

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LANAI WATER COMPANY, INC.)
For Amendment of Its Certificate of)
Public Convenience and Necessity)
Pursuant to Section 269-7.5 to)
Provide Non-Potable Water Service)
In Manele-Hulopoe, Lana'i, and for)
Approval of Rules and Regulations,)
And Rates)

DOCKET NO. 2008-0322

ORDER GRANTING WAIVER REQUESTS AND OTHER INITIAL MATTERS

RECEIVED

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

PUBLIC UTILITIES
COMMISSION

2009 FEB -5 P 12:28

FILED

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By this Order, the commission waives the requirements for LANAI WATER COMPANY, INC. ("Applicant") to: (1) submit an audited balance sheet under Hawaii Administrative Rules ("HAR") § 6-61-75(b)(1); (2) submit an audited income statement under HAR § 6-61-75(b)(2); and (3) state the total increase in its proposed rates in terms of a percent, as required under HAR § 6-61-88(2), in connection with its application filed on December 26, 2008 ("Application"). The commission further finds that the Application is complete and properly filed under Hawaii Revised Statutes ("HRS") § 269-16(f) and HAR § 6-61-88. Thus, the filing date of Applicant's completed Application is December 26, 2008. Finally, the commission instructs the parties¹

'The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), is an ex officio party to this proceeding pursuant to HRS § 269-51 and HAR § 6-61-62. Applicant and the Consumer Advocate are hereafter jointly referred to as the "Parties."

to file a stipulated procedural order for the commission's review and approval within fourteen days of the commission's order addressing intervention or participation without intervention; or if no intervention motions are filed, within seven days of the deadline for intervention. If the Parties are unable to stipulate to a procedural order, the commission will issue its own procedural order that complies with the time requirements of HRS § 269-16(f)(3).

I.

Background

Applicant is a public utility that is authorized by the commission to provide potable water distribution services to the following areas on the island of Lanai, Hawaii: Koele, Lanai City, Lanai Airport, Kaunalapu Harbor, and Manele-Hulopoe. Through the Application, Applicant proposes to amend its CPCN so that it may also provide non-potable water service in the area of Manele-Hulopoe. Specifically, Applicant intends, subject to the commission's approval, to own and operate a non-potable water transmission system to distribute non-potable water for irrigation purposes to metered end-users in its proposed service territory of Manele-Hulopoe. Applicant does not currently charge for non-potable water services.

The Application also requests the commission's approval of: (1) Applicant's proposed Lanai Water Company, Inc. Rules and Regulations Covering the Provision of Non-Potable Water Service;

(2) initial rates for the non-potable water service; (3) Applicant's affiliate transactions; and (4) a waiver of the commission's requirements under HAR §§ 6-61-75(b)(1), 6-61-75(b)(2), and 6-61-88(2) (collectively, "Waiver Requests").²

II.

Discussion

Applicant is a public utility with annual gross operating revenues of less than \$2,000,000. As such, Applicant filed its Application under HAR § 6-61-88 (Requirements for General Rate Increase Applications by a Public Utility with Annual Gross Operating Revenues of Less than \$2,000,000) and HRS § 269-16(f). Under HRS § 269-16(f), the commission must make every effort to issue its proposed decision and order within six months from the filing date of Applicant's completed Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene." HRS § 269-16(f)(3).

²Under HRS § 269-16(d), the Consumer Advocate may object to the sufficiency of any application for a rate increase, within twenty-one days after receipt of the application. The Consumer Advocate did not file any statement objecting to the completeness of the Application, or to Applicant's Waiver Requests.

A.

Waiver Requests

HAR § 6-61-75(b) states, in relevant part:

- (b) The financial statement submitted pursuant to subsection (a) shall be accompanied by:
 - (1) An audited balance sheet, including any pertinent notations and explanations contained therein, as of the end of the last calendar year;
 - (2) An income statement covering the period from the close of the last audited balance sheet up to the date of the latest available balance sheet attached to the application;

HAR § 6-61-75(b) (1) and (2).

In addition, HAR § 6-61-88(2) provides, in relevant part:

For an application by a public utility with annual gross revenues from its public utility business of less than \$2,000,000 for a general rate increase or to alter any classification, contract, practice, or rule as to result in a general rate increase to be considered a completed application under section 269-16, HRS, the application, in addition to meeting the requirements of section 6-61-86, must contain the following:

- (2) The total increase requested, expressed in terms of dollars and per cent. If different classes of service are affected, the increase requested shall be expressed in both dollars and by percentage for each class;

HAR § 6-61-88(2).

The commission, however, may modify the requirements of HAR §§ 6-61-75(b)(1) and (2) and HAR § 6-61-88(2) if the requirements would "impose a financial hardship on the applicant or be unjust or unreasonable." HAR § 6-61-92. Moreover, HRS § 269-16(f) authorizes the commission to "amend its rules and procedures which will provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers." HRS § 269-16(f).

