

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

ORDER NO. 22450

Filed May 3, 2006
At 11 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.

RECEIVED

2006 MAY -4 A 8:48

In the Matter of the Application of)
 WAIKOLOA RESORT UTILITIES, INC.,)
 dba WEST HAWAII UTILITY COMPANY)
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ORDER

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

I.

Discussion

On April 24, 2006, the Parties jointly submitted their executed, proposed Stipulated Protective Order for the commission's review and approval in this proceeding.² Upon review, the commission notes that the Parties make certain changes in their proposed Stipulated Protective Order from the standard language utilized in the Sample Protective Order on file with the commission.³

Specifically, the Parties propose the following changes to the standard language set forth in Paragraphs 1, 4, 5, 8, 12e, 16, 17, 24, and 25 of the commission's Sample Protective Order:⁴

TERMS OF THE ORDER

1. This Protective Order governs the classification, acquisition, and use of trade secrets, customer information, developer information, employee information, and other confidential information produced by any party, participant or intervenor in this docket.

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²The Parties' proposed Stipulated Protective Order is attached as Exhibit 1 to this Order.

³On August 26, 2005, the commission distributed to all public utilities, affected agencies, and interested stakeholders, a Notice transmitting the commission's Sample Protective Order for their review and use. See commission's Notice, dated August 26, 2005, with enclosure.

⁴The Parties' proposed additions are underscored, while their proposed deletions are in strike-through format. (The sub-titles to each section of the proposed Stipulated Protective Order are underscored in both the original and in the text of this Order.)

CLASSIFICATION

4. A party, participant or any intervenor to this proceeding may designate as confidential any information including but not limited to internal and external documents or cost support studies it believes, in good faith, contain trade secrets, employee information, customer information, developer information, or other confidential business, research, development, commercial, financial, vendor, or bid information. Such information shall be protected against disclosure to a non-Qualified Person pursuant to the terms of this Protective Order, unless such information is declassified, or permission to disclose the information to such non-Qualified Person is granted by the party, participant or intervenor claiming confidentiality, as provided in paragraph 13 below. In addition, a party, participant or intervenor may designate certain information as being confidential and not to be distributed to another party, participant or intervenor, (not including the Consumer Advocate) by notifying the Commission and the Consumer Advocate in writing setting forth in particularity the information to be kept as confidential and not available to the other party, participant or intervenor. With respect to such confidential information, the party, participant or intervenor to whom such information is being withheld shall be treated as a non-Qualified Person from whom such information shall be protected against disclosure in accordance with the terms of this Protective Order.

5. ~~If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a party seeks to designate information as confidential,~~ If a party, participant or intervenor seeks to designate information as confidential and does not intend to distribute such confidential information to a particular party, participant or intervenor as provided in paragraph 4 above, it must:
(1) identify, in reasonable detail, the information's source, character, and location,
(2) state clearly the basis for the claim of confidentiality, and (3) describe, with

particularity, the cognizable harm to the producing party, participant or intervenor from any misuse or unpermitted disclosure of the information. If the Commission or any party, participant or intervenor challenges the claim of confidentiality of the information, or the non-disclosure of such confidential information, the party, participant or intervenor claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether: (1) the information is confidential and subject to protection under this protective order, or (2) the challenged information must be disclosed by the producing party, participant or intervenor. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

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DESIGNATION

8. Any party, participant or intervenor claiming that information is confidential shall place upon the applicable material the following legend:

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party, participant or intervenor shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

Any party, participant or intervenor claiming that information is confidential and not be distributed to another party, participant or intervenor (not including the Consumer Advocate), pursuant to paragraph 4 above, shall place upon the applicable material the following legend:

CONFIDENTIAL FOR VIEWING ONLY BY THE CONSUMER ADVOCATE AND COMMISSION SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party, participant or intervenor shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

DISCLOSURE

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12. "Qualified Person", as used in this Protective Order means any one of the following:

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e. Subject to paragraph 4, above, any other party, participant or intervenor to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding, to the extent allowed by the Commission;

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USE OF CONFIDENTIAL INFORMATION

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16. Subject to relevance, materiality, and any other evidentiary requirements that may be applicable and subject to confidential protection as contained or set forth in this Protective Order, any confidential information obtained under this Protective Order may be used by the Commission and its staff in any proceeding pending before the Commission involving the producing party, participant or intervenor, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this Protective Order (or any other applicable Protective Order) is terminated by the producing party, participant or intervenor, or until further order of the Commission.

