

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
PUKALANI STP CO., LTD. )  
For Review and Approval of Rate )  
Increases and Revised Rate )  
Schedules. )  
\_\_\_\_\_ )

DOCKET NO. 05-0025

PROPOSED DECISION AND ORDER NO. 22015

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

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Administrative Director  
Public Utilities Commission  
State of Hawaii

Brooke K. Kane

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### PROPOSED DECISION AND ORDER

The commission issues this Proposed Decision and Order, as mandated by Act 168, Session Laws of Hawaii 2004 ("Act 168"), codified at Hawaii Revised Statutes ("HRS") § 269-16(f), and in response to the Application of PUKALANI STP CO., LTD. ("Pukalani"), filed on March 1, 2005.<sup>1</sup>

The commission approves a general rate increase of \$282,752, or 134 per cent over revenues at present rates for Pukalani, based on a total revenue requirement of \$493,310 for the test year. In so doing, the commission approves in part and denies in part the "Stipulation of Settlement Agreement in Lieu of [Pukalani's] Rebuttal Testimonies," jointly filed by Pukalani and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") (collectively, the

<sup>1</sup>Pukalani's Application, Exhibits PSTP 1 to PSTP 11, Verification, and Certificate of Service, filed on March 1, 2005 (collectively, the "Application"). See also Order No. 21639, filed on February 7, 2005 (authorizing Pukalani to use the 2005 calendar test year); and Pukalani's transmittal letter, dated March 8, 2005.

"Parties"), on August 9, 2005 (the "Stipulation"). Specifically, the commission: (1) on its own motion, revises Paragraph 4(b) of the Parties' proposed Rule XIV, governing contributions-in-aid-of-construction; and (2) denies the Parties' settlement terms set forth in Section III(G)(4), filed under confidential seal, of the Stipulation.

The commission, in approving the Parties' Stipulation: (1) authorizes an increase in the monthly sewer assessment fee charged to Pukalani's residential and commercial customers, under a two (2)-year phase-in plan; (2) terminates Pukalani's replacement reserve fund; and (3) authorizes the implementation of a power cost adjustment clause, to take effect from February 1, 2006.

I.

Introduction

A.

Pukalani STP Co., Ltd.

Pukalani is a public utility that provides wastewater collection and treatment services to residential and commercial customers located in its service area of Pukalani, island of Maui. The commission issued Pukalani its certificate of public convenience and necessity in June 1989, pursuant to HRS § 269-7.5(b).<sup>2</sup>

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<sup>2</sup>Decision and Order No. 10264, filed on June 30, 1989, in Docket No. 6210.

Pukalani Golf Club, LLC owns all of the common stock of Pukalani.<sup>3</sup> Resort Holdings, LLC, in turn, is the sole member of Pukalani.

Pukalani's wastewater treatment plant ("treatment plant") is described as a "contact stabilization treatment plant[.]"<sup>4</sup> The treatment plant's first phase is designed for an average daily flow of 0.5 million gallons per day ("mgd"). Its peak hydraulic capacity is 1.75 mgd. The treatment plant is also designed for future expansion to accommodate average and peak flows of 1.0 mgd and 3.0 mgd, respectively.

The treatment plant "is intended to serve the Pukalani Terrace and Country Club Development located on the lower slopes of Haleakala."<sup>5</sup> "A network of sewer mains, and force mains serves the service area and two sewage pump stations."<sup>6</sup>

The treated effluent is discharged into a two (2) million gallon reservoir. The effluent, along with water from an irrigation well, is then pumped to the adjacent Pukalani Country Club Golf Course for use as irrigation. Pukalani plans to continue charging the Pukalani Country Club Golf Course for the effluent, at a rate of \$0.55 per thousand gallons ("TG").

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<sup>3</sup>Pukalani represents that, on or about January 25, 2002, Pukalani Golf Club, LLC purchased all of Pukalani's outstanding stock, operations, and assets, from Sports Shinko (Hawaii) Co., Ltd., as part of a larger bulk sale transaction involving several properties. See Pukalani's Application, Exhibit PSTP 2; and Exhibit PSTP 10-T-100, at 1 and 3.

<sup>4</sup>Id. at Exhibit PSTP 1, at 1.

<sup>5</sup>Id.

<sup>6</sup>Id.

Pukalani states that its treatment facilities are operated to produce an R-2 quality effluent.

Since 1996, Aqua Engineers, Inc. ("Aqua") has maintained the daily operations of the treatment plant. Pukalani and Aqua recently entered into a five (5)-year contract, effective as of January 1, 2005, which replaces the previous three (3)-year contract. Pukalani states that by contracting with Aqua, it "does not have to maintain separate operations [or] employees and incur the costs associated with certification, training and emergency response."<sup>7</sup>

Pukalani's customer base consists of residential and commercial customers. Pukalani's residential customer base consists of single-family dwellings, with no multi-family units. Pukalani's eight (8) commercial customers include two (2) shopping centers, a park, pool, County of Maui ("County") community center, and two (2) schools (one (1) a public elementary school).<sup>8</sup>

B.

#### Pukalani's Requests

Pukalani seeks the commission's approval of a general rate increase of approximately \$294,040, or 132.7 per cent, over revenues at present rates. The requested increase is based on an

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<sup>7</sup>Id. at Exhibit PSTP 10-T-100 at 4.

<sup>8</sup>In this proceeding, Pukalani classifies the County community center and public elementary school, both government entities, as commercial customers.

estimated total revenue requirement of \$515,579 for the 2005 calendar test year ("test year").

Pukalani makes its request pursuant to: (1) HRS § 269-16, as recently amended by Act 168; and (2) Hawaii Administrative Rules ("HAR") § 6-61-88.

Pukalani states that: (1) its Application represents its first request for a general increase in its wastewater rates since its initial rates were approved in 1989; (2) since then, its operating expenses have significantly increased over its operating revenues, such that its current revenues are insufficient to cover its operating expenses; and (3) by its Application, Pukalani seeks to eliminate its significant operating losses, and achieve an operational break-even point.

Pukalani represents that it currently does not have any rate base, and while it anticipates establishing a rate base by the end of the test year in excess of \$165,000, it has opted not to seek any rate of return on rate base or the recovery of any depreciation on any of its plant.<sup>9</sup> Instead, Pukalani anticipates the filing of a subsequent rate case application within the next few years, which addresses the necessary capital expenditures to

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<sup>9</sup>Since Pukalani is not seeking a return on rate base in this proceeding, the Consumer Advocate defers its review of Pukalani's \$165,000 in rate base, to Pukalani's next rate proceeding. See CA-T-1, Section VII, at 49 - 51. See also id. at 3 - 4 and footnote 3 thereto. Subsequently, the Parties, as part of their Stipulation, concur that a determination of Pukalani's rate base is not necessary for this proceeding. Parties' Stipulation, at 23.

its plant. At that time, Pukalani "will address its rate base and seek an overall rate of return thereon."<sup>10</sup>

Pukalani's present and proposed rates are as follows:

<u>Sewer Assessment Fee</u>	<u>Present Charge</u>	<u>Proposed Charge</u>	<u>Percentage Increase</u>
Residential (per month, per residence)	\$11.99	\$36.66	165%
Commercial (per TG of water used)	\$1.03	\$3.1544	165%
<u>Replacement Reserve</u> <sup>11</sup>			
Residential (per month, per residence)	\$1.84	None	N/A
Commercial (per TG of water used)	\$0.16	None	N/A

Pukalani, as part of its Application, also requests the commission's approval to:

1. Establish a contributions-in-aid-of-construction ("CIAC") tariff rule;
2. Institute a non-refundable service initiation charge of \$100 for prospective new customers;

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<sup>10</sup>Pukalani's Application, at 3.

<sup>11</sup>Pukalani confirms that it seeks to terminate the replacement reserve fund established by the commission in Decision and Order No. 10264. "[T]he termination of the replacement reserve fund will allow [Pukalani] to accumulate rate base, from which [Pukalani] can earn a return on its investment in future rate case proceedings, and also will place [Pukalani] in a more financially advantageous situation to attract capital and obtain financing for future capital improvements on more favorable terms and from a variety of investors." Id. at Exhibit PSTP 10-T-100, at 7 - 8.

