

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HOH UTILITIES, LLC )  
For Expansion of Its Service )  
Territory. )  
\_\_\_\_\_ )

Docket No. 2008-0103

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

DECISION AND ORDER

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DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII~~

PUBLIC UTILITIES  
COMMISSION

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I.

Background

A.

Applicant

HOH, a Hawaii limited liability company, obtained its CPCN to operate as a public utility under a transfer from Poipu Wastewater Corporation, which was approved by the commission pursuant to Decision and Order No. 17562, filed on February 25, 2000, in Docket No. 99-0343. HOH currently provides wastewater utility services from the existing Poipu Water Reclamation Facility ("PWRF") to approximately eighty-nine bulk and individual customers in the Poipu area, including the Kauai Sheraton Resort, Marriott Resort, Kiahuna Shopping Village, Kiahuna Tennis Club, Kiahuna Golf Clubhouse, Kiahuna Golf Village Subdivision, Kiahuna Plantation Condominium, Plantation Gardens Restaurant, Poipu Kapili Condominium, the Poipu Beach Hotel, Poipu Shopping Village, Poipu Beach Estates, Wainani at Kiahuna, and Koloa Landing.<sup>3</sup> HOH's existing service territory was approved by the commission in Decision and Order No. 22117, filed on November 10, 2005, in Docket No. 04-0340 ("Decision and Order No. 22117").<sup>4</sup>

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<sup>3</sup>Application, at 2.

<sup>4</sup>A map of HOH's current service territory as expanded by Decision and Order No. 22117 is shown as Exhibit A to the Application.

B.

Application

By Application, HOH seeks commission approval to expand its existing service territory outside of the Poipu area to provide wastewater utility services to certain additional properties in nearby Koloa Town.<sup>5</sup> The Application states:

Applicant has received inquiries and various requests for service from several landowners and/or establishments in nearby Koloa Town (the "Koloa Town Properties"), including but not limited to the following: Old Koloa Town, Sueoka's Store, Big Save, Bendor Village, Koloa Cultural Center, Shops at Koloa Town, Village at Koloa Town, Hale Ohana, Koloa Neighborhood Center, Koloa Marketplace, Koloa Creekside, and Koloa Early School. The Koloa Town Properties, which are shown on [revised Exhibit B, filed by Applicant on June 6, 2008 ("revised Exhibit B")], primarily include existing and to be developed commercial facilities, as well as certain public facilities including a school and a neighborhood center. Certain new residential developments are slated to be developed in this general area under which the County of Kauai Planning Commission is requiring the developers to obtain commitments for sewer treatment service as a condition of obtaining County approval of these residential developments.

Application, at 3. Applicant estimates that the Koloa Town Properties will generate up to an estimated 150,000 gallons of wastewater per day, in the aggregate at full buildout, which is expected by the year 2020. Applicant may begin providing

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<sup>5</sup>A map of the proposed service territory was submitted via letter from Applicant to the commission, filed on June 6, 2008, as revised Exhibit B to the Application.

wastewater services to the Koloa Town Properties around December 2009.<sup>6</sup>

Applicant states that currently, "nearly all" of the Koloa Town Properties dispose of their wastewater through cesspools, however, the Environmental Protection Agency has banned the use of large capacity cesspools, therefore, these landowners have requested that HOH service their wastewater needs.<sup>7</sup> Applicant states:

In consideration of the owners' requests, the immediate need for wastewater utility services for these Koloa Town Properties, the properties' relatively close proximity to Applicant's existing service territory and those owners' agreement to pay Applicant a contribution-in-aid-of construction ("CIAC") in accordance with Applicant's rules and regulations, Applicant is willing to provide such services. Applicant is unaware of any other wastewater utility company, publicly or privately owned, that is willing or able to provide these services to these properties at this time or in the near future.

Application, at 3-4.

Currently, HOH's wastewater treatment facility has a daily treatment capacity of one million gallons per day ("mgd") and processes an average of approximately 0.4 mgd of wastewater.<sup>8</sup> As part of its overall facilities, HOH plans to construct a new regional wastewater reclamation facility ("RWRF") to be located near the old Koloa Sugar Mill. Construction of the proposed facility will coincide with wastewater capacity demand in the

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<sup>6</sup>Application, at 3.

<sup>7</sup>Application, at 3.

