

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
KAUAI ISLAND UTILITY COOPERATIVE ) Docket No. 2009-0050  
 )  
For Approval of Rate Changes and )  
Increases, Revised Rate Schedules and )  
Rules, and Other Ratemaking Matters. )  
\_\_\_\_\_ )

AMENDED PROTECTIVE ORDER  
STIPULATION FOR AMENDED PROTECTIVE ORDER  
EXHIBIT A  
and  
CERTIFICATE OF SERVICE

FILED  
2009 NOV 18 P 12:21  
PUBLIC UTILITIES  
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
KAUAI ISLAND UTILITY COOPERATIVE ) Docket No. 2009-0050  
 )  
For Approval of Rate Changes and )  
Increases, Revised Rate Schedules and )  
Rules, and Other Ratemaking Matters. )  
\_\_\_\_\_ )

STIPULATION FOR AMENDED PROTECTIVE ORDER

WHEREAS, KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii not-for-profit electric cooperative ("Applicant"), by and through its attorneys, Morihara Lau & Fong LLP, filed an application in the subject docket, on June 30, 2009, requesting various approvals from the Hawaii Public Utilities Commission ("Commission") in connection with proposed rate changes and increases, revised rate schedules and rules, and other ratemaking matters, pursuant to Hawaii Revised Statutes ("HRS") § 269-16 ("Application");<sup>1</sup>

WHEREAS, Applicant, the Division of Consumer Advocacy ("Consumer Advocate"), the Department of Navy ("DoN") and Essex House Condominium Corporation on behalf of Kauai Marriott Resort & Beach Club ("Kauai Marriott") are the only parties in this proceeding;<sup>2</sup>

---

<sup>1</sup> On March 3, 2009, Applicant filed a Notice of Intent informing the Commission of its intent to file for a general rate increase for its electric utility service on the island of Kauai, State of Hawaii.

<sup>2</sup> The Consumer Advocate is an *ex officio* party to this proceeding, pursuant to HRS § 269-51 and Hawaii Administrative Rules § 6-61-62(a). See Order Granting Intervention to the Department of the Navy, filed on July 31, 2009 and Order Granting Intervention to Essex House Condominium Corporation on behalf of Kauai Marriott Resort & Beach Club, filed on October 6, 2009.

WHEREAS, the parties maintain that the disclosure of certain confidential information could disadvantage and harm a party in that disclosure of certain information may touch upon, among other things, a party's company, customer and employee privacy concerns and other business and financial matters deemed confidential, privileged and proprietary;

WHEREAS, the parties anticipate that certain information that may be filed as part of or together with the Application and/or that may be requested or filed during the course of the proceeding in the subject docket will be considered privileged, confidential or proprietary by a party;

WHEREAS, the parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which any party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this amended protective order during the course of the hearing, that portion of the proceeding will be heard in camera; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issues an amended protective order covering the confidential information identified in the course of the proceeding in connection with the Application as follows:<sup>3</sup>

---

<sup>3</sup> As noted in the letter submitting this amended protective order and pursuant to paragraph 27 of the Protective Order issued by the Commission on April 2, 2009 ("April 2, 2009 Protective Order"), the parties requested Commission approval to modify the April 2, 2009 Protective Order. As such, to the

## TERMS OF THE AMENDED PROTECTIVE ORDER

1. This amended protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by any party in this docket.

2. All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this amended protective order, shall be subject to this amended protective order and shall be entitled to all confidential information of a party or participant under the provisions of this amended protective order to the extent allowed by the Commission.

## APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this amended protective order consist of "government records," as defined in HRS § 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this amended protective order conflicts with any provision of the UIPA, the UIPA shall control.

## CLASSIFICATION

4. A party to this proceeding may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, customer usage, financial, vendor, or bid information, including but not limited to cost support studies. Such information shall be protected

---

extent there are any conflicts between the two protective orders, this Amended Protective Order shall control and supersedes the April 2, 2009 Protective Order.

against disclosure to a non-qualified person pursuant to the terms of this amended protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the parties. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under this amended protective order and/or to which parties, as applicable. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or the parties, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party shall notify the Commission and the parties when information provided orally or in other than written form includes confidential information. At the time of such notification, the party shall, in the manner provided in paragraph 5 above,

specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.

#### FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be confidential information shall be subject to the terms of this amended protective order, and shall be treated by all qualified persons (as defined by this amended protective order) as constituting confidential information. Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and reflect the underlying confidential information, shall also be subject to the terms of this amended protective order.

