

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
MOLOKAI PUBLIC UTILITIES, INC.,)
WAI`OLA O MOLOKA`I, INC., and)
MOSCO, INC.)
)
For Temporary Rate Relief.)
_____)

DOCKET NO. 2008-0115

ORDER DENYING MOTION TO INTERVENE FILED BY
WEST MOLOKAI ASSOCIATION AND SETTING PROCEDURAL DEADLINES

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DEPT. OF COMMERCE AND
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ORDER DENYING MOTION TO INTERVENE FILED BY
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By this Order, the commission denies West Molokai Association's ("WMA") Motion to Intervene, filed on July 3, 2008 ("Motion"). In addition, the commission sets certain procedural deadlines, as addressed by the commission at the public hearing on this matter held on July 15, 2008.

I.

Background

A.

Initiation of Proceeding

On June 16, 2008, the commission opened this docket to consider temporary rate relief, via a temporary surcharge, for MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), WAI`OLA O MOLOKA`I, INC. ("Wai`ola"), and MOSCO, INC. ("Mosco") (collectively,

"Utilities").¹ Based on the commission's review and analysis of the Utilities' available financial information, the commission proposed the following temporary rate relief for MPU and Wai'ola: (1) for MPU, an increase in revenues of \$297,965, which is 40.95% more than its 2007 reported water revenues of \$727,458; and (2) for Wai'ola, an increase in revenues of \$163,839, which is 121.50% more than its 2007 reported water revenues of \$134,813. The commission proposed a 0.00% increase over present rates for Mosco, as Mosco appeared to be financially viable and operating at a profit.

The commission named as parties to this proceeding: the Utilities, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), MOLOKAI PROPERTIES LIMITED, dba MOLOKAI RANCH ("MPL"), and the COUNTY OF MAUI ("County") (collectively, "Parties").²

On July 15, 2008, the commission held a public hearing in this docket at Maunaloa Elementary School, Maunaloa, Molokai, Hawaii. As a part of the commission's presentation at the public hearing, the commission discussed tentative procedural deadlines for the Parties in this docket.

¹Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai'ola O Molokai, Inc., and Mosco, Inc., filed on June 16, 2008, in Docket No. 2008-0115.

²The Consumer Advocate is an ex officio party to any proceeding before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

Pursuant to HAR § 6-61-57(1), the deadline to file motions to intervene or participate in this proceeding was ten days after the public hearing, or on July 25, 2008.

B.

Motion

On July 3, 2008, WMA timely filed its Motion.³ In the Motion, WMA states that it is a non-profit corporation organized to provide for the management, maintenance, protection, preservation, architectural control, and development of properties on Molokai within the area commonly referred to as "West Molokai" or "Kaluakoi." WMA's membership is comprised of owners of 817 properties located within Kaluakoi or West Molokai.⁴ Water and wastewater services are provided to the members of WMA by MPU and Mosco, respectively.⁵

In support of the Motion, WMA asserts that its members' property values have been diminished due to the Utilities' statements of intent to terminate services, and the County's statements that it would not provide services to the Utilities' existing customers.⁶ WMA is also concerned about the commission's proposed temporary rate increase for MPU since

³No other motions to intervene or participate were filed by July 25, 2008.

⁴See Motion at 2.

⁵See id.

⁶See id.

the "increase for MPU's services will be born, virtually in its entirety, by the individual members of WMA."⁷

As to how its interests are distinguishable from those of the Consumer Advocate's, WMA maintains:

[The Consumer Advocate] represents many of the common goals of all parties to this proceeding, namely provision of essential water and wastewater services over the long term at reasonable rates. However, because [the Consumer Advocate] must represent the interests of customers of [Wai'ola], which customers include Mauanaloa [sic], Kualapuu, south Kalae and other adjacent areas in Central and West Molokai, [the Consumer Advocate] must divide its attention in representing WMA's interests. Further, [the Consumer Advocate] neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer the Commission. Further, WMA has access to information which will be of assistance to the Commission and to [the Consumer Advocate.]⁸

WMA further argues that its interests are different from those of the County:

To a limited extent, the County of Maui represents the interests of WMA, but to date appears to be reluctant to fulfill its legal mandate to provide potable water for domestic use, fire protection, etc. . . . County's reluctance, to date, to take any positive steps toward a meaningful long term or short term solution indicates that its interest in this proceeding is adverse to WMA's interests.⁹

On July 11, 2008, the County filed a Response to the Motion ("Response"), stating that it "welcomes the participation

⁷Id. at 3.

⁸Id. at 5.

⁹Id. at 5-6.

of other customers of [the Utilities] in this docket."¹⁰
The County, however, had concerns about, and attempted to clarify, several statements made in the Motion.¹¹

II.

Discussion

A.

Motion

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;

¹⁰Response at 1.

¹¹On July 23, 2008, WMA filed a Reply to the County's Response ("Reply"). The commission does not consider WMA's Reply because it was not permitted under the commission's rules of practice and procedure. Specifically, HAR § 6-61-41 only allows for the filing of opposition memoranda to motions, but does not authorize the filing of reply memoranda. WMA did not request leave to file the Reply. Thus, as an unpermitted filing, the commission does not consider the Reply.

- (3) The effect of the pending order as to the applicant's interest;
- (4) The other means available whereby the applicant's interest may be protected;
- (5) The extent to which the applicant's interest will not be represented by existing parties;
- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b).

HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." In addition, the Hawaii Supreme Court has stated the general rule on intervention as follows: "Intervention as a party in a proceeding before the [commission] is not a matter of right but is a matter resting within the sound discretion of the commission." In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Upon review of the entire record, the commission finds that WMA's Motion lacks sufficient support, and should be denied. WMA's members are essentially utility customers of MPU and Mosco.

Pursuant to HRS § 269-51, the Consumer Advocate "shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services" in the State. Thus, the Consumer Advocate is statutorily mandated to represent the interests of WMA's members in this docket, and will do so in this docket. WMA's assertions to the contrary in its Motion are unpersuasive.¹² Moreover, WMA has not otherwise demonstrated that it has any specialized expertise or information that would be pertinent to the commission's determination of the issues in this docket. For these reasons, it does not appear that WMA's participation in this docket will assist in the development of a sound and complete record, and the Motion should be denied.

B.

Procedural Deadlines

Consistent with the procedural schedule presented by the commission at the public hearing held on July 15, 2008, the following deadlines shall apply to the Parties in this docket:

- (a) Discovery by Parties - Through August 7, 2008; and
- (b) Parties' Statements of Position or Statements of Probable Entitlement - August 7, 2008

¹²For example, WMA's arguments that the Consumer Advocate must divide its attention representing other utility customers, and that the Consumer Advocate will not actually feel the impact of a rate increase, could be made in almost every commission proceeding, and do not lend support to WMA's position.

III.

Orders

THE COMMISSION ORDERS:

1. WMA's Motion to Intervene, filed on July 3, 2008, is denied.

2. The following procedural deadlines shall apply to the Parties in this docket:

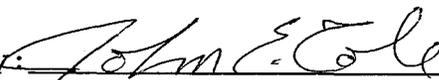
(a) Discovery by Parties - Through August 7, 2008; and

(b) Parties' Statements of Position or Statements of Probable Entitlement - August 7, 2008

DONE at Honolulu, Hawaii AUG - 8 2008

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:

By: 
Leslie H. Kondo, Commissioner


Kaiulani Kidani Shinsato
Commission Counsel

2008-0115.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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