

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

WAIKOLOA SANITARY SEWER)
COMPANY, INC., dba)
WEST HAWAII SEWER COMPANY)

DOCKET NO. 05-0329

For Expedited Review and Approval)
to Increase Rates.)
_____)

DECISION AND ORDER

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

PUBLIC UTILITIES
COMMISSION

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For Expedited Review and Approval)
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DECISION AND ORDER

By this Decision and Order, the commission approves an increase in revenues of \$275,337 over present rates (41.67 percent), for WAIKOLOA SANITARY SEWER COMPANY, INC., dba WEST HAWAII SEWER COMPANY ("WHSC" or "West Hawaii Sewer"),¹ based on the 2006 calendar test year ("2006 Test Year"), in response to WHSC's Application filed on December 29, 2005.² The increase of \$275,337 in revenues over present rates (41.67 percent) is less than the interim increase in revenues of \$276,926 over present rates (41.91 percent) authorized by the commission in Interim Decision and Order No. 23940, filed on December 28, 2007.

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

²Application; Verification; Exhibits 1 to 9; and Certificate of Service, filed on December 29, 2005, as supplemented on January 20, 2006 (collectively, "Application"); see also Proposed Decision and Order No. 23688, filed on October 1, 2007, at 4 n.3 (the filing date of WHSC's complete application is December 29, 2005).

Thus, WHSC's monthly standby charge is decreased from the current interim monthly standby charge of \$36.77 per equivalent residential unit ("per unit") to \$36.67 per unit.³ Accordingly, WHSC is required to refund to its ratepayers the amounts it has collected that are in excess of the increase authorized by this Decision and Order, together with interest, pursuant to HRS § 269-16(d).

I.

Background

WHSC is a public utility that owns, administers, and operates a wastewater collection and treatment system that serves residential, multi-family, commercial, and other customers in the greater Waikoloa Village area on the island of Hawaii. The northern service area is served by the Kamakoa Water Reclamation Plant (the "K-Plant"), while the southern service area is served by the Auwaiakeakua Water Reclamation Plant (the "A-Plant"). WHSC's service territory includes two County of Hawaii ("County") affordable housing projects, known as Paniolo Estates and the Kekumu I, II, and III developments. WHSC's annual gross revenues are less than \$2 million.

According to WHSC:

Since [WHSC's] current rates were approved in 2002 (Decision and Order No. 19223, Docket No. 00-0440), the only significant new project added to the sewer system was

³WHSC's monthly sewer consumption charge of \$1.33 per thousand gallons ("TG") of metered water provided to its customers remains unchanged.

17th Fairway Villas which added 27 units to the A-Plant sewer system in 2005

Investment in utility plant since the previous rate case has been primarily in operating equipment. However, in anticipation of the expected increased demands on WHSC['s] facilities, an expansion of the A-Plant treatment facility is scheduled for completion in 2008. The design phase of this expansion is currently scheduled for 2006.

Application, at 3.

[WHSC] has invested in various pieces of equipment to enhance system operating and maintenance activities including upgraded telemetry equipment for improved system monitoring. Baseyard facilities have been expanded including improved work areas and storage facilities. The A-Plant potable waterline has been replaced, a new aeration piping system installed, and an effluent reuse system constructed.

Does WHSC expect to expand its facilities between now and the end of the 2006 test year?

No. However, [WHSC] will undertake the design phase of a major expansion of the A-Plant to accommodate projected influent wastewater increases from planned development and developments under construction. It is expected that the expanded facilities will be operational in 2008.

Application, Exhibit WHSC 7, at 3-4.

The A-Plant expansion is expected to increase capacity from the existing 300,000 gallons per day to 800,000 gallons per day. The K-Plant replacement will increase capacity to approximately 600,000 gallons per day.

WHSC's response to CA-IR-3.a.2.

WHSC's present rate structure consists of:
(1) an interim monthly standby charge of \$36.77 per unit, approved by the commission in Interim Decision and

Order No. 23940; and (2) a monthly sewer consumption charge of \$1.33 per TG of metered water provided to its customers.

A.

Procedural Summaries

1.

Docket No. 00-0440

In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Docket No. 00-0440 ("Docket No. 00-0440"), involves WHSC's application for a general rate increase based on the 2001 calendar test year ("2001 Test Year").⁴

On November 5, 2001, the commission issued Interim Decision and Order No. 18995, approving an increase of \$103,944 (17.3 percent) in revenues over present rates for WHSC. This interim increase in revenues resulted in an increase in the monthly standby charge to \$24.82 per unit, effective from November 7, 2001, with no increase in the monthly sewer consumption charge.

On February 27, 2002, the commission issued Decision and Order No. 19223, approving an increase of \$139,965 (23.31 percent) in revenues over present rates for WHSC. The increased revenues resulted in an increase in the monthly standby charge to \$27.13 per unit, effective from March 8, 2002, with no increase in the monthly sewer consumption charge.

⁴The commission takes official notice of Docket No. 00-0440. Similar to Docket No. 05-0329, the parties in Docket No. 00-0440 are WHSC and the Consumer Advocate.

By Decision and Order No. 19223, the commission adjudicated numerous issues in dispute, including the contributions-in-aid-of-construction ("CIAC") income tax gross-up issue and the Paniolo Estates CIAC issue. With respect to these two issues, the commission held, in relevant part:

B.

CIAC Tax Gross-Up

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From 1987 to June 11, 1996, CIAC funds received by WHSC were considered taxable income in the year received. During 1987 - 1996, WHSC collected approximately \$1,930,444 in CIAC, of which an estimated \$732,990 represented the portion for income taxes payable.⁵ However, since WHSC recorded negative taxable income in all but two years, WHSC remitted a lesser, five-figure amount to the taxing authorities for CIAC.⁶ WHSC retains the remaining six-figure balance of \$681,400, which was never remitted by WHSC to any taxing authority. Instead, this amount is reflected as a tax liability in WHSC's financial statements.⁷

⁵Footnote 9 of Decision and Order No. 19223 states: "WHSC states that no income taxes were collected on CIAC funds after June 12, 1996."

⁶Footnote 10 of Decision and Order No. 19223 states: "In other words, due to its reported net operating losses, which fully offset any taxable income in the given year, WHSC was not required to pay any income taxes for the other years."

⁷Footnote 11 of Decision and Order No. 19223 states:

WHSC disclosed the total amount of CIAC it received during the 1987 - 1996 period. See WHSC's responses to CA-RIR-11, filed on September 11, 2001. The total amount for income taxes payable is estimated using the income tax rate of 37.97 per cent. Hence, \$1,930,444 x 37.97% = \$732,990. WHSC also disclosed the remaining balance of \$681,400. See WHSC's position statement on the CIAC tax gross-up issue, filed on December 17, 2001, at 14 and Exhibit 5; see also supplemental stipulation, filed on October 19, 2001, at 4 - 5.

WHSC recorded the collection of CIAC in two separate accounts: (1) CIAC, net of income tax, was recorded in the CIAC account; and (2) the income tax portion was recorded as a credit to the Income Tax Payable account.

At issue is the treatment of the remaining six-figure balance collected for the income tax portion of CIAC, which was not remitted by WHSC to any taxing authority.

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Upon careful review, the commission finds that, under the facts of this case, the remaining balance of \$681,400 is not CIAC. Rather, this balance represents the amount collected by WHSC, from 1987 to 1996, for the payment of income taxes for the various projects under which CIAC was assessed.

During 1990 to 1996, the tariff rate of \$9.50 per gallon of estimated daily sewage discharge (EDSD) included the gross-up amount of \$2.25 per gallon EDSD for income tax payments.⁸ This portion of the amount collected was not used for the construction of new or expanded plant facilities. Rather, WHSC retained this portion to pay the income taxes due on the various projects of which CIAC was assessed. Prior to 1990, meanwhile, WHSC's tariff did not include Rule XI.⁹

The commission finds that WHSC's retention of the \$681,400 is inconsistent with the underlying purpose of the full gross-up method. The full gross-up method was not intended to allow a utility to collect and retain cash reserves for

⁸Footnote 13 of Decision and Order No. 19223 states:

Under the Small Business Protection Act of 1996, CIAC funds received by an affected utility after June 12, 1996, were no longer subject to income taxation. Accordingly, on June 12, 1996, WHSC filed its revised tariff with the commission, which, among other things, removed the \$2.25 per gallon EDSD from Rule XI. WHSC revised tariff took effect on August 12, 1996.

⁹Footnote 14 of Decision and Order No. 19223 states:

The record reveals that during this relevant period, from 1987 - 1989, WHSC collected CIAC and the income tax amounts attributed to the CIAC funds collected.

purposes other than the payment of income taxes for the tax year payable. As amply noted by the California Public Utilities Commission, in the event the utility did not have taxable income, there is no tax liability, and the utility should refund the tax to the contributor.

Based on the foregoing reasons, the commission will direct WHSC to refund to the contributors the remaining balance of \$681,400. Within 10 days from the date of this decision and order, WHSC shall submit to the commission for review and approval, a refund plan

C.

Paniolo Estates CIAC

Paniolo Estates is a development consisting of 177 single-family homes that are connected to WHSC's K-Plant. WHSC represents that Paniolo Estates is a County of Hawaii affordable housing project.

In its application, WHSC lists \$43,917 as the amount of CIAC collected for the Paniolo Estates project. This amount is based on a CIAC charge of \$400 per unit collected by WHSC for each of the 177 residential units, less 37.97 per cent for taxes paid. Payments for the Paniolo Estates CIAC were made in three installments, on November 15, 1991, May 6, 1992, and September 14, 1992.¹⁰

At the time of WHSC's receipt of CIAC for the Paniolo Estates project, WHSC's Rule XI, subsection 6, provided:

The amount contribution in aid of construction shall be \$9.50 per gallon of estimated annual average daily sewage discharge from the premises.

¹⁰Footnote 18 of Decision and Order No. 19223 states: "Specifically, on: (1) November 15, 1991, \$33,200; (2) May 6, 1992, \$16,600; and (3) September 14, 1992, \$21,000."

Rule XI.6, WHSC's Rules and Regulations Governing
Rate Schedules and the Provision of Sewer Service
to Customers.¹¹

The Consumer Advocate contends that:

1. Pursuant to Rule XI.6, WHSC should have properly charged, as CIAC, \$9.50 per gallon EDSD (which includes \$2.25 per gallon EDSD for income taxes), or a total of \$3,040 per unit.¹²
2. Under this scenario, a total sum of \$410,640 should have been collected as CIAC for Paniolo Estates.¹³
3. Thus, the amount of \$43,917 reflected as Paniolo CIAC should be increased by \$366,723.¹⁴

In essence, the Consumer Advocate proposes to increase WHSC's CIAC balance by \$366,723, based on WHSC's \$9.50 per EDSD tariff rate, on a net of tax basis (i.e., \$7.25 per gallon EDSD).¹⁵

The record reveals that the \$43,917 collected as CIAC was based on a written agreement, dated March 1988, between Transcontinental Development Company (TDC) and the County of Hawaii.

¹¹Footnote 19 of Decision and Order No. 19223 states:

WHSC's Rule XI initially took effect on July 5, 1990. At that time, the \$9.50 per gallon EDSD rate applied.

Under WHSC's current version of Rule XI, the \$7.25 per gallon EDSD rate applies.

¹²Footnote 20 of Decision and Order No. 19223 states:

320 gallons per day (gpd)/unit x \$9.50 per gallon EDSD = \$3,040 per unit. The 320 gpd/unit estimate is based on WHSC's Rule XI, subsection 8.

¹³Footnote 21 of Decision and Order No. 19223 states:
"\$3,040 x 177 units = \$538,080, less \$127,440 for income taxes = \$410,640."

¹⁴Footnote 22 of Decision and Order No. 19223 states:
"\$43,917 + \$366,723 = \$410,640."

¹⁵Footnote 23 of Decision and Order No. 19223 states:
"See Rule XI.6, effective July 6, 1990."

According to WHSC, "at the time of the agreement, [TDC] owned land at Waikoloa, Hawaii, and provided management services to the Waikoloa-based sewer and water utilities."¹⁶

Pursuant to the written agreement:

1. TDC elected to fulfill the County of Hawaii's affordable housing requirement by dedicating to the County 300 acres of land and supporting infrastructure, including wastewater improvements.
2. TDC agreed to provide, if and when required, improvements to the 300 acre site, to include the treatment, transmission, and pumping capacity to accommodate the development of the 300 acres; and
3. The County agreed to pay a "utility service connection fee" of \$400 per unit for sewer.

Thus, as WHSC states, the \$43,917 "reflects the amount actually collected from the County for the [Paniolo Estates] project, net of taxes."

The written agreement, dated March 1988, pre-dates the July 1990 effective date of WHSC's Rule XI. Under the circumstances, the date of the agreement controls. The fact that the CIAC payments were not made until 1991 and 1992, when Rule XI was in effect, does not abrogate the terms of the 1988 written agreement.

Based on the commission's rulings on this issue, the schedules attached to this decision and order reflect \$43,917 as the amount of CIAC collected for the Paniolo Estates project.

Decision and Order No. 19223, Sections IV.B and IV.C, at 12-19 (footnotes 15, 16, and 17, and text therein omitted).

¹⁶Footnote 24 of Decision and Order No. 19223 states:

An organizational chart produced by WHSC appears to shown an indirect relationship between TDC and WHSC. See WHSC Exhibit CA-IR-26-A, filed on May 14, 2001.

On March 11, 2002, WHSC filed a Motion for Reconsideration of Section IV.B of Decision and Order No. 19223. WHSC's motion was supported by the written declaration of its Vice President, Mr. Myron Yamasato, who declared in part:

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6. The nine Developers who would receive the proposed \$681,400 refund under the Order are identified in Exhibit 1. In addition, Exhibit 1 outlines three alternative refund plans for the Commission's consideration.

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16. The Order characterizes the \$681,400 allegedly un-remitted balance of the tax liability account as having been "retain[ed]" by WHSC. Order, at 13. WHSC, however, did not retain the Tax Component. Instead, it served as a source of funds from which regulatory assets were purchased.

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18. It is a misstatement to say that the Tax Component was not remitted to any taxing authority. Due to the nature of income tax filings, the issue is complex and cannot be so easily concluded that because WHSC did not directly remit income taxes (i.e., issue a check) that the Tax Component has not been remitted. One way to remit the gross-up would be to write a check (i.e., reduce an asset like cash and remove a liability such as taxes payable). Another equally valid way to remit the Tax Component would be to use up the NOL (an asset belonging to WHSC's shareholders [Re East Honolulu Community Services, Inc., Decision and Order No. 12679 (Docket No. 7064), at 18-19 (October 13, 1993)]), and to extinguish the liability (gross-up). In both cases, the liability has been removed, reduced and paid (indirectly and directly) by the company giving up an asset. As a result, WHSC did not retain the \$681,400.

19. Attached as Exhibit 3 is a source and use of funds schedule demonstrating that the cost of the assets purchased matches closely the contributions collected during the same period.

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25. In addition to ratepayers benefiting from WHSC's application of NOLs from 1987 to 1996, had the NOLs not been used to eliminate the tax liability, WHSC would have had to use the "tax component" of the contributions to pay corporate taxes. As a result, WHSC would have had to borrow funds to pay for the regulatory assets purchased during that same period. A schedule showing the foregone borrowing is attached as Exhibit 5.

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30. WHSC will have to look to its parent for the funds necessary to make the refund directed by the Order. No independent financial institution would make a loan of the monies necessary to make the refund under the Company's current circumstances, and in its current financial condition.

Declaration of Myron Yamasato, dated March 11, 2002 ("Mr. Yamasato's Declaration"), Paragraphs Nos. 6, 16, 18, 19, 25, and 30, at 2, 4, 5, 6, and 8 (emphasis added).

On March 18, 2002, the Consumer Advocate filed its Reply to WHSC's Motion for Reconsideration of Section IV.B of Decision and Order, opposing WHSC's motion. On April 10, 2002, the commission issued Order No. 19294, denying WHSC's motion for reconsideration.

On May 9, 2002, WHSC appealed Decision and Order No. 19223 and Order No. 19294 to the Hawaii Supreme Court ("Court"), asserting that the amount it had collected from contributors for the CIAC tax gross-up portion was CIAC, and thus, non-refundable under its CIAC tariff rule, Rule XI.

On December 29, 2005, the Court issued its opinion reversing Decision and Order No. 19223 and Order No. 19294, and remanding the case to the commission for appropriate disposition.¹⁷ On January 24, 2006, the Court issued its Notice and Judgment on Appeal.

On February 7, 2006, the commission issued Order No. 22275, vacating: (1) Section IV.B and Ordering Paragraph No. 3 of Decision and Order No. 19223; and (2) Order No. 19294.

On March 7, 2006, the Consumer Advocate filed a Motion for Partial Reconsideration and Modification of Order No. 22275 in which it argued that, as a result of the Court's decision, WHSC must now recalculate its 2001 Test Year revenue requirement and include the CIAC tax gross-up as a reduction to WHSC's 2001 Test Year rate base, effectively reducing WHSC's monthly standby charge. Specifically, the Consumer Advocate argued that, consistent with the Court's decision, the entire \$9.50 per gallon of EDSD collected by WHSC represented non-refundable CIAC, including the \$2.25 per gallon of EDSD collected for income tax purposes.

The Consumer Advocate also argued that, pursuant to HRS § 269-16(d), WHSC must refund, with interest, the excess monies it collected between the filing of Decision and Order No. 19223 on February 27, 2002 (\$27.13 monthly standby charge) until the date when the new standby charge will take

¹⁷In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., 109 Hawai'i 263, 125 P.3d 484 (Haw. 2005), as corrected on February 2, 2006 ("In re WHSC").

effect (\$19.94 monthly standby charge). On March 29, 2006, WHSC filed a Memorandum in Opposition to the Consumer Advocate's Motion for Partial Reconsideration and Modification of Order No. 22275.

On September 7, 2007, the commission issued Order No. 23635, granting the Consumer Advocate's motion. Thus, as set forth in Ordering Paragraphs No. 2 and 3 of Order No. 23635, the commission held:

2. WHSC's new standby monthly charge of \$19.94 per unit shall take effect on October 15, 2007. Consistent thereto, WHSC shall file by September 28, 2007, its updated tariff sheets to reflect the new charge, with the applicable issued and effective dates.

3. The Parties shall: (A) promptly calculate and reach an agreement on the amount of the refund, including interest, and the repayment terms, given the monthly standby charge amounts of \$24.82, \$27.13, and \$19.94 per unit; and (B) submit their joint agreement on these matters for the commission's review and consideration, by September 28, 2007. In the event that an agreement is not reached, each of the Parties shall submit their individual plans (including the refund amounts and repayment terms) and calculations for the commission's review and consideration by the same date.

Order No. 23635, Ordering Paragraphs No. 2 and No. 3, at 29-30.

On September 19, 2007, WHSC filed a Motion for Reconsideration and Vacation of Order No. 23635, and a Motion to Stay Order No. 23635.

On September 28, 2007, WHSC submitted its: (1) updated tariff sheets to reflect the new monthly standby charge of \$19.94 per unit, in compliance with Ordering Paragraph No. 2 of Order No. 23635, without prejudice; and (2) Refund Proposal in Compliance with Order No. 23635.

On October 5, 2007, the Consumer Advocate filed its: (1) Memorandum in Opposition to WHSC's Motion for Reconsideration and Vacation of Order No. 23635; and (2) Memorandum in Support of WHSC's Motion for Stay. The Consumer Advocate supported WHSC's request to stay Order No. 23635 until WHSC's motion for reconsideration was decided. On October 9, 2007, the commission stayed Order No. 23635, pending the commission's adjudication of WHSC's motion for reconsideration.¹⁸

On December 28, 2007, the commission issued Order No. 23939, granting in part and denying in part WHSC's Motion for Reconsideration and Vacation of Order No. 23635. In particular, the commission granted WHSC's request for reconsideration with respect to its Argument No. 4, and denied WHSC's request for reconsideration on its other arguments. In regards to WHSC's Argument No. 4, the commission held:

In Argument No. 4 of its Motion for Reconsideration, WHSC contends that Order No. 23635 imposes a \$732,990 rate base reduction without any amortization adjustment, "even though the Commission acknowledged that the CIAC tax gross-up funds were received by WHSC between 1987 and 1996."

.....

The revised revenue requirement schedule attached to this Order properly reflects an adjustment of \$718,330 for the unamortized CIAC balance, on December 31, 2001. As a result of this adjustment: (1) WHSC's average test year rate base increases by \$7,330; (2) WHSC's test year revenue requirement increases by \$1,141,

¹⁸See Docket No. 00-0440, Order No. 23701, filed on October 9, 2007.

to \$629,347; and (3) the monthly standby charge based on the revised test year revenue requirement of \$629,347 is \$20.01 per unit, \$0.07 more than the \$19.94 amount set forth in Order No. 23635.

Docket No. 00-0440, Order No. 23939, at 20-21 (footnotes, text, and citation therein omitted) (emphasis added).

The commission, by its Ordering Paragraphs, then held:

THE COMMISSION ORDERS:

1. WHSC's Motion for Reconsideration, filed on September 19, 2007, is granted in part and denied in part, consistent with the terms of this Order.

2. WHSC's request for reconsideration with respect to its Argument No. 4 (adjustment for amortization) is granted. The revised revenue requirement schedule that establishes the new monthly standby charge of \$20.01 per unit is attached hereto.

3. WHSC's request for reconsideration with respect to its other remaining arguments is denied.

4. Order No. 23701, filed on October 9, 2007, which stayed Order No. 23635 pending the commission's adjudication of WHSC's Motion for Reconsideration, is hereby dissolved, consistent with HAR § 6-61-138.

5. The new monthly standby charge of \$20.01 per unit shall take effect on January 9, 2008.

6. WHSC shall: (A) re-calculate its refund plan, by including interest at its authorized rate of return, consistent with HRS § 269-16(d); and (B) provide the commission and the Consumer Advocate with the data and worksheets in support of WHSC's calculations. WHSC shall file its revised refund plan and supporting data and worksheets with the commission by January 25, 2008, with copies served on the Consumer Advocate.

