

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
)
 Instituting Proceedings)
 Relating to the Determination)
 of the Appropriate Fees and)
 Assessments to Finance the)
 Administration and Operation)
 Of the One Call Center.)
 _____)

DOCKET NO. 05-0195

DECISION AND ORDER NO. 23086

Filed Nov. 28, 2006
At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

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

K. Higashi

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Docket No. 05-0195
Decision and Order No. 23086

Decision and Order

By this Decision and Order, the commission approves the One Call Center Advisory Committee's ("Advisory Committee") recommended fees and assessments, which were adopted by the Advisory Committee on January 13, 2006, and amended by the commission for clarification purposes, and further amended to include a billing and collection schedule, attached as Exhibit A hereto, and incorporated herein by reference, to finance the administration and operation of the Hawaii One Call Center ("One Call Center"), as required by Hawaii Revised Statutes ("HRS") § 269E-6. The commission also establishes the billing and collection process to be followed in the collection of fees and assessments for the One Call Center.

I.

Background

HRS § 269-7 and Hawaii Administrative Rules ("HAR") § 6-61-71 allow the commission to investigate any matters subject

to its jurisdiction. Accordingly, by Order No. 21976, filed on August 10, 2005 ("Order No. 21976"), the commission instituted an investigation to determine the appropriate fees and assessments to finance the administration and operation of the One Call Center. To assist the commission in its investigation, the commission made the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate")¹ a party to this proceeding.

In Order No. 21976, the commission also invited all interested public utilities, businesses, building or construction groups, trade or contractor associations and community or civic groups to participate in this docket as intervenors, or participants without intervention, so long as these persons or entities satisfy and adhere to the commission's administrative rules (i.e., HAR Chapter 6-61, Rules of Practice and Procedure Before the Public Utilities Commission) governing intervention and participation in commission proceedings.

By Order No. 22019, filed on September 9, 2005, the commission granted motions to intervene by: (1) Waikoloa Sanitary Sewer Company, Inc., dba West Hawaii Sewer Company ("WHSC"); (2) Waikoloa Resort Utilities, Inc., dba West Hawaii Utility Company ("WHUC"); (3) Waikoloa Water Company, Inc., dba West Hawaii Water Company ("WHWC");² (4) Hawaiian Telcom, Inc. ("Hawaiian Telcom"); (5) Sandwich Isles Communications, Inc.

¹Pursuant to HRS § 269-51 and HAR § 6-61-62, the Consumer Advocate is an ex officio party to all proceedings before the commission.

²WHSC, WHUC and WHWC are collectively referred to as the "Waikoloa Intervenors."

("Sandwich Isles"); (6) Makena Wastewater Corporation ("Makena Wastewater"); (7) South Kohala Wastewater Corporation ("South Kohala Wastewater"); (8) Board of Water Supply, City and County of Honolulu ("BWS"); (9) Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications ("TWTC"); (10) Time Warner Entertainment Company, L.P., dba Oceanic Time Warner Cable ("Oceanic Cable"); (11) Pacific Lightnet, Inc. ("PLNI"); (12) Hawaiian Electric Company, Inc. ("HECO"); (13) Hawaii Electric Light Company, Inc. ("HELCO"); and (14) Maui Electric Company, Limited ("MECO").³ Additionally, by Order No. 22020, filed on September 9, 2005, the commission granted the motion to intervene of Hawaii-American Water Company ("HAWC").⁴ The intervenors and the Consumer Advocate are collectively referred to as the "Parties".

By Order Nos. 22019 and 22020, the commission directed the Parties to meet with the Advisory Committee⁵ to propose appropriate fees and assessments for the financing and administration of the One Call Center and to assist the Advisory Committee in meeting its September 21, 2005 goal for proposing fees and assessments.

³HECO, HELCO and MECO are collectively referred to as the "HECO Companies."

⁴By Order No. 22040, filed on September 21, 2005, the commission denied the City and County of Honolulu's untimely motion for an extension of time to file a motion to intervene.

⁵HRS § 269E-4(c)(1) requires the Advisory Committee to advise the commission in "setting the appropriate fees and assessments for the administration and operation of the [One Call Center]."

A meeting was held between the Parties and the Advisory Committee's Subcommittee on Fees and Rates on September 20, 2005, which allowed the intervenors to ask questions and offer input regarding the fees and assessments. To allow for further consideration and input, the Advisory Committee requested, and the commission granted, an extension of its deadline to file a fees recommendation to January 13, 2006. The intervenors' deadline to submit comments was also extended to January 20, 2006.

