

In the Matter of the Application of)
)
KRWK CORPORATION, dba KOHALA RANCH)
WATER COMPANY)
)
For Review and Approval of Rate)
Increases and Revised Rate)
Schedules.)

Commission, State of P
R. D. Grosel

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ORDER

By this Order, the commission denies the motions to intervene filed by KOHALA BY THE SEA COMMUNITY ASSOCIATION (the "Association"), CAROLYN POMEROY, ANDREW CZAJKOWSKI, and MELANIE I. H. BIDDLE, and, grants participation to the Association, subject to certain conditions, as set forth in this Order.

By an application filed on January 5, 2006, KRWC CORPORATION, dba KOHALA RANCH WATER COMPANY ("KRWC") requests, among other things, commission approval for general rate increases and to revise its rate schedules.¹ On March 8,

¹Application; Exhibits KRWC 1 - KRWC 10; Exhibits KRWC-T-100 and KRWC-T-200; Workpapers; Verification; and Certificate of Service (collectively, the "Application"). HECO served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). Pursuant to Hawaii Revised Statutes ("HRS") § 269-51

2006, the commission held a public hearing at the Waimea Civic Center, 67-5189 Kamamalu Street, Kamuela, Hawaii to take public comments.²

The Association, a Hawaii non-profit corporation, is a planned community association, as defined in HRS § 421J-1, that is authorized to provide management, maintenance, protection, preservation, control and development of real property situated at Kahua 1st, Waika, North Kohala, on the Island of Hawaii, for the subdivision known as Kohala by the Sea.

Carolyn Pomeroy, Andrew Czajkowski, and Melanie I. H. Biddle are ratepayers of KRWC.

II.

Discussion

A.

Intervention

It is well-established that intervention as a party in a commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the commission." See In re Application of Hawaiian Elec. Co., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975). HAR § 6-61-55, which governs

and Hawaii Administrative Rules ("HAR") § 6-61-62, the Consumer Advocate is an ex officio party to this proceeding.

²The commission held the public hearing pursuant to HRS § 269-16(f)(2). A motion to intervene or participate in a public utility rate increase case shall be filed not later than ten days after the last public hearing held pursuant to the published notice of the hearing. HAR § 6-61-57(1). In this instance, motions to intervene or participate were due on or before March 20, 2006.

intervention, requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. Furthermore, HAR § 6-61-55(d) 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."

The Consumer Advocate is statutorily required, pursuant to HRS § 269-51, to "represent, protect, and advance the interest of all consumers, including small businesses, of utility services."

1. The Association

In its Motion to Intervene, the Association states that its property and financial interests "arise by virtue of its exclusive connection to [KRWC's] water system, operation of the common pipes servicing multiple houses within the Kohala By the Sea subdivision, and by the impact the block rate scheduling and rate increases would have based on its present and anticipated future water service use."³ The Association, the self-described first "Firewise" community in the State, contends that KRWC's proposed rate structure would inhibit the effects on its Firewise

³[The Association's] Motion to Intervene, filed on March 17, 2006, at 3.

The Association also submitted a Supplement to Motion to Intervene and Exhibits "1" - "4" on April 3, 2006. The commission notes that its rules of practice and procedure only allow for the filing of an opposition to a motion. HAR § 6-61-41. Thus, because the commission did not grant the Association leave to file an addendum or a reply, the commission will only give the Association's supplement the appropriate weight in its consideration of its Motion to Intervene.

program by individual homeowners to the detriment of the entire subdivision.

As examples of the information that the Association solely can provide to the commission, the Association lists: a) the reasons for and the history of water consumption in the subdivision; b) present and anticipated development within the Kohala by the Sea subdivision; c) the impact the requests will have on its Firewise program, which is incorporated into its design requirements and rules of the subdivision; d) the inventory of meters and need, if any for replacement or increase in rental rates for the existing meters; e) the reasons the Association believes the proposed rate structure is unfair as applied to the "unique conditions at Kohala by the Sea subdivision"; and f) the actual meter reading timing and its impact on the proposed inverted rate structure.⁴

Moreover, the Association expresses concern over the effects of the Application on its interests including: a) "regular rate increases far exceeding those of similarly situated homeowner's association within [its] district"; b) "inhibiting effects on the Firewise program by individual homeowners to the detriment of the entire subdivision"; c) "substantial concern over [KRWC's] claimed 'operating losses'"; d) "failure of [KRWC] to supply audited financial statements or corroboration of its claimed operating losses"; e) "the requested increase in meter rental rates is not substantiated but would impact the homeowners and [the

⁴The Association's Motion to Intervene at 6 - 7.

