

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
METROPOLITAN MORTGAGE &)
SECURITIES CO., INC.)
For Sale of Membership Interest in)
Mokuleia Water, LLC, to North Shore)
Water Company, LLC.)

DOCKET NO. 2006-0137

ORDER NO. 23549

Filed July 18, 2007
At 10 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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2007 JUL 19 A 8:29

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

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

Karen Higashi

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Docket No. 2006-0137

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ORDER

By this Order, the commission approves NORTH SHORE WATER COMPANY, LLC's ("NSWC") July 11, 2007 Withdrawal of Application for Approval of Rate Increase ("Withdrawal"), which was filed in this docket on June 29, 2007.¹

I.

NSWC's Withdrawal

By Decision and Order No. 23471, filed on May 31, 2007, the commission conditionally approved METROPOLITAN MORTGAGE & SECURITIES CO., INC. ("Metropolitan")² and NSWC's joint

¹The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is an ex officio party to this proceeding. See Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

²Metropolitan is a Washington corporation which owned 100% of the sole membership interest in Mokuleia Water, LLC ("MWL"). Metropolitan was incorporated in 1979 and is licensed to conduct business in the State of Hawaii. In July 2002, Metropolitan, through MWL, acquired the water system operating in the Mokuleia area from Sankyo Tsusho Co., Ltd., through an intermediary company, Malani, Inc. On February 4, 2004, Metropolitan voluntarily petitioned the United States Bankruptcy Court in the

application to sell and transfer MWL's³ water facilities assets (the "Water System") to NSWC⁴ ("Proposed Transfer"). In compliance with the commission's directive, on June 18, 2007, NSWC submitted a filing evidencing its adherence to and acceptance of the regulatory conditions set forth in Decision and Order No. 23471.

On June 29, 2007, NSWC submitted an Application for Approval of Rate Increase ("Rate Increase Application") in this docket. In short, NSWC requests commission approval to increase its rates to be consistent with the Board of Water Supply rates and charges that will be effective July 1, 2007, and July 1, 2008. NSWC contends that its request will help defray the costs of maintaining and operating the Water System and that support for its request is based on the: (1) small size of the Water System (revenues of \$44,597.43 for the months June 2006 through May 2007); (2) demonstrated negative cash flows; and (3) unique nature of NSWC's position. Concurrently, NSWC also requests a waiver from any statutory provisions that may be

Eastern District of Washington for relief under Chapter 11 of the U.S. Bankruptcy Code.

³MWL is a Hawaii limited liability corporation. In July 2002, it obtained a water gathering and transmission system on the mountain side of Farrington Highway and a water distribution system that serves approximately 50 residences in the Mokuleia area through a permit allowing it to draw water from a potable well on the Dillingham Ranch property (i.e., the Water System). MWL does not hold a commission issued certificate of public convenience and necessity to operate as a public utility.

⁴NSWC is a limited liability company. Its sole member is Dillingham Ranch Aina LLC, a Delaware limited liability company.

deemed by the commission to be a financial hardship on NSWC or deemed unreasonable or unjust pursuant to HAR § 6-61-92.

On July 10, 2007, the Consumer Advocate filed its Statement of Position Regarding Completeness of Application ("Position Statement") informing the commission that it had various concerns with NSWC's Rate Increase Application and that it objects to the completeness of the filing.⁵ The Consumer Advocate asserts that it opposes the approval of a waiver of any of the statutory provisions in HRS Chapter 269 and the commission's rules regarding NSWC's application without knowing what is being waived since NSWC failed to specifically identify the provisions for which a waiver is being requested nor provided support for the requested waiver. The Consumer Advocate also objects to NSWC filing an application seeking rate relief in this transfer docket and argues that it would be in the public interest to address NSWC's rate relief request in a new docket.⁶

On July 11, 2007, NSWC filed its Withdrawal after receiving the Consumer Advocate's Position Statement.

⁵The Consumer Advocate determined that the NSWC's Rate Increase Application does not comply with numerous requirements of Subchapters 6 and 8 of HAR Chapter 6-61, the commission's rules of practice and procedure. See Consumer Advocate's Position Statement at 2-3.

⁶The Consumer Advocate asserts that "[i]f the [c]ommission chooses to examine the rate increase application within a docket where the issues previously related solely to the transfer of assets, the public will neither be afforded ample and appropriate notice of the proposed rate increases, nor an opportunity to provide the Consumer Advocate and the [c]ommission with comments or input about such proposals." See Consumer Advocate's Position Statement at 4.

II.

Discussion

NSWC seeks to withdraw its Rate Increase Application. As NSWC should not have filed for rate relief in this proceeding, which pertains to a transfer of assets, the commission finds the withdrawal appropriate. An examination of NSWC's proposed increase in rates in this docket would not have afforded NSWC's customers appropriate notice of the proposed rate increase nor an opportunity for them to express their concerns over such increase. Thus, the commission finds the filing of NSWC's Rate Increase Application in this docket to be improper and inconsistent with the public interest.

Based on the above, the commission concludes that NSWC's Withdrawal should be approved.

III.

Order

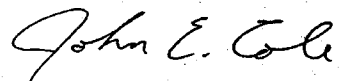
THE COMMISSION ORDERS:

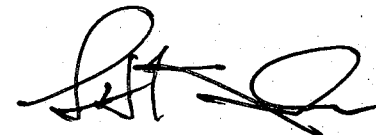
NSWC's July 11, 2007 Withdrawal of its Rate Increase Application, filed on June 29, 2007, is approved.

DONE at Honolulu, Hawaii JUL 18 2007.

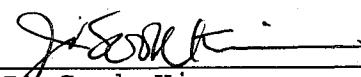
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2006-0137.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23549 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

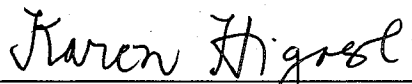
CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

METROPOLITAN MORTGAGE & SECURITIES CO., INC.
Attention: Maggie Lyons
601 W. 1st Street, 10th Floor
Spokane, WA 99201-5015

STEPHEN D. TOM, ESQ.
MARIE E. RILEY, ESQ.
WHITE & TOM
820 Mililani Street, Suite 711
Honolulu, HI 96813

Counsel for NORTH SHORE WATER COMPANY, LLC

NORTH SHORE WATER COMPANY, LLC
c/o KENNEDY WILSON, INC.
Attention: Clifford R. Smith
9601 Wilshire Boulevard, Suite 220
Beverly Hills, CA 90210



Karen Higashi

DATED: JUL 18 2007