

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HOH UTILITIES, LLC)
For Approval of (a) the Expansion)
of its Service Territory and (b))
Acquisition of the Interests)
Of the Poipu Water Reclamation)
Facility Owned by CTF Hotel Sewage)
Treatment Corporation.)

DOCKET NO. 04-0340

DECISION AND ORDER NO. 22117

Filed Nov. 10, 2005
At 10 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 NOV 14 A 8:16

RECEIVED

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

K. Higashi.

In the Matter of the Application of)
)
 HOH UTILITIES, LLC)
)
 For Approval of (a) the Expansion)
 of its Service Territory and (b))
 Acquisition of the Interests)
 Of the Poipu Water Reclamation)
 Facility Owned by CTF Hotel Sewage)
 Treatment Corporation.)
)

Decision and Order No. 22117

By this Decision and Order, the commission approves HOH UTILITIES, LLC's ("HOH" or "Applicant") application for commission approval to (1) expand its existing service territory to provide wastewater treatment services to additional properties, and (2) allow Applicant to acquire the remaining and outstanding 16.67% interest in the Poipu Water Reclamation Facility ("PWRF") from CTF Hotel Sewage Treatment Corporation ("CTF").

The Application

HOH is a Hawaii limited liability company, which provides wastewater treatment services to approximately seventy-six (76) bulk and individual customers in the Poipu area of Kauai, including the Kauai Sheraton Resort, Marriott Resort,

Kiahuna Shopping Village, Kiahuna Tennis Club, Kiahuna Golf Clubhouse, Kiahuna Golf Village Subdivision, Kiahuna Plantation Condominium, Plantation Gardens Restaurant and the Poipu Kapili Condominium. HOH obtained its certificate of public convenience and necessity ("CPCN") pursuant to Decision and Order No. 17562, filed on February 25, 2000, in Docket No. 99-0343.

By Amended and Restated Application filed on March 8, 2005,¹ HOH requested commission approval to expand its existing service territory to provide wastewater treatment services to additional properties in the Poipu area on the island of Kauai, and to allow HOH to acquire the remaining and outstanding 16.67% interest in PWRF from CTF ("Application") pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7.5 and 269-16. Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket, pursuant to HRS § 269-51.

In its Application, HOH seeks commission approval to expand its service territory to include the following areas:

1) *Poipu Beach Villas*. Located on approximately 24 acres of land immediately west of the Poipu Kapili condominium between Poipu Road and the ocean, Poipu Beach Villas is a proposed residential development, which is expected to consist of

¹HOH initially filed an application with the commission on November 24, 2004. The application was limited to expansion of its service territory, and did not include a request for commission approval to acquire the remaining interest in the PWRF. The November 24, 2004 application was superseded by the March 8, 2005 Application.

approximately three hundred and fifty (350) multi-family residences at completion. Construction is expected to begin in February 2006 with the first units ready for occupancy in June 2007. At completion in 2008, the project is expected to generate approximately one hundred and five thousand (105,000) gallons of wastewater per day, utilizing a standard of three hundred (300) gallons of wastewater per day, per multi-family unit.

2) *Villages at Poipu*. The Villages of Poipu is a proposed residential development, which is being developed by the Eric A. Knudsen Trust, on approximately 210 acres of land mauka of the Kiahuna Tennis Club. It is expected to consist of one hundred and fifty-four (154) multi-family units and four hundred and sixteen (416) single-family units. Construction is expected to occur in several phases over a fifteen (15) year period with the first units ready for occupancy in spring 2006. Utilizing a standard rate of three hundred (300) gallons of wastewater per day per multi-family unit and four hundred (400) gallons of wastewater per day per single-family residence, the project is expected to generate approximately two hundred and twelve thousand six hundred (212,600) gallons of wastewater per day at completion of the project.

3) *Kiahuna Mauka*. This proposed development consists of approximately two hundred and four (204) acres of land being developed by the Kiahuna Mauka Partners surrounding the existing Kiahuna Golf Course. Current plans include developing this property in five (5) phases, for a total of six hundred and

thirty-five (635) multi-family units and one hundred and seventy-eight (178) single-family units. At completion, occupants of Kiahuna Mauka are expected to generate approximately two hundred sixty two thousand (262,000) gallons of wastewater per day. Construction of the first phase of Kiahuna Mauka is expected to begin in July 2005 and be ready for occupancy in July 2006.

