

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KUKIO UTILITY COMPANY, LLC)
For Approval of Expansion of its)
Service Territory and)
Establishment of a Bulk Rate.)
_____)

DOCKET NO. 04-0137

DECISION AND ORDER NO. 21836

Filed May 25, 2005
At 2 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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

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K. Higashi.

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DECISION AND ORDER

By this Decision and Order, the commission, among other things, approves the Application of KUKIO UTILITY COMPANY, LLC ("Applicant" or "Kukio") to (1) expand its existing service territory and (2) establish a bulk rate to provide untreated water to the Kukio Golf and Beach Club ("Golf and Beach Club").¹

I.

Application

On June 3, 2004, Applicant filed an Application requesting commission approval to expand its existing service territory to provide water and wastewater service to certain additional properties under its existing certificate of public convenience and necessity ("CPCN"). By its Application, Kukio also seeks to establish a bulk rate for the sale of water from Applicant's system to the Golf and Beach Club for the purpose of serving the Golf and Beach Club's irrigation needs.

¹Kukio's Application, Exhibits 1-10, Verification and Certificate of Service, filed June 3, 2004 ("Application").

Applicant makes its request in accordance with Hawaii Revised Statutes ("HRS") §§ 269-7.5 and 269-16.

Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate filed a Preliminary Statement of Position on July 23, 2004, in which it stated that it had some initial concerns regarding the Application, and thus, would be issuing informational requests ("IRs") to Applicant.

On July 30, 2004, the Consumer Advocate issued IRs to Applicant. Kukio filed responses to the IRs on August 13, 2004.

On November 8, 2004, the Consumer Advocate issued supplemental IRs to Applicant, to which Applicant filed responses on November 22, 2004.

On March 4, 2005, Kukio filed supplemental responses to the Consumer Advocate's July 30, 2004 IRs.

On March 21, 2005, the Consumer Advocate issued a second set of supplemental IRs to Kukio ("Second Supplemental IRs"). Kukio provided responses to the Second Supplemental IRs on April 1, 2005.

On April 19, 2005, the Consumer Advocate filed its Statement of Position stating that it did not object to the commission's approval of the Application.

II.

Background

Applicant is a public utility currently authorized to provide water and wastewater treatment services to Phase 1 of a master planned community known as the Kukio Beach Club ("Master Planned Community"), situated at Kukio, North Kona, Hawaii.² Applicant's manager and sole member is WB Kukio Resorts, LLC, developer of the Kukio Beach Club ("Developer").

By this Application, Applicant seeks to expand its authorized service territory to include portions of Phase 2 and Phase 3 North and South of the Master Planned Community and to the Manini'owali subdivision and the State of Hawaii's Kua Bay Beach Park ("Expanded Service Area"), as described in detail below.

²Applicant was granted its CPCN pursuant to Decision and Order No. 20103, filed on March 27, 2003, in Docket No. 01-0433 ("Decision and Order No. 20103"). Decision and Order No. 20103 authorized Applicant to provide regulated potable and non-potable water and wastewater treatment services to Phase 1 of the master planned community, Kukio Beach Club.

On June 16, 2003, after receiving three (3) extensions of time from the commission, Applicant filed a motion for reconsideration of certain portions of Decision and Order No. 20103. In particular, Applicant requested that the commission reconsider its decision that Applicant's provision of non-potable water to developer-related customers should be regulated. Upon reconsideration, the commission determined, in Order No. 20688, filed on November 26, 2003, in Docket No. 01-0433 ("Order No. 20688"), that Decision and Order No. 20103 should be modified to reflect that Applicant's proposed non-potable irrigation water service should be considered an unregulated activity. In all other respects, Decision and Order No. 20103 remained unchanged.

III.

Proposed Expanded Service Area

A.

Phase 2

Phase 2 of the Master Planned Community consists, or will consist of residential areas currently planned to contain a total of fifteen (15) residential units, together with an 18-hole golf course, clubhouse and maintenance and club administration building/facility, owned, or to be owned by the Golf and Beach Club. In addition, Phase 2 will include a sewer/wastewater treatment plant, to be owned by Applicant, to provide its wastewater treatment services. Applicant desires to expand its service territory to include only those portions of Phase 2 to the extent necessary to provide utility service to the residential areas, the golf clubhouse, the golf maintenance and club administration building/facility, and Applicant's sewer/wastewater treatment plant. Applicant will not provide utility service to the golf course area, which will be serviced by means of brackish water, obtained from the golf course lake via three (3) wells currently owned by the Developer.³ Applicant estimates that the fifteen (15) residential units in Phase 2 will utilize approximately sixty thousand (60,000) gallons of water per day, the golf clubhouse will utilize approximately thirteen thousand five hundred (13,500) gallons of water per day,

³This service is non-regulated, pursuant to Order No. 20688. See n. 2, *supra*.

the golf maintenance and club administration building/facility will utilize approximately seven thousand five hundred (7,500) gallons of water per day and the sewer/wastewater treatment plant will utilize approximately three thousand (3,000) gallons of water per day.