A.

Proposed Fees

At its January 13, 2006 meeting, the Advisory Committee passed a motion to recommend the methodology to determine the fees and assessments to be charged to all subsurface facility operators in the State of Hawaii, and adopted its Proposed One Call Center Fees and Assessments ("Proposed Fees and Assessments").

The Proposed Fees and Assessments are as follows:⁶

Registration Fee

- Each operator, as defined in HRS § 269E-2 ("Operator"), who owns, operates, or maintains a subsurface installation in the State of Hawaii must pay a one-time registration fee of \$350. The registration fee is valid during the period beginning January 1, 2006, through June 30, 2009. The Operator registration fee will not be prorated if paid at any time subsequent to January 1, 2006.

⁶Non-substantive changes for clarification purposes have been made to the Proposed Fees and Assessments.

- Each Operator, upon payment of its registration fee, is entitled to twelve (12) requests for "mark-out" tickets, at no additional fee, valid from January 1, 2006, or upon payment of its registration fee, whichever is later, through June 30, 2009.

Ticket Assessments

- For the period January 1, 2007 through June 30, 2007, and for each six-month period thereafter, an Operator will be billed (via written invoice) for its portion of the One Call Center administration and operations costs, based on the percentage of tickets it receives as a portion of the total number of tickets issued by the One Call Center during the six-month period. Each Operator's percentage portion of tickets will be applied to the total cost to operate and administer the One Call Center during the preceding six-month period.
- For the period July 1, 2006 through December 31, 2006 only, an Operator will be billed based on the number of tickets it receives as a portion of the total tickets issued from the One Call Center during that six-month period, and that percentage will be applied to the cost to operate and administer the One Call Center during the entire calendar year 2006.
- Tickets issued from January 1, 2006 through June 30, 2006 will not be considered in calculating any ticket assessments.⁷

B.

Parties' Comments to the Proposed Fees and Assessments

By letter dated January 18, 2006, the commission provided the Parties with the Advisory Committee's Proposed Fees and Assessments and extended the deadline by which the Parties

⁷The Committee recognizes that the initial months of the One Call Center may yield atypical ticket counts, thus it proposes this introductory period.

could provide comments on the Advisory Committee's proposal to January 27, 2006. PLNI, the HECO Companies, and the Waikoloa Intervenors filed comments on the Proposed Fees and Assessments.⁸ Those comments were provided to the Advisory Committee, which reaffirmed its Proposed Fees and Assessments and proposed that most of the comments be addressed in subsequent rulemaking.

1.

PLNI

In its Comments on the Advisory Committee's Recommendation filed on January 26, 2006, PLNI states that it has no objection to the proposed one-time registration fee, and that in general, it agrees with the Committee's proposal to assess additional fees based on the percentage of tickets each operator receives as a portion of the total tickets issued by the One Call Center during a six-month period. PLNI, however, proposes that "each operator's percentage of tickets should be based on the number of positive response tickets submitted by the operator to the One Call Center, not the number of initial request tickets submitted by the One Call Center to the operator."⁹ PLNI states that based on its understanding of how

⁸By letter dated January 25, 2006, HAWC informed the commission that it had no comments on the Advisory Committee's Proposed Fees and Assessments. Likewise, on January 27, 2006, TWTC and Oceanic Cable informed the commission that it had no comments or objections to the Advisory Committee's proposal. Also, on January 27, 2006, the Consumer Advocate informed the commission that it had no comments as it was actively involved in developing the proposal.

⁹PLNI's Comments on the Advisory Committee's Recommendation ("PLNI Comments") at 1.

tickets are generated, initial tickets may be issued for an area larger than the specific area of the proposed excavation, so that an operator may receive tickets that are in a general area, but not in the specific area of the proposed excavation, resulting in an abnormal number of what it terms "positive response tickets."¹⁰ PLNI proposes that the Committee's recommendation regarding ticket fees be clarified to include the positive response tickets only. PLNI also suggests that the commencement of the reporting period for ticket assessment, i.e., July 1, 2006, be extended until such time that the One Call Center has completed the digitization process for all operators' maps. PLNI asserts that until this process is in place, operators will receive a ticket for every excavation in the state, rendering the use of tickets as a basis for assessment apportionment meaningless. Lastly, PLNI requests the commission to determine that should the proposed fee structure hinder competition or discriminate against a particular party or industry, "that any affected person(s) shall have the right to petition the [c]ommission to re-open or reconsider the fee structure, with additional input from all interested parties."¹¹

¹⁰A "positive response ticket" is one in which an operator, upon receiving a ticket, confirms the existence of, and marks, its underground facilities in the proposed excavation area. This is in contrast to an operator receiving a ticket for a general area, but for which, in the operator's judgment, the excavation will take place away from the operator's subsurface facilities, and for which no marking by the operator is required.