Association]"; and f) "the precedent for future rate increases and the proposed 'inverted' rate structure may be established should the present [A]pplication be approved which would adversely affect the future water consumption and impose an unreasonable financial burden on the [Association]."⁵

On March 28, 2006, KRWC filed a Memorandum in Opposition to the Association's Motion to Intervene, stating that the Association failed to meet the criteria set forth in HAR § 6-61-55, requesting that the Association's Motion to Intervene be denied, and, in the alternative, the Association's participation, if granted, be allowed subject to certain conditions and limitations.⁶

The Association, as a ratepayer of KRWC's system, does not represent an interest that is distinct from the interests statutorily represented by the Consumer Advocate. The concerns it states relating to the effects of the Application upon its interests are those that the Consumer Advocate historically reviews and examines, pursuant to the obligations imposed under HRS § 269-54. However, the commission recognizes that the Association, as the first "Firewise" community in the State, may be able to provide information relating to the background of the Firewise program and its status as a "Firewise" community.

Accordingly, the commission will deny the Association's request to intervene and will, on its own motion, grant it an

⁵The Association's Motion to Intervene at 4 - 5.

⁶Memorandum in Opposition to [the Association's] Motion to Intervene; Exhibits A and B; and Certificate of Service, filed on March 28, 2006, at 13.

opportunity to participate, provided, however, that: a) its participation will not broaden the issues or unduly delay the proceedings; b) it follows all applicable rules of the commission; and c) its participation is limited to the filing of direct and rebuttal testimonies relating to the issue of the "Firewise" safety program.

The Association is admonished that its participation in this docket will be limited to only the issue determined and authorized by the commission. The commission will preclude any efforts that will unreasonably broaden these issues, and unduly delay the proceeding. The commission will reconsider the Association's participation in this proceeding if, at any time during this proceeding, the commission determines that any of the its efforts unreasonably broaden the pertinent issues in this docket or unduly delay the proceeding.

2. Carolyn Pomeroy ("Ms. Pomeroy")

Ms. Pomeroy, the owner of a "very small sheep-raising business," states that as a KRWC ratepayer, she will be "affected by the proposed rate increase," and that her "interests differ significantly from that of the general public."⁷ Ms. Pomeroy

⁷Motion to Intervene and Certificate of Service, filed on March 15, 2006 ("Ms. Pomeroy's Motion to Intervene") at 1 - 2.

Ms. Pomeroy also submitted a Memorandum in Response to [KRWC's] Memorandum in Opposition to [Ms. Pomeroy's] Motion to Intervene; Exhibit A; Affidavit; and Certificate of Service on March 28, 2006 ("Ms. Pomeroy's Memorandum in Response"). The commission notes that its rules of practice and procedure only allow for the filing of an opposition to a motion. HAR § 6-61-41. Thus, because the commission did not grant Ms. Pomeroy leave to file an addendum or a reply, the commission

states that she has "long experience with Kohala Ranch and KRWC, and communication with various government agencies, hydrologists, and others on the subject of local water resources[,] " which "should be significant in assisting in the development of a sound record."⁸

KRWC filed a Memorandum in Opposition to [Ms. Pomeroy's] Motion to Intervene on March 22, 2006, arguing that Ms. Pomeroy's Motion to Intervene fails to meet the intervention requirements set forth in HAR § 6-61-55, and should be denied.

Ms. Pomeroy, an individual ratepayer, is adequately represented by the Consumer Advocate, a party to this proceeding charged with the responsibility to represent the interests of the ratepayers. The commission finds that Ms. Pomeroy failed to, among other things, satisfactorily demonstrate that her interests are reasonably pertinent to the matters presented. Moreover, Ms. Pomeroy failed to substantiate how she will assist in the development of a sound record and refrain from unreasonably broadening the issues already presented.⁹ The commission, therefore, finds that Ms. Pomeroy did not satisfy the requirements of HAR § 6-61-55. Based on the foregoing, the

will only give Ms. Pomeroy's Memorandum in Response the appropriate weight in its consideration of her Motion to Intervene.

⁸Ms. Pomeroy's Motion to Intervene at 2.

⁹In fact, Ms. Pomeroy admits that she "may broaden the issues" presented in this proceeding. See Ms. Pomeroy's Motion to Intervene at 2.

commission concludes that Ms. Pomeroy's Motion to Intervene should be denied.