<sup>8</sup>Application, at 4.

area and will be designed to blend with the neighboring development; interim startup is estimated by approximately December 2009.<sup>9</sup> Thus, Applicant states that it "has or will have more than sufficient capacity to handle the wastewater utility needs of its existing service territory and the Koloa Town Properties."<sup>10</sup>

Applicant states that the revenues generated by the Koloa Town Properties' customers should offset any expenses related to the expansion of its facilities.<sup>11</sup> It also states:

- (1) Applicant is conveniently situated to service the wastewater utility needs of these properties;
- (2) Applicant has the requisite experience, capability and facilities to sufficiently serve the customers in the proposed expanded service territory;
- (3) the Koloa Town Properties are mandated to either obtain wastewater treatment services by installing [their] own septic systems or to connect to a wastewater treatment facility;
- (4) Applicant is financially and otherwise fit to provide safe and reliable wastewater utility services to the Koloa Town Properties; and
- (5) Applicant is unaware of any other wastewater utility company willing or able to service the properties.

Application, at 4-5 (footnotes omitted).

HOH asserts that it is financially and otherwise fit to provide safe and reliable wastewater utility services to the Koloa Town Properties. To support its assertion, HOH incorporates by reference (pursuant to HAR § 6-61-76) its unaudited financial statements filed with the commission on or

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<sup>9</sup>Application, at 4.

<sup>10</sup>Application, at 4.

<sup>11</sup>Application, at 4 n.4.

about April 7, 2008, to satisfy, to the extent necessary, the requirements of HAR § 6-61-75.<sup>12</sup> HOH further asserts that it has the resources available to it to increase the capacity of its wastewater treatment facility to meet the wastewater demands of both its existing service territory and Koloa Town Properties when and if needed.<sup>13</sup>

HOH is not requesting any amendments to its tariffed rates, as reflected in its existing Rules and Regulations filed and approved by the commission. However, Applicant proposes to amend and replace Exhibit A to its existing Rules and Regulations, with revised Exhibit B, which depicts HOH's proposed expanded territory. Applicant proposes to file revised tariff sheets of its existing Rules and Regulations reflecting the above changes and HOH's revised service territory.<sup>14</sup>

C.

Information Requests

On July 1, 2008, Applicant filed responses to a set of information requests from the Consumer Advocate submitted on June 17, 2008 ("IRs" or "CA-IR"). Among other things, Applicant states:

- Other than HOH's facility [ ] there are no other private or publicly owned wastewater utilities serving the Koloa-Poipu area . . . . Based on HOH's discussions with the County of

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<sup>12</sup>Application, at 5 n.5.

<sup>13</sup>Application, at 5.

<sup>14</sup>Application, at 5.

Kauai regarding wastewater service for Koloa and Poipu, the County has stated that they have no plans to construct a wastewater treatment facility in this region.<sup>15</sup>

- The treatment capacity of the [PWRF] is based on an average daily flow of 1.0 [mgd] and not peak flow. The facility's peak handling capacity exceeds 2.0 mgd.<sup>16</sup>
- The RWRf is currently under design. The Basis of Design Report was submitted to the State of Hawaii Department of Health for review in January 2008. The Preliminary draft environmental impact statement preparation notice has been prepared and presented to the Kauai County Planning Department. Final design and the Environmental Impact Study for the treatment facilities and collection system are on-going. Both the design and permitting are projected to be completed by October 2009. The capacity of the first phase of the plant will be 1.0 mgd and is expected to take 12 months to complete. Accordingly, start-up of the new facility is expected in October 2010.<sup>17</sup>
- [T]he intention is to service the Koloa Town [Properties] at the new RWRf. However, in the event that it becomes necessary, it would be possible to service [the Koloa Town Properties] at the existing PWRf plant. PWRf can be expanded to provide an average daily flow capacity of 2.0 mgd, which is adequate to service the existing service area, as well as [the Koloa Town Properties].<sup>18</sup>
- The latest cost estimate for the RWRf provided by the design engineer is approximately \$14,320,000 for a 1.0 mgd wastewater treatment facility. [This] correlates to a capital cost of \$14.32 per gallon of treatment capacity required. Therefore, the costs for all new users of the regional plant, including [the

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<sup>15</sup>Response to CA-IR-1, at 1.

