

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MOLOKAI PUBLIC UTILITIES, INC.)
For Review and Approval of Rate)
Increases, Revised Rate Schedules,)
and Revised Rules.)
_____)

DOCKET NO. 2009-0048

AMENDED PROTECTIVE ORDER

FILED
2009 DEC 11 P 2:29
PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of))
MOLOKAI PUBLIC UTILITIES, INC.)) Docket No. 2009-0048
For Review and Approval of Rate))
Increases, Revised Rate Schedules,))
and Revised Rules.))
_____))

AMENDED PROTECTIVE ORDER

By this Order, the commission adopts, with modifications, the Proposed Amended Protective Order jointly submitted by MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), MOLOKAI PROPERTIES LIMITED ("MPL"), the COUNTY OF MAUI ("County"), WEST MOLOKAI ASSOCIATION ("WMA"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), on November 12, 2009.¹

I.

Background

On April 6, 2009, the commission issued its Protective Order, which approved without change the protective order proposed by the two entities that were the parties to the proceeding at the time, MPU and the Consumer Advocate.

¹The Parties are MPU, MPL, the County, WMA, STAND FOR WATER, and the Consumer Advocate, an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

Subsequently, on October 16, 2009, the commission: (1) granted intervention to the County, Stand for Water, and WMA, subject to certain conditions; and (2) on its own motion, named MPL as a party to the proceeding. On November 12, 2009, MPU, MPL, the County, WMA, and the Consumer Advocate, jointly and timely submitted their Proposed Amended Protective Order for the commission's review and consideration. Stand for Water did not submit its own proposed amended protective order to the commission.²

II.

Amended Protective Order

By their Amended Protective Order, the majority parties propose to: (1) incorporate and reference the County, WMA, Stand for Water, and MPL as additional parties in this proceeding that are subject to the protective order, as amended; and (2) adhere to two different levels of confidentiality to govern "the classification, acquisition, and use of trade secrets and other confidential information produced by any party in this docket."³ Specifically, the two levels include: (1) information

²Instead, MPU's counsel represents that on November 12, 2009, it received a communication from Stand for Water's representative, indicating that Stand for Water was withdrawing as an intervenor. See MPU's transmittal letter, dated November 12, 2009. Stand for Water, for its part, has not responded to the commission's information request to confirm the intervenor's withdrawal from this docket. See Commission's letter, dated November 13, 2009 (PUC-IR-101 (SFW)). Hence, at this time, Stand for Water is still a party to this docket.

³Proposed Amended Protective Order, Paragraph No. 1, at 3.

that is disclosed by the producing party to the commission, the Consumer Advocate, and all other parties; and (2) information that is disclosed by the producing party only to the commission and the Consumer Advocate, or to the commission, the Consumer Advocate, and some but not all other parties.

The commission has rejected agreements between an applicant and the Consumer Advocate which effectively create two levels of information that are designated as confidential by the producing party which may have the effect of preventing potential intervenors or participants from receiving certain information that is designated as confidential and subject to non-disclosure by the producing party.⁴ That said, here: (1) the majority parties voluntarily agree to the two different levels of confidentiality reflected in their Proposed Amended Protective Order; and (2) Stand for Water does not affirmatively object to the Proposed Amended Protective Order.

Nonetheless, the majority parties' acquiescence to the two different levels of confidentiality does not sufficiently alleviate the commission's overall concerns in this instance. In particular, the proposed amendatory language appears to authorize MPU to withhold the distribution of certain information designated as confidential from the intervenors, despite the intervenors duly signing the Protective Agreement (Exhibit A) by

⁴See, e.g., In re Kauai Island Util. Coop., Docket No. 2009-0050, Protective Order, filed on April 2, 2009; In re KRWC Corp., dba Kohala Ranch Water Co., Docket No. 2008-0283, Protective Order, filed on December 29, 2008; and In re Hawaii Elec. Light Co., Inc., Docket No. 2008-0186, Protective Order, filed on September 26, 2008.

which the recipient of the confidentially-designated information agrees to the terms of confidentiality and non-disclosure as set forth in the Proposed Amended Protective Order. Moreover, no apparent, distinctive standard exists in the Proposed Amended Protective Order that MPU must abide by when deciding to withhold the distribution of confidentially-designated information from any of the intervenors.⁵ Instead, such action is subject to MPU's discretion. The absence of such a clear and distinctive standard, in the commission's view, may inevitably lead to discovery disputes that culminate in one or more motions that seek to compel the production of the subject information, which is contrary to the commission's intent of "secur[ing] the just, speedy, and inexpensive determination of [this] proceeding."⁶ The commission notes that this is not a situation where MPU seeks to withhold certain information from its competitors.

