

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
THE GAS COMPANY, LLC)
To File a General Rate Increase)
For All Utility Gas Divisions.)

DOCKET NO. 2008-0081

ORDER APPROVING PROPOSED
STIPULATED PREHEARING ORDER, AS MODIFIED

PUBLIC UTILITIES
COMMISSION

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FILED

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In the Matter of the Application of)
THE GAS COMPANY, LLC) Docket No. 2008-0081
To File a General Rate Increase)
For All Utility Gas Divisions.)
_____)

ORDER APPROVING PROPOSED
STIPULATED PREHEARING ORDER, AS MODIFIED

By this Order, the commission approves, as modified herein, the proposed Stipulated Prehearing Order filed by the Parties on December 4, 2008.¹

I.

Background

On August 4, 2008, TGC filed its Application seeking the commission's approval of a general rate increase of \$12,510,047 (8.46 percent) over revenues at present rates, based on an estimated total revenue requirement of \$160,416,523 for the 2009 calendar test year (consolidated operations basis), and an overall rate of return of 8.81 percent.² On December 4, 2008,

¹The Parties are THE GAS COMPANY, LLC ("TGC") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62(a).

²Application; Exhibits A - G; Written Testimonies TGC T-1 - TGC T-12; Exhibits TGC-100 - TGC-1200; Workpapers; and Certificate of Service, filed on August 4, 2008 (collectively, "Application"). The filing date of TGC's

the Parties timely submitted their proposed Stipulated Prehearing Order for the commission's review and approval.

II.

Discussion

HRS § 269-16(d), governing a public utility's application for a general rate increase, states in relevant part:

The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete

HRS § 269-16(d).

completed Application is August 4, 2008. See Order Instructing the Parties to File a Stipulated Prehearing Order, filed on September 5, 2008.

Item No. 22 of the Stipulated Regulatory Schedule, including the corresponding footnote 5, states:

22. No later than Thursday, Interim Decision and
June 4, 2009 Order

Footnote 5

Pursuant to Order, filed on September 5, 2008, the Commission determined, among other things, that the date of the completed Application, filed on August 4, 2008, is August 4, 2008. As such, under HRS § 269-16(d), TGC is entitled to a final decision on its Application no later than May 4, 2009 (aka, nine-month final decision and order) and, at the very minimum, interim relief by June 4, 2009 if the Commission determines based on the evidentiary record before it that TGC is probably entitled to such interim relief. By stipulating to this regulatory schedule, TGC does not waive its right to a nine-month final decision and order and interim relief within ten months consistent with the requirements set forth under HRS § 269-16(d). In that connection, the parties will make every effort to expedite the discovery process, if possible, to provide the Commission with a sufficient and complete evidentiary record to render at least an interim relief decision within the ten-month period.

Stipulated Regulatory Schedule, Exhibit A, at 3 (emphasis added).

Here, the nine-month deadline for the commission to make every effort to issue its decision and order is on or about May 4, 2009. However, the Stipulated Regulatory Schedule includes certain procedural deadlines and other dates that occur after May 4, 2009, including: (1) the deadline dates for: (A) TGC to respond to any rebuttal information requests; (B) the Parties to file their settlement agreement (if any); and (C) the filing of post-hearing briefs; and (2) the dates for the pre-hearing conference and evidentiary hearing, respectively (if any). Accordingly, by agreeing to deadlines that do not

allow this docket to be completed within nine months, the Parties have effectively waived by their actions the nine-month deadline for the commission to issue its decision and order. This is consistent with past commission decisions involving rate case applications filed by public utilities with annual gross revenues of \$2 million or more.

In sum, the commission finds that the nine-month decision and order deadline under HRS § 269-16(d) does not apply herein.³ The commission, thus, approves the proposed Stipulated Prehearing Order, as modified by deleting footnote 5 of the Stipulated Regulatory Schedule, which states that "TGC does not waive its right to a nine-month final decision and order."⁴ If TGC in fact is unwilling to waive "its right to a nine-month final decision and order," it should file an amended stipulation

³See In re Maui Elec. Co., Ltd., Docket No. 2006-0387, Order No. 23496, filed on June 19, 2007 (the parties' proposed schedule of proceedings included seven deadlines that occur after the nine-month deadline, including the date for the evidentiary hearing; thus, the electric utility effectively waived commission action by the nine-month deadline); In re Hawaii Elec. Light Co., Inc., Docket No. 05-0315, Order No. 22903, filed on September 28, 2006 (the parties' proposed stipulated prehearing order included twelve deadlines that occur on or after the nine-month deadline; thus, the electric utility effectively waived commission action by the nine-month deadline); In re Hawaiian Elec. Co., Inc., Docket No. 04-0113, Order No. 21727, filed on April 8, 2005 (the parties' agreement to schedule the evidentiary hearing to commence after the nine-month deadline constituted an agreement to waive commission action by such date); see also In re Hawaiian Elec. Co., Inc., Docket No. 2006-0386, Order No. 23442, filed on May 17, 2007 (parties' stipulation of certain dates that occur after the nine-month deadline under HRS § 269-16(d)).

