

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
 WAIKOLOA RESORT UTILITIES, INC., )  
 dba WEST HAWAII UTILITY COMPANY )  
 )  
 For Approval to Enter into Financing )  
 Arrangements for the Construction of )  
 Deep Well-6, to Refinance Existing )  
 Loans, and to Establish a Leasing )  
 Line of Credit. )  
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DOCKET NO. 05-0204

DECISION AND ORDER NO. 22078

Filed Oct. 21, 2005  
At 10:30 o'clock A.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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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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The commission approves the requests of WAIKOLOA RESORT UTILITIES, INC., dba WEST HAWAII UTILITY COMPANY ("WHUC"), to enter into certain financing arrangements and to encumber certain assets, in accordance with Hawaii Revised Statutes ("HRS") §§ 269-17 and 269-19.

WHUC requests the commission's approval to enter into certain financing arrangements and to encumber certain assets.<sup>1</sup> WHUC makes its requests in accordance with HRS §§ 269-17 and 269-19.

<sup>1</sup>WHUC's Application, Verification, Exhibits 1 - 16, and Certificate of Service, filed on August 15, 2005 (collectively, the "Application").

WHUC served copies of its Application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On September 16, 2005, WHUC responded to the Consumer Advocate's information requests. The Consumer Advocate does not object to the commission's approval of WHUC's Application, subject to certain conditions and recommendations.<sup>2</sup> WHUC, in response, makes certain comments and ultimately informs the commission that the docket is ready for decision-making on the merits.<sup>3</sup>

## II.

### Financing

WHUC is a public utility that provides water, wastewater, and irrigation services to the Waikoloa Beach Resort area at Anaehoomalu Bay, Waikoloa, island of Hawaii.<sup>4</sup>

WHUC requests the commission's approval to enter into certain financing arrangements for the following purposes: (1) financing the construction costs for a 1,350 foot drinking water well, Deep Well No. 6 ("DW-6"); (2) refinancing and paying

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<sup>2</sup>Consumer Advocate's Statement of Position, filed on September 30, 2005 ("Position Statement").

<sup>3</sup>WHUC's letter, dated October 11, 2005, in response to the commission's letter, dated October 3, 2005.

<sup>4</sup>See Decision and Order No. 6078, filed on February 14, 1980, in Docket Nos. 3795 and 3796 (consolidated)(certificate of public convenience and necessity("CPCN")); Decision and Order No. 15330, filed on January 23, 1997, in Docket No. 96-0448 (amended CPCN); and Decision and Order No. 18322, filed on January 22, 2001, in Docket No. 00-0433 (amended CPCN).

off two (2) existing loans; and (3) securing a line of credit to enter into finance lease arrangements for the purpose of facilitating equipment acquisitions.

A.

Construction and Term Loan

WHUC requests approval of: (1) a \$1,635,000 construction and term loan from HomeStreet Bank ("Loan"); and (2) a grant of a first security interest or mortgage over all of WHUC's property and improvements in connection with its construction of DW-6 to secure its obligations under the Loan.<sup>5</sup>

The Loan: (1) provides for an initial twenty-four (24) month construction loan with interest-only payments to cover the construction period of DW-6, with a six (6)-month right of extension, followed by a ten (10)-year term loan; and (2) is subject to the commission's approval. The initial rate on November 1, 2004 was 5.75 per cent, representing a fluctuating rate equal to one (1) percentage point above the prime interest rate listed in the Wall Street Journal. Upon conversion to a term loan, the interest rate will be 3.5 per cent higher than the weekly average yield of United States Treasury Securities.

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<sup>5</sup>See WHUC's Application, Exhibit 1, Letter Agreement between HomeStreet Bank and WHUC, dated November 1, 2004. WHUC, in its response to CA-IR-1(a), clarifies that the Loan is for a non-revolving line of credit, which it intends to convert to a term loan at the end of the construction period.

