

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

THE GAS COMPANY, LLC,
HGC HOLDINGS, LLC,
k1 VENTURES LIMITED, and
MACQUARIE GAS HOLDINGS LLC

DOCKET NO. 05-0242

For Approval of the Transfer of
Upstream Membership Interests and
Related Matters.

DECISION AND ORDER NO. 22449

Filed May 3, 2006
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

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2006 MAY -4 A 3:48

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_____)

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DECISION AND ORDER

By this Decision and Order, the commission conditionally approves the transfer of upstream membership interests and related matters described in the application filed jointly by THE GAS COMPANY, LLC ("TGC"); HGC HOLDINGS, LLC ("HGC Holdings"); k1 VENTURES LIMITED ("k1 Ventures"); and MACQUARIE GAS HOLDINGS LLC ("MGH") (collectively, "Applicants"), as detailed and described herein.

I.

Background

A.

Application

On October 17, 2005, Applicants filed an application for commission approval of a proposed transfer of control over TGC, the financing arrangements, and other related matters associated with the proposed transfer ("Transfer of Control"), as described in the joint application ("Application") filed pursuant

to Hawaii Revised Statutes ("HRS") §§ 269-7, 269-17, 269-17.5, and 269-19; and Hawaii Administrative Rules ("HAR") Chapter 6-61, Subchapters 2, 6, 9, and 10.¹

1.

Description of Applicants

a.

TGC and Its Operations

TGC,² a Hawaii limited liability company, is a duly franchised public utility that provides approximately 67,200 customers with gas utility service in the State of Hawaii ("State").³ It currently has approximately 300 employees and

¹Applicants served copies of their Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex-officio party to all proceedings before the commission (Applicants and the Consumer Advocate are collectively referred to as the "Parties"). See HRS § 269-51; HAR § 6-61-62. No persons moved to intervene or participate in this docket.

²TGC (formerly known as Hawaii Gas Company, L.L.C., which in turn was formerly known as Citizens Communications Company, dba The Gas Company) was owned by Citizens Communications Company ("Citizens"), a publicly traded Delaware corporation, until 2003 when Citizens sold the gas utility to an entity ultimately controlled by K1 Ventures. See In re Citizens Communications Company, dba The Gas Company, K-1 USA Ventures, Inc., and Hawaii Gas Company, L.L.C., nka The Gas Company, L.L.C., Docket No. 03-0051, Decision and Order No. 20354, filed on July 25, 2003 ("Decision and Order No. 20354").

³TGC holds a franchise in the State to "manufacture and supply gas for use as fuel, illuminating purposes and otherwise, throughout the State[.]" See Application at 5 n.11 (citing Act 262, Session Laws of Hawaii 1967). TGC's franchise was initially issued to Honolulu Gas Company in 1904. The commission, in 1971, approved the reorganization and merger of Honolulu Gas Company with Gasco, Inc., a wholly owned subsidiary of Pacific Resources, Inc. ("PRI"). See In re Honolulu Gas Co., Ltd., Docket No. 1861, Decision and Order No. 2762, filed on May 27, 1971. Then, in 1989, the

conducts both regulated and non-regulated gas operations on the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai.⁴

TGC's regulated gas operations consist of the purchase, production, transmission, and distribution of synthetic natural gas ("SNG") and liquid petroleum gas ("LPG") through underground pipelines for sale to residential, commercial, and industrial customers. Its non-regulated gas operations involve the purchase, distribution, and sale of tanked and bottled LPG to residential, commercial, and industrial customers.⁵

TGC manufactures SNG at its plant in Campbell Industrial Park on the island of Oahu ("SNG Plant") and provides its Oahu customers who are connected to TGC's pipeline system with SNG. Customers, who are provided regulated gas utility service but are not served by TGC's SNG gas utility system, are provided LPG through underground gas utility systems from centralized storage tanks.⁶ Customers that are not provided

commission approved the acquisition of PRI by Broken Hill Proprietary Company, Ltd., the parent of BHP Hawaii Inc. See In re Gasco, Inc., Docket No. 6386, Decision and Order No. 10157, filed on March 9, 1989. Subsequently, in 1997, the commission approved the acquisition and merger of Gasco, dba BHP Gas Company with Citizens. See In re BHP Hawaii Inc., et al., Docket No. 97-0035, Decision and Order No. 15899, filed on September 10, 1997.

⁴TGC provides gas utility service on the islands of Oahu, Hawaii, Kauai, and Maui through its Honolulu, Hawaii, Kauai, and Maui divisions. Gas utility operations for the islands of Molokai and Lanai are provided through TGC's Maui division.

⁵On Lanai, TGC only conducts non-regulated gas operations, while it conducts both regulated and non-regulated gas utility service on the other islands in the State.

⁶SNG is not available to neighbor island customers and certain Oahu customers that are not connected to TGC's SNG gas utility system.

gas utility service through TGC's utility pipeline are served through delivery of LPG via cylinders or tanks as part of TGC's non-regulated gas operations.

b.

The "Seller" Entities

HGC Holdings, a Hawaii limited liability company, owns and holds 100% of TGC's membership interests. HGC Holdings' sole managing member is HGC Managing Member, LLC ("HGCMM"), which is a Hawaii limited liability company. Roy A. Pickren, Jr., an individual, is the sole member of HGCMM, which holds 100% of the voting or managing membership interest in HGC Holdings, and comprises 0.1% of HGC Holdings' total equity. HGC Holdings' sole non-managing member is K-1 HGC Investment ("K-1 HGC") which is also a limited liability company organized under the laws of the State. K-1 HGC was formed to acquire and hold the entire non-voting or non-managing membership interests in HGC Holdings, which comprises 99.9% of HGC Holdings' total equity.⁷ K-1 HGC is wholly owned by k1 Ventures, a Singapore company, that is publicly traded on the Singapore Exchange Securities Trading Limited. A chart illustrating TGC ownership interests and the organization of its upstream membership interests is set forth in Exhibit 3 of the Application.

⁷Applicants claim that TGC's present ownership structure as between HGC Holdings, HGCMM, and K-1 HGC was created to comply with the federal Public Utility Holding Company Act ("PUHCA") and in consultation with special PUHCA counsel, staff of the Securities and Exchange Commission ("SEC"), and is consistent with past SEC positions. See Application at 7 n.14.

