

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAPALUA WATER COMPANY, LTD.)
For Expansion of Its Service)
Territory)
_____)

DOCKET NO. 2007-0320

DECISION AND ORDER NO. 24172

Filed May 1, 2008
At 2:30 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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Commission, State of Hawaii

Karen Higashi.

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DECISION AND ORDER

By this Decision and Order, the commission approves KAPALUA WATER COMPANY, LTD.'s ("Applicant") request for commission approval to expand its existing service territory to provide potable water service to the West Maui Village development, and to amend its Rules and Regulations to reflect the expanded service territory, pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5.

I.

Background

A.

Application

By application, filed on September 19, 2007 ("Application"), Applicant, a Hawaii corporation and wholly owned subsidiary of Maui Land & Pineapple Company, Inc. ("ML&P"), seeks commission approval to: (1) expand its service territory; and

(2) amend its Rules and Regulations to reflect the revised service territory.¹

Applicant is a public utility that provides both potable and non-potable water utility services to residences, condominiums, hotels and commercial establishments in Kapalua, Maui, Hawaii. Applicant obtained its certificate of public convenience and necessity ("CPCN") on September 2, 1977.² Its current service territory was approved by the commission on July 31, 2006, and is depicted in Exhibit A to the Application.³

In its Application, Applicant seeks commission approval to expand its service territory outside of the Kapalua resort area to provide potable water service to the planned West Maui Village development ("West Maui Village"), located on a portion of Tax Map Key number (2) 4-3-001:033, being developed by ML&P.⁴ According to Applicant, the development is planned to consist of approximately 158 multi-family residential units, which will be comprised of approximately 26 residential buildings with four to twelve units per building, together with

¹Application, Exhibits A and B, Verification and Certificate of Service, filed on September 19, 2007.

Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

²Decision and Order No. 4813, filed on September 2, 1977, in Docket No. 3157.

³Decision and Order No. 22662, filed on July 31, 2006, in Docket No. 2006-0011.

⁴Application at 3-4.

associated common areas and roadways.⁵ At full build-out and occupancy, Applicant estimates that West Maui Village will utilize an estimated average daily demand for residential purposes of 88,480 gallons per day ("gpd") of water in the aggregate (based on an average of 560 gpd per multi-family unit) and an estimated maximum daily demand of 132,720 gpd of water in the aggregate (calculated at 1.5 times of average daily demand).⁶ Among the 158 residential multi-family units are four units planned for both residential and commercial uses, which are estimated to utilize an additional average daily demand of 448 gpd of water in the aggregate and an estimated maximum daily demand of 672 gpd of water in the aggregate.⁷ The common areas and roadways within the development will have an average daily demand of approximately 20,100 gpd and an estimated maximum daily demand of 30,150 gpd for landscaping and irrigation needs.⁸ As such, the total estimated average daily demand for the entire development is 109,028 gpd and the total estimated maximum daily demand is 163,542 gpd.⁹ Applicant estimates that water service

⁵Application at 3.

⁶Application at 3.

⁷Application at 3.

⁸Application at 3-4.

⁹Kapalua Water Company, Ltd.'s Responses to the Division of Consumer Advocacy's Information Requests and Certificate of Service, filed on December 4, 2007 ("Response") (Response to CA-IR-6).

will be required in October 2009 with full build-out and occupancy in August 2010.¹⁰

According to Applicant, it is unaware of any other water utility provider, publicly or privately owned, that is willing or able to service the West Maui Village development in the near future.¹¹ Applicant asserts that it is willing and able to provide service to the development, pursuant to the Water Sale Agreement between Applicant and ML&P, which provides Applicant with rights of up to one million gpd of potable water from ML&P's two existing wells. The two wells can produce a conservative sustainable yield of 750,000 gpd per well, or 1.5 million gpd total; and Applicant "has an option to access a third well owned by ML&P, which can produce up to an additional 750,000 gpd of potable water."¹² Applicant's existing service territory has an estimated maximum water consumption amount in the aggregate of approximately 700,000 gpd; "[a]s such, it is not expected that Applicant's existing service territory would reach Applicant's 1,000,000 gpd rights under the Water Sale Agreement until sometime after 2016."¹³

According to Applicant, potable water service will be provided to West Maui Village by transmission lines, service laterals, storage facilities, and appurtenant equipment that will be installed by the developer, ML&P, that will be "dedicated

¹⁰Application at 4.

