

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 of Amended)
Contribution-in-aid-of-Construction)
Fee. Transmittal No. 05-01.)
_____)
)

In the Matter of the Application of)
)
WAIKOLOA WATER COMPANY, INC.,)
dba WEST HAWAII WATER COMPANY)
)

For Approval of Amended)
Contribution-in-aid-of-Construction)
Fee. Transmittal No. 05-01.)
_____)
)

DOCKET NO. 05-0288

(CONSOLIDATED)

ORDER NO. 22300

Filed Feb. 28, 2006

At 9:30 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

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DIV OF CONSUMER AFFAIRS
DEPT OF COMMERCE AND
INDUSTRY
STATE OF HAWAII

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(Consolidated)

By this Order, the commission concludes that the requirement of a public hearing under Hawaii Revised Statutes ("HRS") § 269-16(b) is not implicated by the pending transmittals filed by WAIKOLOA RESORT UTILITIES, INC., dba WEST HAWAII UTILITY COMPANY ("WHUC") and WAIKOLOA WATER COMPANY, INC., dba WEST HAWAII WATER COMPANY ("WHWC") (collectively, the "Utilities"), to amend their respective contributions-in-aid-of-construction ("CIAC") tariff rules.

In addition, the commission opens an investigation to examine the merits of the Utilities' respective transmittals. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty (20) days from the date of this Order, pursuant to Hawaii

Administrative Rules ("HAR") § 6-61-57(3)(B), with copies served on each of the Parties.

The commission also grants WAIKOLOA MAUKA, LLC's ("Waikoloa Mauka") motion to intervene, and instructs the Utilities, Waikoloa Mauka, and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), to submit a stipulated procedural schedule for the commission's review and consideration within thirty (30) days of the date of this order.¹ If the Parties are unable to stipulate to such a schedule, each party shall submit a proposed procedural schedule for the commission's consideration.

I.

Background

The Waikoloa community in the South Kohala area on the island of Hawaii consists of two (2) utility service areas: (1) Waikoloa Village; and (2) Waikoloa Beach Resort. Within Waikoloa Village: (1) WHWC provides water utility service; and (2) West Hawaii Sewer Company ("WHSC") provides wastewater utility service. WHUC provides water and wastewater utility services to the Waikoloa Beach Resort.

WHUC's sole stockholder is Waikoloa Development Company ("WDC"), while Waikoloa Land and Cattle Company ("WLCC") owns all of the stock in WHWC and WHSC. WDC and WLCC, in turn, are related companies with common ownership.

¹The Utilities, Waikoloa Mauka, and the Consumer Advocate are collectively referred to as the "Parties."

On October 31, 2005, the Utilities filed transmittals seeking certain changes to their respective CIAC tariff rules.²

As a condition to receiving service or substantially increasing water consumption to new or substantially modified facilities, developers and commercial applicants must pay a non-refundable CIAC to the Utilities. See WHUC Rule XI(1); WHWC Rule XX(1). The Utilities utilize CIAC funds for the purpose of expanding the capacity of their infrastructure. See WHUC Rule XI(2); WHWC Rule XX(2). The CIAC fee required by each utility as a condition of receiving service to a new facility is payable only once for the facility, provided that an additional CIAC amount may be required from developers or commercial customers for facilities that are substantially modified. See WHUC Rule XI(5); WHWC Rule XX(5).

The Utilities, by their respective transmittals, seek to increase the CIAC fee assessed for the provision of water utility service as follows:³

For WHUC

From \$4.34 to \$7.51 per gallon of estimated daily water use

For WHWC

From \$4.62 to \$7.51 per gallon of estimated daily water use

According to the Utilities, "[a]dopting th[eir] amended CIAC fee does not involve any rate increase to the existing ratepayers and, therefore, subject to the discretion of the

²WHUC's Transmittal No. 05-01, filed on October 31, 2005, and WHWC's Transmittal No. 05-01, filed on October 31, 2005, as amended by letter dated November 1, 2005.

³In addition, the Utilities seek to amend the present guidelines used to estimate water consumption in calculating the amount of CIAC owed by the developer or commercial applicant.

Commission, may be established after thirty (30) days prior notice, provided in accordance with HRS § 269-16(b)." See WHUC's Transmittal No. 05-01, at 7, ¶ 17; WHWC's Transmittal No. 05-01, at 7, ¶ 17.

