

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
  )  
                  HAWAIIAN BEACHES          )  
                  WATER COMPANY, INC.      )  
  )  
For Review and Approval of Rate          )  
Increases; and Revised Rate              )  
Schedules.                                  )  
\_\_\_\_\_)

DOCKET NO. 2009-0161

ORDER REGARDING COMPLETED  
APPLICATION AND OTHER INITIAL MATTERS

FILED  
2009 AUG 24 P 12:49  
PUBLIC UTILITIES  
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)	)	
	)	
HAWAIIAN BEACHES	)	
WATER COMPANY, INC.	)	Docket No. 2009-0161
	)	
For Review and Approval of Rate	)	
Increases; and Revised Rate	)	
Schedules.	)	
_____	)	

ORDER REGARDING COMPLETED  
APPLICATION AND OTHER INITIAL MATTERS

By this Order, the commission: (1) approves HAWAIIAN BEACHES WATER COMPANY INC.'s ("HBWC") request to submit its unaudited financial statements in lieu of audited financial statements, required under Hawaii Administrative Rules ("HAR") § 6-61-75, provided that HBWC makes available for review all documentation supporting its financial statements; (2) finds that the filing date of HBWC's complete application for a general rate increase is July 17, 2009<sup>1</sup>; and (3) instructs HBWC and the Consumer Advocate<sup>2</sup> (collectively, the "Parties") to submit a stipulated procedural order for the commission's review and consideration, consistent with the terms of this Order.

<sup>1</sup>HBWC filed its application on July 17, 2009, and attached various exhibits, including the direct testimony of Mr. Robert L. O'Brien (Exhibit HBWC-T-100); a Verification; and a Certificate of Service (collectively, "Application"). Copies of the Application were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate").

<sup>2</sup>The Consumer Advocate is an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and HAR § 6-61-62.

I.

Background

HBWC is a Hawaii corporation and a public utility as defined by HRS § 269-1 and, thus, is regulated by the commission under Chapter 269, HRS. HBWC, the successor-in-interest to Miller & Lieb Water Company, Inc. ("Miller and Lieb"),<sup>3</sup> was issued a certificate of public convenience and necessity ("CPCN") to operate as a public utility within the Hawaiian Beaches Subdivision located in Pahoia, Puna District of the island of Hawaii by Decision and Order No. 23313, filed on March 21, 2007, in Docket No. 2006-0437.<sup>4</sup>

HBWC currently serves approximately 1,100 customers within its authorized service territory. It provides service to its customers through rates approved by the commission in Proposed Decision and Order No. 23423, filed May 8, 2007, in Docket No. 2006-0442, which was adopted by Decision and Order No. 23469, filed on May 31, 2007, in the same docket.<sup>5</sup> As part of its current rates, HBWC charges residential (single family and condominium) customers a recurring fixed monthly

---

<sup>3</sup>In a proceeding in 2006, the commission, among other things, conditionally approved the joint application filed by Miller & Lieb and HBWC to sell and transfer Miller & Lieb's utility assets and operations to HBWC. See In re Miller and Lieb Water Company, Inc. and Hawaiian Beaches Water Company, Inc., Docket No. 2006-0437, Decision and Order No. 23313, filed on March 21, 2007 ("Decision and Order No. 23313").

<sup>4</sup>See Decision and Order No. 23313 at 29.

<sup>5</sup>See also Decision and Order No. 23513, filed on June 27, 2009, in Docket No. 2006-0442.

Water Service Charge of \$48.06.<sup>6</sup> HBWC does not currently have an authorized recurring usage (or volumetric) charge.

Through its Application, HBWC is seeking to convert the recurring charges in its rate structure from a wholly fixed monthly Water Service Charge of \$48.06 per residential customer to a structure that also includes a monthly Water Usage Charge. Specifically, HBWC is proposing to change the recurring charges in its rate structure as follows:

	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Percentage Increase</u>
<u>Recurring Charges:</u>			
Fixed Monthly Service Charge (per unit)	\$48.06	\$30.00	-37.6%
Monthly Water Usage Charge (per 1,000 gallons)	none	\$5.7818	n/a

In making these changes, HBWC is seeking additional revenues of \$310,302, or an approximate 48.6% increase over total revenues at present rates for the January 1, 2010, through December 31, 2010 test year ("Test Year"). The requested increase is based on an estimated total revenue requirement of \$949,434 for the Test Year, and a proposed rate of return of 9%.