Here, Applicant is a public utility with annual gross revenues of less than \$2,000,000. As to Applicant's requests for waivers under HAR §§ 6-61-75(b)(1) and (2) to submit unaudited financial information, Applicant represents that waivers are justified because, as a small utility with annual revenues less than \$2,000,000: (1) the requirements are unjust and unreasonable; (2) waivers avoid imposing an additional financial burden on Applicant; and (3) imposing the requirements unnecessarily delays the filing.³ In lieu of filing audited financial information, Applicant has filed an unaudited balance sheet and an unaudited income statement with the Application.

As to Applicant's request for a waiver under HAR § 6-61-88(2), Applicant correctly notes that a percentage increase can only be derived mathematically from an existing rate greater than zero (\$0.00). Since Applicant is currently

³See Application at 12-13.

providing non-potable water services at no charge, any percentage multiplied by its current effective rate (\$0.00) will be zero (\$0.00).

Based upon the arguments presented by Applicant, the commission finds that application of the requirements in HAR §§ 6-61-75(b)(1) and (2), and HAR § 6-61-88(2) would be unjust and unreasonable in this case. Furthermore, because Applicant is a small utility with annual revenues of less than \$2,000,000, the commission finds that requiring Applicant to comply with HAR §§ 6-61-75(b)(1) and (2) would impose a financial hardship on Applicant.

Accordingly, the commission finds good cause to: (1) waive the requirements for audited financial information under HAR §§ 6-61-75(b)(1) and (2), subject to the condition that Applicant make available for review all documentation in support of its financial statements, including all books and records of Applicant and its parent company; and (2) waive the requirement in HAR § 6-61-88(2) that Applicant express the total increase in its proposed rates in terms of a percent.

B.

Completed Application

Upon review, and there being no objection by the Consumer Advocate, the commission finds that Applicant's Application is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88. Accordingly, the filing date of Applicant's completed Application is December 26, 2008.

C.

Stipulated Procedural Order

The commission interprets HRS § 269-16(f)(3) to require the commission to issue a procedural order that allows the commission to complete its review and issue its proposed decision and order within the six-month period prescribed in HRS § 269-16(f)(3). For this reason, the Parties are instructed to: (1) initiate the discovery process without delay; and (2) submit a stipulated procedural order setting forth the issues, procedural schedule, and procedures to govern Applicant's Application, within fourteen days of the commission's order addressing intervention or participation without intervention; or if no intervention motions are filed, within seven days of the deadline for intervention. If intervention is not granted, the stipulated procedural schedule to be submitted by the Parties shall, at a minimum, provide that: (1) Applicant's rebuttal testimony (or rebuttal statement of position), if any, be filed by Tuesday, May 19, 2009; and (2) the Parties' settlement agreement, if any, be filed by Tuesday, May 26, 2009, in order for the commission to reasonably meet the six-month deadline of June 26, 2009. If the Parties are unable to agree on a procedural order, as prescribed, the commission will issue its own procedural order in accordance with HRS § 269-16(f)(3).

Under HRS § 269-16(f)(3), in the event that the conditions of the subsection are fully met (i.e., the Parties strictly comply with the established procedural schedule and no

person is granted intervention), the Parties shall not be entitled to a contested case hearing prior to the issuance of the commission's proposed decision and order.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant's Waiver Requests are approved; provided that Applicant make available for review all documentation supporting its financial statements, including all accounting books and records, to the commission and the Consumer Advocate.


2. The filing date of Applicant's completed Application is December 26, 2008.


3. The Parties shall: (a) initiate the discovery process without delay; and (b) unless directed otherwise, submit a stipulated procedural order setting forth the issues, procedural schedule, and procedures to govern Applicant's Application, within fourteen days of the commission's order addressing intervention or participation without intervention; or if no intervention motions are filed, within seven days of the deadline for intervention. If no motions to intervene are granted, the stipulated procedural schedule to be submitted by the Parties shall, at a minimum, provide that: (1) Applicant's rebuttal testimony (or rebuttal statement of position), if any, be filed by Tuesday, May 19, 2009; and (2) the Parties' settlement agreement, if any, be filed by Tuesday, May 26, 2009,


in order for the commission to reasonably meet the six-month deadline of June 26, 2009. If the Parties are unable to agree on a procedural order, as prescribed, the commission will issue its own procedural order in accordance with HRS § 269-16(f)(3).

DONE at Honolulu, Hawaii FEB - 5 2009.

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:


Kaiulani Kidani Shinsato
Commission Counsel

2008-0322.laa

CERTIFICATE OF SERVICE

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

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