

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 WAIKOLOA SANITARY SEWER) Docket No. 00-0440
 COMPANY, INC., dba)
 WEST HAWAII SEWER COMPANY) Order No. 22309
)
 For Approval of Rate Increases)
 and Revised Rate Schedules.)
 _____)

ORDER

By this Order, the commission grants the Division of Consumer Advocacy's ("Consumer Advocate") request for an extension of time until March 7, 2006, to file a motion for reconsideration of Order No. 22275, filed on February 7, 2006.

I.

Background

Consistent with the Hawaii Supreme Court's ("Court") Opinion, In re Waikoloa Sanitary Sewer Co., dba West Hawaii Sewer Co., 109 Hawai'i 263, 125 P.3d 484 (Haw. 2005), issued on December 29, 2005 ("In re WHSC"), the commission, by Order No. 22275, filed on February 7, 2006:

1. Vacated Section IV.B and Ordering Paragraph No. 3 of Decision and Order No. 19223, filed on February 27, 2002, which required WAIKOLOA SANITARY SEWER COMPANY, INC., dba WEST HAWAII SEWER COMPANY ("WHSC") to: (A) refund to the affected contributors the \$681,400 balance WHSC had collected for the

payment of income taxes; and (B) submit a refund plan for the commission's review and approval; and

2. Vacated Order No. 19294, filed on April 10, 2002, which denied WHSC's Motion for Reconsideration and instructed WHSC to submit to the commission its refund plan for informational purposes, with copies served upon the Consumer Advocate.

By letter dated and filed on February 15, 2006, the Consumer Advocate seeks an extension of time until March 7, 2006, to file a motion for reconsideration of Order No. 22275. In support of its extension request, the Consumer Advocate states that it was unable to file a motion for reconsideration by February 21, 2006, due to existing deadlines in other docketed matters.¹

By letter filed on February 27, 2006, WHSC urges the denial of the Consumer Advocate's request for an extension of time. According to WHSC, any motion for reconsideration relating to In re WHSC is untimely and procedurally defective, reasoning that the Consumer Advocate failed to timely seek reconsideration of the Court's Opinion in accordance with Rule 40(a) of the

¹In support of its extension request, the Consumer Advocate cites to two specific examples of existing deadlines in other docketed matters: (1) its participation in technical meetings during the week of February 13, 2006, in In re The Gas Co., LLC, Docket No. 05-0242 (proposed transfer of control of The Gas Co., LLC); and (2) the February 15, 2006 deadline to file its Preliminary Statement of Position in In re Hawaiian Elec. Co., Inc., Docket No. 05-0069 (the Energy Efficiency docket).

Hawaii Rules of Appellate Procedure ("HRAP").² In the event the commission is inclined to grant the Consumer Advocate's request for an extension of time, WHSC requests that it "be given the opportunity to seek further review from the Commission relating to Opinion No. 25087 and the Commission's . . . Decision and Order No. 19223."³

II.

Discussion

Hawaii Administrative Rules ("HAR") § 6-61-23(a)(1) provides the commission with the discretion, for good cause shown, to enlarge the period by which a required act must be completed, if a written request is made before the expiration of the period originally prescribed.

Here, the Consumer Advocate seeks the commission's reconsideration of Order No. 22275 by its letter filed on February 15, 2006. HAR § 6-61-137 authorizes a party seeking any change in a commission decision or order to timely file a motion "for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof" within ten (10) days of service of the decision. According to

²HRAP Rule 40(a) provides that "[a] motion for reconsideration may be filed by a party only within 10 days after the filing of the opinion, dispositional order, or ruling unless by special leave additional time is granted during such period by a judge or justice of the appellate court involved."

³WHSC's letter, dated February 24, 2006, file-stamped February 27, 2006, at 1.

the certificate of service, Order No. 22275 was served on February 7, 2006. As such, the deadline to timely file a motion for reconsideration of Order No. 22275 was February 21, 2006, in accordance with HAR §§ 6-61-21(e), 6-61-22, and 6-61-137.⁴

The Consumer Advocate, however, states that it was unable to file a motion for reconsideration by February 21, 2006, due to existing deadlines in other docketed matters. Given the Consumer Advocate's representations, and the filing of its February 15, 2006 letter prior to the February 21, 2006 deadline, the commission finds good cause to extend the deadline for the Consumer Advocate to file a motion for reconsideration. Accordingly, the commission grants the Consumer Advocate's request for an extension of time to file by March 7, 2006, a motion for reconsideration of Order No. 22275. Nonetheless, the Consumer Advocate, in its forthcoming motion, is strictly precluded from re-litigating in any manner the issues already decided by the Court in In re WHSC. WHSC shall have the opportunity to respond to the Consumer Advocate's motion for reconsideration of Order No. 22275. See § 6-61-140.

⁴See HAR §§ 6-61-21(e) (two (2) days added to the prescribed period for service by mail), 6-61-22 (computation of time), and 6-61-137 (ten (10)-day deadline for a motion seeking any change in a commission decision, including a motion for reconsideration). The Consumer Advocate notes for the docket record that it did not receive a copy of Order No. 22275, "which was presumably served on the Consumer Advocate by mail on February 7, 2006." Consumer Advocate's letter, dated February 15, 2006, at 2 n.2.

III.

Orders

THE COMMISSION ORDERS:

1. The Consumer Advocate's request for an extension of time to file by March 7, 2006, a motion for reconsideration of Order No. 22275, filed on February 7, 2006, is granted.

2. The Consumer Advocate, in its motion for reconsideration of Order No. 22275, is strictly precluded from re-litigating in any manner the issues already decided by the Court in In re WHSC. WHSC shall have the opportunity to respond to the Consumer Advocate's motion for reconsideration.

DONE at Honolulu, Hawaii MAR - 7 2006.

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


Michael Azama
Commission Counsel

00-0440.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22309 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

BRUCE D. VOSS, ESQ.
AMY M. VOSS, ESQ.
JOSHUA E. TREYVE, ESQ.
BAYS, DEEVER, LUNG, ROSE & BABA
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, HI 96813

Counsel for Applicant WEST HAWAII SEWER COMPANY

ROBERT S. SPETICH, GENERAL MANAGER
WEST HAWAII SEWER COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703



Karen Higashi

DATED: MAR - 7 2006