

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
PUUWAAWAA WATERWORKS, INC. and )  
NAPU`U WATER, INC. )  
For Approval of Asset Transfer. )  
\_\_\_\_\_)

DOCKET NO. 05-0137

DECISION AND ORDER NO. 22200

Filed December 29, 2005  
At 10 o'clock A.M.

Brooke K. Kane  
for Chief Clerk of the Commission

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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DECISION AND ORDER

By this Decision and Order, the commission approves the joint request of PUUWAAWAA WATERWORKS, INC. ("PWI") and NAPU`U WATER, INC. ("NWI") (collectively, "Applicants") to sell PWI's water system assets to NWI.

I.

Background

A.

Procedural History

PWI, a Hawaii corporation, provides potable water service to residential and commercial customers in the communities of Puuanahulu, Puuwaawaa, and Puu Lani Ranch on the island of Hawaii ("Served Communities"). PWI's water system consists of, among other things, two (2) water wells with submersible pumps; a 100,000 gallon concrete water tank; two (2) "Coffee Tanks"; over five (5) miles of main water lines; and

various valves, meters, hydrants, and distribution lines.<sup>1</sup> As a public utility under Hawaii Revised Statutes ("HRS") § 269-1, PWI is subject to commission jurisdiction and the requirements of HRS Chapter 269.

PWI received its certificate of public convenience and necessity ("CPCN") to operate as a public utility and commission approval of its initial water rates ("Authorized Rates") in Decision and Order No. 19980, filed on January 22, 2003, in Docket No. 00-0005.<sup>2</sup>

On May 7, 2003, PWI filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Hawaii ("Bankruptcy Court"). PWI filed its bankruptcy petition based on its belief that the Authorized Rates generated insufficient revenues for PWI to recover its operating costs and to establish an operating reserve.

On October 20, 2003, PWI filed an application to increase its volumetric rate and change its rate schedule under HRS § 269-16(b) ("Rate Case"). By Decision and Order No. 21428, filed on October 25, 2004, in Docket No. 03-0369, the commission denied PWI's request to increase its volumetric rate and confirmed that PWI's Authorized Rates, rate schedules, and rules shall be in effect until otherwise ordered by the commission.

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<sup>1</sup>For a detailed description of PWI's water system assets, see Application, Exhibit C (Asset Purchase Agreement at 1-2).

<sup>2</sup>While PWI was first incorporated in 1988, it did not properly seek commission authority to operate as a public utility until January 2000.

B.

Proposed Transfer

On June 3, 2005, Applicants filed a joint application seeking commission approval to sell PWI's water system assets to NWI ("Application"). NWI is a member-owned Hawaii nonprofit corporation established in February 2005. NWI was formed for the express purpose of purchasing and operating PWI's water system. NWI intends to operate similar to a cooperative--providing water service solely to its members and does not intend to operate as a public utility under the definition of HRS § 269-1.<sup>3</sup> The Application was served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.<sup>4</sup>

As described in the Application, Applicants entered into an Asset Purchase Agreement dated February 22, 2005 ("Asset Purchase Agreement"), whereby PWI agreed to sell its water system

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<sup>3</sup>See NWI's Response to Consumer Advocate's Information Request ("IR") no. 1 (CA-IR-1) filed on September 28, 2005; NWI's Response at 5-6.

<sup>4</sup>On June 23, 2005, WILLIAM HOOPER, EMMALINE HOOPER, LIWAI MITCHELL, CAROL LEINAALA LIGHTNER, SHIRLEY ANN KEAKEALANI, MAHANA GOMES, GORDON ALAPAI, SALLY ALAPAI, RALPH ALAPAI, BARBARA JEAN ALAPAI, SHANE ALAPAI, and MERCY ALAPAI (collectively referred to as, "Participants") timely filed a Motion to Intervene ("Motion") in this proceeding. A public hearing on the matters of this proceeding was held on Tuesday, August 9, 2005, in Kailua-Kona, Hawaii ("Public Hearing").