¹¹PLNI Comments at 3.

2.

The HECO Companies

The HECO Companies submitted comments to the commission on January 27, 2006, in support of the Proposed Fees and Assessments consisting of a one-time registration fee of \$350 and a ticket assessment charge to each subsurface installation operator in the State of Hawaii. In addition, the HECO Companies suggest that the commission: (1) include a specific time-frame for billing the one-time registration fee, and (2) implement a process to determine the validity of each ticket issued by the One Call Center.

3.

Waikoloa Intervenors

The Waikoloa Intervenors submitted comments to the commission on January 27, 2006, in which they suggest that the commission implement a system whereby an operator "may pass on to customers, without the need to file a rate case, those fees and costs related to the One Call Center that are charged to an operator."¹² They also ask that the commission establish a penalty to discourage frivolous calls to the One Call Center, i.e., cases where requests for a mark-out are made, where the caller has no intention of excavating, thus creating an unnecessary "ticket" for an operator, and an additional charge.

¹²Waikoloa Intervenors Comments on the Advisory Committee's Recommendations at 1.

II.

Discussion

A.

Proposed Fees and Assessments

HRS § 269E-6 authorizes the commission to assess fees on operators to finance the establishment and operation of the One Call Center in an amount and on a schedule to be determined by the commission. HRS § 269E-6 provides, in relevant part:

- (a) To finance the establishment and operation of the [One Call Center] and the administrative costs of the commission, operators **shall pay to the commission a fee in an amount and at a schedule determined by the commission.** The commission may also assess fees on excavators. All fees paid by operators and excavators shall be deposited with the director of finance to the credit of the public utilities commission special fund.
- (b) All operators of subsurface installations in this State shall share in the operational and administrative costs of the [One Call Center], except where:
 - (1) All of the operator's subsurface installations are located on property owned exclusively by that operator; and
 - (2) The operator has not authorized another operator to use the property for any subsurface installation.

HRS § 269E-6(a) and (b) (emphasis added).¹³

Here, the Proposed Fees and Assessments, as proposed by the Committee, and as set forth above, appear to be reasonable and in the public interest. Under the proposal, all operators will share proportionately in the cost to maintain the

¹³HRS § 269E-6(a) also provides that the commission "may also assess fees on excavators."

One Call Center, the ticket assessment charge will be used to recover the total cost to operate and administer the One Call Center, and the number of tickets issued to each operator will determine the percentage share of the costs. In addition, the Parties were generally supportive of the fee structure.

To the extent that certain Parties had suggestions regarding the fee structure, e.g., ticket validity, frivolous requests for mark outs, and reconsideration of fee apportionment, the commission agrees with the Advisory Committee that those concerns are more appropriately addressed in subsequent rulemaking.

The commission notes, however, that it declines to adopt the Waikoloa Intervenors' suggestion to vest operators with the ability to pass fees and costs to their customers without the filing of a rate case. Since HRS Chapter 269E allows operators that are currently paying public utility fees to petition the commission to apply a portion of its fees as a credit to its One Call Center fees, these operators will have the opportunity to recover their One Call Center fees and costs through any petition for credit granted by the commission.¹⁴

Likewise, the commission declines to delay the commencement of the ticket reporting period until the One Call Center has completed the digitization process for all

¹⁴HRS § 269E-6(f) provides that "[a]ny operator or excavator that pays public utility fees to the commission pursuant to section 269E-30 may petition the commission for approval to apply a portion of its public utility fee payments as a credit toward its center fees."

operators' maps, as suggested by PLNI. Each facility operator was notified by the Hawaii One Call Center in January 2006 that it had the options of submitting maps to the One Call Center, of receiving tickets in any area in which the operator specified using geometric shapes, or of receiving tickets for mark-outs generated on the islands in which it maintains subsurface facilities. As such, not all operators would have submitted maps for digitization rendering the requirement proposed by PLNI inappropriate.

