

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
WAILUKU WATER DISTRIBUTION COMPANY,))
LLC, and WAILUKU WATER COMPANY, LLC))
)
For a Certificate of Public)
Convenience and Necessity to)
Provide Non-Potable Water)
Distribution Service in the Waihee,))
Waiehu, Puuohala, Wailuku, and)
Waikapu Areas and for Approval of)
Rules and Regulations Pursuant to)
Section 269-7.5, Hawaii Revised)
Statutes; Approval of Rates and)
Contracts Pursuant to Section)
269-16, Hawaii Revised Statutes;)
Approval of Waivers Pursuant to)
Section 6-61-92, Hawaii)
Administrative Rules; and Approval)
Of Affiliate Transactions Pursuant)
To Sections 269-19 and 269-19.5,)
Hawaii Revised Statutes.)
_____)

DOCKET NO. 2008-0025

ORDER: (1) GRANTING PARTICIPATION AND MOTION FOR LEAVE
TO FILE REPLY; (2) CLARIFYING THE COMMISSION'S RULES
REGARDING COMPUTATION OF TIME; (3) DIRECTING THE PARTIES
AND PARTICIPANTS TO SUBMIT STATEMENTS OF POSITION ON THE
COMPLETENESS OF THE APPLICATION WITHIN TWENTY DAYS;
AND (4) DIRECTING THE PARTIES AND PARTICIPANTS TO FILE
A STIPULATED PROCEDURAL SCHEDULE WITHIN FORTY-FIVE DAYS

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

PUBLIC UTILITIES
COMMISSION

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FILED

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By this Order, the commission grants participation status in this docket to: (1) County of Maui, Department of Water Supply ("DWS");¹ (2) MMK Maui L.P. ("MMK");² (3) Hui O Na Wai `Eha ("Hui") and Maui Tomorrow Foundation, Inc. ("Maui Tomorrow")

¹See DWS' Petition to Intervene, filed on May 22, 2008 ("DWS' Motion").

²See Motion to Intervene filed by MMK on May 22, 2008 ("MMK's Motion").

(jointly, "Community Groups");³ (4) Office of Hawaiian Affairs ("OHA");⁴ (5) Michael W. Atherton Development, Inc., William S. Filios, Trustee, Boyce Holdings, Inc. (collectively, "Purchasers"), MTP Operating Company, LLC ("MTP"), Maalaea Properties, LLC ("MP"), and Waikapu Properties, LLC ("WP");⁵ (6) Hawaiian Commercial & Sugar Company, a division of Alexander & Baldwin, Inc. ("HC&S");⁶ and (7) Wailuku Country Estates Irrigation Company ("WCE Irrigation") and Wailuku Country Estates Community Association, Inc. ("WCE Association") (jointly, "WCE").⁷

In doing so, the commission grants the Motion for Leave to File a Reply to the Memorandum in Opposition to Atherton's Motion filed by the Atherton Parties on June 12, 2008 ("Motion for Leave"). The commission also utilizes this opportunity to clarify Hawaii Administrative Rules ("HAR") § 6-61-21(e), the commission's "Two-Day Mail Rule," and HAR § 6-61-22, regarding computation of time.

³See Community Groups' Motion to Intervene, filed on May 27, 2008 ("Community Groups' Motion").

⁴See OHA's Motion to Intervene, filed on May 27, 2008 ("OHA's Motion").

⁵Purchasers, MTP, MP, and WP are collectively referred to herein as the "Atherton Parties." See Motion to Intervene of Atherton Parties, filed on May 27, 2008 ("Atherton's Motion").

⁶See Motion to Intervene filed by HC&S on May 27, 2008 ("HC&S' Motion").

⁷See Motion to Intervene or, Alternatively, to Participate filed by WCE on May 27, 2008 ("WCE's Motion").

Moreover, the commission directs the Parties⁸ and all of the participants allowed herein ("Participants") to submit statements of position as to whether the application filed on February 8, 2008 by Applicants ("Application"), as supplemented, is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88. In addition, the commission instructs the Parties and Participants to file a stipulated procedural schedule that, absent a waiver by the Parties and Participants, complies with the time requirements of HRS § 269-16(f)(3), within forty-five days from the date of this Order, for the commission's review and approval. If the Parties and Participants are unable to stipulate to a procedural schedule, each Party and Participant shall submit a proposed procedural schedule for the commission's consideration by the same date.

I.

Background

On February 8, 2008, Applicants filed their Application, requesting, among other things, approval of a Certificate of Public Convenience and Necessity ("CPCN") to provide non-potable water distribution service in

⁸"Parties" refers to Applicants Wailuku Water Distribution Company, LLC ("WWDC"), Wailuku Water Company, LLC ("WWC") (jointly, "Applicants") 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 HAR § 6-61-62.

certain areas of Waihee, Waiehu, Puuohala, Wailuku, and Waikapu on the island of Maui, Hawaii; and approval of rates and certain contracts pursuant to HRS § 269-16.

On February 20, 2008, Applicants filed an "Errata Sheet" with attached replacement pages for the Application; and on March 17, 2008, Applicants filed a "Supplement and Errata," with Supplement Exhibits A to E, for the Application.

On March 6, 2008, the commission issued Order No. 24079, which determined that HAR § 6-61-57(1), and not HAR § 6-61-57(2), shall govern the deadline for intervention in this docket. Thus, the commission ruled that the deadline for intervention in this docket would be ten days after the last public hearing held on the Application.

On May 14, 2008, the commission held a public hearing on the Application at Maui Waena Intermediate School in Kahului, Maui, Hawaii. Accordingly, the deadline for intervention was May 27, 2008.⁹

On May 22, 2008, DWS and MMK filed their Motions to Intervene. Applicants filed separate Memoranda in Opposition to both motions on June 2, 2008.¹⁰

⁹The tenth day after the public hearing on May 14, 2008 fell on May 24, 2008, a Saturday. The following Monday, May 26, 2007, was a holiday (Memorial Day), so pursuant to HAR § 6-61-22, the deadline to file motions to intervene fell on the next following business day, which was Tuesday, May 27, 2008.