7. The Consumer Advocate shall have the opportunity to review and comment on WHSC's revised refund plan. The Consumer Advocate's comments, if any, shall be due by February 11, 2008.

Order No. 23939, Ordering Paragraphs Nos. 1 to 7, at 36-37 (emphasis added).

On January 10, 2008, WHSC filed its Notice of Appeal with the commission, appealing "to the Intermediate Court of Appeals of the State of Hawaii from the Hawaii Public Utilities Commission's . . . Order No. 23635 filed on September 7, 2007 in Docket No. 00-0440, . . . as well as the Commission's Order No. 23939 Granting In Part and Denying in Part WHSC's Motion for Reconsideration and Vacation of Order No. 23635, filed on December 28, 2007 in Docket No. 00-0440[.]"¹⁹

On January 25, 2008, WHSC filed with the commission its Refund Proposal Submitted in Compliance with Order No. 23939, "without prejudice to its Notice of Appeal filed on January 10, 2008[.]"²⁰ On February 11, 2008, the Consumer Advocate filed its Comments in Response to WHSC's Refund Proposal.

On May 19, 2008, the Intermediate Court of Appeals issued an order dismissing WHSC's appeal for lack of appellate jurisdiction, finding that "Order No. 23635 and Order No. 23939 do not appear to have ended the proceedings because the rights of

¹⁹In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Appeal No. 28954, WHSC's Notice of Appeal, at 1.

²⁰Refund Proposal Submitted in Compliance with Order No. 23939; Exhibits 1 - 2; and Certificate of Service (collectively, "Refund Proposal"), at 2.

the parties remain undetermined in that the [commission] has retained this matter for further determination of the validity of [WHSC's] revised refund plan."²¹ Thus, WHSC's Refund Proposal is pending decision-making by the commission.

2.

Docket No. 05-0329

On December 29, 2005, WHSC filed an Application for a general rate increase based on the 2006 Test Year.²² On March 8, 2006, the commission held a public hearing on WHSC's Application, at the Waimea Civic Center, in Kamuela, island of Hawaii.²³ On March 24, 2006 and April 21, 2006, WHSC submitted its responses to the Consumer Advocate's information requests.

²¹In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Appeal No. 23854, Order Dismissing Appeal, filed on May 19, 2008, at 2; see also Appellee State of Hawaii Public Utilities Commission's Statement Contesting Jurisdiction, filed on March 20, 2008.

²²The filing date of WHSC's complete Application was December 29, 2005. See Proposed Decision and Order No. 23688, at 4 n.3.

²³The Notice of Public Hearing states in part:

The Commission will investigate whether the proposed general increase in WHSC's wastewater rates and charges, and its revisions to its rate schedules, are just and reasonable. The total revenue requirement for the 2006 calendar test year will not exceed the \$353,669 amount over revenues at present rates that WHSC requests. However, the increase in rates and charges to be finally approved by the Commission, if any, may be higher or lower than WHSC's proposed rates and charges noted above.

Notice of Public Hearing, at 2. A detailed description of the public hearing process is set forth in Proposed Decision and Order No. 23688, Section II.B, Public Hearing Process, at 6-8.

On April 4, 2006, the commission approved the proposed Stipulated Procedural Order agreed upon by the Parties.²⁴ Pursuant thereto: (1) on May 12, 2006, the Consumer Advocate filed its Initial Direct Testimony, in lieu of a position statement;²⁵ and (2) on May 26, 2006, WHSC filed its Statement of Position.²⁶ Thereafter, on November 8, 2006, WHSC filed its Statement of Probable Entitlement,²⁷ and on November 28, 2006, the Consumer Advocate filed its Statement of Probable Entitlement.²⁸

By Proposed Decision and Order No. 23688, filed on October 1, 2007, the commission proposed a general rate increase of \$277,439 over revenues at present rates (42.1 percent) for WHSC, based on a total revenue requirement of \$937,052 for the 2006 Test Year. In so doing, the commission proposed an increase in WHSC's monthly standby charge to \$36.73 per unit, with no increase in the monthly sewer consumption charge of

²⁴Stipulated Procedural Order No. 22370, filed on April 4, 2006.

²⁵See Consumer Advocate's Direct Testimony; Exhibits; Supporting Workpapers; and Certificate of Service, filed on May 12, 2006; and letter dated May 12, 2006, enclosing confidential information under seal (collectively, "Initial Direct Testimony").

²⁶See WHSC's Statement of Position; Declaration of Richard Terminello; Exhibits 10 to 16; and Certificate of Service, filed on May 26, 2006 (collectively, "Statement of Position").

²⁷See WHSC's Statement of Probable Entitlement to Interim Rate Increase Pursuant [to] H.R.S. § 269-16(d); Exhibits 13 to 16; and Certificate of Service, filed on November 8, 2006 (collectively, "Statement of Probable Entitlement").

²⁸See Consumer Advocate's Statement of Probable Entitlement; Exhibits; and Certificate of Service, filed on November 28, 2006 (collectively, "Statement of Probable Entitlement").

\$1.33 per TG of metered water provided to its customers. The deadline for each of the Parties to "notify the commission as to whether it accept[ed], in toto, or [did] not accept, in whole or in part, [the] Proposed Decision and Order," was October 15, 2007.²⁹

On October 15, 2007, WHSC filed its Notice of Partial Acceptance and Notice of Partial Non-Acceptance of Proposed Decision and Order No. 23688.³⁰ In addition, by letter dated October 15, 2007, the Consumer Advocate notified the commission that it "accept[ed] in toto, the merits of the discussion contained in said proposed Decision and Order and the Commission's findings with regard to the differences between the parties."³¹

By its Notice, WHSC informed the commission that it objected to and did not accept: (1) the commission's upward adjustment of \$546,968 to WHSC's CIAC balance, which increased WHSC's 2006 Test Year CIAC balance to \$2,209,707; and (2) the commission's failure to properly calculate the accumulated amortization of CIAC, even if some upward adjustment of CIAC was appropriate. WHSC accepted, with reservations, the remainder of Proposed Decision and Order No. 23688.

²⁹Proposed Decision and Order No. 23688, Ordering Paragraph No. 3, at 51; see also id., Section XIV, Acceptance or Non-Acceptance, at 50-51.

³⁰Notice of Partial Acceptance and Notice of Partial Non-Acceptance of Proposed Decision and Order No. 23688; and Certificate of Service, filed on October 15, 2007 (collectively, "Notice").

³¹Consumer Advocate's letter, dated October 15, 2007, with attachments (Exhibits A and B), at 1.

In addition, WHSC requested a contested case hearing on the rulings it contested, in accordance with HRS § 269-16(f).

While the Consumer Advocate, by its letter dated October 15, 2007, accepted in toto the merits of the commission's discussion contained in Proposed Decision and Order No. 23688, the Consumer Advocate noted that certain adjustments should be made to WHSC's total revenue requirement that ultimately resulted in an adjusted monthly standby charge of \$36.77 per unit, \$.04 more per unit.³²

On December 28, 2007, the commission issued Interim Decision and Order No. 23940, approving on an interim basis an increase in revenues of \$276,926 over present rates (41.91 percent) for WHSC. In doing so, the commission authorized an increase in WHSC's monthly standby charge to \$36.77 per unit. The commission also instructed the Parties to submit by January 25, 2008, a stipulated prehearing order for the commission's review and consideration that identified the remaining issues in dispute and remaining procedures, including a contesting case hearing, if such a hearing was not waived by the Parties. On January 9, 2008, WHSC's interim increase in its monthly standby charge to \$36.77 per unit took effect, pursuant to Interim Decision and Order No. 23940.³³

³²See Consumer Advocate's letter, dated October 15, 2007, at 1-2; and Exhibits A and B attached thereto.

³³See Interim Decision and Order No. 23940, Ordering Paragraph No. 2, at 13; and WHSC's letter, dated January 8, 2008, transmitting WHSC's updated tariff sheet.

On February 13, 2008, the commission adopted, with modifications, the stipulated prehearing order jointly submitted by the Parties on January 25, 2008, to govern the remainder of this proceeding.³⁴ In accordance with Order No. 24036, on March 3, 2008, the Parties filed their direct testimonies and exhibits.³⁵

On April 2, 2008, the prehearing conference was held as scheduled.³⁶ Consistent with Order No. 24036: (1) on April 14, 2008, WHSC filed its Hearing Exhibits; and (2) on April 16, 2008, WHSC informed the commission that eight of the Hearing Exhibits which it previously designated as confidential and filed under protective seal, no longer represented a privacy concern to WHSC or its customers, and thus, were no longer subject to any designation of confidentiality.³⁷

³⁴Order No. 24036, filed on February 13, 2008.

³⁵Direct Testimony of Richard Terminello; Exhibit 1; and Certificate of Service, filed on March 3, 2008 (collectively, "Direct Testimony"); and Consumer Advocate's Direct Testimony; and Exhibits (filed under confidential seal), filed on March 3, 2008, as corrected (see Consumer Advocate's Revised Pages to its Direct Testimony and Exhibits, filed on May 13, 2008) (collectively, "Direct Testimony").

³⁶Order No. 24123, filed on April 4, 2008 (prehearing conference order).

³⁷WHSC's Hearing Exhibit List; Hearing Exhibits A - S; and Certificate of Service, filed on April 14, 2008; and WHSC's letter, dated April 16, 2008. At the outset of the evidentiary hearing, the commission acknowledged WHSC's waiver of confidentiality. See Transcript of the Evidentiary Hearing, held on April 17, 2008 ("Transcript"), at 5.

On April 17, 2008, the evidentiary hearing was held as scheduled.³⁸ One witness for each of the Parties appeared and testified before the commission.³⁹ Thereafter, on May 7, 2008, the commission issued certain post-hearing instructions to the Parties.⁴⁰ On May 13, 2008, the Consumer Advocate filed its Revised Pages to its Direct Testimony and Exhibits.

³⁸See Notice of Evidentiary Hearing, dated February 22, 2008; and Transcript.

³⁹At the evidentiary hearing, the Parties were represented by the following counsel: (1) for WHSC, Bruce D. Voss, Esq., and Lori N. Tanigawa, Esq.; and (2) for the Consumer Advocate, Jon S. Itomura, Esq., and Lane H. Tsuchiyama, Esq. Mr. Richard Terminello testified on behalf of WHSC, and Ms. Cheryl Kikuta testified on behalf of the Consumer Advocate.

⁴⁰The commission specifically instructed as follows:

THE COMMISSION ORDERS:

1. The Consumer Advocate shall promptly file the corrections orally made to its pre-filed Direct Testimony, with copies served on WHSC.

2. The Parties shall, in their post-hearing briefs, address the applicability of the filed-rate doctrine in relationship to Issue No. 1, specifically as it relates to the MOA, i.e., WHSC's Hearing Exhibit C. The Parties' post-hearing briefs shall include a discussion on: (A) whether the filed-rate doctrine applies; and (B) if so, the effect of applying the filed-rate doctrine herein.

3. The Parties shall include as attachments to their post-hearing briefs, results of operation schedules that reflect the party's position. The results of operation schedules shall identify the source of the specific amounts or figures proposed for each account or balance.

Order No. 24183, filed on May 7, 2008, at 4.

On June 2, 2008, the Parties filed their Post-Hearing Opening Briefs,⁴¹ and on June 23, 2008, they filed their Post-Hearing Reply Briefs.⁴²

B.

Proposed Decision and Order No. 23688

With respect to the issues involving WHSC's 2006 Test Year CIAC balance and the accumulated amortization of CIAC, the commission, in Proposed Decision and Order No. 23688, held:

A.

CIAC Balance

West Hawaii Sewer proposes to recognize \$1,662,739 as the CIAC balance at both December 31, 2005 and December 31, 2006. Of this amount, \$503,216 represents fees collected pursuant to WHSC's Tariff (i.e., cash contributions) and \$1,159,523 represents the costs of facilities that were contributed to the company (i.e., in-kind contributions).

In its direct testimonies, the Consumer Advocate recommended an upward adjustment of \$623,690 to West Hawaii Sewer's proposed CIAC balance, for a CIAC balance of \$2,286,429. However, in its Statement of Probable Entitlement, the Consumer Advocate states that "the \$623,690 adjustment requires further refinement based on

⁴¹WHSC's Opening Brief; Declaration of Bruce Moore; Declaration of Lori N. Tanigawa; Exhibit A, and Certificate of Service, filed on June 2, 2008; and Submission of Original Declaration of Bruce Moore, filed on June 5, 2008 (collectively, "Opening Brief"); and Consumer Advocate's Opening Brief; Certificate of Service; and Exhibits, filed on June 2, 2008 (collectively, "Opening Brief").

⁴²WHSC's Reply Brief; Exhibit A; and Certificate of Service, filed on June 23, 2008 (collectively, "Reply Brief"); and Consumer Advocate's Reply Brief; and Certificate of Service, filed on June 23, 2008 (collectively, "Reply Brief").

the reconciliation conducted of information presented in the instant proceeding and in Docket No. 00-0440". Thus, the Consumer Advocate's Statement of Probable Entitlement includes revised tables and workpapers that recommend a reduced upward adjustment of \$546,968 to West Hawaii Sewer's proposed CIAC balance, for a CIAC balance of \$2,209,707.

As demonstrated by the Consumer Advocate's Contribution in Aid of Construction Reconciliation Schedule ("Consumer Advocate's CIAC Reconciliation Schedule["]), the Consumer Advocate's \$546,968 recommended adjustment is based on two adjustments to West Hawaii Sewer's proposed CIAC balance. First, the Consumer Advocate recommends that West Hawaii Sewer's proposed CIAC balance should include "the amounts that should have been collected pursuant to [West Hawaii Sewer]'s then[-]effective tariff." The Consumer Advocate states, "[w]hile [West Hawaii Sewer] acknowledged the need to reflect these amounts in its rebuttal testimony in Docket No. 00-0440, it incorrectly excluded these amounts in the instant proceeding." West Hawaii Sewer does not address the Consumer Advocate's concern regarding these exclusions. Therefore, the commission accepts the Consumer Advocate's adjustment of \$114,944 to CIAC fees as reasonable.

Second, the Consumer Advocate recommends that West Hawaii Sewer's proposed CIAC balance should include the tax gross-up amounts for the CIAC fees, including the above-discussed adjustment, and for certain in-kind CIAC. The Consumer Advocate calculates the total tax gross-up CIAC as \$432,021.

The commission agrees with the Consumer Advocate that West Hawaii[] Sewer's proposed CIAC balance is unreasonable because it fails to include the tax gross-up CIAC. In Order No. 23635, the commission recognized that "an adjustment [to the CIAC reported net of income tax] should be made to include the income tax component as part of [West Hawaii Sewer]'s test year CIAC, consistent with [In re Waikoloa Sanitary Sewer Company, Inc., 109 Hawai'i 263, 125 P.3d 484 (Haw. 2006)]."⁴³

⁴³Footnote 102 of Proposed Decision and Order No. 23688, cites to "Order No. 23635, filed on September 7, 2007, in Docket No. 00-0440, at 18."

Therefore, consistent with Order No. 23635, West Hawaii Sewer's CIAC balance for rate-setting purposes should include the tax gross-up component. Thus, the commission accepts the Consumer Advocate's recommendation to include \$432,021 for the CIAC tax gross-up as part of the CIAC balance.

Based on the foregoing, the commission finds that an upward adjustment of \$546,968⁴ to West Hawaii Sewer's proposed CIAC balance, for a CIAC balance of \$2,209,707, is reasonable.

B.

Accumulated Amortization of CIAC

In its Rebuttal, West Hawaii Sewer states that "the [Consumer Advocate] assumes . . . that a 50-year amortization period for CIAC is appropriate, when in fact the actual average useful life of [West Hawaii Sewer's] fixed assets is approximately 17.8 years." West Hawaii Sewer provides Exhibit 11, entitled "Schedule of Utility Plant Assets Useful Lives As At [sic] April 30, 2006," which lists 115 assets having useful lives ranging from three years to fifty years. West Hawaii Sewer computed a straight average of the 2,046 total years of useful life over the 115 assets, for an average useful life of 17.79 years (rounded to a 17.8 amortization period for CIAC).

The Consumer Advocate states that "[West Hawaii Sewer]'s proposal to apply a shorter amortization period is inconsistent with the period that the Company currently uses to amortize CIAC." The Consumer Advocate points out that "[a]s noted in WHSC [Exhibit] 8, page 79 of 101, CIAC is amortized over a 50-year period." Thus, the Consumer Advocate maintains that "[t]he Consumer Advocate's amortization of the CIAC income tax gross-up amounts is not arbitrary

⁴Footnote 103 of Proposed Decision and Order No. 23688, states:

Based on the foregoing, \$114,944 to include the CIAC amounts that should have been collected plus \$432,021 for the CIAC tax gross-up equals \$546,965. However, the commission adopts an upward adjustment of \$546,968, as shown on CA-WP-113 (Rev. 11/27/06).

and is consistent with the period that the Company amortizes the non-income tax CIAC collections."

The commission agrees with the Consumer Advocate that a 50-year amortization period is consistent with West Hawaii Sewer's amortization life for CIAC. Indeed, West Hawaii Sewer provided Appendix F to its Application, attached as WHSC Exhibit 8, pages 75 through 83 of 101, stating that "Appendix F contains detailed schedules of CIAC and accumulated amortization calculations for the years ending December 31, 2005 and 2006." As Appendix F demonstrates, West Hawaii Sewer appears to utilize a 50-year amortization life for the majority of its CIAC. Accordingly, the commission accepts a 50-year amortization period for CIAC as reasonable.

Proposed Decision and Order No. 23688, sub-sections VIII.A, CIAC Balance, and VIII.B, Accumulated Amortization of CIAC, at 35-40 (footnotes 92-101 and 104-112, text, and citations therein omitted).

C.

Interim Decision and Order No. 23940

In approving an interim increase in WHSC's rates, the commission, in Interim Decision and Order No. 23940, held:

A.

Results of Operation

Based on the commission's review of the docket record, including the Parties' October 15, 2007 filings, the commission finds that WHSC is probably entitled to increase its monthly standby charge to \$36.77 per unit, as adjusted by the Consumer Advocate. These adjustments reflect: (1) the changes to WHSC's Test Year revenues at present rates, based on WHSC's monthly standby charge of \$20.01 per unit, as established by the commission in its recent Order issued in Docket No. 00-0440; and

(2) the increase in WHSC's Test Year working cash by approximately \$3,885, resulting in a revised Test Year revenue requirement of approximately \$937,697.

For interim rate relief purposes, the commission will apply the average test year methodology. Attached to this Interim Decision and Order is Exhibit A, which provides the estimates of WHSC's operating revenues and expenses and the average depreciated rate base for the Test Year.

For purposes of this Interim Decision and Order, the commission utilizes the 8.85 percent rate of return on the average depreciated rate base of \$921,295, and finds that interim rate relief in the amount of \$276,926 in additional revenues, or an approximate 42 percent increase in revenues over present rates, is appropriate. Based on the record, it appears that WHSC will be probably entitled to the level of relief that the commission grants in this Interim Decision and Order. The interim rate relief granted meets WHSC's need for immediate rate relief and protects the interests of the ratepayers.

The commission emphasizes that the findings and adoption here of the various amounts reflected in Exhibit A are for the purposes of this Interim Decision and Order only. The commission's final decision will reflect a detailed review and analysis of all work papers, schedules, and other materials produced by the Parties.

B.

Interim Rate Design

For interim purposes, the commission authorizes an increase in WHSC's monthly standby charge to \$36.77 per unit, with no interim increase in WHSC's sewer quantity charge of \$1.33 per thousand gallons of metered water. Moreover, in order to avoid rate fluctuation, the commission determines that the monthly standby charge of \$36.77 per unit established by this Interim Decision and Order will be effective on the same day that the monthly standby charge for WHSC is established in the recent Order issued by the commission in Docket No. 00-0440.

C.

Refund

WHSC will be required to refund to its customers any excess collected under this Interim Decision and Order, together with such interest as provided for by HRS § 269-16(d), if the final increase approved by the commission is less than the total interim increase granted by this Interim Decision and Order.

Interim Decision and Order No. 23940, Section II.A, B, and C, at 9-11 (footnotes and citations therein).

D.

Issues

As set forth in Exhibit 1 of Order No. 24036, the remaining issues in this proceeding, as agreed-upon by the Parties, are:

1. Whether the commission erred in approving an upward adjustment of \$546,968 to WHSC's CIAC balance, increasing WHSC's CIAC balance to \$2,209,707.
2. Even assuming some upward adjustment of CIAC was reasonable, whether the commission erred in calculating the accumulated amortization of CIAC.

The first issue will involve a review of sub-issues including, but not limited to, the following:

- A. Whether the commission's upward adjustment of \$114,944 in CIAC is appropriate.
- B. Whether the commission's upward adjustment of \$432,021 in claimed tax gross-up amounts to WHSC's CIAC is appropriate.
- C. Whether the commission's upward adjustment of \$432,021 in claimed tax gross-up amounts to WHSC's CIAC balance violates the Hawaii Supreme Court's decision in In re Waikoloa Sanitary Sewer Company, Inc., 109 Hawai'i 263 (2005).
- D. Whether the commission's calculation of tax gross-up was proper.

The second issue will involve a review of sub-issues including, but not limited to, the following:

- E. Whether a 50-year amortization period for the claimed additional CIAC is reasonable.
- F. Whether the commission's calculation of accumulated amortization for the claimed CIAC funds beginning in 2001 rather than the in-service dates of the unidentified regulatory assets was proper.

See Exhibit 1, at 3-4, of Order No. 24036; see also Notice of Evidentiary Hearing.

E.

WHSC's Position

In general, WHSC contends that: (1) the commission's upward adjustment of \$546,968 to WHSC's 2006 Test Year rate base is unjust and unreasonable (Issue No. 1); and (2) it met its burden of proving that more likely than not, the commission erred in approving a fifty-year amortization period and a 2001 commencement date (Issue No. 2).⁴⁵ WHSC asserts that it is already in a substantially weakened financial position, it has been effectively subsidizing sewer service to Waikoloa Village since 1970, it has never turned a profit, and "an order which continues to deny a utility the opportunity to turn a profit, much less break even cannot be considered to fall within the 'zone of reasonableness.'"⁴⁶

⁴⁵See WHSC's Statement of Position; Statement of Probable Entitlement; Direct Testimony; and Opening Brief.