B.

Billing and Collection Schedule

In addition, the commission finds that the billing and collection process for the Proposed Fees and Assessments should be augmented as follows: (1) the One Call Center shall mail to each operator's last known address on file with the One Call Center a written invoice billing the operator the one-time registration fee and directing that the fee be paid to the commission at 465 South King Street, Room 103, Honolulu, Hawaii 96813, by check or money order, payable to the Hawaii Public Utilities Commission on or before thirty (30) days after the invoice date; the registration fee may also be paid in cash and delivered to the commission at the above address within the same thirty (30) day period; (2) the twelve (12) tickets to which each operator is entitled at no additional fee be issued by the One Call Center only upon payment in full by the operator of the initial registration fee; (3) ticket assessments and billing invoices should be generated and mailed by the One Call Center

to the operator's last known address on file with the One Call Center within fifteen (15) days of the end of each six-month billing period, with a copy of each billing mailed to the commission; and (4) operators should make payment in full to the commission no later than thirty (30) days after the billing date.

Accordingly, the commission concludes that the Proposed Fees and Assessments, as put forth and adopted by the One Call Center Committee on January 13, 2006, as augmented by the commission with a billing and collection schedule, attached hereto as Exhibit A, should be approved.

III.

Order

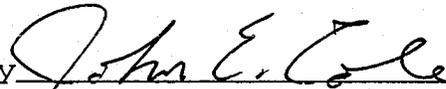
THE COMMISSION ORDERS:

The Proposed Fees and Assessments to finance the administration and operation of the Hawaii One Call Center, as approved and recommended by the One Call Center Advisory Committee on January 13, 2006, as amended by the commission for clarification purposes, and as amended to include a billing and collection schedule, attached hereto as Exhibit A, and incorporated herein by reference, are approved.

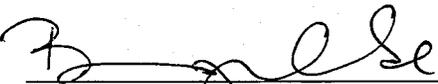
DONE at Honolulu, Hawaii NOV 28 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

05-0195.eh

One Call Center Fees and Assessments and
Billing and Collection Schedule
Exhibit A

Registration Fee

- Each operator, as defined in HRS § 269E-2 ("Operator"), who owns, operates, or maintains a subsurface installation in the State of Hawaii must pay a one-time registration fee of \$350. The registration fee is valid during the period beginning January 1, 2006, through June 30, 2009. The Operator registration fee will not be prorated if paid at any time subsequent to January 1, 2006.

Each Operator, upon payment of its registration fee, is entitled to twelve (12) requests for "mark-out" tickets, at no additional fee, valid from January 1, 2006, or upon payment of its registration fee, whichever is later, through June 30, 2009.

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- For the period July 1, 2006 through December 31, 2006 only, Operators will be billed based on the number of tickets it receives as a portion of the total tickets issued from the One Call Center during that six-month period, and that percentage will be applied to the cost to operate and

administer the One Call Center during the entire calendar year 2006.

- Tickets issued from January 1, 2006 through June 30, 2006 will not be considered in calculating any ticket assessments.

Billing and Collection Schedule

- The one-time registration fees and their related billing invoices will be generated and mailed by the One Call Center to the Operator's last known address on file with the One Call Center and said fee shall be paid to the commission, by check or money order, payable to the Hawaii Public Utilities Commission at 465 South King Street, Room 103, Honolulu, Hawaii 96813, on or before January 31, 2007. The registration fee may also be paid in cash and delivered to the commission at 465 South King Street, Room 103, Honolulu, Hawaii 96813.
- The twelve (12) tickets to which each Operator is entitled at no additional fee shall be issued by the One Call Center only upon payment in full by the Operator of the initial registration fee.
- Ticket assessments and their related billing invoices will be generated and mailed by the One Call Center to the Operator's last known address on file with the One Call Center within fifteen (15) days of the end of each six-month billing period, with a copy of each billing mailed to the commission.
- Operators shall make payment in full to the commission at 465 South King Street, Room 103, Honolulu, Hawaii 96813, no later than thirty (30) days after the billing date.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23086 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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Certificate of Service
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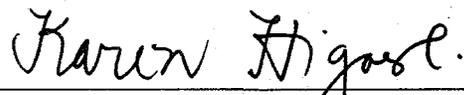
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