C.

The "Buyer" Entities

MGH is a Delaware limited liability company formed to acquire and hold the entire membership interests in K-1 HGC. Macquarie Infrastructure Company Trust ("Trust"), a statutory trust organized and existing under the laws of Delaware, is MGH's ultimate parent. The Trust was formed to hold all of the equity interests in Macquarie Infrastructure Company LLC ("MIC-LLC"). MIC-LLC, along with the Trust (collectively referred to as "MIC") is the holding company for all of the business and investments of MIC.

MIC is a United States company listed on the New York Stock Exchange. It is managed by a member of the Macquarie group⁸ and is headquartered in New York. "MIC has a perpetual existence and intends to operate its business over the long-term. MIC's business strategy is to: (1) own, operate and invest in essential infrastructure assets and businesses that produce stable, predictable cash flows over a long-term investment period; and (2) effectively manage and grow its businesses."⁹ A chart illustrating MIC's various holdings and how K-1 HGC, HGC Holdings, and TGC would be incorporated into MIC's overall organization, assuming that the proposed Transfer of Control is

⁸The Macquarie group consists of the Macquarie Bank Limited and its worldwide subsidiaries and managed entities. It is headquartered in Australia and employs over 6,800 employees in 23 countries. See Application at 8 n.19.

⁹Id. at 8-9.

approved and consummated, is set forth in Exhibit 5 of the Application.

2.

Proposed Transfer of Control

a.

General Description

On August 2, 2005, k1 Ventures, K-1 HGC, and Macquarie Investment Holdings Inc. ("MIHI") entered into a purchase agreement ("Agreement"), which was subsequently amended and assigned through various amendments and agreements.¹⁰ Unless specified otherwise, the Agreement and related amendments, and various other agreements filed in the record are collectively referred to as the "Purchase Agreement."

The proposed Transfer of Control is anticipated to occur in two phases. First, upon commission approval of Applicants' requests, HGCMM's 0.1% membership interest in HGC Holdings will be transferred to K-1 HGC or its subsidiary, resulting in K-1 HGC holding 100% of the membership interests in HGC Holdings. Second, k1 Ventures will then transfer 100% of K-1 HGC's membership interests to MGH, effectively transferring

¹⁰Applicants provided copies of the August 2, 2005 Agreement and various related amendments and agreements as Exhibit 1 to the Application. Moreover, by letter dated March 21, 2006, Applicants filed a copy of an executed Letter Agreement dated March 7, 2006, which memorialized the settlement terms and conditions reached between the Parties and discussed further below. Also attached was a copy of an executed March 7, 2006 Placement Agreement, which allowed MGH to place a financial consultant at TGC for the purpose of preparing TGC to produce public grade financial statements for MGH. Both agreements amended the August 2, 2005 Agreement. See Applicants' letter dated and filed on March 21, 2006.

control of K-1 HGC, and therefore ultimately HGC Holdings and TGC, to MGH. A chart illustrating the proposed Transfer of Control is depicted in Exhibit 6 of the Application. Unless otherwise noted, "Seller" entities (i.e., HGC Holdings, HGCMM, K-1 Investment, and k1 Ventures) will be referred to collectively as "k1 Ventures" while "Buyer" entities (i.e., MGH, the Trust, MIHI, MIC-LLC, and Macquarie group) will be referred to collectively as "MIC."

b.

Proposed Financing Arrangements

The base purchase price for the proposed Transfer of Control from k1 Ventures to MGH is \$238 million,¹¹ subject to certain adjustments (see Section 3.3 of the Agreement for details). Additionally, at closing, this base purchase price will be adjusted (plus or minus) pursuant to various provisions of the Purchase Agreement.

The proposed Transfer of Control is anticipated to be funded through an equity contribution of approximately \$99.3 million from MGH and certain financing and credit commitments (i.e., debt). Along with its equity contribution, MGH has secured financing commitments providing for: (1) an aggregate of \$160 million of 7-year term loan financing (separately, Term Loan Credit Facility A of \$80 million ("Facility A") and Term Loan Credit Facility B of \$80 million

¹¹The base purchase price was initially \$245 million; however, under the August 17, 2005 amendment to the Agreement, k1 Ventures, K-1 HGC, and MIHI agreed to reduce the base purchase price to \$238 million.

("Facility B")); and (2) a \$20 million revolving line of credit ("Facility C") (collectively, the equity contribution and financing commitments are referred to as "Financing Arrangements").

Under the proposed Financing Arrangements, which are necessary to consummate the transfer of K-1 HGC (and ultimately TGC) to MGH, both TGC and HGC Holdings are borrowers and primary obligors. For Facility A (issued to HGC Holdings), HGC Holdings: (1) will pledge its own membership interests in TGC as security; and (2) provide a first ranking security over all of HGC Holdings' present and future assets. To secure Facilities B and C issued to TGC, lenders are seeking: (1) a first ranking security over TGC's present and future assets; (2) a pledge over TGC membership interests; and (3) a security assignment of MGH's rights under the Purchase Agreement. Further detail regarding the proposed Financing Arrangements is contained in Exhibit 11 of the Application, which was filed under protective order.¹²

c.

Justification for the Application

Applicants represent that the proposed Transfer of Control is reasonable and consistent with the public interest and that the proposed Financing Arrangements described above, which are necessary to consummate the proposed Transfer of Control, are permitted and consistent with State laws and past commission

¹²See Order No. 22102, filed on November 4, 2005, in this docket (commission approval of Parties' Stipulation for Protective Order filed on September 27, 2005).

rulings. They also state that the proposed Financing Arrangements will not exceed the 65% debt level that the commission has found in the past to be reasonable.

Applicants argue that TGC's fitness, willingness, and ability to provide its utility services in the State will not be affected by the proposed Transfer of Control and that the transaction will not have any adverse material impact on TGC's operations, management, or customers. Applicants state that TGC will continue to be financially fit and able to fund its operations through revenues generated from its regulated and non-regulated operations, with the support and assistance of MGH. Moreover, Applicants represent that TGC will continue to operate under its existing name, tariffs, rates, and operating authority, upon consummation of the proposed Transfer of Control, and that MGH intends to retain the services of all active TGC employees at closing in the same or similar positions, and with the same or similar compensation levels and benefits.