⁴⁶WHSC's Opening Brief, at 17.

Sub-Issue No. 1A

WHSC notes that the \$114,944 adjustment is based upon the amounts which the Consumer Advocate claims "should have been collected" pursuant to WHSC's then effective tariff for the Kekumu I, II, and III developments in the County's affordable housing project. WHSC objects to the commission's upward adjustment of \$114,944 in CIAC, related to the Kekumu I, II, and III developments. In support of its position, WHSC states:

1. On March 2, 1988, TDC and the County entered into the MOA, "whereby the County agreed to pay TDC a utility connection service fee of \$400 per unit for sewer service for the first five years of the MOA, and then \$600 per unit for sewer service thereafter At that time, TDC owned land in Waikoloa and provided management services to the Waikoloa-based sewer utility."⁴⁷

2. Prior to having an approved tariff, WHSC negotiated connection fees with each developer, the terms and conditions of which were memorialized in written agreements. The MOA is one such agreement that WHSC entered into with the County before WHSC had a tariff. WHSC's tariff did not take effect until July 1990. "Thus, at the time the MOA was entered into, WHSC could not have collected the amounts which the Consumer Advocate claims 'should have been' collected because there was no CIAC tariff in effect."⁴⁸

⁴⁷WHSC's Direct Testimony, at 3.

⁴⁸WHSC's Direct Testimony, at 3.

3. "The MOA was a valid and binding agreement between TDC and the County, and under the terms of the MOA, the County was only obligated to pay \$400 per unit for the first five years and then \$600 per unit thereafter for sewer service. As long as the County continued to perform its contractual obligations, WHSC was obligated to honor the terms of the MOA. Indeed, in [Decision and] Order No. 19223, the Commission confirmed that, "the fact that CIAC payments were not made until 1991 and 1992, when [CIAC] Rule XI was in effect, does not abrogate the terms of the [MOA].'"⁴⁹

4. In addition to Paniolo Estates, the MOA governed the Kekumu I, II, and III developments, and pursuant thereto, WHSC received monies from the County for the Kekumu I, II, and III developments.

5. Contrary to the commission's decision in Proposed Decision and Order No. 23688, WHSC did not receive \$114,944 from the County; instead, "WHSC received \$34,985, net of taxes[,] for the Kekumu I, II, and III developments, pursuant to the MOA."⁵⁰

6. In Docket No. 00-0440, Decision and Order No. 19223, "the Commission opined that amounts collected from the County pursuant to [the] 'written agreement, dated March 1988, pre-dates the July 1990 effective date of WHSC's Rule XI. Under the circumstances, the date of the agreement controls.' Thus, the Commission concluded that monies WHSC never received, in accordance with the

⁴⁹WHSC's Direct Testimony, at 4.

⁵⁰WHSC's Direct Testimony, at 4.

March 1988 agreement, are not CIAC and do not reduce WHSC's rate base. To allow the \$114,944 adjustment would therefore directly contravene the Commission's [Decision and] Order No. 19223."⁵¹

7. The doctrine of collateral estoppel: (A) precludes the relitigation of a fact or issue that was previously adjudicated in a prior action on a different claim between the same parties or party in privity with a party to the prior adjudication, and which was essential to the earlier valid and final judgment; and (B) applies to matters litigated before an administrative agency.⁵² Thus, the Consumer Advocate is estopped from seeking an upward adjustment of CIAC monies which it believes should have been collected pursuant to WHSC's then effective tariff.

8. The Consumer Advocate's contention that the commission's ruling in Decision and Order No. 19223 only pertains to the Paniolo Estates development and does not extend to the Kekumu I, II, and III developments is without merit. According to WHSC:

The Paniolo Estates project and Kekumu I, II, and III developments are identical for ratemaking purposes and should be treated as such. Both projects are: (1) affordable housing projects, see WHSC Hearing Exhibit C; (2) developed by the County, see id.; (3) located within WHSC's service territory, see Declaration of Bruce Moore; (4) governed by the same March 1988 MOA at issue in Decision and

⁵¹WHSC's Direct Testimony, at 2.

⁵²WHSC cites to the following cases in its discussion of the doctrine of collateral estoppel: Dorrance v. Lee, 90 Hawai'i 143, 976 P.2d 904 (1999); and Santos v. State Dep't of Transp., 64 Haw. 648, 646 P.2d 962 (1982).

Order No. 19223, see Direct Testimony of Richard Terminello, p.4, lines 10 - 11; and (5) subject to the same CIAC fee under the terms and conditions of the MOA, see WHSC Hearing Exhibit C. Moreover, it is undisputed that if WHSC [was] required to reflect additional CIAC monies for the Kekumu I, II, and III developments, this would result in disparate treatment between the two projects. See Trans., p.93, lines 1 - 4. Inasmuch as the Consumer Advocate presented no evidence which supports the disparate treatment of the Kekumu I, II, and III developments, the Consumer Advocate's argument that Decision and Order No. 19223 is inapplicable to the Kekumu I, II, and III developments fails. Accordingly, the issue of whether WHSC should be required to reflect CIAC monies which it did not collect in accordance with the March 1988 MOA was already adjudicated in a prior proceeding.

WHSC's Opening Brief, at 5-6.

9. "Moreover, as a matter of equity, WHSC should not be forced to reflect that which it does not have. It is undisputed that WHSC did not collect \$114,944 in CIAC. To now require WHSC to reflect \$114,944 in CIAC which the Commission acknowledges WHSC was not allowed to collect under the terms of the MOA and which it ultimately did not collect is unjust and unreasonable. WHSC simply cannot reflect monies which it never received."⁵³

10. Assuming arguendo, that "WHSC should have collected the \$114,944 in net CIAC associated with the Kekumu I, II, and III developments, there can be no reduction to WHSC's rate base because WHSC did not actually collect these monies and could not have purchased regulatory assets."⁵⁴ "Since WHSC did not purchase utility plant, there can be

⁵³WHSC's Direct Testimony, at 2.

⁵⁴WHSC's Opening Brief, at 7.

no corresponding increase in WHSC's cost of utility plant in service for ratemaking purposes and as a result, there is no risk that WHSC's rate base would be overstated If there is no risk that WHSC's rate base would be overstated, there can be no reduction to WHSC's rate base because the purpose of imposing a reduction to rate base [is] to ensure that a utility's rate base is not overstated."⁵⁵

2.

Sub-Issues No. 1B, No. 1C, and No. 1D

WHSC notes that the \$432,021 upward adjustment consists of the following three CIAC tax gross-up adjustments: (1) \$46,530 in CIAC tax gross-up associated with the net CIAC for the Kekumu I, II, and III developments; (2) \$97,699 in CIAC tax gross-up associated with in-kind CIAC; and (3) \$287,792 in CIAC tax gross-up related to the base amount.⁵⁶ WHSC contends that the commission erred in approving this upward adjustment of \$432,021.

a.

The \$46,530 Adjustment

WHSC asserts that the \$46,530 adjustment in CIAC tax gross-up monies associated the Kekumu I, II, and III developments is erroneous, based on the following reasons:

⁵⁵WHSC's Opening Brief, at 9.

⁵⁶See WHSC's Hearing Exhibit P.

1. At the evidentiary hearing, the Consumer Advocate conceded that it "inadvertently double-counted" approximately \$21,415, and thus, the \$46,530 adjustment should be corrected to \$25,116.

2. "[T]he Commission erred in approving the entire \$46,5[3]0 adjustment because [the] Consumer Advocate is estopped from seeking such adjustment under the doctrine of collateral estoppel. Because the \$46,5[3]0 represents CIAC tax gross-up monies which WHSC was not required to collect under the MOA, there can be no upward adjustment pursuant to Decision and Order No. 19223."⁵⁷

3. "[T]he Commission erred in approving the entire \$46,5[3]0 adjustment because there can be no reduction to rate base because WHSC did not actually collect these monies and could not have purchased regulatory assets. It is undisputed that regulatory assets must be purchased with CIAC tax gross-up monies before there can be any reduction to rate base WHSC, however, did not collect such monies. See Declaration of Bruce Moore. Because WHSC did not collect such monies, such monies were unavailable to purchase utility plant. See id. Inasmuch as WHSC did not purchase utility plant with these monies, there can be no reduction to WHSC's rate base[.]"⁵⁸

⁵⁷WHSC's Opening Brief, at 10.

⁵⁸WHSC's Opening Brief, at 10-11.

b.

The \$97,699 Adjustment

WHSC notes that the \$97,699 adjustment consists of the following three adjustments related to in-kind CIAC: (1) \$55,924 for the Paniolo Estates Project; (2) \$13,247 for the Kekumu I and II developments; and (3) \$28,528 for the Kekumu III development.⁵⁹ WHSC contends that the \$97,699 adjustment is erroneous, based on the following reasons:

1. At the evidentiary hearing, the Consumer Advocate conceded that it inadvertently added a \$28,528 gross-up for the Kekumu III development. Thus, in recognition of this error, the Consumer Advocate eliminated this adjustment from its Direct Testimony.

2. The Consumer Advocate previously recommended, and the commission subsequently adopted in its Proposed Decision and Order No. 23688, a \$55,924 adjustment for the Paniolo Estates development and a \$13,247 adjustment for the Kekumu I and II developments. The Consumer Advocate now seeks to revise its previously recommended adjustments to \$87,644 and \$21,654, respectively, representing an increase of approximately \$40,127 over the adjustment proposed by the commission in Proposed Decision and Order No. 23688. The Consumer Advocate's previous adjustments of \$55,924 and \$13,247, respectively, were based on its Statement of Probable Entitlement, which the Consumer Advocate now seeks to ignore. Such an attempt is wholly inappropriate.

⁵⁹See WHSC's Hearing Exhibit H.

3. The Consumer Advocate's recommendation of a \$109,298 (\$87,644 + \$21,654) CIAC tax gross-up adjustment associated with the in-kind CIAC for Paniolo Estates and the Kekumu I and II developments is without merit. The Consumer Advocate's position is that the \$109,298 adjustment pertains to the \$2.25 income tax component of WHSC's then effective CIAC tariff. However, the Consumer Advocate just "assumed" that the adjustment was related to the tax component and did not attempt to recalculate the amounts. Thus, by the Consumer Advocate's own admission, it has not attempted to substantiate its own recommendation and there is insufficient evidence upon which the commission can impose an adjustment.

c.

The \$287,792 Adjustment

WHSC contends that the \$287,792 adjustment is erroneous, based on the following reasons:

1. At the evidentiary hearing, the Consumer Advocate acknowledged that: (A) to reflect the CIAC monies that were remitted to the taxing authority as a reduction to WHSC's rate base would be harmful to the utility; and (B) it failed to make an adjustment to reflect the \$11,442 in income taxes the WHSC remitted to the taxing authority, and thus, removed this amount from its Direct Testimony. Therefore, it is undisputed that the \$287,792 adjustment did not account for the \$11,442 in taxes that WHSC remitted to the taxing authority.

2. Proposed Decision and Order No. 23688 contains no factual finding, pursuant to HRS § 91-12, that WHSC used CIAC tax gross-up funds to purchase regulatory assets. The reasons why there is no such finding of fact are two-fold: (A) in Docket No. 00-0440, Decision and Order No. 19223, the commission already determined that WHSC did not use the CIAC tax gross-up monies for the construction of new or expanded facilities; and (B) the evidence in the record supports the finding that WHSC used the CIAC tax gross-up monies to pay its tax liability. Thus, there can be no lawful imposition of a reduction to WHSC's rate base.

3.

Issue No. 2

WHSC asserts that the commission's calculation of accumulated amortization is arbitrary and without merit. In support of its position, WHSC states:

. . . . The Commission attempts to calculate the accumulated amortization of the additional CIAC [tax gross-up] amounts without first identifying a single regulatory asset which was allegedly purchased with such CIAC monies. Even assuming regulatory assets were purchased with these tax gross-up monies, the determination of the accumulated amortization of these monies is wholly dependent upon the identification of these assets. This is because amortization must run from the in-service date of the regulatory asset and shall continue for the useful life of such asset. Thus, the commencement and duration of the amortization period is contingent upon the identification of the regulatory asset purchased. It is therefore improper and unreasonable for the Commission to calculate the accumulated amortization based on a commencement date of 2001 and a 50-year amortization period when the Commission has yet to identify a single

regulatory asset which was purchased with the CIAC tax gross-up monies. WHSC is entitled to accumulated amortization which [is] properly calculated and not arbitrarily decided.

WHSC's Direct Testimony, at 15; see also WHSC's Opening Brief, Section VII, at 18-20.

In its Opening Brief, WHSC expands on its argument by stating: (1) WHSC did not use CIAC monies to purchase regulatory assets; and (2) the Consumer Advocate was unable to identify a single regulatory asset which was presumably purchased with CIAC tax gross-up monies, and instead, simply assumed this to be true and "just said start it in 2001."⁶⁰

WHSC, thus, has proven that "it is more likely than not that the Commission erred in approving a 50-year amortization period and 2001 commencement date without first identifying the regulatory assets which were presumably purchased with the CIAC monies."⁶¹

4.

17th Fairway Villas

WHSC asserts that the Consumer Advocate's recommended CIAC adjustment of \$62,640 for the 17th Fairway Villas Project is unreasonable, untimely, and outside the scope of the issues to be addressed in this contested case proceeding. Specifically, the Consumer Advocate waited until after it had already accepted Proposed Decision and Order No. 23688 in toto, in advancing this recommended adjustment in its Direct Testimony.

⁶⁰WHSC's Opening Brief, at 19.

⁶¹WHSC's Opening Brief, at 18.

Imposition of the \$9.50 CIAC Tariff Charge

WHSC notes that during the evidentiary hearing, it was suggested that: (1) the application of the filed rate doctrine to WHSC's CIAC tariff, effective July 1990, precludes WHSC from contracting contrary to the tariff; (2) pursuant to the filed rate doctrine, WHSC's CIAC tariff would abrogate the portion of the MOA that was inconsistent with the tariff; and (3) if the filed rate doctrine applies, the commission should "attribute or charge \$9.50 of CIAC to every development that CIAC has been collected from."⁶²

Citing to In re WHSC, 109 Hawai'i 263, 125 P.3d 484, and Balthazar v. Verizon Hawaii, Inc. ("Balthazar"), 109 Hawai'i 69, 123 P.3d 194 (2005), "WHSC does not dispute that the filed rate doctrine applies to its CIAC tariff and as a result, WHSC is precluded from contracting contrary to its CIAC tariff."⁶³ Nonetheless, WHSC contends that it could not have contracted contrary to its CIAC tariff because, as noted by the commission in Decision and Order No. 19223, WHSC did not have a CIAC tariff at the time the MOA was entered into in March 1988. "Thus, this issue does not involve a contract which was entered into subsequent to the effective date of a filed tariff. Rather, this issue involves a valid and

⁶²WHSC's Opening Brief, at 21.

⁶³WHSC's Opening Brief, at 22.

enforceable contract which was entered into, in part, because there was no filed [CIAC] tariff at that time."⁶⁴

WHSC contends that the commission's action of seeking to retroactively impose the \$9.50 CIAC tariff charge in the form of an upward adjustment to WHSC's 2006 Test Year CIAC balance and corresponding reduction to WHSC's test year rate base violates the Contracts Clause of the United States Constitution, which prohibits states from passing laws that impair the obligations of contracts.⁶⁵ In this regard, WHSC asserts:

1. Effective March 1988, a contractual relationship existed between the County and TDC, in the form of the MOA. Pursuant to the terms of the MOA: (A) the County contracted to pay and TDC contracted that WHSC would receive a specific amount of CIAC; and (B) WHSC collected \$34,985 in net CIAC.

2. "[A]t the time the MOA was entered into, TDC was aware that CIAC collected from developers and commercial applicants allowed WHSC to develop new facilities while ensuring that its existing customers would not be burdened with the cost of adding such facilities because the MOA contained a provision for the payment of CIAC."⁶⁶

3. The MOA culminated over ten years of negotiations between the County and TDC (and TDC's predecessor-in-interest) with respect to affordable housing requirements related to Resort zoning designations at Waikoloa Beach Resort. In exchange for

⁶⁴WHSC's Opening Brief, at 22.

⁶⁵U.S. Const. art. I, § 10, cl. 1.

⁶⁶WHSC's Opening Brief, at 29.

deeding 300 acres of land to the County and providing water and sewer service to the County's affordable housing projects, the County agreed to pay a certain amount of CIAC for sewer service.

4. The commission's retroactive imposition of the \$9.50 CIAC tariff charge operates as a substantial impairment of the MOA, is not designed to promote a significant and legitimate public purpose, and the substantial impairment of the MOA is neither reasonable nor necessary to serving the public purpose.⁶⁷

In effect:

. . . . Inasmuch as the parties to the MOA did not contract for a \$9.50 CIAC tariff charge, there is no question that the Commission's retroactive imposition of the \$9.50 CIAC tariff charge impairs the contractual relationship between TDC and the County by adding an additional burden to the County's obligations by requiring it to pay a CIAC amount greater than the amount it initially contracted for.

WHSC's Opening Brief, at 25.

5. Assuming arguendo, that the commission may retroactively impose the \$9.50 CIAC tariff charge, WHSC asserts that nevertheless, there can be no reduction to rate base of the CIAC monies which the Consumer Advocate claims "should have been collected" pursuant to WHSC's then effective tariff because

⁶⁷In its discussion of the Contracts Clause, WHSC cites to the following federal cases, Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S.Ct. 697 (1983); Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S.Ct. 2716 (1978); U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505 (1977); Louisville & Nashville R.R. Co. v. Garrett, 231 U.S. 298, 34 S.Ct. 48 (1913); UH Prof'l Assembly v. Cayetano, 183 F.3d 1096 (9th Cir. 1999); and Equip. Mfr. Inst., AGCO v. Janklow, 300 F.3d 842 (8th Cir. 2002); and state cases, Campbell v. Boston Hous. Auth., 443 Mass. 574, 823 N.E.2d 363 (Mass. 2005); Cliff v. Blydenberg, 661 N.Y.S.2d 736 (N.Y. Sup. 1997); In re Herrick, 82 Hawai'i 329, 922 P.2d 942 (1996); and Anthony v. Kualoa Ranch, Inc., 69 Haw. 112, 736 P.2d 55 (1987).

WHSC did not actually collect these monies and could not have purchased regulatory assets. In this regard, WHSC states that the Consumer Advocate presented no evidence that WHSC collected these monies and used them to purchase regulatory assets.

6. Assuming arquendo, that the commission can impose a reduction to rate base to reflect those monies which the Consumer Advocate contends "should have been collected," WHSC maintains that the principles of equal protection require the commission to enforce this determination against all other similarly situated public utilities - specifically, "each and every public utility which entered into private contracts for the collection of CIAC monies before the effective date of their respective CIAC tariff."⁶⁸

6.

Regulatory Commission Expense

WHSC notes that in Proposed Decision and Order No. 23688, the commission approved a downward adjustment of \$25,498 (representing WHSC's anticipated costs for the hearing and briefing stages of this proceeding) from WHSC's projected regulatory commission expense of \$101,326, finding that "at this juncture, there is no right to a contested case hearing under HRS § 269-16(f)."

⁶⁸WHSC's Opening Brief, at 32. WHSC cites to the Equal Protection Clauses of the United States and Hawaii Constitutions (U.S. Const. amend. XIV, § 1; and Haw. Const. art. I, § 5), and Hawaii case law (Mahiai v. Suwa, 69 Haw. 349, 742 P.2d 359 (1987); and In re Gardens at West Maui Vacation Club v. County of Maui, 90 Hawai'i 334, 978 P.2d 772 (1999)).

WHSC requests that the commission take judicial notice of certain facts, specifically: (1) WHSC initiated a contested case hearing pursuant to HRS § 269-16(f) by the filing of its Notice of Partial Acceptance and Notice of Partial Non-Acceptance of Proposed Decision and Order No. 23688; and (2) WHSC participated in an evidentiary hearing and submitted post-hearing briefs.

"WHSC therefore submits that given the conditional nature of these expenses and the fact that a final decision has not been issued, the Commission can make this adjustment. Accordingly, WHSC requests that the Commission adjust WHSC's regulatory commission expense to reflect an additional \$25,498 and resulting amortization."⁶⁹

F.

Consumer Advocate's Position

In general, the Consumer Advocate contends that the commission: (1) erred in approving the upward adjustment of \$546,968 to WHSC's CIAC balance (Issue No. 1), on the basis that a higher adjustment is required; and (2) did not err in calculating the accumulated amortization of CIAC (Issue No. 2).⁷⁰

⁶⁹WHSC's Opening Brief, at 33.

⁷⁰See Consumer Advocate's Initial Direct Testimony; Direct Testimony; and Opening Brief; see also Consumer Advocate's Statement of Probable Entitlement.

Issue No. 1

The Consumer Advocate notes that the \$546,968 adjustment, as reflected in Proposed Decision and Order No. 23688, is comprised of the following two adjustments:

1. A \$114,944 adjustment to reflect the net of income tax CIAC that "should have been collected" pursuant to WHSC's then effective CIAC tariff for the Kekumu I, II, and III developments, and the terms of the MOA; and

2. A \$432,021 adjustment to reflect the tax gross-up CIAC amounts collected during the period from 1990 to 1996, pursuant to WHSC's then effective CIAC tariff, but not remitted to the taxing authorities.

By way of its Opening Brief, the Consumer Advocate contends that the commission's upward adjustment to WHSC's CIAC balance should reflect the following amounts:

1. The \$114,944 adjustment for the Kekumu I, II, and III developments, consistent with WHSC's agreement in Docket No. 00-0440 and the commission's position as reflected in WHSC's 2001 Test Year rate base, as set forth in Decision and Order No. 19223 (the "Consumer Advocate's First Adjustment").

2. A \$366,723 adjustment for Paniolo Estates, similar to the Kekumu I, II, and III developments (the "Consumer Advocate's Second Adjustment").