In justifying the Loan, WHWC states:

1. The developer of Waikoloa is required to provide additional wells and pumps so that: (A) there will always be one (1) well and one (1) pump in excess of the average daily demand for potable water; and (B) such well and pump will be available for emergency standby use.<sup>6</sup> Pursuant to Paragraph 7(A) of the Water Sharing Agreement between WHUC and its affiliated utility, West Hawaii Water Company ("WHWC"), the West Hawaii utilities assumed the obligations made by Boise Cascade to the County under the Letter Agreement.<sup>7</sup>

2. The construction of DW-6 is necessary to meet the average daily demand for potable water. Specifically, the West Hawaii utilities' estimated average daily demand for water from 2005 through 2012 projects that with the anticipated development of the Waikoloa area, one (1) additional well will be required within the upcoming year.<sup>8</sup>

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<sup>6</sup>Letter Agreement between Boise Cascade Home & Land Corporation ("Boise Cascade") and the County of Hawaii, Department of Water Supply ("County"), dated October 29, 1973 ("Letter Agreement"). WHUC's Application, Exhibit 4.

<sup>7</sup>Water Sharing Agreement between Waikoloa Water Company, Inc. and Waikoloa Resort Utilities, Inc., dated January 1, 1981. WHUC's Application, Exhibit 5.

<sup>8</sup>"Waikoloa Water Wells['] Pumping Requirements," 2005 - 2012. WHUC's Application, Exhibit 6. See also WHUC's response to CA-IR-8; and WHUC's Exhibit CA-IR-8(a).

3. "DW-6 has already been drilled and is awaiting final outfitting, which is expected to be completed by the third quarter of 2006."<sup>9</sup>

4. The total estimated cost of constructing DW-6 is \$2,725,000.<sup>10</sup> The cost of developing and outfitting DW-6 will be shared between WHUC (65 per cent, estimated) and WHWC (35 per cent, estimated), respectively, pursuant to the Water Sharing Agreement.

B.

Refinancing

WHUC requests approval of: (1) a \$4 million term loan from American Savings Bank ("Refinance Loan"); and (2) a grant of first security interest on all plant and equipment owned by WHUC, including waste and water treatment facilities, to secure its obligations under the Refinance Loan.

The Refinance Loan provides for a ten (10)-year loan term, with an initial five (5)-year loan period at a fixed rate of 6.5 per cent, followed by another five (5)-year loan period at

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<sup>9</sup>WHUC's Application, at 5. See also WHUC's response to CA-IR-3(c). The land underlying DW-6 is owned by an affiliate, Waikoloa Land & Cattle Co. WHUC commenced drilling of DW-6 using its own financial resources.

<sup>10</sup>"Waikoloa Deep Well No. 6, Schedule of Costs." WHUC's Application, Exhibit 2. WHUC's affiliated utility, WHWC, intends to finance its share of the DW-6 costs out-of-pocket without any third-party financing. See WHUC's response to CA-IR-4.

a rate to be determined thirty (30) days before the start of the second five (5)-year period.<sup>11</sup>

In support of the Refinance Loan, WHUC states:

1. The purpose of the Refinance Loan is to pay off WHUC's two (2) existing loans with HomeStreet Bank, which were used to finance a sewer treatment plant.<sup>12</sup>

2. As fixed interest rates are currently lower than when WHUC first entered into the existing loans with HomeStreet Bank, the Refinance Loan will result in significant interest and fee savings. In particular, WHUC estimates that the refinancing of its existing HomeStreet Bank loans with the Refinance Loan will realize interest and fee savings of approximately \$69,074.<sup>13</sup>

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<sup>11</sup>Commitment Letter and Term Sheet between American Savings Bank and WHUC, dated July 1, 2005. WHUC's Application, Exhibits 7 and 10.

<sup>12</sup>WHUC confirms that the two (2) existing loans it intends to pay off with the Refinancing Loan are the two (2) loans previously approved by the commission in Docket No. 01-0042. See Decision and Order No. 18523, filed on May 4, 2001. Decision and Order No. 18523, Ordering Paragraph No. 2, instructed WHUC to "first secure commission approval prior to converting [the] line of credit to a converted term loan, if [it] chooses to exercise that option[.]"

WHUC, in response to CA-IR-3(b): (1) explains that on February 28, 2004, the \$1.5 million construction line of credit was converted to a term loan with a fixed interest rate of 6.625 per cent and a maturity date of March 1, 2009; (2) due to oversight, it did not inform the commission and Consumer Advocate of the conversion; and (3) apologizes for this oversight, stating that "it will take appropriate measures to ensure that such oversights do not reoccur in the future." WHUC's response to CA-IR-3(b).

<sup>13</sup>WHUC's "Estimated Interest and Fee Savings, Refinancing Existing HomeStreet Bank Loans with American Savings Bank." WHUC's Exhibit CA-IR-6(a).