By retaining TGC's existing employees and management team, Applicants contend that MGH will be able to ensure a smooth transition during the proposed Transfer of Control and benefit from these employees' experience and knowledge in operating a gas utility service in the State. Applicants also state that Macquarie group is one of the largest dedicated infrastructure owner/operators in the world,¹³ managing "85 investments across 18

¹³"[G]as, water and electric utilities, toll roads, airports, broadcast networks, select rail assets and various public and private partnerships" are listed as types of assets and entities included as infrastructure businesses. See Application at 15.

countries, with a total of approximately \$22.5 billion in infrastructure equity currently under its management."¹⁴ Applicants represent that the Macquarie group has extensive experience regarding public utilities and understands the regulatory issues affecting the gas utility business and that it has the ability to provide support to assist in the continued successful operation of TGC.

MGH is entering into a Transition Services Agreement ("TSA") with McMoRan Exploration Co. ("McMoRan"), a private entity that currently provides corporate support services to TGC, to govern the services to be provided during the transition period to ensure a smooth transition during the change in ownership and to guarantee that TGC will be able to effectively and efficiently provide gas utility services in the State until such support services can be replaced. The TSA extends TGC's ability to access and utilize McMoRan's service beyond the four (4) months after the consummation of the proposed Transfer of Control, which is authorized under the current service agreement between TGC and McMoRan. MIC intends to replace the services currently being provided by private entities such as McMoRan through the use of Hawaii-based employees or, when applicable and appropriate, by MGH and its related entities, resulting in certain efficiencies and cost savings. Additionally, upon consummation of the proposed Transfer of Control, Applicants contend that TGC will have access to additional capital and financing as needed on reasonable terms. Moreover, in addition

¹⁴Id.

to continuing with TGC planned capital improvements, MGH plans to make additional funds available for capital investments to provide for enhanced safety and redundancy in TGC's system and operations.

3.

Applicants' Prayer for Relief

Applicants specifically request that the commission:

1. Approve the transfer of HGCMM's 0.1% membership interest in HGC Holdings to K-1 HGC or its subsidiary, pursuant to HRS § 269-7 and/or HRS § 269-19, as applicable.
2. Approve the subsequent transfer of all of K-1 HGC's membership interests to MGH and the resulting transfer of control of TGC to MGH, as discussed in and contemplated by the Purchase Agreement, pursuant to HRS §§ 269-7, 269-17.5 and/or 269-19, as applicable.
3. Approve the Proposed Financing Arrangements and related security proposed to be obtained to consummate MGH's acquisition of K-1 HGC's membership interests, as proposed, pursuant to HRS §§ 269-7, 269-17, and/or 269-19, as applicable.
4. Terminate the regulatory condition imposed by the commission in Decision and Order No. 17722, filed on May 9, 2000, in Docket No. 99-0350.¹⁵
5. Terminate the regulatory conditions imposed by the commission in Decision and Order No. 20354, filed on July 25, 2003, in Docket No. 03-0051.¹⁶

¹⁵For the fourth and fifth requests, Applicants had requested that the commission issue declaratory orders within 45 days of the filing of the Application. By letter dated and filed on November 8, 2005, Applicants confirmed that they waived the 45-day requirement under HAR § 6-61-162 regarding their requests for declaratory relief.

¹⁶Alternatively, in the event that the transfer of K-1 HGC's membership interest to MGH (the second phase of the Proposed

B.

Consumer Advocate's Statement of Position

On March 3, 2006, the Consumer Advocate filed its Statement of Position ("CA's Statement of Position") in which the Consumer Advocate recommended that the commission apply its fitness and public interest standards based on a demonstration of "substantial net benefits," as opposed to the weaker "no detriment" policy to ensure that utility customers are assured a substantial and tangible positive net benefit when they are exposed to the risks and costs associated with changing ownership and operations.

To that end, the Consumer Advocate recommended approval of the proposed Transfer of Control (and related relief) provided that the commission adopt the following fourteen (14) stipulated proposed regulatory conditions, which were negotiated and agreed upon by the Parties ("Stipulated Regulatory Conditions"):¹⁷

1. None of the transaction and transition costs incurred by the Buyer and Seller shall be deferred as a regulatory asset for future recovery from ratepayers.

Transfer of Control) is denied by the commission or otherwise withdrawn or not consummated, k1 Ventures requests that the commission approve the transfer of HGCMM's 0.1% membership interest in HGC Holdings to K-1 HGC or its subsidiary in light of the repeal of PUHCA.

¹⁷Certain short forms and references used in the Stipulated Regulatory Conditions are clarified as follows:

1. "Buyer" refers to MIC and its affiliates and subsidiaries;
2. "HPUC" and "PUC" refer to the commission;
3. "Joint Applicants" refers to Applicants;
4. "MIMUSA" refers to Macquarie Infrastructure Management (USA); and
5. "Seller" refers to k1 Ventures.

2. TGC commits to not submitting any Application for a general utility rate increase that would utilize a prospective test year earlier than calendar 2009, unless the HPUC finds that a compelling financial need justifies the waiver of this condition.
3. The debt to total capital ratio of HGC Holdings on a consolidated basis shall not exceed 65 percent on and after closing, calculated and reported on a quarterly basis, unless a higher consolidated debt ratio is requested by TGC and is approved by the HPUC.
4. MIC shall maintain available short term revolving credit (or equivalent cash reserves) of no less than \$20 million at all times, either at TGC, HGC Holdings or by reservation of other available MIC revolving credit arrangements or equivalent cash reserves, to provide financial flexibility for the regulated gas utility business.
5. In the event TGC forms or acquires any new direct or indirect subsidiaries for which notification to its creditors is required pursuant to any loan agreement, a complete copy of all documentation associated with such notification is to be simultaneously filed with the Commission and the Consumer Advocate.
6. The membership interests and assets of HGC Holdings and of TGC that are pledged to secure debt financing of HGC Holdings or TGC or the borrowing of any other affiliate shall not be transferable by creditors or their agents without application and approval by the HPUC.
7. TGC will not object to consideration by the HPUC of debt and other capital balances and cost rates actually used to finance TGC's utility business in any future rate case proceedings, based upon any argument that such debt or other capital was actually issued by HGC Holdings or another affiliate, rather than the regulated business entity, provided that such consideration does not preclude the consideration of other capital structures and rates, such as the hypothetical capital structures used in the past.