On November 14, 2005, the Consumer Advocate filed Protests of both transmittals.⁴ In its Protests, the Consumer Advocate recommended that the commission suspend both transmittals and hold a public hearing, pursuant to HRS § 269-16(b), for the proposed increase in the Utilities' CIAC fee. The Consumer Advocate disagreed with the Utilities' assessment that the proposed amended CIAC fee does not involve a rate increase to existing customers.

Instead, the Consumer Advocate reasoned that the Utilities' proposed amended CIAC fee applies to both new and existing customers who may substantially modify their facilities. See WHUC Rule XI(1); WHWC Rule XX(1). "Thus, while an argument could be made that the proposed increase in the existing CIAC fee will not affect the monthly payments that are currently made by existing customers; the [Utilities'] proposal does result in an increase to the existing rates. As such, the instant request[s] should be considered an increase to a rate set forth in the [Utilities'] tariffs for existing customers who may substantially modify their facilities, resulting in a substantial increase in water use."⁵

⁴Protest by the Division of Consumer Advocacy, filed on November 14, 2005, of WHUC's Transmittal No. 05-01; and Protest by the Division of Consumer Advocacy, filed on November 14, 2005, of WHWC's Transmittal No. 05-01 (collectively, the "Protests").

⁵Consumer Advocate's Protests, at 2 - 3.
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On November 17, 2005, the commission: (1) consolidated and suspended the Utilities' transmittals for further internal commission review; and (2) instructed the Utilities to file a joint position statement addressing the matters raised by the Consumer Advocate in its Protests.⁶

On December 2, 2005, the Utilities filed their Joint Position Statement in response to Order No. 22126.⁷ In their Joint Position Statement, the Utilities contended that they filed Transmittals No. 05-01 consistent with HAR § 6-61-111 and customary practice, asserting that all of their prior filings relating to CIAC fees were made in accordance with HAR § 6-61-111, without objection. Specifically, "[f]rom their inception, CIAC fees and amendments to the respective rules and regulations have been filed by the [Utilities] as transmittals with the appropriate notice period[.]"⁸

The Utilities asserted:

1. At no point in the past sixteen (16) years did the Consumer Advocate object to the Utilities' filings on the basis that the application of the CIAC fee requires the Utilities to file a rate case instead of a notice filing of a tariff change.

⁶Order No. 22126, filed on November 17, 2005. The commission did not, by Order No. 22126, open an investigation under HAR § 6-61-57(3)(B). See Order No. 22126, at 9 n.7.

⁷WHUC's and WHWC's Joint Position Statement in Response to Order No. 22126, Dated November 17, 2005, Exhibit A, and Certificate of Service, filed on December 2, 2005 (collectively, "Joint Position Statement").

⁸Utilities' Joint Position Statement, at 2. The Utilities cite to six (6) transmittals filed between April 1989 and January 1997. See id. at 2 - 3. See also Utilities' response to PUC-IR-101 (attachments).

2. "Indeed, when WHUC increased its CIAC fees (from \$2.00 to \$6.25 per gallon of estimated daily consumption of water) pursuant to its 95-01 notice filing, the Consumer Advocate simply stated [that] it did not object to the approval of WHUC's application."⁹

3. The commission has not previously required the Utilities to file CIAC submissions as rate cases, which require a public hearing and contested case proceeding.

The Utilities also contend that the CIAC fee is distinct from the monthly water rates paid by their customers for utility service. In this respect, the Utilities assert:

1. The CIAC fee is distinct from the monthly water rates paid by customers for water utility service, and "are intended to ensure [that] existing customers are not burdened by the costs of adding facilities to serve new customers."¹⁰

2. The CIAC fee does not impact, supplant, or increase the monthly charge existing customers must pay for water service, but instead, are required from developers or commercial applicants as a contribution-in-aid-of-construction for the provision of services for new and substantially modified facilities.

3. The Hawaii Supreme Court has recognized that a typical CIAC occurs when individuals are located so far from the utility's existing main or line that the utility agrees to render the service if the individuals who desire it pay the cost of all

⁹Utilities' Position Statement, at 3. See also Utilities' response to PUC-IR-102 (attachment).

