





residential and certain commercial customers (including the City) while decreasing the rate it charges to food service commercial customers; and (2) revise its General Wastewater Service Rules and Regulations Covering the Provision of Wastewater Service to Customers to, among other matters, establish a separate rate class to be known as "Public Authority-Dwelling." Under this new rate class, HAWC proposes to charge the City a rate of \$51.28 per user/dwelling for sewerage services for the City's sewer customers in Portlock, Kuliouou Valley, Paiko and other areas in Hawaii Kai that are served by the City's sewer system, as such areas are more particularly described in the Application ("Public Authority Areas"). The City's sewer system in the Public Authority Areas is connected to, and served by, HAWC's system. Accordingly, the City's sewer customers within the Public Authority Areas pay their sewer bills to the City instead of to HAWC.<sup>2</sup>

A.

Motion to Intervene

On November 7, 2005, the City filed a Motion to Intervene in this docket pursuant to HAR Chapter 6-61,

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<sup>2</sup>On October 27, 2005, the commission held a public hearing regarding HAWC's proposals at Kamiloiki Elementary School Cafeteria, 7788 Hawaii Kai Drive, Honolulu, Hawaii, 96825, pursuant to HRS § 269-16(b) ("Public Hearing"). Written and verbal comments regarding HAWC's Application were received into the record prior to, during, and following the Public Hearing. The transcript of the Public Hearing was filed with the commission on November 9, 2005.

Subchapter 4.<sup>3</sup> In its motion, the City contends that the rate increases proposed by HAWC are counter to a valid agreement dated January 31, 1961, entered into by and between the Trustees Under the Will and of the Estate of Bernice P. Bishop, Deceased; Kaiser Hawaii Kai Development Co. ("Kaiser"); and the City ("1961 Agreement"). The City argues that HAWC, as successor-in-interest to Kaiser, must abide by the provisions of the 1961 Agreement.

Under the 1961 Agreement, the City claims that HAWC is required to charge for service based on volume of City flow, as opposed to per user/dwelling, as proposed in the Application, for service rendered to residents and users in the Public Authority Areas. The City also insists that, under the 1961 Agreement, all City facilities are to be provided sewerage services "at no expense to the City" and, thus, HAWC cannot seek to institute charges for sewerage services for the City's facilities through its current Application. Moreover, even if the commission determines that the 1961 Agreement is no longer valid,<sup>4</sup> the City asserts that the rate increases being pursued by HAWC are unreasonable and should be denied.

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<sup>3</sup>The City does not request a hearing on the Motion to Intervene. See Motion to Intervene at 7.

<sup>4</sup>In Order No. 21888, filed on June 23, 2005, in Docket No. 05-0140 ("Order No. 21888"), the commission denied HAWC's request for a declaratory ruling regarding the validity of the 1961 Agreement. In Order No. 21888, the commission also stated its intention to initiate a new and separate proceeding to investigate and examine HAWC's allegation that the 1961 Agreement is invalidated by the 1974 amendment to the HRS that included sewerage companies as a public utility under the commission's regulation.

In support of its Motion to Intervene, the City represents, among other things, that it is HAWC's largest customer, and that a commission order in this proceeding will significantly increase the charges that the City is assessed for sewerage fees for both the Public Authority Areas and the City's own facilities. The City also contends that its interests cannot be represented by the Consumer Advocate or any other existing party to this proceeding since: (1) the Consumer Advocate is "more focused on individual residential customers than on the City as a large wholesale customer"<sup>5</sup>; and (2) the City's interest in this proceeding differs from that of the general public due to the 1961 Agreement and the significant extent to which the proceeding will affect its properties. Moreover, the City represents that its involvement in this proceeding will assist the commission in developing a sound record based on its knowledge of costs normally associated with operating and maintaining a wastewater system and that its involvement will not broaden the issues nor unduly delay the proceeding.

B.

HAWC's Response

On November 14, 2005, HAWC filed a Response to the City's Motion to Intervene informing the commission that it does not object to the motion, provided that intervention by the City is limited solely to the issue of the reasonableness and

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<sup>5</sup>See Motion to Intervene at 7.

appropriateness of the Public Authority-Dwelling rate proposed by HAWC for the Public Authority Areas in Hawaii Kai ("HAWC's Response").<sup>6</sup> Alternatively, HAWC represents that it would be supportive of a decision to consolidate this proceeding with the docket that the commission will be opening to investigate the validity of the 1961 Agreement; provided that the deadline for the completion of the commission's deliberations on this matter, pursuant to HRS § 269-16(d), is not affected.<sup>7</sup>

HAWC contends that while it is prudent and reasonable to allow the City limited intervention regarding the reasonableness and appropriateness of the Public Authority-Dwelling rate, it is opposed to granting the City intervention in this proceeding without limitation since the City's concerns regarding the charges to the City's facilities are matters more appropriately addressed in the upcoming commission investigation regarding the validity of the 1961 Agreement. HAWC also contends that the Consumer Advocate is statutorily charged to represent, protect, and advance the interest of all consumers of utility

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<sup>6</sup>HAWC filed its Response in accordance with HAR § 6-61-41.

<sup>7</sup>HAWC maintains that in the interest of regulatory and judicial economy it would be supportive of the consolidation of this proceeding with the upcoming commission investigation regarding the validity of the 1961 Agreement. HAWC's position regarding the consolidation of the two (2) proceedings is based on its recognition: (1) that the City's position on the reasonableness of the Public Authority-Dwelling rate may be dependent on the outcome of the commission's decision on the validity of the 1961 Agreement; and (2) of the advantages of consolidating the proceedings; such as, providing finality, which would afford HAWC regulatory certainty over its rate design and structure and the revenues that HAWC is entitled to collect.

services and that the City's intervention in this proceeding would be duplicative of the Consumer Advocate's efforts. Furthermore, HAWC contends that the City failed to demonstrate "any specific interest or particular expertise to aid the [c]ommission" in its considerations of the matters of this docket.<sup>8</sup>

C.