¹¹Application at 4.

¹²Application at 5-6.

¹³Application at 5.

and transferred to Applicant at no cost."¹⁴ In addition, Applicant states that the revenues expected to be generated by West Maui Village customers should offset any expenses incurred by Applicant in connection with the expansion. "Applicant will not be required to pay for additional upgrades to its existing water system, if any, due to the expansion of the service territory to include West Maui Village."¹⁵

In support of its Application, Applicant states that it is conveniently situated to serve the expanded service area; has the requisite experience, capability and facilities to serve the customers in the proposed service territory; and is fit to provide the service "all without detriment to the level and quality of service being provided to its existing service territory, and without any negative rate impact on Applicant's current users."¹⁶

Applicant states that (1) no amendments to Applicant's tariffed rates are required, and (2) it proposes to amend and replace Exhibit 1 attached to its Rules and Regulations with the drawing attached as Exhibit B to the Application.¹⁷ Applicant states that if its Application is approved, it will file revised tariff sheets of its Rules and Regulations to reflect the changes to its service territory.¹⁸

¹⁴Application at 6.

¹⁵Application at 6.

¹⁶Application at 6-7.

¹⁷Application at 7.

¹⁸Application at 7.

B.

Information Requests

On October 11, 2007, the Consumer Advocate served information requests ("IRs") upon Applicant, to which Applicant filed responses on December 4, 2007.

In CA-IR-1, CA-IR-2, and CA-IR-3, the Consumer Advocate inquired as to the water service provided to the area surrounding the proposed West Maui Village development and the efforts by ML&P to obtain service for the development from another provider. According to Applicant, the real property located between Applicant's existing service territory and the proposed expanded service territory is currently zoned agriculture and is exclusively owned by Applicant's parent, ML&P.¹⁹ Accordingly, Applicant does not anticipate any right-of-way agreements or arrangements that would be required or would pose an obstacle to delivery of water to the proposed development.²⁰ In addition, in response to CA-IR-1, Applicant stated its understanding that the homes located mauka and makai of the development are serviced by the County of Maui, Department of Water Supply ("DWS"); but that DWS has no available source capacity from which it can provide water to the West Maui Village development.²¹ In addition, Applicant states that ML&P's "discussions with the

¹⁹Response to CA-IR-2a.

²⁰Response to CA-IR-2a and CA-IR-2d. According to Applicant, ML&P has no immediate plans to develop the area between Applicant's existing and proposed service territory and therefore is not seeking to include the area as part of its service territory. Response to CA-IR-2a and CA-IR-2b.

²¹Response to CA-IR-1 and CA-IR-3.

DWS to provide additional raw water have not moved forward in a timely manner to support the timing of the West Maui Village development."²² The possibility of granting DWS rights to draw potable water from ML&P wells was not discussed with DWS "[d]ue to time constraints in providing potable water services to the proposed West Maui Village development."²³

In CA-IR-7, the Consumer Advocate inquired as to Applicant's decision not to extend its non-potable water system to the West Maui Village development to meet the development's irrigation and landscaping watering needs. In response, Applicant stated that it "would be impracticable and too cost prohibitive to expand [Applicant's] existing non-potable water system to provide non-potable water to West Maui Village given the distance between the project and [Applicant's] existing non-potable system, the multi-family attached unit layout of West Maui Village, and the limited amount of water that will be used for common area landscaping and irrigation needs."²⁴ In addition, ML&P will be selling the West Maui Village units subject to a disclosure and requirement that water service be provided to the units at rates approved by the commission and with the understanding that although Applicant provides potable and non-potable water, the water to be provided to the

²²Response to CA-IR-3b.

²³Response to CA-IR-3c.2.

²⁴Response to CA-IR-7a. Applicant states that it would cost approximately \$1.2 million to extend the non-potable water system from Applicant's existing service territory to the proposed service territory. Response to CA-IR-7e.1.