¹⁰Utilities' Position Statement, at 2. See also id. at 3.

or part of the construction. In re Puhi Sewer & Water Co., Inc., 83 Hawai'i 132, 137 n.2, 925 P.2d 302, 307 n.2 (Haw. 1996). By this definition, the Utilities reason that their CIAC fees are not included in the rate charged to customers for their monthly usage of utilities.

4. A "rate" under HRS § 269-16 refers to a utility rate paid by ratepayers for the usage of utilities.¹¹ By contrast, CIAC is excluded from the calculation of rate base, In re Puhi Sewer & Water Co., Inc., 83 Hawai'i at 137, 925 P.2d at 307, and is not included in the rate paid by customers for their monthly usage of utility service.

5. The requirement of a public hearing under HRS § 269-16(b) applies only in the case of a rate increase, and there is no statutory basis to impose a public hearing on the Utilities' notice filings related to CIAC fees.¹²

On January 27, 2006, Waikoloa Mauka filed a Motion to Intervene, pursuant to HAR §§ 6-61-41 and 6-61-55.¹³ Waikoloa

¹¹The Utilities cite to In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 264, 535 P.2d 1102, 1105 (1975) (a ratepayer who is compelled to pay higher utility rates by agency action is a person specially, personally, and adversely affected for standing purposes under the facts specified in this case).

¹²In the event the commission decides that Docket No. 05-0288 should proceed as a rate case, the Utilities "request that the matter be heard at a public hearing that is being scheduled in Docket No. 05-0329 for March 8, 2006." Utilities' response to PUC-IR-102, at 6.

¹³Waikoloa Mauka's Motion to Intervene and Certificate of Service, filed on January 27, 2006; Affidavit in Support of Waikoloa Mauka's Motion to Intervene and Certificate of Service; and Waikoloa Mauka's letter transmitting affiant's original signature, dated January 31, 2006 (collectively, "Motion to Intervene").

Mauka did not take a position "on whether the proposed changes to WHWC's CIAC tariffs should be handled through a rate case proceeding."¹⁴

This Order addresses the issue raised in the transmittals and the Consumer Advocate's Protests as to whether the Utilities' proposals constitute "any increase in rates" thereby requiring a public hearing pursuant to HRS § 269-16(b). This Order also addresses Waikoloa Mauka's Motion to Intervene.

II.

Discussion

A.

A Public Hearing Is Not Required

HRS §§ 269-16 and 269-12 state in pertinent part:

Regulation of utility rates; ratemaking procedures. (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility, or by two or more public utilities jointly, shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities

On February 3, 2006, the Utilities filed their responses to the commission's information requests. See also commission's letter, dated December 7, 2005 (PUC-IR-101 and -102); and Utilities' letter, dated December 29, 2005 (responses forthcoming).

On February 6, 2006, the Utilities filed their Opposition to Waikoloa Mauka's Motion to Intervene. See Utilities' Opposition to Waikoloa Mauka's Motion to Intervene and Certificate of Service, filed on February 6, 2006; and Amended Certificate of Service, filed on February 6, 2006 (collectively, "Opposition"). See also commission's letter, dated February 6, 2006.

¹⁴Waikoloa Mauka's Motion to Intervene, at 5, ¶ 10.
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commission may require, and copies furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding in order to ensure fairness and to provide due process to parties which may be affected by rates approved by the commission, such evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice as prescribed in section 269-12(b) to the commission and prior approval by the commission for any increases in rates, fares, and charges. The commission may, in its discretion and for good cause shown, allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates and such hearing shall be preceded by a public hearing as prescribed in section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice . . .

HRS § 269-16(a) and (b) (emphasis added).

Notices. . . .

(b) Any notice provided pursuant to section 269-16(b), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established, abandoned, modified, or departed from and the proposed effective date thereof and shall be given by filing the notice with the commission and keeping it open for public inspection.

(c) Any public hearing held pursuant to section 269-16(c), shall be an advertised public hearing or hearings on the island on which the utility is situated

HRS § 269-12.

