

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. 23675

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

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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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 WAIKOLOA RESORT UTILITIES, INC.,)
 dba WEST HAWAII UTILITY COMPANY)
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 For Approval to Increase Rates.)
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¹The Parties in this proceeding are WAIKOLOA RESORT UTILITIES, INC., dba WEST HAWAII UTILITY COMPANY ("WHUC"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

HRS § 269-16(d) and HAR §§ 6-61-75, 6-61-86, and 6-61-87.² Thus, unless waived by the Parties, the nine-month deadline for the commission to issue its final decision on the merits of WHUC's Application is October 26, 2007, provided that the Parties strictly comply with the procedural schedule established by the commission.³

On July 18, 2007, the commission approved the Parties' voluntary and intentional waiver of issuance of the commission's final decision within nine months from the filing date of WHUC's Application.⁴ The commission also set the following procedures to govern the remainder of this proceeding:

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|--|-----------------------------|
| Prehearing conference | Week of September 10, 2007 |
| Settlement agreement (if any) | September 13, 2007 |
| Evidentiary hearing | September 20 - 21, 2007 |
| WHUC's Statement of Probable Entitlement | September 24, 2007 |
| Consumer Advocate's Response to WHUC's Statement of Probable Entitlement (if any) | October 1, 2007 |
| Simultaneous Opening Briefs by Parties | 3 weeks after transcripts |
| Simultaneous Reply Briefs by Parties | 3 weeks after Opening Brief |

Order No. 23551, Ordering ¶ 3, at 9.⁵

²See Order No. 23266, filed on February 20, 2007.

³HRS § 269-16(d).

⁴Order No. 23551, filed on July 18, 2007.

⁵The prehearing conference was scheduled for September 13, 2007. See commission letters, dated August 21 and 23, 2007.

On August 30, 2007, the commission timely served copies of the Notice of Evidentiary Hearing upon the Parties, in compliance with HRS § 91-9.5(a).⁶

Notwithstanding the procedural schedule established by the commission described above, by joint letter dated September 12, 2007, the Parties seek to continue the: (1) prehearing conference from September 13, 2007 to November 19, 20, or 21, 2007; and (2) evidentiary hearing from September 20 - 21, 2007 to December 6 - 7, 2007. The Parties also propose new deadline dates for the filing of their statements of probable entitlement, opening briefs, and reply briefs, to correspond with their proposed new dates for the prehearing conference and evidentiary hearing.⁷

II.

Discussion

WHUC's annual gross revenues are more than two million dollars. As such, with respect to the commission's adjudication of WHUC's Application, HRS § 269-16 provides in relevant part:

Regulation of utility rates; ratemaking procedures. (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the

⁶HRS § 91-9.5(a) states that "[u]nless otherwise provided by law, all parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen days before the hearing." See also HRS § 91-9(b), governing the contents of the notice.

⁷See Parties' joint letter, dated September 12, 2007, at 2.

public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding to ensure fairness and to provide due process to parties that may be affected by rates approved by the commission, the evidentiary hearings shall be conducted expeditiously and shall be conducted as part of the ratemaking proceeding.

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(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received under the interim rates that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the

commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the consumer advocate

HRS § 269-16(a) and (d) (emphasis added).

In this case, the Application was deemed to be a completed application as of January 26, 2007, pursuant to Order No. 23266.

HAR § 6-61-23(a)(1) authorizes the commission, for good cause shown, to order a period enlarged if a written request is made before the expiration of the period originally prescribed or as extended by a previous order.⁸

Here, WHUC represents that "[d]ue to an unexpected medical emergency, WHUC's counsel is now unavailable to attend the Prehearing Conference on September 13, 2007, and Evidentiary Hearing on September 20 - 21, 2007. WHUC has discussed the need for a continuance with the Consumer Advocate and has been informed that the Consumer Advocate does not oppose WHUC's request for continuance and will stipulate to a request for a continuance."⁹ On this basis, the Parties also propose new deadline dates to govern the remainder of this proceeding.

⁸See also Order No. 23351, Ordering ¶ 3, at 5, filed on April 10, 2007, (modifications to the procedural schedule are subject to the commission's approval).

⁹Parties' joint letter, dated September 12, 2007, at 1.

Based on WHUC's representations, the commission finds good cause to grant the Parties' request and approve the continuance of the prehearing conference and evidentiary hearing, and to reset the corresponding deadline dates to govern the remainder of this proceeding. Nonetheless, in comparing the Parties' proposed new dates with the commission's schedule, the commission adopts the following new procedural schedule to govern the remainder of this proceeding:

| | |
|--|-----------------------------|
| WHUC's Statement of Probable Entitlement, or the Parties' Joint Statement of Probable Entitlement | November 26, 2007 |
| Consumer Advocate's Response to WHUC's Statement of Probable Entitlement (if any) | December 3, 2007 |
| Prehearing conference | December 10, 2007 |
| Settlement agreement (if any) | December 11, 2007 |
| Evidentiary hearing | December 18 - 19, 2007 |
| Simultaneous Opening Briefs by Parties | 3 weeks after transcripts |
| Simultaneous Reply Briefs by Parties | 3 weeks after Opening Brief |

The Parties, following informal consultation with commission counsel regarding the commission's schedule,¹⁰ propose to re-schedule the evidentiary hearing to December 6 - 7, 2007. Upon review, however, the commission finds that those dates are

¹⁰Teleconference between WHUC's representative, the Consumer Advocate's representatives, and commission counsel, on September 12, 2007.

unavailable, and thus, re-schedules the evidentiary hearing to December 18 - 19, 2007.