⁴A copy of the proposed Stipulated Prehearing Order is attached herein.

or motion with a procedural schedule that will allow the commission to issue a decision by May 4, 2009.

Item No. 22 of the Stipulated Regulatory Schedule is modified to read as follows:

22. No later than Thursday, Interim Decision and
June 4, 2009 Order

III.

Order

THE COMMISSION ORDERS:

The Parties' proposed Stipulated Prehearing Order, filed on December 4, 2008, is approved as modified herein. Specifically, Item No. 22 of the Stipulated Regulatory Schedule is modified to read as follows:

22. No later than Thursday, Interim Decision and
June 4, 2009 Order

DONE at Honolulu, Hawaii DEC 16 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By 
Leslie H. Kondo, Commissioner

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e. Is the rate of return requested fair?

2. Whether any other relief (e.g., interim relief) as may be just and reasonable should be granted under the circumstances?

II.

SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule ("Schedule of Proceedings") attached hereto as Exhibit "A."

Notwithstanding the above, the parties shall have the right to amend the Schedule of Proceedings as may be agreed in writing from time to time; provided that the requesting party or parties receive the Commission's approval in accordance with Hawaii Administrative Rules ("HAR") § 6-61-23, to the extent applicable. However, the intent of the parties in agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

III.

REQUESTS FOR INFORMATION

A party to this proceeding may submit information requests to another party within the time schedule specified in this Stipulated Prehearing Order. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information. If the parties are unable to agree, the inquiring party may seek approval from the Commission and make a showing of good cause. It is then within the Commission's discretion to allow additional information requests.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials (e.g., documents over 50 pages), the documents or

materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette, the party responding to the information request may make the diskette available to the other party and the Commission. A party shall not be required, in a response to an information request, to provide data that is/are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part VI, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to a protective order.

A party seeking production of documents, notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

The responses of each party to information requests shall adhere to a uniform numbering agreed upon by the parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-IR-1," and a response to this information request shall be referred to and designated as "Response to CA-IR-1."

Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference the attached responsive document, indicating the respondent for each response.

IV.

WITNESSES

Witnesses shall submit pre-filed written testimony and exhibits and shall be made available for cross-examination at the hearing. Witnesses should have the work papers used in preparing the evidence they sponsor available at the hearing. Witnesses will not be permitted to read prefiled testimony at the hearings.

In the oral presentation of the testimony, each witness may give a brief summary of the testimony and exhibits and shall summarize the issues raised by such testimony. Each witness shall be subject to cross-examination for both direct and rebuttal testimony and exhibits.

The parties in this case should cooperate to accommodate the schedules of any mainland witnesses and should inform the Commission in advance of any scheduling difficulties of mainland witnesses. If any party has any objection to scheduling a witness in advance of other witnesses, the party should make a timely objection to the Commission.

V.

FORM OF PREPARED TESTIMONY

All prepared testimony, including text and exhibits, shall be prepared in written form on 8-1/2" x 11" paper with line numbers, and shall be served on the dates designated in the Schedule of Proceedings.

Each party shall be permitted to follow its own numbering system for written testimony and exhibits, provided that the numbering system utilized is consistent and is clearly understandable. Each document of more than one page shall be consecutively numbered. Each party shall prepare a list of its exhibits by exhibit numbers and titles.

The parties shall be permitted to make revisions to exhibits after the designated dates appearing in the Schedule of Proceedings. Revisions shall bear appropriate revision dates. However, revisions or additions that do more than correct typographical errors, update facts, or give numerical comparisons of the positions taken by the parties shall not be submitted.

Generally, exhibits should include appropriate footnotes or narratives in the exhibits or the related testimony setting forth the sources of the information used and explaining the methods employed in making statistical compilations or estimates.

VI.

MATTERS OF PUBLIC RECORD

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that TGC has filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for

inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule on whether the identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

VII.