HAR § 6-61-111 provides in part that "any public utility tariff additions or changes, other than tariff additions or changes which result in an increase in rates, fares, or charges or changes in any classifications, practices, or rules which would result in an increase in rates, fares, or charges, may be filed with the commission to become effective not less than thirty days after filing."¹⁵

The current rates and charges assessed by WHUC and WHWC for providing water and wastewater utility services in their respective service areas consist of various fixed and usage charges approved by the commission in the Utilities' most recent rate cases, as based on the Utilities' test year revenue requirements.¹⁶ Specifically:

1. WHUC's present water rate schedule consists of: (A) a monthly fixed service charge based on a customer's meter size; (B) a monthly fixed private fire service charge based on a customer's meter size; and (C) a monthly consumption charge based on water usage.

2. WHUC's present wastewater rate schedule consists of: (A) a monthly fixed service charge based on a customer's

¹⁵Unlike HRS § 269-16(b), HAR § 6-61-111 does not include language referring to a public hearing for any increase in rates.

¹⁶See In re Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 04-0373, Proposed Decision and Order No. 21885, filed on June 22, 2005; Decision and Order No. 21919, filed on July 15, 2005; and Order No. 21944, filed on July 25, 2005 (2005 calendar test year); and In re Waikoloa Resort Util., Inc., dba West Hawaii Util. Co., Docket No. 06-0366, Decision and Order No. 16372, filed on June 9, 1998 (1997 calendar test year).

classification (residential or commercial); and (B) a monthly sewer "consumption" charge based on metered potable water usage.

3. WHWC's present rate schedule consists of: (A) a monthly fixed service charge based on a customer's meter size; (B) a monthly fixed private fire service charge based on a customer's meter size; (C) a monthly consumption charge based on water usage; and (D) a monthly water availability charge.¹⁷

4. For both Utilities, "bills are rendered monthly or bimonthly at the option of [WHUC and WHWC]." ¹⁸

By contrast:

Contributions-in-aid-of construction (CIAC) are non-refundable funds paid to the [public utility] by customers to defray the costs of constructing facilities . . . needed to provide service to them. Ratepayers should not have to pay a return on CIAC plant investments, since facilities constructed with these contributions are not financed by the [utility] with debt or equity. Rather, these contributions must be deducted from the rate base in the calculation of the [utility's] authorized return on investment.

In re Hawaii Elec. Light Co., Inc., Docket No. 04-0140, Decision and Order No. 15480, filed on April 2, 1997, at 28.

A typical contribution in aid of construction occurs when an individual or group of individuals who desires service from a utility company is located so far from the company's existing main or line that the company is unwilling to bear the expense of constructing the necessary extension of its facilities. The utility company will agree to render the service if the individuals who desire it will pay all or part of the cost of construction. Title to the newly constructed facility passes to the utility which agrees to use such facility to supply the service to those who have paid for the line or main extension. The new plant is thereafter used and maintained by the

¹⁷WHWC's monthly consumption charge includes a surcharge for the major maintenance and reserve account.

¹⁸WHUC Rule V(1); and WHWC Rule V(1).

company similarly to its other facilities. The amount paid by these customers is entered on the books of the company as a contribution in aid of construction.

In re Puhi Sewer & Water Co., Inc., 83 Hawai'i at 137 n.2, 925 P.2d 302, at 307 n.2 (citation omitted).

Moreover:

In determining [a public utility's] proper rate base, the 'near-universal rule is that contributions in aid of construction are properly excluded from the rate base.' 'The rule is based on principles of fairness. It is inequitable to require utility customers to pay a return on property for which they, and not the utility, have paid.'

Id. at 137, 925 P.2d at 307 (citations omitted); see also In re Kaanapali Water Corp., 5 Haw. App. 71, 79, 678 P.2d 584, 590 (1984).

CIAC, therefore, by definition consist of *contributions* paid for by the applicant to the utility for the purpose of defraying the costs of constructing facilities to provide utility service to the applicant. Here, the scope of the Utilities' CIAC tariff rules is limited to developers such as Waikoloa Mauka that seek to install facilities to serve future users, and to developers and commercial applicants that seek to substantially modify their existing facilities due to a projected substantial increase in water usage. See WHUC Rule XI(2); WHWC Rule XX(2).

