

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

KILAUEA IRRIGATION CO., INC.)

DOCKET NO. 05-0168

For Approval of the Transfer of)
Stock of Kilauea Irrigation Co.,)
Inc. to Hitch Co. and Related)
Matters.)
_____)

DECISION AND ORDER NO. 22130

Filed Nov. 23, 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

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Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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Docket No. 05-0168
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DECISION AND ORDER

By this Decision and Order, the commission approves KILAUEA IRRIGATION CO., INC.'s ("KICI" or "Applicant") application for commission approval to: (1) transfer 100% of KICI's stock from its parent company, C. Brewer and Company, Ltd. ("C. Brewer"), to Hitch Co. ("Hitch"); and (2) expand KICI's existing service territory to include twelve (12) adjacent agricultural lots.

I.

Background

A.

Procedural History

KICI is a Hawaii corporation and a wholly-owned subsidiary of C. Brewer, which is in liquidation and will be dissolved prior to the end of 2005. Pursuant to the liquidation, C. Brewer has sold most of its subsidiary operating companies and

real estate interests and is, at this time, proposing to sell KICI to Hitch.

KICI's sole asset is the Kaloko Water System located in Kilauea, Kauai. In January 1985, the commission issued KICI a Certificate of Public Convenience and Necessity ("CPCN") to provide non-potable irrigation water service to certain geographic areas in Kilauea, Kauai.¹ Pursuant to the CPCN, KICI charges its customers \$0.77 per thousand gallons for the first 25,000 gallons and \$0.44 per thousand gallons thereafter, which is less than the rates charged by the County of Kauai.² KICI currently provides non-potable water to nineteen (19) customers for agricultural uses. Twelve (12) of KICI's nineteen (19) customers are in the proposed expanded service area. Hitch, a sole proprietorship owned by Thomas Hitch ("Mr. Hitch"), has maintained KICI's water system for the past fifteen (15) years as an independent contractor.

On July 8, 2005, KICI filed an application requesting commission approval for the: (1) transfer of 100% of its stock from C. Brewer to Hitch ("Stock Transfer"); and (2) expansion of KICI's service area to include twelve (12) adjacent agricultural lots ("Application"), as set forth in Exhibit A of the

¹See Decision and Order No. 8221, filed on January 15, 1985, in Docket Nos. 5165 and 5166 (Consolidated).

²According to KICI, the County of Kauai charges customers \$2.10 per thousand gallons for the first 25,000 gallons and, thereafter, \$0.70 per thousand gallons. KICI states that it has not increased its water rates since receiving its CPCN.

Application.³ KICI filed its Application under Hawaii Revised Statutes ("HRS") chapter 269 and Hawaii Administrative Rules ("HAR") chapter 6-61, as applicable. Copies of the Application were served 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.

B.

Stock Transfer

In its Application, KICI seeks commission approval to transfer 100% of its stock from C. Brewer to Hitch for ten dollars (\$10.00) through a Stock Purchase Agreement dated May 20, 2005. According to KICI, Hitch has been maintaining and managing the Kaloko Water System for the last fifteen (15) years. As such, Hitch (through Mr. Hitch) is very knowledgeable of KICI's water system and its customers and has a "proven record of reliably maintaining" the system and serving KICI's customers.⁴

Upon receiving commission approval, KICI states that Hitch intends to maintain and operate the water system under the same rates and policies, and states that the Stock Transfer "will

³In its Application, KICI states that its CPCN will be transferred to Hitch along with its stock. See Application at 5. The commission, however, is not approving the transfer of KICI's CPCN by this Decision and Order. Such a transfer appears unnecessary under the circumstances since KICI will continue to provide water service after the Stock Transfer.

⁴See Application at 4.

have no material effect on KICI's ratepayers or operations."⁵ Moreover, KICI represents that Hitch has no plans to: (1) liquidate or sell KICI's assets; (2) merge or exchange KICI's utility shares with any other entity; (3) materially alter KICI's business relationship with any of its suppliers, customers, or the community in which it operates; or (4) make any other material changes to its utility business. KICI also contends that KICI will continue to have approximately the same level of financial and managerial resources under Hitch ownership and that Hitch will have no future depreciation expenses since the Stock Transfer is being consummated for a total purchase price of ten dollars (\$10.00).⁶ In addition, prior to the Stock Transfer, KICI intends to pay Hitch \$15,000 to improve and maintain the ditch system that serves the Kaloko Water System. Accordingly, KICI maintains that through Hitch, KICI will be fit and able to provide the proposed water service and that KICI's service is required by the future public convenience and necessity.

C.

Expanded Service Area

In its Application, KICI also requests commission approval to expand its service territory to include twelve (12)

⁵See Application at 6.