3. "A \$410,766 (without the additional adjustment for the Paniolo Estates) or \$511,323 (with the additional adjustment for the Paniolo Estates) adjustment to reflect

the CIAC income tax gross up amounts that were collected pursuant to WHSC's CIAC tariff, not remitted to the taxing authorities and instead used to acquire regulatory assets used in the provision of the regulated service[,]"⁷¹ i.e., the "Consumer Advocate's Third Adjustment."⁷²

4. A \$62,640 adjustment to reflect the CIAC received for the 17th Fairway Villas Project, which is complete and receiving service in the 2006 Test Year (the "Consumer Advocate's Fourth Adjustment").

⁷¹Consumer Advocate's Opening Brief, at 11. With respect to the additional adjustment for Paniolo Estates, the Consumer Advocate explains:

. . . . the 2006 Test Year CIAC balance must be adjusted to reflect the CIAC that WHSC should have collected pursuant to WHSC's effective CIAC tariff at the time the payment for the Paniolo Estates project was made in 1994. This adjustment would be consistent with the adjustment proposed for the Kekumu Project. The Consumer Advocate has reflected the adjustments that are required to reflect the tariff rate for both the Kekumu Projects and the Paniolo Estates project on CA-103, page 2 of 2 of Exhibits A and B. As shown[,]. . . the income tax gross-up amounts for the Paniolo Estates should be increased by \$100,557.

Consumer Advocate's Opening Brief, at 33. Thus, the Consumer Advocate proposes an adjustment of \$511,323, inclusive of the \$100,557 adjustment for Paniolo Estates (\$410,766 + \$100,557 = \$511,323).

⁷²The \$410,766 "amount includes the tax gross up adjustment for the Kekumu Projects." Consumer Advocate's Reply Brief, at 3 n.4.

a.

Consumer Advocate's First Adjustment:
Kekumu I, II, and III Developments

The Consumer Advocate asserts that the commission's upward adjustment of \$114,944 in CIAC for the Kekumu I, II, and III developments is appropriate, and thus, must be included in WHSC's 2006 Test Year CIAC balance based on the following reasons:

1. The \$114,944 adjustment is consistent with the filed rate doctrine, which has been widely accepted and applied at the state and federal levels for almost a century.⁷³ The filed rate doctrine requires the recognition of the \$114,944 adjustment proposed by the Consumer Advocate for the Kekumu I, II, and III developments.

2. The \$114,944 adjustment to the CIAC balance represents the CIAC, net of income taxes, which should have been collected pursuant to WHSC's then effective CIAC tariff, consistent with the terms of the MOA.

Specifically, paragraph 4 of the MOA: (A) clearly recognizes that the effective CIAC fees at the time payment is due may be higher than the amounts set forth in the MOA; (B) the County should have paid the CIAC fees reflected in

⁷³The Consumer Advocate cites to the following cases in its discussion of the filed rate doctrine: AT&T Co. v. Cent. Office Tel. Inc., 524 U.S. 214, 118 S.Ct. 1956 (1998); Maislin Indus. v. Primary Steel, 497 U.S. 116, 110 S.Ct. 2759 (1990); Louisville & Nashville Rail Co. v. Maxwell, 237 U.S. 94, 35 S.Ct. 494 (1915); Kansas City Southern Rail Co. v. Carl, 227 U.S. 639, 33 S.Ct. 391 (1913); Balthazar, 109 Hawai'i 69, 123 P.3d 194; Molokoa Vill. Dev. Co., Ltd., 60 Haw. 582, 593 P.2d 375 (1979); and In re Public Util. Comm'n, Docket No. 2006-0021, Decision and Order No. 23725, filed on October 16, 2007.

WHSC's then effective tariff as a service connection charge; and (C) although the County would be assessed a higher fee, the County should have received reimbursement from TDC for the difference between the amounts set forth in the MOA and the fees set forth in the then effective CIAC tariff.

3. The recognition of the \$114,944 in WHSC's 2006 Test Year CIAC balance is consistent with WHSC's position in its rebuttal testimony and supporting exhibits filed in Docket No. 00-0440, and subsequently adopted by the commission in WHSC's 2001 Test Year CIAC balance set forth in Decision and Order No. 19223.⁷⁴ "In spite of [this] agreement in Docket No. 00-0440, WHSC now claims that the \$114,944 adjustment is inappropriate because of the Commission's finding on a similar adjustment proposed in Docket No. 00-0440 by the Consumer Advocate for the Paniolo Estates project."⁷⁵

Specifically, WHSC presently contends that the commission's rejection of the Consumer Advocate's proposed CIAC adjustment for Paniolo Estates in Docket No. 00-0440, due to the existence of the MOA, should also be applied to the \$114,944 adjustment proposed herein by the Consumer Advocate for the Kekumu I, II, and III developments. The Consumer Advocate, in response, notes its disagreement with the commission's rejection of the proposed CIAC adjustment for

⁷⁴See Consumer Advocate's Direct Testimony, at 23-25 (Consumer Advocate's methodology in determining that the \$114,944 was not included in WHSC's CIAC 2006 Test Year balance for Docket No. 05-0329).

⁷⁵Consumer Advocate's Opening Brief, at 18.

Paniolo Estates in Docket No. 00-0440, asserting that the commission, in Decision and Order No. 19223: (A) failed to recognize the provisions set forth in Paragraph 4 of the MOA, which required a CIAC payment that was based on the then effective CIAC tariff, as opposed to the amounts set forth in the MOA; and (B) was inconsistent in its treatment of the net of tax CIAC amounts for the Kekumu I, II, and III developments vs. Paniolo Estates.

5. During the evidentiary hearing in Docket No. 05-0329, the Consumer Advocate "acknowledged that its position on the CIAC for the Paniolo Estates is inconsistent with its position on the Kekumu Projects, but pointed out that it was WHSC [that] recommended a different treatment of Kekumu and Paniolo in Docket No. 00-0440. Furthermore, it is WHSC [that] now recommends a different treatment for the Kekumu Projects from that which was agreed to by WHSC in Docket No. 00-0440 and accepted by the Commission in D&O No. 19223."⁷⁶

6. WHSC's contention that it only collected the amount reflected in the MOA, \$34,985, is without merit. WHSC should have collected the fees that were required to be paid pursuant to WHSC's then effective CIAC tariff, and if such an adjustment is not reflected in this docket, "WHSC's ratepayers will be required to pay a return on and of investment that should have been paid by the [County] and [TDC]."⁷⁷

⁷⁶Consumer Advocate's Opening Brief, at 20.

⁷⁷Consumer Advocate's Opening Brief, at 21.

b.

Consumer Advocate's Second Adjustment:
Paniolo Estates

Based on the filed rate doctrine, the Consumer Advocate contends that the commission should make a corresponding adjustment for the CIAC that should have been collected for Paniolo Estates. The Consumer Advocate states that while it did not raise this proposed adjustment in its Direct Testimony, there is a need to be consistent in the treatment of the CIAC fees for both the Kekumu developments and Paniolo Estates.

c.

Consumer Advocate's Third Adjustment:
CIAC Tax Gross-Up

According to the Consumer Advocate, "WHSC represents that the regulatory assets purchased during the period from 1990 through 1996 were acquired with 'shareholder' funds, not CIAC. Thus, WHSC claims that the Commission erred when it reflected the income tax gross up amounts as CIAC and reduced WHSC's Test Year rate base. Finally, WHSC asserts that the Court found that WHSC's CIAC tariff did not prohibit the use of the NOLs to offset the income tax liabilities."⁷⁸

The Consumer Advocate disagrees with WHSC's position, based on the following reasons:

1. Ratemaking is prospective in nature and utility shareholders are not entitled to receive compensation for past events such as NOLs in the rate setting process. Such action

⁷⁸Consumer Advocate's Opening Brief, at 23.

constitutes retroactive ratemaking, which is inconsistent with generally accepted ratemaking principles.

Specifically, an NOL results from the revenues received in a given year not being sufficient to cover the operating expenses, including depreciation and to pay taxes. Thus, the NOL represents the results of a prior period, and as previously held by the commission, "[r]etroactive ratemaking is ratemaking which allows for past deficits or profits through subsequent rate decreases or increases."⁷⁹ Accordingly, WHSC's attempt to characterize the income tax gross-up amounts of the CIAC tariff as compensation to WHSC's shareholders for the use of the NOLs to extinguish the tax liabilities is inappropriate.

Furthermore, the NOLs were not recognized in determining the income tax expense for rate setting purposes. Thus, ratepayers have not received any benefit from the application of the NOLs to extinguish WHSC's income tax liability. Lastly, any shortfall in earnings resulting from the rates being insufficient to cover the operating expenses (including depreciation) and to pay taxes will require

⁷⁹Consumer Advocate's Opening Brief, at 24 (quoting In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 5658, Decision and Order No. 9049, filed on January 30, 1987, at 11). The Consumer Advocate also cites to the following commission orders in discussing the prohibition against retroactive ratemaking: Princeville at Hanalei Comm. Ass'n v. Princeville Util. Co., Inc., Docket No. 95-0152, Order No. 14369, filed on November 7, 1995; Citizens Util. Co., Kauai Elec. Div., Dockets No. 94-0097 and No. 94-0308 (consolidated), Decision and Order No. 14859, filed on August 7, 1996; In re Hawaiian Tel. Co., Docket No. 4588, Decision and Order No. 8042, filed on August 14, 1984; and Docket No. 1402, Decision and Order No. 1028, filed on October 27, 1960.

shareholders to advance working capital to fund such shortfall. Advances for working capital are not recognized in the rate setting process, and HRS § 269-17 prohibits the commission from authorizing a public utility to enter into long term debt or issue securities to generate working capital.

2. The source of the funds used to acquire the regulatory assets came from developers, not WHSC's shareholders. Accordingly, consistent with generally accepted ratemaking principles: (A) the commission is required to reflect the monies as CIAC in order to reduce the 2006 Test Year plant-in-service balance for the cost of the facilities not funded by shareholders; and (B) since WHSC used the monies to acquire utility assets, its shareholders are not entitled to a return on and of the investment which was not funded by shareholder funds. In effect, the commission appropriately reduced WHSC's 2006 Test Year rate base for the tax gross-up CIAC funds that were used to acquire utility assets.

3. The commission's upward adjustment of WHSC's CIAC balance to reflect the \$2.25 per gallon of EDSD as an offset to WHSC's Test Year rate base does not violate the Court's decision in In re WHSC:

A. The Court concluded that the entire \$9.50 per gallon of EDSD (including the \$2.25 per gallon of EDSD for income tax payments) represented non-refundable CIAC. Moreover, the Court did not rule on the issue as to whether the \$2.25 per gallon of EDSD collected for CIAC should be reflected as a reduction to WHSC's rate base for

ratemaking purposes. Instead, the Court remanded the matter back to the commission for appropriate disposition, and "the Commission was required to evaluate the facts pertaining to the use of the \$2.25 of the CIAC tariff and determine the proper ratemaking treatment of these amounts."⁸⁰

B. "Consistent with generally accepted regulatory principles, the CIAC tax payments should be reflected in WHSC's test year rate base as an offset to the cost of the plant that was acquired with such proceeds."⁸¹ "WHSC represented in Docket No. 00-0440 that the \$2.25 payments from developers were used to acquire utility assets."⁸² "WHSC does not dispute this fact. The difference between WHSC and the Consumer Advocate is whether developers' CIAC or shareholder funds were used to make such acquisition. As noted above, WHSC contends that shareholder funds were used since the monies represented compensation for the use of shareholder owned NOLs to extinguish the income tax liabilities. The Consumer Advocate disagrees and contends that shareholders are not entitled to such compensation in the rate setting process. Thus, developers['] CIAC funds were used to acquire the utility assets and the adjustment to increase the CIAC balance and reduce WHSC's Test Year plant in service amounts is appropriate and consistent with generally accepted ratemaking principles."⁸³

⁸⁰Consumer Advocate's Opening Brief, at 31.

⁸¹Consumer Advocate's Direct Testimony, at 20.

⁸²Consumer Advocate's Direct Testimony, at 21.

⁸³Consumer Advocate's Opening Brief, at 32.

In sum:

The Supreme Court ruled that the monies represented CIAC funds collected from developers. In addition, [WHSC] represented that the monies were used to acquire utility assets. Therefore, the Commission's treatment of the CIAC funds in Order No. 23939 filed in Docket No. 00-0440 and Proposed Decision and Order No. 23688 filed in [Docket No. 05-0329] does not violate the Hawaii Supreme Court's ruling on the matter, is reasonable, and consistent with traditional ratemaking principles.

Consumer Advocate's Direct Testimony, at 21-22.

4. As a final matter, with respect to the CIAC adjustment for the tax gross-up, the Consumer Advocate notes that its calculation of the tax gross-up for the Kekumu developments, as reflected in its Statement of Probable Entitlement, requires adjustment. Specifically:

In its Written Direct Testimony, WHSC, contended that the Consumer Advocate double counted an adjustment for the income tax gross-up component of the CIAC that should have been collected for the Kekumu Projects. At the evidentiary hearing, the Consumer Advocate noted its concurrence for the record that the CIAC tax gross up adjustment for the Kekumu Projects were indeed inadvertently double counted. The Consumer Advocate acknowledged that the \$21,415 amount had already been included in the \$732,990 tax gross up amount that was agreed to by the Consumer Advocate and WHSC in Docket No. 00-0440 in 2001. As a result, the CIAC income tax gross-up for [the] Kekumu Projects should be amended to reflect \$25,116 instead of \$46,530, a difference of \$21,414 from the Consumer Advocate's original recommendation. This adjustment decreases the total CIAC income tax gross up adjustment, the amortization of CIAC, and the accumulated unamortized CIAC in the Test Year rate base. The changes were reflected in the revised pages of the Consumer Advocate's Written Direct Testimony and Exhibits submitted on May 13, 2008.

Consumer Advocate's Opening Brief, at 32-33.

d.

Consumer Advocate's Fourth Adjustment:
17th Fairway Villas

The Consumer Advocate notes that in preparing its Direct Testimony, it discovered that the CIAC funds received in 2003 for the 17th Fairway Villas Project was not included in the CIAC balance for the 2006 Test Year. Instead, WHSC reflected these monies in its deferred credit account.

The Consumer Advocate asserts that the construction of the 17th Fairway Villas Project is complete, and WHSC has included revenues from these customers in the 2006 Test Year operating revenues, as reflected in Proposed Decision and Order No. 23688. "As a result, the \$62,640 should be transferred from the Deferred Credit Account and reflected in the 2006 Test Year CIAC balance."⁸⁴

2.

Issue No. 2

For Sub-Issue No. 2E, the Consumer Advocate contends that the commission's use of the fifty-year amortization period associated with the income tax component of WHSC's CIAC tariff rate (i.e., the \$2.25 per gallon of EDSD) is reasonable and appropriate. In the alternative, the Consumer Advocate recommends the use of a forty-year amortization period, based on the average depreciable lives of the assets acquired during the period from 1990 through 1996.

⁸⁴Consumer Advocate's Opening Brief, at 34; see also Consumer Advocate's Direct Testimony, at 34-35.

In support of its position, the Consumer Advocate states:

1. WHSC is responsible for maintaining the necessary financial records to identify the assets that were acquired with the CIAC funds collected from developers, especially since it was WHSC that represented in Docket No. 00-0440 that the CIAC tax gross-up funds were used to acquire utility plant. WHSC's Exhibit 8, attached to its Application, reflects a fifty-year amortization period for all but one amount, and "WHSC has not provided information to support a different amortization period for the components of the CIAC funds (i.e., the net of tax and gross of tax amounts) received from developers."⁸⁵ In the absence of any contrary data, the commission should utilize a fifty-year amortization period, consistent with WHSC's practice of amortizing CIAC, including the net of tax amounts received from 1990 to 1996, over a fifty-year period.

2. WHSC proposes an amortization period of 17 years, based on the average depreciation lives of assets purchased from 1974 through 2006. In particular, WHSC's Exhibit 11 "illustrates that the average depreciable service lives of the assets acquired from January 1, 1974 through January 1, 2006 is 17.79 years."⁸⁶

3. WHSC's attempt to average the depreciable lives of all utility plant assets purchased between 1974 and 2006 is unreasonable and inappropriate. Mr. Yamasato's representation

⁸⁵Consumer Advocate's Direct Testimony, at 39.

⁸⁶Consumer Advocate's Opening Brief, at 38.

that "the \$2.25 CIAC amounts were used to acquire plant during the period of 1986 through 1996 would support a 40-year amortization period, based on the average useful lives of the assets acquired during the period from 1980 (when WHSC's CIAC tariff became effective) to 1996 (when the CIAC no longer was subject to income taxes). As noted . . . , WHSC represented that during the period that the CIAC funds were collected from developers and subject to income taxes pursuant to the then existing tax regulations, WHSC acquired assets with the monies that were not remitted to the taxing authorities."⁸⁷

4. WHSC's attempt to include assets that were acquired after 1996 to determine the period over which the CIAC tax gross-up adjustment should be amortized is unreasonable. WHSC's position is inconsistent with its representation that it acquired utility assets using CIAC tax gross-up monies that were not remitted to the taxing authorities during this period. Thus, at a minimum, the commission should amortize the CIAC tax gross-up adjustment over a forty-year period.

For Sub-Issue No. 2F, the Consumer Advocate contends that the commission's calculation of accumulated amortization for the CIAC tax gross-up amounts beginning in 2001 rather than the in-service dates of the unidentified regulatory assets is proper. Accordingly, the Consumer Advocate disagrees with WHSC's contention that the amortization of the tax gross-up amounts should commence when the plant acquired with such funds

⁸⁷Consumer Advocate's Opening Brief, at 38-39.

was placed into service. The Consumer Advocate expresses two concerns with WHSC's position:

1. "[I]f one commenced amortization of the \$2.25 CIAC amounts on the in-service date of the plant acquired by such funds, WHSC's ratepayers would not receive the 'full' benefit of the CIAC income tax gross up amounts since the first year in which the amounts would be recognized for ratemaking purposes is 2001, the test year in Docket No. 00-0440."⁸⁸

2. "[I]f information regarding the assets that were presumably acquired with the \$2.25 CIAC proceeds is not available, the Consumer Advocate and Commission [are] unable to determine when the amortization should commence to coincide with the in-service date of the assets, as WHSC proposes."⁸⁹

In sum, "[t]he Consumer Advocate recommends that the amortization commence with 2001, which is the first year in which ratepayers would receive the benefits of the adjusted CIAC being reflected in the rate setting process."⁹⁰

G.

WHSC's Reply

WHSC, without waiving any of the positions set forth in its Opening Brief, limits the scope of its response to "addressing the Consumer Advocate's recommendation that the Commission should make a corresponding adjustment for the CIAC

⁸⁸Consumer Advocate's Direct Testimony, at 40.

⁸⁹Consumer Advocate's Direct Testimony, at 40.

⁹⁰Consumer Advocate's Opening Brief, at 40.

that should have been collected for the Paniolo Estates project and recommended 2001 amortization commencement date."⁹¹

In its Reply Brief, WHSC contends:

1. The Consumer Advocate's attempt to seek reconsideration of the commission's decision in Docket No. 00-0440 on the Paniolo Estates CIAC issue is untimely and improper, and there is no statutory basis upon which the commission can even reconsider the Paniolo Estates CIAC issue.

2. The Consumer Advocate's recommendation that amortization commences in 2001 is inconsistent with its previous position in Docket No. 00-0440 that amortization commences on the date of receipt of CIAC. Specifically, "WHSC notes that in Docket No. 00-0440, the Consumer Advocate's CIAC amortization calculation for the Kekumu I, II, and III developments and Paniolo Estates project assumed the date of receipt of CIAC as the commencement date for amortization In the instant docket, however, the Consumer Advocate recommends that the amortization commence in 2001, which, according to the Consumer Advocate, is the first year in which ratepayers would receive the benefits of the adjusted CIAC being reflected in the rate setting process."⁹²

⁹¹WHSC's Reply Brief, at 2.

⁹²WHSC's Reply Brief, at 9.

H.

Consumer Advocate's Reply

In its response, the Consumer Advocate asserts:

1. The Declaration of Bruce Moore, which is attached to WHSC's Opening Brief, should be rejected, as "[t]he Consumer Advocate was given no notice that this Declaration would be filed and more importantly, the Consumer Advocate was not provided any opportunity under due process to cross-examine Mr. Moore upon his Declaration."⁹³

2. The Consumer Advocate is not seeking to relitigate the Kekumu developments net of tax issue. Instead, WHSC seeks to relitigate or change its position and contradict the commission's final decision in Docket No. 00-0440 on the net of tax adjustment for the Kekumu developments. The doctrine of collateral estoppel precludes WHSC from seeking to exclude the \$114,944 in CIAC adjustment for the Kekumu developments. Moreover, at the evidentiary hearing, WHSC's witness confirmed that the adjustment for the Kekumu developments was consistent with the adjustment reflected by the commission in Docket No. 00-0440.

3. In In re WHSC, the Court ruled that "the entire \$9.50, which includes the tax gross-up amounts at issue, represented CIAC in its entirety pursuant to WHSC's then effective tariff Thus, it is clear that the amounts in question represent CIAC pursuant to WHSC's then effective tariff."⁹⁴ "[T]he doctrine of collateral estoppel would preclude

⁹³Consumer Advocate's Reply Brief, at 6; see also id., at 23.

⁹⁴Consumer Advocate's Reply Brief, at 8.

WHSC from arguing that tax gross-up funds should not be treated as CIAC" for ratemaking purposes.⁹⁵

4. There is no final decision on the ratemaking treatment of the tax gross-up amounts collected pursuant to WHSC's then effective CIAC tariff, as required by the collateral estoppel test. Thus, "[t]here is no legal basis to conclude that the Consumer Advocate should be precluded from asserting its arguments related to the appropriate CIAC amounts and relevant ratemaking treatment."⁹⁶

5. In Docket No. 00-0440, WHSC argued that the entire \$9.50 per gallon of EDSO should be considered CIAC, since a utility's tariff has the force and effect of law.

6. At the evidentiary hearing, WHSC's witness confirmed that the MOA specifically anticipated future amendments to the CIAC fees to be paid by the County, and that the difference would be paid by TDC. Thus, the application of the tariff rate does not violate the Contracts Clause due to the absence of any substantial impairment of a contractual relationship.

