

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAIKOLOA WATER COMPANY, INC., dba)
WEST HAWAII WATER COMPANY)
For Approval of Rates Increases)
and Revised Rate Schedules.)

DOCKET NO. 04-0373

ORDER NO. 21638

RECEIVED
2005 FEB 11 A 8:08
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed Feb. 7, 2005
At 1:30 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.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAIKOLOA WATER COMPANY, INC., dba)
WEST HAWAII WATER COMPANY)
For Approval of Rates Increases)
and Revised Rate Schedules.)
_____)

Docket No. 04-0373
Order No. 21638

ORDER

The commission approves, with modification, the Proposed Stipulation for Protective Order ("Proposed Order") jointly submitted by WAIKOLOA WATER COMPANY, INC., dba WEST HAWAII WATER COMPANY ("Applicant" or "WHWC") and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate")(collectively, the "Parties").

On January 27, 2005, the Parties submitted their Proposed Order for commission action. Paragraph 8 of the Proposed Order states in part:

8.

Notwithstanding the above, Applicant has already in the course of the proceeding provided information that it has identified as confidential to the Consumer Advocate and the Commission. The previously submitted confidential information included a detailed schedule of water usage by customers for the years 1999 - 2004 and detailed budget calculations for the 2005 year related to labor costs. The schedule of water usage was provided as Exhibit 7-3, Appendix A to the Application. The budget calculations were provided as Exhibit 7-3, Appendix B to the Application. Subject to challenge pursuant to paragraph 24, this information shall be

governed by and protected under this Protective Agreement.¹

Prior to taking any action on the Parties' Proposed Order, the commission instructed WHWC to promptly comply with Paragraphs 5 and 10 of the Proposed Order.² On February 3, 2005, WHWC responded to the commission's instructions.³

In essence, WHWC seeks to retroactively seal, on a confidential basis, certain portions of Appendices A and B attached to its Application,⁴ following the commission's approval of the Proposed Order.⁵

The commission finds that, following its review of WHWC's response, WHWC has met its burden of complying with the standard of proof set forth in Paragraphs 5 and 10 of the attached Stipulation for Protective Order, governing the designation of confidential information.⁶ Hence, WHWC, in this instance, is authorized to retroactively redact and seal, on a

¹Footnote and text therein omitted.

²Commission counsel's letter, dated February 1, 2005.

³WHWC's letter, dated February 2, 2005, and filed on February 3, 2005.

⁴WHWC's Application, Verification, Certificate of Service, and Exhibits 1 to 7-4, filed on December 30, 2004 (collectively, the "Application").

⁵Specifically, WHWC requests to redact: (1) for Appendix A, the name of each customer; and (2) for Appendix B, the name of each WHWC employee.

⁶With respect to designating information filed with the commission as confidential, Paragraphs 5 and 10 require WHWC to: (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.

confidential basis, its designated portions of Appendices A and B.⁷ Conversely, the unredacted information shall remain unsealed.

The third paragraph in Paragraph 8 of the Proposed Order, however, is not in the form of Stipulated Protective Orders routinely approved by the commission in the past. Thus, the commission approves the Parties' Proposed Order, as modified by removing the third paragraph of Paragraph 8 of the Proposed Order.

THE COMMISSION ORDERS:

1. The Parties' Proposed Stipulation for Protective Order, submitted on January 27, 2005 and attached hereto as Exhibit 1, is approved as modified. Paragraph 8 of the Proposed Order is modified to read as follows, *in toto*:

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.

⁷WHWC filed the original and eight (8) copies of its Application, with two (2) copies served upon the Division of Consumer Advocacy. Paragraph 10 of the attached Stipulation for Protective Order states in part that "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" of said Order.

2. WHWC: (A) is authorized to retroactively redact and seal, on a confidential basis, its designated portions of Appendices A and B attached to the Application; and (B) shall take the necessary steps to promptly comply with Paragraphs 8 and 10 of the attached Stipulation for Protective Order.

DONE at Honolulu, Hawaii FEB - 7 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

04-0373.cs

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)

WAIKOLOA WATER COMPANY, INC. dba,)
WEST HAWAII WATER COMPANY)

For Expedited Review and Approval to Increase)
Rates)
_____)

DOCKET NO. 04-0373

PROTECTIVE ORDER NO. _____

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

Filed _____

At _____ o'clock _____.m.