¹⁰The timeliness of all opposition memoranda filed by Applicants in response to the motions to intervene will be addressed in detail in Section III, Computation of Time, below.

On May 27, 2008, the following motions were filed with the commission: (1) Community Groups' Motion; (2) OHA's Motion; (3) Atherton's Motion; (4) HC&S' Motion; and (5) WCE's Motion. Applicants filed separate opposition memoranda to each of these motions on June 3, 2008.

On June 12, 2008, the Atherton Parties filed their Motion for Leave, requesting permission to file an attached reply memorandum in support of their intervention motion. On June 19, 2008, Applicants filed a memorandum in opposition to the Atherton Parties' Motion for Leave.

II.

Intervention and Participation

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;
 - (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."¹¹

In addition, HAR § 6-61-56 sets forth the requirements for participation without intervention in commission proceedings. Similar to the requirements for intervention in HAR § 6-61-55, HAR § 6-61-56 provides in relevant part:

- (b) A person who has a limited interest in a proceeding may make an application to participate without intervention 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.

¹¹See also In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

(c) The motion shall provide:

- (1) A clear and concise statement of the direct and substantial interest of the applicant;
- (2) The applicant's position regarding the matter in controversy;
- (3) The extent to which the participation will not broaden the issues or delay the proceeding;
- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and
- (7) A statement of the relief desired.

HAR § 6-61-56(b) and (c). Moreover, regarding the extent to which a participant may be involved in a proceeding, HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

HAR § 6-61-56(a).

A.

DWS' Motion

In DWS' Motion, DWS states that it is a municipal utility serving potable water to residences, businesses, schools, churches, farms, and other customers in Central and South Maui. DWS receives water deliveries from, and has contracts with, WWC.¹² In support of its motion, DWS cites a recent "unilateral price increase" by WWC, from \$0.48 to \$0.60, per 1,000 gallons. Thus, DWS argues that "DWS's interests, and those of the public who depend on DWS for their sole source of water supply, have already suffered, and continue to suffer, adverse consequences of the continued operation of an unregulated utility."¹³ DWS also asserts that it understands rate-making procedures, as well as the County of Maui's ("County") "need for water and the challenges faced in trying to meet increased demands."¹⁴

Regarding its position on the relief sought in the Application, DWS states:

While DWS supports public regulation and oversight of [WWC] and its wholly-owned affiliate, DWS does not support the proposed rates and rate structure; the exemption from regulation of certain "grandfathered" contracts; the transactions between [WWC] and its affiliated company, [WWDC]; the artificially stepped-up basis of [WWC's] fully-depreciated assets; and numerous other aspects of the application. Furthermore, DWS does not acknowledge that [WWC] and its

¹²See DWS' Motion at 2. As a part of the Application, Applicants have requested that this contract with DWS be grandfathered into WWDC's tariff.

¹³Id. at 4.

¹⁴Id. at 5.

affiliates have any absolute or vested legal right to sell a public trust resource for private profit.¹⁵

In response, Applicants argue that DWS does not have a statutory or other right to participate in this docket. Applicants also argue that any general interests that DWS may have with respect to the Application are the same as those of the general public, such that DWS' interests can be adequately represented by the Consumer Advocate. In addition, Applicants argue that DWS' intervention would not assist in the development of a sound record. To this end, Applicants state that DWS failed to specify how the Application and the commission's final order in this proceeding will adversely affect DWS' contract with WWC since Applicants propose to grandfather DWS' water agreement. Applicants, however, do not oppose participation by DWS in this proceeding so long as it is limited in scope to DWS' water agreement.

Upon review, the commission finds that DWS is a uniquely situated customer of WWC in that DWS is a municipal utility that provides essential potable water service, through purchased water from WWC, to residents in Central Maui. DWS' service to its Central Maui System appears highly dependent on water purchased from WWC. Thus, initial rates that are set in this proceeding are very likely to have a significant impact on DWS and the essential services it provides to the public.

¹⁵Id. at 6.

While it appears that DWS has a sufficient interest to protect in this proceeding, on balance with the commission's obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding," and the entire record herein, DWS does not have an interest in all aspects or issues of this rate case proceeding that would warrant granting DWS full-party status. Thus, the commission concludes that DWS should be granted participant status. DWS may participate in all procedures in this docket as would a full-party, including discovery and settlement, but with such participation specifically limited to issues relating to its water agreement with Applicants.

B.

MMK's Motion

MMK states that it owns and operates The King Kamehameha Golf Club and the Kahili Golf Course (jointly, the "Golf Course"), which are located in Waikapu, Wailuku, Maui. Pursuant to a Water Delivery Agreement dated June 17, 1988, as amended, which was entered into by WWDC's/WWC's and MMK's predecessors-in-interest, in 1998, MMK's predecessor-in-interest prepaid WWDC's/WWC's predecessor-in-interest for the delivery of 2,700,000 gallons of water per day to the Golf Course.¹⁶ MMK alleges that WWDC/WWC and MMK are now the successor parties to the 1988 Water Delivery Agreement, and that WWDC/WWC remain

¹⁶As a part of the Application, Applicants have requested that the contract with MMK be grandfathered into WWDC's tariff.

obligated to deliver water to the Golf Course, since part of the consideration MMK paid when it acquired the Golf Course was for the delivery of water. MMK asserts that if its rights under the 1988 Water Delivery Agreement are not honored, such that MMK is required to pay additional fees for the delivery of water, MMK's financial interests will be severely negatively affected.¹⁷

In response, Applicants argue that MMK's concerns and interests are specific to the grandfathering of its Water Agreement, and do not address the main issues in this proceeding that pertain to whether WWDC is fit, willing, and able to properly perform the services proposed under the Application. Given MMK's limited interests, Applicants state that MMK's intervention will not contribute to a sound record, and would delay the proceedings. Applicants, however, do not object to MMK being granted participant status so long as its participation is limited to issues relating to the grandfathering of its Water Agreement.