#### DESIGNATION

8. Any party claiming that information is confidential shall place upon the applicable material the following legend:

#### **CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER**

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of the party claiming the information is confidential, other persons shall, to the extent

requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

#### DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a “qualified person” as defined in paragraph 12 below.

12. “Qualified person,” as used in this amended protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission in this proceeding;

- c. The Consumer Advocate, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate in this proceeding;
- d. Subject to paragraph 4 above, Applicant, its officers, Board of Directors, employees, and counsel (including employees directly employed by such counsel), and any consultants retained by Applicant;
- e. Subject to paragraph 4 above, any other party or participant to this proceeding, its staff, its employees, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding;
- f. Any other person approved by the party asserting the claim of confidentiality; and
- g. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such

non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

#### PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff and counsel, and the Consumer Advocate and its staff and counsel, the qualified person shall read a copy of this amended protective order, complete a copy of the agreement attached as Exhibit A to this amended protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.<sup>4</sup>

#### USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this amended protective order shall be used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, and (c) the UIPA, including any ruling of the Office of Information Practices.

---

<sup>4</sup> On September 1, 2009 and in accordance with the requirements of the April 2, 2009 Protective Order, the Consumer Advocate submitted 13 agreements executed by its consultants or qualified persons. The parties agree that these executed agreements shall also be applicable to this Amended Protective Order and, therefore, the Consumer Advocate is not required to re-submit revised agreements for these consultants pursuant to this paragraph. To the extent applicable, any other consultants or qualified persons must hereinafter comply with this paragraph.

16. Any confidential information obtained under this amended protective order may be used by the Commission and its staff and counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this amended protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this amended protective order may be used by any party, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the party in fulfilling its statutory duties and responsibilities, as applicable. The confidential information shall continue to be treated as confidential until the protection conferred by this amended protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of a hearing, if any, at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in

the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information  
Deleted Pursuant To  
Amended Protective Order  
Filed on \_\_\_\_\_.**

**RETENTION OF CONFIDENTIAL INFORMATION**

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff and counsel shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO AMENDED PROTECTIVE ORDER, FILED ON \_\_\_\_\_, AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS.**

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this

amended protective order, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

#### DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this amended protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this amended protective order, or until further order of the Commission.

#### APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this amended protective order. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this amended protective order.

#### NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. Nothing in this amended protective order shall

prevent any party from objecting to requests for production of information or other discovery requests.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

#### MODIFICATION OF THE AMENDED PROTECTIVE ORDER

27. The Commission may modify this amended protective order on the motion of any party, or on its own motion, upon reasonable notice to the parties and an opportunity for hearing, or the Commission may modify this amended protective order upon receipt and approval of a written stipulation by the parties.

#### DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within ninety (90) days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the

extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives, and may remain in the possession of any other party (i.e., DoN and Kauai Marriott) and its counsel for the same period of time. Such parties shall preserve the confidentiality of this information in accordance with the terms of this amended protective order for as long as they retain the confidential information.

#### SANCTIONS

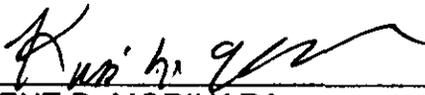
31. Any person violating this amended protective order shall be subject to sanctions imposed by the Commission.

#### COUNTERPARTS/SIGNATURE

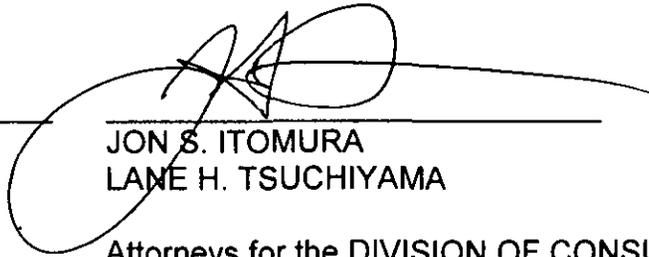
32. This Stipulation for Amended Protective Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulation for Amended Protective Order by facsimile or electronic signature for

initial submission to the Commission to be followed by the filing of originals of said facsimile or electronic signature pages.

DATED: Honolulu, Hawaii November 10, 2009.

  
KENT D. MORIHARA  
MICHAEL H. LAU  
KRIS N. NAKAGAWA  
SANDRA L. WILHIDE

Morihara Lau & Fong LLP  
Attorneys for  
KAUAI ISLAND UTILITY  
COOPERATIVE



JON S. ITOMURA  
LANE H. TSUCHIYAMA

Attorneys for the DIVISION OF CONSUMER  
ADVOCACY DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS

\_\_\_\_\_  
JAMES N. MCCORMICK  
THEODORE E. VESTAL

Attorneys for  
THE DEPARTMENT OF NAVY

\_\_\_\_\_  
THOMAS C. GORAK

Gorak & Bay, L.L.C.  
Attorneys for ESSEX HOUSE CONDOMINIUM  
CORPORATION ON BEHALF OF KAUAI  
MARRIOTT RESORT & BEACH CLUB

initial submission to the Commission to be followed by the filing of originals of said facsimile or electronic signature pages.