The Utilities' proposals to amend the amount of contributions assessed to such applicants: (1) will not affect the monthly fixed or usage rates or charges assessed for the provision of water and wastewater utility services, as reflected in the Utilities' respective rate schedules; and (2) do not constitute an increase in the monthly fixed or usage rates

assessed for the provision of water and wastewater utility services, as established by the commission in WHUC's and WHWC's respective rate cases. Rather, the Utilities' CIAC tariff rules, by design, are intended to apply to the cost-causer to ensure that ratepayers are not burdened by the costs of adding new or renovated facilities that will not provide them with utility service. In re Hawaii Elec. Light Co., Inc., Docket No. 04-0140; and In re Puhi Sewer & Water Co., Inc., 83 Hawai'i 132, 925 P.2d 302.

Accordingly, the commission finds that under the facts and circumstances of this case: (1) the Utilities' proposals to increase their CIAC fee do not constitute "any increase in rates" under HRS § 269-16(b); and (2) the requirement of a public hearing under HRS § 269-16(b) is not implicated by the Utilities' proposals to amend their CIAC tariff rules.

This reasoning is consistent with the commission's practice of allowing changes in a public utility's CIAC tariff rule, including changes in the amount of the CIAC fee, to take effect by thirty (30)-day tariff filing under HRS §§ 269-12(b) and 269-16(a) and (b) and HAR § 6-61-111.

While the commission concludes that a public hearing is not required in this case,¹⁹ interested persons who may be affected by the Utilities' transmittals have the opportunity to timely file motions to intervene or participate in this proceeding, as discussed below. Interested persons may also

¹⁹In addition, the deadline to timely protest the Utilities' transmittals has expired under HAR § 6-61-61 (interested persons had "not less than fifteen days before the effective date of the proposed tariff change[]" to file a timely protest with the commission).

communicate any comments or concerns to the Consumer Advocate, the party designated by State law to "represent, protect, and advance the interests of all consumers, including small businesses, of utility services."²⁰

B.

Opening of an Investigation and the
Granting of Waikoloa Mauka's Motion to Intervene

1.

Investigation

By Order No. 22126, filed on November 17, 2005, in this docket, the commission suspended the Utilities' transmittals for further internal commission review.²¹ The commission, however, did not, by Order No. 22126, open an investigation under HAR § 6-61-57(3)(B).²²

Given Waikoloa Mauka's Motion to Intervene and the allegations contained therein, the commission finds sufficient cause to open an investigation of the Utilities' transmittals,

²⁰HRS § 269-51.

²¹Order No. 22126, Section III, at 10, Ordering Paragraph No. 1.

²²See Order No. 22126, at 9 n.7 (the commission, at the time of its issuance of Order No. 22126, did not open an investigation under HAR § 6-61-57(3)(B)).

pursuant to HRS §§ 269-6, 269-7, and 269-8, and HAR § 6-61-71.²³ Interested persons will have the opportunity to file, within twenty (20) days from the date of this Order, motions to intervene or participate in the commission's investigation, pursuant to HAR § 6-61-57(3)(B).²⁴

2.

Waikoloa Mauka's Motion to Intervene

With respect to Waikoloa's Mauka's Motion to Intervene, the standard for granting intervention is set forth in HAR § 6-61-55.

HAR § 6-61-55 requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. Furthermore, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the

²³HRS § 269-6 sets forth the commission's broad general powers and supervision over public utilities. HRS § 269-7: (1) authorizes the commission to: (1) examine and investigate the condition of each public utility and all matters of every nature affecting the relations and transactions between the utility and public; and (2) open an investigation upon its own motion. HRS § 269-8 mandates that every public utility or other person that is a subject of the commission's investigation must comply with the commission's request to furnish information. HAR § 6-61-71 authorizes the commission to investigate at any time matters subject to its jurisdiction.

²⁴HAR § 6-61-57(3)(B) provides in part that a motion to intervene or participate shall be filed within "[t]wenty days after the commission orders an investigation including an investigation of a tariff change[.]" Cf. In re Hawaiian Elec. Co., Inc., Docket No. 05-0069 (separated), Order No. 21698, filed on March 16, 2005 (commission separated Hawaiian Electric Company, Inc.'s demand-side management programs from its rate case and opened a new docket, with interested persons having the opportunity to file motions to intervene or participate in Docket No. 05-0069 pursuant to HAR § 6-61-57(3)(B)).

issues already presented." It is well-established that intervention as a party in a commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the commission." In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Waikoloa Mauka, through the supporting affidavit of its managing member, avers:

1. Waikoloa Mauka is a Delaware limited liability company qualified to conduct business in the State of Hawaii ("State").

