

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Transmittal of)

)
KEAUHOU COMMUNITY SERVICES, INC.)

) TRANSMITTAL NO. 08-01

)
For Approval of Changes to its)

Tariff by Removing all References)
to Effluent.)

Transmittal No. 08-01.)

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

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DECISION AND ORDER

By this Decision and Order, the commission approves the transmittal filed by KEAUHOU COMMUNITY SERVICES, INC. ("KCSI"), on November 5, 2008, subject to the conditions noted herein.

I.

Background

KCSI is a public utility that provides wastewater collection and treatment services to residential and commercial customers within its service territory of Keauhou, island of Hawaii. KCSI also provides effluent, a byproduct of the wastewater treatment process, to Kona Country Club, Inc. ("KCCI"), the sole user of the effluent produced by KCSI's wastewater treatment plant.¹

¹KCSI's response to PUC-IR-102. KCSI states that it "does not consider KCCI to be a regulated customer for effluent service for which a tariffed rate must be established under the filed rate doctrine." KCSI's response to PUC-IR-201. Nonetheless, "[b]ecause there is a certain cost associated with the use and delivery of effluent, [KCSI] understand[s] that in certain rate case proceedings including KCSI's rate case in

A.

Procedural Background

On November 5, 2008, KCSI filed its Transmittal No. 08-01, proposing to delete the references to "effluent" from the wastewater utility's tariff, including the current effluent rate of \$0.49 per thousand gallons ("TG").² On December 1, 2008, the commission suspended KCSI's transmittal for further review.³ KCSI subsequently filed its responses to the commission's information requests on December 12, 2008 and January 5 and 6, 2009. On January 27, 2009, the Consumer Advocate filed its Statement of Position.⁴ On February 2, 2009,

Docket No. 00-0194, revenues attributable to the use and delivery of this byproduct have been taken into consideration as part of a utility's revenue requirement to avoid improper cross-subsidization of this service by the utility's customers." KCSI's response to PUC-IR-102, footnote 3.

²Transmittal No. 08-01; Exhibit 1; and Certificate of Service, filed on November 5, 2008 ("Transmittal No. 08-01"). KCSI served copies of its transmittal upon 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 ("HAR") § 6-61-62(a).

³Order Suspending Transmittal, filed on December 1, 2008. KCSI, by informal communication, stated that it did not object to the suspension of its transmittal in order to provide ample time for: (1) KCSI to respond to the commission's information requests; and (2) the commission and the Consumer Advocate to review the merits of KCSI's proposed tariff changes.

⁴Consumer Advocate's Statement of Position; and Certificate of Service, filed on January 27, 2009 (collectively, "Statement of Position").

KCSI filed its Comments to the Consumer Advocate's position statement.⁵

B.

KCSI's Position

KCSI states that: (1) its proposed tariff changes are the result of a Settlement and Mutual Release Agreement, dated December 31, 2007 ("Settlement Agreement"), relating to a lawsuit involving the Kona Country Club and the rights, title, and interests of KCCI; and (2) the agreement represents a global settlement of many issues, "one of which is the disposal and delivery of effluent, a byproduct generated by KCSI's wastewater treatment plant."⁶ In this regard, KCSI explains:

1. Historically, effluent generated at KCSI's wastewater treatment plant was pumped from the wastewater treatment plant and disposed into certain lakes located on the Kona Country Club.

2. KCCI is the only customer that receives effluent generated from KCSI's wastewater treatment plant. "Among the issues resolved under the global settlement is the confirmation that (a) KCSI has the obligation to provide and the right to discharge the effluent on the KCCI Property and (b) KCCI has

⁵KCSI's Comments to Division of Consumer Advocacy's Statement of Position; and Certificate of Service, filed on February 2, 2009 (collectively, "Comments").

⁶Transmittal No. 08-01, at 3. According to KCSI, the Settlement Agreement is between Alii Hawaii Resort, Inc.; KCCI; Otaka, Inc.; Kamehameha Investment Corporation; and KCSI. KCSI's response to PUC-IR-101. On January 5, 2009, KCSI provided copies of the Settlement Agreement to the commission and the Consumer Advocate under confidential seal.

the obligation to accept and the right to receive effluent produced by KCSI for use in irrigating the golf course."⁷

3. As part of the Settlement Agreement, the parties thereto agreed to delete all references to "effluent" from KCSI's tariff, including the current effluent rate of \$0.49 per TG.