Here, MMK asserts that its predecessors-in-interest prepaid for the delivery of 2,700,000 gallons of water per day from WWDC's/WWC's predecessors-in-interest. MMK therefore appears to contend that it should not have to pay any additional charges for water delivery service. In this regard, MMK further argues that this proceeding will affect whether it is financially feasible for MMK to continue operations of the Golf Course.

While it appears that MMK has a sufficient interest to protect in this proceeding, on balance with the commission's

¹⁷See MMK's Motion at 2-3.

obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding," and the entire record herein, MMK does not have an interest in all aspects or issues of this rate case proceeding that would warrant granting MMK full-party status. Thus, the commission concludes that MMK should be granted participant status. MMK may participate in all procedures in this docket as would a full-party, including discovery and settlement, but with such participation specifically limited to issues relating to its water agreement with Applicants.

C.

Community Groups' Motion and OHA's Motion

In the Community Groups' Motion, the Community Groups explain that the Hui is a community-based organization whose members primarily own land, reside, and farm in Applicants' proposed service area, including the watersheds of Na Wai `Eha -- "The Four Waters" of Waihe`e River, Waiehu Stream, `Iao Stream, and Waikapu Stream in Central Maui. Maui Tomorrow is a local non-profit organization with over 1,000 supporters, many of whom also reside, own land, and farm in the proposed service area. "Both organizations are committed to promoting sound public management of Na Wai `Eha's water resources, restoring instream flows, and supporting community uses of Na Wai `Eha water within the streams and watersheds."¹⁸

¹⁸Community Groups' Motion at 3.

The Community Groups state that their members and supporters ("Community Members") have rights and interests in Na Wai `Eha water that Applicants divert for their operations. They assert, moreover, that many of the Community Members receive water from Applicants' diversions, without charge, based on such rights. The Community Groups explain their rights in more detail as follows:

Among other rights, Community Members, both Native Hawaiian and non-Native Hawaiian, hold and exercise "appurtenant" or "kuleana" rights to Na Wai `Eha water on their lands based on "immemorial usage." See Peck v. Bailey, 8 Haw. 658, 661 (1867). These rights enjoy protected and preferred status under Hawai'i constitutional, statutory, and common law. See Haw. Const. art. XI, § 7; Haw. Rev. Stat. §§ 174C-63, -101(d); In re Waiahole Ditch Combined Contested Case Hearing, 94 Haw. 94, 179, 137 & n.34, 9 P.3d 409, 491, 449 & n.34 (2000) ("Waiahole"). From the time they began diverting Na Wai `Eha streams, thereby preventing others from accessing the stream flows, the [Applicants] and their predecessors have never disputed the superior rights of the kuleana water users to first access to any diverted flows, free of charge. . . . Community Members and their `ohana (extended family) depend on their legally entitled water to support their domestic lifestyles and subsistence, cultural, and economic interests in bona fide farming activities, including the cultivation of kalo (taro).

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The Hawai'i Supreme Court has recognized that such interests and rights are entitled to due process protections under the Hawai'i Constitution. See, e.g., Waiahole, 94 Haw. at 119-20 n.15, 9 P.3d 431-32 n.15; Pele Def. Fund v. Puna Geothermal Venture, 77 Haw. 64, 67, 881 P.2d 1210, 1213 (1994).¹⁹

¹⁹Id. at 3-4.

The Community Groups also represent that this proceeding shares numerous common factual issues with a related case pending before the Commission on Water Resource Management ("CWRM"), Case No. CCH-MA06-01, in which they have participated. To this end, the Community Groups maintain that their "intention is not to relitigate the issues covered in the CWRM proceeding, but the opposite: to ensure the Community Members' rights are protected and to make relevant information available to the PUC."²⁰ In addition, the Community Groups assert that, while the Consumer Advocate represents the interests of the Applicants' general customer base, it is not well-situated to protect the distinct interests of Community Members "who receive or seek to receive water from the [Applicants'] diversions based on superior rights to water, and not as a 'customer' from the general public."²¹

In OHA's Motion, OHA states that, as an agency of the State of Hawai'i, it shares with other state agencies the constitutional responsibility to "protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes" possessed by Hawaiians.²² OHA further states that its statutory mandates include "[a]ssessing the policies and practices of other agencies

²⁰Id. at 8.

²¹Id. at 7.

²²OHA's Motion at 1 (citing Haw. Const., Art. XII, § 2).

impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians."²³

OHA seeks to intervene to protect and advocate for the interests of its beneficiaries, including those beneficiaries who reside in Applicants' proposed service area. OHA explains:

[M]any OHA beneficiaries in WWC's proposed service area own and farm kuleana parcels that were awarded in the Mahele, and thus hold appurtenant rights to use on those kuleana parcels water from [the Na Wai `Eha streams], which are the same sources from which WWC diverts and delivers water. Because of WWC's dewatering of Na Wai `Eha streams, and destruction of the ancient `auwai, some of the Native Hawaiian and Hawaiian kuleana users are unable to divert water directly from Na Wai `Eha streams for use on their kuleana lands, and WWC has historically recognized its obligation to deliver water, free of charge, to these kuleana users through its ditch system. The kuleana users are not voluntary "customers" of WWC or consumers of its services.

