

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAANAPALI WATER CORPORATION,)
AQUASOURCE UTILITY, INC., and)
CALIFORNIA WATER SERVICE GROUP)
Requesting Approval of the Sale of)
the Stock of Kaaanapali Water)
Corporation by AquaSource Utility,)
Inc. to California Water Service)
Group, Pursuant to Hawaii Revised)
Statute, § 269-17.5.)

DOCKET NO. 02-0372

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

DECISION AND ORDER NO. 20102

Filed March 27, 2003
At 10 o'clock A..M.

Kris N. Nakamura
for Chief Clerk of the Commission

ATTEST: A True Copy
CATHERINE SAKATO
Clerk
Public Utilities Commission
State of Hawaii

Catherine Sakato

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Docket No. 02-0372
Decision and Order No. 20102

DECISION AND ORDER

I.

On October 11, 2002, KAA NAPALI WATER CORPORATION, (KWC), AQUASOURCE UTILITY, INC. (AquaSource), and CALIFORNIA WATER SERVICE GROUP (CWS), collectively called Applicants, filed an application requesting commission approval of the sale of all of the outstanding stock of KWC by AquaSource to CWS, pursuant to Hawaii Revised Statutes (HRS) § 269-17.5 (proposed transaction).¹

Applicants served copies of their application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND

¹On December 9, 2002, Applicants supplemented the application by filing the portions of Exhibit 103 to the application that were previously redacted. The supplemental filing was designated confidential, subject to Stipulation for Protective Order and Protective Order No. 19848, filed on December 5, 2002.

CONSUMER AFFAIRS (Consumer Advocate).² On January 10, 2003, the Consumer Advocate served information requests upon the Applicants, to which they responded on January 24, 2003. By position statement filed on February 27, 2003, the Consumer Advocate informed the commission that while it does not object to the approval of the sale of the stock of KWC by AquaSource to CWS, it reserves its right to review the claimed cost savings resulting from CWS' ownership of KWC in the future.³

II.

A.

KWC is a wholly-owned subsidiary of AquaSource, and is organized under the laws of the State of Hawaii. KWC currently provides water service to six hotels with a total of 17 meters, eight condos with a total of 38 meters, 334 single-family connections, 13 commercial connections, and approximately 64 other connections. Presently, AquaSource, Inc., AquaSource's parent company, employs seven people to operate KWC.

AquaSource is a corporation organized under the laws of Texas. Thus, it is a foreign corporation, as defined by HRS

²Pursuant to HRS § 269-51 and Hawaii Administrative Rules § 6-61-62, the Consumer Advocate is an ex officio party to this proceeding. The Consumer Advocate is responsible for representing, protecting and advancing the interests of all consumers in this matter.

³The Consumer Advocate notes that KWC's rate of return on its financial statements as of August 31, 2002 is approximately 12.75%, which is above its 10% authorized rate of return.

§§ 269-17.5 and 235-1.⁴ By Decision and Order No. 16993, filed on May 21, 1999, in Docket No. 99-0056, the commission approved AquaSource's application to purchase KWC.

CWS, also a foreign corporation, is a publicly traded corporation organized under the laws of Delaware. CWS specializes in the ownership of water and wastewater utility companies, and serves approximately 1,700,000 customers through its three regulated subsidiaries: California Water Service Company, Washington Water Service Company, and New Mexico Water Service Company, and its non-regulated subsidiary, CWS Utility Services.⁵

B.

On August 2, 2002, AquaSource and CWS entered into a Stock Purchase Agreement (Agreement) in which CWS agreed to purchase all of the outstanding stock of KWC for approximately \$7,700,000 in cash, subject to adjustment at closing as set forth

⁴HRS §§ 269-17.5 and 235-1 define a foreign corporation as a corporation that is not organized under the laws of the State of Hawaii.

⁵As the Consumer Advocate noted in its statement of position, filed on February 27, 2003, there appears to be a discrepancy in the number of customers served. The Applicants state on Page 4 of their application that CWS services 1,800,000 people. However, CWS states in response to CA-IR-6(1) that it serves 1,700,000 people.

in the Agreement.⁶ The transfer of KWC's stock ownership will be completed shortly after receipt of the commission's approval and satisfaction of other preconditions specified in the Agreement.

III.

