

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
  )  
                  KUKIO UTILITY COMPANY, LLC        )  
  )  
For Expansion of its Service                    )  
Territory.    )  
\_\_\_\_\_)

DOCKET NO. 2006-0414

DECISION AND ORDER NO. 23492

Filed June 14, 2007  
At 9 o'clock A.M.

Karen Higashi.  
Chief Clerk of the Commission

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

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

Karen Higashi.

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Docket No. 2006-0414  
Decision and Order No. 23492

DECISION AND ORDER

By this Decision and Order, the commission approves KUKIO UTILITY COMPANY, LLC's ("Applicant") request to expand its existing service territory, as shown in Exhibit 1 of the application filed on October 16, 2006.

I.

Background

A.

Applicant

Applicant is a public utility authorized to provide water and wastewater treatment services pursuant to Decision and Order No. 20103, filed on March 23, 2003, in Docket No. 01-0433. Currently, Applicant provides water and wastewater treatment services to the master planned community known as Kukio, located in North Kona, Hawaii, consisting of the residential developments, Kukio Beach Club and Manini'owali. In addition, Applicant provides water and wastewater services to the restroom at the Kua Bay Beach Park, and water service for the park's

initial landscaping needs, up to a maximum of 5,000 gallons per day ("gpd"). Applicant also provides untreated bulk water on an interruptible "as is/where is" basis, subordinate to Applicant's potable water needs, to the Kukio Golf & Beach Club, for irrigation purposes.

B.

Application

On October 16, 2006, Applicant filed an application requesting commission approval to expand its existing service territory to provide water to certain additional properties under its existing certificate of public convenience and necessity ("CPCN").<sup>1</sup> Specifically, Applicant seeks commission approval to expand its existing service territory to provide potable water to the Kukio Mauka subdivision and the adjacent Stroud subdivision (together, the "Service Expansion Properties"). The Kukio Mauka subdivision consists of approximately 23.088 acres of land, which the current owner plans to subdivide into four lots. The Stroud subdivision consists of approximately 25.449 acres of land, which the current owner plans to subdivide into five lots. Applicant asserts that it is willing to provide up to 3,000 gpd, per lot, of water to the Service Expansion Properties, i.e., 12,000 gpd in the aggregate for Kukio Mauka, and 15,000 gpd in the aggregate

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<sup>1</sup>Application, Exhibits 1 and 2, Verification and Certificate of Service, filed October 16, 2006 ("Application"). Applicant also served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). On March 1, 2007, the Consumer Advocate filed a Statement of Position in which it indicated that it did not object to the commission's approval of the Application ("Statement of Position").

for the Stroud subdivision. Applicant will not be providing wastewater services to the Service Expansion Properties.

Applicant currently provides potable water service to its customers from water pumped from five wells, designated as the Huehue Ranch ("HR") wells. Water from the HR wells is treated at Applicant's reverse osmosis ("RO") treatment facility. According to Applicant, due to the location of the Service Expansion Properties, it is not feasible to provide potable water to these properties from the RO treatment facility. Applicant thus plans to install a chlorination tank near its HR-5 well, which will connect to the master meter, or meters, thus providing service to the Service Expansion Properties.

Applicant expects that water utility service to the Service Expansion Properties will be needed by July 1, 2007, and asserts that it will be able to provide the requested service without detriment to the level and quality of service it currently provides to customers in its existing service territory. Further, Applicant states that the additional service will not negatively impact its current users. In support of these assertions, Applicant contends that: (1) after meeting the anticipated average water needs of both its existing service territory and the proposed Service Expansion Properties, at full build-out, Applicant will have over 290,000 gpd of surplus water available<sup>2</sup>; (2) all facilities necessary and appropriate to transport the potable water from the service connection point/master meter(s) to the Service Expansion Properties will be

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<sup>2</sup>See Exhibit 2 to the Application ("Exhibit 2").