Pukalani does not anticipate proceeding with the future improvements to plant until after the test year. Thus, "[a]t the time of its next rate case, [Pukalani] will seek to have these improvements recognized as part of its rate base, and will seek a rate of return on that investment." Id. at 8.



3. Establish a tariff rule governing customers' water usage data; and

4. Establish a power cost adjustment clause ("PCAC") that will enable it to pass through any increases in its electric charges above the base cost established in this proceeding.

## II.

### Background

#### A.

#### Procedural Background

Pukalani served copies of its Application upon the Consumer Advocate. The Consumer Advocate did not object to the completeness of Pukalani's Application.<sup>12</sup> Hence, the filing date of Pukalani's complete Application is March 1, 2005, consistent with HRS § 269-16(d) and (f)(3).<sup>13</sup>

On May 10, 2005, the commission held a public hearing on Pukalani's Application, at the King Kekaulike High School Cafeteria, pursuant to HRS §§ 269-12(c) and 269-16(f)(2).

Pukalani responded to the Consumer Advocate's information requests on May 19 and 27 and June 16, 2005. On June 21 and 24, 2005, Pukalani submitted a copy of its current tariff rules, including its rate schedule, in response to the commission's directive.

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<sup>12</sup>Consumer Advocate's Statement of Position Regarding Completeness of Application, filed on March 21, 2005, in accordance with HRS § 269-16(d).

<sup>13</sup>See Order No. 21706, filed on March 24, 2005.

On July 11, 2005, the Consumer Advocate submitted its direct testimony and exhibits. On July 29, 2005, Pukalani responded to the commission's information request, PUC-IR-201.

On August 9, 2005, the Parties jointly filed their Stipulation, supported by the Parties' worksheets, data, and other information.<sup>14</sup>

B.

Public Hearing Process

The commission's Notice of Public Hearing was published statewide in various newspapers, in accordance with HRS §§ 1-28.5 and 269-16(c).<sup>15</sup> On April 15, 2005, Pukalani notified its ratepayers by bill insert of the upcoming public hearing, consistent with HRS § 269-12(c).<sup>16</sup>

At the public hearing, Pukalani's representative and Consumer Advocate orally testified and submitted written comments. Numerous ratepayers and a non-ratepayer also testified

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<sup>14</sup>Stipulation of Settlement Agreement in Lieu of [Pukalani's] Rebuttal Testimonies, Exhibits A through J, and Certificate of Service, filed on August 8, 2005.

<sup>15</sup>Specifically, the commission's Notice of Public Hearing was published on April 15 and 25 and May 2 and 9, 2005, in The Garden Island, Hawaii-Tribune Herald, Honolulu Star-Bulletin, The Maui News, and West Hawaii Today.

<sup>16</sup>See Pukalani's letter, dated April 18, 2005.

in-person.<sup>17</sup> Pukalani's representative testified in rebuttal, responding to an array of questions posed by the audience/ratepayers.<sup>18</sup> After the audience/ratepayers completed their questioning, the commission closed the public hearing.

In general, the ratepayers opposed or expressed concerns with Pukalani's proposed rate increase or the magnitude and impact of the increase.

C.

Act 168

As a public utility with annual gross revenues of less than \$2 million, Pukalani's Application is filed in accordance with Act 168, which streamlines the rate review process for small utilities such as Pukalani. In brief, the commission must make every effort to issue its Proposed Decision and Order within six (6) months from the filing date of Pukalani's complete Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene." HRS § 269-16(f)(3).

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<sup>17</sup>At the public hearing, the commission also received a written comment from a ratepayer, dated May 8, 2005, who was not able to attend the public hearing. In addition, the commission received a ratepayer's written comment by electronic mail. See commission's letter, dated May 3, 2005, with enclosure.

<sup>18</sup>Pukalani's representative readily acknowledged that he was unable to answer certain questions due to the lack of available information.

The commission timely issues this Proposed Decision and Order, in accordance with Act 168.<sup>19</sup>

### III.

#### Issues

The underlying issue, as set forth in Order No. 21771, filed on April 22, 2005, is the reasonableness of Pukalani's proposed general rate increase. This involves, in turn, a review of the following sub-issues:

1. Are the proposed tariffs, rates, and charges just and reasonable?
2. Are the revenue forecasts for the test year at present and proposed rates reasonable?
3. Are the projected operating expenses for the test year reasonable?

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<sup>19</sup>The deadline for issuance is September 8, 2005. See Order No. 21920, filed on July 15, 2005 (six (6)-month deadline extended from September 1 to 7, 2005). See also Parties' joint letters, dated July 20 and August 8, 2005 (six (6)-month deadline extended from September 7 to 8, 2005). The Parties, by their joint letters, seek to amend the procedural schedule by removing the August 8, 2005 deadline for Pukalani to file its rebuttal testimonies, and replacing it with the Parties' Stipulation, filed on August 9, 2005.

The commission approves the: (1) Parties' request to amend Stipulated Procedural Order No. 21771, filed on April 22, 2005; and (2) Parties' corresponding request to extend the deadline date, from September 7 to September 8, 2005, for the commission to comply with the six (6)-month deadline to timely issue its Proposed Decision and Order, pursuant to HRS § 269-16(f).

IV.

The Parties' Stipulation

The Stipulation reflects the Parties' global settlement of all the issues. In reaching their global agreement, the Parties note:

1. The Stipulation, binding between them, "represent[s] compromises by the Parties to fully and finally resolve all issues in the subject docket on which they had differences for the purpose of simplifying and expediting this proceeding, and are not meant to be an admission by either of the Parties as to the acceptability or permissibility of [the] matters stipulated to herein."<sup>20</sup>
2. They reserve their respective rights to proffer, use, and defend different positions, arguments, methodologies, or claims regarding the matters stipulated to herein in other dockets or proceedings.
3. They "have stipulated to the various revenue requirement components and matters discussed in the [Stipulation] as being appropriate, without necessarily agreeing on the underlying methodologies or justifications asserted by the other party."<sup>21</sup> Moreover, "nothing contained in this Stipulation shall be deemed to, nor be interpreted to, set any type of precedent, or be used as evidence of either Parties' position in any future regulatory proceeding, except as necessary to enforce this Stipulation."<sup>22</sup>
4. Each provision of the Stipulation is in consideration and support of all other provisions, and is expressly conditioned upon the commission's acceptance of the Stipulation in its entirety.

"In the event the Commission declines to adopt parts or all of the matters agreed to by the Parties and as set forth in this Stipulation, the

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<sup>20</sup>Parties' Stipulation, at 7.

<sup>21</sup>Id.

<sup>22</sup>Id.

Parties reserve the right to pursue any and all of their respective positions through further negotiations and/or additional filings and proceedings before the Commission."<sup>23</sup>

5. "[T]he Commission may take such steps and actions it deems necessary and appropriate to facilitate its review of this Stipulation, and to determine whether this Stipulation should be approved."<sup>24</sup>

The Parties also acknowledge that the Stipulation is subject to the commission's review and approval, and the commission is not bound by the Stipulation.

In this regard, it is well-settled that an agreement between the parties in a rate case cannot bind the commission, as the commission has an independent obligation to set fair and just rates and arrive at its own conclusion. *In re Hawaiian Elec. Co., Inc.*, 5 Haw. App. 445, 698 P.2d 304 (1985). With this mandate, the commission proceeds in reviewing the justness and reasonableness of the Parties' Stipulation, taken as a whole.

## V.

### Summary of the Parties' Stipulation

The Parties stipulate to a revenue requirement of \$493,310 for the test year, consisting of \$461,812 in operating expenses and \$31,498 in revenue taxes. The Stipulation results in a revenue increase of \$282,752 in revenues over present rates, or approximately 134 per cent. The Parties agree that: (1) the Stipulation provides Pukalani with the opportunity to recover its operating expenses; and (2) Pukalani "is not seeking any

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<sup>23</sup>Id. at 37.

