

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
NORTH SHORE WATER COMPANY, LLC)
For a Certificate of Public)
Convenience and Necessity to)
Provide Water Services on the)
Island of Oahu, District of)
Waialua, and for Approval of Rules)
And Rates.)
_____)

DOCKET NO. 2008-0180

ORDER ON APPLICATION COMPLETENESS
AND FILING OF PROPOSED PROCEDURAL ORDER

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ORDER ON APPLICATION COMPLETENESS
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By this Order, the commission finds that NORTH SHORE WATER COMPANY, LLC's ("NSWC") application¹ is complete and properly filed under Hawaii Revised Statutes ("HRS") § 269-16(f) and Hawaii Administrative Rules ("HAR") § 6-61-88, and, thus, the filing date of NSWC's completed Application is September 12, 2008.² The commission instructs the Parties to file a stipulated procedural order for the commission's review and approval within thirty days of the commission's order addressing intervention or participation without intervention; or if

¹NSWC filed its application on September 12, 2008, and attached various exhibits; the direct testimonies of Mr. Clifford Smith (designated as Exhibit NSWC 115) and Mr. Walter Matsuno (designated as Exhibit NSWC 116); a Verification; and a Certificate of Service (collectively, "Application").

²Copies of the Application were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate is an ex officio party to this proceeding pursuant to HRS § 269-51 and HAR § 6-61-62. NSWC and the Consumer Advocate are hereafter collectively referred to as the "Parties."

no intervention motions are filed, within thirty days of the deadline for intervention. If the Parties are unable to stipulate to a procedural order, the commission will issue its own procedural order that complies with the time requirements of HRS § 269-16(f)(3).

I.

Background

In January 2006, in Docket No. 05-0009,³ the commission determined that NSWC's predecessor-in-interest, Mokuleia Water, LLC ("MWL"), is a public utility as defined by HRS § 269-1 and, among other things, required MWL to apply for a certificate of public convenience and necessity ("CPCN"), within 120 days of the filing of Decision and Order No. 22214. Subsequently, upon request by MWL, the commission stayed Docket No. 05-0009 for a period of twenty-four months pending MWL's negotiations with the City and County of Honolulu, Board of Water Supply ("BWS") for the provision of water service to MWL's service area, subject to certain conditions (the "Stay").⁴

Thereafter, upon application by MWL's sole member, Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan"), the commission approved the sale of MWL's water facility assets

³See In re Mokuleia Water, LLC and Mokuleia Water Users Association, Docket No. 05-0009, Decision and Order No. 22214, filed on January 11, 2006 ("Decision and Order No. 22214").

⁴See In re Mokuleia Water, LLC and Mokuleia Water Users Association, Docket No. 05-0009, Order No. 22857, filed on September 15, 2006.

to NSWC.⁵ The transfer of MWL's assets to NSWC was subject to certain conditions including, but not limited to: (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, 2006.⁶

In compliance with the commission's orders in Docket No. 05-0009, NSWC filed the Application on September 12, 2008, requesting a CPCN to provide water service in Mokuleia, in the district of Waialua, on Oahu and approval of its proposed rates, charges and rules.

NSWC currently serves approximately 120 customers within its service territory in Mokuleia and charges its customers rates pursuant to Decision and Order No. 23471, in which the commission restricted NSWC from charging more than the BWS rates in effect on October 1, 2006.

Aside from seeking a CPCN to continue to provide water to its current customers, NSWC is requesting approval of a rate increase of approximately \$90,160 or about 175.55%, over total revenues at present rates for the calendar 2009 test year ("Test Year"). The requested increase is based on an estimated revenue requirement of \$141,520 for the Test Year, and

⁵See 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").

⁶See Decision And Order No. 23471 at 27.

a proposed rate of return of 0.4185%. NSWC is also requesting the establishment of a Repair and Maintenance Reserve of \$12,518 for the Test Year.

Specifically, with regard to its rates and services, NSWC is proposing to: (1) increase its Monthly Water Consumption Charge and exchange its current Billing Charge for a new monthly Meter Charge, see Application, Exhibit NSWC 104; (2) impose an Automatic Power Cost Adjustment Clause to cover the increasing cost of electricity; (3) establish a Repair and Maintenance Reserve through an additional assessment of \$0.35 per each 1,000/gallons of water consumed by customers who receive water from NSWC's bulk meters; and (4) establish its rules governing water service.