C.

Line of Credit

WHUC seeks to establish a leasing line of credit ("LOC") with First Hawaiian Leasing, Inc., enabling WHUC to enter into finance lease arrangements up to an aggregate amount not to exceed \$500,000 at any given time, to facilitate equipment acquisitions.<sup>14</sup>

WHUC explains that:

1. Presently, it leases equipment on a rental basis and considers market value lease buyout options at lease maturity. The current Line of Credit arrangement is generally suitable for most equipment needs for which the useful service life is less than seven (7) years.

2. However, WHUC is now considering leasing modular buildings, which carry a longer useful service life, and thus, a considerably higher market value buyout option at maturity. Hence, for these types of acquisitions, WHUC believes that finance leasing is more advantageous.

3. In other words, WHUC seeks to revise the current Line of Credit arrangement "to potentially include finance lease transactions, i.e., hire-purchase arrangements wherein ownership of the leased equipment would transfer to WHUC and be pledged as collateral against the finance lease. None of the existing lease transactions under the current arrangement with First Hawaiian

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<sup>14</sup>Lease Commitment Agreement between First Hawaiian Leasing, Inc. and WHUC, dated March 1, 2005. WHUC's Application, Exhibit 9.



Leasing encumber WHUC assets. [Thus,] [t]he approval being sought is to change the existing arrangement to include potential future financing transactions."<sup>15</sup>

D.

Closing

WHUC represents that:

1. Its Loan, Refinance Loan, and LOC have been approved by the respective financial institutions.<sup>16</sup> Each of the financial institutions was selected based on an existing or past relationship, facility of application, promptness of processing and approval, and favorable financial conditions.<sup>17</sup>

2. The "[c]losing of the Loan will occur and the applicable interest rate will be determined upon execution of the loan documents. The execution of the loan documents is contingent upon receipt of the Commission's approval of this Application."<sup>18</sup>

3. "Closing of the Refinance Loan must occur no later than September 30, 2005, in order to obtain the fixed interest rate of 6.50%. As the execution of the loan documents for the Refinance Loan is also contingent upon receipt of the Commission's approval of this Application, [WHUC] again requests

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<sup>15</sup>WHUC's response to CA-IR-7(c).

<sup>16</sup>WHUC's Application, at 7 - 8.

<sup>17</sup>See WHUC's response to CA-IR-2.

<sup>18</sup>WHUC's Application, at 7.

that approval be given as expeditiously as possible to ensure this low fixed rate is realized."<sup>19</sup>

4. The commitment for the LOC must be utilized by February 28, 2006.

5. WHUC expresses confidence that "it will be able to make all required payments under the Loan, Refinance Loan, and [LOC] in a timely manner."<sup>20</sup>

### III.

#### HRS §§ 269-17 and 269-19

HRS § 269-17 provides that, upon the commission's prior approval, a public utility corporation may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve (12) months after the date thereof, for the following purposes, and no other:

for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences

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<sup>19</sup>Id. at 8. The Parties' subsequent actions in this docket render moot the September 30, 2005 closing date. Specifically: (1) the Parties extended the deadline to file their stipulated procedural schedule from September 26 to October 24, 2005; (2) on September 30, 2005, the Consumer Advocate filed its Position Statement; and (3) on October 11, 2005, WHUC filed its reply letter thereto. In any event, an extension of the closing date for the Refinance Loan is subject to the discretion of American Savings Bank. See WHUC's Application, Exhibit 7, at 3.

<sup>20</sup>WHUC's Application, at 8.

of indebtedness, for any of the aforesaid purposes except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

Conversely, "[a] public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations." HRS § 269-17. "All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void." Id.

HRS § 269-19 states that no public utility corporation shall assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, "without first having secured from the public utilities commission an order authorizing it so to do." "Every such . . . assignment, mortgage, disposition, encumbrance . . . made other than in accordance with the order of the commission shall be void." HRS § 269-19. The purpose of HRS § 269-19 is to safeguard the public interest. *In re Honolulu Rapid Transit Co.*, 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

IV.

Consumer Advocate

The Consumer Advocate examined: (1) whether WHUC's financing arrangements are consistent with HRS § 269-17; (2) whether the encumbrance of WHUC's utility assets, as part of the financing arrangements, is reasonable under HRS § 269-19; and (3) whether the financing arrangements are consistent with the public interest, including any future adverse impact on WHUC's utility rates.