<sup>24</sup>Id.

operating income in [this] docket, and is only seeking to achieve an approximate operational break-even point without recovering any rate of return on its rate base and any depreciation on any of its plant."<sup>25</sup>

For Pukalani's rate design, the Parties agree to "a two-step phase-in of the rate increase to address potential rate shock issues, while still providing a reasonable opportunity for [Pukalani] to earn the Test Year revenue requirement of \$493,310 beginning at the end of the phase-in period."<sup>26</sup>

## VI.

### Operating Revenues

In its Application (Exhibits PSTP 9-1 and 9-2), Pukalani calculated its revenues at present rates as follows:

<u>Customer Class</u>	<u>Present Rates</u>
Residential	\$129,942 <sup>27</sup>
Commercial	\$ 47,669 <sup>28</sup>

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<sup>25</sup>Id. at 8.

<sup>26</sup>Id. at 9.

<sup>27</sup>786 customers x \$13.83 (\$11.99 monthly residential charge + \$1.84 monthly replacement reserve fee) x 12 months = \$130,445, rounded to \$129,942. See Exhibit PSTP 9-2.

<sup>28</sup>3,338 TG monthly water use x \$1.19 per TG (\$1.03 commercial charge, per TG + \$0.16 commercial replacement reserve fee, per TG) x 12 months = \$47,667, rounded to \$47,669. See Exhibit PSTP 9-2. Pukalani converted the public elementary school's and County community center's respective monthly flat rate revenues to a water usage amount, and included these converted revenues as part of the commercial account revenues. See Exhibit PSTP 10-T-200 at 10; and Exhibit PSTP 9-2.

Commercial - Pukalani Golf Course/Effluent	\$ 43,428 <sup>29</sup>
Late Charges	<u>\$500<sup>30</sup></u>
	\$221,539

Pukalani's revenues at present rates include the monies received from the replacement reserve fund.<sup>31</sup>

The Consumer Advocate, in turn, calculated Pukalani's revenues at present rates (Exhibit CA-101 and the Parties' Exhibit B) as follows:

<u>Customer Class</u>	<u>Present Rates</u>
Residential	\$114,097 <sup>32</sup>
Commercial	\$53,017 <sup>33</sup>

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<sup>29</sup>6,580 TG monthly effluent sales x \$0.55 per TG x 12 months = \$43,428. See Exhibit PSTP 9-2.

<sup>30</sup>This amount reflects the total monies Pukalani estimates it will receive during the test year from its assessment of the late charge. See Exhibit PSTP 9-2.

<sup>31</sup>Pukalani explains: "Since [Pukalani] is eliminating the billing for the replacement reserve as part of its proposed rates, [Pukalani] believes it is correct to reflect, at present rates, the amounts currently being paid by the customers, which includes both the approved sewer assessment fees and replacement reserve charges. The revenue increase requested in this proceeding therefore is over the total of those two charges. This accurately reflects the proposed increase in charges to the customers." Exhibit PSTP 10-T-200 at 10.

<sup>32</sup>793 customers x \$11.99 monthly residential charge x 12 months = \$114,097. See CA-T-1, Section V(A), at 7 - 10; and CA-102.

<sup>33</sup>CA-T-1, Section V(B), at 11 - 18; and CA-103 to CA-107 (confidential filings).



Effluent Sales	\$42,944 <sup>34</sup>
Late Charges	<u>\$500<sup>35</sup></u>
	\$210,558

In contrast with Pukalani's estimate, the Consumer Advocate's estimate of revenues at present rates excludes the monies received from the replacement reserve fund.

Pukalani, as part of the Stipulation, agrees to adopt the Consumer Advocate's respective adjustments and estimates for revenues at present rates.<sup>36</sup> The commission finds reasonable the Parties' test year estimates for operating revenues at present rates. Concomitantly, for future rate cases, the Parties are urged to utilize the rates reflected in its existing rate schedules in calculating revenues at present rates.<sup>37</sup>

## VII.

### Expenses

Pukalani's expenses consist of two (2) categories: (A) operating expenses; and (B) revenue taxes. For this rate case, Pukalani does not have any expenses associated with depreciation or income taxes.

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<sup>34</sup>CA-T-1, Section V(C), at 19 - 23; and CA-108 (confidential filing).

<sup>35</sup>The Consumer Advocate does not take issue with Pukalani's total test year estimate of \$500 from late charges. See CA-101.

<sup>36</sup>See Parties' Stipulation, Section III(B), Revenue, at 9 - 13; and the Parties' Exhibit B.

<sup>37</sup>See footnote 28, above.

A.

Operating Expenses

The Parties agree on the following operating expense amounts for the test year:<sup>38</sup>

<u>Operating Expenses</u>	<u>Parties'</u> <u>Agreement</u>	<u>Pukalani's</u> <u>Estimate</u>	<u>CA's</u> <u>Estimate</u>
Electricity	\$117,149		x
Water	\$180	x	
Professional Fees - Aqua	\$177,455	x	
Sludge Removal/Refuse Disposal	\$43,224	x	
Chemicals	\$25,582		x
Other Supplies	\$6,046	x	
Repair & Maintenance - Equipment	\$11,272	x	
Office Supplies	\$3,600	x	
Accounting Services	\$17,000		
Telephone	\$1,500	x	
Fuel/Gas/Oil	\$2,300	x	
Rate Case Amortization <sup>39</sup>	\$21,840		x
Wet Well Cleaning	\$11,400	x	
Insurance	\$5,264	x	
Sewer Line Cleaning	<u>\$18,000</u>	x	
Total:	\$461,812		

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<sup>38</sup>The third and fourth columns identify whose estimate the other Party accepted for settlement purposes. For example, for electricity expense, Pukalani accepted the Consumer Advocate's estimate of \$117,149.

Meanwhile, the stipulated amount for accounting services: (1) reflects an amount approximately halfway between both Parties' respective estimates; and (2) includes the estimated cost of accounting services following the expiration of Pukalani's contract with its external accountant in July 2005. In connection thereto, the Parties agree that Pukalani "will have the [new] person(s) performing the accounting service keep a time record of the total number of hours spent per day on accounting functions and the activities performed during that day for possible use and consideration in future proceedings before the Commission." Parties' Stipulation, at 19.

<sup>39</sup>The Consumer Advocate concurs with Pukalani's five (5)-year amortization period. See CA-T-1, Section IV(F)(2), Amortization Period, at 46 - 47; and the Parties' Stipulation, Section III(C)(12), Rate Case Amortization, at 20 - 21.

In general, the above-referenced amounts (excluding rate case amortization) represent the normalized level of funds Pukalani will expend during the test year to operate its facilities and provide wastewater collection and treatment services to its ratepayers. Pukalani's test year operating expenses also include the expenditure of funds to address the odor complaints associated with Pukalani's treatment plant.<sup>40</sup>

Rate case amortization, meanwhile, represents the reasonable amount of expenses incurred by Pukalani to process this rate case, amortized over a five (5)-year period.

The commission finds reasonable the Parties' stipulated amounts for operating expenses.

B.

Revenue Taxes

Pukalani's revenue taxes consist of the: (1) State Public Service Excise ("PSE") Tax, 5.885 per cent; and (2) State Public Utility Fee, 0.5 per cent. The commission finds reasonable the Parties' stipulated amount of \$31,498 for revenue taxes, which is calculated based on Pukalani's projected revenue requirement of \$493,310. This estimated sum of \$31,498 consists of the following amounts:

PSE Tax	\$29,031
Public Utility Fee	<u>\$2,467</u>
Total:	\$31,498

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<sup>40</sup>See Exhibit PSTP 10-T-100 at 3 - 4; Exhibit PSTP 10-T-200 at 17 - 18; and Pukalani's responses to CA-IR-15, CA-IR-19, and CA-SIR-9 to CA-SIR-12. See also CA-T-1 at 35 - 36.

VIII.

Rate Design

A.

