

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

NORTH SHORE WASTEWATER
TREATMENT, L.L.C.

DOCKET NO. 2006-0486

For Review and Approval of Rate
Increases and Revised Rate
Schedules.

ORDER NO. 23190

Filed January 11, 2007

At 11 o'clock A.M.

for Broderick K. Kane
Chief Clerk of the Commission

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

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KAREN HIGASHI

Chief Clerk, Public Utilities
Commission, State of Hawaii.

Broderick K. Kane

By motion filed on December 19, 2006, NSWT requests commission approval to: (1) submit unaudited financial information in lieu of the audited balance sheet required by Hawaii Administrative Rules ("HAR") § 6-61-75(b)(1); and (2) utilize calendar year 2007 financial data in place of the mid-year data that would otherwise be required by HAR

§ 6-61-88(3)(A).¹ NSWTT makes its requests pursuant to HRS § 269-16(f) and HAR §§ 6-61-41 and 6-61-92.

In its Motion, NSWTT asserts that it is a public utility with annual gross revenues of less than \$2 million, see HRS § 269-16(f); that it currently does not have any audited financial statements; and that because of its limited size and revenues, it would be unduly burdensome and time consuming for NSWTT to prepare audited financial information solely for the purpose of complying with the audited balance sheet requirement in HAR § 6-61-75(b)(1). Accordingly, NSWTT seeks approval to submit unaudited financial information in lieu of the audited balance sheet required by section 6-61-75(b)(1).

In addition, NSWTT seeks approval to utilize the 2007 calendar test year in lieu of a mid-year test year, as required by HAR § 6-61-88(3)(A). According to NSWTT, it is actively preparing its rate case application and supporting exhibits and testimony, but was unable to file its application by the end of 2006,² which would have allowed the use of a 2007 calendar test

¹NSWTT's Motion to Waive Certain General Rate Case Application Regulatory Requirements ("Motion"), Memorandum in Support of Motion ("Memorandum"), and Certificate of Service, filed on December 19, 2006 (collectively, "NSWTT's Motion"). NSWTT served copies of its Motion upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to all matters before the commission pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and HAR § 6-61-62. On December 22, 2006, the Consumer Advocate filed a Response to Motion to Waive Certain General Rate Case Application Regulatory Requirements ("Response").

²NSWTT states that due to various delays in gathering data for its pending Application, the earliest it expects to file its Application and supporting exhibits is "mid-to-late January 2007." Memorandum at 3.

year pursuant to HAR § 6-61-88(3)(B).³ Adhering to a mid-year test year, i.e., July 1, 2007 to June 30, 2008, as required by HAR § 6-61-88(3)(A) would necessitate re-doing all of NSWT's financial exhibits and other supporting information. As NSWT's rate case application and supporting financial exhibits and testimony are virtually complete, and re-doing these documents to conform to a mid-year test year would be an onerous and expensive task, NSWT seeks to utilize calendar year 2007 financial data in place of the mid-year data that would otherwise be required.

NSWT does not request a hearing on its Motion.⁴

B.

Consumer Advocate's Response

On December 22, 2006, the Consumer Advocate filed its Response to NSWT's Motion in which it states that it does not oppose NSWT's requests to submit unaudited financial statements and use a 2007 calendar test year. According to the Consumer Advocate, it "generally concurs that utilities with less than \$2 million in operating revenues that do not routinely have audits performed on the[ir] financial records should be allowed to submit unaudited financial statements in lieu of audited

³Memorandum at 3.

⁴Motion at 2.

financial statements"⁵ as audited financial statements can be time consuming and expensive for a small utility.⁶

With respect to the use of a 2007 calendar test year, the Consumer Advocate states that allowing NSWT to use the 2007 calendar test year would allow for more efficient and less costly processing of the rate case application in that NSWT would not have to re-do its supporting exhibits and testimony. In addition, NSWT's use of a 2007 calendar year would provide greater certainty of the operating results upon which the test year revenue requirement is based, as there will be a greater period of actual experience rather than reliance on forecasts to assess the reasonableness of the test year revenue requirement projections. Finally, the Consumer Advocate cites to the commission's previous approvals of requests to use a calendar test year, where the commission's rules required use of a "split test year."⁷

⁵Response at 2.