17. Subject to relevance, materiality, and any other evidentiary requirements that may be applicable and subject to confidential protection as contained or set forth in this Protective Order, any confidential information obtained under this Protective Order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party, participant or intervenor, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this Protective Order (or any other applicable protective order) is terminated by the producing party, participant or intervenor, or until further order of the Commission.

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APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential or the non-disclosure of any information a party may claim as confidential pursuant to paragraph 4 above, the party, participant or intervenor claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. . . .

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties, participants or intervenors retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. Nothing in this Protective Order shall prevent any party, participant or intervenor from objecting to requests for production of information or other discovery requests.

DISPOSAL OF CONFIDENTIAL INFORMATION

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30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration

required by applicable statutes, rules and administrative directives. statute, and shall not be disseminated to any non-Qualified Person.

A.

Paragraphs 4 (3rd and 4th sentences), 5, 8, 12e, and 24

The stipulated protective orders approved and issued by the commission generally provide that information deemed confidential by the producing party will be produced to the other parties that sign the protective order and corresponding protective agreement. While the Parties' proposed Stipulated Protective Order encompasses this scenario, the Parties also effectively agree that, between the Utilities and Waikoloa Mauka, LLC, either of them need not produce to each other certain information designated as confidential, subject to challenge by the party that does not receive the information designated as confidential.⁵

The Parties have agreed to this arrangement whereby the Utilities and Waikoloa Mauka, LLC need not produce to each other certain information designated as confidential, despite the commission's issuance of a protective order. Accordingly, the commission, in this instance, finds reasonable the Parties'

⁵See the Parties' proposed Stipulated Protective Order, Paragraphs 4 (3rd and 4th sentences), 5, 8, 12e, and 24. Thus: (1) the Utilities may produce certain information it designates as confidential only to the commission and Consumer Advocate; and likewise (2) Waikoloa Mauka, LLC may produce certain information it designates as confidential only to the commission and Consumer Advocate. See, e.g., Utilities' responses, filed on April 24, 2006, to the Consumer Advocate's information requests, designating certain exhibits as confidential and for viewing only by the commission and Consumer Advocate.

proposed Paragraphs 4 (3rd and 4th sentences), 5, 8, 12e, and 24, as set forth in their proposed Stipulated Protective Order.⁶

B.

Paragraph 5A

The Parties, by their proposed Stipulated Protective Order, agree to recognize in this proceeding two (2) types of confidential information: (1) information deemed confidential by the producing party that is produced to the other parties that sign the protective order and corresponding protective agreement; and (2) certain information designated as confidential by either the Utilities or Waikoloa Mauka, LLC, that is not produced to the other entity (but produced to the Consumer Advocate and commission), despite the commission's issuance of a protective order.

The Parties' proposed Paragraph 5 covers the latter instance, but not the first scenario. Accordingly, the commission hereby modifies the Parties' proposed Stipulated Protective Order by adding Paragraph 5A, to read as follows:⁷

5A. If a party, participant or intervenor designates information as confidential pursuant to the first and second sentences of paragraph 4 above or paragraph 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14

⁶The commission, in this instance, also finds reasonable the Parties' proposed Paragraphs 1, 4 (1st and 2nd sentences), 16, 17, and 25, as set forth in their proposed Stipulated Protective Order. In general, the Parties' additions provide further detail and particularity.

⁷The first paragraph of Paragraph 5A is consistent with the standard language set forth in Paragraph 5 of the commission's Sample Protective Order.

below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a party, participant or intervenor seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party, participant or intervenor challenges the claim of confidentiality of the information, or the non-disclosure of such confidential information, the party, participant or intervenor claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether: (1) the information is confidential and subject to protection under this protective order, or (2) the challenged information must be disclosed by the non-producing party. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

Paragraph 5A shall not apply to information designated as confidential by either Applicants or Intervenor Waikoloa Mauka, LLC, that is not produced to the other entity (excluding the commission and Consumer Advocate) in accordance with the paragraph 4 (third and fourth sentences) and paragraph 5 above. Instead, in such a situation, paragraph 5 above shall control.

C.