Following a hearing on the Motion on July 12, 2005, and completion of the Public Hearing, the commission issued Order No. 21996, filed on August 29, 2005 ("Order No. 21996"), allowing the Participants to be involved in this proceeding without intervention, pursuant to HAR § 6-61-56(a), to the extent set forth in Order No. 21996.

assets to NWI "including all the physical assets and all other rights, easements, etc., that are pertinent to the operation of the [w]ater [s]ystem"<sup>5</sup> for the purchase price of \$25,000 ("Proposed Transfer"). The Asset Purchase Agreement is a means by which PWI may reorganize and emerge from bankruptcy. The Proposed Transfer is expressly subject to and conditioned upon Bankruptcy Court approval, but Applicants are confident that the Bankruptcy Court will approve the Proposed Transfer. Applicants contend that PWI is insolvent and that there is a "real and immediate concern" that the water system under PWI is not being maintained to ensure that the system remains viable and safe.

Applicants also contend that the formation of NWI represents a community effort to own and operate PWI's water system to allow property owners in the Served Communities to have control over their own water rates. To this end, Applicants represent that: (1) every person or entity purchasing water from NWI will be an owner-customer of NWI; (2) only NWI's owner-customers will be provided service; (3) every NWI owner-customer will have a vote to fill positions on NWI's Board of Directors ("Board"); and (4) the Board will have ultimate power over the rates charged by NWI.<sup>6</sup> In addition, Applicants state that NWI's initial Board has unanimously approved the Proposed Transfer and authorized NWI through its president to execute the Asset Purchase Agreement with PWI.

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<sup>5</sup>See Application at 3.

<sup>6</sup>See NWI's Response at 5; Application at 4.

C.

Consumer Advocate's Position

The Consumer Advocate filed its Statement of Position on November 4, 2005, informing the commission that it does not object to the relief sought by Applicants with certain qualifications ("CA Statement of Position"). According to the Consumer Advocate, the terms of the Asset Purchase Agreement appear reasonable. In addition, with the financial and technical assistance provided by the Rural Communities Assistance Corporation ("RCAC") and the U.S. Department of Agriculture Rural Utility Services ("RUS"); and continued use of Island Utility Services, Inc. ("IUS") for day-to-day operations and management of the system, as planned, NWI appears to be fit, willing, and able to operate and manage the water system.

Moreover, the Consumer Advocate states that the Proposed Transfer should be approved by the commission as being in the public interest. The Consumer Advocate contends that the Proposed Transfer appears to be logical on an intuitive level and prudent given current circumstances. It comments that there have been numerous issues and concerns in the past regarding service under PWI relating to, among other things, "customer relations and the apparent lack of appreciation for the regulatory process."<sup>7</sup> Additionally, the Consumer Advocate surmises that since PWI's current owner desires to sell the water system, there is no assurance of a strong commitment from PWI to continue operating the water system in a reliable manner and that such

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<sup>7</sup>See CA Statement of Position at 11.

lack of commitment may lead to a decline in service quality. The Consumer Advocate assumes that, as a cooperative organization, NWI's operational decisions would better reflect the customers' interests as compared to operations under its current ownership.

However, the Consumer Advocate's endorsement of the Proposed Transfer is tempered by the following recommendations reflecting its concerns:

1. Applicants need to modify the Application to indicate whether: (a) PWI's CPCN is being transferred to NWI, or (b) PWI is surrendering its CPCN subsequent to the issuance of a separate CPCN to NWI. Alternatively, the commission should, on its own motion, issue NWI a CPCN subsequent to the surrender of PWI's CPCN.
2. NWI should remain under commission regulation for a period of at least twenty-four (24) months following commission approval of the Proposed Transfer; after which time the need to continue regulation would then be revisited.
3. NWI should complete development of its policies and procedures regarding patronage capital within three (3) months after the completion of the Proposed Transfer. Policies and procedures regarding patronage capital should then be made available to all member-owners and a copy shall be filed with the commission and the Consumer Advocate.

Furthermore, the Consumer Advocate expressed concerns with NWI's proposed rules and regulations and recommends certain modifications. Aside from concerns regarding operational matters, the Consumer Advocate takes issue with NWI's proposed interim rates, which are different from PWI's current commission Authorized Rates. The Consumer Advocate contends that while NWI anticipates that interim rates will be required, Applicants failed to request commission approval of the contemplated interim rates and states that "a utility company cannot unilaterally change rates without receiving [c]ommission approval and following the procedures and guidelines set forth in HRS § 269-16 and in the HAR."<sup>8</sup>

D.