A.

HRS §§ 269-17, 269-19, and Public Interest

The Consumer Advocate finds that:

HRS § 269-17

1. Based on WHUC's representations, the proceeds from the various transactions will be used to fund the completion of the DW-6 construction, refinance existing debt instruments, and facilitate lease transactions to acquire property and equipment used in providing utility service. "These purported uses are consistent with the allowable purposes as set forth in HRS § 269-17."<sup>21</sup>

2. The projected growth in the Waikoloa Resort area will result in the need for DW-6, pursuant to the Letter Agreement between Boise Cascade and the County.<sup>22</sup> "Thus, using

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<sup>21</sup>Consumer Advocate's Position Statement, at 5.

<sup>22</sup>WHUC's Application, Exhibit 4. The West Hawaii utilities assumed the obligations made by Boise Cascade to the County. WHUC's Application, Exhibit 4, Water Sharing Agreement.

the proceeds of the proposed financing transactions to complete construction of DW-6 is reasonable."<sup>23</sup>

3. The existing cost of debt is relatively low and other utilities have filed applications seeking approval to refinance more costly debt instruments.<sup>24</sup> "Thus, WHUC's proposal to refinance more costly debt instruments at this time is not unreasonable."<sup>25</sup>

HRS § 269-19

4. Based on WHUC's purported ability to make principal and interest payments to avoid having the lenders assume ownership of the utility assets to be constructed or acquired, the granting of security interests in WHUC's plant, property, and equipment: (A) will not impair or otherwise adversely affect the nature, quality, or provision of WHUC's utility service; and (B) appears necessary to obtain the proposed financing transactions.

5. "Given the conclusion that the proposed use of the proceeds from the secured financing transactions is consistent with the requirements set forth in HRS § 269-17 and the appearance that utility service will not be adversely affected,

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<sup>23</sup>Consumer Advocate's Position Statement, at 6.

<sup>24</sup>As an example, the Consumer Advocate cites to Docket No. 05-0029, *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications*.

<sup>25</sup>Consumer Advocate's Position Statement, at 6.

the proposed encumbrance of assets is reasonable[]" and consistent with HRS § 269-19.<sup>26</sup>

Public Interest

6. Based on WHUC's forecasted information and data:

(A) WHUC appears able to meet its debt service requirements and recover its operating costs, thus, WHUC's ability to cover its interest payments appears sufficient;<sup>27</sup> and (B) WHUC's capital structure for the next few years will be within a range of values approved by the commission for other water and wastewater companies, and thus, will not be adversely affected by the proposed transactions.<sup>28</sup>

7. The interest rates of the two (2) loans WHUC seeks to refinance are eight (8) per cent and 6.625 per cent, respectively. While the Consumer Advocate does not necessarily concur with some of the assumptions WHUC used in arriving at the estimated \$69,074 in savings resulting from the Refinance Loan, the Consumer Advocate "agrees that the net result does appear to result in an overall decrease in the cost of debt and interest payments."<sup>29</sup>

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<sup>26</sup>Id. at 7 - 8.

<sup>27</sup>See WHUC's Application, Exhibit 13, "Schedule of Interest Coverage for the Years 2004 Through 2009[;]" WHUC's response to CA-IR-5; and WHUC's Exhibit CA-IR-5(a).

<sup>28</sup>See WHUC's Application, Exhibit 12, "Statement of Capital Structure and Notes Payable, 2005 - 2009[;]" WHUC's response to CA-IR-5; and WHUC's Exhibit CA-IR-5(a). See also Consumer Advocate's Position Statement, Table 1, at 10.

<sup>29</sup>Consumer Advocate's Position Statement, at 12.

B.

Conditions and Recommendations

The Consumer Advocate does not object to the commission's approval of WHUC's Application, subject to certain conditions. Specifically, WHUC must:

1. File with the commission and Consumer Advocate copies of all documents executed in connection with said transactions. If the terms and conditions of the transactions materially differ from the terms and conditions in the docket record, additional investigation, if necessary, will be allowed.