constructed and installed at no expense to Applicant, and each respective customer and/or their applicable community association will be responsible, at their own risk and expense, for repairing and maintaining these facilities; and (3) customers in the Service Expansion Properties will be charged at the applicable potable water service rates as set forth in Applicant's Rules and Regulations and will not cause any financial or rate harm to Applicant's existing customers.<sup>3</sup>

In support of its request to include the Service Expansion Properties in its existing service territory, Applicant contends that: (1) the Service Expansion Properties are located near Applicant's existing water system; (2) Applicant is conveniently situated to provide potable water to the Service Expansion Properties through the addition of a chlorination tank; (3) Applicant has the ability and facilities to serve the Service Expansion Properties; and (4) Applicant is

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<sup>3</sup>Applicant "believes it is reasonable at this time to utilize the existing potable rates for this service" because: (1) Applicant's existing rate structure is not currently cost, or rate of return, based, but is instead based on a "zone of reasonableness" standard whose rate design will be revisited at the time of Applicant's next rate proceeding; (2) Applicant believes its estimated annual revenues from its new customers will "materially exceed" any additional costs that Applicant may incur to operate and maintain the chlorination tank and small portion of line running from HR-5, the chlorination tank and to the meter(s) serving the Service Expansion Properties, therefore not creating any cross-subsidy issues; (3) Applicant is operating at a net loss and additional revenues from the Service Expansion Properties should assist Applicant in achieving at least an operational break-even point sooner than anticipated; and (4) Applicant will not be seeking any return on its investment in the chlorination tank until its next rate case proceeding, at which time Applicant's entire rate structure can be reviewed to determine the appropriate rates at which service should be provided to all of Applicant's customers. Application at 5, n.5.

unaware of any other utility willing or able to provide water to the Service Expansion Properties.

Applicant further states that no amendments to its tariffed rates are required or sought at this time. However, to reflect its anticipated expanded service territory, Applicant proposes to amend and replace Exhibit A in Section E of its Rules and Regulations with the Exhibit 1 attached to its Application. Applicant also proposes to amend Rule XI of its Rules and Regulations to replace the current reference to Docket No. 04-0137 with a reference to this docket.<sup>4</sup>

C.

Consumer Advocate's Statement of Position

On March 1, 2007, the Consumer Advocate filed its Statement of Position stating that it does not object to commission approval of Applicant's request to expand its existing service territory. In reaching this conclusion, the Consumer Advocate considered Applicant's ability to provide water service to the Service Expansion Properties in addition to its existing service territory, whether Applicant's existing customers will be affected by Applicant's proposed service to the Service Expansion Properties, and the effect, if any, Applicant's

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<sup>4</sup>Pursuant to Hawaii Administrative Rules ("HAR") 6-61-76, Applicant incorporates by reference Exhibit 10 of its application filed on June 3, 2004, in Docket No. 04-0137 and its supplement to its 2005 Annual Financial Report, filed by letter dated May 11, 2006, to satisfy, to the extent necessary, the requirements set forth in HAR § 6-61-75.

expansion will have on its ability to provide wastewater service, should this service become necessary in the future.

In reviewing the Application, the Consumer Advocate considered Exhibit 2 in which Applicant provides a summary of its water use, which includes water use for its existing service territory and anticipated water usage from the Service Expansion Properties. By Applicant's estimate, as shown in Exhibit 2, it has enough water supply for its existing customers and for the Service Expansion Properties with a surplus of 291,870 gpd. Based on this estimate, the Consumer Advocate states that Applicant has sufficient water capacity to meet the demands of its existing customers and those anticipated customers in the Service Expansion Properties.<sup>5</sup>

Assuming that Applicant has the ability to serve customers in the Service Expansion Properties, the Consumer Advocate considered the effect, if any, the expansion would have on the existing rates for water service charged to Applicant's current customers. The Consumer Advocate was "not able to assess the impact that the additional maintenance costs associated with the chlorination tank may have on [Applicant's] rates." The Consumer Advocate, however, stated that "the capital