4. Notwithstanding the removal of the effluent rate from KCSI's tariff, under the provisions of the Settlement Agreement, "KCCI has agreed to pay to KCSI ninety-one percent (91%) of the cost of electricity measured by HELCO Meter No. 76161 (which measures the electricity used to pump the effluent to KCCI's holding ponds). KCSI notes that the 91% measurement factor was utilized by KCSI as the basis for calculating the effluent rate of \$0.49/1000 gallons approved by the Commission on September 14, 2001, in Decision and Order No. 18891, Docket No. 00-0194. Accordingly, the proposed changes will not result in any (a) material change in KCSI's currently approved procedures; (b) change in rates; and (c) will not impact KCSI's other customers or operations. As such, the public benefit will be served, or at least not harmed, by this request."⁸

⁷Transmittal No. 08-01, at 3 (footnote and text therein omitted).

⁸Transmittal No. 08-01, at 5; see also KCSI's responses to PUC-IR-101, PUC-IR-102, PUC-IR-105, PUC-IR-106, PUC-IR-107, and PUC-IR-201. In re Keauhou Comm. Serv., Inc., Docket No. 00-0194 ("Docket No. 00-0194"), represents KCSI's most recently completed general rate case, based on the 2000-2001 split test year. See also In re Keauhou Comm. Serv. Inc., Docket No. 05-0186 ("Docket No. 05-0186"), Decision and Order No. 21951, filed on July 28, 2005, and Order No. 22011, filed on September 7, 2005 (allowing certain tariff changes proposed by KCSI to take effect,

C.

Consumer Advocate's Position

By its Statement of Position filed on January 27, 2009, the Consumer Advocate states that it does not object to the commission's approval of KCSI's requested relief, since KCSI has acknowledged that the proposed tariff changes should not result in the subsidization of effluent service and that, if approved, there should be no material change in KCSI's current procedures and rates, and no impact on KCSI's other customers or operations.

In this regard, the Consumer Advocate specifically states:

1. "KCCI will pay KCSI ninety-one percent (91%) of the cost of electricity measured by [HELCO] meter No. 76161. HELCO meter No. 76161 is the meter that measures the electricity used to pump the effluent to KCCI's holding ponds."⁹

2. With respect to the possible cross-subsidization of effluent service by KCSI's other customers:

It appears that the primary goal of the proposal is to remove the provision of effluent from Commission regulation. In general, one of the reasons that the Consumer Advocate supported the need to regulate the provision of effluent service was to ensure the costs associated with effluent service were properly associated with that service. The Consumer Advocate's objective was to minimize the possibility of effluent service being subsidized by other customers. Based on various responses to the Commission's information requests, [KCSI] is not seeking to have the effluent service be[] subsidized. In other words, the Consumer Advocate assumes that

including a new section to address the provision and handling of effluent, Section 15).

⁹Consumer Advocate's Statement of Position, at 4 (footnote and text therein omitted).

[KCSI] is not seeking to recover the costs of delivering effluent to KCCI through regulated rates. Based on those representations, the Consumer Advocate will not object to the Commission's approval of the relief granted, provided that certain qualifications are adopted.

Consumer Advocate's Statement of Position, at 4-5 (footnote and citation therein omitted).

3. While the cost of the electricity used to deliver the effluent to the holding ponds will be recovered from KCCI, it does not appear that consideration has been given to other cost of service items, such as maintenance and pipe replacement expenses, that may be incurred by KCSI related to the supplying of effluent to the golf course. In these instances, if the costs are not recovered from the cost causer, other customer classes will have to subsidize the cost of supplying the effluent to KCCI.

4. The Consumer Advocate, thus, notes that in future rate case proceedings, to prevent the possible subsidization of effluent service, the commission should "allow the appropriate regulatory actions to be taken to ensure that additional costs associated with the delivery of effluent beyond electricity expense, if any, are properly excluded from the determination of revenue requirements for the Commission regulated utility services and the exclusion of those unregulated costs of service items from regulated rates."¹⁰ Consistent thereto, KCSI must "maintain adequate accounting and operating records, if not already done so, that would permit the parties to determine the

¹⁰Consumer Advocate's Statement of Position, at 7; see also id. at 5-6.

appropriate allocation and regulatory treatment of all applicable cost of service items among all customer classes for regulated and unregulated services."¹¹

D.

