

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Complaint of)  
JOHN D. (JACK) HOYT, )  
Complainant, )  
v. )  
KOHALA RANCH WATER COMPANY, )  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO. 04-0296

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

2005 JAN -4 P 3:21

RECEIVED

ORDER NO. 21526

Filed Jan. 4, 2005  
At 1 o'clock P .M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Complaint of)  
JOHN D. (JACK) HOYT, )  
Complainant, )  
v. )  
KOHALA RANCH WATER COMPANY, )  
Respondent. )  
\_\_\_\_\_ )

Docket No. 04-0296  
Order No. **21526**

ORDER

I.

Introduction

On October 1, 2004, JOHN D. (JACK) HOYT ("Complainant") filed a formal complaint ("Complaint") with the commission against KRWC CORPORATION, dba KOHALA RANCH WATER COMPANY ("KRWC" or "Respondent")<sup>1</sup>, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-67. Complainant alleges that Respondent engaged in the following activities:

1. "Excessive, unfair, and unreasonable charges for loss of water during one-month billing period due

---

<sup>1</sup>On March 2, 2000, the commission approved the transfer of KOHALA RANCH WATER COMPANY's assets, including its certificate of public convenience and necessity, to KRWC. Decision and Order No. 17580, filed on March 2, 2000, in Docket No. 99-0390.

to hidden underground break in irrigation system[;]" and

2. "Failure to conduct meter testing and hearing procedures in a fair and reasonable manner."

The Complaint appears to request that the commission review Respondent's rates, fares, classifications, charges or rules, and find that such rates, fares, classifications, charges or rules are unfair and unreasonable. Furthermore, the Complaint seeks the following relief:

1. "Direct [Respondent] to adopt a policy for hidden or accidental water loss in keeping with County Water District of 1.5 times the average monthly bill for the previous 12 months[;]"
2. "Grant a one-time adjustment to [Complainant] for water lost due to a failure of the irrigation system during the 1/5/04-3/8/04 billing cycle in keeping with the County Water District Policy described above[;]" and
3. "Review and establish consumer protection procedures in [Respondent's] tariffs such that hearings are conducted in public with witnesses and meters are tested in an independent, verifiable, timely manner when appropriate."

On November 5, 2004, the commission issued Order No. 21455 directing Respondent to either satisfy the matters

complained and file an answer reporting that it has satisfied the matters raised in the Complaint or file an answer to the Complaint within twenty (20) days after the date of service of such order.

On November 16, 2004, Respondent filed its answer to the Complaint in accordance with Order No. 21455 alleging the following:

1. Respondent's charge to Complainant is not excessive, unfair and unreasonable under the circumstances; and
2. Respondent's did not fail to conduct meter testing and procedures in a fair and reasonable manner.

Based on the foregoing, Respondent requests that the commission deny the Complainant's requested relief set forth in the Complaint.

On December 3, 20004, Complainant filed a response to Respondent's answer.

## II.

### Discussion

HAR § 6-61-70 provides, in relevant part, that "[w]hen a respondent has filed its answer, the commission shall set a hearing on the complaint." However, Hawaii Revised Statutes ("HRS") § 269-15.6 provides that "[t]he commission may require the parties in any matter before the commission to participate in

nonbinding arbitration, mediation, or other alternative dispute resolution process prior to the hearing."<sup>2</sup>

Since it appears that Respondent did not satisfy the matters complained of in the Complaint and has instead filed its answer setting forth its grounds of defense, both of law and of fact, the commission recognizes that the next step is to set a hearing date for this matter, pursuant to HAR § 6-61-70. However, upon review of the pleadings filed in this matter, the commission finds that it may be more beneficial and efficient for both Complainant and Respondent to participate in nonbinding mediation<sup>3</sup> prior to holding a hearing in this docket.

Accordingly, pursuant to HRS § 269-15.6 and consistent with HRS § 91-8.5, the commission will direct both Complainant and Respondent (collectively, "Parties") to participate in nonbinding mediation prior to the commencement of a commission

---

<sup>2</sup>HRS § 91-8.5 also provides, in relevant part:

**Mediation in contested cases.** (a) An agency may encourage parties to a contested case hearing under this chapter to participate in mediation prior to the hearing subject to conditions imposed by the agency in rules adopted in accordance with this chapter. The agency may suspend all further proceedings in the contested case pending the outcome of the mediation.

HRS § 91-8.5(a) (Supp. 2003).

<sup>3</sup>"Mediation" is a process in which a neutral facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute. The mediator normally uses a variety of skills and techniques to help parties communicate, negotiate, and reach agreements and settlements. While mediators may, under certain circumstances, make suggestions about potential resolutions to the parties, they have no authority to bind the commission in matters that are within our statutory purview.

hearing in this matter, subject to the following guidelines and conditions:

1. The Parties may jointly select a person to conduct the mediation. If the Parties are unable to jointly select a mediator, the Parties shall inform the commission within ten (10) days of the date of this order of the non-selection, and the commission will select the mediator.
2. Unless otherwise extended by the commission, the mediation period shall not exceed thirty (30) days from the date of this order. The Parties shall report in writing the status of its mediation within twenty (20) days from the date of this order. If the matter in this docket has not been resolved within the mediation period, a hearing on this matter will be scheduled by the commission, and the Parties will be informed of the date, place and time of the hearing through a notice of hearing to be issued subsequent to the mediation period.
3. Unless otherwise provided by law, ordered by the commission, or agreed to by the Parties, all costs of the mediation shall be borne equally by the Parties.
4. No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving this matter.

In addition, consistent with HRS § 91-8.5, the commission will suspend all further proceedings in this matter pending the outcome of the nonbinding mediation.

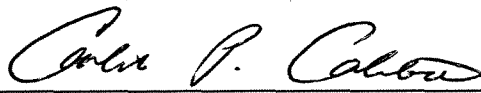
III.

Order

THE COMMISSION ORDERS that Complainant and Respondent shall participate in nonbinding mediation prior to the commencement of a commission hearing in this matter, subject to the guidelines and conditions set forth in Section II. above. All further proceedings in this matter are suspended pending the outcome of the nonbinding mediation.

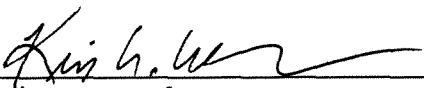
DONE at Honolulu, Hawaii JAN - 4 2005.

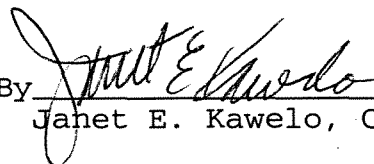
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

By   
Janet E. Kawelo, Commissioner

04-0296.s1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21526 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  
P. O. Box 541  
Honolulu, HI 96809

JOHN D. (JACK) HOYT  
P.O. Box 1141  
Kapa`au, HI 96755

KRWC CORPORATION, dba  
KOHALA RANCH WATER COMPANY  
c/o WALLY CAMPBELL  
59-916 Kohala Ranch Road  
Kamuela, HI 96743

ALAN M. OSHIMA, ESQ.  
KENT D. MORIHARA, ESQ.  
OSHIMA CHUN FONG & CHUNG LLP  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

Attorneys for KRWC CORPORATION, dba  
KOHALA RANCH WATER COMPANY

  
\_\_\_\_\_  
Karen Higashi

DATED: JAN - 4 2005