

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAPALUA WATER COMPANY, LTD.)
For Expansion of Its)
Service Territory)
_____)

DOCKET NO. 2006-0011

DECISION AND ORDER NO. 22662

Filed July 31, 2006
At 2:10 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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Commission, State of Hawaii.

K. Higashi.

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Docket No. 2006-0011
Decision and Order No. 22662

DECISION AND ORDER

By this Decision and Order, the commission approves KAPALUA WATER COMPANY, LTD.'s ("Applicant") application for commission approval to (1) expand its existing service territory to provide both potable and non-potable water utility services to additional properties, and (2) amend its Rules and Regulations to reflect the revised service territory, pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7.5 and 269-16.

I.

BACKGROUND

A.

Applicant

Applicant is a wholly-owned subsidiary of Maui Land & Pineapple Company, Inc. ("ML&P"). Applicant is a public utility that provides both potable and non-potable water utility services to the residences, condominiums, hotels and commercial establishments within its service territory at Kapalua, Maui, Hawaii. Applicant obtained its certificate of public convenience

and necessity ("CPCN") on September 2, 1977.¹ Applicant's current service territory was approved by the commission on June 14, 2004.²

B.

Application

On January 19, 2006, Applicant submitted its Application for Expansion of Service Territory ("Application") seeking commission approval to: (1) expand its service territory; and (2) amend its Rules and Regulations to reflect the revised service territory. Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to HRS § 269-51.

In its Application, Applicant seeks commission approval to expand its service territory by 498 acres to provide potable and non-potable water utility services to the following two properties that are adjacent to the existing service territory:

1. Honolua Ridge, Phase II.³ This service area will consist of approximately twenty-five (25) single family residences and appurtenant common areas, located on approximately

¹Decision and Order No. 4813, filed on Sept. 2, 1977, in Docket No. 3157.

²Decision and Order No. 21057, filed on June 14, 2004, in Docket No. 03-0411.

³In Decision and Order No. 21057, filed on June 14, 2004, in Docket No. 03-0411, the commission approved, inter alia, the inclusion of approximately 189.774 acres of the Honolua Ridge ("Phase I of Honolua Ridge") as part of Applicant's service territory.

463 acres of land identified as Tax Map Key number (2) 4-2-001:041. Based on an estimated average use similar to Phase I of Honolua Ridge of 652 gallons per day ("gpd") of potable water and 5,383 gpd of non-potable water per residential unit,⁴ Applicant estimates that the twenty-five (25) single family residences in Phase II will utilize approximately 16,300 gpd of potable water and 134,575 gpd of non-potable water, and that the appurtenant common areas will utilize approximately 66,063 gpd of non-potable water for landscaping and irrigation purposes.

2. A portion of Kapalua Mauka, Phase I.⁵ This service area will consist of approximately eighteen (18) single family residences and appurtenant common areas, located on approximately 35.14 acres of land identified as Tax Map Key number (2) 4-2-001:042. Based on an estimated average use similar to Phase I of Honolua Ridge, described above, Applicant estimates that eighteen (18) single family residences in Phase I of Kapalua Mauka will utilize approximately 11,736 gpd of potable water and 96,894 gpd of non-potable water, and that the appurtenant common areas will utilize approximately 27,826 gpd of non-potable water for landscaping and irrigation purposes.

⁴Applicant explains that "[a]ctual usage numbers are not yet available for the residential units in Honolua Ridge, Phase I." See Application at 3 n.4. However, Applicant also explains that consistent with Docket No. 03-0411, "the estimated water usage for Honolua Ridge, Phase I was determined from utilizing data from existing customers in the Plantation Estates subdivision."

⁵The Kapalua Mauka, Phase I development is planned to consist of approximately fifty-one (51) single family residences and appurtenant common areas. Applicant's current service territory already includes thirty-three (33) of the fifty-one (51) single family residences.

Applicant states that its decision to include the additional properties in its service territory is based on the following factors: (1) the properties are located near Applicant's existing service territory; (2) Applicant is conveniently situated to service the potable and non-potable water utility needs of the properties; (3) Applicant has the capability and facilities to serve these customers; and (4) Applicant is unaware of any other water utility, publicly or privately owned, that is willing or able to provide water service in the proposed expansion areas at this time or in the near future.⁶ Applicant, however, is aware that Mayor Arakawa has recently expressed an interest in the County of Maui ("County") taking over certain water systems on the island of Maui. Applicant asserts, however, that:

. . . we believe that this is still in the early planning and analysis stages and it is uncertain at this time whether the County will pursue this. In addition, in any event, we do not believe that the County is able or will be able at any time in the near future, to provide water service to the two property areas covered by this Application, and could only do so through a possible takeover of [Applicant]'s water system instead of developing its own system.⁷

Applicant states that it is or will be able to service the proposed additional properties. With respect to potable water, pursuant to the Water Sale Agreement between Applicant and ML&P, as approved by the commission in Decision and Order No. 12618, filed on Sept. 23, 1993, in Docket No. 7683,

⁶Application at 5, 7.