7. Citing to In re Public Util. Comm'n, Docket No. 2006-0021, the Consumer Advocate notes that WHSC mistakenly argues that the filed rate doctrine only applies in situations where contracts are entered into after the utility has filed its tariff. Instead, "the filed rate doctrine requires

⁹⁵Consumer Advocate's Reply Brief, at 8.

⁹⁶Consumer Advocate's Reply Brief, at 12.

the recognition of the net of tax and tax gross up adjustment proposed by the Consumer Advocate for the Kekumu Projects."⁹⁷

8. The Consumer Advocate's proposed adjustment for the 17th Fairway Villas Project is within the scope of this proceeding.

9. The commission did not err in calculating the accumulated amortization of CIAC.

10. Order No. 24036 does not identify regulatory commission expense as an issue for the evidentiary hearing, and WHSC's attempt to raise this issue at this juncture leaves the Consumer Advocate with no opportunity to analyze data or cross-examine any witness to determine the reasonableness of the proposed expense adjustment. The commission's consideration of WHSC's proposed adjustment for regulatory commission expense at this time "amounts to a violation of due process as the Consumer Advocate and the Commission has had no opportunity to determine whether the proposed \$25,498 adjustment is reasonable and just."⁹⁸

II.

Discussion

HRS § 269-16 states in relevant part:

(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall

⁹⁷Consumer Advocate's Reply Brief, at 15.

⁹⁸Consumer Advocate's Reply Brief, at 22.

require all parties to a proceeding to comply strictly with procedural time schedules that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received under the interim rates that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

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(f) Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than \$2,000,000, the commission may make and amend its rules and procedures to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

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- (3) Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a

completed application with the commission; provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission's proposed decision and order, the parties shall not be entitled to a contested case hearing.

If all parties to the proceeding accept the proposed decision and order, the parties shall not be entitled to a contested case hearing, and [HRS] section 269-15.5 shall not apply. If the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed, pursuant to subsections (b), (c), and (d).

If a party does not accept the proposed decision and order, either in whole or in part, that party shall give notice of its objection or nonacceptance within the timeframe prescribed by the commission in the proposed decision and order, setting forth the basis for its objection or nonacceptance; provided that the proposed decision and order shall have no force or effect pending the commission's final decision. If notice is filed, the above six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed as set forth in subsection (d). Any party that does not accept the proposed decision and order under this paragraph shall be entitled to a contested case hearing; provide that the parties to the

proceeding may waive the contested case hearing.

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HRS § 269-16(d) and (f).⁹⁹

Following the issuance of Proposed Decision and Order No. 23688, the Parties, on January 25, 2008, stipulated to the remaining issues in dispute. The commission adopted the stipulated issues, which are reflected in Exhibit 1 of Order No. 24036, and in the Notice of Evidentiary Hearing. The stipulated issues identify two matters for adjudication by the commission: (1) the upward adjustment of \$546,968 to WHSC's 2006 Test Year CIAC balance; and (2) the calculation of the accumulated amortization of CIAC.

Notwithstanding their agreement on the issues, each of the Parties have raised and discussed certain issues that appear beyond the scope of the issues agreed-upon by them. Specifically, WHSC proposes certain adjustments to its 2006 Test Year regulatory commission expense and working cash accounts,¹⁰⁰ while the Consumer Advocate proposes CIAC adjustments for the Paniolo Estates and 17th Fairway Villas Projects.¹⁰¹

⁹⁹The commission's reasons for not issuing an interim rate decision within the time period set forth in HRS § 269-16(d) are set forth in footnote 8 of Proposed Decision and Order No. 23688. Proposed Decision and Order No. 23688, at 6 n.8; see also id., n.7.

¹⁰⁰See WHSC's Opening Brief, Section XII, at 32-33; and WHSC's Opening Brief, Exhibit A, at 3, Working Cash.

¹⁰¹See Consumer Advocate's Opening Brief, Section III.A, at 10 n.5, and Section III.A.1, at 15-16 (CIAC adjustment for Paniolo Estates), and Section III.A.5, at 33-37 (CIAC adjustment for the 17th Fairway Villas Project); see also

On page 51 of Proposed Decision and Order No. 23688, the commission noted:

In the event that one (1) or both of the Parties do not accept, in whole or in part, the Proposed Decision and Order, the commission advises that it may review de novo the entire docket and all issues therein, including the Parties' areas of agreement.

Proposed Decision and Order No. 23688, at 51.¹⁰²

The commission, on page 10 of Interim Decision and Order No. 23940, likewise noted:

The commission emphasizes that the findings and adoption here of the various amounts reflected in Exhibit A are for the purposes of this Interim Decision and Order only. The commission's final decision will reflect a detailed review and analysis of all work papers, schedules, and other materials produced by the Parties.

Interim Decision and Order No. 23940, at 10.

Moreover, it is well-settled that the commission has general supervision over all public utilities, and is authorized to fix just and reasonable rates. HRS §§ 269-6 and 269-16; see also In re Gray Line Hawai'i, Ltd., 93 Hawai'i 45, 53, 995 P.2d 776, 784 (Haw. 2000); In re Puhi Sewer, 83 Hawai'i 132, 136-37, 925 P.2d 302, 306-07 (Haw. 1996); In re Hawaiian Tel. Co., 67 Haw. 370, 379, 689 P.2d 741, 747 (1984); and In re Kaanapali Water Corp., 5 Haw. App. 71, 77-78, 678 P.2d 584, 589 (1984). Consistent with this broad authority as well as its WHSC's Opening Brief, Section VIII, at 20-21 (Consumer Advocate's proposed adjustment for the 17th Fairway Villas Project).

¹⁰²WHSC, in its Notice of Partial Acceptance and Notice of Partial Non-Acceptance of Proposed Decision and Order No. 23688, asserted that "[HRS] § 269-16(f) does not give the Commission any such authority, where a Party has objected to and requested a contested case hearing on specific issues." WHSC's Notice, at 1 n.1.

ratemaking function of making pragmatic adjustments called for by the particular circumstances, see In re Hawaii Elec. Light Co., Inc., 67 Haw. 425, 432, 690 P.2d 274, 279 (1984); and In re Hawaiian Tel. Co., 67 Haw. at 382-83, at 689 P.2d at 749; see also In re Hawaii Elec. Light Co., Inc., 60 Haw. 625, 636, 594 P.2d 612, 620 (1979), the commission will proceed with reviewing each component that comprises WHSC's 2006 Test Year revenue requirement, for the purpose of establishing just and reasonable rates under HRS chapter 269.

In general, the Parties did not affirmatively object to the following matters as reflected in Proposed Decision and Order No. 23688: (1) WHSC's 2006 Test Year operating revenues (present rates); (2) WHSC's 2006 Test Year operating and maintenance expenses (present rates), with the exception of WHSC's request to increase the amount for regulatory commission expense, as subsequently raised in its Opening Brief; (3) WHSC's 2006 Test Year rate of return; (4) the methodologies and tax rates utilized in computing WHSC's 2006 Test Year amounts for income taxes and taxes other than income taxes, respectively; (5) the methodology for calculating WHSC's 2006 Test Year balance for working cash; (6) assigning the entire amount of the rate increase to the monthly standby charge; and (6) adding two new non-rate rules to WHSC's tariff.

A.

Operating Revenues

WHSC receives revenues for its wastewater treatment operations from residential, multi-family, commercial, and other customers, derived from: (1) a monthly standby charge; and (2) a monthly consumption charge based on each customer's metered water.

1.

Standby Charge

By Proposed Decision and Order No. 23688, the commission found reasonable the following customer count estimates for the 2006 Test Year:¹⁰³

<u>Customers</u>	<u>Customer Count</u>
A Plant Single-Family	13
K Plant Single-Family	177
A Plant Multi-Family	1029
K Plant Multi-Family	94
A Plant Commercial	43
K Plant Commercial	0
A Plant Public Authority	4
K Plant Public Authority	17

See also Interim Decision and Order No. 23940, at 9, and Exhibit A, at 1.

¹⁰³The term customer count, as used in Proposed Decision and Order No. 23688, refers to equivalent residential units.

The Parties utilize these customer count estimates at present rates in their opening briefs.¹⁰⁴ The commission adopts as reasonable these customer count estimates, as reflected in Proposed Decision and Order No. 23688 and Interim Decision and Order No. 23940.

WHSC's monthly standby charge of \$20.01 per unit was established by the commission in Docket No. 00-0440, Order No. 23939. Utilizing this monthly standby charge, the commission, in Interim Decision and Order No. 23940, calculated WHSC's 2006 Test Year operating revenues, as follows:

<u>Customers</u>	<u>Customer Count</u>	<u>Revenues Standby Charge</u>
A Plant Single-Family	13	\$3,122
K Plant Single-Family	177	\$42,501
A Plant Multi-Family	1029	\$247,083
K Plant Multi-Family	94	\$22,571
A Plant Commercial	43	\$10,325
K Plant Commercial	-	-
A Plant Public Authority	4	\$960
K Plant Public Authority	17	<u>\$4,082</u>
Standby Charge Revenues, Present Rates		\$330,644

The Consumer Advocate incorporates these amounts in its Opening Brief.¹⁰⁵ The commission adopts as reasonable these standby charge revenue amounts at present rates, as reflected in Interim Decision and Order No. 23940.

¹⁰⁴ See WHSC's Opening Brief, Exhibit A, at 5; and Consumer Advocate's Opening Brief, Exhibits A and B, at 1-2.

¹⁰⁵ See Consumer Advocate's Opening Brief, at Exhibits A and B, at 1-2. By contrast, WHSC, in its Opening Brief, appears to utilize the amounts reflected in Proposed Decision and Order No. 23688 at approved rates, instead of the amounts reflected in Interim Decision and Order No. 23940 at present rates.

Consumption Charge

The 2006 Test Year revenues at present rates generated from the consumption charge are based on the customers' estimated water usage during the test year multiplied by the monthly consumption charge of \$1.33 per TG.

By Proposed Decision and Order No. 23688, the commission found reasonable the following water usage estimates and corresponding consumption charge revenues at present rates:

<u>Customers</u>	<u>Total Water Usage (per TG)</u>	<u>Revenues Consumption Charge</u>
A Plant Single-Family	1,911	\$2,542
K Plant Single-Family	26,019	\$34,605
A Plant Multi-Family	162,582	\$216,234
K Plant Multi-Family	20,398	\$27,129
A Plant Commercial	13,846	\$18,415
K Plant Commercial	-	-
A Plant Public Authority	644	\$857
K Plant Public Authority	22,814	<u>\$30,343</u>
Consumption Charge Revenues, Present Rates		\$330,125

The Parties utilize these water usage estimates and corresponding consumption charge revenues at present rates in their opening briefs.¹⁰⁶ The commission adopts these amounts as reasonable, as reflected in Proposed Decision and Order No. 23688 and Interim Decision and Order No. 23940.

¹⁰⁶ See WHSC's Opening Brief, Exhibit A, at 5-6; and Consumer Advocate's Opening Brief, Exhibits A and B, at 1-2.

3.

Total Operating Revenues

WHSC's total 2006 Test Year operating revenues at present rates are summarized as follows:

Standby Charge Revenues	\$330,644
Consumption Charge Revenues	<u>\$330,125</u>
Total Operating Revenues, Present Rates	\$660,771 (rounding)

B.

Expenses

WHSC's 2006 Test Year expense components consist of:

- (1) operating and maintenance expenses; (2) depreciation expense; (3) taxes other than income taxes; and (4) income taxes.

1.

Operating and Maintenance Expenses

By Proposed Decision and Order No. 23688, the commission found reasonable the following amounts for WHSC's 2006 Test Year operating and maintenance expenses at present rates:

<u>Description</u>	<u>Amount</u>
Salaries and Wages - Employees	\$304,306
Purchased Power	\$25,020
Fuel for Power Production	\$22,572
Chemicals	\$14,592
Materials and Supplies	\$59,544
Contractual Services - Other	\$18,496
Rental of Equipment	\$29,136
General and Administrative Allocation	<u>\$207,255</u>
Total Operating and Maintenance Expenses, Present Rates	\$680,921

These amounts for operating and maintenance expenses were subsequently incorporated by the commission in its Interim Decision and Order No. 23940.

WHSC's general and administrative expenses include an account for regulatory commission expense attributable to the costs incurred by WHSC in seeking the commission's approval of its request to increase its wastewater rates based on the 2006 Test Year. In Proposed Decision and Order No. 23688, the commission concurred with the Consumer Advocate's position and disallowed the \$25,498 in projected costs associated with the hearing and briefing phases of Docket No. 05-0329:

. . . . Based on the foregoing, the commission agrees with the Consumer Advocate that the costs associated with the evidentiary hearing and preparation of a post-hearing brief, in the amount of \$25,498, should be removed from West Hawaii Sewer's test year rate case expense and resulting amortization. The commission reiterates that, at this juncture, there is no right to a contested case hearing under HRS § 269-16(f)

As the commission has previously stated, "instead, only if one (1) or both Parties object to the proposed Decision and Order, or if the Parties waive the right to the commission's issuance of a proposed Decision and Order within six (6) months of West Hawaii Sewer's complete Application, is a contested case hearing contemplated under HRS § 269-16(f)."

Proposed Decision and Order No. 23688, at 32-33 (brackets, footnotes, and citations therein omitted). In addition, in Proposed Decision and Order No. 23688 and Interim Decision and Order No. 23940, the commission utilized the five-year amortization period proposed by WHSC, which was based on the five-year historical interval between the utility's 2001 and 2006 test year rate cases.

In its Opening Brief, WHSC "requests that the Commission adjudicate WHSC's regulatory commission expense to reflect an additional \$25,498 and resulting [five-year] amortization[,]" asserting that "given the conditional nature of these expenses and the fact that a final decision has not been issued, the Commission can make this adjustment."¹⁰⁷

As a result of WHSC's partial non-acceptance of Proposed Decision and Order No. 23688, the Parties prepared and filed direct testimonies, appeared at and participated in the prehearing conference and the evidentiary hearing, and prepared and filed opening and reply briefs. The \$25,498 in regulatory commission expense associated with the hearing and briefing phases of Docket No. 05-0329 is based on the professional services incurred by WHSC, as follows:

<u>Professional Services</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Phases, Hearing/Briefing</u>
Legal	\$194.50	105	\$20,423
Engineering and Accounting	\$145.00	<u>35</u>	<u>\$5,075</u>
		140	\$25,498

See WHSC's Exhibit CA-IR-18-a, b.

The commission finds reasonable WHSC's request to include, as part of its overall regulatory expense for the 2006 Test Year, the \$25,498 in costs associated with the hearing and briefing phases of this proceeding. In effect, the evidentiary hearing was held and completed on April 17, 2008, and WHSC filed its post-hearing briefs on June 2 and 23, 2008, in accordance with Order No. 24036. Consistent with the interval

¹⁰⁷WHSC's Opening Brief, at 33.

between WHSC's 2001 and 2006 test year rate cases,¹⁰⁸ this amount will be amortized over a five-year period, resulting in a net increase of \$5,100 in WHSC's 2006 Test Year general and administrative account,¹⁰⁹ to \$212,355 for the 2006 Test Year. In response to the Consumer Advocate's specific concerns over the asserted lack of due process, the commission finds that the Consumer Advocate, as part of the discovery process, did issue, and WHSC subsequently responded to, an information request on the utility's test year regulatory commission expense.¹¹⁰

Overall, the commission adopts as reasonable the amounts reflected in Proposed Decision and Order No. 23688 and Interim Decision and Order No. 23940 for WHSC's 2006 Test Year operating and maintenance expenses, adjusted by \$5,100 to reflect the costs incurred by WHSC for the hearing and briefing phases of this proceeding, amortized over a five-year period. Accordingly, WHSC's 2006 Test Year operating and maintenance expenses at present rates are as follows:

<u>Description</u>	<u>Amount</u>
Salaries and Wages - Employees	\$304,306
Purchased Power	\$25,020
Fuel for Power Production	\$22,572
Chemicals	\$14,592
Materials and Supplies	\$59,544
Contractual Services - Other	\$18,496

¹⁰⁸See WHSC's response to CA-IR-18.c (five-year amortization period for regulatory commission expense).

¹⁰⁹See WHSC's Opening Brief, Exhibit A, at 2.

¹¹⁰See WHSC's response to CA-IR-18 (regulatory commission expense account); and WHSC Exhibit CA-IR-18-a, b; see also Consumer Advocate's Initial Direct Testimony, Section VI.B.2, at 32-33.

<u>Description</u>	<u>Amount</u>
Rental of Equipment	\$29,136
General and Administrative Allocation	<u>\$212,355</u>
Total Operating and Maintenance Expenses, Present Rates	\$686,021

2.

Depreciation Expense

In general, depreciation expense represents the systematic write-off of the cost of a plant's asset over the asset's depreciable life.¹¹¹ Based on WHSC's net plant-in-service amount for the 2006 Test Year, the commission adopts as reasonable the amount of \$64,039 for WHSC's 2006 Test Year depreciation expense.

3.

Taxes Other Than Income Taxes

The Parties do not dispute the tax rates and methodology for calculating WHSC's taxes other than income taxes, otherwise known as revenue taxes, which consist of the public service company tax (5.885 percent) and the public utility fee (0.5 percent).¹¹² WHSC's revenue taxes are calculated based on its 2006 Test Year operating revenues at present and approved rates, as follows:

¹¹¹In re Waikoloa Resort Util., Inc., dba West Hawaii Util. Co., Docket No. 2006-0409, Decision and Order No. 24085, filed on March 10, 2008, at 32 (citing In re Young Bros., Ltd., Docket No. 2006-0396, Decision and Order No. 23714, filed on October 12, 2007, at 45).

¹¹²See Proposed Decision and Order No. 23688, Exhibit A, at 2; and Interim Decision and Order No. 23940, Exhibit A, at 2.

Total Operating Revenues, at Present Rates	\$660,771
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Public Service Company Tax (5.885 percent)	\$38,886
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Public Utility Fee (0.5 percent)	\$3,304
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Total Revenue Taxes (6.385 percent)	\$42,190
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Total Operating Revenues, at Approved Rates	\$936,108
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Public Service Company Tax (5.885 percent)	\$55,090
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Public Utility Fee (0.5 percent)	\$4,681
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Total Revenue Taxes (6.385 percent)	\$59,770
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The commission finds these amounts reasonable for WHSC's 2006 Test Year revenue taxes at present and approved rates.

4.

Income Taxes

WHSC income taxes for the 2006 Test Year are calculated based on the federal and State composite income tax rate of 38.2471 percent.¹¹³ The commission finds reasonable the following amounts for WHSC's 2006 Test Year income taxes: (1) (\$50,287), at present rates, and (2) \$48,297, at approved rates.

C.

Rate Base

The commission utilizes an average 2006 Test Year rate base in determining WHSC's 2006 Test Year revenue

¹¹³See Proposed Decision and Order No. 23688, Exhibit A, at 3; and Interim Decision and Order No. 23940, Exhibit A, at 3.

requirement. WHSC's rate base consists of its net plant-in-service (i.e., the plant-in-service minus accumulated depreciation), minus unamortized CIAC, accumulated deferred income taxes ("ADIT"), the Hawaii State Capital Goods Excise Tax Credit ("HSCGETC"), plus working cash.

The Parties' areas of disagreement focus on the appropriate level of WHSC's average depreciated rate base for the 2006 Test Year. In general, five areas are subject to dispute: (1) Paniolo Estates; (2) the \$114,944 in CIAC adjustment for the Kekumu developments; (3) the \$432,021 in CIAC adjustment for the tax gross-up component; (4) the 17th Fairway Villas Project; and (5) the accumulated amortization of CIAC. These issues and the other components of rate base are discussed below.

1.

Paniolo Estates

Paniolo Estates is a County affordable housing project that receives wastewater utility service from WHSC. The amount of CIAC collected for the Paniolo Estates Project was at issue in Docket No. 00-0440. WHSC contended that it collected \$43,917 in CIAC for the Paniolo Estates Project, pursuant to the terms of the March 1988 MOA, which pre-dated the July 1990 effective date of WHSC's CIAC Rule XI. The Consumer Advocate countered that pursuant to WHSC's CIAC Rule XI, WHSC should have collected a total of \$410,640 in CIAC for the Paniolo Estates Project, and

thus, WHSC's proposed amount of \$43,917 for CIAC should be increased by \$366,723 ($\$43,917 + \$366,723 = \$410,640$).

In Docket No. 00-0440, the commission held that the March 1988 date of the MOA, which pre-dated the July 1990 effective date of WHSC's CIAC Rule XI, controlled. Accordingly, the commission, in Decision and Order No. 19223, "reflect[ed] \$43,917 as the amount of CIAC collected for the Paniolo Estates project."¹¹⁴ The commission did not adopt the \$366,723 increase in CIAC proposed by the Consumer Advocate for the Paniolo Estates Project.

Now, the Consumer Advocate, in its Opening Brief, contends that "the Commission should make a corresponding adjustment for the CIAC that should have been collected for the Paniolo Estates. Although not raised by the Consumer Advocate in its written direct testimony [in Docket No. 05-0329], there is a need to be consistent in the treatment of the CIAC fees for both the Kekumu and Paniolo Estates projects."¹¹⁵

The Consumer Advocate, in its Opening Brief, reasserts the same position it previously advanced in Docket No. 00-0440; namely, to increase by \$366,723 the CIAC for the Paniolo Estates Project. However, the Consumer Advocate, in Docket No. 00-0440, did not contest or otherwise appeal the commission's decision on the Paniolo Estates CIAC issue. Thus, Decision and Order No. 19223 represents a final decision with respect to the Paniolo Estates CIAC issue. Accordingly, the commission rejects

¹¹⁴Docket No. 00-0400, Decision and Order No. 19223, at 19.

¹¹⁵Consumer Advocate's Opening Brief, at 15-16; see also id., at 10 n.5, and 33.

the Consumer Advocate's proposed \$366,723 CIAC adjustment for the Paniolo Estates Project. Likewise, the commission rejects the \$100,557 adjustment proposed by the Consumer Advocate for the income tax gross-up portion for Paniolo Estates, as part of the Consumer Advocate's Third Adjustment.