⁶KICI maintains that: (1) there are no security agreements, mortgages, or deeds of trust on its property; (2) KICI has not issued any bonds and has no outstanding notes; and (3) KICI has not made any distributions during the five (5) previous calendar years.

neighboring agricultural lots that KICI has been providing service to for the last fifteen (15) years. Apparently since obtaining its CPCN in 1985, KICI has inadvertently provided neighboring agricultural customers with water service without having obtained prior commission approval. According to KICI, twelve (12) of its existing nineteen (19) customers are within its "expanded" service area. As such, KICI requests commission approval to expand its service area to allow KICI to continue to provide water service to the twelve (12) agricultural customers in its "expanded" service area.

D.

Consumer Advocate's Position

On October 17, 2005, the Consumer Advocate filed its Statement of Position informing the commission that it supports the sale of KICI's stock to Hitch and the expansion of KICI's service territory to include service to the neighboring agricultural lots.

According to the Consumer Advocate, the Stock Transfer will not negatively impact KICI's ability to provide non-potable water service, as Hitch has demonstrated the ability to reliably maintain the Kaloko Water System and serve KICI's customers. In addition, the terms and conditions of the Stock Transfer appear to be reasonable, and the Stock Transfer appears to be in the best interest of KICI's ratepayers as C. Brewer is in the process of liquidation and expects to be dissolved by the end of 2005.

With respect to expansion of KICI's service territory, the Consumer Advocate supports the request. According to the Consumer Advocate, the expansion of KICI's service territory to include water service to the additional twelve (12) customers will not adversely affect the provision of water service to its customers. Also, should KICI be unable to provide water service to its existing customers and those in the expanded service area, these customers can access Kauai County water service, albeit at a higher rate. Accordingly, the Consumer Advocate recommends that the commission approve the Stock Transfer and allow expansion of KICI's authorized service area as requested.

II.

Discussion

A.

Stock Transfer

HRS § 269-19 provides in part that no public utility corporation "shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in its performance of its duties to the public[.]" It also states that "[e]very such sale, lease, assignment, mortgage, disposition . . . , made other than in accordance with the order of the commission shall be void." The purpose of HRS § 269-19 is to safeguard the public interest.⁷

⁷See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

The commission, moreover, under HRS § 269-7(a), has the authority to examine any and all transactions of the public utility that affect or may affect the public that it serves. Specifically, under HRS § 269-7(a), the commission is empowered to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

Having reviewed the record, the commission finds that the transfer of KICI's stock to Hitch is reasonable and in the public interest. This decision is based on the record established in this proceeding, including KICI's various representations. The transfer of ownership of KICI from C. Brewer to Hitch is reasonable given that C. Brewer is liquidating and plans to dissolve by the end of 2005, and given that Mr. Hitch has been operating and maintaining KICI's water system for the past fifteen (15) years and, thus, should be knowledgeable about the water system and the customers that the system serves. Through the transfer of ownership of KICI to Hitch, KICI's customers are assured continued service under the same rates (which are noticeably lower than those offered by the County of Kauai), and the same level of administrative expertise that they have become accustomed to.

B.

Expansion of 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.

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

Pursuant to HRS § 269-7.5, the commission finds that KICI is fit, willing, and able to provide the expanded service, as shown in Exhibit A to the Application, and that the provision of these services is required by the present or future public convenience and necessity. Expansion of KICI's authorized service territory to include the additional twelve (12) neighboring agricultural lots should not negatively impact KICI's existing customers since KICI has already been providing service to the customers in its "expanded" service area. As noted by the Consumer Advocate, should KICI be unable to provide the water service, for whatever reason, KICI's customers do have access to water service from the County of Kauai albeit at a higher price. Accordingly, we find it reasonable and in the public interest to expand KICI's authorized service area to include the additional twelve (12) neighboring agricultural lots as KICI requests.

III.

Orders

THE COMMISSION ORDERS:


1. The transfer of KICI's stock from C. Brewer to Hitch pursuant to the Stock Purchase Agreement dated May 20, 2005, is approved.

2. KICI's authorized service area is expanded to include the neighboring agricultural lots, as described in KICI's Application.

3. This docket is closed, unless ordered otherwise by the commission.

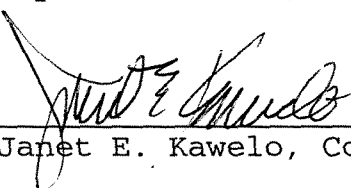
DONE at Honolulu, Hawaii NOV 23 2005.

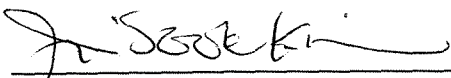
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (Excused)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Ji Sook Kim
Commission Counsel

05-0168.eh

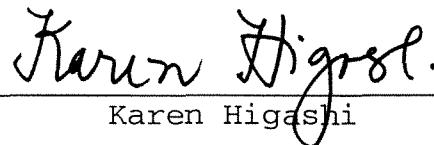
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22130 upon the following Petitioners, 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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Karen Higashi

DATED: NOV 23 2005