 denying the Motion to Intervene and ordering the parties to submit a stipulated procedural schedule for the Commission's consideration and approval by September 18, 2005. The parties acknowledge that the purported Intervenors, through their counsel, are entitled to receive copies of submissions in accordance with Order No. 21996 and as noted below.

A public hearing on the Joint Application was held on August 9, 2005.

Joint Applicants and the Consumer Advocate have reached agreement on the procedural matters and submit this Stipulated Procedural Order to the Commission, which is acceptable to the parties.

ACCORDINGLY, IT IS ORDERED that the following Schedule of Proceedings and procedures shall be utilized in this docket.

I.

STATEMENT OF ISSUES

The issues in this docket are:

1. Whether the sale of all of the assets pursuant to the terms of the Asset Purchase Agreement filed in this docket should be approved pursuant to HRS § 269-19.
2. Whether the financing the Buyer is proposing to obtain for the purpose of acquiring the Seller's assets requires Commission approval under HRS § 269-17. If yes, whether said financing should be approved pursuant to HRS § 269-17.
3. Whether the Buyer is fit, willing and able to perform the services currently offered by the utility to be acquired.

4. Whether Buyer's acquisition of the Seller's Assets is reasonable and in the public interest.
5. Whether it is reasonable for Buyer to use the current Seller rates, tariffs and rules and regulations for its financial projections in this docket.
6. Whether any other relief as may be just and reasonable should be granted under the circumstances.
7. Whether any other conditions or provisions are required to ensure the proposed transaction is in the public interest.

II.

SCHEDULE OF PROCEEDINGS

Application filed for approval of asset sale	June 3, 2005
CA Information Requests ("IRs") to Joint Applicants ¹	September 14, 2005
Joint Applicants' Responses to CA/Intervenor IRs	September 28, 2005
CA Supplemental IRs ("SIRs"), if necessary	October 7, 2005
Joint Applicants' Responses to CA SIRs	October 14, 2005
CA Statement of Position ("SOP")	October 28, 2005
Joint Applicants' Reply SOP, if necessary*	November 11, 2005

* If the Consumer Advocate objects to approval of the application, or requests that approval be subject to conditions

If there are substantial disagreements following the filing of the SOPs, and the parties cannot resolve the differences by stipulation and the parties do not waive the

¹ Whenever possible, parties will provide a copy of documents on diskette upon request.

right to a hearing, the parties shall propose a hearing schedule (including the filing of simultaneous post-hearing briefs) for Commission approval.

If Joint Applicants determine that a Reply SOP is unnecessary, Joint Applicants, the Consumer Advocate will notify the Commission that the proceeding is ready for decision making.

II.

MISCELLANEOUS MATTERS TO FACILITATE AND EXPEDITE THE ORDERLY CONDUCT OF THESE PROCEEDINGS

A. REQUESTS FOR INFORMATION

To the extent practical, Joint Applicants and the Consumer Advocate will cooperate (1) by exchanging information requests and responses as they become available, and (2) by resolving questions regarding information requests ("IR" and "SIR") and responses informally to attempt to work out problems with respect to understanding the scope and meaning of information requests, or with respect to the availability of information. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials (documents consisting of 100 pages or more), the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or other readily usable electronic medium, the party

responding to the information request may make the diskette or such electronic medium with all formula and cell references intact available to the other party and the Commission.

A party shall not be required, in response to an information request, to provide data that are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part B, *infra*. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were

disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to a protective order governing this docket.

A party seeking production of documents notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

B. MATTERS OF PUBLIC RECORD

In order to provide a means to reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that Joint Applicants have filed with the Commission, published decisions of this or other Commissions, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to water utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule on whether the identified document can be admitted into evidence when a party proffers such document for admission in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

C. COPIES OF FILINGS AND INFORMATION REQUESTS

1. Filings:

Commission	Original + 8 copies
Joint Applicants	4 copies
Consumer Advocate	4 copies
Participants	4 copies

2. Information Requests and Responses:

Commission	Original + 8 copies
Joint Applicants	4 copies
Consumer Advocate	4 copies
Participants	4 copies

3. All pleadings, and other documents required to be filed with the Commission shall be filed at the office of the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to Chapter 61, subchapter 2, section 6-61-15 of the Commission's Rules of Practice and Procedure.

4. Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or via facsimile. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette or e-mail in a standard electronic format that is readily available by the parties. The parties agree to use Word 97, Word 2000, or Word 2003 as the standard programming format for filings in this case. However, if work papers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such work papers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a

filing, information request or information request response is delivered to a party via diskette or e-mail, unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or via facsimile as provided in Parts II.C.1 and II.C.2 above.

D. COMMUNICATIONS

Chapter 61, subchapter 3, section 6-61-29 of the Commission's Rules of Practice and Procedure concerning *ex parte* communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel on matters of practice and procedure through their own counsel or designated official.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party. All motions, supporting memoranda, and the like shall also be served on opposing counsel.

E. GENERAL

These procedures are consistent with the orderly conduct of this docket. Pursuant to Chapter 61, subchapter 3, section 6-61-37 of the Commission's Rules of Practice and Procedure, this Stipulated Procedural Order shall control the subsequent courses of the proceedings, unless modified at or prior to the hearings to prevent manifest injustice.

DONE at Honolulu, Hawai'i, this _____ day of _____, 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura, Commissioner

By _____
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the foregoing Stipulated
Procedural Order No. _____ upon the following parties,
by causing a copy hereof to be mailed postage prepaid and properly addressed
to each such party::

Division of Consumer Advocacy
Department of Commerce and Consumer Affairs
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Honolulu, HI 96809

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Attorney for Applicant Seller
PUUWAAWAA WATERWORKS, INC.

R. Ben Tsukazaki
Tsukazaki Yeh & Moore
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Attorney for Participants
WILLIAM and EMMALINE HOOPER, et al.

Blake W. Bushnell, Esq.
Bushnell & Miller
737 Bishop Street, Suite 3000
Honolulu, HI 96813
Attorney for Applicant Buyer
NAPU`U WATER, INC.

DATED: Honolulu, Hawaii, _____

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22061 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
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Hilo, HI 96720



Karen Higashi

DATED: OCT - 6 2005