2.

The \$114,944 in CIAC Adjustment

The \$114,944 in CIAC adjustment, as reflected in Proposed Decision and Order No. 23688 and Interim Decision and Order No. 23940, represents the amount that the Consumer Advocate claims WHSC should have collected in CIAC, net of income taxes, for the Kekumu developments, pursuant to WHSC's then effective CIAC tariff as well as the terms of the MOA.

WHSC contends that the \$114,944 in CIAC adjustment for the Kekumu developments is erroneous, while the Consumer Advocate counters that this adjustment is appropriate. Based on the reasons set forth below, the commission adopts as reasonable the \$114,944 in CIAC adjustment for the Kekumu developments.

As noted by the Consumer Advocate, the \$114,944 amount is consistent with WHSC's position in Docket No. 00-0440, and subsequently adopted by the commission in Decision and Order No. 19223. In Docket No. 00-0440, WHSC, by its Rebuttal Testimony, concurred with the Consumer Advocate's recommendation to increase WHSC's estimate of CIAC collected for

the Kekumu developments.¹¹⁶ As described by WHSC's witness, "[t]he CA's specific adjustment is the difference between the CIAC recorded for the Kekumu projects and the CIAC amount that the CA believes that WHSC should have collected based on its CIAC rule then in place."¹¹⁷

WHSC then calculated and recommended \$114,944 as the appropriate amount of the increase in WHSC's CIAC balance for the Kekumu developments.¹¹⁸ This amount was subsequently adopted by the commission and included in Decision and Order No. 19223 as part of WHSC's CIAC balance for the 2001 Test Year.¹¹⁹ Decision and Order No. 19223, in turn, represents a final decision with respect to the \$114,944 in CIAC adjustment for the Kekumu developments.

The filed rate doctrine also supports the \$114,944 in CIAC adjustment for the Kekumu developments. The Court, in Molokoa Village Dev. Co., Ltd. v. Kauai Elec. Co., Ltd. ("Molokoa"), 60 Haw. 582, 593 P.2d 375 (1979), held that "a public utility can enforce payment for its services in accordance with its established tariff, notwithstanding any agreement to charge less." Id. at 587, 593 P.2d at 379.

¹¹⁶See Docket No. 00-0440, WHSC's Rebuttal Testimony; Exhibits; and Certificate of Service, filed on August 3, 2001, at 32-34 (collectively, "WHSC's Rebuttal Testimony").

¹¹⁷Docket No. 00-0440, WHSC's Rebuttal Testimony, at 33.

¹¹⁸Docket No. 00-0440, WHSC's Rebuttal Testimony, Exhibit-WHSC-RT-5 (WHSC's recommended CIAC adjustment of \$114,944 for the Kekumu developments); see also Transcript, at 17-18.

¹¹⁹See Docket No. 00-0440, Decision and Order No. 19223, Exhibit B; and Docket No. 05-0329, Consumer Advocate's Direct Testimony, Section II.B.1, at 23-28.

According to the Court, "[t]he doctrine which permits a utility to enforce payment for its services in accordance with its tariff, notwithstanding that it has contracted for a lesser sum, implements a public policy against discriminatory pricing of utility services." Id. at 589, 593 P.2d at 380.

The filed rate doctrine "essentially prohibits a regulated entity from charging rates for its services that differ from the rates filed with the appropriate federal agency." Balthazar, 109 Hawai'i 69, 72, 123 P.3d 194, 197. Citing to Molokoa, 60 Haw. 582, 587, 593 P.2d 375, 379, the Court, in Balthazar, noted that "[d]espite its federal origins, the principles of the filed-rate doctrine have also been applied in cases where the rates are filed with a state regulatory authority rather than a federal one." Balthazar, 109 Hawai'i at 73, 123 P.3d at 198. Based on the principles enunciated in Molokoa and Balthazar, the Court, in In re WHSC, articulated the filed rate doctrine as follows:

Generally, tariffs are "public documents setting forth services being offered; rates and charges with respect to services; and governing rules, regulations, and practices relating to those services."

As explained in Balthazar, although the filed rate doctrine was originally applied in cases where an entity filed rates with a federal agency, the doctrine has been extended to all forms of regulated utilities and applies where rates are filed with the state agency.

Pursuant to the "doctrine, filed tariffs govern a utility's relationship with its customers and have the force and effect of law until suspended or set aside."

Additionally, "notice of the terms and rates established in a filed tariff is imputed to customers. It is established that "the filed-rate doctrine . . . does not preclude courts from interpreting the provisions of a tariff and enforcing that tariff[.]"

In re WHSC, 109 Hawai'i at 271-72, 125 P.3d at 492-93 (brackets, citations and text therein omitted).

In In re Public Util. Comm'n, Docket No. 2006-0021 ("Docket No. 2006-0021"), the commission applied the principles of the filed rate doctrine in rendering unenforceable and unlawful the "rates" in a written agreement that provided sewage service at no charge to certain wastewater utility customers (the "1961 Agreement"), to the extent that such "rates" conflicted with the utility's ("HAWC") commission-approved tariff. The commission held, in relevant part:

State law confers the supervision and regulation of "all public utilities" and the administration of HRS chapter 269 on the commission. The definition of a "public utility" in HRS § 269-1 was amended in 1974 through Act 59 to include private owners and operators of sewer facilities. Specifically, HRS § 269-1, in relevant part, states that a public utility includes "any person insofar as that person owns or operates a private sewer company or sewer facility." HAWC provides wastewater collection, treatment, and disposal services in the Hawaii Kai area and, thus, is a public utility under the commission's jurisdiction subject to, by law, the provision set forth in HRS chapter 269. In particular, HRS § 269-16 sets forth the parameters for the regulation of utility rates and ratemaking procedures

The matters set forth above are not disputed by the Parties. Also undisputed is that HAWC's current tariff, filed with and approved by the commission, does not mention the 1961 Agreement nor contain provisions allowing HAWC to provide free service or at special terms to the City, the SOH, or Lunalilo Homes. The primary issue in dispute in this case is whether

the rates established in the 1961 Agreement are enforceable to the extent that they conflict [with] HAWC's tariff.

Upon review, the commission finds the rates of the 1961 Agreement to be unenforceable and unlawful to the extent that they conflict [with] HAWC's tariff. The provisions of HRS § 269-16 are clear: all rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility must be filed with and approved by the commission. HAWC's tariff filed with and approved by the commission does not mention the provisions of the 1961 Agreement. Additionally, as explained by HAWC, under the filed rate doctrine, once approved by a regulatory agency, the tariff of a public utility is considered to be the law with respect to the service provided and the public utility may not charge rates that are different from the tariff. The Hawaii Supreme Court made clear in Balthazar v. Verizon Hawaii, Inc., 109 Hawaii 69, 77, 123 P.3d 194, 202 (2005) ("Balthazar"), that the filed rate doctrine is applicable in a case involving a public utility subject to the commission's jurisdiction. Thus, the 1961 Agreement which provides for free sewer services to all City facilities in Hawaii Kai and rates based on a certain formula for the Portlock and Related Areas is unenforceable and unlawful.

Docket No. 2006-0021, Decision and Order No. 23725, filed on October 16, 2007, at 23-25 (brackets, footnotes and citations therein omitted).¹²⁰

Here, the MOA took effect in March 1988,¹²¹ and WHSC's CIAC tariff rule (\$9.50 per gallon of EDSD) took effect in July 1990. In addition, the CIAC payments to WHSC for

¹²⁰Docket No. 2006-0021 is presently on appeal to the Hawaii Intermediate Court of Appeals ("ICA"). See In re Public Util. Comm'n, Appeal No. 28853, Order Granting Stipulation for Dismissal of City and County of Honolulu's Appeal with Prejudice, filed on July 8, 2008, by the ICA (dismissing the City and County of Honolulu's appeal with prejudice, while assigning the State's cross-appeal to a merit panel).

¹²¹In addition to Paniolo Estates, WHSC represents that the MOA applied to the Kekumu developments. WHSC's Direct Testimony, at 4.

the Kekumu developments were not made until after July 1990, when WHSC's CIAC tariff rule took effect. Thus, under the filed rate doctrine, the CIAC tariff rate then in effect applied to the Kekumu developments.¹²²

WHSC contends that it did not collect \$114,944 in CIAC from the County, and since it did not receive these monies, WHSC could not have purchased regulatory assets, and thus, there can be no corresponding adjustment to WHSC's 2006 Test Year rate base. Instead, WHSC asserts that pursuant to the terms of the MOA, it received \$34,985, net of taxes, from the County for the Kekumu developments. The commission rejects WHSC's position in this regard.

First, the commission reiterates that Decision and Order No. 19223 in Docket No. 00-0440 represents a final decision with respect to the \$114,944 in CIAC adjustment for the Kekumu developments. Second, the MOA, which pre-dated the July 1990 effective date of WHSC's CIAC tariff rule (\$9.50 per gallon of EDSD), was never approved by the commission. Third, under the filed rate doctrine, an agreement to charge rates contrary to the utility's tariff is unenforceable. See Docket No. 2006-0021, Decision and Order No. 23725; see also Molokoa, 60 Haw. 582, 593 P.2d 375. Moreover, notice of

¹²²The commission recognizes that its reasoning is inconsistent with the commission's decision on the Paniolo Estates CIAC issue in Decision and Order No. 19223 in Docket No. 00-0440, where the filed rate doctrine was not mentioned or discussed. See WHSC's Reply Brief, at 4-5 (the filed rate doctrine was not asserted as a basis for the Paniolo Estates CIAC adjustment in Docket No. 00-0440). However, as previously noted, the commission's decision on the Paniolo Estates CIAC issue in Docket No. 00-0440 represents a final decision on that issue.

the terms and rates established in a utility's tariff is imputed to the utility's customers under the filed rate doctrine. See In re WHSC, 109 Hawai'i at 272, 125 P.3d at 493; and Balthazar, 109 Hawai'i at 73, 123 P.3d at 198.

In effect, the filed rate doctrine "sets forth principles that may appear 'harsh' under certain circumstances in order to advance the dual goals of promoting nondiscrimination and non justiciability." Balthazar, 109 Hawai'i at 73, 123 P.3d at 198. As noted by the commission in Docket No. 2006-0021:

The principles that underlie the filed rate doctrine are: (1) preventing price discrimination and ensuring all customers pay the same rates; and (2) preserving the regulatory agency's exclusive role in approving rates and to ensure that the filed rates are the exclusive source of the terms and conditions by which the utility provide[s] services to its customers. These principles are well established and in the public interest.

Docket No. 2006-0021, Decision and Order No. 23725, at 30 (footnote and citations therein omitted).

The commission also rejects WHSC's assertion that a decision by the commission which substantially impairs the contractual obligations of the parties to the MOA violates the Contracts Clause. Under the filed rate doctrine, "neither the tort of the carrier nor the existence of a contract will work to vary or enlarge the rights defined in a tariff." In re WHSC, 109 Hawai'i at 271-72, 125 P.3d at 492-93; and Balthazar, 109 Hawai'i at 73, 123 P.3d at 198.

Moreover, "there is no violation of [the] due process or contract clauses of the Constitution when state regulation of a public service results in the abrogation or modification of the existing contractual obligations since the exercise of state police powers may impose limitations on property rights and all contracts are subject to the possible exercise of police powers."¹²³ As clearly articulated by the United States Supreme Court:

For it is settled that neither the "contract" clause nor the "due process" clause has the effect of overriding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise. And the enforcement of uncompensated obedience to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law.

Atlantic Coast Line R.R. Co. v. Goldsboro , 232 U.S. 548, 558-59, 34 S.Ct. 364, 368 (1914) (the enactment of certain municipal ordinances that affected the obligations under a pre-existing railroad charter constituted a legitimate and reasonable exercise of the police power, and no violation of the contract or due process clauses was shown).¹²⁴

¹²³Docket No. 2006-0021, Decision and Order No. 23725, at 11 (the commission's description of HAWC's position in Docket No. 2006-0021).

¹²⁴See also Midland Realty Co. v. Kansas City Power & Light Co., 300 U.S. 109, 57 S.Ct. 345 (1937) (the enforcement of utility rates for steam heating in accordance with the public service commission law, contrary to the terms of a pre-existing contract, did not violate the contract or due process clauses);

It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals . . . in other words, that parties, by entering into contracts, may not estop the legislature from enacting laws intended for the public good.

Manigault v. Springs, 199 U.S. 473, 480, 26 S.Ct. 127, 130 (1905) (the enactment of state law to construct and maintain a dam across a creek, contrary to a pre-existing private contractual agreement to remove obstructions from the creek, constituted a proper exercise of the state's police power).

Lastly, the commission finds that WHSC's equal protection argument is without merit. Specifically, contrary to WHSC's position, there is no evidence in the docket record of any other "similarly circumstanced" public utilities' that

Union Dry Goods Co. v. Georgia Public Serv. Corp., 248 U.S. 372, 377, 39 S.Ct. 117, 119 (1919) (the right of a private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state); Louisville & Nashville R.R. Co. v. Mottley, 219 U.S. 467, 482, 31 S.Ct. 265, 270 (1911) ("as, in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority"); and Hudson County Water Co. v. McCarter, 209 U.S. 349, 357, 28 S.Ct. 529, 531-32 (1908) ("One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject-matter.").

"entered into private contracts for the collection of CIAC monies before the effective date of their respective CIAC tariff."¹²⁵

Based on the foregoing reasons, the commission adopts as reasonable the \$114,944 in CIAC adjustment for the Kekumu developments.

3.

The Remaining \$432,021 in CIAC Adjustment

The \$432,021 in CIAC adjustment set forth in Proposed Decision and Order No. 23688 and Interim Decision and Order No. 23940 reflects the tax gross-up CIAC amounts collected during the period from 1990 through 1996, pursuant to WHSC's then effective CIAC tariff of \$9.50 per gallon of EDSO, but not remitted to the taxing authorities.¹²⁶

WHSC contends that the \$432,021 in CIAC adjustment, as reflected by the commission in Proposed Decision and Order No. 23688, is erroneous. The Consumer Advocate counters that due to its inadvertent double-counting of "the [\$]21,415 CIAC tax gross-up adjustment associated with the cash CIAC for the Kekumu I, II, and III projects[,] "¹²⁷

¹²⁵WHSC's Opening Brief, at 31-32.

¹²⁶See Consumer Advocate's Opening Brief, at 10; and Consumer Advocate's Reply Brief, at 2 n.1.

¹²⁷Transcript, at 56; see also Transcript, at 66 and 89; and WHSC's Opening Brief, at 10.

the correct amount should be \$410,766.¹²⁸ The Consumer Advocate also asserts:

[WHSC's] allegations that the Consumer Advocate provided erroneous calculations for tax gross up amounts for the in-kind dedicated facilities should be dismissed. The Consumer Advocate has not included such adjustments and clarified that [its] calculations are, in fact, the amounts provided and agreed to by the Parties pursuant to a stipulated settlement in Docket No. 00-0440.

Consumer Advocate's Opening Brief, at 41; see also Transcript, at 194-195.

The ratemaking treatment of the tax gross-up portion of WHSC's CIAC funds was discussed by the commission in Docket No. 00-0440. The commission reiterates:

Here, the commission agrees with the Consumer Advocate that, as a result of the Court's opinion, generally accepted ratemaking principles require the commission to recalculate WHSC's revenue requirement and resulting rates. The Court in In re WHSC held that the entire \$9.50 per gallon of EDSD (including the \$2.25 per gallon of EDSD for income tax payments) represented CIAC. As such, the commission is required to treat the entire \$9.50 (including the \$2.25 for income taxes) as CIAC for ratemaking purposes. WHSC's test year CIAC, however, was reported net of income tax. Thus, an adjustment should be made to include the income tax component as part of WHSC's test year CIAC, consistent with In re WHSC.

It is well-settled that CIAC must be deducted from rate base in calculating a utility's authorized return on investment. "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

¹²⁸See Consumer Advocate's Revised Pages to its Direct Testimony, filed on May 13, 2008; and Consumer Advocate's Opening Brief, Section III.A.4.a, at 32-33; see also Transcript, at 54-56.

of fairness. It is inequitable to require utility customers to pay a return on property for which they, and not the utility, have paid."

WHSC, however, argues that it used the CIAC income tax gross-up fees to reimburse itself for the use of its shareholder-owned NOLs that had been used to pay the tax liability, instead of paying the tax component directly to the taxing authorities. As such, WHSC argues that the Consumer Advocate's Motion for Reconsideration, if granted, will effectively transfer the shareholder NOLs to ratepayers without compensation to WHSC and at WHSC's expense. As noted by the Consumer Advocate, "in recording the cost of utility plant in service, no distinction is made between property purchased with shareholder versus non-shareholder or contributed funds. Therefore, for ratemaking purposes, regulatory commissions eliminate the cost of contributed property when calculating a rate base by reducing the plant in service costs by the amount of contributions received to acquire such utility assets."

Docket No. 00-0440, Order No. 23635, at 17-19 (brackets, footnotes, and citations therein omitted) (emphasis in original).

Moreover, the Court, in holding that the entire \$9.50 per gallon of [EDSD] (including the \$2.25 per gallon of EDSD for income tax payments) represented CIAC, reasoned in part that WHSC's use of CIAC payments to pay income taxes constituted paying for new or expanded sewage treatment plant facilities, consistent with the language set forth in WHSC's CIAC Tariff Rule XI.

Docket No. 00-0440, Order No. 23939, at 17 (footnote and text therein omitted).

Consistent with the commission's decisions in Order No. 23635 and Order No. 23939 in Docket No. 00-0440, the commission finds reasonable the \$410,766 in CIAC adjustment recommended by the Consumer Advocate.¹²⁹

¹²⁹The source of these funds was developers requesting wastewater utility service from WHSC, irrespective of WHSC's characterization of these funds. See Transcript, at 65-66

This amount: (1) includes the tax gross-up amount for the Kekumu developments, excluding the inadvertent double-counting of the \$21,415;¹³⁰ (2) excludes the \$28,528 adjustment in CIAC tax gross-up associated with the in-kind CIAC for the Kekumu III development, on the basis that such facility was dedicated to WHSC by the developer in 1998, when the tax gross-up component was no longer collected for CIAC;¹³¹ and (3) excludes \$11,442 in income taxes that WHSC remitted to the taxing authority.¹³²

Lastly, the commission also reaffirms that the application of a public utility's NOLs are not recognized by the commission in determining the utility's income tax expense for ratemaking purposes.¹³³

(Consumer Advocate's explanation in calculating the \$410,766 CIAC adjustment for the tax gross-up); and 179-183 (imputing CIAC as an offset to rate base); Consumer Advocate's Revised Pages to its Direct Testimony and Exhibits, filed on May 13, 2008, Exhibits CA-101 and Exhibits CA-102, Revised 4/17/08; and Consumer Advocate's Opening Brief, Exhibit C, CA-101 and CA-102.

¹³⁰See Transcript, at 54-56, 66, 89, and 93-99; Consumer Advocate's Revised Pages to its Direct Testimony and Exhibits, filed on May 13, 2008; Consumer Advocate's Opening Brief, Section III.A.4.a, at 32-33; and WHSC's Opening Brief, at 10.

¹³¹See Transcript, at 11, 18, 37-38, 100-101, and 171; see also WHSC's Opening Brief, at 11.

¹³²See Transcript, at 118-121; Consumer Advocate's Revised Pages to its Direct Testimony and Exhibits, filed on May 13, 2008, Exhibit CA-101; Consumer Advocate's Opening Brief, Exhibit C, CA-101; and WHSC's Opening Brief, at 13.

¹³³In In re East Honolulu Cmty. Serv., Inc., Docket No. 7064 ("Docket No. 7064"), the commission held:

[W]e have consistently permitted the regulated utilities to compute their income taxes, for ratemaking purposes, by (1) calculating income tax liability solely on the taxable income generated by the utility in the test year, and (2) having the utility's ratepayers pay the associated

17th Fairway Villas Project

The Consumer Advocate, in its Direct Testimony, asserted:

. . . . in preparing the CIAC exhibit for my written direct testimony, I noticed that the CIAC received in 2003 for the 17th Fairway Villas project was not . . . included in the CIAC balance for the 2006 Test Year. In WHSC's response to CA-SIR-2, the CIAC for this project is currently reflected in the Deferred Credit account. Construction of the project, however, is complete and WHSC has included revenues from customers in 17th Fairway Villas in determining the test year operating revenues, which the Commission reflected in Proposed Decision and Order No. 23688. Thus, the CIAC for the 17th Fairway Villas should be transferred from the Deferred Credit account to CIAC for the 2006 test year, resulting in an additional upward adjustment of \$62,640.

Consumer Advocate's Direct Testimony, at 34-35 (footnote and citation therein omitted); see also Consumer Advocate's Opening Brief, at 33-34.

The Consumer Advocate's recommendation to transfer the \$62,640 from WHSC's deferred credit account to the utility's 2006 Test Year CIAC balance is supported by the docket record. CIAC in the amount of \$62,640 was collected from the developer for this project; the amount remains in WHSC's deferred credit account; and the 17th Fairway Villas

taxes and receive any tax credits and benefits. We have not allowed previous taxable losses to be carried forward to calculate the income tax under the approved rates.

We see no reason to reverse ourselves on this matter in this decision and order

Docket No. 7064, Decision and Order No. 12679, filed on October 13, 1993, at 18-19; accord In re East Honolulu Cmty. Serv., Inc., Docket No. 7718, Decision and Order No. 15170, filed on November 18, 1996, Section IV.E, at 15-17.

Project added twenty-seven units to the A-Plant sewer system in 2005.¹³⁴ Moreover, as acknowledged by WHSC in Exhibit WHSC 8 of its Application:

[WHSC] receives contributions in aid of construction from commercial customers or developers in the form of cash or utility property. Cash payments are received for line extensions to the applicant's property or for other, offsite improvements. Cash amounts received are recorded to the contributions in aid of construction account when the corresponding utility plant items are placed in service. Utility property received by [WHSC] is recorded at its actual construction cost, as provided by the developer or commercial applicant, at the date placed in service.

WHSC's Application, Exhibit WHSC 8, at 29 (emphasis added).

