

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting Proceedings)
Relating to the Determination)
Of the Appropriate Fees and)
Assessments to Finance the)
Administration and Operation)
Of the One Call Center.)
_____)

DOCKET NO. 05-0195

ORDER NO. 22040

Filed Sept. 21, 2005
At 8 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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

2005 SEP 23 A 8:00

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

K. Higashi.

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Of the One Call Center.)
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Docket No. 05-0195

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Order

By this Order, the commission denies the motion of the City and County of Honolulu ("City" or "Movant"), filed on September 13, 2005, for an extension of time to file a motion to intervene.

I.

Procedural History

On August 10, 2005, the commission, by Order No. 21976, instituted a proceeding to determine the appropriate fees and assessments necessary to finance the administration and operations of the One Call Center, pursuant to Hawaii Revised Statutes ("HRS") Chapter 269E.¹ Order No. 21976

¹HRS Chapter 269E calls for the establishment of a One Call Center to coordinate the location of subsurface installations, and to provide advance notice to operators of subsurface installations of proposed excavation work. In November 2004, the commission established the One Call Center Advisory Committee ("Committee"), pursuant to HRS § 269E-4, to advise the commission regarding the implementation of the

also made the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") a party to this docket,² and invited all interested public utilities, businesses, building or construction groups, trade or contractor associations and community or civic groups to participate in this docket as intervenors, or participants without intervention, so long as these persons or entities satisfy and adhere to the commission's administrative rules, as set forth in HAR Chapter 6-61, *Rules of Practice and Procedure Before the Public Utilities Commission*, governing intervention and participation in commission proceedings. Order No. 21976 required all motions to intervene, or to participate without intervention, to be filed with the commission no later than twenty (20) days from August 10, 2005, i.e., August 30, 2005.³

On September 13, 2005, the City filed a motion with the commission for an extension of time to file a motion to intervene, pursuant to HAR § 6-61-23 ("Motion for Enlargement of Time"), and a motion to intervene.

One Call Center, including the establishment of fees and assessments to finance the administration and operation of the One Call Center.

²See Hawaii Administrative Rules ("HAR") § 6-61-62.

³By this deadline the commission had received fourteen (14) timely motions to intervene and one (1) request for an enlargement of time.

II.

Motion for Enlargement of Time

HAR § 6-61-23(a)(2) states that the commission, upon a motion made **after** the expiration of a specified period, may, at its discretion, enlarge the period in which to act "where the failure to act was the result of excusable neglect." Thus, because the commission received the Motion for Enlargement of Time after the specified period, i.e., after August 30, 2005, the commission must first determine whether Movant's failure to act within the required time constitutes excusable neglect.

The excusable neglect standard is a strict standard requiring a showing that the failure to timely file with the commission was due to circumstances beyond a movant's control.⁴

⁴See *Hall v. Hall* 95 Hawai'i 318, 320, 22 P.3d 965, 967 (2001); and *Enos v. Pacific Transfer & Warehouse, Inc.*, 80 Hawai'i 345, 350, 910 P.2d 116,121 (1996) (noting that the excusable neglect standard was a "strict standard, requiring a showing that the failure to timely file a notice of appeal was due to circumstances beyond the appellant's control"). See also *In re Aikane Interpacific Corporation, dba Maika'i Ohana Tours*, Docket No. 05-0095, Order No. 21893 (June 24, 2005) (the commission finding that the moving party's assertion that it was delayed in securing legal representation did not rise to the level of excusable neglect); *In re Hawaii Water Service Company, Inc.*, Docket No. 03-0275, Order No. 21059 (June 17, 2004) (finding that docket deadlines, departure of the supervising attorney, sick leave requests and scheduling commitments did not constitute excusable neglect); *In re Puuwaawaa Waterworks, Inc.*, Docket No. 03-0369, Order No. 21021 (June 2, 2004) (finding that an underestimation of the time it takes for a mail delivery did not rise to the level of excusable neglect); *In re Soltur, Inc.*, Docket No. 00-0063, Order No. 18114 (October 4, 2000) (the commission denying a motion for the enlargement of time based on excusable neglect where the movant claimed that its failure to act was due to the substitution of counsel); and *In re Laie Water Company, Inc.*, Docket No. 00-0017, Order No. 17942 (August 2, 2000) (stating that ignorance of the rules governing the practice and procedure before the commission, or mistakes construing such rules, do not constitute excusable neglect).

In the instant proceeding, in support of its request for an enlargement of time, the City asserts that it "first learned about this docket after the 20-day time period to intervene had elapsed" and notes that the Certificate of Service attached to Order No. 21976 indicates that only the Consumer Advocate was served.⁵ The City also contends that, in light of its participation on the Committee, it did not anticipate that it would be necessary to monitor the commencement of the instant proceeding.

The commission does not find the City's argument to be persuasive. Failure on the part of the City to anticipate that it should be monitoring commission filings in the instant proceeding, notwithstanding that it has a representative on the Committee, does not constitute excusable neglect. This is consistent with prior commission rulings governing requests filed pursuant to HAR § 6-61-23(a)(2), noted *supra*. The commission also notes that the City will continue to have a representative on the Committee and, thus, will have a voice in the final determination of the appropriate fees. Accordingly, the commission finds that the City's reason for not filing a timely motion to intervene does not rise to the level of excusable neglect, and, thus, concludes that its Motion for Enlargement of Time should be denied.

⁵Motion for Enlargement of Time at 2.

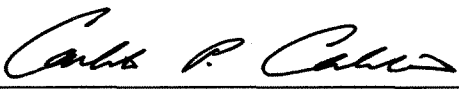
III.

Order

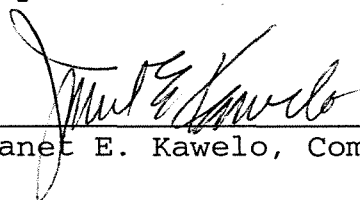
THE COMMISSION ORDERS that the City's Motion for Enlargement of Time, filed on September 13, 2005, is denied.

DONE at Honolulu, Hawaii SEP 21 2005.

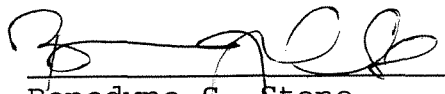
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

05-0195.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22040 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: SEP 21 2005