KCSI's Comments

In its Comments filed on February 2, 2009, KCSI states that while it does not oppose the Consumer Advocate's position statement, it seeks to "clarify certain matters and to insure that, through its non-opposition, it is not deemed to have waived its rights to challenge certain regulatory actions which the Consumer Advocate or the Commission may undertak[e] in any future proceeding."¹² In particular:

. . . . KCSI believes that any future regulatory actions which impact the ratemaking components related to effluent (including its disposal) which the Consumer Advocate and/or which the Commission may propose or adopt in the future must fully consider all of the facts and circumstances which may be in effect at that time. Effluent, as a byproduct of the wastewater treatment process, must be properly treated and disposed of by a sewer utility pursuant to various applicable federal and state laws, rules, and regulations. As a result, KCSI believes that a sewer utility and its ratepayers, both regulated and unregulated, are responsible for the cost of treatment and disposal, together with the cost of complying with applicable laws, rules, and regulations. Moreover, in the absence of a user that is willing to utilize the effluent, the sewer utility, and ultimately its ratepayers, will need to pay for the proper treatment and disposal of the effluent.

¹¹Consumer Advocate's Statement of Position, at 6.

¹²KCSI's Comments, at 1.

. . . simply assigning all cost of service items related to effluent disposal to the user utilizing the effluent is an over-simplified approach which will, in certain situations, penalize KCSI and its shareholders. Therefore, before any regulatory action is taken to allocate or shift more of the costs to the user of the effluent, much consideration and analysis must occur to fairly balance how such costs will be allocated in the future between the regulated and unregulated ratepayers.

KCSI's Comments, at 2-3.

II.

Discussion

Tariff changes proposed by public utilities must be just and reasonable.¹³

At the outset, the commission notes that: (1) it is not bound by the terms of the Settlement Agreement; and (2) this Decision and Order should not be construed as affirmatively approving, in whole or in part, the Settlement Agreement.¹⁴

Based on KCSI's transmittal and its responses to the commission's information requests, the commission makes the following findings:

¹³HRS § 269-16(a) and (b). KCSI does not affirmatively request a hearing on its non-docketed tariff transmittal.

¹⁴This Decision and Order also does not address: (1) the apparent position taken by KCSI in this non-docketed matter that the disposal of its effluent to a sole user, KCCI, is not a regulated utility service; or (2) KCSI's past practice of not specifically assessing KCCI the tariff rate of \$0.49 per TG for effluent. Cf. Molokoa Village Dev. Co. v Kauai Elec. Co., Ltd., 60 Haw. 582, 587, 593 P.2d 375, 379 (1979) ("It is well-established that a public utility can enforce payment for its services in accordance with its established tariff, notwithstanding any agreement to charge less.").

1. The Schedule of Wastewater Rates section of KCSI's current tariff includes an effluent rate of \$0.49 per TG. The \$0.49 per TG effluent rate: (A) was approved by the commission in Docket No. 00-0194; and (B) is based on the methodology in Docket No. 00-0194, by which KCCI agreed to pay KCSI an amount equal to ninety-one percent of the cost of electricity for the effluent pump electric meter (i.e. HELCO Meter No. 76161), which serves the effluent pump and other equipment for KCCI's holding ponds.

2. Section 15 of KCSI's current tariff governs effluent service.¹⁵ The non-rate tariff provisions governing effluent service were approved by the commission in Docket No. 05-0186.

3. As represented by KCSI, "the removal of the \$0.49/1000 gallons charge and the substitution of the 91% cost reimbursement formula merely confirms the methodology that was utilized in establishing the initial \$0.49/1000 gallons charge in the first place."¹⁶ Thus, the "removal of the \$0.49/1000 gallons charge but continuing to charge KCCI an amount equal to 91% of the cost of electricity expense to pump the effluent is entirely consistent with the methodology of how the initial charge was established" in Docket No. 00-0194.¹⁷

4. KCCI is the sole user of the effluent that is produced by KCSI's wastewater treatment plant. As represented by KCSI:

¹⁵See also KCSI's tariff, Section 1.1, definition of effluent, and Section 6.1, bills.

¹⁶KCSI's response to PUC-IR-102.

¹⁷KCSI's response to PUC-IR-102.

. . . . KCSI currently only collects 91% of the electricity cost measured by HELCO meter no. 76161, which is presently not included in KCSI's current tariff. KCSI does not assess KCCI the \$0.49/1000 gallons charge.

KCSI's response to PUC-IR-201.