NWI's Response

On November 21, 2005, NWI filed its response to the CA Statement of Position ("NWI's Response").<sup>9</sup> In its response, NWI states that while it will consider and possibly modify some of its proposed policies and procedures in light of the Consumer Advocate's suggestions, it rejects the Consumer Advocate's recommendation that NWI voluntarily submit to regulation under HRS Chapter 269 for a period of two (2) years.

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<sup>8</sup>See CA Statement of Position at 18.

<sup>9</sup>On the same day, PWI filed its response to the CA Statement of Position informing the commission that it does not have anything to add to NWI's Response.



NWI states that it was formed as a nonprofit corporation for the "specific purpose of providing water to its members at cost without the corresponding delays and significant costs of regulation."<sup>10</sup> NWI contends that it is not within the commission's jurisdiction and that voluntarily subjecting itself to regulation is not practical. It argues that NWI will need to continually adjust its rates to reflect its operating costs and reserve needs and, thus, NWI cannot afford to apply for and await commission rate approval every time a rate adjustment is needed.

Moreover, NWI requests that the commission on its own motion make a determination that NWI will be exempt from regulation after PWI's assets are transferred to NWI upon a favorable commission decision on the Application. NWI makes this request since it contends that a commission decision on whether NWI can lawfully operate without regulation and a CPCN is imperative, and since it does not have the necessary reserves to fund an additional application for such a determination.

NWI cites to prior commission decisions, In re Hokuli'a Community Services, Inc., Docket No. 00-0009, Decision and Order No. 17557, filed on February 22, 2000 ("Hokuli'a") and In re Poipu Kai Water Reclamation Corp., Docket No. 6939, Decision and Order No. 11184, filed on July 22, 1991 ("Poipu Kai"), to support its claim that it is not a public utility. NWI asserts that in both of those cases the commission determined that entities that provide service to persons that control the companies, as shareholders are not public utilities. Thus, NWI contends that a

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<sup>10</sup>See NWI's Response at 2.

nonprofit water company that provides and sells water to only its members who through voting control determines how the entity operates, such as NWI, is not a public utility as defined by HRS § 269-1 and is "outside" of the commission's jurisdiction. NWI claims that its owner-customers will have the same amount of control as owner-customers in Hokuli'a and Poipu Kai. Consistent with the commission's determination in these prior proceedings, NWI also represents that it does not need a CPCN since it will not operate as a public utility regulated under HRS Chapter 269.

Nonetheless, due to the concerns raised by the Consumer Advocate, NWI states that it is willing to poll its members two (2) years after operating as a cooperative to determine whether the majority of its members wish to have NWI's exempt status changed. NWI states that it will utilize a ballot form with input from the Consumer Advocate and that NWI will report back to the commission and the Consumer Advocate regarding the results of the poll and its current operations and, at that time, will voluntarily consider any comments provided by the commission and the Consumer Advocate.

Moreover, NWI contends that while its proposed rules and regulations have been reviewed and scrutinized by various experts, its Operations Committee will consider incorporating language to address the Consumer Advocate's recommendations concerning, among other things, billing disputes, return check fees, and late payment charges. However, with regard to the Consumer Advocate's criticism regarding the lack of guidelines and procedures regarding patronage capital, NWI states that strict

guidelines and procedures for patronage capital and for the transfer of capital accounts are set forth clearly in paragraphs 7.2 and 7.3 of its Bylaws in accordance with Internal Revenue Service ("IRS") requirements. NWI also states that the issue of patronage capital and how it operates was discussed in detail with its members in community meetings and that all of its members have access to the Bylaws, which are attached to the Application as Exhibit B. Furthermore, NWI argues that the issue of patronage capital is a matter under the oversight of the IRS and not the commission.

## II.

### Discussion

#### A.

#### The Proposed Transfer Is Reasonable and In the Public Interest

Applicants argue, and the Consumer Advocate agrees, that the Proposed Transfer of PWI's water system assets to NWI is reasonable and in the public interest. The commission agrees.