2. On September 20, 2005, Waikoloa Mauka purchased and acquired from WDC and WLCC approximately 14,000 acres of unimproved land at Waikoloa for \$60 million (the "unimproved land").

3. The unimproved land purchased by Waikoloa Mauka comprises the bulk of the remaining developable lands in Waikoloa, mauka of the Queen Kaahumanu Highway, and are within WHWC's service area.

4. In addition to the \$60 million purchase price, Waikoloa Mauka has expended and will continue to expend considerable sums of money in connection with the development of the unimproved land.

5. Waikoloa Mauka's development of the unimproved land "would be subject to the payment of CIAC fees to WHWC as a condition to obtaining water service."²⁵ Waikoloa Mauka has "been working with WHWC to obtain water commitments for portions of its

²⁵Affidavit in Support of Waikoloa Mauka's Motion to Intervene, at 2, ¶ 6.

[unimproved] lands, including the amounts of the CIAC fees which WHWC would assess [Waikoloa Mauka] for some of its development areas."²⁶

6. Because of disagreements between WHWC and Waikoloa Mauka as to "WHWC's basis and methodology in estimating the water consumption that will be utilized in calculating the CIAC fee for one-acre or larger lots," representatives of Waikoloa Mauka and WHWC met on January 18, 2006 "in an effort to understand WHWC's methodology." "[D]espite meeting with [Waikoloa Mauka's] representatives on CIAC matters, WHWC did not inform [Waikoloa Mauka] of . . . Transmittal No. 05-01 nor the matters that are the subject of the instant proceeding."²⁷ Instead, on January 19, 2006, Waikoloa Mauka became aware of the commission's order consolidating and suspending WHWC's Transmittal No. 05-01.

In its Motion to Intervene, Waikoloa Mauka further asserts:

1. The bulk of its unimproved land is zoned or planned for residential or commercial, and will require water commitments from WHWC.

2. As the largest landowner within WHWC's service area, Waikoloa Mauka's financial and property interests are different from the interests the Consumer Advocate is empowered by statute to protect.

²⁶Id. at ¶ 7.

²⁷Id. at ¶¶ 8 - 9. See also Waikoloa Mauka's Motion to Intervene, at 3, ¶ 4.

3. "Given [Waikoloa Mauka's] unique situation of owning nearly all of the available developable lands in Waikoloa mauka of the Queen Kaahumanu Highway which would be subject to the payment of a CIAC fee, [its] participation in this proceeding can greatly assist in the development of a sound record[,]""²⁸ and "in ensuring that the proposed changes are just and reasonable and in the public interest."²⁹ In effect, Waikoloa Mauka "will be directly impacted by WHWC's proposed changes to its CIAC fee and rules and subject to the CIAC fee to WHWC."³⁰

4. Waikoloa Mauka's allegations are reasonably pertinent and its participation will not unduly broaden the issues or delay the proceeding.

The Utilities oppose Waikoloa Mauka's intervention, asserting that Waikoloa Mauka has not met its burden of proving that intervention is warranted under HAR § 6-61-55. The Utilities contend that:

1. Waikoloa Mauka fails to identify any sufficient right to participate in Docket No. 05-0288 or to allege any pertinent reasons in support of its intervention. Specifically: (A) Waikoloa Mauka's assertion that it is the largest landowner in WHWC's service area is an insufficient basis for intervening; and (B) Waikoloa Mauka fails to provide any cogent reason as to why the Consumer Advocate is unable to satisfactorily represent Waikoloa Mauka's supposed interests.

²⁸Waikoloa Mauka's Motion to Intervene, at 4, ¶ 7.

²⁹Waikoloa Mauka's Motion to Intervene, at 5, ¶ 10.

³⁰Waikoloa Mauka's Motion to Intervene, at 4 - 5, ¶ 9.

2. Waikoloa Mauka's intervention will unreasonably broaden the issues already presented. In particular, "what the amount of [Waikoloa Mauka's] specific [CIAC] payment should be and how that payment should be calculated for estimated utilities to be used at [Waikoloa Mauka's] individual development projects[]" "is irrelevant to the issue before the Commission[.]"³¹

3. Waikoloa Mauka's intervention will unreasonably delay the proceeding.

In the event the commission is inclined to grant Waikoloa Mauka's Motion to Intervene, the Utilities suggest that as an alternative, in lieu of intervention, Waikoloa Mauka should be limited to participant status in accordance with HAR § 6-61-56.³²

Here, the Utilities, through their transmittals: (1) propose to increase their CIAC fee; and (2) amend their present guidelines used in estimating water consumption in calculating the amount of CIAC owed by a developer or commercial applicant for single-family detached residences and apartment/condominiums. The commission must review whether the

³¹Utilities' Opposition, at 1 - 2. See also id. at 3.