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By requiring Native Hawaiian and Hawaiian kuleana users in the proposed service area to pay WWC a fee in order to exercise their appurtenant rights, and the proposed rates and rate structure would severely impair those rights and effectively inhibit the kuleana users' ability to grow kalo (taro) on their kuleana lands. Further, approving the proposed tariff could establish a precedent that could harm the interests of OHA beneficiaries beyond WWC's proposed service area.²⁴

Generally, Applicants oppose both motions by first asserting that the Community Groups and OHA have no statutory or other right to intervene in this proceeding. For example,

²³Id. at 1-2 (citing HRS §§ 10-3(3), (5)).

²⁴Id. at 2-3 (footnote omitted).

Applicants contend that, although OHA cites the purpose section of its provisioning statute, HRS § 10-3(4), that section only defines OHA's role and does not grant it any specific right or authority to intervene or participate in this proceeding (in contrast to HRS § 269-51, which authorizes the Consumer Advocate to participate as a party in all proceedings before the commission).

Applicants further argue that the kuleana users' claims to superior water rights have no relevance in this docket, which is an application for a CPCN to provide non-potable water service. According to Applicants, the Community Groups' and OHA's primary concern is with the allocation of water resources, which would be more appropriately addressed, and in fact, is being addressed in proceedings before the CWRM, in which the Community Groups are participating. In addition, because water rights and allocation issues go beyond this proceeding, Applicants argue that the Community Groups' and OHA's intervention would only broaden the issues and delay the proceedings. Applicants, however, do not object to OHA being granted participant status in this proceeding so long as OHA's participation is limited to specific issues relating to the distribution of water for those having kuleana appurtenant water rights.

Upon review of both Motions, it appears that Community Members have been receiving water from Applicants free of charge based on appurtenant, or "kuleana," rights to Na Wai `Eha water. The commission finds that the Community Groups have demonstrated

a sufficient interest in this proceeding to the extent that the rates and charges for water, to be determined herein, may affect their claimed superior rights to use the Na Wai `Eha water, free of charge. Likewise, OHA, as the state agency responsible for protecting and advocating for Hawaiian rights and interests, has an interest to protect in this proceeding.

The commission, however, agrees with Applicants that this proceeding pertains to Applicants' request for a CPCN, and setting of initial rates for Applicants' proposed non-potable water distribution service. The commission further acknowledges that it has no jurisdiction over issues pertaining to the allocation of water resources, and traditional and customary rights to water; rather, such jurisdiction belongs exclusively to the CWRM.²⁵ Moreover, on balance with the commission's obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding," and the entire record herein, it appears that the Community Groups and OHA do not have an interest in all aspects or issues of this rate case proceeding that would warrant granting the Community Groups and OHA full-party status. Thus, the commission concludes that the Community Groups and OHA should be granted participant status. The Community Groups and OHA may participate in all procedures in this docket as would a full-party, including discovery and

²⁵ See In re Laie Water Company, Inc., Docket No. 2006-0502, Order No. 23446, filed on May 18, 2007.

settlement, but with such participation specifically limited to issues relating to the distribution of water for those having kuleana appurtenant water rights.

D.

Atherton's Motion

In Atherton's Motion, the interests of each of the Atherton Parties is set forth as follows:

1. MTP: MTP is the owner of Maui Tropical Plantation, which includes a working plantation, restaurant, and gift shop located on approximately 59 acres of land in Waikapu, Maui. MTP plans to revitalize and reorganize Maui Tropical Plantation as an eco-tourist site, emphasizing Maui and Molokai coffee. As a part of MTP's purchase of the Maui Tropical Plantation, MTP also acquired rights under a Water Agreement dated March 24, 1983, under which MTP has the right to receive up to 500,000 gallons per day of water from WWC at a negotiated rate.²⁶ The rate is currently \$0.30 and can be increased to an amount equal to one-third of the County rate.

2. WP: WP is the owner of approximately 1,600 acres of land in Waikapu, Maui. Approximately 1,362 acres of this land is leased to HC&S for sugar cultivation. WP plans to place the remaining 200 acres, consisting of former pineapple lands, into coffee production. As a part of its acquisition of

²⁶As a part of the Application, Applicants have requested that this contract for the sale of water to Maui Tropical Plantation be grandfathered into WWDC's tariff.

this property, WP obtained water delivery commitments from WWC, which were memorialized in a Water Delivery Agreement dated January 1, 2008.²⁷ Under this agreement, WP has the right to receive up to two million gallons of water per day for irrigation of approximately 457 acres of the land leased to HC&S and the 200 acres intended for coffee production.²⁸ The negotiated rate under the agreement is the County rate (currently \$0.90 per thousand gallons) for the first 50,000 gallons per day, and the County rate less \$0.26 (currently \$0.64 per thousand gallons) for water in excess of 50,000 that is used for commercial agriculture.

3. MP: MP is the owner of approximately 260 acres of land in Maalaea. Depending on the use that is ultimately approved for the property, MP plans to develop this property to an urban use. As a part of the acquisition of this property, MP obtained water delivery commitments from WWC, which were memorialized in a Water Delivery Agreement dated January 1, 2008.²⁹ Under this agreement, MP has the right to receive up to one million gallons of water per day for irrigation and agricultural activities at a rate equal to the County rate.

²⁷As a part of the Application, Applicants have requested that this contract with WP be grandfathered into WWDC's tariff.

²⁸The Atherton Parties note that HC&S has a separate agreement with WWC for water to irrigate the remainder of the lands leased from WP. See Atherton's Motion at 4 n.3.

²⁹As a part of the Application, Applicants have requested that this contract with MP be grandfathered into WWDC's tariff.

4. Purchasers: Purchasers have reached an agreement with WWC on the terms for the sale of approximately 4,620 acres of watershed property and associated non-potable water distribution assets by WWC to Purchasers ("Land Sale").³⁰ The property subject to the sale includes the Waikapu Stream and South Waikapu Ditch. If the commission approves the Land Sale, Purchasers intend to deliver water from that property via the South Waikapu Ditch to properties owned by MTP, WP and MP, in which case they will no longer receive water from WWC.³¹ Purchasers wish to continue to deliver water to kuleana owners who currently receive water from the South Waikapu Ditch.