3. Andrew Czajkowski ("Mr. Czajkowski")

In his Motion to Intervene, Mr. Czajkowski states

[T]hat, as a KRWC utilities customer, and as a Kohala Ranch Subdivision Lots owner, [he], and those other subdivision lot owners similarly situated, constitute a class of users which are not subject to any limitation upon size of water meters or water quantity under any of the Project Documents which KRWC must supply to an Owner's lot for the 'mandatory' agricultural purpose for which the subdivision was platted"¹⁰

Mr. Czajkowski argues that his interest will not be represented by existing parties because he and the similarly situated Kohala Ranch Subdivision owners have "special contractual rights with KRWC which run with the land through the common Subdivision Developer."¹¹ In addition, he notes that the "Public Advocate has not yet intervened, nor has any other potential party."¹²

On March 28, 2006, KRWC filed a Memorandum in Opposition to Mr. Czajkowski's Motion to Intervene, requesting

¹⁰Movant Andrew Czajkowski's Motion to Intervene; Legal Memorandum; and Certificate of Service ("Mr. Czajkowski's Motion to Intervene"), filed on March 17, 2006, at 3rd page.

Mr. Czajkowski also submitted a Reply to Applicant KRWC's Opposition to [Mr. Czajkowski's Motion to Intervene and Certificate of Service on April 4, 2006 ("Mr. Czajkowski's Response"). The commission notes that its rules of practice and procedure only allow for the filing of an opposition to a motion. HAR § 6-61-41. Thus, because the commission did not grant Mr. Czajkowski leave to file a reply, the commission will only give Mr. Czajkowski's Response the appropriate weight in its consideration of its Motion to Intervene.

¹¹Mr. Czajkowski's Motion to Intervene at 4th page.

¹²Id.

that the commission deny his Motion to Intervene for failure to meet the requirements set forth in HAR § 6-61-55.¹³

Mr. Czajkowski, an individual ratepayer, is adequately represented by the Consumer Advocate, a party to this proceeding charged with the responsibility to represent the interests of the ratepayers. The commission finds that Mr. Czajkowski failed to, among other things, satisfactorily demonstrate that his interests are reasonably pertinent to the matters presented. Moreover, Mr. Czajkowski failed to substantiate how he will assist in the development of a sound record and refrain from unreasonably broadening the issues already presented. The commission, therefore, finds that Mr. Czajkowski did not satisfy the requirements of HAR § 6-61-55. Based on the foregoing, the commission concludes that Mr. Czajkowski's Motion to Intervene should be denied.

4. Melanie I. H. Biddle ("Ms. Biddle")

Ms. Biddle is a KRWG ratepayer, a co-owner of a home in the Kohala Estates development, an operator of a bed and breakfast, and one who raises sheep. In her Motion to Intervene, Ms. Biddle asserts that the "proposed rate increases are excessive and inequitable in several respects and would have significant impacts on [her] business."¹⁴ Ms. Biddle argues that

¹³Memorandum in Opposition to [Mr. Czajkowski's] Motion to Intervene; Exhibit A; and Certificate of Service, filed on March 28, 2006.

¹⁴Motion to Intervene and Certificate of Service ("Ms. Biddle's Motion to Intervene"), filed on March 20, 2006, at 1.

since she is a KRWG ratepayer "whose livelihood will be affected by the proposed rate increase, [her] interests differ significantly from that of the general public."¹⁵ She further argues that "she strongly believes that the interests of Kohala Estates ratepayers must be represented as they differ greatly from those of other ratepayers served by KRWG."¹⁶

KRWG filed a Memorandum in Opposition to Ms. Biddle's Motion to Intervene on March 28, 2006, in which it argues that Ms. Biddle's Motion to Intervene fails to meet the requirements of HAR § 6-61-55, and requests that her Motion to Intervene be denied.¹⁷

Ms. Biddle, an individual ratepayer, is adequately represented by the Consumer Advocate, a party to this proceeding charged with the responsibility to represent the interests of the ratepayers. The commission further finds that Ms. Biddle failed to, among other things, satisfactorily demonstrate that her interests are reasonably pertinent to the matters presented. Moreover, Ms. Biddle failed to substantiate how she will assist in the development of a sound record and refrain from unreasonably broadening the issues already presented. The commission, therefore, finds that Ms. Biddle did not satisfy the requirements of HAR § 6-61-55. Based on the foregoing, the

¹⁵Ms. Biddle's Motion to Intervene at 2.

¹⁶Id.

¹⁷Memorandum in Opposition to [Ms. Biddle's] Motion to Intervene; Exhibit A; and Certificate of Service, filed on March 28, 2006.

commission concludes that Ms. Biddle's Motion to Intervene should be denied.

B.