<sup>16</sup>Response to CA-IR-2, at 2-3.

<sup>17</sup>Response to CA-IR-3, at 5-7.

<sup>18</sup>Response to CA-IR-3, at 7-8.

Koloa Town Properties] and other future users will be \$14.32 per gallon of treatment capacity requested.<sup>19</sup>

- The CIAC fee for the Koloa Town [P]roperties is based on each property's pro rata share of the collection system, treatment system, permitting, and legal costs. The treatment system cost is approximately \$14.30/gallon and will be shared among all RWRP users (not just [the Koloa Town Properties]) based on the capacity required at the facility. For the permitting and collection system design/construction, each user will pay their pro [ ] rata share towards the facilities.<sup>20</sup>
- HOH anticipates filing its next rate case in 2009 or 2010, upon completion of the RWRP design and estimate of [Operating and Maintenance] costs.<sup>21</sup>

D.

Statement of Position

On July 24, 2008, the Consumer Advocate filed its Statement of Position ("Statement of Position"), informing the commission that it does not object to commission approval of the Application. In reviewing the Application, the Consumer Advocate states:

- Applicant represents in [the Application] that the Koloa Town Properties will generate up to an estimated average of 150,000 gallons of wastewater per day at full build-out, which is expected by 2020. The information

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<sup>19</sup>Response to CA-IR-4, at 8-9.

<sup>20</sup>Response to CA-IR-4, at 10-12.

<sup>21</sup>Response to CA-IR-5, at 13-14.

provided [in responses to IRs], however, only shows an average flow for the Koloa Town Properties of approximately 99,000 gallons per day in 2020. The Consumer Advocate will presume that the additional 51,000 gallons needed to reach the 150,000 gallons per day flow may be attributed to the new residential developments that required wastewater treatment commitments for County of Kauai Planning Commission approval as mentioned in the [Application].

- Although [Applicant] indicates in [the Application] that HOH can or will begin providing wastewater utility services to the Koloa Town Properties around December 2009, the information provided shows flows from the Koloa Town Properties starting in 2011.

Statement of Position, at 5-6 (footnotes omitted). Also, "HOH indicates [in its responses to IRs] that the capacity of [PWRf] is based on an average daily flow of 1.0 mgd, and a peak handling capacity that exceeds 2.0 mgd. The existing average and peak capacities provided in this proceeding by the Applicant are consistent with the findings of the Consumer Advocate in its statement of position in Docket No. 04-0340 regarding HOH's plant capacities based upon the completion of their then planned plant upgrades."<sup>22</sup> Moreover, "HOH maintains that the RWRf is currently under design, and that both design and permitting are projected to be completed by October 2009."<sup>23</sup> The Consumer Advocate notes that Applicant expects start-up of the RWRf facility by October 2010 with an initial capacity of 1.0 mgd and ultimate

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<sup>22</sup>Statement of Position, at 6.

<sup>23</sup>Statement of Position, at 7.

capacity of 2.0 mgd.<sup>24</sup> The Consumer Advocate states:

[Applicant] presently intends to service the Koloa Town Properties at the new RWRP (which should be in service by about 2011 or, more specifically, October 2010 as HOH estimates in the application), and, in the event it becomes necessary, it could service the Koloa Town Properties at the existing PWRP plant. Moreover the [IR] response alleges that the current PWRP plant can be expanded if need be to provide an average daily flow capacity of 2.0 mgd, which would be more than adequate capacity to service the Applicant's current customers and the Koloa Town Properties.

Based upon the [Applicant's] aforementioned representations regarding the capacities of its existing and planned wastewater treatment facilities, the Consumer Advocate finds that [Applicant] is expected to be able to treat the wastewater produced by customers in its existing and expanded service territory [ ] without adversely affecting its existing customers.

Statement of Position, at 7-8.

The Consumer Advocate states that "[w]ith the proposed service territory expansion, HOH may realize a large increase in the number of customers served, thereby enabling [Applicant] to increase its revenues, presumably with or without a corresponding increase in operating costs."<sup>25</sup> The Consumer Advocate notes that in its response to IRs, Applicant indicated:

[T]hat it currently does not have any detailed projections on what its increases in operating expenses and revenues will be from the proposed expansion of the service territory. It appears from Applicant's response [to IRs, that Applicant] is still in the process of designing the RWRP, and determining how to integrate both the RWRP and PWRP to efficiently service customers in HOH's existing and proposed expanded service territory. [HOH] even discusses the possible installation of

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<sup>24</sup>Statement of Position, at 7.

