

In the Matter of the Application of)
)
 OLOWALU WATER COMPANY, LLC)
)
 To Convert from a Hawaii Limited)
 Liability Company to a Hawaii)
 Corporation)
)

Karen Higrot.
Chief Clerk of the Commission

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

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Decision and Order No. 24227

By this Decision and Order, the commission grants OLOWALU WATER COMPANY, LLC's ("OWC")¹ request for approval to convert from a Hawaii limited liability company to a Hawaii "C" corporation, subject to certain regulatory requirements.

OWC holds a Certificate of Public Convenience and Necessity to provide water services in Olowalu, Maui.² OWC's sole member is Olowalu Elua Associates, LLC ("OEA").³

³Application, at 2.

A.

OWC's Request

On December 3, 2007, OWC filed an application seeking commission approval of its conversion from a Hawaii limited liability company to a Hawaii "C" corporation ("Application").⁴ In its Application, OWC states that on September 14, 2007, OEA consented to adopt a plan and Articles of Conversion that would convert OWC from a Hawaii limited liability company to a Hawaii "C" corporation ("Proposed Change"), a copy of which is attached to the Application as "Exhibit A."⁵

Through the Proposed Change, OWC represents that it is seeking to utilize Internal Revenue Code ("IRC") Section 118 ("IRC § 118") which permits corporations to exclude contributions in aid of construction from gross income for tax purposes.⁶ OWC contends that the Internal Revenue Service ("IRS") has "ruled" that IRC § 118 is only applicable to corporations and not to limited liability companies.⁷ In support, OWC attached as "Exhibit B" to its Application, IRS Industry Director Directive No. 1, which states that IRC § 118 is only applicable

⁴OWC served copies of its Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. OWC and the Consumer Advocate are the sole parties to this proceeding.

⁵Application, at 2.

⁶Application, at 3.

⁷Application, at 3.

to corporations.⁸ Under the Proposed Change, OWC would be known as Olowalu Water Company, Inc. (the "Utility") and OEA will become its sole shareholder.⁹

Moreover, OWC contends that the Utility would adopt all of OWC's rules, regulations, and rates and asserts that "there would be no change in the operation of the water utility. The financial fitness, willingness, and ability of the water utility would remain the same. The only change would be that OWC would be a Hawaii "C" corporation rather than a Hawaii limited liability company."¹⁰

B.

Consumer Advocate's Position

On December 12, 2007, the Consumer Advocate filed its Statement of Position ("Statement of Position") asserting that it does not object to the commission's approval of the Proposed Change.¹¹ This position is based on various reasons. First, the Consumer Advocate states that the Proposed Change would not result in a change of ownership since OEA would become the Utility's sole shareholder upon the Proposed Change. On this point, the Consumer Advocate maintains that "[f]rom a legal perspective, the change in the **form** of ownership of OWC (i.e.,

⁸Application, at 3.

⁹Application, at 2.

¹⁰Application, at 2-3.

¹¹Statement of Position, at 1.

from general ownership to stock ownership) is consistent with the . . . conversion from a Hawaii limited liability company to a Hawaii "C" corporation.¹² Second, the Consumer Advocate recognizes that the rules, regulations, and rates for water service would not be affected as a result of the Proposed Change since the Utility will be adopting all of OWC's rules, regulations, and rates currently administered by OWC and previously approved by the commission.

Third, the Consumer Advocate asserts that the Proposed Change could be beneficial to the Utility and its customers since the conversion would permit it to utilize the gross income exclusion set forth in IRC § 118. Regarding this point, the Consumer Advocate's view is that "[d]epending on how significant the . . . contributions in aid of construction are in any given year, the tax benefits arising out of the application of IRC § 118 could be important to the . . . [Utility] and ultimately its ratepayers."¹³ Finally, the Consumer Advocate states, from a customer point of view, nothing about OWC would be different aside from it being a Hawaii "C" corporation as opposed to a Hawaii limited liability company.

The Consumer Advocate, however, recommends that: (1) OWC "re-file its tariff reflecting the change in name from Olowalu Water Company, LLC to Olowalu Water Company, Inc.;"¹⁴ and

¹²Statement of Position, at 5.

¹³Statement of Position, at 5-6.

¹⁴Statement of Position, at 7.

(2) as a courtesy and to avoid any confusion, OWC "may want" to inform its customers of its conversion from a limited liability company to a Hawaii "C" corporation (collectively, "Tariff and Notice Recommendations").

II.

Discussion

State law confers the supervision and regulation of "all public utilities" and the administration of HRS chapter 269 on the commission.¹⁵ In particular, under HRS § 269-7, the commission is vested with broad powers to review and examine the condition and the manner in which a public utility is operated. HRS § 269-7(a) states, in relevant part:

The public utilities commission . . . shall have power to examine into the condition of each public utility, the manner in which it is operated with reference . . . 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.

HRS § 269-7(a).

¹⁵ See HRS § 269-6.

Upon review, the commission finds the Proposed Change described in the Application to be reasonable and in the public interest. The Proposed Change should not adversely affect OWC's customers since the Utility will be adopting all of the previously approved rules, regulations, and rates for water service in OWC's service area.¹⁶ Additionally, as the Consumer Advocate reasoned, the Proposed Change would not result in a change in ownership since upon effectuation of the conversion, OWC's sole member, OEA, would become the Utility's sole shareholder. Moreover, upon the Proposed Change, it appears that the Utility would be able to utilize the IRC § 118 gross income exclusion provision. The application of this provision would assist in maintaining the Utility's financial viability,¹⁷ which ultimately is in the best interest of its customers and the public.

Furthermore, the Consumer Advocate's Tariff and Notice Recommendations appear to be reasonable. The Proposed Change would result in a name change for the utility; thus, requiring OWC to re-file its tariff to reflect the change would be appropriate. Additionally, OWC should notify its customers of the change to forestall any confusion that may result due to the conversion. Accordingly, the commission finds it reasonable to adopt the Consumer Advocate's Tariff and Notice Recommendations.

¹⁶See Application, at 2.

¹⁷See Application, at 3.

Based on the foregoing, the commission concludes that OWC's request for commission approval of the Proposed Change should be granted. The commission also concludes that the Consumer Advocate's Tariff and Notice Recommendations should be adopted.

III.

Orders

THE COMMISSION ORDERS:

1. OWC's request for commission approval of its conversion from a Hawaii limited liability company to a Hawaii "C" corporation is granted.

2. Within 15 days of the date of this Decision and Order, OWC shall re-file its tariff reflecting the name change from Olowalu Water Company, LLC to Olowalu Water Company, Inc. and serve appropriate copies of the same on the Consumer Advocate.

3. Within 30 days of the date of this Decision and Order, OWC shall provide notice of the conversion to its ratepayers and provide documentation of such notice to the commission and the Consumer Advocate.

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

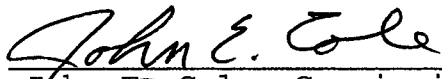
5. Upon compliance with Ordering Paragraphs 2 and 3, above, this docket shall be closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii

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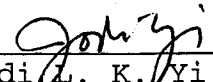
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

2007-0399.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24227 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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Karen Higashi

DATED: MAY 15 2008