Paragraph 30

For Paragraph 30, governing the retention of information by the commission, the Parties exclude the reference to rules and other administrative directives, as set forth in Paragraph 30 of the commission's Sample Protective Order. Accordingly, the commission hereby modifies the Parties' proposed Paragraph 30 to read as follows:

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel

for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives, and shall not be disseminated to any non-Qualified Person.

II.

Order

THE COMMISSION ORDERS that the Parties' proposed Stipulated Protective Order, filed on April 24, 2006, is approved as modified by the commission, consistent with the terms of this Order. Specifically, the commission modifies the Parties' proposed Paragraph 30 (Section II(C), above), and adds Paragraph 5A (Section II(B)).


DONE at Honolulu, Hawaii MAY - 3 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By 
Janet E. Kawelo, Commissioner

05-0288.sl

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application) DOCKET NO. 05-0288
) (CONSOLIDATED)
 of)
)
 WAIKOLOA RESORT UTILITIES, INC.,)
 d/b/a 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.,)
 d/b/a WEST HAWAII WATER COMPANY,)
)
 For Approval of Amended Contribution in Aid)
 of Construction Fee. Transmittal No. 05-01.)
 _____)

PUBLIC UTILITIES
COMMISSION

2006 APR 24 P 4: 18

FILED

PROTECTIVE ORDER NO. _____

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

Filed _____

At _____ o'clock ____ .m.

Chief Clerk of the Commission

EXHIBIT 1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)	DOCKET NO. 05-0288
)	(CONSOLIDATED)
of)	
)	
WAIKOLOA RESORT UTILITIES, INC.,)	
d/b/a WEST HAWAII UTILITY)	
COMPANY,)	
)	
For Approval of Amended Contribution in Aid)	
of Construction Fee. Transmittal No. 05-01.)	
_____)	
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In the Matter of the Application)	
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of)	
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WAIKOLOA WATER COMPANY, INC.,)	
d/b/a WEST HAWAII WATER COMPANY,)	
)	
For Approval of Amended Contribution in Aid)	
of Construction Fee. Transmittal No. 05-01.)	
_____)	

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, WAIKOLOA RESORT UTILITIES, INC., d/b/a WEST HAWAII UTILITY COMPANY, a Hawaii corporation, and WAIKOLOA WATER COMPANY, INC., d/b/a WEST HAWAII WATER COMPANY, a Hawaii corporation, (collectively, "Applicants"), each submitted transmittals to the Public Utilities Commission ("Commission") for approval of amended contribution-in-aid-of-construction fees, filed on October 31, 2005.

WHEREAS, Applicants' transmittals were consolidated under Docket No. 05-0288;

WHEREAS, Applicants anticipate that certain information that may be requested or filed during the course of the proceedings in Docket 05-0288 will be considered to be privileged and/or confidential;

WHEREAS, Applicants, the Division of Consumer Advocacy (“Consumer Advocate”), and Intervenor Waikoloa Mauka, LLC desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which any party, participant or intervenor may in the future contend to be confidential; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Hawaii Administrative Rules Section 6-61-50 that the Commission issue a protective order covering the confidential information identified in the course of the proceeding in the subject docket as follows (“Protective Order”):

TERMS OF THE ORDER

1. This Protective Order governs the classification, acquisition, and use of trade secrets, customer information, developer information, employee information, and other confidential information produced by any party, participant or intervenor in this docket.

2. All parties, participants, or intervenors, to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this Protective Order, shall be subject to this Protective Order and shall be entitled to confidential information of a party, participant or intervenor as permitted under the provisions of this Protective Order to the extent allowed by the Commission.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this Protective Order consist of “government records,” as defined in Hawai’i Revised Statutes (“HRS”) § 92F-3, the provisions of HRS Chapter 92F (“Uniform Information Practices Act” or “UIPA”) shall apply to the disclosure of information contained in such documents. In the event any provision of this Protective Order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. A party, participant or any intervenor to this proceeding may designate as confidential any information including but not limited to internal and external documents or cost support studies it believes, in good faith, contain trade secrets, employee information, customer information, developer information, or other confidential business, research, development, commercial, financial, vendor, or bid information. Such information shall be protected against disclosure to a non-Qualified Person pursuant to the terms of this Protective Order, unless such information is declassified, or permission to disclose the information to such non-Qualified Person is granted by the party, participant or intervenor claiming confidentiality, as provided in paragraph 13 below. In addition, a party, participant or intervenor may designate certain information as being confidential and not to be distributed to another party, participant or intervenor, (not including the Consumer Advocate) by notifying the Commission and the Consumer Advocate in writing setting forth in particularity the information to be kept as confidential and not available to the other party, participant or intervenor. With respect to such confidential information, the party, participant or intervenor to whom such information is being withheld shall be treated as a non-Qualified Person from whom such information shall be protected against disclosure in accordance with the terms of this Protective Order.