2. Provide notice to the commission and Consumer Advocate upon WHUC's conversion of the LOC to a term loan, or when extending the term of the Loan or Refinance Loan, with an analysis that demonstrates the prudence of such course of action.<sup>30</sup>

That said, the Consumer Advocate cautions that it "is not opining that the proposed construction costs of DW-6 are reasonable or that the entire well capacity is presently needed."<sup>31</sup> Instead:

The Consumer Advocate reserves the right to review the project scope and costs in a rate proceeding that reflects the completed costs of DW-6, including issues such as excess capacity, cost sharing, and other issues normally associated with capital improvement projects. This position is also applicable to any equipment that might be obtained through the proposed lease finance agreement. The Consumer Advocate also reserves the right to evaluate the cost of debt in the

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<sup>30</sup>See id., Section II(E)(4), at 16 - 17.

<sup>31</sup>Id. at 6 (underscore in original). See also id. at 19.

context of determining the overall rate of return, if necessary, in future rate proceedings.<sup>32</sup>

The Consumer Advocate concludes by recommending that WHUC, on a prospective basis:

1. Reflect any applicable benefits associated with assets obtained through the leasing LOC when determining revenue requirements in future rate proceedings, even if First Hawaiian Leasing, Inc. may have retained those benefits for its own purposes.<sup>33</sup> If WHUC seeks to include any asset acquired through the leasing LOC in its future test year rate base without the associated benefits, the Consumer Advocate will object to such treatment as inconsistent with WHUC's response to CA-IR-7(b).<sup>34</sup>

2. Adopt appropriate measures to eliminate future possible incidents of non-compliance with regulatory law.<sup>35</sup>

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<sup>32</sup>Id. at 6 - 7. See also id. at 19. The Consumer Advocate also identifies two (2) issues that will require careful review in future regulatory applications: (1) the allocation of DW-6 and its associated operating and maintenance costs between WHUC and its affiliated utilities, pursuant to the Water Sharing Agreement; and (2) WHWC's anticipated use of deferred, unspent contributions to fund its share of the construction costs for DW-6. See id., Section II(E)(5), at 17 - 18. See also WHUC's response to CA-IR-4(a) (WHWC currently has \$1,691,081 in deferred, unspent contributions).

<sup>33</sup>See Consumer Advocate's Position Statement, Section II(E)(3), at 15 - 16.

<sup>34</sup>In its response to CA-IR-7(b), WHUC explains:

For rate base purposes, the asset would be included as an increase to rate base, [while] the accumulated depreciation and excise tax credit would be treated as deductions to rate base. The depreciation expense would be included in the revenue requirement calculation. Interest expenses are generally excluded from the calculation.

<sup>35</sup>The phrase "regulatory law, as defined in Hawaii Administrative Rules ("HAR") § 6-68-4, includes HRS chapter 269 and the commission's applicable rules and orders.



3. Evaluate the value of competitive bidding in selecting the most advantageous financing terms and conditions from available financial institutions in future transactions, consistent with the intent of HAR § 6-61-101(a)(3),<sup>36</sup> unless justified otherwise.<sup>37</sup>

V.

WHUC's Reply

WHUC, in response to the Consumer Advocate's proposed conditions and recommendations, states:

1. WHUC previously provided the Water Sharing Agreement in Docket No. 96-0003. At that time, the commission and Consumer Advocate had the opportunity to examine the Water Sharing Agreement in detail.

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The Consumer Advocate cites to two (2) specific examples of WHUC's unintentional non-compliance with regulatory law, including WHUC's admitted failure to obtain the commission's approval prior to converting its \$1.5 million construction line of credit to a term loan in Docket No. 01-0042. See Consumer Advocate's Position Statement, Section II(E)(1), at 13 - 14; and footnote 12, above. The Consumer Advocate does not recommend that any specific action be taken against WHUC at this time for its non-compliance. Nonetheless, in the event WHUC continues to enter into borrowings in the future without the commission's approval, the Consumer Advocate reserves the right to recommend certain "measures for the Commission's consideration such as downward adjustments to the cost of capital determinations in future rate proceedings." Id. at 14.

<sup>36</sup>HAR § 6-61-101(a)(3) provides that "[i]f the issuance of securities is to be by negotiated bid rather than by competitive bid, the justification for that course of action[]" shall be provided.

<sup>37</sup>See Consumer Advocate's Position Statement, Section II(E)(2), at 14 - 15.

