

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

MAKENA WASTEWATER CORP. AND  
MEHEU, LLC

DOCKET NO. 2007-0201

For Approval of the Sale of 100%  
Of Outstanding Common Stock of  
Makena Wastewater Corp. and  
Related Matters

DECISION AND ORDER NO. 24011

Filed Feb. 4, 2008

At 1:30 o'clock P.M.

Karen Higashi

Chief Clerk of the Commission

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2008 FEB -5 A 9:06

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE & INDUSTRY

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

Karen Higashi

In the Matter of the Application of)

MAKENA WASTEWATER CORP. AND

MEHEU, LLC

For Approval of the Sale of 100%

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Related Matters

DECISION AND ORDER

By this Decision and Order, the commission approves MAKENA WASTEWATER CORP. ("MWC") and MEHEU, LLC's ("Meheu") (jointly, "Applicants") application for commission approval to transfer 100% of MWC's common stock from its parent company, Moani Corp ("Moani") to Meheu ("Proposed Transaction").<sup>1</sup>

<sup>1</sup>See Application, Verifications, Exhibits "A" - "C", and Certificate of Service, filed on July 25, 2007 ("Application"). Applicants served copies of the Application on 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 Hawaii Administrative Rules § 6-61-62(a).

planned real estate development project in the Makena area on the island of Maui.<sup>2</sup> The land and improvements that comprise the master-planned real estate development project, which includes the Maui Prince Hotel ("Project Lands"), were previously owned by Maui Prince Hotel, LLC ("MPH"), a Hawaii limited liability company, and Lokelani Resort Corp. ("LRC"), a Hawaii corporation. MPH and LRC are related entities to MWC. MWC's sole shareholder, in turn, is Moani, a Hawaii corporation.

Meheu, a Delaware limited liability company, is a related entity to Honua, LLC ("Honua"). Both Meheu and Honua are wholly owned subsidiaries of Namalu, LLC, a Delaware limited liability company.

Applicants represent that, on June 26, 2007, the Project Lands were sold from MPH and LRC to Honua.

## 2.

### Proposed Transaction

Applicants state that, on January 25, 2007, Moani and Meheu entered into a Stock Purchase Agreement ("Agreement"), pursuant to which Meheu agreed to purchase 100% of the outstanding stock of MWC for \$500,000.<sup>3</sup> The closing of the Proposed Transaction is conditioned, in part, on either: (1) the issuance of a final declaratory order confirming that the

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<sup>2</sup>See In re Makena Wastewater Corp., Docket No. 02-0133, Decision and Order No. 21352, filed on September 16, 2004 (issuance of a certificate of public convenience and necessity to MWC).

<sup>3</sup>Applicants attached a copy of the Agreement as Exhibit B to the Application.

commission's approval is not required for the consummation of the Proposed Transaction;<sup>4</sup> or (2) if the commission determines that its approval is required, then a final order approving the Proposed Transaction.

Applicants explain that MWC's wastewater treatment facilities were constructed specifically to serve the Project Lands that were owned and being developed by MWC's affiliates. They further state that the Proposed Transaction is related to the larger transaction involving the sale of the Project Lands from MPH and LRC to Honua. In addition, according to the Applicants, Meheu is the Honua-related entity that is seeking to own MWC's stock, in order to continue to serve the Project Lands for wastewater utility purposes.

In support of the Application, Applicants assert that:

(i) Meheu has made commitments confirming that the Proposed Transaction will not affect the commission's ability to regulate MWC, and that MWC will continue to operate as a public utility in strict compliance with all laws; (ii) MWC will continue to operate under its commission-approved rates and tariffs, and will

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<sup>4</sup>On March 20, 2007, MWC filed a petition with the commission, requesting a declaratory ruling that the Proposed Transaction does not require commission approval under HRS Chapter 269. In addition, MWC requested that the commission not assert its jurisdiction to review the Proposed Transaction under HRS § 269-7. By Decision and Order No. 23408, filed on May 2, 2007, in Docket No. 2007-0073, the commission ordered and declared that: (1) MWC's request for a declaratory ruling that the Proposed Transaction does not require the commission's approval is denied; (2) HRS §§ 269-17, 269-18, and 269-19 do not apply to the Proposed Transaction; (3) the Proposed Transaction is exempt under HRS § 269-17(c)(2); (4) the Proposed Transaction is subject to the commission's review and approval under HRS § 269-7(a); and (5) MWC's request that the commission not exercise its jurisdiction to review and approve the Proposed Transaction under HRS § 269-7(a) is denied.