Under the circumstances, the commission adopts the Proposed Amended Protective Order, subject to the deletion of the following provisions from Paragraph No. 4:

In addition, a party may designate certain information as being confidential and not to be distributed to another party (not including the Consumer Advocate) by notifying the Commission and the parties in writing setting forth in particularity the information to be kept as confidential and not available to the other party. A party withholding information from another party will describe with particularity the nature of the information withheld, and the basis for

⁵See, e.g., In re KRWC Corp., dba Kohala Ranch Water Co., Docket No. 2008-0283, Protective Order, filed on December 29, 2008; and In re Hawaii Elec. Light Co., Inc., Docket No. 2008-0186, Protective Order, filed on September 26, 2008.

⁶HAR § 6-61-1.

withholding the information from the other party. With respect to such confidential information, the party to whom such information is being withheld shall be treated as a non-qualified person from whom such information shall be protected against disclosure in accordance with the terms of this amended protective order.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Amended Protective Order jointly submitted by the majority parties on November 12, 2009, and attached as an exhibit herein, is adopted, subject to the modifications to Paragraph No. 4, as described above.

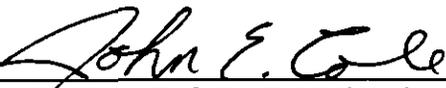
2. Paragraph No. 4 is modified to read as follows:

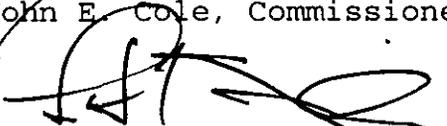
4. A party to this proceeding may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, customer usage, financial, vendor, or bid information, including but not limited to cost support studies. Such information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

DONE at Honolulu, Hawaii DEC 11 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:


Michael Azama
Commission Counsel

2009-0048.laa

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)
)
 of)
) Docket No. 2009-0048
 MOLOKAI PUBLIC UTILITIES, INC.)
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 For review and approval of rate)
 increases; revised rate schedules;)
 and revised rules.)
 _____)

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)	
)	
of)	
)	Docket No. 2009-0048
MOLOKAI PUBLIC UTILITIES, INC.)	
)	
For review and approval of rate)	
increases; revised rate schedules;)	
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STIPULATION FOR AMENDED PROTECTIVE ORDER

WHEREAS, MOLOKAI PUBLIC UTILITIES, INC., a Hawaii corporation (“Applicant”), by and through its attorneys, Morihara Lau & Fong LLP, filed an Amended Application on June 29, 2009, in the above-referenced matter, requesting various approvals from the Hawaii Public Utilities Commission (“Commission”) in connection with the proposed increase in Applicant’s rates and charges, pursuant to Hawaii Revised Statutes (“HRS”) § 269-16 (“Amended Application”)¹;

WHEREAS, Applicant maintains that the disclosure of certain confidential information could disadvantage and harm Applicant and/or its related entities in that disclosure of certain information may touch upon, among other things, Applicant’s and/or its related entities’ respective company, customer and employee privacy

¹ On July 29, 2009, the Commission issued and filed its Order Regarding Completed Amended Application and Other Initial Matters, finding, among other things, that June 29, 2009 is the filing date of the Amended Application by MPU.

concerns and other business and financial matters deemed confidential, privileged and proprietary;

WHEREAS, Applicant anticipates that certain information that may be requested or filed during the course of the proceeding in the subject docket will be considered to be privileged, confidential or proprietary by Applicant and/or its related entities;

WHEREAS, Applicant, the Division of Consumer Advocacy ("Consumer Advocate"), the County of Maui ("County"), West Molokai Association ("WMA"), Stand for Water ("SFW"), and Molokai Properties Limited ("MPL") are parties in this proceeding²;

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

² The Consumer Advocate is an *ex officio* party to this proceeding, pursuant to HRS § 269-51 and HAR § 6-61-62(a). *See* Order Granting Intervention to the County, WMA, and SFW, in which the Commission, on its own motion, named MPL as a party, filed on October 16, 2009.

covering the confidential information identified in the course of the proceeding in connection with the Amended Application as follows:³

TERMS OF THE AMENDED 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.

