

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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

DOCKET NO. 05-0334

ORDER NO. 22530

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DIV OF CONSUMER ADVOCACY  
DEPT OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

Filed June 13, 2006  
At 1 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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

In the Matter of the Application of )  
KRWC CORPORATION, dba KOHALA RANCH ) Docket No. 05-0334  
WATER COMPANY ) Order No. 22530  
For Review and Approval of Rate )  
Increases and Revised Rate )  
Schedules. )  
\_\_\_\_\_  
)

ORDER

By this Order, the commission denies KOHALA BY THE SEA COMMUNITY ASSOCIATION's (the "Association") motion for reconsideration or clarification of Order No. 22454; and dismisses its motion for stay as moot.<sup>1</sup>

I.

Introduction

In Order No. 22454, issued on May 5, 2006, the commission denied the Association's motion to intervene, but allowed it to participate in the instant proceeding. The Association's participation was limited to providing the commission with written testimonies relating to the issue of the "Firewise" safety program. See Order No. 22454 at 13.

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<sup>1</sup>[The Association's] Motion for Reconsideration or Alternatively Clarification of Order No. 22454 filed on May 5, 2006 and for Stay; Exhibits "A" - "E", filed on May 19, 2006 (collectively, "Motion"). The Association served copies of its Motion upon KRWC Corporation, dba Kohala Ranch Water Company ("KRWC") and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").

On May 19, 2006, the Association filed a motion for reconsideration of Order No. 22454, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-41 and 6-61-137. In its motion, the Association asserts that full intervention status should have been granted to the Association "to fully present its Firewise Community program to the [c]ommission." Motion at 4. Alternatively, the Association seeks clarification on whether it is allowed to present live testimony to the commission on the Firewise program. Id. at 5.

In its motion for stay, the Association requests that Order No. 22454 be stayed, pursuant to HAR § 6-61-138, until its motion for reconsideration has been addressed. Id.

## II.

### Discussion

#### A.

##### The Association's Motion for Reconsideration

The Association contends that intervention should have been granted to it because "its unique position created by federal regulation is reasonably pertinent to and does not unreasonably broaden the issues presented by [KRWC's] requested rate changes." Motion at 4. In support of its motion for reconsideration, the Association provides additional information relating to the Firewise program, a program that attempts to lessen the "imminent danger and threat to life and property presented by wildfires in North Kohala." Motion at 2.

HAR § 6-61-137 provides:

Motion for reconsideration or rehearing.  
A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137. Thus, to succeed on a motion for reconsideration, the movant must demonstrate that the commission's decision or order was "unreasonable, unlawful, or erroneous." See id.

"[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Taqupa v. Taqupa, 108 Hawai'i 459, 465, 121 P.2d 924, 930 (2005). "Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Id. (citing Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) and quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000)).

Here, the Association's motion for reconsideration presents additional information that could or should have been included with its original motion to intervene, and fails to specifically state the grounds on which it considers the order denying its motion to intervene to be unreasonable, unlawful, or

erroneous. Even if the commission were to consider the additional information presented by the Association in its motion for reconsideration, the commission would still be unconvinced that Decision and Order No. 22454 is unreasonable, unlawful, or erroneous. Based on the foregoing, the commission denies the Association's motion for reconsideration.

In the alternative, the Association seeks clarification on whether it is allowed to present testimony to the commission at an evidentiary hearing. Order No. 22454, however, was clear that the Association's participation was limited to the presentation of written testimonies relating to its status as a Firewise community.

Indeed, Hawaii Revised Statutes § 269-16(f)(3), which generally describes the procedures for public utilities having annual gross revenues of less than \$2,000,000 to obtain an increase in rates, states that the parties to such a proceeding are not entitled to a contested case hearing if the parties accept the commission's proposed decision and order on the matter. Accordingly, an evidentiary hearing to take testimonies and arguments shall only be scheduled if the parties to this docket, KRWC and the Consumer Advocate, object or do not accept the proposed decision and order issued in this proceeding.

As Order No. 22454 was clear that the Association is only allowed to present written testimonies relating to its status as a Firewise community, the Association's alternative motion for clarification is denied.

B.

The Association's Motion for Stay

HAR § 6-61-138(a) states that:

[t]he filing of a motion for reconsideration or rehearing shall not stay a commission decision and order. However, if a motion for a stay accompanies the motion, the commission shall act on the motion for a stay promptly. If a stay is granted, the stay shall remain in effect until disposal of the motion for reconsideration.

HAR § 6-61-138(a).

Having denied the Association's motion for reconsideration, the commission finds the Association's motion for stay to be moot. Accordingly, the commission dismisses the Association's motion for stay.

III.

Orders

THE COMMISSION ORDERS:

1. The Association's motion for reconsideration, filed on May 19, 2006, is denied.
2. The Association's motion for clarification, filed on May 19, 2006, is also denied. As set forth in Order No. 22454, the Association's participation in this proceeding is limited to presenting written testimonies relating to its status as a Firewise community.

3. The Association's motion for stay is dismissed as moot.

DONE at Honolulu, Hawaii JUN 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:

Catherine P. Awakuni:

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. 22530 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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*Karen Higashi*

Karen Higashi

DATED: JUN 13 2006