

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

COUNTY OF MAUI,

Complainant,

vs.

WAI`OLA O MOLOKA`I, INC., MOLOKAI
PUBLIC UTILITIES, INC., AND
MOSCO, INC.,

Respondents.

DOCKET NO. 2008-0116

ORDER DENYING MOTION TO INTERVENE
FILED BY WEST MOLOKAI ASSOCIATION

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

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ORDER DENYING MOTION TO INTERVENE
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By this Order, the commission denies West Molokai Association's ("WMA") Motion to Intervene, filed on July 3, 2008 ("Motion").

I.

Formal Complaint

On June 16, 2008, the COUNTY OF MAUI ("County") filed a formal complaint with the commission against Respondents WAI`OLA O MOLOKA`I, INC. ("Wai`ola"), MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), and MOSCO, INC. ("Mosco") (collectively, "Utilities") ("Formal Complaint").¹ Citing the Utilities' statement of intent to discontinue utility services on Molokai by

¹The parties to this docket are the County, the Utilities, and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") (collectively, "Parties"), an ex officio party to any proceeding before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

the end of August 2008, the County alleged in the Formal Complaint that such a disruption in services "would cause an unprecedented public health catastrophe as well as irreparable harm to the Molokai economy."² The County also alleged that it would be directly affected by a shut-down of utility services since it is a customer of the Utilities.

The County asserts that a cessation of service by the Utilities would violate HRS § 269-19, and the terms and conditions of each of the Utilities' Certificates of Public Convenience and Necessity. As relief, the County requests the commission to take several measures, including: issuing an order to show cause why the Utilities should not be prohibited from ceasing operations or transferring or disposing of their assets; requiring the Utilities to prepare and submit a plan for their continued operation beyond August 2008; and investigating each of the Utilities and their respective operations, revenues, assets, practices, and services.³

II.

Motion

On July 3, 2008, WMA filed its Motion, stating that it is a non-profit corporation organized to provide for the management, maintenance, protection, preservation, architectural control, and development of properties on Molokai within the area commonly referred to as "West Molokai" or "Kaluakoi."

²Formal Complaint at 2.

³See id. at 3.

WMA's membership is comprised of owners of 817 properties located within Kaluakoi or West Molokai.⁴ Water and wastewater services are provided to the members of WMA by MPU and Mosco, respectively.⁵

In support of the Motion, WMA asserts that, because the Utilities have threatened to terminate services on August 31, 2008, its members are threatened with a loss of essential services.⁶ Moreover, "[b]ecause County of Maui has -- at least preliminarily -- exhibited a reluctance to take over the two systems serving WMA, WMA has financial property, health and safety interests at stake."⁷ WMA is also concerned about the commission's proposed temporary rate increase (in Docket No. 2008-0115) for MPU since the "increase for MPU's services will be born, virtually in its entirety, by individual members of WMA."⁸

As to how its interests are distinguishable from those of the Consumer Advocate's, WMA maintains:

Because [the Consumer Advocate] must represent the interests of customers of [Wai'ola] (which customers include Mauanaloa [sic], Kualapuu, south Kalae and other adjacent areas in Central and West Molokai) there is less time for [the Consumer Advocate] to represent WMA's interests.

⁴See Motion at 2.

⁵See id.

⁶See id. at 3.

⁷Id.

⁸Id.

Another distinguishing feature is the fact that [the Consumer Advocate] neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer to the Commission. Further, WMA has access to information not available to County or [the Consumer Advocate], which will assist the Commission and [the Consumer Advocate] in arriving at an informed decision.⁹

On July 11, 2008, the County filed a Response to the Motion ("Response"), stating that it "welcomes the participation of other customers of [the Utilities] in this docket."¹⁰ The County, however, had concerns about, and attempted to clarify, several statements made in the Motion.¹¹

III.

Discussion

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and

⁹Id. at 5-6.

¹⁰Response at 1.

¹¹On July 23, 2008, WMA filed a Reply to the County's Response ("Reply"). The commission does not consider WMA's Reply because it was not permitted under the commission's rules of practice and procedure. Specifically, HAR § 6-61-41 only allows for the filing of opposition memoranda to motions, but does not authorize the filing of reply memoranda. WMA did not request leave to file the Reply. Thus, as an unpermitted filing, the commission does not consider the Reply.

reasons for the proposed intervention and the position and interest of the applicant.

(b) The motion shall make reference to:

- (1) The nature of the applicant's statutory or other right to participate in the hearing;
- (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
- (3) The effect of the pending order as to the applicant's interest;
- (4) The other means available whereby the applicant's interest may be protected;
- (5) The extent to which the applicant's interest will not be represented by existing parties;
- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b).

HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." In addition, the Hawaii Supreme Court has stated the general rule on intervention as follows: "Intervention as a party

in a proceeding before the [commission] is not a matter of right but is a matter resting within the sound discretion of the commission." In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Upon review of the entire record, the commission finds that WMA's Motion lacks sufficient support, and should be denied. WMA's members are essentially utility customers of MPU and Mosco. Pursuant to HRS § 269-51, the Consumer Advocate "shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services" in the State. Thus, the Consumer Advocate is statutorily mandated to represent the interests of WMA's members in this docket, and will do so in this docket. WMA's assertions to the contrary in its Motion are unpersuasive.¹² Moreover, WMA has not otherwise demonstrated that it has any specialized expertise or information that would be pertinent to the commission's determination of the issues in this docket. For these reasons, it does not appear that WMA's participation in this docket will assist in the development of a sound and complete record, and the Motion should be denied.

¹²For example, WMA's arguments that the Consumer Advocate must divide its attention representing other utility customers, and that the Consumer Advocate will not actually feel the impact of a rate increase, could be made in almost every commission proceeding, and do not lend support to WMA's position.

IV.

Order

THE COMMISSION ORDERS:

WMA's Motion to Intervene, filed on July 3, 2008,
is denied.

DONE at Honolulu, Hawaii AUG - 8 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Kaiulani Kidani Shinsato
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Commission Counsel

2008-0116.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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