8. If TGC asserts income tax expenses for ratemaking purposes in any future rate case, the full benefits available to taxpaying affiliates of TGC, that arise from TGC's utility assets, operations and parent company interest deductions supportive of TGC's utility assets, may be considered in ratemaking, without objection by TGC based upon the utility not being the actual taxpaying entity.
9. MIC shall charge the regulated utility operations of TGC for management fees or other allocations of costs associated with the MIMUSA Management Services Agreement dated December 21, 2004, or any comparable successor agreements, only upon a finding by the HPUC that such charges are for goods or services that are needed to provide regulated services, in amounts that do not exceed fair market value for comparable services available from non-affiliated third party vendors. Prior to receipt of such a Commission finding, any fees or allocations of MIMUSA costs to TGC shall be recorded below-the-line or to non-utility accounts.
10. For a period of 48 months after closing the Transfer of Control transaction, all recurring transactions between HGC Holdings or any affiliated entity (i.e., an entity with an "affiliated interest" with TGC as defined in HRS § 269-19.5) with either TGC or HGC Holdings will be documented by written contract and submitted to the HPUC and Consumer Advocate prior to the contract effective date, without regard to the expected annual transaction levels relative to the dollar thresholds codified in HRS § 269-19.5.
11. TGC will provide a detailed reporting by entity of its transactions with HGC Holdings, MIC or any other Macquarie Bank Limited affiliated entity, and any other affiliated entity (i.e., an entity with an "affiliated interest" with MIC or TGC as defined in HRS § 269-19.5) by National Association of Regulatory Commissions ("NARUC") Account, type of service provided, and stating the basis of pricing for such services, as a supplement to TGC's Annual Report to the HPUC for 2006 and all subsequent years.

12. HGC Holdings, MIC and all affiliated entities (i.e., an entity with an "affiliated interest" with MIC or TGC as defined in HRS § 269-19.5) that provide services chargeable to TGC utility operations will provide complete access in Hawaii to all financial and operational data relevant in proceedings before the HPUC, upon the request of the HPUC or Consumer Advocate, provided that any such voluminous data that cannot reasonably be provided in Hawaii will be made available at other locations, with reimbursement by TGC of any incremental costs caused by such out-of-state access.
13. TGC shall revise its monthly FAC calculations commencing as of the closing of the proposed transfer of control, but to be retroactive to the beginning of the first full calendar month following the date of PUC approval of Joint Applicants' proposed transfer of control, to provide a reconciliation of FAC revenues actually charged its regulated Oahu customers to the corresponding actual incurred FAC includable fuel expenses for its Oahu operations that are not being collected through base rates. Notwithstanding the above, the Consumer Advocate and TGC reserve the right to recommend alternative FAC calculations procedures for implementation on a prospective basis in future TGC general rate case proceedings.
14. TGC shall provide a customer appreciation bill credit, as hereinafter provided, to each regulated firm gas customer of TGC as of the date of closing of the proposed transfer of control who has remained a customer of TGC through the date of said credit, and the aggregate amount of all such credits shall equal \$4.1 million in non-fuel base rate revenues. This billing credit shall be applied to each non-delinquent (current or having a past due balance of less than 60 days) utility firm gas customer account, by calculating an estimated per therm amount to be applied to each customer's respective usage amounts for the second billing period after closing of the proposed Transfer of Control, with a corresponding true-up adjustment in the per therm credits in a subsequent billing month as necessary so that the aggregate amount of all credits totals \$4.1 million. The credits shall be completed

no later than the end of the fifth full calendar month following the closing of the transfer of control. Notwithstanding anything to the contrary set forth in this Condition, in no event shall TGC be required to provide credits in excess of \$4.1 million. All customer bill credits are to be presented to TGC's applicable customers in a form mutually acceptable to the Consumer Advocate and TGC. TGC shall prepare and submit to the PUC and Consumer Advocate a report of all amounts credited to customers by billing cycle date pursuant to this paragraph within 60 days following the completion of said credits.

The Consumer Advocate states that the Stipulated Regulatory Conditions, attached as Attachment A to the CA's Statement of Position and set forth, verbatim above, are necessary to address its concerns with the proposed Transfer of Control and the proposed Financing Arrangements. Moreover, it states that these conditions are necessary to assure that ratepayers realize benefits that exceed the costs and risks arising from the proposed Transfer of Control.

The Consumer Advocate asserts that while the proposed Transfer of Control would largely be transparent to customers from an operational perspective since the existing assets, employees, and business processes will generally remain the same, and "there is little, if any expected change in the level of expenses and capital investment required to provide gas service as a result of the [proposed] Transfer of Control"; there are specific regulatory concerns that need to be addressed.¹⁸ These regulatory concerns fall within the following broad categories, which are addressed by the Stipulated Regulatory

¹⁸See CA's Statement of Position at 2.

Conditions: (1) increased debt service burdens; (2) transaction and transition costs and large amounts of goodwill arising from the transfer; (3) possible unreasonable cost allocations arising from affiliated arrangements; and (4) uncertain ratemaking outcomes related to taxes, affiliated transactions, and financing.

The Stipulated Regulatory Conditions also address two (2) other regulatory concerns that the Consumer Advocate discovered during its investigation that were resolvable at this time, even though they do not arise directly from the proposed Transfer of Control. These additional regulatory concerns deal with, as described by the Consumer Advocate: (1) TGC's fuel adjustment clause ("FAC") under which the Consumer Advocate claims that TGC is significantly over-recovering in relation to actual fuel costs; and (2) the one-time \$1.3 million refund received from the State in fiscal year 2005 under k1 Ventures' ownership related to the Energy Corridor ("Energy Corridor") for which ratepayers historically have borne full cost responsibility.