Based on these reasons, the commission finds reasonable the \$62,640 adjustment to WHSC's 2006 Test Year CIAC balance.

5.

Accumulated Amortization/CIAC

WHSC contends that the commission's use of the fifty-year amortization period is erroneous, and instead, maintains that a 17.8 year amortization period is appropriate. The Consumer Advocate counters that the use of a fifty-year amortization period is reasonable and appropriate.

¹³⁴See WHSC's Application, at 3; and Verification of Bruce W. Moore; WHSC's responses to CA-IR-1.c.2 and CA-IR-2.a; WHSC's Exhibit CA-IR-1c-1, 2 (17th Fairway Villas); WHSC's Exhibit CA-IR-2-a, b (17th Fairway Villas); WHSC's response to CA-SIR-2; and WHSC's confidential Exhibit CA-SIR-2.

By letter dated April 16, 2008, WHSC effectively waived its claim of confidentiality, which the commission acknowledged at the outset of the evidentiary hearing on April 17, 2008. See Transcript, at 5. Thus, the entire evidentiary hearing, including the Consumer Advocate's proposed adjustment for the 17th Fairway Villas Project, was held in an open proceeding.

In the alternative, the Consumer Advocate recommends the use of a forty-year amortization period.

WHSC further contends that the use of 2001 as the commencement date for calculating the accumulated amortization of CIAC is erroneous, and instead, maintains that amortization must run from the in-service date of the regulatory asset and shall continue for the useful life of such asset. The Consumer Advocate counters that the accumulated amortization for the CIAC income tax gross-up amounts beginning in 2001 rather than the in-service dates of the unidentified regulatory assets is proper.

The commission rejects WHSC's contention that a 17.8 year amortization period is appropriate, and instead, finds that the use of a fifty-year amortization period is supported by the docket record. In this regard, as the commission reasoned in Proposed Decision and Order No. 23688:

In its Rebuttal, West Hawaii Sewer states that "the Consumer Advocate assumes . . . that a 50-year amortization period for CIAC is appropriate, when in fact the actual average useful life of [West Hawaii Sewer's] fixed assets is approximately 17.8 years." West Hawaii Sewer provides Exhibit 11, entitled "Schedule of Utility Plant Assets Useful Lives As At [sic] April 30, 2006," which lists 115 assets having useful lives ranging from three years to fifty years. West Hawaii Sewer computed a straight average of the 2,046 total years of useful life over the 115 assets, for an average useful life of 17.79 years (rounded to a 17.8 amortization period for CIAC).

The Consumer Advocate states that "West Hawaii Sewer's proposal to apply a shorter amortization period is inconsistent with the period that the Company currently uses

to amortize CIAC." The Consumer Advocate points out that "as noted in WHSC Exhibit 8, page 79 of 101, CIAC is amortized over a 50-year period." Thus, the Consumer Advocate maintains that "the Consumer Advocate's amortization of the CIAC income tax gross-up amounts is not arbitrary and is consistent with the period that the Company amortizes the non-income tax CIAC collections."

The commission agrees with the Consumer Advocate that a 50-year amortization period is consistent with West Hawaii Sewer's amortization life for CIAC. Indeed, West Hawaii Sewer provided Appendix F to its Application, attached as WHSC Exhibit 8, pages 75 through 83 of 101, stating that "Appendix F contains detailed schedules of CIAC and accumulated amortization calculations for the years ending December 31, 2005 and 2006." As Appendix F demonstrates, West Hawaii Sewer appears to utilize a 50-year amortization life for the majority of its CIAC. Accordingly, the commission accepts a 50-year amortization period for CIAC as reasonable.

Proposed Decision and Order No. 23688, at 39-40 (brackets, footnotes and citations therein omitted).

Based on the credible, available information in the docket record, the commission adopts as reasonable the use of a 50-year amortization period.¹³⁵ The commission, as part of its ruling on this matter, credits the pertinent information set forth in Mr. Yamasato's Declaration. As noted by the Consumer Advocate:

WHSC has not sufficiently demonstrated that its proposed 17.8-year amortization period is reasonable. Absent sufficient data, the Commission should utilize a 50-year amortization period consistent with the period WHSC used

¹³⁵ See WHSC's Application, Exhibit 8, Appendix F; WHSC's response to CA-IR-19.d (WHSC's objection to the Consumer Advocate's request for information on the utility's acquisition of plant assets); and WHSC's response to CA-SIR-2.b.6 (WHSC's reference to WHSC's Application, Exhibit 8, Appendix F); see also Consumer Advocate's Opening Brief, Section III.B.1, at 37-40; and Consumer Advocate's Reply Brief, Section II.D, at 17-20.

for the net of tax CIAC funds received. The Consumer Advocate proposes to amortize the CIAC tax gross-up amounts over a 50-year period to be consistent with the amortization period applied by WHSC to the net of tax CIAC payments. Since all but one CIAC payment is amortized over a 50-year life, regardless of the specific asset acquired with such funds, it is more than reasonable to simply amortize the CIAC income tax gross-up adjustment for the instant docket over a 50-year period. This would be consistent with WHSC's current practice of amortizing CIAC including the net of tax amounts received from 1990 to 1996 over a 50-year period.

WHSC asserts that the use of a 50-year amortization period, as recommended by the Consumer Advocate and adopted by the Commission in proposed Decision and Order No. 23688 is arbitrary because the Consumer Advocate and Commission failed to identify any assets acquired with CIAC tax gross-up funds during this period. In Docket No. 00-0440, however, WHSC filed its Motion for Reconsideration of Section IV.B of Decision and Order No. 19223, on February 27, 2002, stating the following:

As demonstrated by the attached schedule (source and use of funds) showing assets purchased during the period in question, the cost of the assets purchased matches closely the contributions collected during the same period. Yamasato Declaration, Exhibit 3.

In said docket, WHSC represented that during the period that the CIAC funds were collected from developers and subject to income taxes pursuant to the then existing tax regulations, WHSC acquired regulatory assets with the monies that were not remitted to the taxing authorities. Mr. Yamasato further stated that by using WHSC's NOLs to eliminate its tax liability from 1987 through 1996, WHSC avoided having to borrow funds to pay for regulatory assets purchased during that same period. During the Evidentiary Hearing, Commissioner Kondo directed a question to Mr. Terminello regarding the use of the tax gross-up funds, to which Mr. Terminello merely restated that the Company's non-remitted CIAC income tax gross-up amounts were used to compensate WHSC's shareholders for the use of NOLs to eliminate the income tax liabilities associated

with the CIAC funds received. Yet, Mr. Terminello also stated that regulatory assets may have been purchased and he would be able to identify which CIAC amounts are applied to a particular utility plant in service.

Consumer Advocate's Reply Brief, at 17-19 (footnotes, text, and citations therein omitted); see also Consumer Advocate's Opening Brief, Section III.B.1, at 37-40.

The commission, likewise, concurs with the Consumer Advocate's rationale that the use of 2001 as the commencement date for calculating the accumulated amortization of CIAC for the income tax gross-up amounts is reasonable:

. . . . WHSC's attempts to . . . amortiz[e] the CIAC from 1992, when ratepayers have not received any benefit of the inclusion of the CIAC in rate base until the 2001 test year is unreasonable because WHSC's ratepayers will not receive the benefit of the income tax portion of the CIAC associated with the amortization from 1992 through the 2001 test year (i.e., a period of 10 years). The accumulated amortization should, at most, reflect the amortization from the 2001 test year (i.e., five years of amortization), since this is [the] year when the amounts would first be included in the test year rate base, not 1992 as WHSC suggests.

Consumer Advocate's Statement of Probable Entitlement, at 21; see also Consumer Advocate's Direct Testimony, at 39-40; Consumer Advocate's Opening Brief, Section III.B.2, at 40; and Consumer Advocate's Reply Brief, at 20.

Accordingly, the commission finds reasonable the use of the 2001 commencement date discussed above.

6.

Net Plant-in-Service

In general, WHSC's plant-in-service, less accumulated depreciation, i.e., its net plant-in-service, reflects its investments in its wastewater collection and treatment system. The commission adopts as reasonable the amount of \$2,353,435 for WHSC's net plant-in-service balance for the 2006 Test Year, as reflected in the attached schedules.

7.

CIAC

Based on the commission's rulings on the various CIAC issues herein, including issues related to Paniolo Estates, the Kekumu developments, the income tax gross-up, and the accumulated amortization of CIAC, the commission adopts as reasonable the average amount of \$1,384,434 for WHSC's unamortized CIAC balance for the 2006 Test Year, as reflected in the attached schedules.

8.

ADIT

In In re Young Bros., Ltd., Docket No. 2006-0396 ("Docket No. 2006-0396"), the commission noted:

ADIT represents the difference between the amount of income tax expense reported for book (i.e., ratemaking) and for tax purposes. In general, a regulated entity calculates and reports book depreciation expenses on a straight-line basis (i.e., straight-line depreciation), but for tax purposes, the regulated entity may write-off the same asset on an accelerated basis, i.e.,

accelerated depreciation. The difference in tax liabilities calculated for book and tax purposes, respectively, generates deferred income taxes. Thus, the regulated entity must pass onto its ratepayers the tax benefits received as a result of the accelerated tax depreciation practices. For ratemaking purposes, the ADIT is reflected as a reduction to rate base.

Docket No. 2006-0396, Decision and Order No. 23714, at 50; see also WHSC's Application, Exhibit WHSC 8, Section 9.5, at 30 (deferred income taxes).

The commission approves as reasonable the average amount of \$73,767 for ADIT, as reflected in the attached schedules.

9.

HSCGETC

As described by the commission in Docket No. 2006-0396:

The HSCGETC is the tax credit authorized for purchases related to the acquisition or construction of capital goods in the State. "Similar to ADIT, the tax benefits associated with HSCGETC must be returned to a regulated utility company's customers. Thus, similar to ADIT, the accumulated balance of HSCGETC is reflected as an offset to rate base.

Docket No. 2006-0396, Decision and Order No. 23714, at 52 (footnotes, text, and citation therein omitted); see also WHSC's Application, Exhibit WHSC 8, Section 9.6, at 31 (deferred Hawaii Capital Goods Excise Tax Credit).

The commission approves as reasonable the average amount of \$71,272 for the HSCGETC balance, as set forth in the attached schedules.

Working Cash

As noted by the commission in Proposed Decision and Order No. 23688:

West Hawaii computes working cash by equating the working capital requirement to $1/12^{\text{th}}$ of the total estimated test year operating expenses. The Consumer Advocate does not object to West Hawaii Sewer's methodology. The $1/12^{\text{th}}$ factor "equates to an approximately 30-day time lag between the rendering of the service and payment by the customer," and provides "a general estimation of a utility's working capital requirements." The commission agrees with the Consumer Advocate that it is generally acceptable to use the $1/12^{\text{th}}$ formula methodology to compute working cash. The commission has accepted this methodology for West Hawaii Sewer (Decision and Order Nos. 13791 and 19223), as well as for West Hawaii Utility Company (Decision and Order No. 16372), and West Hawaii Water Company (Decision and Order No. 17271). Accordingly, the commission accepts West Hawaii Sewer's $1/12^{\text{th}}$ formula methodology in this docket.

Proposed Decision and Order No. 23688, Section IX, Working Cash, at 40-41 (brackets, footnotes, and citations therein omitted).

WHSC, in Exhibit A, page 3, of its Opening Brief, suggests that an adjustment to the working cash calculation set forth in Proposed Decision and Order No. 23688 is appropriate, reasoning that "[i]t appears the Commission overlooked the adjustment to working cash resulting from its decision to include the \$46,626 salary expenses associated with the Field Engineer and Utility Plant Operator positions." The commission responds by noting that such an adjustment, i.e., increasing WHSC's 2006 Test Year working cash balance

by approximately \$3,885, was made by the commission in Interim Decision and Order No. 23940,¹³⁶ and the same adjustment is also incorporated in this Decision and Order.

The commission adopts as reasonable the amount of \$57,168 for WHSC's 2006 Test Year working cash balance, as reflected in the attached schedules.

D.

Rate of Return

As discussed by the Court in In re Hawaii Elec. Light Co., Inc., 60 Haw. 625, 594 P.2d 612 (1979):

A fair return is the percentage rate of earnings on the rate base allowed a utility after making provision for operating expenses, depreciation, taxes and other direct operating costs. Out of such allowance the utility must pay interest and other fixed dividends on preferred and common stock. In determining a rate of return, the Commission must protect the interests of a utility's investors so as to induce them to provide the funds needed to purchase plant and equipment, and protect the interests of the utility's consumers so that they pay no more than is reasonable.

To calculate the rate of return, the costs of each component of capital - debt, preferred equity and common equity - are weighted according to the ratio each bears to the total capital structure of the company and the resultant figures are added together to yield a sum which is the rate of return.

¹³⁶ See Interim Decision and Order No. 23940, at 9 (the adjustments to Proposed Decision and Order No. 23688 include an increase in WHSC's test year working cash balance by approximately \$3,885 in light of the upward adjustment of \$46,626 to WHSC's test year expenses for salaries and wages); and Interim Decision and Order No. 23940, Exhibit A, page 5, Test Year Working Cash.

The proper return to be accorded common equity is the most difficult and least exact calculation in the whole rate of return procedure since there is no contractual cost as in the case of debt or preferred stock[:]

Equity capital does not always pay dividends; all profits after fixed charges accrue to it and it must withstand all losses. The cost of such capital cannot be read or computed directly from the company's books. Its determination involves a judgment of what return on equity is necessary to enable the utility to attract enough equity capital to satisfy its service obligations.

.

Questions concerning a fair rate of return are particularly vexing as the reasonableness of rates is not determined by a fixed formula but is a fact question requiring the exercise of sound discretion by the Commission. It is often recognized that the ratemaking function involves the making of "pragmatic" adjustments and there is no single correct rate of return but that there is a "zone of reasonableness" within which the commission may exercise its judgment.

In re Hawaii Elec. Light Co., Inc., 60 Haw. at 632-33 and 636, 594 P.2d at 618-20 (citations omitted) (emphasis added).

In Proposed Decision and Order No. 23688, the commission found that an 8.85 percent rate of return for WHSC was just and reasonable, and the commission subsequently applied the 8.85 percent rate of return in Interim Decision and Order No. 23940. The commission declined to adopt WHSC's proposed rate of return of ten percent, noting in part that "an applicant is not necessarily entitled to earn a rate of return simply because that rate of return was allowed by the commission in a previous rate case. Rather, an applicant

is required to provide sufficient support for its proposed rate of return in each docket."¹³⁷

Consistent with the commission's rationale in Proposed Decision and Order No. 23688, the commission adopts as fair the 8.85 percent rate of return.

E.

Revenue Requirement Components

The commission's rulings on the foregoing revenue requirement components (operating revenues, expenses, rate base, and rate of return) are incorporated in the schedules attached to this Decision and Order. The revenue requirement components, moreover, are reflected in Exhibit C of the Consumer Advocate's Opening Brief,¹³⁸ subject to the commission's inclusion of the costs associated with the hearing and briefing phases of this proceeding (\$5,100 for the 2006 Test Year).

¹³⁷Proposed Decision and Order No. 23688, at 43.

¹³⁸A copy of the Consumer Advocate's Exhibit C is attached to this Decision and Order. As explained by the Consumer Advocate:

Exhibit C reflects the . . . revenue requirement that incorporates the Consumer Advocate's minimum recommended CIAC adjustment for: (a) the Kekumu Projects [\$114,944], (b) the income tax gross-up amounts that were used to purchase plant [\$410,766] and (c) the reclassification of the 17th Fairway Villa's CIAC from the Deferred Credit to the Test Year CIAC balance [\$62,640]. In addition, the revenue requirement on this Exhibit reflects the Consumer Advocate's primary recommended 50-year amortization period for the CIAC income tax gross up adjustment.

Consumer Advocate's Opening Brief, at 44.

In effect, the changes between Proposed Decision and Order No. 23688 and this Decision and Order include:

1. For WHSC's regulatory commission expense, the inclusion of \$5,100 in the 2006 Test Year for the hearing and briefing phases (\$25,498, amortized over five years).

2. The downward adjustment for the CIAC tax gross-up component, from \$432,021 to \$410,766, for the 2006 Test Year.

3. The inclusion of the \$62,640 in CIAC adjustment for the 17th Fairway Villas Project, as part of the 2006 Test Year.

4. The inclusion of \$3,885 in WHSC's 2006 Test Year working cash balance, which the commission already incorporated in Interim Decision and Order No. 23940.

F.

Rate Design

In Proposed Decision and Order No. 23688, and as subsequently adopted by the commission in Interim Decision and Order No. 23940, the commission allocated the entire amount of the rate increase to the monthly standby charge in order to provide WHSC with the "best opportunity" to recover its fixed expenses.

The commission, consistent with Interim Decision and Order No. 23940, will allocate the entire amount of the rate increase authorized by this Decision and Order to WHSC's monthly standby charge, with no change to the monthly consumption charge of \$1.33 per TG of metered water.

Based on the rulings in this Decision and Order, WHSC's new monthly standby charge is \$36.67 per unit, which is \$0.10 less than the monthly standby charge of \$36.77 per unit authorized by Interim Decision and Order No. 23940. Hence, WHSC is required to refund to its ratepayers the amounts that it has collected that are in excess of the increase authorized by this Decision and Order, together with interest, pursuant to HRS § 269-16(d).¹³⁹ WHSC shall file a refund plan that includes the amount of interest to be paid, the proration of the refund amongst its ratepayers, and the amortization period of the refund.¹⁴⁰

G.

Non-Rate Tariff Rules

In Proposed Decision and Order No. 23688, the commission found reasonable the following two new rules to WHSC's tariff, as proposed by the Consumer Advocate:

1. Add a provision that sets forth who is responsible for equipment on customer's premises:

COMPANY'S EQUIPMENT ON CUSTOMER'S PREMISES

All equipment belonging to the Company and installed upon the Customer's premises for measuring, testing, checking or any other

¹³⁹See, e.g., In re Hawaiian Elec. Co., Inc., Docket No. 04-0113 ("Docket No. 04-0113"), Decision and Order No. 24171, filed on May 1, 2008 (refund required for the electric utility's 2005 test year rate case, pursuant to HRS § 269-16(d)).

¹⁴⁰See Docket No. 04-0113, Order Approving HECO's Refund Plan, Filed on May 23, 2008, filed on June 20, 2008; and Order Approving HECO's Revised Tariff Sheets and Rate Schedules, Filed on May 21, 2008.

purpose shall continue to be the property of the Company, and may be repaired, replaced or removed by the Company at any time without the consent of the Customer. The Customer shall exercise reasonable care to prevent damage to equipment of the Company upon the Customer's premises and shall not interfere with the operation of the same.

2. Add a provision that sets forth the customer responsibility:

CUSTOMER RESPONSIBILITY

The Customer shall, at Customer's risk and expense, furnish, install, and keep in good and safe condition all equipment that may be required for utilizing the sewer service supplied by the Company.

Proposed Decision and Order No. 23688, at 47-48 (footnotes and citations therein omitted).

Consistent with Proposed Decision and Order No. 23688, the commission adopts as reasonable the two new non-rate tariff rules proposed by the Consumer Advocate.

III.

Summary of Findings and Conclusions

Based on the foregoing, the commission finds and concludes:

1. The operating revenues and expenses for the 2006 Test Year, as set forth in the attached schedules, are reasonable.

2. The use of an average 2006 Test Year rate base is reasonable.

3. The 2006 Test Year average depreciated rate base of \$881,131 is reasonable.

4. A rate of return of 8.85 percent is fair.

5. WHSC is entitled to an increase in revenues of \$275,337, or approximately 41.67 percent over revenues at present rates, based on a total revenue requirement of \$936,108 for the 2006 Test Year, and a rate of return of 8.85 percent.

6. WHSC shall decrease its monthly standby charge from \$36.77 per unit to \$36.67 per unit.

7. The two non-rate tariff rules are reasonable.

8. Interim Decision and Order No. 23940 provides that "WHSC will be required to refund to its customers any excess collected under this Interim Decision and Order, together with such interest as provided for by HRS § 269-16(d), if the final increase approved by the commission is less than the total interim increase granted by this Interim Decision and Order."¹⁴¹ The increase in revenues over present rates approved by the commission in this Decision and Order is less than the increase in revenues over present rates previously approved by the commission in Interim Decision and Order No. 23940. Accordingly, WHSC must refund to its ratepayers the amounts it has collected that are in excess of the increase authorized by this Decision and Order, together with interest, pursuant to HRS § 269-16(d).

¹⁴¹Interim Decision and Order No. 23940, at 11.

IV.

Orders

THE COMMISSION ORDERS:

1. WHSC may increase its rates to such levels as will produce \$275,337 in additional revenues for the 2006 Test Year (approximately 41.67 percent over revenues at present rates).

2. By October 1, 2008, WHSC shall file its revised tariff sheets that reflect the new non-tariff rules and the wastewater rates approved by the commission in this Decision and Order, for the commission's review and approval, with copies served on the Consumer Advocate.

3. By October 1, 2008, WHSC shall file a refund plan that includes the amount of interest to be paid, the proration of the refund amongst its ratepayers, and the amortization period of the refund, with copies served on the Consumer Advocate.