HRS § 269-19 states:

No public utility corporation shall sell, lease, 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, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added). The purpose of HRS § 269-19 is to safeguard the public interest.<sup>11</sup>

Here, the terms of the Asset Purchase Agreement appear reasonable. With the technical and financial assistance of the RCAC, a national nonprofit organization that provides technical assistance and funding for rural communities to address water and wastewater concerns, and the RUS, an arm of the U.S. Department of Agriculture, NWI should be fit and able to provide water service to its owner-customers. The commission notes that NWI is scheduled to receive RCAC training for its members on January 21 and 28, 2006, to educate its members on how to operate a water system and various other matters such as the responsibilities of the Board.<sup>12</sup> The commission also notes that NWI will continue to utilize the services of IUS, an independent contractor, to perform the day-to-day operations and management of the water system, on an interim basis until a long-term "Utility Management Company" is selected through a request for proposal.<sup>13</sup>

The commission also finds that the Proposed Transfer is in the public interest. PWI is currently a debtor-in-possession in a Chapter 11 bankruptcy proceeding, and appears unwilling or unable to continue to offer water service to the Served

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<sup>11</sup>See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

<sup>12</sup>See NWI's Response to Consumer Advocate's Supplemental Information Request ("SIR") no. 3.e.1 (CA-SIR-3.e.1) filed on October 21, 2005.

<sup>13</sup>NWI represents that IUS has managed PWI's water system for two-and-a-half years and that IUS is certified by the State Department of Health. See NWI's Response to Consumer Advocate's IR no. 10 (CA-IR-10) filed on September 28, 2005.

Communities. As noted by the Consumer Advocate, the commission is aware of various concerns and issues with service under PWI regarding, among other things, customer relations and PWI's apparent lack of appreciation of the regulatory process. Given these factors, the commission is concerned that PWI does not have a strong commitment to provide quality and reliable water service to its customers. This concern appears to be shared by the residents in the Served Communities, as evidenced by the formation of NWI. Operational decisions concerning the water system should better reflect the desires of its customers under NWI than under PWI, an investor-owned company.

As the Proposed Transfer is reasonable and in the public interest, the commission concludes that the Proposed Transfer should be approved, pursuant to HRS § 269-19.

B.

Commission Regulation of NWI

In their Application, Applicants sought commission approval of the Proposed Transfer, but did not seek a declaratory ruling regarding whether NWI is subject to commission regulation. This resulted in confusion over Applicants' intentions with respect to commission oversight. As a result, the Consumer Advocate in its Statement of Position recommended that Applicants modify their Application to indicate whether PWI would be transferring its CPCN to NWI, and commented on the absence of a request to implement interim rates in the Application. The Consumer Advocate also recommended that NWI remain under

commission regulation for at least two (2) years following commission approval of the Proposed Transfer.

In its Response to the CA Statement of Position, NWI objected to the Consumer Advocate's requests; in particular, the request to retain commission jurisdiction for two (2) years following approval of the Proposed Transfer. NWI asserted that it is not a public utility as defined by HRS § 269-1, and thus, is not subject to commission regulation. NWI, moreover, requested in its Response a determination by the commission that NWI would be exempt from regulation after the Proposed Transfer is consummated. According to NWI, it is "imperative that the Commission determine whether NWI can lawfully operate without regulation and a CPCN. NWI does not have the monetary reserves necessary to fund an additional application prior to obtaining RCAC funding and NWI cannot wait any longer to close on this transaction."<sup>14</sup>

Although procedurally improper, the commission, on its own motion, will address NWI's request for a determination that it is no longer subject to commission regulation given the exigent circumstances outlined in NWI's Response.

HRS § 269-1 defines a "public utility" as:

every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for . . . the production, conveyance, transmission, delivery, or furnishing of . . . water . . . .

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<sup>14</sup>See NWI's Response at 4.

The Hawaii Supreme Court provided further clarification of the definition of a public utility in In re Wind Power Pacific Investors-III, 67 Haw. 342, 686 P.2d 831 (1984) ("Wind Power"), by adopting the following test:

Whether the operator of a given business or enterprise is a public utility depends on whether or not the service rendered by it is of a public character and of public consequence and concern, which is a question necessarily dependent on the facts of the particular case, and the owner or person in control of property becomes a public utility only when and to the extent that his business and property are devoted to a public use. The test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals.