---

<sup>6</sup>Among other things, HBWC is also authorized to charge its customers a host of non-recurring charges as follows: (1) New Water Service Connection Charge of \$1,500 per connection; (2) Voluntary Disconnect and Reconnection Charge of \$260.00 per request; (3) Involuntary Disconnect and Reconnection Charge of \$60.00 per instance; and (4) Return Check Fee of \$30.00 plus bank charge to HBWC.

According to HBWC, its "current rates do not now and will not in the foreseeable future produce sufficient revenues to allow it to recover its prudently incurred expenses and earn a fair return on its prudently incurred investments."<sup>7</sup> At present rates, HBWC projects a Test Year "operating loss of \$73,945, and a negative 5.24% rate of return on an average rate base of \$1,410,016."<sup>8</sup> HBWC represents that its Application is designed to eliminate the current ongoing losses and allow HBWC to earn a fair return on its prudently incurred costs for utility assets.

In addition, HBWC requests, pursuant to HAR § 6-61-92, that its unaudited financial statements, submitted with its Application, be accepted in lieu of audited financial statements required under HAR § 6-61-75 ("Waiver Request").

On August 6, 2009, the Consumer Advocate timely filed its Preliminary Statement of Position Regarding Completeness of Application ("Statement of Completeness"), stating that it does not object to the completeness of HBWC's Application.<sup>9</sup>

## II.

### Discussion

As a public utility with annual gross revenues of less than \$2 million, HBWC filed its Application pursuant to HAR § 6-61-88 (general rate increase application filed by a public utility with annual gross revenues of less than

---

<sup>7</sup>See Application at 5.

<sup>8</sup>Id.

<sup>9</sup>See Statement of Completeness at 4.

\$2 million) and HRS § 269-16, specifically subsection (f). In sum, the commission must make every effort to issue its proposed decision and order within six months from the filing date of HBWC's complete 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).

A.

Waiver Request

HAR Chapter 6-61, Subchapter 8, governs rate increase applications and tariff changes. In relevant part, HAR § 6-61-86 requires a public utility requesting authority to change its rate, schedule, or charge to file an application, and a financial statement under HAR § 6-61-75. Specifically, HAR § 6-61-75(b)(1) requires that financial statements be accompanied by "[a]n audited balance sheet, including any pertinent notations and explanations contained therein, as of the end of the last calendar year[.]" HAR § 6-61-75(b)(1).

Under HAR § 6-61-92, the commission may modify the requirements of Subchapter 8, HAR Chapter 6-61, in its discretion, if the requirements of the subchapter would impose a financial hardship on the applicant or be unjust or unreasonable. Further, under HRS § 269-16(f), the commission is authorized to amend its rules and procedures "to 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).

HBWC requests, pursuant to HAR § 6-61-92, that its unaudited financial statements (submitted with its Application as Exhibit HBWC 2, Schedules 4 and 5), be accepted in lieu of audited financial statements as required by HAR § 6-61-75. HBWC contends that as a small utility with annual revenues less than \$2 million, it does not have audited financial reports and that compliance with the requirement would: (1) delay the filing of the Application; and (2) unjustly impose on HBWC additional financial burdens.

The Consumer Advocate does not object to approval of HBWC's Waiver Request, provided that HBWC makes available for review all documentation supporting its financial statements, including all accounting books and records.<sup>10</sup>

Here, the commission finds that the requirement for HBWC to submit an audited balance sheet pursuant to HAR § 6-61-75(b)(1) appears to be unduly burdensome, and, thus, is unjust and unreasonable, in this instance. Accordingly, the commission finds good cause to approve HBWC's Waiver Request, subject to the Consumer Advocate's proposed condition.

B.

Complete Application

To be considered a complete application for a general rate increase, the contents of HBWC's Application must meet the

---

<sup>10</sup>Id. at 3.

requirements set forth in HAR §§ 6-61-75, 6-61-86, and 6-61-88, unless otherwise waived by the commission pursuant to HAR § 6-61-92. Upon review, the commission finds that HBWC's Application complies with the noted requirements.<sup>11</sup> Accordingly, the commission finds that HBWC's Application is complete and properly filed pursuant to HRS § 269-16(f) and HAR § 6-61-88. Thus, the filing date of HBWC's complete Application is July 17, 2009.

