

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
MOKULEIA WATER, LLC and)
MOKULEIA WATER USERS ASSOCIATION)
)
Notice of Failure to Comply With)
the Commission's Laws and Rules;)
Order to Show Cause Why)
Respondents Should Not be)
Assessed a Civil Penalty.)
_____)

DOCKET NO. 05-0009

ORDER DISMISSING MOKULEIA WATER, LLC'S
MOTION FOR RECONSIDERATION AS MOOT AND CLOSING DOCKET

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

PUBLIC UTILITIES
COMMISSION

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and the MOKULEIA WATER USERS ASSOCIATION ("Association") should be assessed a civil penalty for failure to comply with the requirements of Hawaii Revised Statutes ("HRS") Chapter 269.² The commission's concerns regarding the service provided by MWL and the Association was based on Informal Complaint No. 04-89, filed on June 7, 2004, by Michael W. Gibson, Esq. on behalf of Mokuleia Beach Colony ("Complainant"), which is a party to this proceeding.³ In Decision and Order No. 22214, filed on January 11, 2006, in this docket ("Decision and Order No. 22214") the commission, among other things:

1. Determined that MWL is a public utility, as defined by HRS § 269-1;
2. Required MWL to apply for a CPCN to provide water service to its customers, pursuant to HRS § 269-7.5, within 120 days of the filing of the decision and order;
3. Determined that MWL's transfer of its water system to the Association through certain agreements dated July 3, 2003, violated HRS § 269-19 and was void; and

²The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is an ex officio party to this proceeding pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

³See Prehearing Order No. 21884, filed on June 21, 2005.

4. Ordered Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan")⁴ to obtain prior commission approval, pursuant to HRS § 269-19, if it desired to sell its membership interest in or the assets of MWL.

On January 20, 2006, MWL filed its Motion for Reconsideration of Decision and Order No. 22214 and then filed a motion for stay of that order on January 26, 2006. Subsequently, on May 23, 2006, MWL filed an application for interim stay of Decision and Order No. 22214, in which it stated that Metropolitan had filed an application with the commission in Docket No. 2006-0137, to transfer its assets or interests in MWL to North Shore Water Company, LLC ("NSWC"). Furthermore, on June 15, 2006, MWL filed another motion for stay of Decision and Order No. 22214, requesting that the commission stay for a period of twenty-four months the requirement that MWL apply for a CPCN within 120 days of the filing of Decision and Order No. 22214.

By Order No. 22857, filed on September 15, 2006 ("Order No. 22857"), the commission granted MWL's June 15, 2006 motion for stay.⁵ Specifically, the commission stayed the proceedings in this docket for a period of

⁴Metropolitan is MWL's sole member. See Decision and Order No. 22214 at 1.

⁵In Order No. 22857, the commission clarified that it was addressing MWL's motion for stay filed on June 15, 2006 "which supersedes its motion for stay filed on January 26, 2006, and supplements and, where appropriate, supersedes its application for interim stay of Decision and Order No. 22214, but does not render a decision on" MWL's Motion for Reconsideration, filed on January 20, 2006. See Order No. 22857 at 7.

twenty-four months, pending the parties' negotiations with the Board of Water Supply ("BWS") for provision of water service to MWL's service area (the "Stay"). The Stay was conditioned, however, on MWL (or NSWC, if the application for sale of MWL's assets to NSWC was approved in Docket No. 2006-0137), charging ratepayers no more than standard BWS rates as committed to by MWL, and providing the commission and the Consumer Advocate with quarterly updates as to the progress of forming a community association, its negotiations with BWS, its progress toward line extension or improvement, its assessments of the quality and reliability of water service provided, the rates being charged to ratepayers, and any other information that may be required by the commission or its staff in writing.

Thereafter, the commission approved the sale of MWL's water facility assets to NSWC in Docket No. 2006-0137.⁶ The transfer of MWL's assets to NSWC was subject to certain conditions including, but not limited to, that: (1) upon effectuation of the transfer, "the obligations and requirements imposed by the commission on MWL, and its service under Metropolitan in Docket No. 05-0009, shall be transferred to and assumed by NSWC and its affiliates, as applicable"; and (2) the rates to be charged to NSWC's customers shall be no more than the BWS rates that were in effect as of October 1, 2006.⁷

⁶See In re Metropolitan Mortgage & Securities Co., Inc., Docket No. 2006-0137, Decision and Order No. 23471, filed on May 31, 2007 ("Decision and Order No. 23471").

⁷See Decision and Order No. 23471 at 27.

II.

Discussion

In its Motion for Reconsideration, which was filed pursuant to HAR §§ 6-61-41 and 6-61-137, MWL requested that the commission "reconsider, modify, and/or vacate" Decision and Order No. 22214, or portions thereof, since: (1) Metropolitan was not made a party to the complaint and the ensuing hearing, received no formal notice of the proceeding, and was not accorded an opportunity to be heard or due process of law; (2) Metropolitan cannot be subject to Decision and Order No. 22214 since it is protected by the automatic stay imposed by the Bankruptcy Court of the Eastern District of Washington; (3) the decision that MWL and not any of its predecessors-in-interest is subject to the provisions of the statutes is arbitrary and unreasonable and offends MWL's right to equal treatment under the law; and (4) Decision and Order No. 22214 will fail by impossibility of performance.

On January 25, 2006, Complainant filed a memorandum in opposition to MWL's Motion for Reconsideration, pursuant to HAR §§ 6-61-41 and 6-61-140. In opposition, Complainant argues that MWL's Motion for Reconsideration presents no new evidence or argument that was not or could not have been brought to the commission's attention prior to its disposition or would require the commission to reconsider Decision and Order No. 22214. Moreover, Complainant states that MWL does not dispute that it is a regulated public utility and MWL's arguments concerning Metropolitan are without merit.

Here, MWL's arguments set forth in its Motion for Reconsideration appear to be moot, as Metropolitan requested and received commission approval to sell and transfer its interests in MWL to NSWC.⁸ Thus, MWL's arguments that Metropolitan lacked notice of the proceeding and that Metropolitan was protected by the automatic stay in bankruptcy; and that the commission's decisions in Decision and Order No. 22214 were arbitrary and will fail by impossibility of performance are moot as to MWL and Metropolitan, who no longer own any of the water system assets at issue. Notably, Metropolitan complied with the commission's requirement in Decision and Order No. 22214 that it obtain prior commission approval, pursuant to HRS § 269-19, if it desired to sell its membership interest in or the assets of MWL. Additionally, in accord with Decision and Order No. 22214 and the Stay granted in Order No. 22857, NSWC submitted an application for a CPCN, which is currently a subject of Docket No. 2008-0180. Thus, the commission finds it appropriate to dismiss MWL's Motion for Reconsideration as moot.

Based on the foregoing, the commission concludes that MWL's Motion for Reconsideration should be dismissed as moot. As there are no remaining issues to be resolved, the commission closes this docket.

⁸See Decision and Order No. 23471 at 26.

III.

Orders

THE COMMISSION ORDERS:

1. MWL's Motion for Reconsideration filed on January 20, 2006, is dismissed as moot.

2. This docket is closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii OCT 29 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
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Commission Counsel

2005-0009.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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