Sewer Assessment Fee

The Consumer Advocate initially recommended a three (3)-year phase-in of Pukalani's rate increase in order to minimize the magnitude of the increase in Pukalani's wastewater rates. While Pukalani agreed to implement a rate phase-in, it opposed a three (3)-year phase-in, stating that such a scenario would require the utility to continue to operate at a loss until the final rate phase-in takes effect at the beginning of the third year.

The Consumer Advocate, in response, acknowledged that: (1) Pukalani is seeking an operational break-even point such that a three (3)-year phase-in period forces Pukalani to continue to operate at a loss for two (2) more years; and (2) "the rate increase does not appear to be excessive relative to the [median] household income for residents on the island of Maui[;]"<sup>41</sup> and (3) the proposed increase appears comparable to the rates charged by the County of Maui, Reclamation Division, for wastewater service.

As a result of their settlement negotiations, the Parties stipulate to a two (2)-year phase-in of Pukalani's rate increase, as follows (Parties' Exhibits B and C):

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<sup>41</sup>Parties' Stipulation, at 26.

<u>Sewer Assessment Fee</u>	<u>Present Charge</u>	<u>1<sup>st</sup> Year</u>	<u>2nd Year+</u>
Residential (per month, per residence)	\$11.99	\$24.13	\$32.22
Commercial (per TG of water used)	\$1.03	\$2.0721	\$2.7668

The Parties further agree that "the Phase 2 revenue increase should be effective 12 months after the implementation of the Phase 1 rates."<sup>42</sup>

Pukalani agrees to implement a two (2)-year phase-in of its increase in wastewater rates, in order to minimize the impact and magnitude of its rate increase on its ratepayers. Moreover, in response to the Consumer Advocate's recommendation, Pukalani agrees to begin gathering and maintaining information to perform a cost of service study for its next rate proceeding.<sup>43</sup> The Parties maintain that, "[a]t a minimum, such data is expected to allow the [P]arties to determine whether there should be a usage rate to recover variable costs and a flat rate to recover the fixed costs of operation for all customer classes."<sup>44</sup>

The commission finds reasonable the Parties' stipulated rate design, which provides Pukalani with a reasonable opportunity to earn its test year revenue requirement of \$493,310, beginning from the second year on.

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<sup>42</sup>Id.

<sup>43</sup>Id. at Section III(G)(3), Cost of Service Data/Study Required for Next Rate Case, at 34 - 35.

<sup>44</sup>Id. at 35.

B.

Replacement Reserve Fund

The commission, in granting Pukalani its CPCN in June 1989, also authorized Pukalani to establish, over the Consumer Advocate's objection, a replacement reserve fund "to [e]nsure that [Pukalani], which has no plant investment and therefore no depreciation expenses, is able to pay for major replacements to plant so that the system will be operable."<sup>45</sup> The commission noted that: (1) the replacement reserve fund is subject to the commission's review and termination; and (2) the monies from the replacement reserve fund are the property of ratepayers.

The current balance of the replacement reserve fund is approximately \$39,786.<sup>46</sup>

Pukalani represents that: (1) all of its improvements to its utility system have been paid for through the replacement reserve fund; thus (2) Pukalani "continues not to have any rate base to seek any rate of return on."<sup>47</sup>

The Consumer Advocate concurs with Pukalani's decision to terminate the replacement reserve fund. The Parties reason that the termination of the replacement reserve fund will enable

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<sup>45</sup>Decision and Order No. 10264, filed on June 30, 1989, at 12. The commission interchangeably referred to the reserve replacement fund as the net operating reserve account, operating reserve fund, and major maintenance and repair reserve fund. See id. at 12 - 15 and 21 - 23.

<sup>46</sup>Exhibit PSTP 8-5.

<sup>47</sup>Exhibit PSTP 10-T-100 at 7.

Pukalani to develop a rate base and seek a corresponding return in future rate proceedings.

The commission will terminate the replacement reserve fund, effective from the implementation date of Pukalani's new rate schedule, as approved by the commission. Pukalani shall: (1) utilize the remaining balance from the replacement reserve to fund its sewer line replacement project;<sup>48</sup> and (2) reflect said expenditure as CIAC.<sup>49</sup>

## IX.

### Tariff Revisions

#### A.

#### Stipulated Revisions to Tariff Rules

Pukalani agrees to incorporate certain changes to its tariff rules, in response to the Consumer Advocate's recommendations:<sup>50</sup>

1. Amend the Table of Contents by identifying the subsection of each tariff rule. See Table of Contents of Puhi Sewer & Water Co., Inc.'s tariff rules.
2. Amend its tariff throughout by changing: (A) "Consumer" to "Customer;" and (B) the terms "his," "her," and "its," to "Customer."
3. Amend Rule I to include definitions of "Applicant," "Public Utilities Commission," and "Rules and Regulations," as follows:

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<sup>48</sup>See Pukalani's responses to CA-IR-3 and CA-SIR-18.

<sup>49</sup>See Exhibit PSTP 10-T-200 at 4 and 7 - 8.

<sup>50</sup>Unless noted otherwise, proposed deletions are bracketed, while proposed additions are underscored. See the Parties' Exhibits H (CA-T-1, Exhibit CA-115), I, and J.

"Applicant" means a person or persons, firm, corporation, partnership, association, or governmental entity, whether owner or tenant, who applies for service from the Company, intending to become a Customer.

"Public Utilities Commission," "Commission," and "PUC" mean the Public Utilities Commission of the State of Hawaii.

"Rules and Regulations" mean the Rules and Regulations covering Sewage Disposal Service to Customers (also referred to herein as "these Rules and Regulations") adopted by the Company and as the same may be modified or amended from time to time by the Company.

4. Amend Rule II, Paragraph 1, to include a description of future increases in rates:

[The amount Consumers shall pay to the Company] The amounts to be paid for sewer service shall be in accordance with the rates on file with the Public Utilities Commission of the State of Hawaii[.] (PUC herein). The Company will be applying to the PUC for sewer service rate increases from time to time to cover a) operation, b) future capital and plant improvements, c) other reasonable and appropriate items as authorized by the PUC, and d) improvements required for compliance with applicable county, state, federal and agency environmental and other laws and regulations. Total costs for replacement and future capital and plant improvements are not and have not been included in each developer's or owner's purchase price of respective developments or condominiums. The existing rates and tariffs for the Company are attached hereto as Exhibit "B".

5. Amend Rule II, Paragraph 2, to clarify that Pukalani's service territory is based on its approved CPCN:

[Any Consumer whose lot is located within the service limits established by the Company, which is described in Exhibits "A" and "A-1" attached hereto,] Any Applicant or Customer whose residential or commercial premises lies within the areas covered by the Company's CPCN for sewer service issued by the Public Utilities Commission (as described in Exhibit A hereto) may, upon compliance with



these Rules and Regulations, obtain sewage service from the Company[.], provided that the Company has sufficient sewage treatment system capacity to take on new or additional service obligations without detriment to those already served or promised service. No Applicant or Customer shall be provided sewer service, however, unless and until an application for sewer service has been executed by the Applicant/Customer and approved by the Company.

6. Amend Rule II by including a new paragraph that reads as follows:<sup>51</sup>

A non-refundable contribution in aid of construction may be required as a condition to receiving service in accordance with Rule 14.

7. Amend Rule III, Paragraph 1, for clarification purposes:

. . . . .

[All Consumers, irrespective] All users of the Company's services, regardless of whether or not they have [made] signed an application for service, [shall be subject to and] shall comply with these Rules and Regulations and the rate schedules of the Company[.] provided, however, any Customer who has not previously executed an application shall do so at the request of the Company.

[The application is a request for service and the Company's obligation to provide service is conditioned upon the Consumer complying with the terms and conditions set forth in these Rules and Regulations.]

Failure to execute an application may, at the discretion of the Company, subject the Customer to a discontinuation of service.

Until accepted and approved by the Company, the application is merely a request for service and shall not bind the Company except under the provisions of these Rules and Regulations.