West Maui Village development will be through its potable water system only and charged at Applicant's potable water rates.²⁵ The inclusion of this language is intended to "provide a contingency or protection against" a situation similar to the one that gave rise to Docket No. 05-0132 where Applicant requested an irrigation water rate for customers in Phase I of the Pineapple Hill subdivision to address concerns that those customers only have access to potable water and pay potable water rates for all purposes, including irrigation, in contrast to other customers in Applicant's service territory, who have access to both potable and non-potable water service and pay potable and non-potable water rates. In Docket No. 05-0132, the commission granted Applicant temporary authority to provide potable water to customers of Pineapple Hill, Phase I at a lower irrigation water rate, subject to certain conditions, including termination of the temporary rate at Applicant's next rate proceeding.

In CA-IR-8, the Consumer Advocate inquired as to the rates charged by DWS and those charged by Applicant; in particular, whether it would be more reasonable to have DWS service the new development as DWS' rates are lower than Applicant's currently effective rates. In response, Applicant stated that it would not be appropriate and reasonable to allow DWS to draw from its wells because of uncertainties such as the timing and feasibility of obtaining approval by the DWS and the State Department of Health Clean Water Branch, which Applicant

²⁵Response to CA-IR-7b.

does not believe could be obtained in time to commence service to the proposed development.

C.

Consumer Advocate's Statement of Position

On March 24, 2008, the Consumer Advocate filed its Statement of Position ("Statement of Position") in which it stated that it does not object to commission approval of the Application.

In reviewing Applicant's request for commission approval to expand its service territory, the Consumer Advocate considered: (1) whether there is a need for Applicant to serve the proposed area, and since the area is not contiguous to its existing service territory, whether Applicant is the proper entity to provide service in the area; (2) whether Applicant has the ability to provide potable water service to customers in the proposed area, and (3) what effect the expansion will have on the existing rates charged for the water service provided to Applicant's existing customers.²⁶

With respect to whether Applicant is the proper entity to provide service in the proposed area, the Consumer Advocate notes that the cost of service from Applicant will be more than service from DWS,²⁷ but that the difference does not appear to

²⁶Statement of Position at 3-4.

²⁷According to the Consumer Advocate, "the cost of service and resulting rates for a[n] investor owned public utility are expected to be higher than the cost of service and resulting rates for a municipality since a municipality's rates do not

pose a financial hardship for purchasers of units in the West Maui Village.²⁸ The Consumer Advocate compared the potential cost differential for customers receiving potable water service from Applicant versus DWS. With respect to the fixed monthly service charges based on meter size, a residential customer is likely to pay \$2 less per month in fixed meter charges if potable water service is provided by Applicant.²⁹ In terms of volumetric charges, however, the residential customer of a standard unit in the West Maui Village development would pay approximately \$384 more per year if potable water service is provided by Applicant.³⁰

As DWS is unable to commit to providing water service to the proposed development unless a new water source is secured, and as Applicant is willing to provide the service and given the modest estimated difference in the average monthly water bill for the standard residential customer, the Consumer Advocate recommends that the commission approve Applicant's request to expand its service territory to include the West Maui Village area.³¹

With respect to whether Applicant has the ability to provide service to customers in the proposed area, the Consumer Advocate states that Applicant "can be deemed to be fit,

include a return on investment (i.e., net profit) or the payment of taxes." Statement of Position at 5-6.

²⁸Statement of Position at 9.

²⁹Statement of Position at 7.

³⁰Statement of Position at 9.

³¹Statement of Position at 9-10.

willing and [able] to serve the proposed West Maui Village" based on its representation that another ML&P well is available to serve as a source of additional capacity to meet the demand of customers in the existing and proposed service territory.³² In addition, the Consumer Advocate states that Applicant's existing rates should not be adversely affected by Applicant's provision of service to the West Maui Village development. "The Consumer Advocate recommends, however, that upon completion of the work to connect customers in the West Maui Village to [Applicant's] existing water system, [Applicant] submit an itemized list of the required capital additions and the cost for each item, including, but not limited to, the transmission lines, service laterals, storage facilities, and appurtenant equipment installed to serve customers in the West Maui Village," which will serve as support for the contribution in aid of construction ("CIAC") amounts to be considered as offsets to the capital costs included in the plant-in-service balance for future rate proceedings.³³

In addition, to address the potential concern that customers in the West Maui Village may seek non-potable water rates for their non-potable water use, even though the water provided is potable, the Consumer Advocate recommends that Applicant be required to provide an analysis of the costs to extend the non-potable water system throughout its existing

³²Statement of Position at 11.