On October 8, 2008, the Consumer Advocate filed its Statement of Position Regarding Completeness of Application ("CA's SOP"), stating that it will not object to the completeness of NSWC's Application. However, the Consumer Advocate recommends that the commission, on its own motion, waive certain filing requirements.

II.

Discussion

NSWC filed its Application pursuant to HRS §§ 269-7.5 and 269-16, as amended, and HAR §§ 6-61-74 and 6-61-75. However, given that NSWC is a public utility with annual gross operating revenues of less than \$2 million, its Application shall be deemed filed 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 NSWC'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).

A.

Waiver Recommendation

HAR Chapter 6-61, Subchapter 8, governs the filing of rate increase applications and tariff changes, while HAR Chapter 6-61, Subchapter 6, governs the filing of general applications before the commission; in this case, Applicant's request for a CPCN. In particular, HAR § 6-61-86 requires a public utility requesting authority to change its rate, schedule, or charge to file an application, and a financial statement under HAR § 6-61-75.

Under HAR § 6-61-92, the commission may modify the requirements of Subchapter 8, HAR Chapter 6-61, in its discretion, if the requirements of the subchapter would impose a financial hardship on the applicant or be unjust or unreasonable. Further, under HRS § 269-16(f), the commission is authorized to amend its rules and procedures "to provide the commission with sufficient facts necessary to determine the reasonableness of

the proposed rates without unduly burdening the utility company and its customers." HRS § 269-16(f).

In its review, the Consumer Advocate notes certain deficiencies regarding NSWC's compliance with the requirements of HAR § 6-61-75(b).⁷ However, the Consumer Advocate recommends that the commission, on its own motion, grant NSWC waivers for these filing deficiencies, as discussed below.

First, the Consumer Advocate notes that NSWC's submission of an audited balance sheet for the fiscal year ended May 31, 2008, is not in compliance with requirements of HAR § 6-61-75(b)(1).⁸ Second, the Consumer Advocate states that NSWC did not provide an audited income statement for the twelve month period ending May 31, 2008, as required under HAR § 6-61-75(b)(2).⁹ Finally, the Consumer Advocate contends that NSWC did not submit pro forma financial statements required under HAR § 6-61-75(b)(3).¹⁰

⁷Throughout its statement of position, the Consumer Advocate incorrectly refers to the requirements of HAR § 6-61-75(b) as HAR § 6-61-75(7). For instance, the Consumer Advocate refers to HAR § 6-61-75(b)(1) as HAR § 6-61-75(7)(b)(1) and HAR § 6-61-75(b)(3) as HAR § 6-61-75(7)(c). See CA's SOP at 5-7. The commission presumes that these reference errors were inadvertent.

⁸HAR § 6-61-75(b)(1) requires that financial statements be accompanied by "[a]n audited balance sheet, including any pertinent notations and explanations contained therein, as of the end of the last calendar year[.]"

⁹HAR § 6-61-75(b)(2) requires that the financial statements be accompanied by "[a]n income statement covering the period from the close of the last audited balance sheet up to the date of the latest available balance sheet attached to the application[.]"

¹⁰HAR § 6-61-75(b)(3) requires that "[f]or a person seeking a certificate of public convenience and necessity as a

However, the Consumer Advocate states that it would not oppose the commission granting NSWC waivers from the filing requirements of HAR § 6-61-75(b) since: (1) NSWC would incur additional costs to obtain an audited financial statement for the 2007 calendar year, especially if NSWC's financial records are maintained on a fiscal year basis ending on May 31, 2008; (2) an unaudited income statement for the period from the audited balance sheet to the latest available balance sheet may be for a period of only three months (i.e., June through August 2008); and (3) the instant application is also a request to increase its existing rates. The Consumer Advocate notes that in support of its rate increase request, NSWC provided pro forma financial statements for the 2009 calendar year (i.e., the Test Year).