HRS § 269-17.5 requires a foreign corporation to obtain our consent prior to obtaining more than 25 per cent of the issued and outstanding voting stock of a Hawaii corporation that owns, controls, operates, or manages any plant or equipment as a public utility.⁷ Under the proposed transaction and as previously stated, CWS is a foreign corporation and proposes to buy all of the outstanding stock of KWC, resulting in direct ownership of more than 25 per cent of the stock of KWC. Moreover, none of the exemptions set forth under HRS § 269-

⁶As discussed by the Consumer Advocate in its statement of position and consistent with our decision to allow AquaSource's request to purchase KWC in Decision and Order No. 16993, filed on May 21, 1999, in Docket No. 99-0056, the commission notes that it has consistently denied recovery of acquisition premiums from ratepayers. Moreover, the commission has required utilities to record an acquisition premium or transaction costs in "below-the-line" accounts to prevent recovery in future rate proceedings. The commission advises CWS to use similar "below-the-line" account treatment of the proposed transaction's acquisition premium.

⁷HRS § 269-17.5(c) provides, in relevant part:

No more than twenty-five per cent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls, operates, or manages any plant or equipment, or any part thereof, as a public utility within the definition set forth in section 269-1 shall be held, whether directly or indirectly, by a single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission, or unless a transaction is exempt.

17.5(c) is applicable to the proposed transaction. Therefore, the proposed transaction falls under the purview of HRS §. 269-17.5.

CWS and KWC each provided financial statements as exhibits to the application. In addition, CWS advises that Standard & Poor's and Moody's have maintained their ratings of CWS and its subsidiary mortgage bonds at AA- and Aa3, respectively. CWS contends its bond ratings are among the highest ratings for senior debt in the water industry. In its statement of position, the Consumer Advocate states that after review of, among other things, CWS and KWC's financial statements, CWS' mortgage bond ratings and line of credit, and KWC's rate of return, "CWS and KWC appear to have the financial resources and strength available to provide long-term support to the operations of KWC."

The Consumer Advocate also stated that "CWS possesses the technical knowledge and ability required to successfully operate the facilities and the acquisition should not result in any significant disruption of service." In support of its technical ability, CWS states that it has been providing water service to customers since 1926 and still maintains as its principal business the ownership of water and wastewater utility companies.

Furthermore, the Consumer Advocate notes that the execution of the Agreement between CWS and AquaSource, as well as the time and resources that CWS has invested in its analysis of

KWC's operations demonstrates CWS' willingness to provide water service to the KWC customers.

Based upon our careful review of the record, we find that the CWS is fit, willing, and able to provide water service to KWC's customers. In addition, we find that CWS' acquisition of KWC's stock is reasonable and in the public interest. Accordingly, we conclude that CWS' acquisition of KWC's stock from AquaSource, as described in the application, should be approved.

We also find good cause to have copies of KWC's annual financial statements provided to the Consumer Advocate to allow it to perform ongoing analyses of KWC's rate of return. As a result, for the next five years, unless otherwise ordered, we shall require that KWC provide copies of its annual financial statements filed with the commission to the Consumer Advocate for its use.

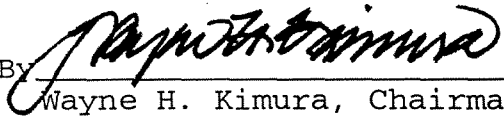
THE COMMISSION ORDERS:

1. CWS' acquisition of all of the outstanding stock of KWC from AquaSource, as described in the application filed on October 11, 2002, is approved.

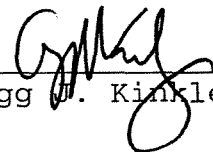
2. For the next five years, unless otherwise ordered, KWC shall provide copies of its annual financial statements filed with the commission to the Consumer Advocate for its use in analyzing KWC's rate of return.

DONE at Honolulu, Hawaii this 27th day of March,
2003.

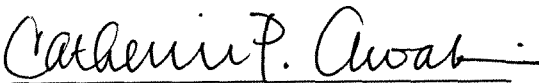
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By 
Gregg M. Kinkley, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

02-0372.eh

CERTIFICATE OF SERVICE

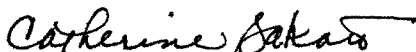
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20102 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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for Karen Higashi

DATED: March 27, 2003