

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of -----)  
WAIKOLOA SANITARY SEWER )  
COMPANY, INC., dba )  
WEST HAWAII SEWER COMPANY )  
For Approval of Rate Increases )  
and Revised Rate Schedules. )

DOCKET NO. 00-0440

ORDER NO. 23701

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

Filed Oct. 9, 2007  
At 11 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

----- In the Matter of -----)

WAIKOLOA SANITARY SEWER )

COMPANY, INC., dba )

WEST HAWAII SEWER COMPANY )

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<sup>1</sup>The Parties are WAIKOLOA SANITARY SEWER COMPANY, INC., dba WEST HAWAII SEWER COMPANY ("WHSC"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

Reconsideration and Modification of Order No. 22275, filed on March 7, 2006.

Upon reconsideration, the commission grants the Consumer Advocate's request to recalculate [WHSC's] rate base, revenue requirement, and resulting rates; and issues a revised revenue requirement schedule that establishes a new monthly standby charge of \$19.94 per unit for WHSC, to take effect on October 15, 2007.

In addition, with respect to the refund issue raised by the Consumer Advocate, the commission finds that, given the recalculation of WHSC's monthly standby charge to \$19.94 per unit, a refund of the amounts over-collected by WHSC from its ratepayers, between November 7, 2001 and October 15, 2007, with interest, is required by Chapter 269, [HRS].

The actual amount of the refund, however, was not calculated or claimed by the Consumer Advocate. Thus, the commission instructs the Parties to: (1) promptly calculate and reach agreement on the amount of the refund, including interest, and the repayment terms, given the findings and parameters described herein; and (2) submit their joint agreement on these matters for the commission's review and consideration, by September 28, 2007. In the event that an agreement is not reached, each of the Parties shall submit their individual plans (including the refund amounts and repayment terms) and calculations for the commission's review and consideration by the same date.

The commission strongly encourages the parties to reach a reasonable agreement that is fair and equitable to the utility and its ratepayers, which allows utility services to continue.

Order No. 23635, at 1-2.

Thus, as set forth in Ordering Paragraphs No. 2 and 3 of Order No. 23635, the commission held:

2. WHSC's new standby monthly charge of \$19.94 per unit shall take effect on October 15, 2007. Consistent thereto, WHSC shall file by September 28, 2007, its updated tariff sheets to reflect the new charge, with the applicable issued and effective dates.

3. The Parties shall: (A) promptly calculate and reach an agreement on the amount of the refund, including interest, and the repayment terms, given the monthly standby charge amounts of \$24.82, \$27.13, and \$19.94 per unit; and (B) submit their joint agreement on these matters for the commission's review and consideration, by September 28, 2007. In the event that an agreement is not reached, each of the Parties shall submit their individual plans (including the refund amounts and repayment terms) and calculations for the commission's review and consideration by the same date.

Order No. 23635, Ordering ¶¶s 2 and 3, at 29-30.

On September 19, 2007, WHSC filed a Motion for Reconsideration and Vacation of Order No. 23635,<sup>2</sup> and a Motion to Stay Order No. 23635.<sup>3</sup> By its Motion to Stay, WHSC seeks a stay of Order No. 23635, "until the Commission has ruled on WHSC's Motion for Reconsideration and Vacation of Order No. 23635, and the resolution of any appeal from the Commission's ruling on WHSC's motion."<sup>4</sup> WHSC filed its request for stay pursuant to HAR §§ 6-61-41, 6-61-137, and 6-61-138.

By letter dated September 24, 2007, commission counsel informed the Consumer Advocate that pursuant to HAR §6-61-140,

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<sup>2</sup>WHSC's Motion for Reconsideration and Vacation of Order No. 23635; Declaration of Richard Terminello; Certificate of Service; and Exhibits A - B, filed on September 19, 2007 (collectively, "Motion for Reconsideration").

<sup>3</sup>WHSC's Motion to Stay Order No. 23635; and Certificate of Service, filed on September 19, 2007 (collectively, "Motion to Stay").

<sup>4</sup>WHSC's Motion to Stay, at 1 and 4.

the commission found it "desirable or necessary" for the Consumer Advocate to file replies to WHSC's motions by October 8, 2007.<sup>5</sup>

On September 28, 2007, WHSC submitted its: (1) updated tariff sheets in compliance with Ordering Paragraph No. 2 of Order No. 23635, without prejudice;<sup>6</sup> and (2) refund proposal in compliance with Ordering Paragraph No. 3 of Order No. 23635, without prejudice.<sup>7</sup>

On October 1, 2007, the commission, in In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co.,

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<sup>5</sup>By this Order, the commission formally adopts said finding, consistent with HAR § 6-61-140.