4) *Poipu Beach Hotel Property.* This property was once occupied by the Poipu Beach Hotel, which was destroyed by Hurricane Iniki. While the property is expected to be redeveloped at some point in time, at present, Applicant cannot predict the amount of wastewater that would be processed per day at this site because it is not aware of specific plans for its redevelopment.

5) *Other Properties.* Applicant states that it has received requests for wastewater service from the County of Kauai and several small lot owners whose properties are located near the Marriott Resort. These properties include primarily large single-family properties, one small commercial property, and portions of a county park; most of which currently dispose of their wastewater through small cesspools or small septic tank systems. Applicant is unaware of any immediate plans to develop these lands at this time, but is obligated to provide wastewater service on land located within its existing and proposed service territory, pursuant to prior agreements with Applicant's predecessors-in-interest.

In addition to expanding its service territory, Applicant also requested in its Application commission approval to acquire the remaining 16.67% interest in PWRF from CTF. Apparently, CTF no longer desires to have an ownership interest in PWRF and would prefer to receive sewer service from a public utility. Should the commission approve Applicant's request, Applicant will own one hundred percent (100%) of the interest in PWRF.

B.

Information Requests

On March 1, 2005, the commission issued information requests ("IRs") to Applicant regarding its wastewater treatment facilities, to which Applicant filed responses on March 11, 2005. On March 24, 2005, the Consumer Advocate issued IRs to Applicant regarding, among other things, its Application, expansion of its wastewater treatment facilities, the availability of other private sewer treatment facilities, and the impact of Applicant's expansion on existing customers. Applicant filed responses to the Consumer Advocate's IRs on April 7, 2005.

C.

Consumer Advocate's Statement of Position

On May 10, 2005, the Consumer Advocate filed its Statement of Position. In considering Applicant's request for commission approval to expand its service territory, the

Consumer Advocate considered (1) whether the expansion of Applicant's service territory would have a negative impact on Applicant's existing customers, and (2) whether Applicant's existing rates would need to be changed as a result of the proposed expansion of its service territory.

With regard to the impact on existing customers, the Consumer Advocate considered whether Applicant had the necessary wastewater treatment facilities to provide service to occupants of the proposed expanded service areas, and whether Applicant's existing customers would be responsible for subsidizing the expanded wastewater service.

The Consumer Advocate noted that Phase I of a planned three-phase upgrade of the PWRF was recently completed. With the completion of Phase II of the upgrade, PWRF's capacity will increase from five hundred thousand (500,000) gallons per day ("gpd") to eight hundred thousand (800,000) gpd. The Phase II upgrade is scheduled to be completed in July 2005, which is approximately one year before occupancy of the first units in the expanded service territory. Phase III, which is not expected to commence until capacity exceeds six hundred and fifty thousand (650,000) gpd, will increase capacity to one million (1,000,000) gpd sometime after 2006.

The Consumer Advocate also considered the possibility that the addition of "other properties" to Applicant's service territory might exceed the one million (1,000,000) gpd planned capacity of PWRF. Applicant assured the Consumer Advocate, however, that the PWRF could potentially treat up to two million

(2,000,000) gallons of wastewater per day, if necessary.² Accordingly, based on this information, the Consumer Advocate concluded that Applicant has sufficient capacity to treat the expected wastewater produced by its existing and potential customers in the proposed expanded service territory. It also concluded, based on Applicant's existing tariff, that the developers of the expanded properties would bear the costs of improvements through contributions in aid of construction ("CIAC").³

In addition, the Consumer Advocate considered whether Applicant's existing rates would need to be revised as a result of the proposed expansion in service territory. The Consumer Advocate noted that operating costs of wastewater treatment facilities are primarily fixed, i.e., costs do not vary with the amount of wastewater produced. Consequently, increases in the number of customers do not necessarily result in an increase in operating costs. However, as the Applicant currently has a pending request for a rate increase before the commission in Docket No. 05-0024, the Consumer Advocate recommended that any decision regarding whether the current rates should be revised with the increased customer base be deferred to the pending docket.

²See Response to Consumer Advocate's IR-10.b.

³See Response to Consumer Advocate's IR-13.a.

II.

FINDINGS AND CONCLUSIONS

A.

Expanded Service Territory

HRS § 269-7.5 states, in relevant part:

a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules and regulations governing the proposed service.

(b) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules and regulations

proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

.