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<sup>51</sup>See Pukalani's response to CA-SIR-24.

8. Amend Rule III, Paragraph 2, to clarify when sewer service may be discontinued:

Unless otherwise provided by mutual written agreement between the Company and the [Consumer,] Customer, charges will begin upon approval of the rates by the Public Utilities Commission or on the date the Company's Sewage System is available for a Service Connection to the [Consumer's] Customer's Sewage System, whichever occurs later, and will continue thereafter until one of the following events occur[s]: (a) service is discontinued upon the request of the [Consumer,] Customer, or (b) [the Company ceases to provide sewage disposal service within the Subdivision.] until service is discontinued by the Company for failure of the Customer to comply with these Rules and Regulations.

9. Amend Rule III, Paragraph 4, so that it now reads follows:

Anyone occupying or otherwise having the right to possession of property without having made application to the Company for service to such property shall be liable for the sewer service provided to such property from and as of the last date of services for which the Company has received payment. If proper application for service and Credit Deposit is not made upon notification by the Company to do so, and if accumulated bills for sewer service are not paid within thirty (30) days after deposit in the United States mail or upon other presentation to such person, the sewer service shall be subject to discontinuance without further notice. Any such person shall be deemed a Customer for all purposes relating to compliance with these Rules and Regulations by Customers.

10. Amend the last sentence of Rule III, Paragraph 5, to provide customers with clear notification of when Pukalani does not approve a customer's request to change the customer's sewage system:

. . . The Company's failure to approve or disapprove the change within sixty (60) days after receipt of said written notice shall be construed as [dis]approval of the request. Failure of the Customer to make such written

notification to the Company may result in termination of service.

11. Amend Rule IV, Paragraph 1(b), by decreasing the interest rate earned on customer deposits, from six (6) to two (2) per cent interest:

. . . The Credit Deposit shall earn [six] two percent [(6%)] (2%) simple interest. . . .

12. Amend Rule VI, Paragraph 1, by modifying the period in which payment is due, from ten (10) to twenty (20) days:

. . . and all bills shall be due and payable within [ten (10)] twenty (20) days after the Company deposits the bill in the United States mail or upon presentation to the Customer. . . . If any bill is not paid within [ten (10)] twenty (20) days after the Company deposits it in the United States mail or upon presentation to the Customer, the Customer shall be subject to a late payment charge, which shall be in addition to the billed service charge.

13. Amend Rule VI, by adding a Paragraph 5 that incorporates procedures for customers who have a billing dispute:

Any dispute regarding the charges appearing on the bill must be received by the Company in writing no later than twenty (20) days following the Company's deposit of the bill in the United States mail or presentation to the Customer. The Company shall furnish a written response within twenty (20) days of its receipt of the written dispute. The Customer may pay the disputed bill under protest within the time required by this rule to avoid discontinuation of service, in which event the dispute may be submitted to the PUC for final determination.

14. Amend Rule VII "to subsection the paragraphs similar to Rule 4" of Puhi Sewer & Water Co., Inc.'s tariff rules.<sup>52</sup>
15. Change the phrase "No Consumer" throughout Rule VII to "No person."

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<sup>52</sup>Pukalani's response to CA-SIR-40(b).

16. Amend Rule VII, Paragraph 3, by changing the phrase "endanger life, limb, public or private property," to "endanger life, health, public, or private property."

17. Amend Rule VII, Paragraphs 2(a) and 3(e), as follows:

2. No [Consumer] person shall discharge or cause or allow to be discharged any of the following described waters or wastes into the Company's Sewage System:

a. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, [or] gas[.], or other similar organic compounds whether explosive or not.

. . . . .

3. . . . . The substances prohibited are:

e. Any water or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits [(one part per million or as] established by applicable State or Federal regulations[] established [by the Company] for such materials.

18. Amend Rule VIII, Paragraph 1, as follows:

The Company will exercise reasonable diligence and care to provide adequate sewer disposal service to its [Consumers] Customers and to avoid interruptions in same, but shall not be [responsible for any interruption or insufficiency of service or any loss or damage occasioned thereby.] liable for termination of services for reasons deemed necessary and proper as provided herein.

19. Amend Rule VIII, Paragraph 2, as follows:

The Company reserves the right at any and all times to temporarily shut off service without notice to its [Consumers] Customers for the purpose of making repairs, extensions, alterations, or for other reasons[.] related

to the operation of the sewage system. Repairs or improvements will be executed as rapidly as may be feasible and, insofar as practicable, at such times that it should cause, in the best judgment of the Company, inconvenience to its [Consumers] Customers. Except in the case of emergency repairs, the Company shall use reasonable efforts to give the Customer at least 24 hours notice before shutting off service.

20. Amend Rule IX, Paragraph 1, to reduce the delinquency period by which sewer service may be discontinued, from six (6) months to sixty (60) days, consistent with other wastewater utilities:

Sewer service to a [Consumer] Customer may be discontinued for nonpayment of a bill after the expiration of [the six (6) month period] sixty (60) days and the fees and charges remain unpaid. . . .

21. Amend Rule XI by adding a new sentence that describes Pukalani's recourse in the event the customer does not provide access to the customer's premises during reasonable hours:

Any officer, employee or agent of the Company shall have the right of ingress to and egress from the [Consumer's] Customer's premises at all reasonable hours for any purposes reasonably connected with the furnishing of sewer service to said premises or the operation of the Company's Sewage System and the exercise of any and all rights secured to it by law or by these Rules and Regulations. In case any such officer, employee, or agent is refused admittance to any premises, is hindered from being admitted, or is prevented from making such inspection, the Company may cause the sewer service to be discontinued from the premises after giving twenty-four (24) hours' notice to the Customer, owner or occupant of said premises of the Company's intention to do so.

22. Include Paragraphs for Severability, Governing Law, Notices, and Time is of the Essence, which read as follows:

### Severability

If any Rule, section, sentence, clause, or phrase of these Rules and Regulations or its application to any person or circumstances or property is held to be unconstitutional or invalid, the remaining portions of these Rules and Regulations or the application of these Rules and Regulations to other personal or circumstances of property will not be affected. The Company hereby declares that it would have adopted these Rules and Regulations, and each and every Rule, section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more other Rules, sections, sentences, clauses, or phrases be declared unconstitutional or invalid.

### Governing Law

These Rules and Regulations are made under and shall be governed by the laws of the State of Hawaii.

### Notices

All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by first class or certified mail, postage prepaid or by hand delivery to the address of the party as set forth in the Application. The parties' addresses may be changed from time to time by serving notice to the other party as provided above. Service of such notice or demand shall be deemed complete on the day of actual delivery or at the expiration of the second day after the date of mailing, whichever is earlier.

### Time is of the Essence

Time is of the essence in any performance required by the Customer under these Rules and Regulations. Any delay in performance will be considered material.

23. Amend the rate schedule to include the rate charged for effluent water supplied to the Pukalani Country Club Golf Course.

24. Attach as Exhibit C a copy of Pukalani's standard application form, and amend Rule III, Paragraph 1, by referring to said Exhibit C.

The Parties also agree to certain formatting revisions to Pukalani's tariff rules.<sup>53</sup>

The commission finds reasonable the Parties' agreed-upon revisions to Pukalani's tariff rules.

B.

Pukalani's Service Territory Map

Pukalani proposes to replace its existing service territory maps (Exhibits A and A-1) with an updated, color-coded map (see Exhibit PSTP 11), to better reflect and clarify Pukalani's service territory boundaries.

The Consumer Advocate counters that Pukalani's updated map appears to expand its service territory, identified by Pukalani as: (1) Area 1, the public elementary school and County community center; (2) Area 2, a small residential area located at the end of Iolani Street; and (3) Area 3, an undeveloped parcel of residentially-zoned land.