. . . . KCCI has agreed to continue to pay KCSI an amount equal to 91% of the electricity cost measured by HELCO meter No. 76161 consistent with . . . the underlying basis for the establishment of the \$0.49/1000 gallons charge established in Docket No. 00-0194.

KCSI's response PUC-IR-101; see also Transmittal No. 08-01, at 5 (KCCI agrees to pay the ninety-one percent electricity reimbursement payment rate).

KCSI confirms that KCCI is the only user that is receiving effluent generated from KCSI's wastewater treatment plant. KCCI has been paying KCSI 91% of the electricity cost as measured by HELCO meter no. 76161, which is currently in excess of \$0.49/1000 gallons.

KCSI's response to PUC-IR-105; see also KCSI's response to PUC-IR-201.

5. KCSI does not oppose the inclusion of the ninety-one percent electricity reimbursement payment rate in its tariff,¹⁸ ostensibly as a replacement and substitute for the \$0.49 per TG effluent rate that is presently included therein.

Based on these findings, the commission concludes that KCSI's proposal to delete the references to "effluent" from its tariff, including the \$0.49 per TG effluent rate, appears just and reasonable, subject to the following conditions:

1. KCSI shall include in its tariff a provision that sets forth the ninety-one percent electricity reimbursement

¹⁸KCSI's response to PUC-IR-102.

payment rate, including a description of the methodology for calculating this rate.¹⁹

2. To avoid the subsidization of effluent service, KCSI shall maintain adequate accounting and operating records that will enable the commission and Consumer Advocate to determine the appropriate allocation and regulatory treatment of all applicable cost of service items among all its customers, in particular, the costs associated with the delivery of effluent to KCCI.²⁰

As represented by KCSI, its "proposal to delete the \$0.49/1000 effluent charge will not decrease the revenues received by KCSI since KCCI will continue to pay for 91% of the electricity cost of HELCO meter no. 76161, which was the basis for establishing the \$0.49/1000 rate in Docket No. 00-0194. Therefore, KCSI does not intend to seek to recover from other ratepayers any sums resulting from the tariff change being proposed herein."²¹ Consistent thereto, KCSI confirms that its

¹⁹See KCSI's responses to PUC-IR-102 and PUC-IR-202 (KCSI's explanation of the methodology in establishing the ninety-one percent factor); see also Docket No. 00-0194, KCSI's response to CA-IR-2a and Exhibit KCSI CA-IR-2a (KCCI pays an amount equal to ninety-one percent of the cost of electricity for the effluent pump meter, which services the effluent pump and other equipment; ninety-one percent represents the factor used by the effluent pumps to pump effluent to the golf course reservoir).

²⁰KCSI affirmatively does not oppose the Consumer Advocate's position statement or recommendations. See KCSI's Comments, at 1-2.

²¹KCSI's response to PUC-IR-106; see also Docket No. 00-0194, KCSI's response to CA-IR-2a and Exhibit KCSI CA-IR-2a (KCCI pays an amount equal to ninety-one percent of the cost of electricity for the effluent pump meter, which services the effluent pump and other equipment; ninety-one percent represents the factor used by

proposed tariff changes "will not result in any (a) material change in KCSI's currently approved procedures; (b) change in rates; and (c) impact to KCSI's other customers or operations."²²

In essence, for ratemaking purposes, KCSI's tariff changes, as approved herein, will maintain the status quo with respect to the revenues KCSI continues to receive from KCCI for the supplying of effluent to the holding ponds for the purpose of irrigating the golf course.

III.

Orders

THE COMMISSION ORDERS:

1. KCSI's Transmittal No. 08-01, filed on November 5, 2008, is approved, subject to the following conditions:

A. KCSI shall include in its tariff a provision that sets forth the ninety-one percent electricity reimbursement payment rate, including a description of the methodology for calculating this rate; and

B. KCSI shall maintain adequate accounting and operating records that will enable the commission and Consumer Advocate to determine the appropriate allocation and regulatory treatment of all applicable cost of service items among all its customers, in particular, the costs associated with the delivery of effluent to KCCI.

the effluent pumps to pump effluent to the golf course reservoir).

²²KCSI's response to PUC-IR-107.

2. KCSI shall promptly file its revised tariff sheets, with the applicable issued and effective dates.

3. Upon the filing of the revised tariff sheets, this non-docketed matter shall be considered closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii FEB 27 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

08-01.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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