B.

Phase 3

Phase 3 North and South of the Master Planned Community ("Phase 3 North and South"), located on the ocean side of the Queen Kaahumanu Highway and adjacent to Applicant's existing authorized service territory, are planned to consist of a total of approximately forty-six (46) single-family lots. It is estimated that Phase 3 North and South will utilize approximately one hundred thirty eight thousand (138,000) gallons of water per day.

C.

Manini'owali Subdivision

In an area consisting of approximately three hundred eighty-eight (388) acres located immediately south of the Master Planned Community, WB Manini'owali, LLC is currently in the process of developing a single-family residential subdivision ("Manini'owali"). The Proposed Expanded Service Area includes the sports club, the members club, and the planned one-hundred twenty seven (127) residential lots in Manini'owali.

Applicant represents that there are no providers of potable water or wastewater treatment services available to serve this area. Applicant estimates that upon completion, the residential lots in Manini'owali will utilize approximately three hundred fifty-one thousand (351,000) gallons of water per day, the sports club will utilize approximately ten thousand (10,000) gallons of water per day, and the members club will utilize approximately fourteen thousand six hundred (14,600) gallons of water per day.

D.

Kekaha Kai State Park

Additionally, the Proposed Expanded Service Area includes the State of Hawaii's Kua Bay Beach Park restroom area and initial park landscaping water needs. Applicant estimates that the restroom area and initial park landscaping will utilize approximately five thousand (5,000) gallons of water per day.

IV.

Proposed Bulk Sales

Applicant seeks to establish a bulk rate in the amount of \$2.3069 per thousand gallons for the sale of untreated water from Applicant's system to the Golf and Beach Club to service the

Golf and Beach Club's irrigation needs.⁴ If approved by the commission, the untreated water will be provided to the Golf and Beach Club on an interruptible basis, subordinate to Applicant's rights to use said water for its potable needs. The water will be provided to the Golf and Beach Club prior to treatment and will be sold without any warranties of fitness or water quality. Applicant states that it will amend its Rules and Regulations, containing its currently approved rates to include the bulk rate for the Golf and Beach Club.

V.

Consumer Advocate's Position

The Consumer Advocate does not object to the commission's approval of Applicant's requests to expand its service area and to establish a bulk rate for the Golf and Beach Club. After a review of the Application and Applicant's responses to all of its IRs, the Consumer Advocate is satisfied that Applicant has sufficient capacity to expand its service

⁴In this regard, HAR § 6-61-111 provides that the proposed bulk rate shall become effective not less than thirty (30) days after the filing of the proposed bulk rate with the commission. Applicant notes that its request for commission approval of the proposed bulk rate is made in conjunction with its request to expand its service territory, and will thus be rendered moot should the commission deny Applicant's expansion request. Applicant, thus, waives the thirty (30)-day period set forth in HAR § 6-61-111 and agrees that any bulk rate will not become effective unless and until the commission issues an order approving both the service expansion request and the establishment of the bulk rate. By this Decision and Order, the commission will approve Applicant's waiver of the thirty (30)-day period set forth in HAR § 6-61-111.

territory in addition to supplying its existing customers with water service, and that the expansion of its water service to the Expanded Service Area will not adversely impact Applicant's ability to serve its existing customers.

In addition, the Consumer Advocate deems it reasonable that Applicant's proposed bulk rate does not include a return on rate base and that Applicant's bulk rate is equal to the estimated cost of supplying the water, since Applicant states that its existing rates for potable water also do not include a return on its rate base. The Consumer Advocate notes that in Applicant's next rate proceeding, Applicant will consider the appropriateness of including a return component in developing the potable and non-potable rates for its utility service.