In sum, the Consumer Advocate states that the Stipulated Regulatory Conditions listed above, "represent steps required to mitigate costs and risks and to assure that the proposed Transfer of Control will produce public interest benefits to ratepayers. Substantial and tangible net ratepayer benefits will result from these conditions due to the up-front customer bill credits, the rate stability created by the extended rate case moratorium, correction of Fuel Adjustment Clause

problems, settlement of regulatory liabilities owed to ratepayers and the elimination of excessive k1 [Ventures] corporate administrative charges under new management."¹⁹ Through the imposition of these agreed-upon conditions, the Consumer Advocate concludes that TGC will be operationally and financially fit, willing, and able to provide its customers gas utility service in the State and that the proposed Transfer of Control provides public interest benefits to TGC's customers. Accordingly, the Consumer Advocate recommends that the commission approve the proposed Transfer of Control and the related proposed Financial Arrangements, subject to the Stipulated Regulatory Conditions listed above.

C.

Applicants' Response

On March 17, 2006, Applicants filed a Statement in Support of Settlement and Response to the Division of Consumer Advocacy's Statement of Position ("Applicants' Response") informing the commission, among other things, that they agree to the commission's adoption and imposition of the Stipulated Regulatory Conditions. According to Applicants, the Stipulated Regulatory Conditions represent a "global settlement with the Consumer Advocate on a set of regulatory conditions to address the issues and matters raised by the Consumer Advocate."²⁰

¹⁹See CA's Statement of Position at 66.

²⁰Applicants state that each of the Stipulated Regulatory Conditions agreed to by the Parties "are in consideration and support of all of the other regulatory conditions . . . and are

Although Applicants do not agree with the underlying justifications for some of the Consumer Advocate's concerns that are being addressed through the proposed regulatory conditions,²¹ Applicants maintain that the Stipulated Regulatory Conditions are a "delicate balance between the Consumer Advocate's concerns and what [Applicants] could collectively agree to in order to further ensure that the [proposed Transfer of Control] is reasonable and consistent with the public interest while still preserving the financial viability" of the proposed Transfer of Control for Applicants.²² Moreover, Applicants state that they agreed to the Stipulated Regulatory Conditions to: (1) fully resolve and provide certainty regarding the FAC and Energy Corridor issues; (2) provide additional benefits to TGC's customers; and (3) provide the commission with a stipulated set of agreed-upon regulatory conditions between all of the Parties to expedite the commission's review of the proposed Transfer of Control.

expressly conditioned upon acceptance by the [c]ommission of each of the regulatory conditions . . . in their entirety and without modification or addition." See Applicants' Response at 2 n.3. Moreover, they state that if the commission elects to adopt any of the Stipulated Regulatory Conditions, but decides to modify the language of the conditions "or chooses to impose any additional or separate regulatory condition, *sua sponte*, such modifications or additions may result in conditions that are considered to be a 'Regulatory Material Adverse Effect' under the Purchase Agreement . . . or otherwise unacceptable to Applicants, resulting in the termination of the Agreement." Id. at 11.

²¹Applicants disagree with the underlying justifications for some of the Consumer Advocate's concerns that are being addressed through the proposed regulatory conditions. Applicants, however, do not request commission action on the differing positions given the settlement reached between the Parties (i.e., the Stipulated Regulatory Conditions).

²²See Applicants' Response at 9.

Accordingly, while the Applicants reiterate their prayer for relief as set forth in their Application, Applicants include the additional request that the commission impose the Stipulated Regulatory Conditions without any modifications or additions.

II.

Findings and Conclusions

A.

The Proposed Transfer of Control Is Reasonable and In the Public Interest

Under State law, the commission is vested with broad powers to review the proposed Transfer of Control and related proposed Financing Arrangements by which ownership of TGC is ultimately being transferred from k1 Ventures to MIC. Specifically, HRS § 269-19, states as follows:

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 the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added).

HRS § 269-7(a) states, in relevant part:

The public utilities commission . . . shall have power to examine into the condition of each public

utility, the manner in which it is operated with reference . . . the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HRS § 269-7(a).

Commission approval under HRS § 269-7(a) requires a finding that the proposed Transfer of Control is "reasonable and consistent with the public interest."²³ A transaction is said to be reasonable and consistent with the public interest if the transaction "will not adversely affect the . . . [utility's] fitness, willingness, and ability to provide" public utility service in the State as authorized in its permit, certificate, or franchise.²⁴ When reviewing a proposed transfer and related financing requirements under HRS § 269-19, the commission has

²³See In re Sprint Communications Company, L.P., Sprint Payphone Services, Inc., and ASE Telecom, Inc., Docket No. 05-0045, Decision and Order No. 21715, filed on April 4, 2005 ("Sprint"), at 11 (citing In re ITC^DeltaCom Communications, Inc., et al., Docket No. 02-0345, Decision and Order No. 19874, filed on December 13, 2002); In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al., Docket No. 00-0354, Decision and Order No. 18220, filed on November 30, 2000; In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al. Docket No. 00-0047, Decision and Order No. 17662, filed on April 10, 2000.

²⁴See Sprint at 11-12 (citing In re Ionex Telecommunications, Inc., et al., Docket No. 99-0223, Decision and Order No. 17369, filed on November 8, 1999).

applied the standard of review of HRS § 269-7.5, which states that the applicant must be "fit, willing, and able properly to perform the service proposed."²⁵ Thus, when reviewing Applicants' proposed Transfer of Control and proposed Financing Arrangements under HRS § 269-19, the commission must find that TGC will be fit, willing, and able to perform the service it is currently performing in the State under MIC ownership and that the transfer is reasonable and in the public interest (collectively and generically referred to as the "Fitness and Public Interest" standard).

HRS § 269-17.5, moreover, requires written commission approval before more than 25% of the issued and outstanding voting stock of a public utility organized under the State be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or any person, unless the transaction is exempt under this section.²⁶

²⁵See In re Paradise MergerSub, et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696") at 13 (citing In re Citizens Communications Company, Kauai Electric Division and Kauai Island Utility Co-op, Docket No. 02-0060, Decision and Order No. 19658, filed on September 17, 2002, at 14-15, referencing In re GTE Corp. and Bell Atlantic Corporation, Docket No. 98-0345, Decision and Order No. 17377, filed on November 17, 1999); In re BHP Hawaii Inc., GASCO, Inc. and Citizens Utilities Company Docket No. 97-0035, Decision and Order No. 15899, filed on September 10, 1997.