³²The Utilities also state that Waikoloa Mauka neglects to note that "WHWC provided [Waikoloa Mauka] with separate Will Serve commitment letters in September 2005, at [its] request, for each of [Waikoloa Mauka's] anticipated development projects. At its own election, [Waikoloa Mauka] let the Will Serve letters from WHWC simply expire in December 2005." Utilities' Opposition, at 3 (emphasis in original).

Utilities' proposals are just and reasonable, in accordance with HRS § 269-16(a).³³

Undoubtedly, Waikoloa Mauka, as the recent purchaser of 14,000 acres of unimproved land situated within WHWC's service area, has a direct property and financial interest in WHWC's proposal to increase its CIAC fee and amend the related water usage guidelines applied to developers. Waikoloa Mauka, in effect, expresses concern with "WHWC's basis and methodology in estimating the water consumption that will be utilized in calculating the CIAC fee for one-acre or larger lots."³⁴ Ultimately, WHWC appears to question the amount of WHWC's proposed increase in the CIAC fee, from \$4.62 to \$7.51 per gallon of estimated daily water use, and the basis and methodology used in calculating the proposed increase.

Therefore, the commission finds that: (1) Waikoloa Mauka's participation in this proceeding can assist in developing a sound record; and (2) the allegations by Waikoloa Mauka in its Motion to Intervene are pertinent to the issues raised in both transmittals, and will not unreasonably broaden said issues.³⁵

³³See also HRS § 269-16(b).

³⁴Affidavit in Support of Waikoloa Mauka's Motion to Intervene, at 2, ¶ 8.

³⁵Although Waikoloa Mauka's concerns are limited to WHWC's proposal, the commission opens an investigation of both transmittals. In this regard, the commission notes that: (1) both WHUC and WHWC rely on identical data and information in justifying their CIAC proposals (compare WHUC's Transmittal No. 05-01, Exhibits 1 - 12 with WHWC's Transmittal No. 05-01, Exhibits 1 - 12); and (2) both transmittals were consolidated into a single docket, Docket No. 05-0288 (consolidated).
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The commission, thus, grants Waikoloa Mauka's Motion to Intervene.³⁶

Concomitantly, the commission will preclude any effort by Waikoloa Mauka to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider Waikoloa Mauka's participation in this docket if, at any time during the course of this proceeding, the commission determines that Waikoloa Mauka is unreasonably broadening the pertinent issues raised or unduly delaying the proceeding.

III.

Orders

THE COMMISSION ORDERS:

1. A public hearing is not required under HRS § 269-16(b) and the facts and circumstances of this case.

2. An investigation is instituted to examine the merits of WHUC's and WHWC's respective Transmittals No. 05-01.

3. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission within twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B), with copies served on each of the Parties to this proceeding. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's *Rules of Practice and Procedure*.

³⁶Cf. In re Hawaiian Elec. Co., Inc., Docket No. 05-0069 (separated), Order No. 21698 (certain motions to intervene pending at the time of the commission's opening of its investigation in Docket No. 05-0069 (separated) were contemporaneously granted by the commission).

4. Waikoloa Mauka's Motion to Intervene, filed on January 27, 2006 and supplemented on January 30 and 31, 2006, is granted.

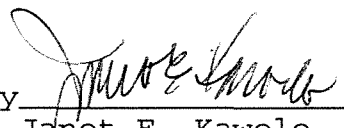
5. The Parties shall submit to the commission a stipulated procedural schedule, incorporating their agreed-upon schedule with respect to this proceeding, within thirty (30) days from the date of this Order. If the parties are unable to stipulate to such a schedule, each party shall submit a proposed procedural schedule for the commission's consideration by the same date.

DONE at Honolulu, Hawaii FEB 28 2006.


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

05-0288.sl

05-0288

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22300 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: FEB 28 2006