<sup>6</sup>Specifically, as noted by WHSC:

In Order No. 23635, the Commission directed that [WHSC's] standby monthly charge be reduced to \$19.94 per unit, effective October 15, 2007. The Commission also directed that [WHSC] file by September 28, 2007 its updated tariff sheets, to reflect the new charge, with the applicable issued and effective dates.

[WHSC] timely filed a Motion to Stay Order No. 23635, but the Commission has declined to act on the Motion to Stay.

Accordingly, as required by Order No. 23635, enclosed please find an original and eight copies of [WHSC's] Fourth Revised Sheet 30, to be included within the Company's Tariff No. 1, issued September 28, 2007, and effective October 15, 2007.

This submittal is without prejudice to any of the contentions or arguments in [WHSC's] Motion for Reconsideration and Vacation of Order No. 23635, filed September 19, 2007, or the Company's Motion to Stay Order No. 23635.

WHSC's letter, dated September 28, 2007, at 1-2.

<sup>7</sup>WHSC notes that it did not reach an agreement with the Consumer Advocate on the amount of the refund, including interest, and the repayment terms. Based on certain assumptions, WHSC calculates the refund amount as \$805,228.14, including interest.

Docket No. 05-0329, WHSC's 2006 test year rate case, issued Proposed Decision and Order No. 23688.<sup>8</sup> The commission, in effect, proposes to increase WHSC's monthly standby charge to \$36.73 per unit, effective from October 15, 2007 (or as otherwise ordered by the commission), as follows:

. . . . . The commission approves a general rate increase of \$277,439, or 42.1 percent over revenues at present rates for West Hawaii Sewer, based on a total revenue requirement of \$937,052 for the test year. In so doing, the commission authorizes an increase in West Hawaii Sewer's monthly standby charge from \$19.94 per equivalent residential unit to \$36.73 per equivalent residential unit, effective October 15, 2007.

. . . . .

As discussed above, effective October 15, 2007, the monthly standby charge at present rates will be reduced from \$27.13 per unit to \$19.94 per unit, pursuant to Order No. 23635. In light of this reduction in the monthly standby charge, the commission approves the Consumer Advocate's proposal to recover the entire increase solely through the monthly standby charge. The commission agrees with the Consumer Advocate that under these circumstances, allocating the entire increase to the monthly standby charge will provide West Hawaii Sewer with the best opportunity to recover the Company's fixed expenses. Furthermore, assigning the entire increase to the monthly standby charge will not result in rate shock for West Hawaii Sewer's customers. Accordingly, the commission approves a monthly standby charge of \$36.73 per equivalent residential unit and a consumption charge of \$1.33 per thousand gallons of water consumed.

Finally, in order to avoid rate fluctuation and to prevent the need for a refund in this docket, the commission determines that the rates established in this Proposed Decision and Order will be effective on the same date that the rates established in Order No. 23635 are effective (i.e., October 15, 2007, or as otherwise ordered by the commission).

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<sup>8</sup>Similar to Docket No. 00-0440, the parties in Docket No. 05-0329 are WHSC and the Consumer Advocate.

. . . . .  
2. No later than October 15, 2007, West Hawaii Sewer shall file its revised tariff sheets and rate schedules for the commission's review and approval, which implement the tariff changes and increases in rates and charges authorized by this Proposed Decision and Order, with copies served upon the Consumer Advocate. West Hawaii Sewer's tariff changes and increases in its rates and charges shall take effect upon the commission's review and approval of said filing.

Docket No. 05-0329, Proposed Decision and Order No. 23688, at 1, 46-47, and 51 (emphasis added). The deadline for the parties in Docket No. 05-0329 to "notify the commission as to whether it accepts, in toto, or does not accept, in whole or in part, [the] Proposed Decision and Order," is October 15, 2007.<sup>9</sup>

On October 5, 2007, the Consumer Advocate filed its: (1) Memorandum in Opposition to WHSC's Motion for Reconsideration and Vacation of Order No. 23635; and (2) Memorandum in Support of WHSC's Motion for Stay.<sup>10</sup> The Consumer Advocate indicates that "it supports [WHSC's] request to stay Order No. 23635 until WHSC's Motion for Reconsideration is decided."<sup>11</sup> As explained by the Consumer Advocate:

. . . . . Because a decision on the Motion for Reconsideration may result in rates that differ from the rates set forth in Order No. 23635, a stay is appropriate to avoid subjecting WHSC's customers to varying rates that may remain in

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<sup>9</sup>Docket No. 05-0329, Proposed Decision and Order No. 23688, Ordering ¶ 3, at 51; see also id., Section XIV, Acceptance or Non-Acceptance, at 50-51.