Id. at 345 (quoting 73B C.J.S. Public Utilities § 3).

The Commission examined the control of a facility as another critical factor that distinguishes a facilities operator from a "public utility" in Poipu Kai<sup>15</sup>. In Poipu Kai, the commission found that a private wastewater company is not a public utility with respect to services that it provides to persons who control the sole shareholder of the company. The

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<sup>15</sup>See also Hokuli'a (wherein the commission concluded that a private sewer company was not a public utility because the lot owner-customers had the same control over the company as the lot owner-customers did over the Poipu Kai Reclamation Corporation).

commission reasoned under the facts of that case that the private wastewater company was providing services to itself, rather than to the general public, or any portion thereof. The commission acknowledged in Poipu Kai that the legislative intent for placing private wastewater companies under the commission's jurisdiction was "to protect the public to whom private sewerage service is rendered who have no control over the decision made by the provider of the service."<sup>16</sup> However, the commission concluded that the Poipu Kai Reclamation Corporation would be a public utility if it provided service to a nearby condominium project since the owners of units in the condominium project were not members of the Poipu Kai Association, did not have the right to vote, had no control over the decisions made by the association, and did not have the same input into the rates and conditions for service as the owner-occupants in the Poipu Kai subdivision.

Consistent with Wind Power and Poipu Kai, the commission in Hokuli'a determined that a nonprofit corporation that owns and operates a water system and reclamation facility for the sole use of its members that control the corporation is not a public utility since the owner-customers of the corporation

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<sup>16</sup>See Poipu Kai, Decision and Order No. 11184, at 5-6 (citing Act 59, 1974 Haw. Sess. Laws 109 and Standing Committee Report 777 of the Senate Ways and Means Comm.), 1974 Sen. Journal 1048).



have the same control over the corporation as was demonstrated in Poipu Kai.<sup>17</sup>

Like Wind Power, Poipu Kai, and Hokuli`a, NWI's owner-customers will have a similar measure of control over NWI. Every person or entity purchasing water from NWI will be an owner-customer of NWI. As members, NWI's customers will control the operations of the water system by voting for NWI's Board. The Board will have the power to determine the rates charged by NWI. Only NWI's owner-customers will be provided service by NWI. As such, under these facts, the commission finds that NWI is providing service to itself rather than the general public, and is not a public utility consistent with Wind Power, Poipu Kai, and Hokuli`a.

While the commission understands the Consumer Advocate's desire for "continued" regulation of NWI, it is unable to impose such a requirement as the commission has found that NWI, as organized and represented in this proceeding, is not a public utility as defined by HRS § 269-1 and that upon consummation of the Proposed Transfer, NWI would not be subject to commission regulation under HRS Chapter 269.

In addition, the commission recognizes that continued regulation in this instance would severely hamper NWI's ability to operate in an efficient and effective manner. Under continued regulation, NWI would be subject to HRS Chapter 269. Among other things, NWI would be subject to the requirements of HRS § 269-16 and, thus, NWI would need to obtain commission approval prior to

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<sup>17</sup>See Hokuli`a at 4-5.

adjusting its rates. The regulatory lag involved in obtaining commission approval would, as argued by NWI, be impractical since NWI would need the flexibility to continually adjust its rates to reflect its operational costs and reserve needs.

In urging the commission to retain jurisdiction over NWI, the Consumer Advocate compares the Proposed Transfer to that of the transfer of assets in Docket No. 02-0060, wherein Kauai Island Utility Cooperative ("KIUC") purchased the assets used to provide electric service on the island of Kauai from Citizens Communications Co. The commission approved the transfer of assets to KIUC in Docket No. 02-0060 by approving the stipulation between KIUC and most of the parties to the docket (including the Consumer Advocate) to, among other things, not seek regulatory exemption from the commission or support legislation deregulating its services until January 2008.<sup>18</sup> However, unlike KIUC, who agreed to be "regulated" after commission approval of the transfer transaction, NWI is unwilling to "voluntarily" subject itself to commission regulation.<sup>19</sup> Accordingly, KIUC is distinguishable from the present docket.

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<sup>18</sup>See Docket No. 02-0060, Decision and Order No. 19755, filed on October 30, 2002.

