

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 KILAUEA IRRIGATION COMPANY, INC.)
)
 Investigation into the Breach of)
 The Kaloko Reservoir That Occurred)
 In Kilauea, Hawaii on March 14, 2006.)
_____)

DOCKET NO. 2006-0089

ORDER NO. 22390

Filed April 13, 2006
At 4:15 o'clock P.M.

Karon Higashi
Chief Clerk of the Commission

STATE OF HAWAII
DEPARTMENT OF PUBLIC UTILITIES AND
CONSUMER AFFAIRS
STATE OF HAWAII

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

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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 KILAUEA IRRIGATION COMPANY, INC.) Docket No. 2006-0089
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 Investigation into the Breach of) Order No. 22390
 The Kaloko Reservoir That Occurred)
 In Kilauea, Hawaii on March 14, 2006.)
 _____)

ORDER

By this Order, pursuant to Hawaii Revised Statutes ("HRS") § 269-9, the commission initiates an investigation concerning KILAUEA IRRIGATION COMPANY, INC. ("KICI"), a regulated public utility in the State of Hawaii, and the breach of the Kaloko Reservoir in Kilauea, Hawaii on March 14, 2006, as it pertains to the operations and services provided by KICI.

I.

Background

Under HRS § 269-9, public utilities must report accidents resulting from or related to the utilities' operations and service, and the commission must investigate such accidents that result in the loss of life. Specifically, HRS § 269-9 provides:

Every public utility shall report to the public utilities commission all accidents caused by or occurring in connection with its operations and service, and the commission shall investigate the causes of any accident which results in loss of life,

and may investigate any other accidents which in its opinion require investigation.

HRS § 269-9 (emphasis added).¹

On or around March 14, 2006, the Kaloko Reservoir located in Kilauea, Hawaii on the island of Kauai breached, which resulted in the release of millions of gallons of water to the neighboring Kilauea area, the destruction of several homes, and the loss of several lives.²

KICI is a regulated public utility that provides non-potable irrigation water service to certain geographic areas in Kilauea, Hawaii,³ using water collected and stored in the Kaloko Reservoir. Given the unfortunate and tragic loss of lives due to the Kaloko Reservoir breach on March 14, 2006, the commission, by this order, initiates an investigation pursuant to HRS § 269-9 concerning the following issues:

- a. Whether the breach of the Kaloko Reservoir was caused, to any degree, by KICI's operations and services as a regulated public utility;
- b. Whether any statute or rule within the jurisdiction of the commission was violated;
- c. The subsequent impact of the breach of the Kaloko Reservoir on KICI's operations; and
- d. In the event a causal connection between KICI's provision of utility services and the

¹Commission investigatory authority is also set forth in HRS §§ 269-7(a), 269-15, and Hawaii Administrative Rules ("HAR") § 6-61-71.

²The commission takes official notice of the occurrence of the breach of Kaloko Reservoir on March 14, 2006 pursuant to HAR § 6-61-48 and Rule 201 of the Hawaii Rules of Evidence.

³The commission issued KICI its Certificate of Public Convenience and Necessity to provide such service in January 1985. See Decision and Order No. 8221, filed on January 15, 1985, in Docket Nos. 5165 and 5166 (Consolidated).

breach of the Kaloko Reservoir is found, the steps, if any, that may be taken to avoid similar accidents in the future.

By opening this investigation as required under HRS § 269-9, the commission does not at this point intend to imply or presume wrongdoing by the utility and conducts this investigation cognizant of its limited jurisdiction over public utilities, as further investigation and additional information will be required prior to making such a determination. In addition, in opening this investigation, the commission is cognizant that others, including the State Attorney General's office, are investigating the breach of the Kaloko Reservoir. It is the commission's understanding that the Attorney General's office, in particular, is already well underway with its investigation and appears to be expending considerable resources on its investigation of the Kaloko Reservoir breach. Consequently, it may be appropriate to await the results of the Attorney General's investigation to the extent information relevant to the commission's jurisdiction is made available by the Attorney General's office.

II.

THE COMMISSION ORDERS:

1. This docket is opened, in accordance with HRS § 269-9, to investigate the operations and services of KICI and the breach of the Kaloko Reservoir on March 14, 2006, relative to the issues set forth in Section I, above.

2. The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") shall be a party to this proceeding.⁴ Within 90 days of the date of this order, the Consumer Advocate shall file a position statement.

3. Within 30 days of the date of this Order, KICI shall file with the commission and the Consumer Advocate a report that provides details of: (1) the general condition of the Kaloko Reservoir prior to March 14, 2006; (2) the safety measures, if any, that were in place at the time of the breach that were for the purpose of preventing a breach; (3) the ownership of the Kaloko Reservoir; (4) the maintenance history of the Kaloko Reservoir; (5) the breach itself, including any photographs, notes, and witness statements that were taken subsequent to the breach; (6) the general condition of the Kaloko Reservoir currently; and (7) the impact of the breach of the Kaloko Reservoir on KICI's operations.

4. If deemed necessary, the parties may file a stipulated protective order or a stipulated prehearing order for commission review and approval within 30 days of this order.

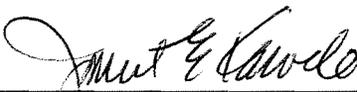
⁴The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service, and is an *ex officio* party to any proceeding before the commission. See HRS § 269-51; HAR § 6-61-62.

DONE at Honolulu, Hawaii APR 13 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:


Kaiulani E.S. Kidani
Commission Counsel

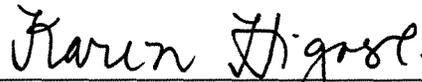
2006-0089.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22390 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

THOMAS A. HITCH
HITCH COMPANY/KILAUEA IRRIGATION COMPANY, INC.
4650 Kapuna Road
Kilauea, HI 96754



Karen Higashi

DATED: APR 13 2006