Given the above, the commission finds that the requirements under HAR § 6-61-75(b) may be unduly burdensome on NSWC, and, thus, are unjust and unreasonable, in this instance. The commission notes that NSWC is a small utility with annual revenues substantially less than \$2 million. Requiring NSWC to file its financial documents in full compliance with HAR § 6-61-75(b), at this time, would delay the processing and review of the Application and may unjustly impose on NSWC additional financial burdens. Accordingly, the commission finds it reasonable to adopt the Consumer Advocate's recommendation to grant NSWC waivers from certain financial statement filing requirements set forth in HAR § 6-61-75(b); provided that

public utility . . . a pro forma income statement for the twelve months following the month in which the application is filed and a pro forma balance sheet as of the end of those twelve months" accompany the financial statements.

NSWC makes available for review all documentation supporting its financial statements, including all accounting books and records, to the commission and Consumer Advocate.

B.

Completed Application

Upon review, the commission finds that NSWC's Application is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88, and, thus, concurs with the Consumer Advocate's assertions regarding the completeness of the Application. Thus, the filing date of NSWC's completed Application is September 12, 2008.

C.

Stipulated Procedural Order

HRS § 269-16(f)(3) requires the commission to issue a procedural order allowing the commission to complete its review and issue its proposed decision and order within the six-month period prescribed in the subsection. For this reason, the Parties are instructed to: (1) initiate the discovery process without delay; and (2) submit a stipulated procedural order setting forth the issues, procedural schedule, and procedures to govern NSWC's Application, within thirty days of the commission's order addressing intervention or participation without intervention; or if no intervention motions are filed,

within thirty days of the deadline for intervention.¹¹ If intervention is not granted, the stipulated procedural schedule to be submitted by the Parties shall, at a minimum, provide that: (1) NSWC's rebuttal testimony (or rebuttal statement of position), if any, be filed by Thursday, February 5, 2009; and (2) the Parties' settlement agreement, if any, be filed by Thursday, February, 12, 2009, in order for the commission to reasonably meet the six-month deadline of March 12, 2009. If the Parties are unable to agree on a procedural order, as prescribed, the commission will issue its own procedural order in accordance with HRS § 269-16(f)(3).

Under HRS § 269-16(f)(3), in the event that the conditions of the subsection are fully met (i.e., the Parties strictly comply with the established procedural schedule and no person is granted intervention), the Parties shall not be entitled to a contested case hearing prior to the issuance of the commission's proposed decision and order.

III.

Orders

THE COMMISSION ORDERS:

1. The Consumer Advocate's recommendation to grant NSWC waivers of certain financial statement filing requirements

¹¹On October 9, 2008, Mokuleia Beach Colony ("MBC") filed a motion to intervene in this proceeding and, then, on October 14, 2008, MBC submitted its memorandum in support of its motion. The commission expects to address all motions to intervene or participate without intervention in this proceeding upon the passage of the deadline to submit such motions, pursuant to HAR § 6-61-57(1).

set forth in HAR § 6-61-75(b) is adopted; provided that NSWC makes available for review all documentation supporting its financial statements, including all accounting books and records to the commission and Consumer Advocate.

2. The filing date of NSWC's completed Application is September 12, 2008.

3. The Parties shall: (a) initiate the discovery process without delay; and (b) unless directed otherwise, submit a stipulated procedural order setting forth the issues, procedural schedule, and procedures to govern NSWC's Application, within thirty days of the commission's order addressing intervention or participation without intervention; or if no intervention motions are filed, within thirty days of the deadline for intervention. If no motions to intervene are granted, the stipulated procedural schedule to be submitted by the Parties shall, at a minimum, provide that: (1) NSWC's rebuttal testimony (or rebuttal statement of position), if any, be filed by Thursday, February 5, 2009; and (2) the Parties' settlement agreement, if any, be filed by Thursday, February, 12, 2009, in order for the commission to reasonably meet the six-month deadline of March 12, 2009. If the Parties are unable to agree on a procedural order, as prescribed, the commission will issue its own procedural order in accordance with HRS § 269-16(f)(3).

DONE at Honolulu, Hawaii NOV - 7 2008.

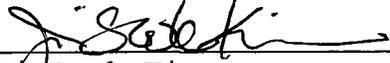
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2008-0180.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:

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

CLIFFORD R. SMITH
SENIOR VICE PRESIDENT
KENNEDY WILSON
9601 Wilshire Blvd., Suite 220
Beverly Hills, CA 90210

MARIE E. RILEY, ESQ.
WHITE TOM & OYASATO
900 Fort Street, Suite 930
Honolulu, HI 96813

Attorney for NORTH SHORE WATER COMPANY, LLC