⁶The Consumer Advocate states that it is reasonable, however, to require the submission of audited financial statements in situations where either the utility prepares audited financial statements as a general business practice, or there are concerns with the validity of the financial information presented in the unaudited statements. Response at 3.

⁷See, e.g., In re KRW Corporation, dba Kohala Ranch Water Company, Docket No. 05-0334, Order No. 22236 (January 24, 2006) (commission waiver of the audited balance sheet and test year requirements).

II.

Discussion

A.

Audited Balance Sheet Requirement (HAR § 6-61-75(b)(1))

HAR Chapter 6-61, Subchapter 8, governs rate increase applications and tariff changes. In relevant part, HAR § 6-61-86 requires a public utility requesting authority to change a rate, schedule, or charge to file an application, and a financial statement under HAR § 6-61-75. HAR § 6-61-75(b)(1) requires that financial statements be accompanied by "[a]n audited balance sheet, including any pertinent notations and explanations contained therein, as of the end of the last calendar year[.]"

The commission, however, may modify the requirements of Subchapter 8, in its discretion, if the requirements of the subchapter would impose a financial hardship on the applicant or be unjust or unreasonable. Further, under HRS § 269-16(f), the commission is authorized to amend its rules and procedures "which will provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers." HRS § 269-16(f).

Here, NSWT is a public utility with annual gross revenues of less than \$2 million. According to NSWT, it does not have audited financial statements and because of its limited size and revenues, it would be unduly burdensome and time consuming for NSWT to prepare audited financial information solely for the

purpose of complying with the audited balance sheet requirement in HAR § 6-61-75(b)(1).

Having reviewed the record, the commission agrees with NSWT and the Consumer Advocate and finds that it would be unduly burdensome to NSWT to be required to obtain audited financial statements, and accordingly, will approve NSWT's request to waive the audited balance sheet requirement.

B.

Test Year Requirement (HAR § 6-61-88(3)(A))

HAR § 6-61-88(3) states, in relevant part:

For an application by a public utility with annual gross revenues from its public utility business of less than \$2,000,000 for a general rate increase or to alter any classification, contract, practice, or rule as to result in a general rate increase to be considered a completed application under section 269-16, HRS, the application, in addition to meeting the requirements of section 6-61-86, must contain the following:

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(3) A summary of estimated earnings (rate of return summary) on a depreciated rate base for a twelve month period (test year). The adjusted or estimated results shown for the test year shall be on a consistent basis reflecting normalized conditions to the best estimate possible. The test year shall be a forward test year, determined as follows:

(A) If an application is filed within the first six months of any year, the test year shall be from July 1 of the same year through June 30 of the following year; or

(B) If an application is filed in the last six months of any year, the test year shall be from January 1 through December 31 of the following year; and

HAR § 6-61-88(3). As noted above, the commission may modify the requirements of HAR § 6-61-88(3) if the requirement would "impose a financial hardship on the applicant or be unjust or unreasonable." HAR § 6-61-92.

According to NSWT, its rate case application and supporting financial exhibits and testimony are "virtually complete" so revising these documents to utilize a split test year would be an onerous and expensive task.⁸ Likewise, the Consumer Advocate argues that NSWT's use of a 2007 calendar year would provide greater certainty of the operating results upon which the test year revenue requirement is based, as there will be a greater period of actual experience rather than reliance on forecasts.

Based on the foregoing, it appears that employment of the test year requirement in HAR § 6-61-88(3) would impose a financial hardship on NSWT, and thus, would be unjust and unreasonable in this instance. Accordingly, the commission finds that the test year requirement should be waived and NSWT should be allowed to utilize calendar year 2007 financial data, provided that NSWT files its rate case application no later than June 30, 2007.

⁸Memorandum at 3.

III.

Orders

THE COMMISSION ORDERS:

1. NSWT's Motion to Waive Certain General Rate Case Application Regulatory Requirements, filed on December 19, 2006, is granted.

2. NSWT is authorized to submit its unaudited financial information in lieu of an audited balance sheet.

3. NSWT is authorized to utilize a 2007 calendar test year, including the use of calendar year 2007 financial data; provided that NSWT files its rate case application no later than June 30, 2007.

DONE at Honolulu, Hawaii JAN 11 2007.

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:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

2006-0486.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23190 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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DATED: JAN 11 2007