<sup>25</sup>Statement of Position, at 9.

a photovoltaic system to generate solar energy for use at the RWRP. Additionally, . . . HOH represents that it anticipates filing its next rate case in 2009 or 2010 upon the completion of the RWRP design and estimate of its operating and maintenance costs.

In view of the above, the Consumer Advocate notes that it may be somewhat premature at this point to assess the financial impact (i.e. revenues and operating costs) of the proposed expanded service territory on HOH. As such, the Consumer Advocate would find it more reasonable and efficient to assess the reasonableness of the existing rates in [HOH's] next rate case anticipated to be filed in either 2009 or 2010. . . . Thus, the Consumer Advocate would recommend that any assessment of the need to adjust the existing rates be deferred to [HOH's] anticipated 2009 or 2010 rate case filing.

Statement of Position, at 10-11.

In summary, the Consumer Advocate states:

Based upon the above, the Consumer Advocate hereby recommends that HOH be allowed to expand its service territory to include the areas of Koloa Town requested by the Applicant in the instant application for the following reasons:

- The PWRP and planned RWRP appear to have sufficient capacity to handle the wastewater flows expected from customers in the existing and expanded service territory without adversely affecting service to the existing customers.
- The cost of the RWRP and to improve HOH's facilities to service customers in the expanded service territories will be funded by the landowners or business owners of each property in the expanded service territory. This cost is not expected to be paid for by the Applicant's existing customer[s].
- The reasonableness of the existing rates will be assessed in the Applicant's next rate case anticipated to be in 2009 or 2010.

In addition, the Consumer Advocate recommends [c]ommission approval of this requested service territory expansion on the condition that (1) the Applicant amend its existing Rules and Regulations as necessary to reflect the expanded service territory as shown in its [revised] Exhibit B filed on June 6, 2008, and (2) the Applicant file its next rate case by 2010 or earlier should it complete its design and estimated operating expenses for the RWRP to serve the requested expanded service territory in this proceeding earlier than 2010.

Statement of Position, at 11-12 (footnotes omitted).

## II.

### Discussion

#### A.

#### Expansion of Service Territory

HRS § 269-7.5 states, in relevant part:

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

. . .

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed

service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

. . .

HRS § 269-7.5. As HOH's authority pursuant to its CPCN does not currently authorize it to provide wastewater utility services to the area listed in the proposed expanded service area, commission approval is required to amend Applicant's service territory to include the expanded service area.

Pursuant to HRS § 269-7.5, the commission finds that Applicant is fit, willing, and able to provide the expanded service, as shown in revised Exhibit B to the Application, and that the provision of these services is required by the present or future public convenience and necessity. Applicant is able, or will be able, to provide wastewater utility services to the proposed additional properties, and it will be able to do this without detriment to the level and quality of service currently being provided to its existing customers.

Applicant indicates: (1) that the capacity of the first phase of the RWRP is 1.0 mgd with an ultimate capacity of

2.0 mgd;<sup>26</sup> (2) construction of the RWRF will coincide with wastewater capacity demand in the area;<sup>27</sup> (3) the PWRP will remain as a scalping plant for the production of recycled water and also have a capacity of 1.0 mgd;<sup>28</sup> (4) the combined capacity of the system will be 2.0 mgd, based on average daily flow;<sup>29</sup> and (5) the system will be designed to handle "maximum days flows," which correspond to the peak handling capacity of the system of 4.0 mgd.<sup>30</sup> Applicant represents that it has or will have more than sufficient capacity to handle the wastewater utility needs of its existing service territory and the Koloa Town Properties.

The Consumer Advocate, after analysis, states that "it appears that the 1.0 mgd average daily flow capacity and 2.0+ mgd peak handling capacity for the PWRP would be sufficient to process the current estimates of wastewater from customers in the existing and expanded service territories of the Koloa Town Properties for years 2010 through approximately 2013 . . . . During that period Applicant's RWRF should be in service (by about 2011) to provide any additional wastewater treatment capacity required to service the Koloa Town Properties at that

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<sup>26</sup>Response to CA-IR-3, at 5-6.