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
WAIKOLOA WATER COMPANY, INC. dba,)	DOCKET NO. 04-0373
WEST HAWAII WATER COMPANY)	
)	
For Expedited Review and Approval to Increase)	
Rates)	
)	
)	

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, Waikoloa Water Company, Inc., dba, West Hawaii Water Company
("WHWC" or "Applicant") has filed an application for approval to increase its rates;

WHEREAS, Applicant maintains that disclosure of certain confidential information (i.e.,
the disclosure of the names of Applicant's employees as part of the Applicant's labor allocations
and the individual customer names for water sales and usage) may be a privacy concern if the
public has access to that information;

WHEREAS, Applicant anticipates that during the course of this proceeding, information
considered to be privileged or confidential by a party may be requested or filed;

WHEREAS, Applicant and the Division of Consumer Advocacy ("Consumer Advocate")
are parties in this proceeding;

WHEREAS, Applicant is willing to disclose certain confidential information only to the
Commission and the Consumer Advocate, provided that the information is protected from further
release;

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 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 issue a protective order covering the confidential information identified in the course of the proceeding in connection with the Application as follows:

TERMS OF THE ORDER

1. This 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 protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party or participant under the provisions of this 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 protective order consist of "government records," as defined in Hawaii Revised Statutes ("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 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, 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 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 Consumer Advocate. 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 a protective order. 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 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 protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this 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.

Notwithstanding the above, Applicant has already in the course of the proceeding provided information that it has identified as confidential to the Consumer Advocate and the Commission. The previously submitted confidential information included a detailed schedule of water usage by customers for the years 1999-2004 and detailed budget calculations for the 2005 year related to labor costs. The schedule of water usage was provided as Exhibit 7-3, Appendix A to the Application. The budget calculations were provided as Exhibit 7-3, Appendix B to the Application. Subject to challenge pursuant to paragraph 24, this information shall be governed by and protected under this Protective Agreement.¹

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

¹ By executing this Stipulation, the Consumer Advocate is not waiving its right to so challenge any claims of confidentiality.

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 protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission and its staff;
- 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. Applicant, its officers and employees, its counsel (including employees directly employed by such counsel) and any consultants retained by Applicant;
- e. Any other party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding, to the extent allowed by the Commission;
- 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, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this 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 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 protective order may be used by the Commission and its staff 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 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 protective order may be used by the Consumer Advocate, 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 Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this 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 that 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 any hearing 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
Protective Order No. _____.**

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 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
PROTECTIVE ORDER NO. _____ 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 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 protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this 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 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 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.

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 PROTECTIVE ORDER

27. The Commission may modify this protective order on the motion of any party, or

on its own motion, upon reasonable notice to the parties and an opportunity for hearing.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 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 statute.

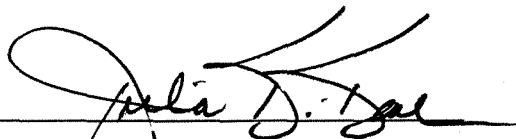
SANCTIONS

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

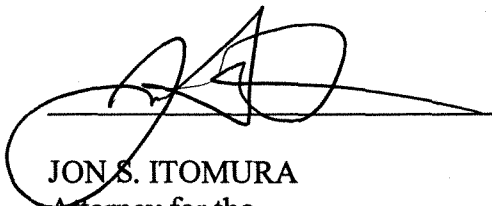
DATED:

Honolulu, Hawai'i

January 21, 2005.



JULIA K. KANE
Attorney for Applicant



JON S. ITOMURA
Attorney for the
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs

APPROVED AND SO ORDERED THIS _____, 2005,
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura, Commissioner

By _____
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

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 Protective Order No. _____ issued by the Hawai'i Public Utilities Commission in Docket No. _____ on the _____ day of _____, 2005 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. _____ and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the 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 Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

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

DATED at _____, _____, this _____, 2005.

Signature

Address

(_____) _____
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing protective Order No.

_____, upon the following party (parties) by hand delivery or by mail, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. Box 541
Honolulu, Hawai'i 96809

WAIKOLOA WATER COMPANY, INC., d/b/a
WEST HAWAII WATER COMPANY
150 Waikoloa Beach Drive
Waikoloa, Hawai'i 96738-5703

JULIA K. KANE, ESQ.
ROBERT J. MARTIN, JR., ESQ.
BAYS, DEEVER, LUNG, ROSE & BABA
Ali'i Place, 16th Floor
1099 Alakea Street
Honolulu, Hawai'i 96813

Dated: _____, 2005

Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21638 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

BRUCE MOORE
DEVELOPMENT MANAGER
WEST HAWAII WATER COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703

JULIA KIM KANE, ESQ.
ROBERT J. MARTIN JR., ESQ.
BAYS, DEEVER, LUNG, ROSE & BABA
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, HI 96813

Counsel for WEST HAWAII WATER COMPANY



Karen Higashi

DATED: FEB - 7 2005