HRS § 269-7.5. As Applicant's authority pursuant to its CPCN does not currently authorize it to provide wastewater treatment services to the properties listed in the proposed expanded service area, commission approval is required to amend Applicant's service territory to include the expanded service area.

Pursuant to HRS § 269-7.5, the commission finds that Applicant is fit, willing, and able to provide the expanded wastewater treatment service, as shown in Exhibit B to the Application, and that the provision of these services is required by the present or future public convenience and necessity.

Applicant is able, or will be able to, when the properties are ready to connect to Applicant's wastewater system, provide wastewater treatment services to the proposed additional properties, and it will be able to do this without detriment to the level and quality of service currently being provided to its existing customers.

PWRF has a daily treatment capacity of five hundred thousand (500,000) gpd, and currently processes three hundred and fifty thousand (350,000) gpd. Applicant states that under current plans to upgrade the PWRF, the daily treatment

capacity will be increased to eight hundred thousand (800,000) gpd as of July 2005, and eventually, in the final phase of upgrading the plant, to one million (1,000,000) gpd. Additionally, the further expansion of PWRP will coincide with the long range plans for development of Kiahuna Mauka and the Villages at Poipu.⁴

In addition, Applicant asserts that no amendments to its tariff are required. The owners of the proposed additional properties have agreed to pay CIAC to Applicant for the proposed wastewater service, and all capital improvements necessary for plant expansion will be provided through CIAC funds. Thus, should Applicant's request to expand its service territory be approved, Applicant will charge the new customers the rates currently in effect and approved by the commission. Notably, the reasonableness of Applicant's existing rates are currently being assessed in Docket No. 05-0024.

The commission, moreover, notes that the properties located in the proposed expanded service area, are located near properties currently being serviced by Applicant, thereby facilitating the provision of service to the new properties.

Finally, the occupants of the proposed additional properties must be afforded a means to treat their wastewater, and the commission is unaware of any other wastewater treatment

⁴See Application at 7.

facility willing or able to service the additional properties.⁵ Accordingly, for the foregoing reasons, the commission concludes that Applicant's request for commission approval to expand its existing wastewater service territory should be approved.

B.

Acquisition of Remaining Interest in PWRF

As noted above, in addition to expanding its service territory, Applicant requests commission approval to acquire the remaining 16.67% interest in the PWRF from CTF.

HRS § 269-7(a) provides the commission with the authority to, among other things, examine a public utility's business relations with other persons, companies, or corporations, and all matters affecting the relations and transactions between the utility and the public or persons or corporations.

Pursuant to HRS § 269-7(a), the commission finds the proposed acquisition by Applicant of the remaining 16.67% interest in the PWRF from CTF to be reasonable and in the public interest. CTF no longer wants an ownership interest in the PWRF and would prefer to receive its sewer service from a public utility. The commission, thus, concludes that

⁵See Response to Consumer Advocate's IR-11. It is the commission's understanding that there are fifteen (15) privately owned sewage treatment facilities in the Poipu area of which thirteen are relatively small and are not certificated or regulated by the commission. With the exception of HOH, the only other facility regulated by the commission that provides services to the public, is not located near the area proposed to be served by HOH. *Id.*

Applicant's request to acquire the remaining and outstanding 16.67% interest in the PWRF from CTF should be approved.

III.

ORDERS


THE COMMISSION ORDERS:

1. Applicant's Application, filed on March 8, 2005, for commission approval to (1) expand its existing service territory to provide wastewater treatment services to additional properties, and (2) allow Applicant to acquire the remaining and outstanding 16.67% interest in the PWRF from CTF, is approved. Applicant's new service area includes those properties reflected in Exhibit B attached to the Application.


2. Applicant shall promptly file with the commission its revised tariff sheets, incorporating its expanded service territory. The revised tariff sheets will take effect upon filing. Failure to promptly comply with this requirement may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii NOV 10 2005.

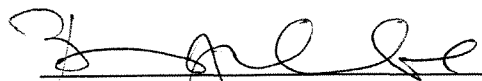
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

04-0340.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22117 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
P. O. Box 541
Honolulu, HI 96809

IAN KAGIMOTO
HOH UTILITIES, LLC
4560 Piko Road
Lawai, HI 96765

MICHAEL H. LAU, ESQ.
KENT D. MORIHARA, ESQ.
LANE T. ISHIDA, ESQ.
ISHIKAWA MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813



Karen Higashi

DATED: NOV 10 2005