The Consumer Advocate believes that Applicant's expansion of its service territory will generate additional revenues beyond those generated by the current rates, which, in Docket No. 01-0433, were considered non-compensatory. As a result, however, the Consumer Advocate recommends that Applicant be required to file copies of its annual financial statements, including a calculation of its rate of return with such filing, with the Consumer Advocate, in addition to the commission, so that the Consumer Advocate can monitor the impact of Applicant's expansion of service on Applicant's earnings and return on investment.

The Consumer Advocate expressed concern regarding the possible subsidization of water service by Applicant's existing customers for the service to be provided to four (4) additional

properties.⁵ The Consumer Advocate received assurances from Applicant, however, that it would properly account for the costs incurred to provide water to these properties to prevent Kukio's existing customers from assuming these costs.⁶

Finally, the Consumer Advocate asserts that because Applicant intends to provide wastewater service to the Kaupulehu area and water service to three other properties set for development in the near future, Applicant should establish rules for customer advance and contribution in aid of construction.⁷ In response, Applicant agreed to develop proposed Rules XI and XII to its tariff to cover Contribution in Aid of Construction and System Extensions to accommodate a situation should a third party developer desire to connect to Applicant's system. Based upon its review of proposed Rules XI and XII, the Consumer Advocate states that it recommends approval of these rules.

VI.

Findings and Conclusions

The commission finds that Applicant is fit, willing, and able to provide the expanded water utility service to the

⁵See Kukio's Response to Consumer Advocate's First IRs, CA-IR-4, referencing a water purchase agreement from Docket No. 01-0433.

⁶See Consumer Advocate's Statement of Position at 13-15.

⁷Id. at 15-16.

Expanded Service Area, as described in the Application, and that the provision of this service is required by the present or future public convenience and necessity, pursuant to HRS § 269-7.5. As Applicant notes, the Expanded Service Area is located near Applicant's existing service territory and/or water system, Applicant has the capability and facilities to serve these customers and Applicant is unaware of any other utility willing to provide water and/or wastewater treatment service to customers in the Expanded Service Area.

With regard to Applicant's offering of a bulk rate to the Golf and Beach Club, the commission accepts Applicant's bulk rate and additionally, finds that Applicant should offer this service to any customer willing to receive the water under the same conditions as the Golf and Beach Club, i.e., untreated non-potable, interruptible and subordinate to Applicant's rights to use said water for its potable needs. Moreover, Applicant should specify the conditions under which a customer may receive this bulk rate in its new rate schedule.

The commission also agrees with the Consumer Advocate's recommendation that Applicant should establish rules pertaining to customer advance and contributions in aid of construction, and, thus, finds the establishment of Rules XI and Rule XII to be reasonable.

Based on the foregoing, the commission concludes that Applicant's request for approval to expand its existing service territory and to establish a bulk rate for the provision of non-potable water to the Golf and Beach Club should be approved,

subject to the conditions noted below. In addition, Rules XI and Rule XII, as discussed in more detail above, should be approved, subject to certain conditions, noted below.

VII.

Orders

THE COMMISSION ORDERS:

1. Applicant's Application, filed on June 3, 2004, for commission approval to expand its service area, is approved, subject to the conditions, noted below.

2. Applicant's request to establish a bulk rate for the sale of water from Applicant's system to the Golf and Beach Club is approved, subject to the condition that Applicant shall offer this bulk rate to any customer willing to receive water under the same conditions as the Golf and Beach Club and Applicant shall specify the conditions under which a customer may receive the bulk rate in its new rate schedule.

3. Applicant's waiver of the thirty (30)-day period set forth in HAR § 6-61-111 is approved.

4. Pursuant to HRS § 269-8.5, Applicant shall file with the commission, with service upon the Consumer Advocate, an annual financial report in accordance with the Uniform Systems of Accounts - 1996 of the National Association of Regulatory Utility Commissioners covering its water and wastewater treatment utility services commencing with calendar year ending December 31, 2005, and each year thereafter. The reports shall include a

calculation of its rate of return with such filing, and shall be filed not later than March 31 for the immediate past calendar year.

5. Applicant's proposed Rules XI and XII of its tariff are approved.

6. Within thirty (30) days from the date of this Decision and Order, Applicant shall file with the commission its revised tariff sheets, incorporating its expanded service territory, bulk rate, including the prescribed conditions for bulk rate purchasers, and Rules XI and XII approved by this Decision and Order. Unless otherwise ordered, the revised tariff sheets will take effect upon filing.

7. Applicant shall promptly comply with the requirements set forth, above. Failure to promptly comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAY 25 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

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel
04-0137.rpr

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21836 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
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DATED: MAY 25 2005