

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
METROPOLITAN MORTGAGE & )  
SECURITIES CO., INC. )  
For Sale of Membership Interest in )  
Mokuleia Water, LLC, to North Shore )  
Water Company, LLC. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0137

ORDER NO. 22815

Filed Sept. 1, 2006  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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

2006 SEP -5 A 9:18

RECEIVED

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

K. Higashi



On June 13, 2006, Mokuleia Beach Colony filed a motion to intervene.<sup>2</sup> Mokuleia Beach Colony is an association of co-owners of the Mokuleia Beach Colony and a multiple-unit facility served by the Mokuleia Water, LLC.

## 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 intervention, requires the movant to state the facts and reasons for the proposed intervention, and its position and interest

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Membership Interest of, or in the Alternative, the Applicable Water Facilities Assets in, Mokuleia Water, LLC to North Shore Water Company LLC; Verifications; and Certificate of Service (collectively the "Application"). Metropolitan 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 and Hawaii Administrative Rules ("HAR") § 6-61-62, the Consumer Advocate is an ex officio party to this proceeding.

<sup>2</sup>On June 8, 2006, Mokuleia Beach Colony requested "an indefinite extension of time to intervene in this docket." See letter by Michael W. Gibson, Esq., counsel for Mokuleia Beach Colony (June 8, 2006). On June 9, 2006, the commission wrote to the parties of Docket No. 05-0009 to advise that the Application filed by Metropolitan on May 23, 2006 in this proceeding is being treated as a separate docket from Docket No. 05-0009. On June 12, 2006, the commission granted Mokuleia Beach Colony's request for extension of time to file a motion to intervene. On June 13, 2006, Mokuleia Beach Colony filed its Motion to Intervene and Certificate of Service ("Motion to Intervene").

thereto. In particular, HAR § 6-61-55(b) requires that a movant's motion make reference to:

- (1) The nature of the applicant's statutory or other right to participate in the hearing;
- (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
- (3) The effect of the pending order as to the applicant's interest;
- (4) The other means available whereby the applicant's interest may be protected;
- (5) The extent to which the applicant's interest will not be represented by existing parties;
- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

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."

Mokuleia Beach Colony's Motion to Intervene fails to satisfy HAR § 6-61-55(b). It does not state the nature of Mokuleia Beach Colony's right to participate in the proceeding, the nature and extent of its property, financial, and other interest in the proceeding, the other means available whereby its interest may be protected, the extent to which its interest will not be represented by existing parties, the extent to which its participation can assist in the development of a sound record, the extent to which its participation will not broaden the issues or delay the proceeding, the extent to which its interest in the proceeding differs from that of the general public, and whether its position is in support of or in opposition to the relief sought.

In its Motion to Intervene, Mokuleia Beach Colony merely states that it "is a consumer of water from the water system operated by Mokuleia Water System, LLC" and that it "has an interest in the financial fitness, willingness and ability of the operator of the water system." Mokuleia Beach Colony does not provide any other description of its interest in this proceeding. Nor does Mokuleia Beach Colony describe how its interest is distinct from the interests statutorily represented by the Consumer Advocate.<sup>3</sup> As Mokuleia Beach Colony has not met its burden of demonstrating why it should be allowed to intervene in this proceeding, the commission will deny Mokuleia Beach Colony's request to intervene.

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<sup>3</sup>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."

B.

Regulatory Schedule

To assist in the efficient disposition of the instant proceeding, the commission finds it necessary to establish issues, procedures, and a schedule. Thus, we conclude that Metropolitan and the Consumer Advocate should submit to the commission a stipulated procedural order, incorporating their agreed-upon issues, procedures, and schedule with respect to this proceeding, for commission approval within thirty days from the filing of this Order. If the parties are unable to stipulate to such order, each party shall submit a proposed procedural order for the commission's consideration within thirty days from the date of this Order.

III.

Orders

THE COMMISSION ORDERS:

1. Mokuleia Beach Colony's Motion to Intervene, filed on June 13, 2006, is denied.

2. Metropolitan and the Consumer Advocate shall submit to the commission a stipulated procedural order, incorporating their agreed-upon issues, procedures, and schedule with respect to this proceeding, for commission approval within thirty days from the filing of this Order. If the parties are unable to stipulate to such order, each party shall submit a proposed procedural order for the commission's consideration within thirty days from the date of this Order.

DONE at Honolulu, Hawaii SEP - 1 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni  
Catherine P. Awakuni  
Commission Counsel

2006-0137.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22815 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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Counsel for Metropolitan Mortgage & Securities Co., Inc.

NORTH SHORE WATER COMPANY, LLC  
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Beverly Hills, CA 90210  
Attn: Mary Ricks

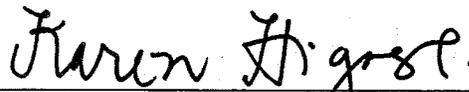
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Certificate of Service

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Karen Higashi

DATED: SEP - 1 2006