5. If a party, participant or intervenor seeks to designate information as confidential and does not intend to distribute such confidential information to a particular party, participant or intervenor as provided in paragraph 4 above, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party, participant or intervenor from any misuse or unpermitted disclosure of the information. If the Commission or any party, participant or intervenor challenges the claim of confidentiality of the information, or the non-disclosure of such confidential information, the party, participant or intervenor claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether: (1) the information is confidential and subject to protection under this protective order, or (2) the challenged information must be disclosed by the producing party, participant or intervenor. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or a party, participant or intervenor, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party, participant or intervenor shall notify the Commission and the parties, participants or intervenors when information provided orally or in other than written form includes confidential information. At the time of such notification, the party, participant or intervenor shall, in the manner provided in paragraph 5 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party, participant or intervenor from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all Qualified Persons (as defined by this Protective Order) as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

8. Any party, participant or intervenor claiming that information is confidential shall place upon the applicable material the following legend:

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party, participant or intervenor shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

Any party, participant or intervenor claiming that information is confidential and not be distributed to another party, participant or intervenor (not including the Consumer Advocate), pursuant to paragraph 4 above, shall place upon the applicable material the following legend:

CONFIDENTIAL FOR VIEWING ONLY BY THE CONSUMER ADVOCATE AND COMMISSION SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party, participant or intervenor shall, to the extent

reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of the party, participant or intervenor claiming the information is confidential, other persons shall, to the extent requested by that party, participant or intervenor, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party, participant or intervenor may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, participant or intervenor, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party, participant or intervenor from any misuse or unpermitted disclosure of the information. In addition, the party, participant or intervenor claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a "Qualified Person" as defined in paragraph 12 below.

12. "Qualified Person", as used in this Protective Order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission in this proceeding;
- c. The Consumer Advocate, its staff, counsel, (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate;
- d. Applicants, their respective officers, employees, and counsel (including employees directly employed by such counsel) and any consultants retained by Applicants;
- e. Subject to paragraph 4 above, any other party, participant or intervenor to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding, to the extent allowed by the Commission;
- f. Any other person approved by the party, participant or intervenor asserting the claim of confidentiality.
- g. Any other person designated as a qualified person by order of the Commission.

13. When a Qualified Person wishes to disclose confidential information to a non-Qualified Person, the Qualified Person must request permission from the party, participant or intervenor claiming confidentiality. The request shall identify the non-Qualified Person to

whom disclosure is desired; disclose any past, present, or anticipated affiliation between the Qualified Person and the non-Qualified Person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party, participant or intervenor claiming confidentiality, disclosure of the confidential information shall be made to such non-Qualified Person in the same manner as provided for Qualified Persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a Qualified Person other than the Commission and its staff, the Qualified Person shall read a copy of this Protective Order, complete a copy of the agreement attached as Exhibit A to this Protective Order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party, participant or intervenor claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this Protective Order shall be used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, and (c) the UIPA, including any ruling of the Office of Information Practices.

16. Subject to relevance, materiality, and any other evidentiary requirements that may be applicable and subject to confidential protection as contained or set forth in this Protective Order, any confidential information obtained under this Protective Order may be used

by the Commission and its staff in any proceeding pending before the Commission involving the producing party, participant or intervenor, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this Protective Order (or any other applicable Protective Order) is terminated by the producing party, participant or intervenor, or until further order of the Commission.

17. Subject to relevance, materiality, and any other evidentiary requirements that may be applicable and subject to confidential protection as contained or set forth in this Protective Order, any confidential information obtained under this Protective Order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party, participant or intervenor, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this Protective Order (or any other applicable protective order) is terminated by the producing party, participant or intervenor, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party, participant or intervenor desires to file written testimony, exhibits or pleadings that contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page,

with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order No. _____**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a Qualified Person.