²⁶With regard to the transfer aspect of the Application, while acknowledging that HRS §§ 269-17.5 and 269-19 could apply if it is determined that membership voting interests in a LLC were intended to be covered under these provisions, Applicants argue that the proposed transfer should be reviewed solely under HRS § 269-7. See Application at 12 n.24. The commission disagrees. Paramount in both HRS §§ 269-17.5 and 269-19 are the concepts of ownership and control. While it is the holding company of TGC's parent that is being transferred (i.e.,

In its position statement, while agreeing that the proper "test" to apply is the "Fitness and Public Interest" standard, the Consumer Advocate recommends that the commission require a demonstration of "substantial net benefits" rather than a "no detriment" policy. The Consumer Advocate contends that "[b]efore approving the sale or merger of regulated utility operations, and exposing ratepayers to the risks and costs of changing ownership and operations, it is imperative that utility customers be assured of substantial and tangible positive net benefits."²⁷

While the commission understands the underlying rationale for the Consumer Advocate's argument in favor of the adoption of a "substantial net benefits" policy, the commission finds it unnecessary to make a decision regarding this matter at this time. Since Applicants have agreed to all fourteen (14) of the Stipulated Regulatory Conditions, adoption and imposition of the Stipulated Regulatory Conditions will provide the assurances that the Consumer Advocate is seeking and the commission surmises that the stricter standard would be met, regardless of our decision on this matter.²⁸

K-1 HGC), ultimately it is TGC's ownership and control that is being transferred, as proposed in the Application. This type of indirect transfer of control is contemplated under HRS §§ 269-17.5 and 269-19.

²⁷See CA's Statement of Position at 15.

²⁸This position is consistent with the commission's stance regarding a similar request under similar circumstances in a recent proceeding. See Decision and Order No. 21696 at 14.

Having reviewed the entire record, the commission finds that the proposed Transfer of Control, with the adoption and imposition of the Stipulated Regulatory Conditions to be reasonable and consistent with the public interest. At the outset the commission notes that the proposed Transfer of Control should be basically transparent to TGC's customers and employees since TGC will continue to operate under its current name, tariffs, and approved rates;²⁹ and MIC intends to retain TGC's current employees and management personnel under similar compensation and benefit levels.³⁰ A review of the financial projections anticipated by TGC under MIC ownership indicate that TGC should be financially fit to provide its utility services in the State.³¹ Additionally, with the anticipated retention of TGC's current employees and management personnel, and with the added expertise and experience of those employed by MIC and its affiliated entities such as the Macquarie group, TGC under MIC should have the necessary expertise and ability to not only ensure a smooth transition from k1 Venture ownership to MIC, but ensure TGC's ability to provide gas utility services in the State as anticipated under its authority.

²⁹See Application at 17.

³⁰Id. at 14.

³¹Aside from our review, the Consumer Advocate indicated that "anticipated free cash flows after debt service will be sufficient" to pay dividends upon review of TGC's financial projections. See CA's Statement of Position at 10. The Consumer Advocate also stated that "projected financial results remain adequate to support proposed levels of debt service." Id. at 11.

In addition, Applicants represent that MGH has no intention of seeking a general rate increase as a result of the proposed Transfer of Control and that consistent with commission policy it will not seek rate recovery of its transition and transaction costs nor any related goodwill amortization, acquisition premium costs, or impairment charges incurred or arising from the proposed Transfer of Control.³² Applicants highlight the following public interest considerations arising from the proposed Transfer of Control: (1) anticipated future cost savings through the avoidance of current administrative and management fees; (2) access to additional capital from MGH; and (3) certain anticipated capital investments in TGC infrastructure for enhanced safety and redundancy.

The Stipulated Regulatory Conditions, moreover, should address specific concerns arising from the proposed transaction. One major area of concern, as articulated by the Consumer Advocate, involves the increased level of debt and financial risks resulting from the proposed transaction. The Consumer Advocate contends that "the negotiated base purchase price of \$238 million is more than double the \$115 million price paid by k1 [Ventures] in 2003 to acquire essentially the same ownership interests, resulting in a large gain on sale to k1 [Ventures] and a proposed total debt burden growing to about \$180 million by year-end 2011 that must be serviced . . . out of

³²See Application at 18.

TGC's operating cash flows."³³ Aside from millions in goodwill arising from the purchase price that MIC has agreed to pay, the large amount of new debt financing planned "to fund this higher acquisition price more than doubles the present cash flow requirement that must be dedicated to servicing the proposed new debt."³⁴ Among other things, the Consumer Advocates states that increased debt burdens would serve to decrease TGC's financial flexibility and its access to capital on reasonable terms, relative to ownership under kl Ventures.³⁵

³³See CA's Statement of Position at 9 referencing Confidential Exhibit 7, Schedule 2.0 Output Summary at "Consolidated Borrowings."

³⁴Id. at 3.

³⁵While agreeing to all the various regulatory conditions, Applicants assert in their response that the Consumer Advocate's stated concerns regarding increased debt and risk arising from the proposed Transfer of Control are potentially misleading. Among other things, Applicants contend that Facility A, the \$80 million term loan at the HGC Holdings' level: (1) will be non-recourse to TGC; (2) will not be secured by TGC's assets; and (3) will be structurally and contractually subordinated to the \$80 million term loan and \$20 million revolving line of credit at the TGC level (Facilities B and C). In addition, Applicants state that if TGC is in default, the debt at HGC Holdings' level will not receive payment and that HGC Holdings' debt holders cannot cause a default of TGC. Applicants also assert that their proposed consolidated capital structure: (1) is within the range of capital structures that were approved in past proceedings by the commission; and (2) has a lower debt to capital level than certain past transactions approved by the commission.