Since Pukalani presently provides utility service to Areas 1 and 2, the Consumer Advocate does not object to Pukalani's purported expansion of its service territory to

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<sup>53</sup>Specifically: (1) add Pukalani's name, location, tariff, and page version number to the page headers on each page; (2) add the identity of the issuer of the tariff rules (i.e., the contact person), and the effective date to the pager footers on each page; and (3) add a tariff check list sheet. Parties' Stipulation, Section III(G)(2)(c), at 34; and the Parties' Exhibits I and J.

include these two (2) areas. Conversely, the Consumer Advocate recommends that Pukalani eliminate Area 3 from its updated map, as Pukalani has not identified the customers it intends to serve in Area 3, or discussed the effect these customers will have on Pukalani's existing utility system and ratepayers. Instead, "[w]hen Area 3 is to be developed, [Pukalani] should file a timely application requesting Commission authorization to expand its service territory to include this area."<sup>54</sup>

Pukalani, as part of the Stipulation: (1) agrees to remove Area 3 from its proposed updated service territory map; and (2) requests commission approval of its updated service territory map, as revised (Parties' Exhibit E).

The commission, in this instance, accepts Pukalani's updated service territory map, as revised (Parties' Exhibit E). Concomitantly, in the event Pukalani anticipates providing wastewater utility service to Area 3, Pukalani shall seek the commission's prior approval to expand its service territory.

#### C.

##### Contributions-in-aid-of-Construction

Pukalani states that it presently does not have any established CIAC guidelines. Hence, it seeks to establish guidelines for the payment and collection of CIAC from

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<sup>54</sup>CA-T-1 at 64.



prospective new customers, by adopting its proposed Rule XIV, governing CIAC.<sup>55</sup> Specifically:

The CIAC is designed for future expansions or where service to a new customer requires a significant overhaul of the existing sewage treatment plant. As such, [Pukalani] will still be able to build rate base from replacements and other plant additions not connected with such future expansions or overhauls.

. . . . .

[Pukalani] does not anticipate any CIAC during the test year.<sup>56</sup>

The Consumer Advocate initially objected to Pukalani's proposed Rule XIV, asserting that Pukalani's proposal to collect CIAC may not allow the utility to accumulate rate base, and may cause discrimination in which some customers, namely, Pukalani's new customers, subsidize the cost of providing service to the utility's existing customers.

During settlement negotiations, the Parties attempted to strike "a balance between developer/customer contributions and [Pukalani's] ability to develop rate base from which to earn a return on its investment."<sup>57</sup> As a result, the Parties reached agreement on a Rule XIV (Parties' Exhibit F), revised from Pukalani's initial proposal. The Parties' stipulated Rule XIV will apply to new or substantially modified premises situated within Pukalani's service territory:

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<sup>55</sup>See Exhibit PSTP 10-T-100, Attachment JY-101, Pukalani's proposed Rule XIV.

<sup>56</sup>Pukalani's response to CA-IR-6(a) (excerpt) and (b).

<sup>57</sup>Parties' Stipulation, at 32.

In each instance where new premises require capacity equal or greater [than] ten percent (10%) of the Company's then existing capacity, or when an existing commercial, industrial or governmental customer shall change the character, use, size, or activity of the premises which increases wastewater flow by twenty percent or greater of the originally estimated flow, a contribution-in-aid-of-construction ("CIAC") payment in accordance with the terms of this Rule shall be required.<sup>58</sup>

The purpose of Pukalani's proposed CIAC rule is to authorize Pukalani to collect CIAC for new or substantially modified premises, before Pukalani initiates wastewater service to such premises. The commission expresses its concern with the formula set forth in Paragraph 4(b) of Rule XIV.

Paragraph 4(b), as stipulated to by the Parties, utilizes the original cost per original capacity formula in calculating an applicant's CIAC payment when the utility has capacity available at the time the request for service is made (Parties' Exhibit F). This agreed-upon formula materially differs from the language of other commission-authorized CIAC provisions, which utilizes the cost per TG of the utility's *latest capacity addition*, multiplied by a Consumer Price Index adjustment factor.<sup>59</sup> This latter calculation is the same formula initially proposed by Pukalani as part of its Application.<sup>60</sup>

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<sup>58</sup>Parties' Exhibit F, Rule XIV, at 1.

<sup>59</sup>See HOH Utilities, LLC, CIAC Rule VI(4)(b); Kukio Utility Co., LLC, CIAC Rule XI(4)(b); and North Shore Wastewater Treatment, LLC, CIAC Rule VI(4)(b).

<sup>60</sup>See Exhibit PSTP 10-T-100, Attachment JY-101, Pukalani's proposed Rule XIV, Paragraph 4(b).

The commission finds that the Parties' formula set forth in Paragraph 4(b): (1) appears inconsistent with Pukalani's representation that its original, existing treatment plant is CIAC-funded; and (2) does not adequately address the Consumer Advocate's concerns that Pukalani's proposal to collect CIAC: (A) may not allow the utility to accumulate rate base; and (B) may cause discrimination in which some customers may subsidize the cost of providing utility service to other customers.

Accordingly, the commission finds that the revision of Rule XIV, Paragraph 4(b), by replacing the stipulated formula with the cost per TG of the utility's *latest capacity addition*, multiplied by a Consumer Price Index adjustment factor formula, as initially proposed by Pukalani as part of its Application, is consistent with the public interest. With this revision, the commission finds reasonable Pukalani's CIAC Rule XIV.<sup>61</sup>

D.

Service Initiation Charge

Pukalani seeks to establish a non-refundable service initiation charge of \$100 for prospective new customers, with payment due prior to initiating utility service, "to defray and/or offset future infrastructure costs."<sup>62</sup> Specifically, the

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<sup>61</sup>Pukalani should also revise its proposed CIAC Rule XIV as follows: (1) for the first paragraph, second sentence, insert a comma after "major development;" (2) for the second paragraph, first sentence, insert "(20.0%)" after "twenty percent;" and (3) for Paragraph 4(b), replace "applicant" with "CIAC Applicant."

<sup>62</sup>Pukalani's Application, at 4.

proposed charge "is designed to fund only a small portion of the plant replacements required to maintain service and as such will offset only a portion of the rate base increase."<sup>63</sup>

The Consumer Advocate contends that: (1) Pukalani's proposed service initiation charge discriminates against prospective new customers; and (2) the scope of this proposed charge, in conjunction with Pukalani's proposed CIAC charge (Rule XIV), appears duplicative and unclear.

Pukalani, as part of the Stipulation, "agree[s] to remove its request to impose the service initiation charge."<sup>64</sup>

E.

#### Water Usage Data

Pukalani seeks to impose certain requirements on commercial customers who must provide their water usage data to Pukalani for billing purposes.<sup>65</sup>

To the commission's knowledge, Pukalani did not file or publish the text or language of its proposed tariff rule governing water usage data, during the application or discovery stages. Instead, during settlement negotiations, Pukalani proposed certain language to the Consumer Advocate. Now, as a result of compromise, the Parties agree on specific language to govern Pukalani's water usage data provision (Parties'

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<sup>63</sup>Pukalani's response to CA-IR-7(b).

<sup>64</sup>Parties' Stipulation, at 30.

<sup>65</sup>Pukalani's Application, at 5, paragraph 11(d), and 8, prayer for relief number 8; and Exhibit PSTP 10-T-100 at 10 - 11.

Exhibit G), for codification as a new paragraph to Pukalani's existing Rule VI, Payment of Bills.

The purpose of Pukalani's proposed water usage data provision is to enable Pukalani to timely obtain the necessary water usage data from its commercial customers for wastewater billing purposes. The commission finds reasonable Pukalani's water usage data provision.

F.

Power Cost Adjustment Clause

Pukalani seeks to establish a PCAC that will enable it to pass through any increases in its electric charges above the base cost established in this proceeding.

The Consumer Advocate initially objected to Pukalani's proposed PCAC, noting that while the commission has previously authorized PCACs or other similar clauses, in this proceeding: (1) electricity does not represent a significant percentage of Pukalani's total operating expenses; and (2) Pukalani, it appears, will be collecting a substantial amount of revenues beyond the test year levels, which is expected to mitigate the need for such a clause. In addition, the Consumer Advocate noted that a consultant's study recommends various substantial repairs and replacements to Pukalani's treatment plant, which will likely require Pukalani to seek another rate increase in the next few years, at which time the feasibility of implementing a PCAC can be re-evaluated.