³³Statement of Position at 12-13.

service territory and, separately, to West Maui Village and provide the analysis in Applicant's next rate proceeding.

D.

Applicant's Response

On March 27, 2008, Applicant filed its Response Statement to the Consumer Advocate's Statement of Position ("Response") in which it states that it does not object to the Consumer Advocate's two conditions as articulated in its Statement of Position; and provides notice to the commission that the docket is now ready for decision-making.

II.

Discussion

A.

Expanded 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 and regulations governing the proposed service.

(b) 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 and regulations 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.

. . . .

As Applicant's authority pursuant to its CPCN does not currently authorize it to provide potable water service to the West Maui Village development, commission approval is required to amend Applicant's service territory to include the property.

Pursuant to HRS § 269-7.5, the commission finds that Applicant is fit, willing, and able to provide the expanded water utility services to the expanded service area, as shown in 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 water utility services to the West Maui Village, 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 has access to over one million gpd of potable water. Thus, Applicant states, and the Consumer Advocate agrees, that it currently has sufficient capacity and has additional resources available to it to provide potable water to existing customers, as well as customers in the proposed additional service area.

Applicant will not incur the costs of installation of any additional transmission lines, service laterals, storage facilities or appurtenant equipment, or any additional upgrades to its water system resulting from the expansion of its service territory. The revenues generated by the West Maui Village development are expected to offset the expected maintenance expenses related to the expansion. Therefore, there will be no change to Applicant's net plant-in-service value for ratemaking purposes and existing ratepayers will not be burdened with any of the costs of the expansion.

Finally, the occupants of the West Maui Village development must be afforded a means to access potable water, and the commission is unaware of any other water utility willing or able to service the development. Accordingly, for the foregoing reasons, the commission concludes that Applicant's request for commission approval to expand its existing service territory should be approved, subject to the conditions articulated by the Consumer Advocate in its Statement of Position.

B.

Amendment of Rules and Regulations

Applicant proposes to amend and replace Exhibit 1 attached to its Rules and Regulations with the drawing attached as Exhibit B to the Application. Applicant states that if its Application is approved, it will file revised tariff sheets of its Rules and Regulations to reflect the changes to Applicant's revised service territory. Accordingly, in light of the above findings, the commission concludes that Applicant should promptly file revised sheets of its Rules and Regulations to amend and replace Exhibit 1 with the drawing attached as Exhibit B to the Application, and to reflect the changes to Applicant's revised service territory.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant's request for commission approval to expand its existing service territory to provide potable water service to the West Maui Village development, as reflected in Exhibit B attached to the Application, is approved.

2. Applicant shall promptly file with the commission its revised tariff sheets of its Rules and Regulations to amend and replace Exhibit 1 with the drawing attached as Exhibit B to the Application, and to reflect the changes to Applicant's revised service territory. The revised sheets will take effect upon filing.

3. Upon completion of the work to connect customers in the West Maui Village to Applicant's existing water system, Applicant shall file an itemized list that identifies the plant, property and equipment acquired or constructed to serve the West Maui Village, including but not limited to, the costs incurred for each plant, property and equipment item as well as confirmation that the costs were incurred by ML&P and dedicated to Applicant.

4. Applicant shall provide an analysis of the costs to extend the non-potable water system throughout its existing service territory and, separately, to West Maui Village in Applicant's next rate proceeding

5. Failure to comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAY - 1 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

APPROVED AS TO FORM:

 Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

 Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

2007-0320.eh

CERTIFICATE OF SERVICE

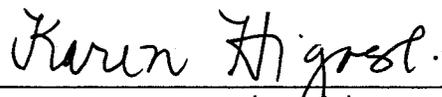
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24172 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY - 1 2008