The commission disagrees with Applicants characterization of the Consumer Advocate's concerns regarding financial risks arising from the proposed transaction. Applicants cannot and do not dispute that the level of debt under the proposed Transfer of Control will approximately double the debt currently being financed under kl Ventures. Additionally, while there appears to be certain positive safeguards built into the structure of the proposed Financing Arrangements, including certain loan covenants imposed by lenders that limit additional indebtedness and acquisitions (see Applicants' response to CA-IR-40), financial risks and uncertainties do exist with increased debt which will

Generally, however, the majority of the proposed Stipulated Regulatory Conditions are a continuation, extension, or update of the regulatory conditions imposed on TGC when the utility was transferred to k1 Ventures in 2003³⁶ or a formalization of various representations made by Applicants in the record of this proceeding. For instance, Stipulated Regulatory Condition No. 1 regarding transaction and transition costs not being deferred for future rate recovery was imposed as Condition No. 2 in Decision and Order No. 20354. In this docket, Applicants specifically represented that they will not seek rate recovery of any transition and transaction costs incurred as a result of the proposed Transfer of Control.

Stipulated Regulatory Condition No. 2, wherein TGC commits to not submit an application for a general rate increase earlier than calendar year 2009, is an extension of the rate case filing moratorium that TGC is currently under pursuant to the regulatory requirements imposed in Decision and Order No. 20354, and this requirement "should not detract from MIC's projected financial results . . . [and] has the desired effect of requiring MIC to bear some responsibility for the viability of its own financial projections in the near term when transition costs and

affect TGC's financial flexibility and its ability to access financial markets at favorable terms, compared to k1 Ventures' ownership. Moreover, financial uncertainty exists since the loans, mostly on fixed terms, are for a period of seven (7) years; upon maturity, the loans will need to be refinanced at prevailing rates, which are, at this juncture, unknown.

³⁶See Decision and Order No. 20354 at 24-26.

risks are being incurred."³⁷ Additionally, Stipulated Regulatory Condition No. 3, wherein HGC Holdings' debt to capital ratio, on a consolidated basis, is required to not exceed 65% on and after closing is likewise a continuation of a regulatory condition imposed in Decision and Order No. 20354. This condition should provide assurance that the combined debt burden will not exceed the levels that have been projected in the Application, among other things. Stipulated Regulatory Conditions Nos. 10, 11, and 12, concerning TGC's relationship with affiliated entities, are also a continuation of provisions already imposed on TGC in Decision and Order No. 20354 and "are necessary safeguards given the potential for significant new affiliate charges under MIC ownership as well as the potential for certain information regarding tax matters, financing documents and accounting consolidation records being maintained" outside of the State.³⁸

Lastly, Stipulated Regulatory Conditions Nos. 13 and 14 address the Consumer Advocate's concerns regarding regulatory liabilities due to over-recovery of fuel costs under TGC's FAC and a result of the Energy Corridor refund that TGC received in fiscal year 2005, which were both raised in due diligence work conducted by one of Applicants' consultants. With regard to the FAC issue, the Consumer Advocate contends that TGC's FAC calculations are not properly taking into account improved performance regarding actual lost and unaccounted for gas which is causing TGC to "systemically over-recover its actual incurred

³⁷See CA's Statement of Position at 22.

³⁸Id. at 50.

fuel costs.”³⁹ An examination of TGC’s records demonstrates that over-recovery under TGC’s FAC is occurring.⁴⁰ Thus, the Consumer Advocate recommends that the FAC calculations be “revised to eliminate continuing ratepayer overpayments related to fuel costs that exceed fuel recovery levels that are embedded in TGC’s base rates.”⁴¹ In fiscal year 2005, TGC received a refund of \$1.3 million from the State for its proportionate share of the Energy Corridor. The Consumer Advocate maintains that “[t]he Energy Corridor refund represents an extraordinary non-recurring transaction that should produce benefits to customers who have paid Energy Corridor costs through their gas rates for many years[.]”⁴²

Based on the foregoing, the commission concludes that the proposed Stipulated Regulatory Conditions should be adopted by the commission, and be imposed as conditions for our approval of the proposed Transfer of Control. The conditions: (1) are appropriate under the facts and circumstances of this proceeding to address regulatory concerns related to the proposed Transfer of Control; (2) provide assurance that the proposed Transfer of Control will not adversely affect TGC’s fitness and

³⁹Id. at 51.

⁴⁰Id. at 53-54.

⁴¹Id. at 54-55.

⁴²Id. at 57-58. Applicants concede that Stipulated Regulatory Condition No. 14 which provides for a \$4.1 million credit to TGC’s non-delinquent customers is a “suitable remedy under the circumstances to resolve this issue as part of the [p]roposed” Transfer of Control. See Applicants’ Response at 24.

ability to provide utility service; and (3) ensure public interest benefits to TGC's utility customers.

As such, the commission finds that TGC will be fit, willing, and able to provide its utility service upon consummation of the proposed Transfer of Control. The commission also finds that the proposed Transfer of Control is reasonable and in the public interest, provided that Applicants adhere to and comply with all fourteen (14) of the Stipulated Regulatory Conditions listed in Section I.B. above. Thus, the commission concludes that the proposed Transfer of Control, described in the Application, should be approved, subject to Applicants' adherence to and compliance with the Stipulated Regulatory Conditions.

B.

Financing Arrangements

Under HRS § 269-17, a public utility must obtain prior commission approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months after the date of issue. This section restricts the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property or the construction, completion, extension, or improvement of, or addition to its facilities or services.

As noted above, HRS § 269-7(a) authorizes the commission to examine the condition of every public utility,

including all of its financial transactions and its business relations with other persons, companies, and corporations.

Applicants' proposed Financing Arrangements and related security are necessary to effectuate the proposed Transfer of Control. Applicants affirmatively represent that the proposed Financing Arrangements are for the purposes permitted under HRS § 269-17.⁴³ The funds obtained from the financing and facility arrangements described in the Application will be used to, among other things, build in-house administrative support systems in the State and improve and provide necessary redundancy to TGC infrastructure and services which are permissible under HRS § 269-17. Accordingly, the commission finds the proposed Financing Arrangements to be reasonable and in the public interest.

Based on the foregoing, the commission concludes that the proposed Financing Arrangements and related security and pledge obligations proposed to be obtained to consummate the proposed Transfer of Control should be approved, pursuant to HRS §§ 269-7, 269-17 and 269-19. However, our approval of the proposed Financing Arrangements and related security and pledge obligations, as set forth above, is specifically for the purpose of effectuating the proposed Transfer of Control, and for no other purpose or reason. Any future encumbrances and guarantees provided by TGC (and HGC Holdings, as applicable and necessary) for other financing and facility arrangements will require prior

⁴³See Application at 25.

separate commission approval under HRS §§ 269-7(a), 269-17, and 269-19, as applicable.