<sup>10</sup>Consumer Advocate's Memorandum in Support of WHSC's Motion for Stay of Order No. 23635; and Certificate of Service, filed on October 5, 2007 (collectively, "Memorandum in Support of Stay").

<sup>11</sup>Consumer Advocate's Memorandum in Support of Stay, at 1.

effect for a short duration of time. As will be discussed in the Consumer Advocate's Memorandum in Opposition to WHSC's Motion for Reconsideration of Order No. 23635, the rates require a modest adjustment to reflect the 2001 Test Year amortization in the adjustment to rate base. Furthermore, the Consumer Advocate notes that WHSC's rates are expected to be further adjusted as a result of proposed Decision and Order No. 23688 filed in Docket No. 05-0329 (WHSC's pending rate application utilizing a 2006 Test Year) which requires the Company to file revised tariffs no later than October 15, 2007. Given the above, a Stay of Order No. 23635 is in the public interest to make the change in rates as seamless as possible for WHSC's customers.

Consumer Advocate's Memorandum in Support of Stay, at 1-2  
(emphasis omitted).

## II.

### Discussion

HAR §§ 6-61-137, 6-61-138, and 6-61-140 state:

§6-61-137 Motion for reconsideration or rehearing. A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

§6-61-138 Effect of filing. (a) The filing of a motion for reconsideration or rehearing shall not stay a commission decision and order. However, if a motion for a stay accompanies the motion, the commission shall act on the motion for a stay promptly. If a stay is granted, the stay shall remain in effect until disposal of the motion for reconsideration.

(b) Notwithstanding the foregoing, pursuant to section 271-32(b), HRS, a commission order granting a change in motor carrier rates shall be automatically stayed upon the filing of a motion



for reconsideration of the order. The stay shall remain in effect until the earlier of: the date the commission renders its decision on the motion for reconsideration or the twentieth day after the motion is filed. The commission may set aside this automatic stay for good cause shown.

§6-61-140      Replies to motions.      The commission may allow replies to a motion for rehearing or reconsideration or a stay, if it deems those replies desirable or necessary.

HAR §§ 6-61-137, 6-61-138 (emphasis added), and 6-61-140.

On September 28, 2007, WHSC complied with Ordering Paragraphs No. 2 and No. 3, respectively, of Order No. 23635, by submitting its updated tariff sheets and calculating and submitting its refund proposal (both submittals without prejudice). Accordingly, to the extent that Ordering Paragraph No. 2 provides that WHSC's new standby monthly charge of \$19.94 per unit shall take effect on October 15, 2007, the commission hereby stays Order No. 23635. In this regard, the commission notes that the Consumer Advocate supports WHSC's request for a stay, and the deadline for the parties in Docket No. 05-0329 to notify the commission of their acceptance or non-acceptance of Proposed Decision and Order No. 23688, is October 15, 2007.

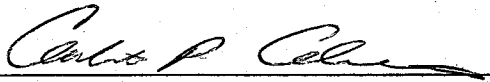
### III.

#### Order

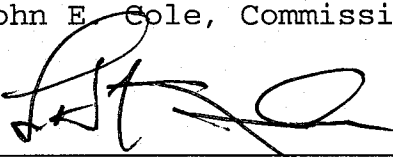
THE COMMISSION stays Order No. 23635, filed on September 7, 2007. Consistent with HAR § 6-61-138, "the stay shall remain in effect until disposal of the motion for reconsideration."

DONE at Honolulu, Hawaii OCT - 9 2007.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

00-0440.cp

CERTIFICATE OF SERVICE

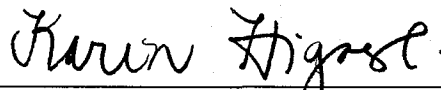
I hereby certify that I have this date served a copy of the foregoing Order No. 23701 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
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Karen Higashi

DATED: OCT - 9 2007