COPIES OF TESTIMONIES, EXHIBITS AND INFORMATION REQUESTS

| | |
|---|------------------------|
| Public Utilities Commission 465 South King Street First Floor Honolulu, HI 96813 | Original plus 8 copies |
| Division of Consumer Advocacy 335 Merchant Street Room 326 Honolulu, HI 96813 Facsimile Number: 586-2780 | 6 copies |
| Kent D. Morihara, Esq. Kris N. Nakagawa, Esq. Rhonda L. Ching, Esq. Morihara Lau & Fong LLP Davies Pacific Center 841 Bishop Street, Suite 400 Honolulu, HI 96813 Facsimile Number: 566-0800 | 1 copy |
| Jeffrey M. Kissel President and Chief Executive Officer The Gas Company, LLC 745 Fort Street, 18 th Floor Honolulu, HI 96813 Facsimile Number: 535-5943 | 1 copy |
| George T. Aoki, Esq. The Gas Company, LLC 745 Fort Street, 18 th Floor Honolulu, HI 96813 Facsimile Number: 535-5943 | 1 copy |

All pleadings, briefs and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to HAR § 6-61-15.

Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or U.S. mail. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette, compact disc or e-mail in a standard electronic format that is readily available by the parties. The parties agree to use Word 97, Word 2000, or Word 2003 as the standard programming format for filings in this case. However, if work papers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such work papers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a filing, information request or information request response is delivered to a party via diskette, compact disc or e-mail unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or via facsimile as provided above.

VIII.

ORDER OF EXAMINATION

Consistent with the requirements set forth under HAR § 6-61-31, TGC's witnesses shall open with its direct case. The Consumer Advocate's direct case shall be presented after TGC's direct case. TGC shall close with its rebuttal case.

Examination of any witness shall be limited to one attorney for a party. The parties shall avoid duplicative or repetitious cross-examination. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Re-cross-

examination shall be limited to the extent of material covered in redirect examination unless otherwise permitted by the Commission.

IX.

COMMUNICATIONS

HAR § 6-61-29 concerning *ex parte* communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel through their own counsel or designated official only as to matters of process and procedure.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party as provided in Part VII above.

All motions, supporting memoranda, briefs, and the like shall also be served on opposing counsel.

X.

GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket.

Pursuant to HAR § 6-61-37, this Stipulated Prehearing Order shall control the subsequent courses of the proceedings, unless modified at or prior to the hearings to prevent manifest injustice. This Stipulated Prehearing Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Prehearing

Order by facsimile for initial submission to the Commission to be followed by the filing of originals of said facsimile pages.

Dated: Honolulu, Hawaii, December 4, 2008.

By 
JON S. ITOMURA
LANE H. TSUCHIYAMA
Counsel for
DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS

By 
GEORGE T. AOKI, ESQ.
Counsel for Applicant
THE GAS COMPANY, LLC

and

KENT D. MORIHARA
KRIS N. NAKAGAWA
RHONDA L. CHING
Outside Regulatory Counsel for Applicant
THE GAS COMPANY, LLC

APPROVED AND SO ORDERED AT HONOLULU, HAWAII THIS _____ day of

_____, 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:

Michael Azama
Commission Counsel

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE
THE GAS COMPANY, LLC ("TGC")
Docket No. 2008-0081

| | DATE | PROCEDURAL STEPS |
|-----|--|--|
| 1. | Monday, August 4, 2008 | Application Filed at Commission |
| 2. | Wednesday, October 22, 2008 | 1 st Public Hearing (Hilo, Hawaii) |
| 3. | Thursday, October 23, 2008 | 2 nd Public Hearing (Kailua-Kona, Hawaii) |
| 4. | Monday, October 27, 2008 | 3 rd Public Hearing (Honolulu, Oahu) |
| 5. | Wednesday, October 29, 2008 | 4 th Public Hearing (Lihue, Kauai) |
| 6. | Thursday, October 30, 2008 | 5 th Public Hearing (Kahului, Maui) |
| 7. | Wednesday, November 5, 2008 | 6 th Public Hearing (Kaunakakai, Molokai) |
| 8. | Thursday, November 6, 2008 | 7 th Public Hearing (Lanai City, Lanai) |
| 9. | Thursday, August 21, 2008 through Friday, January 9, 2009 | Submissions of Information Requests (IRs) to TGC ¹ |
| 10. | Note: January 30, 2009 last day for responses | TGC's Responses to IRs ² |
| 11. | Thursday, February 26, 2009 | Filing of Direct Testimonies and Exhibits by Consumer Advocate and Other Parties (as applicable) |