The Atherton Parties state that their primary interest in this proceeding is to obtain commission approval of the Land Sale and request the grandfathering of MTP's, WP's, and MP's water agreements. They further explain the effect of this proceeding on their interests as follows:

The Commission's rulings in this matter will have a substantial impact on [the Atherton Parties'] interests. The Commission's ruling on the Land Sale will determine whether Purchasers can provide water to MTP, WP and MP. If the Commission does not approve the Land Sale, and MTP, WP and MP must continue to rely on water from WWC, the Commission's decision on the request to grandfather existing contracts will have a substantial impact on MTP, WP and MP.

³⁰In the Application, Applicants have requested that the commission approve the Land Sale under HRS § 269-19 as an affiliated transaction to the issuance of a CPCN.

³¹The Atherton Parties note that, if the commission approves the Land Sale, then Purchasers will file a request for declaratory order that they are not a public utility and/or an application for a CPCN to provide this service. See Atherton's Motion at 5 n.6.

The tariff rate proposed by WWC is \$0.90 per thousand gallons. As explained above, MTP's and WP's contracts provide for rates that are less than the proposed tariff rate. Therefore, if the Commission does not grandfather their contracts, MTP and WP will be required to pay higher rates than those provided for in their contracts.³²

Applicants oppose Atherton's Motion mainly by arguing that the Atherton Parties' primary interests in this proceeding are specific to obtaining the commission's approval of the Land Sale and their respective water agreements with WWC, and these concerns do not address the main issues in this CPCN proceeding. Thus, Applicants maintain that intervention by the Atherton Parties will not lead to the development of a sound record, and would delay the proceeding. Applicants, however, do not object to the Atherton Parties being granted participant status in this proceeding so long as their participation is limited to specific issues relating to the Land Sale and the grandfathering of the Atherton Parties' Water Agreements.³³

Upon review, the commission finds that the Atherton Parties have demonstrated that their interests are reasonably pertinent to the issues in this proceeding. As a part of

³²Id. at 5-6 (footnote omitted).

³³On June 12, 2008, the Atherton Parties filed their Motion for Leave to File a Reply to Applicants' Opposition Memorandum. On June 19, 2008, Applicants filed a Memorandum in Opposition to the Motion for Leave. Although the commission's rules do not allow for the filing of reply memoranda in support of motions, see HAR § 6-61-41, upon review of the Motion for Leave, it appears reasonable, in this instance, to grant the Motion and include the Reply Memorandum in the record for consideration herein.

the Application, Applicants have requested approval of the Land Sale, a denial of which would appear to significantly impact the Atherton Parties' financial and contractual interests. Moreover, the Atherton Parties also have interests in the grandfathering of their respective water agreements with WWC, or in the alternative, the tariffed rate that may be determined in this proceeding to apply to the Atherton Parties.

While it appears that the Atherton Parties have a sufficient interest to protect in this proceeding, on balance with the commission's obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding," and the entire record herein, the Atherton Parties do not have an interest in all aspects or issues of this rate case proceeding that would warrant granting them full-party status. Thus, the commission concludes that the Atherton Parties should be granted participant status. The Atherton Parties may participate in all procedures in this docket as would a full-party, including discovery and settlement, but with such participation specifically limited to issues relating to the Land Sale³⁴ and the grandfathering of their respective water agreements.

³⁴Although the commission allows the Atherton Parties to participate on issues pertaining to the Land Sale, the commission has not yet determined whether the Land Sale is properly before the commission in this CPCN/rate case, and may later order the Atherton Parties and the Applicants to file a separate application and/or request for a declaratory order regarding the Land Sale.

E.

HC&S' Motion

HC&S states that, together with Applicants, it jointly operates and maintains certain portions of the West Maui Irrigation System, with some portions being solely owned and controlled by HC&S and other portions being solely owned by Applicants. As a joint owner and operator of the West Maui Irrigation System, HC&S represents that it is fully responsible for its share of all costs associated with the ownership and operation of the system. Moreover, as a joint owner and operator, HC&S asserts that it clearly has a property interest in this proceeding.

HC&S also uses water from the West Maui Irrigation System to irrigate its sugar cane fields. In fact, according to HC&S, it is the largest user of water from the West Maui Irrigation System. Currently, HC&S represents that it utilizes approximately 80% - 90%, on average, of the water yielded by the system. Thus, HC&S contends that "[t]he West Maui Irrigation System is crucial to HC&S's operations and to the continued survival of cane cultivation and other agricultural pursuits in central Maui."³⁵

In response, Applicants refute HC&S' representation that it jointly owns portions of the West Maui Irrigation System with Applicants.³⁶ Thus, Applicants maintain that

³⁵HC&S' Motion at 7.

³⁶See, e.g., id. at 3 ("Applicants wish to make one thing expressly clear: there is no portion of Applicants' system that it jointly owns with HC&S.")

the commission's decision on the Application will not affect HC&S' portion of the irrigation system or its financial interests. Applicants state that the only interest that HC&S may have in this proceeding is limited to a Lease Agreement dated July 6, 2005, which Applicants have proposed to grandfather in the Application. Applicants do not object to HC&S being granted participant status in this proceeding provided that the scope of HC&S' participation be limited to the July 6, 2005 Lease Agreement.

Upon review, although the record is presently unclear as to the extent of HC&S' ownership and operation of the West Maui Irrigation System, the commission finds that HC&S has demonstrated that it has property interests related to the system. HC&S also has financial and contractual interests in the grandfathering of its Lease Agreement. Moreover, as the primary user of, on average, 80% to 90% of the water from the West Maui Irrigation System, HC&S has a substantial financial interest in the rates that will be determined in this proceeding.