Pursuant to HRS § 269-16(d), the ten-month deadline for the commission to issue its interim rate decision is November 26, 2007, provided that "[t]he commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete." Here, the commission notes that under either the Parties' proposed dates for the evidentiary hearing (December 6 - 7, 2007), or the latter dates established by the commission (December 18 - 19, 2007), it is clear that the evidentiary hearing would be re-scheduled to commence after the ten-month deadline of November 26, 2007. Thus, the eleven-month deadline for the commission to issue its interim rate decision applies, which is on or about December 26, 2007, which is three working days following the completion of the evidentiary hearing on December 19, 2007.

Under the circumstances, the commission finds it necessary to require the Parties to submit their statements of probable entitlement prior to the commencement of the evidentiary hearing, in order to provide the commission with ample opportunity to timely issue its interim rate decision.¹¹ In addition, based on its review of the docket record thus far, the commission instructs the Parties, in the filing of their statements of probable entitlement, to: (1) utilize average depreciated rate base amounts for the 2007 test year, with

¹¹By this Order, the commission also makes it clear that the Parties are not precluded from filing a joint statement of probable entitlement.

supporting work papers and schedules;¹² and (2) include Power Cost Adjustment Clause ("PCAC") revenues as part of WHUC's 2007 test year operating revenues at present and proposed rates, with supporting work papers and schedules.¹³

Lastly, the Parties stipulate that "[i]f a continuance is granted, the Parties agree to waive the notice of hearing requirement under Hawaii Revised Statutes Section 91-9.5[a]." ¹⁴ In essence, the Parties voluntarily and intentionally waive the need for the commission to re-issue a new Notice of Evidentiary Hearing by registered or certified mail, and instead, agree that this Order shall serve as the notice of the new dates for the re-scheduled evidentiary hearing. The commission approves the Parties' waiver in this regard, pursuant to HRS § 91-9(d) and HAR § 6-61-35.¹⁵

¹²See In re Hawaii Elec. Light Co., Inc., Docket No. 99-0207, Decision and Order No. 18365, Section III, at 6 - 7, filed on February 8, 2001 (commission's discussion regarding its use of an average depreciated rate base).

¹³The PCAC revenues at proposed rates is re-set to zero. See WHUC's Statement of Position, at 34, filed on July 20, 2007.

¹⁴Parties' joint letter, dated September 12, 2007, at 2.

¹⁵HRS § 91-9(d) provides:

Contested cases; notice; hearing; records.

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(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

HRS § 91-9(d); accord HAR § 6-61-35 (with the commission's approval, any procedure in a contested case may be waived by stipulation of the parties and informal disposition may be made

III.

Orders

THE COMMISSION ORDERS:

1. The Parties' request to continue the prehearing conference and evidentiary hearing, and to reset the corresponding deadline dates to govern the remainder of this proceeding, is approved.

2. A new procedural schedule to govern the remainder of this proceeding is adopted as follows:

| | |
|---|-----------------------------|
| WHUC's Statement of Probable Entitlement, or the Parties' Joint Statement of Probable Entitlement | November 26, 2007 |
| Consumer Advocate's Response to WHUC's Statement of Probable Entitlement (if any) | December 3, 2007 |
| Prehearing conference | December 10, 2007 |
| Settlement agreement (if any) | December 11, 2007 |
| Evidentiary hearing | December 18 - 19, 2007 |
| Simultaneous Opening Briefs by Parties | 3 weeks after transcripts |
| Simultaneous Reply Briefs by Parties | 3 weeks after Opening Brief |

3. The Parties shall, in the filing of their statements of probable entitlement: (A) utilize average depreciated rate base amounts for the 2007 test year, with supporting work papers and schedules; and (B) include PCAC revenues as part of WHUC's 2007 test year operating revenues at of any contested case by stipulation, agreed settlement, consent order, or default).

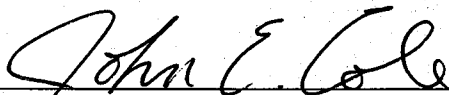
present and proposed rates, with supporting work papers and schedules.

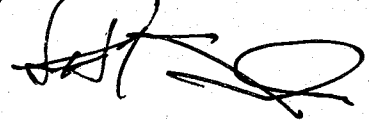
4. The Parties' voluntary and intentional waiver of the commission's issuance of a new Notice of Evidentiary Hearing, pursuant to HRS § 91-9.5(a), is approved. Accordingly, this Order shall serve as the notice of the new dates for the re-scheduled evidentiary hearing.

DONE at Honolulu, Hawaii SEP 21 2007.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2006-0409.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23675 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

BRUCE D. VOSS, ESQ.
LORI N. TANIGAWA, ESQ.
BAYS, DEEVER, LUNG, ROSE & HOLMA
Aii Place, 16th Floor
1099 Alakea Street
Honolulu, HI 96813

Counsel for WHUC

BRUCE MOORE
DEVELOPMENT MANAGER
WAIKOLOA LAND AND CATTLE COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703



Karen Higashi

DATED: SEP 21 2007