20. Confidential information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER NO. _____ AND CONTAINS
DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT
IS NOT TO BE OPENED OR THE CONTENTS OF THIS
ENVELOPE DISPLAYED OR REVEALED EXCEPT TO
QUALIFIED PERSONS AUTHORIZED TO INSPECT THE
ENCLOSED DOCUMENTS.**

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party, participant or intervenor or person has obtained under this Protective Order, that party, participant or intervenor or person, prior to

disclosure, shall promptly notify the party, participant or intervenor claiming confidentiality of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this Protective Order shall be preserved until all interested parties, participants or intervenors, by written stipulation, terminate the protection conferred by this Protective Order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential or the non-disclosure of any information a party may claim as confidential pursuant to paragraph 4 above, the party, participant or intervenor claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party, participant or intervenor claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this Protective Order. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this Protective Order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties, participants or intervenors retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. Nothing in this Protective Order

shall prevent any party, participant or intervenor from objecting to requests for production of information or other discovery requests.

26. The parties, participants or intervenors retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may modify this Protective Order on the motion of any party, participant or intervenor, or on its own motion, upon reasonable notice to the parties, participants or intervenors and an opportunity for hearing.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party, participant or intervenor producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party, participant or intervenor producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, participant or intervenor, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representatives of record for a party, participant or intervenor shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to

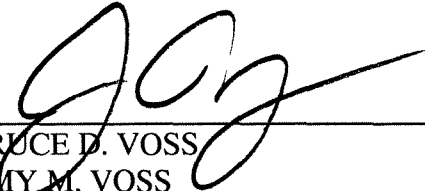
the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statute, and shall not be disseminated to any non-Qualified Person.

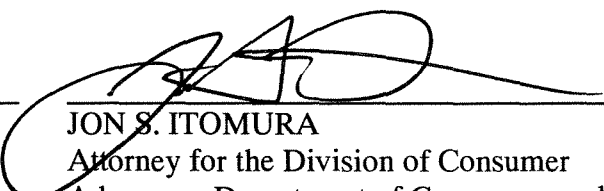
SANCTIONS

31. Any person violating this Protective Order shall be subject to sanctions imposed by the Commission.


DATED: Honolulu, Hawai'i, APR 24 2006



BRUCE D. VOSS
AMY M. VOSS
JOSHUA E. TREVE
Attorneys for Waikoloa Water Company, Inc.,
d/b/a West Hawaii Water Company and
Waikoloa Resort Utilities, Inc.,
d/b/a West Hawaii Utility Company



JON S. ITOMURA
Attorney for the Division of Consumer
Advocacy, Department of Commerce and
Consumer Affairs



MICHAEL H. LAU, ESQ.
Attorney for Waikoloa Mauka, LLC

APPROVED AND SO ORDERED THIS _____ day of _____, 2006 at
Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF HAWAII

By: _____
Carlito P. Caliboso, Chairman

By: _____
Wayne H. Kimura, Commissioner

By: _____
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Commission Counsel

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____ issued by the Public Utilities Commission of the State of Hawaii in Docket No. _____ on the _____ day of _____, 2006 ("Protective Order").

2. I am employed by, retained by or assisting _____ in Docket No. _____ and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party, participant or intervenor claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____,
2006.

Signature

Address

() _____
Telephone Number

CERTIFICATE OF SERVICE

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

JON S. ITOMURA
DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. Box 541
Honolulu, Hawai'i 96809

BRUCE D. VOSS, ESQ.
AMY M. VOSS, ESQ.
JOSHUA E. TREYVE, ESQ.
BAYS, DEAVER, LUNG, ROSE & BABA
Ali'i Place, 16th Floor
1099 Alakea Street
Honolulu, Hawai'i 96813

MICHAEL H. LAU, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street
400 Davies Pacific Center
Honolulu, Hawai'i 96813

Dated: _____

Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22450 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

BRUCE D. VOSS, ESQ.
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Attorneys for WAIKOLOA RESORT UTILITIES, INC. dba WEST
HAWAII UTILITY COMPANY, and WAIKOLOA WATER COMPANY, INC. dba
WEST HAWAII WATER COMPANY

BRUCE MOORE
DEVELOPMENT MANAGER
WEST HAWAII WATER COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703

WAIKOLOA RESORT UTILITIES, INC.,
dba WEST HAWAII UTILITY COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703

Certificate of Service - Continued
Page 2

MICHAEL H. LAU, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street
Suite 400
Honolulu, HI 96813

Attorneys for WAIKOLOA MAUKA, LLC



Karen Higashi

DATED: MAY - 3 2006