

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAIKOLOA RESORT UTILITIES, INC.,)
dba WEST HAWAII UTILITY COMPANY)
For Approval to Increase Rates.)

DOCKET NO. 2006-0409

ORDER NO. 23497

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

2007 JUN 21 A 10:11

RECEIVED

Filed June 19, 2007

At 8 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

Karen Higashi

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In the Matter of the Application of)
WAIKOLOA RESORT UTILITIES, INC.,)
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Docket No. 2006-0409
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ORDER

By this Order, the commission approves the request of WAIKOLOA RESORT UTILITIES, INC., dba WEST HAWAII UTILITY COMPANY ("WHUC"), dated June 5, 2007, as supplemented on June 8, 2007, to substitute its previously produced Exhibits CA-SIR-1a and 3a, with versions that redact from these two exhibits certain developer and customer information, respectively, limited to the redaction of the monetary amounts listed in Exhibit CA-SIR-1a and the identities of the customers listed in Exhibit CA-SIR-3a.¹

I.

Background

On April 23, 2007, the commission issued Stipulated Protective Order No. 23380. On May 18, 2007, WHUC filed its responses and exhibits to the Consumer Advocate's supplemental information requests.

¹The Parties in this proceeding are WHUC and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules § 6-61-62(a).

By letter dated June 5, 2007, WHUC, through its counsel, requests that the commission remove two exhibits (WHUC's Exhibits CA-SIR-1a and 3a) previously filed by WHUC on May 18, 2007, "from the public filing and accept the attached confidential exhibits to be held under Protective Order No. 23380."² As part of its request, WHUC represents that "[t]he Consumer Advocate does not object to the removal of these exhibits and subsequent placement under Protective Order No. 23380."³

On June 6, 2007, the commission instructed WHUC to promptly comply with Paragraphs 5 and 10 of Stipulated Protective Order No. 23380 by: (1) identifying, in reasonable detail, the information's source, character, and location; (2) stating clearly the basis for the claim of confidentiality; and (3) describing, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.⁴ On June 8, 2007, WHUC submitted the following information to the commission:

Exhibit CA-SIR-1a:

1. WHUC supplied the information contained in Exhibit CA-SIR-1a. This exhibit contains information relating to several [Contribution] In Aid of Construction ("CIAC") contributions received by WHUC and WHUC's subsequent designation of such funds.
2. WHUC claims confidentiality on the basis of developer information.

²WHUC's letter, dated May 18, 2007, at 1.

³WHUC's letter, dated May 18, 2007, at 1.

⁴Commission's letter, dated June 6, 2007.

3. WHUC receives CIAC funds from developers who request service for their development projects within WHUC's service area. Inasmuch as these funds represent a portion of a developer's investment, this information constitutes developer information and is therefore confidential and subject to Protective Order No. 23380.

Exhibit CA-SIR-3a:

1. WHUC supplied the information contained in Exhibit CA-SIR-3a. This exhibit identifies WHUC's customers in Account No. 1 and each customer's actual usage information for the period between January 2002 and April 2007.
2. [WHUC] claims confidentiality on the basis of customer information.
3. Inasmuch as this exhibit identifies WHUC's customers and each customer's actual usage information, this information constitutes customer information and is therefore confidential and subject to Protective Order No. 23380.

WHUC's letter, dated June 8, 2007, at 1 - 2 (boldface and underscore in original) (footnote and text therein omitted).

II.

Discussion

Paragraphs 1, 5, 8, and 10 of Stipulated Protective Order No. 23380, state:

1. This protective order governs the classification, acquisition, and use of trade secrets, customer information, developer information, employee information, and other confidential information produced by any party in this docket.

.....

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential

information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of information. If the Commission or any party challenges the claim of confidentiality of the information or the non-disclosure of such confidential information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether: (1) the information is confidential and subject to protection under this Protective Order; or (2) the challenged information must be disclosed by the producing party. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

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DESIGNATION

8. Any party claiming that information is confidential shall place upon the applicable material the following legend:

**CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER**

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

.....

10. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim

of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

Stipulated Protective Order No. 23380, Paragraphs 1, 5, 8, and 10, at 2 - 5.

Pursuant to Paragraph 10 of Stipulated Protective Order No. 23380, any party may request the commission to designate as confidential any document or other information previously produced but not designated as confidential, provided that the party meets the requirements of Paragraph 5 of the stipulated protective order. Based on the representations set forth in WHUC's letter, dated June 8, 2007, the commission finds that WHUC's justification to redact the developer and customer information disclosed in WHUC's Exhibits CA-SIR-1a and 3a appears to meet the requisite criteria set forth in Paragraphs 1 and 5 of the stipulated protective order.

Accordingly, pursuant to Paragraphs 10 and 8, respectively, of Stipulated Protective Order No. 23380, WHUC "shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8" of the stipulated protective order, provided that "[w]henver only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion." In this instance, the commission finds

appropriate the partial redaction of WHUC's two exhibits, limited to the redaction of the monetary amounts listed in Exhibit CA-SIR-1a and the identities of the customers listed in Exhibit CA-SIR-3a.

Consistent with the terms of this Order, WHUC shall take the necessary steps to comply with Paragraphs 8 and 10 of Stipulated Protective Order No. 23380. Specifically, for Exhibits CA-SIR-1a and 3a, WHUC shall submit: (1) the replacement original and eight copies in redacted form; and (2) nine sets of envelopes, consistent with the designation noted in Paragraph 8 of Stipulated Protective Order No. 23380, for the purpose of sealing the exhibits presently on file with the commission.

III.

Orders

THE COMMISSION ORDERS:

1. WHUC's request, dated June 5, 2007, as supplemented on June 8, 2007, to substitute its previously produced Exhibits CA-SIR-1a and 3a, with versions that redact from these two exhibits certain developer and customer information, respectively, is approved, limited to the redaction of the monetary amounts listed in Exhibit CA-SIR-1a and the identities of the customers listed in Exhibit CA-SIR-3a.

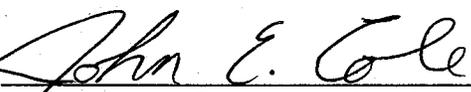
2. For Exhibits CA-SIR-1a and 3a, WHUC shall submit: (A) the replacement original and eight copies in redacted form; and (B) nine sets of envelopes, consistent with the designation noted in Paragraph 8 of Stipulated Protective Order No. 23380,

for the purpose of sealing the exhibits presently on file with
the commission.

DONE at Honolulu, Hawaii JUN 19 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2006-0409.cp

CERTIFICATE OF SERVICE

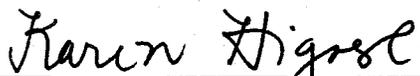
I hereby certify that I have this date served a copy of the foregoing Order No. 23497 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
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Karen Higashi

DATED: JUN 19 2007