City's Reply

On November 28, 2005, the City filed its reply in support of its Motion to Intervene ("City's Reply"). The City's Reply was filed without commission approval and without referencing any authority to support the unauthorized filing. Accordingly, the commission declines to consider the City's Reply in this proceeding.

II.

Discussion

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

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<sup>8</sup>See HAWC's Response at 3.

- (b) The motion shall make reference to:
- (1) The nature of the applicant's statutory or other right to participate in the hearing;
  - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
  - (3) The effect of the pending order as to the applicant's interest;
  - (4) The other means available whereby the applicant's interest may be protected;
  - (5) The extent to which the applicant's interest will not be represented by existing parties;
  - (6) The extent to which the applicant's participation can assist in the development of a sound record;
  - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
  - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
  - (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(b) further 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."<sup>9</sup>

Here, HAWC does not oppose intervention by the City, provided that its intervention is limited to the reasonableness and appropriateness of the Public Authority-Dwelling rate.

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<sup>9</sup>See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

This limitation, however, appears overly restrictive given the issues raised in this proceeding. Not only are the City's interests affected by the imposition of a Public Authority-Dwelling Rate, but also by HAWC's proposal to impose sewerage charges on City facilities. Indeed, as acknowledged by HAWC, the resolution of the validity of the 1961 Agreement is a matter of concern of this docket since it affects the level of revenue increase being sought by HAWC in this proceeding.<sup>10</sup> All of the exhibits and supporting documents attached to the Application (except for Exhibit 4) were prepared under the assumption that HAWC would be receiving revenues for its services from the public authorities.<sup>11</sup> Moreover, as HAWC reasons, the City's position on the reasonableness of the Public Authority-Dwelling rate may be dependent on the commission's decision regarding the validity of the 1961 Agreement.<sup>12</sup>

In addition, the City claims to be HAWC's largest customer (which is not disputed by HAWC), and in past rate case proceedings, the commission has allowed intervention by large customers.<sup>13</sup> Also, as a large customer, the commission recognizes

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<sup>10</sup>See Application at 3-4, n.5.

<sup>11</sup>Id. at 4.

<sup>12</sup>See HAWC's Response at 5.

<sup>13</sup>In In re Citizens Utilities Company, Kauai Electric Division, Docket No. 94-0097, Order No. 13596, filed on October 13, 1993, the commission granted, without limitation, the motions to intervene filed by the United States Department of Defense and the County of Kauai, based, in part, on their allegations that they were larger consumers of electric service provided by the applicant, Kauai Electric.

that the City's interests may differ from the interests of the general public, and that the Consumer Advocate may not be able to fully represent the City's interests in this proceeding. In addition, the City operates a wastewater system on Oahu, and, as such, input and insights from the City regarding various aspects of rate case issues including, but not limited to, what constitutes "normal" costs associated with operating and maintaining a wastewater system could be invaluable in the development of a sound record in this proceeding and the City's experience in operating and maintaining a wastewater system could assist the commission in the resolution of issues in this docket. Accordingly, the commission concludes that the City's Motion to Intervene should be granted without limitation.

As an intervenor, however, the City is cautioned that its participation in this docket will be limited to the issues raised in this docket. The commission will preclude any effort by the City to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider the City's participation in this docket if, at any time, during the course of this proceeding, the commission determines that the City is unreasonably broadening the pertinent issues raised in this docket or unduly delaying the proceeding.

The commission directs HAWC, the Consumer Advocate,<sup>14</sup> and the City to meet informally to formulate and formalize the issues, procedures, and regulatory schedule with respect to this docket, to be set forth in a stipulated prehearing order for filing with the commission for its review and approval within twenty (20) days from the date of this Order. If the parties are unable to stipulate to such an order, each party to this proceeding shall file a proposed prehearing order for the commission's consideration within twenty (20) days of the date of this Order.<sup>15</sup>

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The City's Motion to Intervene is granted.
2. HAWC, the Consumer Advocate, and the City shall meet informally to formulate and formalize the issues, procedures, and regulatory schedule with respect to this docket, to be set forth in a stipulated prehearing order for filing with

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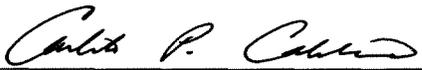
<sup>14</sup>HAWC states that it is currently working informally with the Consumer Advocate through an agreed-upon regulatory schedule. See HAWC's Response at 6. The City should be mindful of the informal discovery already conducted by the Consumer Advocate since, as an intervenor, it will be served a copy of all relevant documents. Accordingly, the City's discovery efforts should not in any way duplicate discovery already conducted.

<sup>15</sup>The commission is aware of HAWC's and the City's positions on consolidating this rate case proceeding with the investigatory docket the commission will be opening regarding the validity of the 1961 Agreement. The commission, however, will not address this issue at this time.

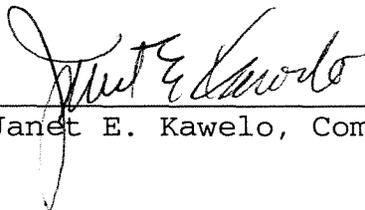
the commission for its review and approval within twenty (20) days from the date of this Order. If the parties are unable to stipulate to such an order, each party to this proceeding shall file a proposed prehearing order for the commission's consideration within twenty (20) days of the date of this Order.

DONE at Honolulu, Hawaii JAN 31 2006.

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

05-0103.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22252 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JAN 31 2006