⁷Response to CA-IR-1.

Applicant has rights to up to one million gpd of potable water from ML&P's existing two (2) wells.⁸ In addition, Applicant asserts that the two existing wells "can produce a conservative sustainable yield of 750,000 gpd per well or 1.5 million gpd total. Actual production could be higher if needed."⁹ Applicant further states that "if necessary, Applicant currently has the option to access a third well owned by ML&P, which can provide up to an additional 750,000 gpd of potable water."¹⁰ Applicant states that it has more than sufficient capacity to handle the potable water needs of the proposed additional properties.¹¹

With respect to non-potable water, Applicant states that "based on Applicant's transmission line capacity to provide approximately 7.2 million gpd of non-potable irrigation water for Applicant's use . . . Applicant has more than sufficient capacity to handle the non-potable water needs of the [proposed additional properties]."¹²

Applicant states that the service will be provided by means of transmission lines, service laterals and appurtenant

⁸Section 1 of the Water Sale Agreement provides for a term of ten (10) years, commencing on January 1, 1993 and continuing until December 31, 2003, as may be extended by mutual agreement of Applicant and ML&P. Applicant and ML&P have agreed to extend the term of the Water Sale Agreement for an additional ten (10) year period. See Application at 5 n.6.

⁹Application at 5 n.7.

¹⁰Application at 5 n.7.

¹¹Application at 5.

¹²Application at 5-6.

equipment installed or to be installed by the developer to connect Applicant's facilities to the properties.¹³ Applicant asserts that the revenues generated by the additional properties should offset any expenses related to the expansion.¹⁴ Moreover, Applicant will not be required to pay for additional upgrades to its water system, if any, due to the expansion of the service territory.¹⁵

Thus, Applicant states that it "has or will have the ability to provide potable and non-potable water service to the above properties, all without detriment to the level and quality of service being provided to its existing service territory, and without any rate impact on Applicant's current users."¹⁶

Finally, Applicant states that (1) no amendments to Applicant's tariff rate are required, and (2) it proposes to amend and replace Exhibit 1 attached to its Rules and Regulations with the drawing attached as Exhibit B to the Application.¹⁷ Applicant states that if its Application is approved, it will file revised sheets of its Rules and Regulations to amend and replace Exhibit 1 and reflect the changes to Applicant's revised service territory.¹⁸

¹³Application at 6.

¹⁴Application at 6.

¹⁵Application at 6.

¹⁶Application at 6.

¹⁷Application at 6-7.

¹⁸Application at 7.

C.

Information Requests

On February 24, 2006, the Consumer Advocate served information requests ("IRs") upon Applicant. Applicant filed initial, supplemental, and second supplemental responses on March 9, 2006, March 17, 2006, and March 31, 2006, respectively.

D.

Consumer Advocate's Statement of Position

On June 9, 2006, the Consumer Advocate filed its Statement of Position ("Statement of Position"). In considering Applicant's request for commission approval to expand its service territory, the Consumer Advocate considers (1) whether Applicant currently has the ability to provide potable and non-potable water to customers in the current service territory, as well as the additional properties, and (2) what effect the expansion will have on the existing rates charged for the water service provided to Applicant's existing customers.¹⁹

With respect to Mayor Arakawa's expressed interest in having the County take over certain water systems on the island of Maui, the Consumer Advocate states: "As there does not appear to be any immediate plans by the County to serve the expanded service territory, [Applicant]'s assertion that the County will be unable to provide service seems reasonable. Thus, since there

¹⁹Statement of Position at 3-4.

are customers requesting water service, the need to propose expanding [Applicant]'s service territory is evident."²⁰

In considering whether Applicant currently has the ability to provide potable and non-potable water to customers in the current service territory, as well as the additional properties, the Consumer Advocate first notes that "[Applicant] appears to assess the calculated maximum water consumption of: 1) the developments it currently serves; 2) the future developments within its existing territory that [Applicant] plans to serve; and 3) the future developments within the proposed territory."²¹ The Consumer Advocate explains that it received confirmation from Applicant that the forecasted water consumption for the two phases of Honolua Ridge are comparable. However, the Consumer Advocate provides recalculations of the forecasted water consumption based on the higher actual water consumption of Plantation Estates, as provided in Applicant's Supplemental Attachment.²² Using Applicant's total estimated 10,588 gpd of potable water and 93,810 gpd of non-potable water, and a total of 17 residential units for the Plantation Estates,²³ the

²⁰Statement of Position at 3.