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<sup>5</sup>Applicant adds that if daily peak demand exceeds the capacity of the existing HR wells and storage systems, the Covenants, Conditions and Restrictions ("CC&R") provisions in the deeds for each property established a budgeted allotment of water for each residential lot. This provision allows Applicant to notify customers who exceed their allotment of their need to reduce their water use. Should the excessive water use continue, the CC&Rs allows Applicant to limit the potable water allotment for each lot by restricting, or terminating service. Application at 4, n.4.

cost of the chlorination tank should be paid for by the customers in the [Service Expansion Properties]."<sup>6</sup> As such, according to the Consumer Advocate, the commission and the Consumer Advocate should monitor Applicant's earnings and operating expenses to determine the effect of maintaining the chlorination tank on existing rates.

In addition, the Consumer Advocate stated that expanding Applicant's service territory will not have any impact on its ability to provide wastewater service. In a telephone conversation with the State of Hawaii Department of Health's Wastewater Branch ("Wastewater Branch"), it was represented to the Consumer Advocate that the Wastewater Branch's last inspection of Applicant's facilities, on January 18, 2007, indicated that Applicant is utilizing approximately twenty percent of its wastewater capacity. With Applicant's apparent wastewater capacity and its assurances that it would expand its plant to address any additional capacity issues, the Consumer Advocate concluded that Applicant has sufficient capacity at this time to meet the wastewater flows of its customers should this become necessary.

As a final point, the Consumer Advocate adds that Applicant should submit an amended Rule XII, in addition to an amended Rule XI as noted above, deleting any references to Applicant's Docket No. 04-0137 and replacing them with references to this docket.

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<sup>6</sup>Statement of Position at 8.



## II.

### Discussion

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 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.

. . . .

HRS § 269-7.5. (emphasis added). Because Applicant's authority pursuant to its CPCN does not currently authorize it to provide potable water to the Kukio Mauka and Stroud subdivisions, commission approval is required to amend Applicant's service territory to include these properties.

Here, Applicant appears to be fit, willing, and able to provide the expanded service to the Service Expansion Properties, and provision of the service is required by the present or future public convenience and necessity. The Service Expansion Properties are adjacent to properties currently being serviced by Applicant, thereby facilitating the provision of service to these areas. In addition, occupants of the Service Expansion Properties must be afforded a source of potable water, and with the addition of a chlorination tank, Applicant is able to fulfill this need. The commission is unaware of any other utility willing or able to provide this service. Should the need arise, Applicant also appears to be able to provide wastewater service to the Service Expansion Properties, and will be able to do this without detriment to the level and quality of service currently being provided to its existing customers.

Accordingly, for the foregoing reasons, the commission concludes that Applicant's request for commission approval to

expand its existing utility service territory, as shown in Exhibit 1 of the Application, should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant's Application for commission approval to expand its existing service territory, as reflected in Exhibit 1 of the Application, filed on October 16, 2006, is approved.

2. Applicant shall promptly file with the commission amendments to its Rules and Regulations reflecting the expanded service territory and the replacement of references to Docket No. 04-0137 with this docket.

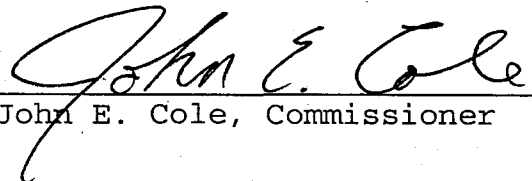
3. Applicant shall promptly comply with the requirement set forth above. Failure to promptly comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii

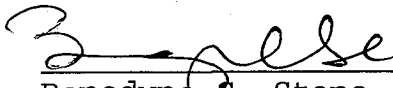
JUN 14 2007

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

2006-0414.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23492 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: JUN 14 2007