<sup>19</sup>Although not dispositive, the Consumer Advocate points to an informal poll by NWI of its members on the subject of whether NWI should voluntarily submit itself to commission regulation. The Consumer Advocate states that approximately 31% of the 54 responses received indicated a willingness or desire for continued commission regulation. In contrast, NWI states that of the 137 members polled, only 17 or a little over 12% of its customers indicated a willingness for continued commission regulation. In either case, it appears that a distinct majority of NWI's members would prefer that NWI not be subject to commission regulation.

Based on the foregoing, the commission finds that regulation of NWI in this instance would be unreasonable and improper under the facts and circumstances of this case. As such, the commission also concludes that NWI does not require a CPCN to operate. However, should the facts regarding NWI's organization change so that NWI's water service is expressly or impliedly being offered to the general public, through possibly a transfer of ownership to an investor or a change in its Bylaws to allow service to non-members, NWI may be deemed a public utility as defined under HRS § 269-1 and would be subject to regulation under HRS Chapter 269.

Nevertheless, as a condition to the commission's approval of the Proposed Transfer in this Decision and Order, the commission will hold NWI to its offer to: (1) poll its member two (2) years after providing service as a cooperative to determine whether or not the majority of its members wish to change its exempt status; (2) utilize a ballot form with input from the Consumer Advocate; and (3) report back to the commission and the Consumer Advocate regarding the results of the poll and its current operations, and consider any comments provided by the

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Moreover, the commission notes that while the Participants were given an opportunity to issue information requests and provide a position statement regarding the Proposed Transfer, the records demonstrate that the Participants failed to participate in this proceeding in any manner. Accordingly, the commission assumes that the concerns of the Participants, which necessitated the filing of their Motion to Intervene in this proceeding, have been addressed and that the Participants support the Proposed Transfer and the NWI Board's decision to not "voluntarily" be regulated under HRS Chapter 269.

commission and Consumer Advocate, at that time ("NWI's Representations").

Moreover, as a further condition, to ensure that the commission is kept apprised of NWI's operations prior to the "poll" being taken, as planned, the commission finds it reasonable to require NWI to file: (1) on or about March 1, 2007 and 2008, information regarding its annual operational and capital costs; its current rates; NWI's current number of owner-customers; and total water sales; and (2) as available and practicable, notification of any changes to its Bylaws and copies of its Board and General Membership meeting minutes (collectively, "Monitoring Filings"). The imposition of the Monitoring Filings requirement should not be unduly burdensome to NWI, since compliance with this requirement would merely constitute a compilation of readily available data and information.

Finally, as a further condition, upon consummation of the Proposed Transfer, as approved herein, the commission finds it reasonable to require: (1) Applicants to notify the commission and the Consumer Advocate of the consummation date of the Proposed Transfer; and (2) PWI to surrender its CPCN to the commission.<sup>20</sup>

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<sup>20</sup>The commission notes that on October 21, 2005, PWI informed the commission of its plans to surrender its CPCN, which was filed in response to the Consumer Advocate's SIRs.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The transfer of PWI's water system assets to NWI, as described in Applicants' Application filed on June 3, 2005, is approved. The commission's decision herein is subject to NWI's adherence to: (1) NWI's Representations set forth in this proceeding regarding, among other things, its pledge to poll its owner-customers after two (2) years of operating as a cooperative, to determine whether a majority of its owner-customers wish to continue operating without commission regulation; and (2) the Monitoring Filings requirement.

2. Under the specific facts set forth in this proceeding, NWI is not a public utility as defined in HRS § 269-1 and, thus, is not subject to regulation under HRS Chapter 269.

3. Upon consummation of the Proposed Transfer, as soon as practicable: (1) Applicants shall notify the commission and the Consumer Advocate of the consummation date of the Proposed Transfer; and (2) PWI shall surrender its CPCN to the commission.

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

DONE at Honolulu, Hawaii December 29, 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim  
Ji Sook Kim  
Commission Counsel  
05-0137.ac

CERTIFICATE OF SERVICE

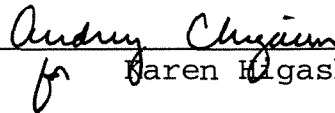
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22200 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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for Karen Higashi

DATED: December 29, 2005