During settlement negotiations, Pukalani agreed to the concept suggested by the Consumer Advocate, that the proposed "PCAC be designed to only recover changes in the kWh [kilowatt-hour] price of electricity, and that there should not be any pass through of changes in the electricity expense associated with differing amounts of kWhs consumed from the amount used in determining the Test Year electricity expense."<sup>66</sup>

The Parties' agreed-upon PCAC methodology is set forth in their Exhibit D. Under the PCAC methodology, Pukalani will calculate the annual adjustment in rates to pass through changes in its electricity costs. In brief, Pukalani will utilize the test year kWh and costs included in its most recent rate case, as the basis for each annual PCAC adjuster, until a new base is established in its next rate case.

The percentage increase or decrease that Pukalani will apply to a customer's sewer assessment fee (excluding the effluent charge) for each twelve (12)-month implementation period is calculated as follows:

$$\text{Percent Change} = \frac{[(\text{Measurement Year Factor} - \$0.1986) \times 590,016 \text{ kWh}] \times 1.068205}{\text{Total Revenues}}$$

Measurement Year: The calendar year immediately preceding the calculation.

Measurement Year Factor: Electricity expense/total kWh for Measurement Year.

\$0.1986: the Test Year Cost per kWh.

590,016 kWh: the Test Year kWh Usage.

1.068205: the Factor to account for Revenue Taxes.

Total Revenues: Total revenues for Measurement Year w/o effluent revenues.

For the initial twelve (12)-month implementation period beginning February 1, 2006 and ending January 31, 2007, Pukalani

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<sup>66</sup>Parties' Stipulation, at 28.

will implement an increase of 2.6445 per cent on its sewer assessment fee (except for the effluent charge).<sup>67</sup>

The commission finds reasonable the Parties' agreed-upon PCAC.<sup>68</sup> The initial twelve (12)-month implementation period shall begin on February 1, 2006, as identified by the Parties.<sup>69</sup> For ease of implementation, the PCAC section of Pukalani's revised rate schedule shall: (1) include definitions or descriptions for \$0.1986, 590,016 kWh, and 1.068205; and (2) clarify whether the Electricity expense element of the Measurement Year Factor is the electricity expense in the Measurement Year, i.e., the Measurement Year Electricity expense.

## X.

### Government Customers

Since April 1992, Pukalani has charged the County community center and public elementary school monthly flat rates for wastewater service.<sup>70</sup> Pukalani, as part of its Application, initially sought to convert the charges assessed to these

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<sup>67</sup>See Parties' Exhibit D. The effluent revenues will not be subject to any increase or decrease caused by the PCAC.

<sup>68</sup>While recognizing that the final version of the PCAC is a result of compromise, the commission's preference is to utilize the total kWh for the Measurement Year instead of the Test Year usage of 590,016 kWh. The latter measurement would allow Pukalani to collect or return monies based on the actual amount of electricity used in the Measurement Year, which may be more or less than the Test Year usage of 590,016 kWh.

<sup>69</sup>See Parties' Stipulation, at 29.

<sup>70</sup>See Pukalani's responses to CA-IR-34 and PUC-IR-101 (supplement); and Exhibit PSTP 10-T-200 at 9.

two (2) government entities to the measured usage rates in place for Pukalani's other commercial customers.

On June 24, 2005, the commission, in its PUC-IR-201, questioned whether Pukalani provided the government entities timely and proper notice of the "proposed change in rates" under HRS § 269-12(c), as applied to their respective interests. On July 29, 2005, Pukalani submitted its response to PUC-IR-201.<sup>71</sup>

Pukalani, as set forth in the Stipulation, contends that it provided sufficient notice to the two (2) government entities, pursuant to HRS §§ 269-12 and 269-16.<sup>72</sup> Thereafter, the Parties' purported settlement of this issue is filed under confidential seal.

A.

Denial of Settlement Terms

The commission, upon its *in camera* review of the sealed information, finds that the Parties' purported settlement of this issue does not address the commission's concern regarding the lack of timely and proper notice of the "proposed change in rates" to the two (2) government entities. Accordingly: (1) the commission denies the Parties' settlement terms set forth in Section III(G)(4) of the Stipulation, filed under confidential

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<sup>71</sup>Pukalani's response to PUC-IR-201 (partially confidential).

<sup>72</sup>See Parties' Stipulation, Section III(G)(4), Notice Issue with Governmental Customers Under Existing Flat Monthly Rate, at 35 - 37 (partially confidential). See also Pukalani's response to PUC-IR-201 (partially confidential).



seal; and (2) the County community center's and public elementary school's wastewater rates shall remain unchanged.

B.

Basis of Confidentiality

Pukalani's basis for designating the subject information as confidential is:

The portion . . . filed under Protective Order contains confidential information to, from, on, about or between Pukalani and/or its customers, the unpermitted disclosure of which could infringe on Pukalani's and/or its customers' respective privacy rights.<sup>73</sup>

Paragraph 5 of Stipulated Protective Order No. 21674, filed on March 7, 2005, provides in part that a party that seeks to designate certain information as confidential 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.

The commission finds that, in this instance, Pukalani's purported basis for confidentiality is insufficient.<sup>74</sup> Hence,

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<sup>73</sup>Pukalani provides the basis for confidentiality in the cover page of its response to PUC-IR-201. No basis is provided by the Parties as part of the Stipulation. Nonetheless, upon the commission's *in camera* inspection, it finds that the sealed information in Pukalani's response to PUC-IR-201 and in Section III(G)(4) of the Parties' Stipulation are virtually identical.

<sup>74</sup>While Pukalani's purported basis for confidentiality is insufficient, the commission nonetheless exercises extreme caution in not divulging the information sealed by the Parties in Section III(G)(4) of their Stipulation.

Pukalani shall submit to the commission its supplemental explanation to support its claim of confidentiality.

## XI.

### Commission's Approval

This rate filing represents Pukalani's first application for a general increase in its rates, since its inception of wastewater service in 1989. Pukalani, at the Consumer Advocate's suggestion, agrees to implement a two (2)-year phase-in of its increase in wastewater rates, in order to minimize the impact and magnitude of its rate increase on its ratepayers.

The Parties' stipulated rate increase provides Pukalani with a reasonable opportunity to: (1) earn its test year revenue requirement of \$493,310, beginning from the second year on; and (2) maintain its utility operations and provide wastewater utility service to its ratepayers at a break-even revenue level.

The Parties' Stipulation results from arms-length negotiations, involving "give and take" on both sides. The commission finds that the Parties' Stipulation, taken as a whole, is just and reasonable.

Accordingly, the commission approves in part and denies in part the Parties' Stipulation, consistent with the terms of this Proposed Decision and Order.

The commission's approval of the Parties' Stipulation, or of the methodologies used herein, may not be cited as

precedent in any future proceeding;<sup>75</sup> except that the commission's rationale and decision in revising or denying certain portions of the Stipulation may be referred or cited to in future commission proceedings.<sup>76</sup>

In the future, Pukalani is strongly advised to seek rate relief on a more frequent basis, in order to minimize the potential impact of the magnitude of its rate increases upon its ratepayers. In this respect, the commission notes:

1. The Parties agree to amortize Pukalani's rate case expenses over a five (5)-year period; and

2. Act 168 streamlines the rate application and ratemaking process for public utilities such as Pukalani, with annual gross revenues of less than \$2 million.

## XII.

### Ultimate Findings and Conclusions

The commission's finds and concludes:

1. The operating revenues and expenses for the test year, as set forth in Exhibit A, attached, are reasonable.

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<sup>75</sup>For example, in calculating Pukalani's revenues under present rates, Pukalani converted the public elementary school's and County's community center's respective monthly flat rate revenues to a water usage amount, and included these converted revenues as part of the commercial account revenues. In the future, Pukalani is advised to use the actual, non-converted rate in calculating revenues at present rates for each customer class. See Section VI, Operating Revenues, above.