²¹Statement of Position at 5.

²²Statement of Position at 7-8 (citing Kapalua Water Company, Ltd.'s Supplemental Response to Division of Consumer Advocacy's First Submission of Information Requests (CA-IR-3a), Supplemental Attachment CCH-IR-3a (Part 1), at 1 of 1).

²³The Consumer Advocate states that Applicant's estimate of 11 residential units in this docket appears to be incorrect, as Applicant identified 17 residential units for the Plantation Estates in its water analysis provided in Docket No. 05-0132.

Consumer Advocate estimates water consumption of 622 gpd of potable water and 5,518 gpd of non-potable water per residential unit.²⁴ Based on these estimates, the Consumer Advocate recalculates water consumption as follows:²⁵

	Estimated Completion of Development	Estimated Maximum Water Consumption (gpd)	
		Potable	Non-Potable
Developments currently served by Applicant	Current	698,822	3,093,030
Future developments in Applicant's existing service territory	2006-2015	198,678	1,430,231
Future developments within the proposed territory expansion	2006-2009	42,054	496,745
Estimated total water consumption to the year 2015	Current-2015	939,554	5,021,006
Future developments in Applicant's existing service territory	2016-2018	316,992	1,340,523

Thus, the Consumer Advocate states that it appears that Applicant will be able to meet the potable and non-potable requirements of customers in its existing service territory and proposed expansion territory until the year 2016.²⁶ The Consumer Advocate notes that Applicant's current water sale

²⁴Statement of Position at 7-8.

²⁵Statement of Position at 8-9.

²⁶Statement of Position at 9.

agreement with ML&P only allows Applicant to draw one million gpd from the two wells, which would not meet the estimated maximum potable water consumption beyond 2015.²⁷ However, the Consumer Advocate recognizes that Applicant appears to have resources available to it that will allow it to increase its capacity to meet the potable water demands beyond the year 2015.²⁸ The Consumer Advocate therefore concludes that the addition of the two properties to Applicant's service territory should not affect Applicant's ability to service current and future customers in Applicant's existing service territory.²⁹

In addition, the Consumer Advocate considers the rate impact of the addition of the two properties on the current rates of Applicant's existing customers.³⁰ First, the Consumer Advocate considers the cost to install and maintain the new facilities to service customers in the additional properties.³¹ The Consumer Advocate notes that the new facilities will be constructed by the developer outside of the individual residential properties and dedicated to Applicant at no cost, and therefore there will be no change to Applicant's net plant-in-service value for ratemaking purposes.³² With respect to the operational and maintenance costs for servicing the two

²⁷Statement of Position at 9.

²⁸Statement of Position at 10.

²⁹Statement of Position at 10.

³⁰Statement of Position at 10-14.

³¹Statement of Position at 11.

³²Statement of Position at 12.

properties, the Consumer Advocate states that "there is insufficient evidence available to conclusively determine whether the expenses will exceed or be less than the incremental revenues expected to be received from the expanded service territory."³³ However, the Consumer Advocate states that until there is evidence to suggest otherwise, it is "willing to assume that the incremental costs to serve customers in the expansion territory will not exceed the revenues expected to be collected from the customers."³⁴

Second, the Consumer Advocate considers the additional revenues vs. total costs of new facilities.³⁵ The Consumer Advocate states that "assuming that the revenue to cost ratio remains fairly consistent, existing ratepayers should not be adversely affected by the service territory expansion."³⁶ In addition, the Consumer Advocate states that because the new facilities will be contributed to Applicant, "there will be no rate base impact."³⁷

Third, the Consumer Advocate considers any required upgrades to the existing system needed to provide water service to the customers in new properties.³⁸ The Consumer Advocate notes

³³Statement of Position at 12.

³⁴Statement of Position at 12.

³⁵Statement of Position at 13.

³⁶Statement of Position at 13.

³⁷Statement of Position at 13.

³⁸Statement of Position at 14.

that Applicant will not require any additional upgrades to its water system due to the expansion of its service territory.³⁹

Fourth, the Consumer Advocate considers Applicant's expectation of a rate increase due to the addition of the new properties.⁴⁰ The Consumer Advocate notes Applicant does not intend to amend its tariffs at this time, and that Applicant has no plans to increase its rates.⁴¹ The Consumer Advocate also notes that "the addition of the two properties to [Applicant]'s service territory should increase its revenues and allow [Applicant] to more fully utilize its system's capabilities."⁴² Indeed, "[t]he additional revenue generated with no required capital investment by [Applicant] and only incremental operations and maintenance costs should increase [Applicant]'s net operating income."⁴³ Thus, the Consumer Advocate concludes that "the addition of the two properties should not result in a negative impact on existing customers."⁴⁴

Accordingly, the Consumer Advocate does not object to the approval of the Application for the following reasons:

1. [Applicant] currently has sufficient capacity and has additional resources available to provide potable and non-potable water to customers in the expanded service territory without

³⁹Statement of Position at 14.