C.

Public Hearing

The commission will schedule a public hearing on HBWC's completed Application on the island of Hawaii, consistent with HRS §§ 269-12(c) and 269-16(b). The Parties will be notified of the date, time, and location of the public hearing.

---

<sup>11</sup>Like the Consumer Advocate, the commission presumes that no dividends were paid by HBWC during the preceding five calendar years. Since, contrary to HAR § 6-61-75(a)(7) "HBWC did not specifically state in its [A]pplication whether it had paid dividends during the five previous calendar years." See Statement of Completeness at 2. Moreover, while it appears that HBWC did not provide all of the details of the mortgages and security interest identified in Exhibit HBWC 2, Schedule 3, as required under HAR § 6-61-75(3), like the Consumer Advocate, the commission notes that the financial documents associated with these transactions were filed by HBWC in a June 13, 2008 letter to the commission in Docket No. 2006-0442. Thus, by its own motion, the commission will incorporate this financial information in the Application by reference, pursuant to HAR § 6-61-76.



D.

Stipulated Procedural Order

HRS § 269-16(f)(3) states that the commission shall:

Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission; provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission's proposed decision and order, the parties shall not be entitled to a contested case hearing.

HRS § 269-16(f)(3).

Given the six-month target date governing the commission's issuance of its proposed decision and order, the Parties shall: (1) initiate the discovery process without delay; and (2) submit a stipulated procedural order for the commission's review and consideration. If the Parties are unable to agree on a stipulated procedural order, they each shall submit their own proposed procedural order.

If no timely motions to intervene or participate are filed, the stipulated procedural order or individual proposals shall be due within seven days following the deadline to file any such motions to intervene or participate. However, if one or more timely motions to intervene or participate are filed, the Parties and any designated intervenors or participants, if any, shall file their stipulated procedural order within ten days from the filing of the commission's decision on the motions to

intervene or participate. If no intervention is granted by the commission, the stipulated procedural order submitted by the Parties, at a minimum, shall provide that the last pleading (e.g., a settlement agreement on the merits in the normal course of a general rate case) be filed by November 23, 2009, in order for the commission to reasonably meet the six-month target date of January 17, 2010. If no agreement is reached on a stipulated procedural order that conforms to the foregoing parameters, the commission will issue its own procedural order.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. HBWC's request to submit its unaudited financial statements in lieu of an audited financial statements, required under HAR § 6-61-75, is approved; provided that HBWC 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 HBWC's complete Application is July 17, 2009.

3. The Parties shall: (A) initiate the discovery process without delay; and (B) submit a stipulated procedural order for the commission's review and consideration. If the Parties are unable to agree on a stipulated procedural order, they each shall submit their own proposed procedural order.


If no timely motions to intervene or participate are filed, the stipulated procedural order or individual proposals shall be due within seven days following the deadline to file any such motions to intervene or participate. However, if one or more timely motions to intervene or participate are filed, the Parties and any designated intervenors or participants, if any, shall file their stipulated procedural order within ten days from the filing of the commission's decision on the motions to intervene or participate. If no intervention is granted by the commission, the stipulated procedural order submitted by the Parties, at a minimum, shall provide that the last pleading be filed by November 23, 2009, in order for the commission to reasonably meet the six-month target date of January 17, 2010. If no agreement is reached on a stipulated procedural order that conforms to the foregoing parameters, the commission will issue its own procedural order.

DONE at Honolulu, Hawaii           AUG 24 2009          .

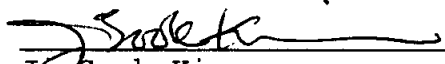
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

2009-0161.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:

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P.O. Box 541  
Honolulu, HI 96809

KATHERINE M. PRESCOTT  
MARK J. PRESCOTT  
P.O. Box 22  
Pahoa, HI 96778

MICHAEL H. LAU, ESQ.  
KRIS N. NAKAGAWA, ESQ.  
SANDRA L. WILHIDE, ESQ.  
MORIHARA LAU & FONG LLP  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

Attorneys for HAWAIIAN BEACHES WATER COMPANY, INC.