<sup>76</sup>Cf. *In re Hawaii Water Serv. Co., Inc.*, Decision and Order No. 21644, filed on February 11, 2005, Section XI, Approval in Part, Denial in Part, at 48 - 49, in Docket No. 03-0275 (commission's partial denial of the parties' settlement agreement may be referred or cited to in future commission proceedings).

2. Pukalani is entitled to: (A) an increase in revenues of \$282,752, or 134 per cent over revenues at present rates; and (B) total operating revenues of \$493,310..

3. The Parties' stipulated rate design, including the two (2)-year phase-in of Pukalani's new wastewater rates, is reasonable.

4. The termination of the replacement reserve fund is reasonable.

5. The Parties' agreed upon revisions to Pukalani's tariff rules, as set forth in Sections IV(A) and (B), above (Parties' Exhibits E, H, I, and J), are reasonable.

6. The Parties' stipulated CIAC Rule XIV (Parties' Exhibit F), water usage data provision (Parties' Exhibit G, Rule VI(4)), and PCAC (Parties' Exhibit D), are reasonable, unless noted otherwise in this Proposed Decision and Order.

### XIII.

#### Acceptance or Non-Acceptance

Consistent with HRS § 269-16(f)(3), by September 19, 2005, each of the Parties shall notify the commission as to whether it:<sup>77</sup>

1. Accepts, *in toto*, the Proposed Decision and Order. If the Parties accept the Proposed Decision and Order, they

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<sup>77</sup>This deadline date is consistent with the deadline to move for reconsideration of a commission decision or order. See HAR §§ 6-61-21(e) (two (2) days added to the prescribed period for service by mail), 6-61-22 (computation of time), and 6-61-137 (ten (10) day deadline, motion for reconsideration).

"shall not be entitled to a contested case hearing, and [HRS] section 269-15.5 shall not apply." HRS § 269-16(f)(3).

2. Does not accept, in whole or in part, the Proposed Decision and Order. If so, said Party shall give notice of its objection or non-acceptance and set forth the basis for its objection or non-acceptance. Id. Moreover, the Party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record, i.e., the materials available to the commission at the time of its issuance of the Proposed Decision and Order.

Any Party that does not accept the Proposed Decision and Order "shall be entitled to a contested case hearing; provided that the [P]arties to the proceeding may waive the contested case hearing." Id. The commission shall make every effort to complete its deliberations and issue its Decision and Order by December 8, 2005. Id.

The underlying purpose of Act 168 is to expedite the ratemaking process for public utilities with annual gross revenues of less than two (2) million dollars. Consistent thereto, the commission has completed its review and timely issues this Proposed Decision and Order. Nonetheless, the commission makes it clear that if it is required to issue a Decision and Order due to the non-acceptance of the Proposed Decision and Order by one (1) or both of the Parties, the commission is free to review anew the entire docket and all issues therein.

XIV.

Orders

THE COMMISSION ORDERS:

1. The Parties' request, filed on July 20 and August 8, 2005, to amend the procedural schedule by removing the August 8, 2005 deadline for Pukalani to file its rebuttal testimonies, and replacing it with the Parties' Stipulation, filed on August 9, 2005, is approved.

2. The Parties' corresponding request to extend the deadline date, from September 7 to September 8, 2005, for the commission to comply with the six (6)-month deadline to timely issue its Proposed Decision and Order, pursuant to HRS § 269-16(f), is approved.

3. Stipulated Procedural Order No. 21771, filed on April 22, 2005, is amended, consistent with Ordering Paragraphs 1 and 2, above. In all other respects, Stipulated Procedural Order No. 21771 remains unchanged.

4. The Parties' Stipulation, filed on August 9, 2005, is approved in part and denied in part, consistent with the terms of this Proposed Decision and Order. By September 19, 2005, Pukalani shall submit to the commission its supplemental explanation to support its claim of confidentiality, with copies served upon the Consumer Advocate.

5. Pukalani may increase its rates to produce a total annual revenue increase of \$282,752, or 134 per cent, as shown on Exhibit A, attached, representing an increase in Pukalani's revenue requirement to \$493,310.

6. Pukalani's replacement reserve fund is terminated, effective from the implementation date of Pukalani's new rate schedule, as approved by the commission. Pukalani shall: (A) utilize the remaining balance from the replacement reserve to fund its sewer line replacement project; and (B) reflect said expenditure as CIAC.

7. Unless ordered otherwise, the County community center's and public elementary school's wastewater rates shall remain unchanged.

8. Pukalani shall undertake and complete a cost of service study for its next rate proceeding.

9. By September 23, 2005, Pukalani shall file its revised tariff sheets and rate schedules for the commission's review and approval, which implement the tariff changes and increases in rates and charges authorized by this Proposed Decision and Order, with copies served upon the Consumer Advocate.

Pukalani shall revise the CIAC Rule XIV, Paragraph 4(b), by replacing the stipulated formula with the cost per TG of the utility's *latest capacity addition*, multiplied by a Consumer Price Index adjustment factor formula, as initially proposed by Pukalani as part of its Application.

The PCAC section of Pukalani's revised rate schedule shall: (A) include definitions or descriptions for \$0.1986, 590,016 kWh, and 1.068205; and (B) clarify whether the Electricity expense element of the Measurement Year Factor is the

electricity expense in the Measurement Year, i.e., the Measurement Year Electricity expense.


Pukalani's tariff changes and increases in its rates and charges shall take effect upon the commission's review and approval of said filing.

10. By September 19, 2005, each of the Parties shall notify the commission as to whether it accepts, *in toto*, or does not accept, in whole or in part, this Proposed Decision and Order, consistent with Section XIII, above. A Party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record.



DONE at Honolulu, Hawaii September 7, 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (Excused)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:



Michael Azama  
Commission Counsel

05-0025.cs

## Exhibit A

**DOCKET NO. 05-0025**  
**PUKALANI STP CO., LTD.**  
**REVENUE REQUIREMENTS**  
**TEST YEAR ENDED DECEMBER 31, 2005**

	Present Rates	Additional Amount	Approved Rates
<b>REVENUES</b>			
Residential	\$ 114,097	\$ 192,475	\$ 306,572
Commerical	\$ 95,961	\$ 89,434	\$ 185,395
Others	500	\$ 843	\$ 1,343
	<hr/>	<hr/>	<hr/>
Total Operating Revenues	\$ 210,558	\$ 282,752	\$ 493,310
<b>O &amp; M EXPENSES</b>			
Electricity	\$ 117,149		\$ 117,149
Water Utility	180		180
Professional Fees	177,455		177,455
Sludge Removal	43,224		43,224
Chemical	25,582		25,582
Other Supplies	6,046		6,046
Repair & Maintenance	11,272		11,272
Office Supplies	3,600		3,600
Accounting	17,000		17,000
Telephone	1,500		1,500
Fuel, Gas & Oil	2,300		2,300
Rate Case Amortization	21,840		21,840
Wet Well Cleaning	11,400		11,400
Insurance	5,264		5,264
Sewer Line Cleaning	18,000		18,000
	<hr/>	<hr/>	<hr/>
Total O & M Expenses	\$ 461,812	-	\$ 461,812
Revenue Taxes	\$ 13,444	\$ 18,054	\$ 31,498
			-
Income Taxes	<hr/>	<hr/>	<hr/>
			-
Total Operating Expense	\$ 475,256	\$ 18,054	\$ 493,310
	<hr/>	<hr/>	<hr/>
Operating Income	\$ (264,698)	\$ 264,698	\$ -

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Proposed Decision and Order No. 22015 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

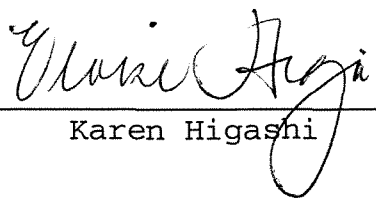
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

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JON YAMANISHI  
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Honolulu, HI 96815

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

DATED: September 7, 2005