⁴⁰Statement of Position at 14.

⁴¹Statement of Position at 14.

⁴²Statement of Position at 14.

⁴³Statement of Position at 14.

⁴⁴Statement of Position at 14.

adversely affecting the service provided to its existing customers.

2. The developer of the properties in the expansion territory will provide for the installation of the additional piping and appurtenances to connect the properties to [Applicant]'s water system, so as not to burden [Applicant] and existing ratepayers with any of these expenditures.
3. There should be no adverse rate impact on [Applicant]'s existing customers associated with the proposed expansion because the revenues to be generated by the new customers are expected to offset the expected maintenance expenses related to the expansion.⁴⁵

II.

DISCUSSION

A.

Expanded Service Territory

HRS § 269-7.5 states, in relevant part:

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged

⁴⁵Statement of Position at 14-15.

including the rules and regulations governing the proposed service.

(b) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules and regulations proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

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As Applicant's authority pursuant to its CPCN does not currently authorize it to provide potable and non-potable water utility services to the two additional properties in the proposed expanded service area, commission approval is required to amend Applicant's service territory to include the expanded service area.

Pursuant to HRS § 269-7.5, the commission finds that Applicant is fit, willing, and able to provide the expanded water utility services, as shown in Exhibit B to the Application, and

that the provision of these services is required by the present or future public convenience and necessity. Applicant is able, or will be able, to provide water utility services to the proposed additional properties, and it will be able to do this without detriment to the level and quality of service currently being provided to its existing customers.

Applicant has access to over one million gpd of potable water, as well as 7.2 million gpd of non-potable water. Thus, Applicant states, and the Consumer Advocate agrees, that it currently has sufficient capacity and has additional resources available to it to provide potable and non-potable water to existing customers, as well as customers in the proposed additional properties.

Applicant will not incur the costs of installation of any additional transmission lines, service laterals or appurtenant equipment, or any additional upgrades to its water system resulting from the expansion of its service territory. The revenues generated by the additional properties are expected to offset the expected maintenance expenses related to the expansion. Therefore, there will be no change to Applicant's net plant-in-service value for ratemaking purposes and existing ratepayers will not be burdened with any of the costs of the expansion. Indeed, Applicant asserts that no amendments to its tariff are required.

Moreover, the commission notes that the two additional properties are located near properties currently being serviced

by Applicant, thereby facilitating the provision of service to the new properties.

Finally, the occupants of the proposed additional properties must be afforded a means to access potable and non-potable water, and the commission is unaware of any other water utility facility willing or able to service the additional properties.⁴⁶ Accordingly, for the foregoing reasons, the commission concludes that Applicant's request for commission approval to expand its existing water utility service territory should be approved, subject to the conditions described below.

B.

Amendment of Rules and Regulations

Applicant proposes to amend and replace Exhibit 1 attached to its Rules and Regulations with the drawing attached as Exhibit B to the Application. Applicant states that if its Application is approved, it will file revised sheets of its Rules and Regulations to amend and replace Exhibit 1 and reflect the changes to Applicant's revised service territory. Accordingly, in light of the above findings, the commission concludes that Applicant should promptly file revised sheets of its Rules and Regulations to amend and replace Exhibit 1 with the drawing attached as Exhibit B to the Application, and to reflect the changes to Applicant's revised service territory.

⁴⁶See section I.B., supra.

III.

ORDERS

THE COMMISSION ORDERS:

1. Applicant's Application, filed on March 8, 2005, for commission approval to expand its existing service territory to provide potable and non-potable water utility services to additional properties is approved, subject to paragraph 2 below. Applicant's new service area includes those properties reflected in Exhibit B attached to the Application.

2. Applicant shall promptly file with the commission its revised sheets of its Rules and Regulations to amend and replace Exhibit 1 with the drawing attached as Exhibit B to the Application, and to reflect the changes to Applicant's revised service territory. The revised sheets will take effect upon filing. Failure to promptly comply with this requirement may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii JUL 31 2006.

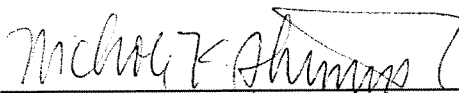
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Nichole K. Shimamoto
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22662 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

DATED: JUL 31 2006