C.

Previously Imposed Regulatory Conditions

1.

Docket No. 99-0350

In Decision and Order No. 17722, filed on May 9, 2000, in Docket No. 99-0350 ("Decision and Order No. 17722"), the commission authorized TGC to borrow up to \$19,600,000 through the issuance and sale of special purpose revenue bonds ("SPRBs") under Act 257, Session Laws of Hawaii 1999 ("Act 257"), for the purpose of undertaking certain capital improvement projects related to its gas utility service in the State. Related to the commission's approval, certain reporting requirements, due on March 31 of each year, were imposed on TGC for the purpose of providing the commission with information regarding the progress made on reducing TGC's financing costs, under Act 257.

Applicants state that all of the obligations and liabilities related to the SPRBs will be retired as a result of the proposed Transfer of Control and will not be assumed by MGH. Applicants contend that if their Application is approved, the annual reporting requirement imposed in Decision and Order No. 17722 will no longer be consistent with the intent of Act 257; and, thus, they request that the commission terminate the regulatory condition imposed by Decision and Order No. 17722. The Consumer Advocate agrees with TGC's termination request.

Based on the above and the commission's decision to approve the proposed Transfer of Control and related proposed Financing Arrangements, subject to Applicants' compliance with and adherence to the fourteen (14) Stipulated Regulatory Conditions, as set forth in the Section I.B., above, the commission finds that termination of the regulatory condition imposed in Decision and Order No. 17722 to be reasonable. Since the SPRBs in question will be retired as a result of the proposed Transfer of Control, discontinuation of the regulatory requirement related to the SPRBs is appropriate at this time. Thus, the commission concludes that the regulatory condition imposed on TGC in Decision and Order No. 17722 related to the SPRBs should be terminated, upon closing of the proposed Transfer of Control.

2.

Docket No. 03-0051

In Decision and Order No. 20354, filed on July 25, 2003, in Docket No. 03-0051, the commission approved the sale of TGC's assets from Citizens to k1 Ventures, and other related matters. The commission's approval of the transaction in Decision and Order No. 20354 was subject to various regulatory conditions imposed on TGC, HGC Holdings, and their existing affiliates, including but not limited to, the ten (10) regulatory conditions that the parties to the docket had agreed upon.

Applicants request that the regulatory conditions imposed in Decision and Order No. 20354 be terminated.

In support of their request, Applicants argue that the regulatory conditions imposed in Decision and Order No. 20354: (1) were approved by the commission based solely on the record established in that docket; and (2) should no longer be applicable. Applicants further contend that the proposed Transfer of Control should be reviewed from a clean slate based on the specific facts and circumstances of the Application filed in this docket.

The Consumer Advocate argues that Applicants' request to terminate the regulatory conditions imposed in Decision and Order No. 20354 should be denied, since the regulatory conditions approved by the commission in Decision and Order No. 20354 are recommended for continuation, with specific revisions, in this proceeding.

Given our decision to approve the Transfer of Control subject to the Stipulated Regulatory Conditions, the commission finds that a wholesale termination of the regulatory conditions imposed in Decision and Order No. 20354 to be inappropriate. As the Consumer Advocate notes, all of the regulatory conditions imposed in Decision and Order No. 20354 are being continued, with specific revisions, as part of the Stipulated Regulatory Conditions. Accordingly, the commission concludes that the regulatory conditions imposed in Decision and Order No. 20354 should not be terminated, at this time, rather they are revised or amended, as set forth in the Stipulated Regulatory Conditions, as applicable. The commission notes that the Stipulated Regulatory Conditions have been adopted by the commission, and

are imposed on Applicants (and their related affiliates, as applicable) as a condition of the commission's approval of the proposed Transfer of Control, as set forth above.

III.

Orders

THE COMMISSION ORDERS:

1. The proposed Transfer of Control, as described in the Application, is approved, as applicable under HRS §§ 269-7(a), 269-17.5, and 269-19, provided that Applicants (and their related affiliates, as applicable) adhere to and comply with the Stipulated Regulatory Conditions, set forth in Section I.B. of this Decision and Order.

2. The proposed Financing Arrangements including any related security and pledge obligations necessary to consummate the proposed Transfer of Control are approved, under HRS §§ 269-7(a), 269-17, and 269-19.

3. Upon closing of the proposed Transfer of Control, the regulatory condition imposed in Decision and Order No. 17722 related to SPRBs is terminated.

4. The regulatory conditions imposed in Decision and Order No. 20354, are revised or amended by the applicable provisions of the Stipulated Regulatory Conditions, adopted and approved by the commission in this Decision and Order.

5. Promptly after closing of the proposed Transfer of Control, TGC shall provide its customers with written notice of the change in ultimate ownership of the utility and provide

customers with any necessary information; and promptly provide written notification regarding compliance with this requirement to the commission and the Consumer Advocate.

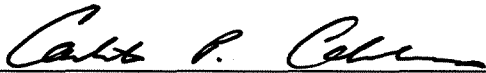
6. Within a reasonable period of time after closing of the proposed Transfer of Control, Applicants shall provide the commission and the Consumer Advocate with written notice of the consummation of the subject transaction and a summary of the related final Financing Arrangements.

7. The commission's other applicable orders, rules, and regulatory requirements, not specifically terminated, revised, or amended, by this Decision and Order shall continue to be in effect, as applied to TGC.

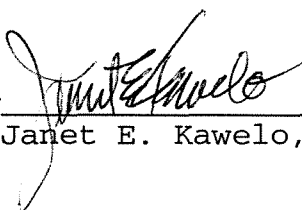
8. Applicants shall timely comply with all of the regulatory conditions and other requirements set forth above, as applicable. Failure to comply with any of these regulatory conditions and requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by State law and commission rules and regulations.

DONE at Honolulu, Hawaii MAY - 3 2006.

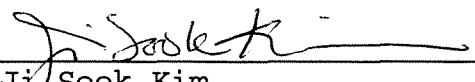
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

05-0242.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22449 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY - 3 2006