Motion to Set Place of Hearings

On March 17, 2006, Ms. Pomeroy filed a motion requesting that the commission hold future hearings with respect to all matters pertaining to this proceeding on the Island of Hawaii, "as near as practicable to the water service area."¹⁸ Ms. Pomeroy argues that the Island of Hawaii is the appropriate venue for any hearings "because of the interest shown in this matter at the March 8th hearing."¹⁹

Since the commission denied Ms. Pomeroy's Motion to Intervene, she is neither a party nor a participant in this proceeding. Ms. Pomeroy, therefore, lacks the appropriate standing to make such a request. Accordingly, the commission dismisses the Motion to Set Place.

C.

Regulatory Schedule

HRS § 269-16(f)(3) requires the commission to

Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission, provided that all parties to the proceeding

¹⁸Motion to Set Place of Hearings on the Island of Hawaii; Memorandum in Support of Motion; Certificate of Service ("Motion to Set Place"), filed on March 17, 2006.

¹⁹Motion to Set Place at 3.

strictly comply with the procedural schedule established by the commission and no person is permitted to intervene.

(Emphasis added).

Should the commission grant the Association participant status, KRWC requested guidance as to whether KRWC and the Consumer Advocate may proceed in this proceeding consistent with the six-month procedural schedule established by the commission.²⁰

The statute governing the ratemaking process, HRS § 269-16, was modified in 2004 to, among other things, "provide requirements for implementing an expedited filing process, or processes, for receiving public utilities commission authorization to adjust rates for public utility companies having annual gross revenues of less than \$2,000,000. . . ." ²¹ The expedited process for review of small public utilities included a deadline of six months for the commission to issue a proposed decision and order.²² The commission's six-month decision and order deadline is extended to nine months, the traditional time period by which the commission must issue a decision and order for an application for rate increase, pursuant to HRS § 269-16(d), if "the commission permits a person to intervene."²³

²⁰Memorandum in Opposition to [the Association's] Motion to Intervene at 2.

²¹Act 168, § 1, 2004 Haw. Sess. Laws.

²²HRS § 269-16(f)(3).

²³Id.

The plain reading of the statute allows for an extension of time for the commission to issue a decision and order if a motion to intervene is granted.²⁴ However, the commission denied the Association's Motion to Intervene, but allowed the Association to participate without intervention based upon its limited interest in this proceeding. Accordingly, the Association was not allowed to intervene under HRS § 269-16(d), and the Consumer Advocate and KRWC may proceed in this proceeding consistent with the six-month procedural schedule approved by the commission.

III.

Orders

THE COMMISSION ORDERS:

1. The Association's Motion to Intervene, filed on March 17, 2006, is denied. Instead, the Association is granted participation without intervention, limited to the submission of direct and rebuttal testimonies relating to the issue of the "Firewise" safety program, and provided that the Association's participation will not broaden the issues, unduly delay the proceedings, and that it follows all applicable rules of the commission.

²⁴See HRS § 1-14, which provides that words of law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular meaning. See also In re Hawaiian Elec. Co., Order No. 11681, filed on June 22, 1992, in Docket No. 6965; and Hawaiian Beaches, Inc. v. Kondo, 52 Haw. 279, 281, 474 P.2d 538, 540 (1970).

2. The Association's participation will not be construed as "permitted to intervene" within the meaning of HRS § 269-16(f)(3). The Consumer Advocate and KRWC may proceed in this proceeding consistent with the six-month procedural schedule approved by the commission.

3. Ms. Pomeroy's Motion to Intervene, filed on March 15, 2006, is denied.

4. Ms. Pomeroy's Motion to Set Place, filed on March 17, 2006, is dismissed.


5. Mr. Czajkowski's Motion to Intervene, filed on March 17, 2006, is denied.

6. Ms. Biddle's Motion to Intervene, filed on March 20, 2006, is denied.

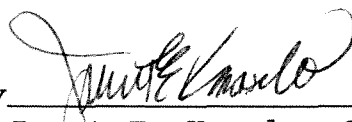
7. KRWC, the Consumer Advocate, and the Association shall meet informally to determine whether the regulatory schedule with respect to the instant docket requires amendment in light of the Association's participation.

DONE at Honolulu, Hawaii MAY - 5 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:


Catherine P. Awakuni
Commission Counsel

05-0334.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22454 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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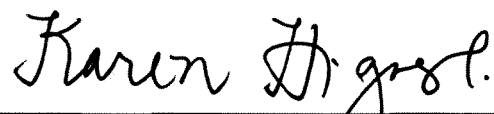
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Karen Higashi

DATED: MAY - 5 2006

AMENDED CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22454 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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