³ 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 6, 2009 ("April 6, 2009 Protective Order"), the parties are requesting Commission approval to modify the April 6, 2009 Protective Order to primarily address revisions requested by MPU following the granting of intervention after the April 6, 2009 Protective Order (i.e., the County, WMA, SFW, and MPL). As such, to the extent there are any conflicts between the two protective orders, this Amended Protective Order shall control and supersedes the April 6, 2009 Protective Order.

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 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. In addition, a party may designate certain information as being confidential and not to be distributed to another party (not including the Consumer Advocate) by notifying the Commission and the parties in writing setting forth in particularity the information to be kept as confidential and not available to the other party. A party withholding information from another party will describe with particularity the nature of the information withheld, and the basis for withholding the information from the other party. With respect to such confidential information, the party to whom such information is being withheld shall be treated as a non-qualified person from whom such information shall be protected against disclosure in accordance with the terms of this amended protective order.

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 and/or challenges a party withholding information from another party, 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 and/or any challenge to withholding of confidential information from any party shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or a party, 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 AMENDED 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 and/or its related entities, their respective officers, employees, and counsel (including employees directly employed by such counsel) and any consultants retained by Applicant and/or its related entities;
- e. Subject to paragraph 4 above and to the extent allowed by the Commission, counsel of record for any other party or participant to this proceeding, and counsel's staff;

- 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.

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.

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 a 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 or withholding information from another party, the party claiming confidentiality and/or withholding information, 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 and/or withholding of information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality and/or withholding the information 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 and/or properly withheld from another party 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 or of withholding information from other parties. 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, which may be a non-hearing motion, or on its own motion, upon reasonable notice to the parties, 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 parties (i.e., the County, WMA, SFW and MPL) and their 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

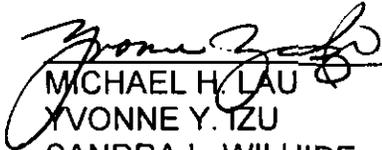
31. Any person violating this amended protective order shall be subject to sanctions imposed by the Commission.

COUNTERPARTS/SIGNATURE

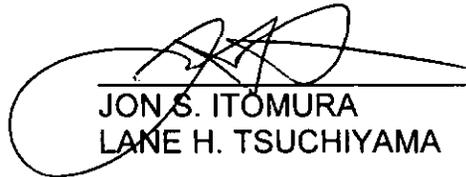
32. This Stipulation for Amended Protective Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulation for Amended Protective Order by facsimile 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 12, 2009


MICHAEL H. LAU
YVONNE Y. TZU
SANDRA L. WILHIDE

Morihara Lau & Fong LLP
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MOLOKAI PUBLIC UTILITIES, INC.


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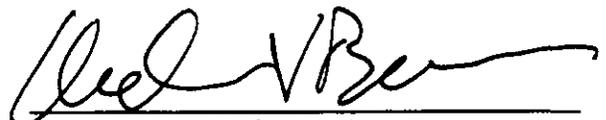
Attorneys for the
COUNTY OF MAUI


WILLIAM W. MILKS

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WEST MOLOKAI ASSOCIATION

TIMOTHY BRUNNERT

President, STAND FOR WATER



ANDREW V. BEAMAN

Chun Kerr Dodd Beaman & Wong, LLLP
Attorney for
MOLOKAI PROPERTIES LIMITED

APPROVED AND SO ORDERED THIS _____,
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. 2009-0048 on the ____ day of _____, 2009 ("Amended Protective Order").

2. I am employed by, retained by or assisting _____ in Docket No. 2009-0048 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

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Attorney for WEST MOLOKAI ASSOCIATION

TIMOTHY BRUNNERT
President
Stand for Water
P. O. Box 71
Maunaloa, HI 96770

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Chun Kerr Dodd Beaman & Wong, LLLP
Topa Financial Center, Fort Street Tower
745 Fort Street, 9th Floor
Honolulu, HI 96813

Attorney for MOLOKAI PROPERTIES LIMITED

CERTIFICATE OF SERVICE

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

DEAN K. NISHINA
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

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