continue to maintain and abide by its policies with respect to service to customers, employees, operations, financing, and other matters affecting the public interest or utility operations; (iii) The Proposed Transaction will not adversely impact MWC's rates; there are no material contemplated changes in the income statement, balance sheet or financial position of MWC as a result of the Proposed Transaction; (iv) MWC and Meheu do not plan to seek recovery of the costs of the Proposed Transaction through rates; (v) The symbiotic relationship between the owner of MWC's facilities and the owner of the Project Lands adjacent to MWC has always been the basis of MWC's existence; the Proposed Transaction merely seeks to ensure that the same market factors continue, and that the symbiotic relationship between MWC and the new owner of the Project Lands, Honua, exists; and (vi) Meheu will be retaining a majority of MWC's key employees, including MWC's Plant Manager.

Overall, Applicants contend that the Proposed Transaction is reasonable and consistent with the public interest because:

(i) MWC's fitness, willingness, and ability to provide utility services will not be affected by the Proposed Transaction, and (ii) the Proposed Transaction will not have any adverse material impacts on MWC's operations, management, or customers. In fact, the [P]roposed [T]ransaction will ensure a symbiotic relationship between the [sic] MWC and the new owner of the Project Lands, Honua, LLC.<sup>5</sup>

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<sup>5</sup>Application at 8.

B.

Consumer Advocate's Position

On November 7, 2007, the Consumer Advocate filed its Statement of Position ("CA's SOP"), informing the commission that it does not object to the commission's approval of the Proposed Transaction. Based on its review of the Application, the Consumer Advocate stated:

the Proposed Stock Transaction is reasonable and consistent with the public interest because the Proposed Stock Transaction is not expected to have an immediate negative effect on MWC's fitness, willingness, or ability to provide waste water treatment services to its customers. Furthermore, the proposed stock sale will not have an immediate impact on the rates that are charged for the regulated service. Finally, Applicants assert that the gain on the stock sale will not be recorded on the financial books of MWC. Thus, there is no intent to recover any acquisition premium, transaction or transition costs from MWC's ratepayers, consistent with the Commission's findings on these matters. For all of the above reasons, the Consumer Advocate states that it does not object to Commission approval of the proposed sale of 100 percent (100%) of the outstanding stock of MWC to Meheu by Moani.<sup>6</sup>

II.

Discussion

Pursuant to Decision and Order No. 23408, filed on May 2, 2007, in Docket No. 2007-0073, the commission reviews the Application under HRS § 269-7(a),<sup>7</sup> which provides:

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<sup>6</sup>CA's SOP at 5-6 (footnote omitted).

<sup>7</sup>As set forth above, see supra note 4, in Decision and Order No. 23408, the commission ordered and declared that HRS §§ 269-17, 269-18, and 269-19 do not apply to the Proposed Transaction, and that the Proposed Transaction is exempt under HRS § 269-17(c)(2).

The public utilities commission and each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

Upon review of the entire record, the commission finds that the transfer of 100% of MWC's outstanding common stock from its parent, Moani, to Meheu, is reasonable and in the public interest. This decision is based on the record established in this proceeding, including Applicants' various representations. The Proposed Transaction is reasonable given that MWC intends to continue to operate under its commission-approved rates and tariffs, and continue to maintain and abide by its policies with respect to service to customers, employees, operations, financing, and other matters affecting the public interest or utility operations. Moreover, the proposed stock sale will not have an immediate impact on the rates that are charged for MWC's service. In addition, it appears that the

Proposed Transaction will ensure the continuation of a "symbiotic relationship" between MWC and the new owner of the Project Lands, Honua. For all of these reasons, the Application should be approved.

III.

Orders


THE COMMISSION ORDERS:

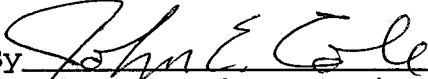
1. The transfer of 100% of MWC's outstanding common stock from its parent company, Moani, to Meheu, as described in the Application, is approved.

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

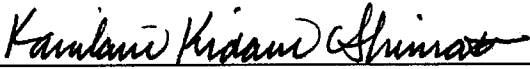
DONE at Honolulu, Hawaii FEB - 4 2008.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel

By   
Leslie H. Kondo, Commissioner

2007-0201.1aa



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24011 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service

Page 2

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Karen Higashi

DATED: FEB - 4 2008