DATED: Honolulu, Hawaii November 10, 2009.

---

KENT D. MORIHARA  
MICHAEL H. LAU  
KRIS N. NAKAGAWA  
SANDRA L. WILHIDE

Morihara Lau & Fong LLP  
Attorneys for  
KAUAI ISLAND UTILITY  
COOPERATIVE

---

JON S. ITOMURA  
LANE H. TSUCHIYAMA

Attorneys for the DIVISION OF CONSUMER  
ADVOCACY DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS

---

JAMES N. MCCORMICK  
THEODORE E. VESTAL

Attorneys for  
THE DEPARTMENT OF NAVY



THOMAS C. GORAK

Gorak & Bay, L.L.C.  
Attorneys for ESSEX HOUSE CONDOMINIUM  
CORPORATION ON BEHALF OF KAUAI  
MARRIOTT RESORT & BEACH CLUB

initial submission to the Commission to be followed by the filing of originals of said facsimile or electronic signature pages.

DATED: Honolulu, Hawaii November 10, 2009.

---

KENT D. MORIHARA  
MICHAEL H. LAU  
KRIS N. NAKAGAWA  
SANDRA L. WILHIDE

Morihara Lau & Fong LLP  
Attorneys for  
KAUAI ISLAND UTILITY  
COOPERATIVE

---

JON S. ITOMURA  
LANE H. TSUCHIYAMA

Attorneys for the DIVISION OF CONSUMER  
ADVOCACY DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS



---

JAMES N. MCCORMICK  
THEODORE E. VESTAL

Attorneys for  
THE DEPARTMENT OF NAVY

---

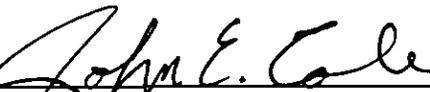
THOMAS C. GORAK

Gorak & Bay, L.L.C.  
Attorneys for ESSEX HOUSE CONDOMINIUM  
CORPORATION ON BEHALF OF KAUAI  
MARRIOTT RESORT & BEACH CLUB

APPROVED AND SO ORDERED THIS NOV 18 2009,  
at Honolulu, Hawaii.

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:

  
Michael Azama  
Commission Counsel

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, \_\_\_\_\_, have been presented with a copy of the Amended Protective Order filed by the Public Utilities Commission of the State of Hawaii in Docket No. 2009-0050 on the \_\_\_\_ day of \_\_\_\_\_, 2009 ("Amended Protective Order").

2. I am employed by, retained by or assisting \_\_\_\_\_ in Docket No. 2009-0050 and have requested review of the confidential information covered by the Amended Protective Order.

3. I understand the confidential information covered by the Amended Protective Order is to be used solely to assist \_\_\_\_\_ and that unless otherwise permitted by the Amended Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to \_\_\_\_\_, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Amended Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Amended Protective Order.

5. I hereby certify that I have read the above-mentioned Amended Protective Order and agree to abide by its terms and conditions.

DATED at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address

(\_\_\_\_) \_\_\_\_\_  
Telephone Number

**CERTIFICATE OF SERVICE**

The foregoing Amended Protective Order was served on the date of filing by mail, postage prepaid and properly addressed to the following.

**MS. CATHERINE P. AWAKUNI**  
Executive Director  
Department of Commerce and Consumer Affairs  
Division of Consumer Advocacy  
335 Merchant Street, Suite 326  
Honolulu, Hawaii 96813

**KENT D. MORIHARA, ESQ.**  
**MICHAEL H. LAU, ESQ.**  
**KRIS N. NAKAGAWA, ESQ.**  
**SANDRA L. WILHIDE, ESQ.**  
Moriyara Lau & Fong LLP  
841 Bishop Street  
Suite 400  
Honolulu, Hawaii 96813

**Attorneys for KAUAI ISLAND UTILITY COOPERATIVE**

**JAMES N. MCCORMICK, ESQ.**  
**THEODORE E. VESTAL, ESQ.**  
Associate Counsel (Code 09C)  
Naval Facilities Engineering Command, Pacific  
258 Makalapa Drive, Suite 100  
Pearl Harbor, Hawaii 96860-3134

**Attorneys for the DEPARTMENT OF NAVY**

**THOMAS C. GORAK, ESQ.**  
Gorak & Bay, L.L.C.  
1161 Ikena Circle  
Honolulu, Hawaii 96815

**Attorney for ESSEX HOUSE CONDOMINIUM CORPORATION**  
**on behalf of KAUAI MARRIOTT RESORT & BEACH CLUB**