Nonetheless, on balance with the commission's obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding," and the entire record herein, HC&S does not have an interest in all aspects or issues of this rate case proceeding that would warrant granting HC&S full-party status. Thus, the commission concludes that HC&S should be granted participant status. HC&S may participate in all procedures in this docket as would a full-party,

including discovery and settlement, but with such participation specifically limited to issues relating to any property interests it has in Applicants' water distribution system, the Lease Agreement, and any water delivery agreements HC&S has with Applicants.

F.

WCE's Motion

As explained in WCE's Motion, WCE Irrigation has a contract with WWC dated August 30, 2002, under which WWC is obligated to deliver non-potable water to WCE Irrigation.³⁷ WCE Irrigation may only use the water for irrigation and agricultural activities within the Wailuku Country Estates agricultural subdivision. WCE Irrigation delivers the non-potable water to WCE Association, which then delivers the water to 184 2-or-more acre lots in the subdivision, and uses it in the common areas of the subdivision. WCE Association is the sole member of WCE Irrigation. The owners of the 184 lots within the Wailuku Country Estates subdivision are the members of WCE Association.

According to WCE, WWC formerly owned the property that was subdivided into the 184-lot Wailuku Country Estates subdivision. WWC sold the property to a developer, who created and recorded covenants, conditions, and restrictions on the subdivision, formed WCE Association, and entered into agreements with WWC and the County, to enable the subdivision to be created

³⁷Applicants submitted this agreement as a "Proposed Grandfathered Contract" with its Application.

and approved by the County. WCE further states that, as a part of the agreements with WWC and the County, the developer of the subdivision: (1) allowed WWC to retain rights to any and all water within the subdivision; (2) granted easements to allow WWC to use the irrigation system within the subdivision for purposes of serving the subdivision, and for serving kuleana lots outside of the subdivision; (3) entered into a contract with the County, requiring each lot within the subdivision to limit its use of County-supplied potable water to 540 gallons per day; and (4) required each 2-or-more acre lot to be in agricultural use.³⁸

As a result of these arrangements, WCE asserts:

[T]he present owners of each of the 184 lots within the Wailuku Country Estates subdivision are at this time absolutely dependent upon WWC to deliver the required non-potable water to be able to use and develop their land, farms, and homes. Unless the Commission allows WWC to continue providing non-potable water to [WCE Irrigation] and, thus, to [WCE Association], under the terms and conditions of the August 30, 2002 contract as presently written, or as modified in this Docket, or unless the Commission requires the County of Maui or another party to provide irrigation water to WCE, there can be no realistic agricultural use of the lots, and the members of [WCE Association] will not be able to farm or improve their land, and could readily lose most if not all of their investments and homes.³⁹

WCE supports grandfathering of its water agreement with WWC, but requests the commission to modify that agreement by, among other things, requiring Applicants to deliver water

³⁸See WCE's Motion at 6-7.

³⁹Id. at 7.

directly to end-users (i.e., owners of the 184 subdivision lots, WCE Association for use in the common areas, and kuleana parcels outside of the subdivision). WCE requests to participate in this docket, as an alternative, if the commission denies intervention.

In response, Applicants argue that WCE's concerns are specific to the grandfathering of its Water Agreement, and do not address the main issues in this proceeding pertaining to whether WWDC is fit, willing, and able to perform the services proposed in the Application. Applicants also state that they strongly oppose the modification of WCE's Water Agreement on the grounds that WWDC's proposed rate structure is based on delivering water to a single entity, i.e., WCE Irrigation, and the test year financials do not forecast the additional costs associated with delivering water to each of the 184 lots. Applicants nevertheless do not object to WCE being granted participant status in this proceeding provided that WCE's participation is limited to the grandfathering of its Water Agreement.

Upon review, as members of WCE Association appear to be required to use their lots for agricultural use, and such use appears to be dependent on water delivered by WWC, WCE therefore has property and financial interests in the outcome of this proceeding. However, on balance with the commission's obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding," and the entire record herein, WCE does not have an interest in all aspects or issues of this rate case proceeding that would warrant granting WCE full-party status. Thus, the commission concludes that

WCE should be granted participant status. WCE may participate in all procedures in this docket as would a full-party, including discovery and settlement, but with such participation specifically limited to issues relating to the grandfathering of WCE's water agreement.⁴⁰

In sum, the commission grants participation to the following: (1) DWS; (2) MMK; (3) the Community Groups; (4) OHA; (5) the Atherton Parties; (6) HC&S; and (7) WCE. The commission, however, cautions all of the Participants that their participation in this docket will be limited in scope, as set forth in this Order. Specifically, the commission does not intend for this proceeding to turn into the CWRM proceeding, and will preclude the relitigation of issues that are exclusively before the CWRM. Likewise, the commission will preclude any effort by any Participant to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider any Participant's involvement in this docket if, at any time, during the course of this proceeding, the commission determines that the Participant is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

⁴⁰The commission grants WCE's Motion to the extent it allows WCE to participate in this docket, but the commission does not rule on any of WCE's other stated requests for relief in its Motion, i.e., modification of WCE's Water Agreement.

III.

Computation of Time

The commission recognizes that application of its rules relating to filing oppositions to motions may be confusing. Given that seven intervention motions, and seven opposition memoranda, were filed in this proceeding, the commission utilizes this opportunity to clarify its filing rules.

First, the applicable rules will be set forth, starting with HAR § 6-61-41(c), which provides that a party has five days after service to file an opposition to a motion:

(c) An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion[.]

The commission allows service by the methods set forth in HAR §§ 6-61-21(c) and (d):

(c) Documents shall be served personally or, unless otherwise provided by law, by first class mail.