2. Under the proposed agreement for finance lease arrangements, "WHUC would acquire and exercise all rights of an owner including capital goods excise tax credits, depreciation expense, and financing costs, i.e., interest expense. It would relinquish nothing to First Hawaiian Leasing[, Inc.] except the conditional conveyance of title in the event of a default under the financing agreement."<sup>38</sup>

3. WHUC's lack of comment on the other areas raised by the Consumer Advocate should not be deemed by the commission as WHUC's concurrence with the Consumer Advocate's position.

## VI.

### Discussion

WHUC represents that the purpose of: (1) the Loan is to finance the construction of DW-6; (2) the Refinance Loan is to pay off the two (2) existing loans previously approved by the commission in Docket No. 01-0042, that were used to finance a sewer treatment plant; and (3) the LOC is to facilitate equipment acquisitions.

Based on WHUC's representations, the commission finds that: (1) the proceeds from the Loan, Refinance Loan, and LOC will be used for the purposes permitted under HRS § 269-17; and (2) there is no evidence in the docket record that the financing arrangements will have a materially adverse effect on WHUC's utility operations.

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<sup>38</sup>WHUC's letter, dated October 11, 2005, at 1 (citing to WHUC's response to CA-IR-7).

The commission also finds that the encumbrance of WHUC's utility assets under HRS § 269-19, as part of the financing arrangements, is consistent with the public interest, as the monies will be used: (1) to fund plant infrastructure and other capital improvements for WHUC's utility operations; and (2) "for the reimbursement of moneys actually expended" for such purposes. HRS § 269-17.

The commission approves WHUC's financing arrangements with respect to the Loan, Refinance Loan, and LOC, consistent with HRS §§ 269-17 and 269-19.<sup>39</sup>

WHUC does not affirmatively object to the Consumer Advocate's proposed conditions and recommendations, other than the Consumer Advocate's Proposed Recommendation No. 1, to which WHUC represents that it will not relinquish any benefits to First Hawaiian Leasing, Inc. under the proposed agreement for finance lease arrangements. The Consumer Advocate, by contrast, maintains that if WHUC seeks to include any asset acquired through the leasing LOC in its future test year rate base without the associated benefits, the Consumer Advocate will object to such treatment as inconsistent with WHUC's response to CA-IR-7(b).<sup>40</sup>

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<sup>39</sup>The reasonableness of the capital projects and project costs resulting from the proceeds of the financing arrangements, including whether said projects are used and useful for public utility purposes, are deferred to WHUC's future rate cases, to the extent not otherwise covered in WHUC's past completed rate cases.

<sup>40</sup>See footnote 34, above.

The commission will adopt as reasonable the Consumer Advocate's Conditions Nos. 1 and 2 and Recommendations Nos. 2 and 3.

## VII.

### Orders

#### THE COMMISSION ORDERS:

1. WHUC's financing arrangements with respect to the Loan of \$1,635,000, the Refinance Loan of \$4 million, and the LOC of up to \$500,000, are approved, consistent with HRS §§ 269-17 and 269-19.

2. WHUC's use of the proceeds from the Loan, Refinance Loan, and LOC shall be consistent with the representations made in this docket.

3. Within sixty (60) days of each closing, WHUC shall provide the commission and Consumer Advocate with copies of all documents executed in connection with said transactions. If the terms and conditions of the transactions materially differ from the terms and conditions in the docket record, additional investigation, if necessary, will ensue.

4. WHUC shall provide notice to the commission and Consumer Advocate upon WHUC's conversion of the LOC to a term loan, or when extending the term of the Loan or Refinance Loan, within thirty (30) days of conversion or extension, with an analysis that demonstrates the prudence of such course of action.

5. WHUC shall adopt and implement appropriate measures to eliminate future possible incidents of non-compliance with regulatory law.

6. WHUC shall evaluate the value of competitive bidding in selecting the most advantageous financing terms and conditions from available financial institutions in future transactions, consistent with the intent of HAR § 6-61-101(a)(3), unless justified otherwise.

7. WHUC shall conform to all of the commission's orders set forth above. WHUC's failure to adhere to the commission's orders constitutes cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

DONE at Honolulu, Hawaii OCT 21 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Michael Azama  
Michael Azama  
Commission Counsel

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

05-0204.sl

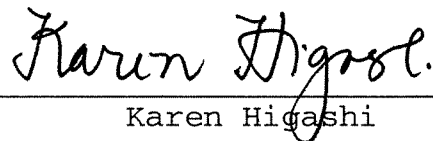
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22078 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  
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Karen Higashi

DATED: OCT 21 2005