¹ During the period from August 21, 2008 through January 9, 2009, the Consumer Advocate has the right to issue IRs on TGC at any time. In addition, for any parties that are granted intervention in this docket, they will have the right to issue IRs on TGC at any time from the date they are granted intervention through January 9, 2009. In doing so, this deadline is being established to provide the Commission with sufficient time to meet their statutory timeline requirements to issue a final decision and/or interim rate decision under Hawaii Revised Statutes (HRS) §269-16(d). Upon receipt of these IRs, TGC agrees to use its best efforts to provide a response to each IR to the party issuing the IR within 21 days from the date the particular IR was submitted to TGC. The IRs and responses will initially only be shared between TGC and the party issuing the IR in question. However, in periodic intervals, but in no event later than seven (7) days after the date the Direct Testimonies and Exhibits are filed with the Commission, TGC and the parties will compile and file with the Commission all IRs and responses provided during the time period.

² Id.

| | DATE | PROCEDURAL STEPS |
|-----|---|--|
| 12. | Monday, March 9, 2009 | TGC's Submission of IRs to Consumer Advocate and/or Other Parties on Direct Testimonies and Exhibits (as applicable); Settlement Discussions (if any) ³ |
| 13. | Monday, March 30, 2009 | Consumer Advocate and/or Other Party Responses to TGC's IRs |
| 14. | Friday, April 17, 2009 | TGC's Rebuttal Testimonies to Direct Testimonies and Exhibits |
| 15. | Monday, April 27, 2009 | Consumer Advocate and/or Other Party Submission(s) of Rebuttal IRs to TGC |
| 16. | Friday, May 8, 2009 | TGC's Responses to Rebuttal IRs |
| 17. | Friday, May 15, 2009 | Settlement Letter/Agreement (if any) to Commission ⁴ |
| 18. | Wednesday, May 20, 2009 | Pre-Hearing Conference |
| 19. | Wednesday, May 20, 2009 | Simultaneous filing of Statement of Probable Entitlement if no settlement |
| 20. | Friday, May 22, 2009 | Consumer Advocate and Other Party Response, if any, to Statement of Probable Entitlement |
| 21. | Tuesday through Friday, May 26 – May 29, 2009 | Evidentiary Hearing (if no settlement) |

³ The parties reserve the right to (collectively or individually) engage in settlement discussions at any time on any and/or all disputed issues that may exist between any of the parties' respective positions in the subject docket. In the event a settlement is reached by all or any of the parties, the respective parties will notify the Commission and any other parties accordingly and make such changes to the remaining procedural steps as may be applicable or prudent under the circumstances, including but not limited to waiving any rights to an evidentiary hearing or limiting the scope of the hearing to any unresolved issues.

⁴ Id.

| | DATE | PROCEDURAL STEPS |
|-----|--|---|
| 22. | No later than Thursday, June 4, 2009 | Interim Decision and Order ⁵ |
| 23. | 3 weeks after transcript completed and filed with the Commission | Simultaneous Post-Hearing Briefs from TGC/Consumer Advocate/Other Parties (as applicable) |
| 24. | | Decision and Order |

⁵ Pursuant to Order, filed on September 5, 2008, the Commission determined, among other things, that the date of the completed Application, filed on August 4, 2008, is August 4, 2008. As such, under HRS § 269-16(d), TGC is entitled to a final decision on its Application no later than May 4, 2009 (aka, nine-month final decision and order) and, at the very minimum, interim relief by June 4, 2009 if the Commission determines based on the evidentiary record before it that TGC is probably entitled to such interim relief. By stipulating to this regulatory schedule, TGC does not waive its right to a nine-month final decision and order and interim relief within ten months consistent with the requirements set forth under HRS § 269-16(d). In that connection, the parties will make every effort to expedite the discovery process, if possible, to provide the Commission with a sufficient and complete evidentiary record to render at least an interim relief decision within the ten-month period.

CERTIFICATE OF SERVICE

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

MS. CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
250 S. King Street
Room 825
Honolulu, Hawaii 96813

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ..
RHONDA L. CHING, ESQ.
Mori-hara Lau & Fong LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

MR. JEFFREY M. KISSEL
President and Chief Executive Officer
The Gas Company, LLC
745 Fort Street, 18th Floor
Honolulu, HI 96813

GEORGE T. AOKI, ESQ.
The Gas Company, LLC
745 Fort Street, 18th Floor
Honolulu, HI 96813

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

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GEORGE T. AOKI, ESQ.
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Outside Regulatory Counsel for THE GAS COMPANY, LLC