(d) Service upon a party, other than the commission, shall be deemed complete upon the occurrence of at least one of the following:

- (1) The party or its attorney is personally served;
- (2) The document is delivered to the party's office or its attorney's office and left with some responsible person; or
- (3) The document is properly stamped, addressed, and mailed to the last known address of the party on file with the commission or to its attorney.

If a party is served by mail, then the party has two extra days within which to respond, referred to as the "Two-Day Mail Rule." Specifically, HAR § 6-61-21(e) states:

- (e) Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period.

The commission's Two-Day Mail Rule is similar to Rule 6(e) of the Hawaii Rules of Civil Procedure and Rule 6(d) of the Federal Rules of Civil Procedure.⁴¹ The purpose of this kind of rule, as stated by the Hawaii Supreme Court, is to "alleviate any unfairness that might be caused by transmission by mail."⁴²

Lastly, as to how to compute periods of time under the commission's rules, HAR § 6-61-22 provides:

Computation of time. In computing any period of time specified under this chapter, in a notice, or in any order or rule of the commission, the day of the act, event, or default shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation.

⁴¹Under Fed. R. Civ. P. 6(d), however, a party is allowed three extra days to respond if served by mail.

⁴²Rivera v. Dep't of Labor and Indus. Relations, 100 Hawai'i 348, 351, 60 P.3d 298, 301 (Haw. 2002). See also Moore's Federal Practice 3D § 6App.104 (stating that the purpose of Fed. R. Civ. P. 6(d) (formerly Rule 6(e)) is to give a party who has been served by alternative means approximately the same time to respond as a party who has been personally served).

As used in this chapter, "holiday" includes any day designated as such by section 8-1, HRS. [Emphasis added.]⁴³

The commission recognizes that application of these rules together, as written, in computing a time to respond, may lead to different results. For example, if a party is served a motion to intervene by mail, two extra days could be added to the five-day period under HAR § 6-61-41(c) to result in a total period of seven days to file any opposition to that motion. In one scenario, the Weekend Rule would not apply (since it only applies to a period of less than seven days), and an opposition to that motion would always be due seven days, or one week, after the motion is filed. On the other hand, the two extra days could be added after the original five-day period is computed. In this scenario, the Weekend Rule would apply, so intervening weekends and holidays would not be counted, and the two extra days would be tacked on only after the five-day period is computed. Clearly, a party would be afforded a larger period of time to file if the second method is employed.⁴⁴

⁴³For ease of reference, the rule underscored above that intervening weekends and holidays are excluded from the computation when the prescribed time is less than seven days, will be referred to herein as the "Weekend Rule."

⁴⁴Another question arises in that the Weekend Rule could be interpreted to apply to the Two-Day Mail Rule -- i.e., intervening weekends and holidays could be excluded in adding on the two extra days for mailing -- in which case, a period of time using the second method would be even larger.

The commission also recognizes that employment of the first method in computing the time to respond to a motion essentially obviates the Weekend Rule, and can lead to unfair results. The facts in this docket demonstrate this point. Two motions to intervene (DWS' and MMK's) were filed on Thursday, May 22, 2008. The following Monday, May 26, 2008, was Memorial Day, a State holiday. Employing the first method, if Applicants were served by mail, then their deadline to file an opposition would have been Thursday, May 29, 2008, since the Weekend Rule would not apply, and the intervening weekend and holiday would be included in the computation. If, however, Applicants were served by hand-delivery, then their deadline to respond would have been one day later, on Friday, May 30, 2008, since the Weekend Rule would have applied, and the intervening weekend and holiday would have been excluded in the computation. This result is clearly contrary to the intent and purpose of the Two-Day Mail Rule.

To eliminate any confusion and the potential for unfair results, the commission clarifies its filing rules as follows:

1. When the prescribed time period for a party to file is less than seven days, and the party is served by mail, then the original period shall be computed first, excluding intervening weekends and holidays, before two extra days for mailing are added. In adding the two extra days, however,

weekends and holidays shall be counted. If the last day of the two-day period falls on a weekend or holiday, then the deadline will be the following business day that is not a weekend or holiday.

To illustrate, if a motion is filed on Monday, November 10, 2008, and a party is served with the motion by mail, then the party's deadline to file an opposition would be Thursday, November 20, 2008. This deadline is computed by counting five days from November 10, 2008, but excluding the intervening Veterans' Day holiday on Tuesday, November 11, 2008 and weekend days, with the fifth day falling on Tuesday, November 18, 2008. Two extra days are then added under the Two-Day Mail Rule, making the deadline to file Thursday, November 20, 2008.

As a second example, if another motion is filed on Thursday, November 20, 2008, and a party is served by mail, the party's deadline to file an opposition would be Monday, December 1, 2008. This deadline is computed by counting five days from November 20, 2008, but excluding the intermediate weekend days and the Thanksgiving holiday on Thursday, November 27, 2008, with the fifth day falling on Friday, November 28, 2008. The two extra days under the Two-Day Mail Rule are then added by including the ensuing weekend days, such that the last day of the two-day period would be Sunday, November 30, 2008. Under HAR § 6-61-22, the deadline to file would be the next business day, Monday, December 1, 2008.

2. When the prescribed time period for a party to file is more than seven days, and the party is served by mail, then two extra days shall be added to the originally prescribed period and the total period shall be computed (including weekends and holidays since the Weekend Rule would not apply) to derive the filing deadline. If the last day of the total period falls on a weekend or holiday, then the deadline would fall on the next day that is not a weekend or holiday.

For example, under HAR § 6-61-137, a motion for reconsideration of a commission decision or order shall be filed within ten days after a decision or order is served upon a party. Thus, (using the same date from the first example, above) if a party seeks to file a motion for reconsideration of a commission decision and order that is filed on Monday, November 10, 2008, and served by mail,⁴⁵ then the party's deadline to file would be Monday, November 24, 2008. This deadline is obtained by adding a total of twelve days, including the intervening Veterans' Day holiday and weekend days, such that the last (twelfth) day would fall on Saturday, November 22, 2008. The filing deadline would be the next day that is not a weekend or holiday, which is Monday, November 24, 2008.