<sup>27</sup>Application, at 4.

<sup>28</sup>Response to CA-IR-3, at 6.

<sup>29</sup>Response to CA-IR-3, at 6.

<sup>30</sup>Response to CA-IR-3, at 6.

time."<sup>31</sup> Moreover, the Consumer Advocate notes HOH's representation that the PWRF plant can be expanded to provide an average daily flow capacity of 2.0 mgd, which the Consumer Advocate believes to be more than adequate capacity to service Applicant's current customers and the Koloa Town Properties. Thus, the Consumer Advocate concludes that HOH is expected to be able to treat the wastewater produced by customers in its existing and expanded service territory without adversely affecting its existing customers.

Applicant's current customers will not incur the costs of the expansion of Applicant's service territory. The landowners or business owners of each property in the expanded service territory are expected to cover the cost of the RWRP and improvements to HOH's facilities. Accordingly, for the foregoing reasons, the commission finds it reasonable and in the public interest to expand HOH's authorized service area to include the additional properties, subject to the conditions described below.

B.

Amendment of Rules and Regulations

Applicant proposes to amend and replace Exhibit A attached to its existing Rules and Regulations with the Revised Exhibit B, filed on June 6, 2008.<sup>32</sup> Applicant states that if its Application is approved, it will file revised tariff sheets of

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<sup>31</sup>Statement of Position, at 7.

<sup>32</sup>Application, at 5.

its existing Rules and Regulations reflecting the changes to Applicant's service territory. Accordingly, in light of the above findings, the commission concludes that Applicant should promptly file revised tariff sheets of its Rules and Regulations reflecting the changes to Applicant's revised service territory.

C.

Applicant's Next Rate Case

The Consumer Advocate recommends that HOH "file its next rate case by 2010 or earlier should [the wastewater utility] complete its design and estimated operating expenses for the RWRP to serve the requested expanded service territory in this proceeding earlier than 2010."<sup>33</sup> The Consumer Advocate's recommended condition is based in part on its presumption that "by 2010 HOH should have completed the initial phase of the RWRP, finalized how it will integrate the RWRP with the PWRP, and possibly have some actual operating expenses related to flows from the expanded service territory."<sup>34</sup>

Here, however, the commission notes that the Consumer Advocate's presumption that HOH should complete the initial phase of the RWRP by 2010 or earlier, may not necessarily be realized. Moreover, even if the initial phase of the RWRP is completed by 2010, HOH, at its option, may choose to defer the recovery of this completed initial phase until a later period.

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<sup>33</sup>Statement of Position, at 11-12.

<sup>34</sup>Statement of Position, at 12 n.9.

Under the circumstances, the commission defers to HOH regarding the *timing* of the filing of its next rate case application. Thus, the commission declines to adopt the Consumer Advocate's recommendation that HOH file its next rate case application by 2010 or earlier.

### III.

#### Orders

1. HOH's Application, filed on May 30, 2008, for commission approval to expand its existing service territory to provide wastewater treatment services to the Koloa Town Properties, is approved. Applicant's new service area includes those properties reflected in the revised Exhibit B filed on June 6, 2008.

2. Applicant shall promptly file with the commission its revised tariff sheets, incorporating its expanded service territory. The revised tariff sheets will take effect upon filing. Failure to promptly comply with this requirement may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

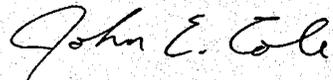
3. This docket is closed, unless ordered otherwise by the commission.

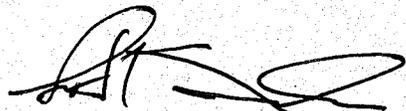
DONE at Honolulu, Hawaii

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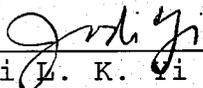
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Jodi L. K. Yi  
Commission Counsel

2008-0103.cp

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

IAN KAGIMOTO  
HOH Utilities, LLC  
4560 Piko Road  
P.O. Box 1214  
Lawai, Kauai, HI 96765

MICHAEL H. LAU, ESQ.  
KRIS N. NAKAGAWA, ESQ.  
SANDRA L. WILHIDE, ESQ.  
MoriHara Lau & Fong LLP  
841 Bishop Street, Suite 400  
Honolulu, HI 96813