3. Because the calculation of the time period for filing a response to a motion is dependent upon how a party is served, the commission directs all parties before the commission to state clearly on certificates of service the method of service on each party listed in the certificate of service (i.e.,

⁴⁵Generally, all commission decisions and orders are served by mail.

whether by hand-delivery or by mail). On a going forward basis, it will not be sufficient, and considered a violation of the commission's rules, to generally represent on a certificate of service that a filing was served by hand-delivery or U.S. mail without designation as to which parties were served by hand-delivery and which were served by mail.

4. Finally, the foregoing rules shall also apply when the commission orders parties in a decision or order to take any action or file a document. For example, the commission often will order parties to file a stipulated procedural schedule, protective order, or a statement of position within a certain amount of days from the date of an order. If the period allowed by the commission is less than seven days, then the method addressed in subsection 1., above, shall be applied; if the period allowed by the commission is greater than seven days, then the method addressed in subsection 2., above, shall be utilized to compute the deadline.

The commission's interpretation of its rules herein is consistent with recent amendments to the federal court rules,⁴⁶ Hawaii State Supreme Court decisions,⁴⁷ and a prior order by the commission addressing the timing for filing a motion for

⁴⁶See Fed. R. Civ. P. 6 advisory committee's note on 2005 Amendments.

⁴⁷See, e.g., Rivera, 100 Hawai'i 348, 60 P.3d 298 (addressing the timeliness of a notice of appeal within a thirty-day appeal period); In re Robert's Tours and Transp., Inc., Order No. 24960 (Haw. May 30, 2002) (order dismissing an appeal of a commission order based on the untimely filing of a motion for reconsideration under the commission's rules).

reconsideration.⁴⁸ The commission further notes that all of the opposition memoranda filed by Applicants in this docket appear to be timely filed, and consistent with the commission's clarifications to its rules discussed above.

IV.

Statements on Completeness of the Application

As set forth above, Applicants filed their Application on February 8, 2008. On February 20, 2008, Applicants filed an "Errata Sheet" with attached replacement pages for the Application; and on March 17, 2008, Applicants filed a "Supplement and Errata," with Supplement Exhibits A to E, for the Application. In the Supplement and Errata, Applicants state that the Application, Supplement and Errata, in toto, constitute the complete Application before the commission.⁴⁹

Notwithstanding this statement, the commission recognizes that the Parties and Participants may have objections to the completeness of the Application under HAR §§ 6-61-86 and 6-61-88, governing the completeness of rate case applications.⁵⁰ Accordingly, the commission directs the Parties and Participants to submit statements of position as to the completeness of the Application within twenty days of the date of this Order. In these statements, the Parties and Participants may comment on

⁴⁸See In re Pacific Lightnet, Inc., Order No. 23369, filed on April 16, 2007, in Docket No. 03-0197.

⁴⁹See Supplement and Errata, filed on March 17, 2008, at 3.

⁵⁰See also HRS § 269-16(d) and (f)(3).

Applicants' requests in the Application for waivers of the requirements in HAR §§ 6-61-75(b)(1) and (2) to submit an audited balance sheet and an audited income statement, and a waiver of HAR § 6-61-88(2) that requires Applicants to express the total increase in rates as a percent.

V.

Stipulated Procedural Schedule

If issued a CPCN, WWDC will be a public utility with annual gross operating revenues of less than \$2 million. As such, WWDC filed the Application under HAR § 6-61-88 (Requirements for General Rate Increase Applications by a Public Utility with Annual Gross Operating Revenues of Less than \$2,000,000) and HRS § 269-16(f). Under HRS § 269-16(f), the commission must make every effort to issue its proposed decision and order within six months from the filing date of WWDC's completed Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene." HRS § 269-16(f)(3). If the commission permits intervention, then "the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed[.]" Id.

Given the time requirements in HRS § 269-16(f)(3), the commission instructs the Parties and Participants to submit a stipulated procedural schedule that, absent a waiver by the Parties and Participants, complies with the time requirements of HRS § 269-16(f)(3). The stipulated procedural schedule shall be submitted within forty-five days from the date of this Order for the commission's review and approval. If the Parties and Participants are unable to stipulate to a procedural schedule, each Party and Participant shall submit a proposed procedural schedule for the commission's consideration by the same date.

VI.

Orders

THE COMMISSION ORDERS:

1. The commission grants participation to the following: (1) DWS; (2) MMK; (3) the Community Groups; (4) OHA; (5) the Atherton Parties; (6) HC&S; and (7) WCE.

2. The Participants' involvement in this docket will be limited in scope, as set forth in this Order. The commission will preclude any effort by any Participant to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider any Participant's involvement in this docket if, at any time, during the course of this proceeding, the commission determines that the Participant is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

3. The Atherton Parties' Motion for Leave is granted.

4. The commission's rules related to computation of time are clarified, as described above in Section III.

5. Within twenty days from the date of this Order, the Parties and Participants shall submit statements of position as to whether the Application, as supplemented, is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88.

6. Within forty-five days from the date of this Order, the Parties and Participants shall file a stipulated procedural schedule that, absent a waiver by the Parties and Participants, complies with the time requirements of HRS § 269-16(f)(3), for the commission's review and approval. If the Parties and Participants are unable to stipulate to a procedural schedule, each Party and Participant shall submit a proposed procedural schedule for the commission's consideration by the same date.

DONE at Honolulu, Hawaii OCT 28 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

APPROVED AS TO FORM:

Kaiulani Kidani Shinsato
Kaiulani Kidani Shinsato
Commission Counsel

2008-0025.laa

By John E. Cole
John E. Cole, Commissioner

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

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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