4. By October 8, 2008, the Consumer Advocate shall file its comments to WHSC's refund plan, with a copy served on WHSC.

5. The failure to comply with Ordering Paragraphs Nos. 2 and 3, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law.

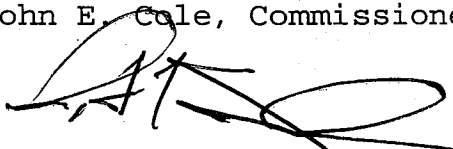
DONE at Honolulu, Hawaii

SEP 23 2008


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

05-0329.laa

COMMISSION'S SCHEDULES

DOCKET NO. 05-0329
WEST HAWAII SEWER COMPANY
REVENUE REQUIREMENTS
TEST YEAR ENDED DECEMBER 31, 2006

	<u>Present Rates</u>	<u>Additional Amount</u>	<u>Approved Rates</u>
REVENUES			
Residential	\$ 82,770	37,991	\$ 120,761
Multi Family	513,019	224,548	737,567
Commercial	28,740	8,598	37,338
Other	36,242	4,200	40,442
Total Operating Revenues	<u>\$ 660,771</u>	<u>\$ 275,337</u>	<u>\$ 936,108</u>
OPERATING & MAINT. EXPENSES			
Salaries and Wages - Employees	\$ 304,306		\$ 304,306
Purchased Power	25,020		25,020
Fuel for Power Production	22,572		22,572
Chemicals	14,592		14,592
Material & Supplies	59,544		59,544
Contractual Services - Other	18,496		18,496
Rental of Equipment	29,136		29,136
Administrative & General Allocation	212,355		212,355
Total O & M Expenses	<u>\$ 686,021</u>	<u>-</u>	<u>\$ 686,021</u>
Depreciation	\$ 64,039	\$ -	\$ 64,039
TOTIT	42,190	17,580	59,770
Income Taxes	(50,287)	98,584	48,297
Net Operating Expense	<u>\$ 55,942</u>	<u>\$ 116,165</u>	<u>\$ 172,107</u>
Net Operating Income (Loss)	<u>\$ (81,192)</u>	<u>\$ 159,172</u>	<u>\$ 77,980</u>
Average Rate Base	<u>\$ 881,131</u>		<u>\$ 881,131</u>
Return on Rate Base	<u>-9.21%</u>		<u>8.8500%</u>

**DOCKET NO. 05-0329
WEST HAWAII SEWER COMPANY
ANALYSIS OF RATE INCREASE
TEST YEAR ENDED DECEMBER 31, 2006**

	<u>Amount</u>	<u>% Increase</u>
Rate Increase:		
Final Rate Increase	275,337	41.67%
Less:		
Interim Rate Increase (D&O No. 23940)	<u>276,926</u>	<u>41.91%</u>
Final Increase (Refund)	<u><u>(1,589)</u></u>	<u><u>-0.24%</u></u>

DOCKET NO. 05-0329
WEST HAWAII SEWER COMPANY
REVENUE TAXES
TEST YEAR ENDED DECEMBER 31, 2006

	<u>Tax Rates</u>	<u>Present Rates</u>	<u>Adjustments</u>	<u>Approved Rates</u>
Total Operating Revenues		<u>\$ 660,771</u>	<u>\$ 275,337</u>	<u>\$ 936,108</u>
Public Company Service Tax	5.885%	38,886	16,204	55,090
Public Utility Fee	0.500%	<u>3,304</u>	<u>1,377</u>	<u>4,681</u>
Total Revenue Taxes	6.385%	<u>\$ 42,190</u>	<u>\$ 17,580</u>	<u>\$ 59,770</u>

DOCKET NO. 05-0329
WEST HAWAII SEWER COMPANY
INCOME TAX EXPENSE
TEST YEAR ENDED DECEMBER 31, 2006

	<u>Present Rates</u>	<u>Approved Rates</u>
REVENUES		
Residential	\$ 82,770	\$ 120,761
Multi Family	513,019	737,567
Commercial	28,740	37,338
Other	36,242	40,442
Total Operating Revenues	<u>660,771</u>	<u>936,108</u>
OPERATING & MAINT. EXPENSES		
Salaries and Wages - Employees	304,306	304,306
Purchased Power	25,020	25,020
Fuel for Power Production	22,572	22,572
Chemicals	14,592	14,592
Material & Supplies	59,544	59,544
Contractual Services - Other	18,496	18,496
Rental of Equipment	29,136	29,136
Administrative & General Allocation	212,355	212,355
Total O & M Expenses	<u>686,021</u>	<u>686,021</u>
Depreciation	64,039	64,039
TOTIT	42,190	59,770
Net Operating Expense	<u>106,229</u>	<u>123,809</u>
Taxable Income	(131,479)	126,278
Income Tax Provision		
Effective tax rate of 38.2471%	(50,287)	48,297
Income Tax Expense	<u>\$ (50,287)</u>	<u>\$ 48,297</u>

**DOCKET NO. 05-0329
WEST HAWAII SEWER COMPANY
AVERAGE RATE BASE
TEST YEAR ENDED DECEMBER 31, 2006**

Description	At 12/31/2005	At 12/31/2006	Average
Plant in Service	\$ 3,860,570	\$ 3,915,570	
Accum. Depreciation	1,480,044	1,589,226	
Net-Plant-in-Service	<u>2,380,526</u>	<u>2,326,344</u>	\$ 2,353,435
Deduct:			
CIAC	2,251,091	2,251,091	
Accum. Amortization of CIAC	(844,086)	(889,229)	
Deferred Income Tax	62,111	85,423	
Deferred Hawaii Capital Goods Credit	72,945	69,598	
Subtotal	<u>1,542,061</u>	<u>1,516,883</u>	1,529,472
Average			823,963
Working Cash at Present Rates			<u>57,168</u>
Rate Base at Present and Interim Rates			<u><u>\$ 881,131</u></u>

DOCKET NO. 05-0329
WEST HAWAII SEWER COMPANY
WORKING CASH
TEST YEAR ENDED DECEMBER 31, 2006

Operating Expenses	
Salaries and Wages - Employees	\$ 304,306
Purchased Power	25,020
Fuel for Power Production	22,572
Chemicals	14,592
Material & Supplies	59,544
Contractual Services - Other	18,496
Rental of Equipment	29,136
Administrative & General Allocation	<u>212,355</u>
	686,021
 Number of months in a year	 <u>12</u>
 Working Cash	 <u><u>\$ 57,168</u></u>

CONSUMER ADVOCATE'S EXHIBIT C

West Hawaii Sewer Company
Revenue Requirements
Test Year Ending December 31, 2006
w/o Paniolo adjustment and 50 year amortization of CIAC tax gross up adjustment

	Results of Operation	Additional Amount	Proposed Rates at 8.85%
Residential	\$82,770	\$48,599	\$131,369
Multi Family	513,019	209,493	722,512
Commercial	28,740	11,736	40,476
Other (including hotels)	36,242		36,242
Total Operating Revenues	\$660,771	\$269,828	\$930,599
 S&W-Employees	 \$304,306		 \$304,306
Purchased Power	25,020		25,020
Fuel for Power Production	22,572		22,572
Chemicals	14,592		14,592
Materials & Supplies	59,544		59,544
Contractual Services-Other	18,496		18,496
Rental of Equipment	29,136		29,136
A&G Allocation	207,255		207,255
Total O&M Expenses	\$680,921	\$0	\$680,921
 TOTIT	 \$42,194	 \$17,229	 \$59,422
Depreciation	64,039		64,039
Income Taxes	(48,338)	96,612	48,274
Total Operating Expenses incl. Taxes, etc.	\$738,816	\$113,840	\$852,656
 Operating Income	 (\$78,045)	 \$155,987	 \$77,943
 Average Rate Base	 \$880,706	 \$0	 \$880,706
 Return on Rate Base	 0.00%		 8.85%

West Hawaii Sewer Company
Income Tax Expense
Test Year Ending December 31, 2006
w/o Paniolo adjustment and 50 year amortization of CIAC tax gross up adjustment

	Present Rates	Proposed Rates
Residential	\$82,770	\$131,369
Multi Family	513,019	\$722,512
Commercial	28,740	\$40,476
Other (including hotels)	36,242	\$36,242
Total Operating Revenues	<u>\$660,771</u>	<u>\$930,599</u>
 S&W-Employees	 \$304,306	 \$304,306
Purchased Power	25,020	25,020
Fuel for Power Production	22,572	22,572
Chemicals	14,592	14,592
Materials & Supplies	59,544	59,544
Contractual Services-Other	18,496	18,496
Rental of Equipment	29,136	29,136
A&G Allocation	<u>207,255</u>	<u>207,255</u>
 Total O&M Expenses Before Income Taxes	 \$680,921	 \$680,921
 Depreciation	 64,039	 64,039
TOTIT	42,194	59,422
Sub-total	<u>\$106,233</u>	<u>\$123,461</u>
 Taxable Income	 (\$126,383)	 \$126,217
 Income Tax Provision	 	
Effective tax rate of	38.2471% (\$48,338)	\$48,274
 Less Amortization of: HCGETC Amortization	 <u>0</u>	 <u>0</u>
 Income Tax Expense	 <u><u>(\$48,338)</u></u>	 <u><u>\$48,274</u></u>

West Hawaii Sewer Company
Taxes Other Than Income Taxes
Test Year Ending December 31, 2006
w/o Paniolo adjustment and 50 year amortization of CIAC tax gross up adjustment

<u>Revenue Taxes</u>	<u>Revenues at Present Rates</u>	<u>Revenues at Proposed Rates</u>	<u>Tax Rates</u>	<u>Taxes at Present Rates</u>	<u>Taxes at Proposed Rates</u>
Public Company Service Tax	\$660,771	\$930,599	5.886%	\$38,890	\$54,770
Public Utility Fee	\$660,771	\$930,599	0.500%	3,304	4,653
Total Revenue Taxes				<u>\$42,194</u>	<u>\$59,423</u>
Total Taxes Other Than Income Taxes				<u>\$42,194</u>	<u>\$59,423</u>

West Hawaii Sewer Company
Average Rate Base
Test Year Ending December 31, 2006
w/o Paniolo adjustment and 50 year amortization of CIAC tax gross up adjustment

Description	At 12/31/2004	At 12/31/2005	Average
Plant In Service	\$3,860,570	\$3,915,570	
Accum Deprn Reserve	1,480,044	1,589,226	
Net Plant-in-Service	<u>\$2,380,526</u>	<u>\$2,326,344</u>	\$2,353,435
Deduct:			
CIAC	\$2,251,091	\$2,251,091	
Accum Amortization of CIAC	(844,086)	(889,229)	
Deferred Income Taxes	62,111	85,423	
Deferred Hawaii Capital Goods Credit	72,945	69,598	
subtotal	<u>\$1,542,061</u>	<u>\$1,516,883</u>	\$1,529,472
Add:			
Average			\$823,963
Working Cash at Present Rates			<u>56,743</u>
Rate Base at Present and Proposed Rates			<u><u>\$880,706</u></u>

West Hawaii Sewer Company
Working Cash Calculation
Test Year Ending December 31, 2006
w/o Paniolo adjustment and 50 year amortization of CIAC tax gross up adjustment

	At present rates
Operating Expenses	
S&W-Employees	\$304,306
Purchased Power	25,020
Fuel for Power Production	22,572
Chemicals	14,592
Materials & Supplies	59,544
Contractual Services-Other	18,496
Rental of Equipment	29,136
A&G Allocation	207,255
 Total O&M Expenses	 <u>\$680,921</u>
 Number of months in a year	 <u>12</u>
 Working Cash	 <u><u>\$56,743</u></u>

Analysis of Gross CIAC Fees To Be Reflected in WHSC's Test Year Rate Base
w/out additional Paniolo Estates Adjustment to reflect \$9.50 tariff rate

				Balance at 12/31/2005 12/31/2006	CIAC Income Tax	Adjusted CIAC at 12/31/2005 12/31/2006
Collection Sewers Force						
17000 Sewer Lines (Dedicated) Schuler	5/14/1993	50	\$	147,285	\$ 87,644	\$ 234,929
17001 Sewer Lines (Dedicated) Kekumu I & II	4/4/1996	50	\$	34,888	\$ 21,654	56,542
Sewer Lines (Dedicated) Kekumu III	1/1/1997	50	\$	75,132	\$ -	75,132
			\$	257,305	\$ 109,298	\$ 366,603
Collection Sewers Gravity						
17085 Sewer Transmission Line	1/1/1974	50	\$	871,886	\$ -	\$ 871,886
T&D Equipment						
17086 Treatment Plant-Original	1/1/1974	50	\$	27,009	\$ -	\$ 27,009
17087 Utility Plant Donated	10/31/1978	50	\$	1,319	\$ -	1,319
17089 Shelter for ICSO Sampler	12/31/1981	12	\$	2,005	\$ -	2,005
Rounding			\$	-	\$ -	-
			\$	30,333	\$ -	\$ 30,333
CIAC Fees						
Villas	1/1/1979	50	\$	11,600	\$ -	\$ 11,600
Paniolo Club	1/1/1980	50	\$	4,466	\$ -	4,466
Fairway Terrace	1/1/1990	50	\$	86,842	\$ 53,158	140,000
Waikoloa Hills	1/1/1990	50	\$	11,910	\$ 7,290	19,200
Waikoloa Greens	8/1/1991	50	\$	97,759	\$ 48,416	146,175
Waikoloa Fairways	12/1/1991	50	\$	50,616	\$ 30,984	81,600
Villages @ Waikoloa Elimani Lani	1/1/1992	50	\$	46,895	\$ 28,705	75,600
Paniolo Estates PH-1	7/1/1992	50	\$	43,917	\$ 26,883	70,800
Waikoloa Elementary School	9/1/1994	50	\$	97,232	\$ 59,518	156,750
Kekumu I	9/1/1994	50	\$	76,560	\$ 23,760	100,320
Kekumu II	10/1/1995	50	\$	41,470	\$ 12,870	54,340
Kekumu III	1/1/1997	50	\$	31,900	\$ 9,900	41,800
Fire Station	11/1/1997	50	\$	10,150	\$ -	10,150
U. S. Post Office	6/19/1999	23	\$	6,844	\$ -	6,844
Rounding			\$	-	\$ (16)	(16)
			\$	618,161	\$ 301,468	\$ 919,629
Subtotal				\$ 1,777,685	\$ 410,766	\$ 2,188,451
17th Fairway Villas	2003			62,640		62,640
Total adjusted gross CIAC				<u>\$ 1,840,325</u>	<u>\$ 410,766</u>	<u>\$ 2,251,091</u>

Analysis of Tax on CIAC Fees To Be Reflected in WHSC's Test Year Rate Base

				Per Dkt 00-0440 Stipulation Balance at 12/31/2000 12/31/2001	Less Taxes Paid	Adjustment	
Collection Sewers Force							
17000 Sewer Lines (Dedicated) Schuler	5/14/1993	50	\$	87,644		\$	87,644
17001 Sewer Lines (Dedicated) Kekumu I & II	4/4/1996	50		21,654			21,654
Sewer Lines (Dedicated) Kekumu III	1/1/1997	50					-
			\$	109,298		\$	109,298
Collection Sewers Gravity							
17085 Sewer Transmission Line	1/1/1974	50				\$	-
T&D Equipment							
17086 Treatment Plant-Original	1/1/1974	50				\$	-
17087 Utility Plant Donated	10/31/1978	50					-
17089 Shelter for ICSO Sampler	12/31/1981	12					-
Rounding							-
			\$	-		\$	-
CIAC Fees							
Villas	1/1/1979	50				\$	-
Paniolo Club	1/1/1980	50					-
Fairway Terrace	1/1/1990	50		53,158			53,158
Waikoloa Hills	1/1/1990	50		7,290			7,290
Waikoloa Greens	8/1/1991	50		59,841	11,425		48,416
							-
Waikoloa Fairways	12/1/1991	50		30,984			30,984
Villages @ Waikoloa Elima Lani	1/1/1992	50		28,705			28,705
Paniolo Estates PH-1	7/1/1992	50		26,883			26,883
							-
Waikoloa Elementary School	9/1/1994	50		59,518			59,518
Kekumu I	9/1/1994	50		10,935			10,935
Kekumu II	10/1/1995	50		5,923			5,923
Kekumu III	1/1/1997	50		4,556			4,556
Fire Station	11/1/1997	50					-
U. S. Post Office	6/19/1999	23					-
Rounding				1	17		(16)
			\$	287,794	\$	11,442	\$ 276,352
Subtotal				\$	\$	\$	
				397,092	11,442	385,650	
Waikoloa Heights - recorded as deferred credit							
				335,898	40,148	295,750	
Total at issue in Docket No. 00-0440				\$	\$	\$	
				732,990	51,590	681,400	
Additional amounts for the Kekumu projects to reflect additional CIAC that should have been collected pursuant to WHSC's CIAC tariff							
Kekumu I						\$	12,825
Kekumu II							6,947
Kekumu III							5,344
						\$	25,116

\$ 410,766

Amortization of Contributions in Aid of Construction w/o additional adjustment for Paniolo Estates

System No.	Description	Date In Service	Estimated Useful Life	Balance at 12/31/2005			Balance at 12/31/2006		
				Net of Tax	Tax	Total	Net of Tax	Tax	Total
Collection Sewers-Force									
17000	Sewer Lines (Dedicated) Schuler	5/14/1993	50	(\$37,313)	\$ (8,764)	(\$46,077)	(\$40,258)	\$ (10,517)	(\$50,776)
17001	Sewer Lines (Dedicated) Kekumu I & II	4/4/1996	50	(\$6,803)	\$ (2,165)	(\$8,969)	(\$7,501)	\$ (2,598)	(\$10,099)
17084	Sewer Lines (Dedicated) Kekumu III	1/1/1997	50	(\$13,524)	\$ -	(\$13,524)	(\$15,026)	\$ -	(\$15,026)
	Subtotal			(\$57,639)	(\$10,930)	(\$68,569)	(\$62,786)	(\$13,116)	(\$75,901)
Collection Sewers-Gravity									
17085	Sewer Transmission Line	1/1/1974	50	(\$558,007)	\$ -	(\$558,007)	(\$575,445)	\$ -	(\$575,445)
T&D Equipment									
17086	Treatment Plant-Original	1/1/1974	50	(\$17,286)	\$ -	(\$17,286)	(\$17,826)	\$ -	(\$17,826)
17087	Utility Plant Donated	10/31/1978	50	(\$717)	\$ -	(\$717)	(\$743)	\$ -	(\$743)
17009	Jaeger Pump	3/1/1977	10	\$0	\$ -	\$0	\$0	\$ -	\$0
17088	ISCO 158OR Refrig Sampler	12/31/1981	12	\$0	\$ -	\$0	\$0	\$ -	\$0
17089	Shelter for ICSO Sampler	12/31/1981	12	(\$2,005)	\$ -	(\$2,005)	(\$2,005)	\$ -	(\$2,005)
	Subtotal			(\$20,007)	\$0	(\$20,007)	(\$20,574)	\$0	(\$20,574)
CIAC Fees									
	Villas	1/1/1979	50	(\$6,264)	\$ -	(\$6,264)	(\$6,496)	\$ -	(\$6,496)
	Paniolo Club	1/1/1980	50	(\$2,322)	\$ -	(\$2,322)	(\$2,412)	\$ -	(\$2,412)
	Fairway Terrace	1/1/1990	50	(\$27,789)	\$ (5,316)	(\$33,105)	(\$29,526)	\$ (6,379)	(\$35,905)
	Waikoloa Hills	1/1/1990	50	(\$3,811)	\$ (729)	(\$4,540)	(\$4,049)	\$ (875)	(\$4,924)
	Waikoloa Greens	8/1/1991	50	(\$28,187)	\$ (4,842)	(\$33,029)	(\$30,142)	\$ (5,810)	(\$35,952)
	Waikoloa Fairways	12/1/1991	50	(\$14,257)	\$ (3,098)	(\$17,355)	(\$15,269)	\$ (3,718)	(\$18,987)
	Villages @ Waikoloa Elima Lani	1/1/1992	50	(\$13,131)	\$ (2,871)	(\$16,001)	(\$14,069)	\$ (3,445)	(\$17,513)
	Paniolo Estates PH-1	7/1/1992	50	(\$11,858)	\$ (2,688)	(\$14,546)	(\$12,736)	\$ (3,226)	(\$15,962)
	Waikoloa Elem School	9/1/1994	50	(\$22,039)	\$ (5,952)	(\$27,991)	(\$23,984)	\$ (7,142)	(\$31,126)
	Kekumu I	9/1/1994	50	(\$9,919)	\$ (2,376)	(\$12,295)	(\$11,450)	\$ (2,851)	(\$14,301)
	Kekumu II	10/1/1995	50	(\$5,163)	\$ (1,287)	(\$6,450)	(\$5,992)	\$ (1,544)	(\$7,537)
	Kekumu III	1/1/1997	50	(\$3,786)	\$ (990)	(\$4,776)	(\$4,424)	\$ (1,188)	(\$5,612)
	Fire Station	11/1/1997	50	(\$1,658)	\$ -	(\$1,658)	(\$1,861)	\$ -	(\$1,861)
	US Post Office	6/19/1999	23	(\$1,934)	\$ -	(\$1,934)	(\$2,232)	\$ -	(\$2,232)
	Subtotal			(\$152,118)	(\$30,148)	(\$182,267)	(\$164,642)	(\$36,178)	(\$200,820)
	Adjustment to include 17th Fairways Villas	2004	50	(\$2,506)		(\$2,506)	(\$3,758)		(\$3,758)
	Miscellaneous Difference			(12,730)		(12,730)	(12,730)		(12,730)
	Rounding			1		1	0		0
Adjusted Balance in Docket 05-0329				(\$803,007)	(\$41,078)	(\$844,086)	(\$839,935)	(\$49,294)	(\$889,229)
Per WHSC 8-2 page 25 of 101				\$ (776,279)		\$ (776,279)	\$ (809,654)		\$ (809,654)
Adjustment				\$ (26,728)	\$ (41,078)	\$ (67,807)	\$ (30,281)	\$ (49,294)	\$ (79,575)

Amortization of Contributions in Aid of Construction
Excluding Income Tax Payments Made Pursuant to WHSC CIAC Tariff and additional adjustment for Paniolo Estates

System No.	Description	Date In Service	Estimated Useful Life	12/31/2006	Accum Amortization 12/31/2000	Amortization Expense 2001	Accum Amortization 12/31/2001	2002	2003	2004	2005	Accumulated Amortization 12/31/2005	Amortization Expense 2006	Accumulated Amortization 12/31/2006
Collection Sewers-Force														
17000	Sewer Lines (Dedicated) Schuler	5/14/1993	50	(\$147,288)	(\$22,584)	(\$2,946)	(\$25,529)	(\$2,946)	(\$2,946)	(\$2,946)	(\$2,946)	(\$37,313)	(\$2,946)	(\$40,258)
17001	Sewer Lines (Dedicated) Kekumu I	4/4/1996	50	(34,888)	(3,314)	(698)	(\$4,012)	(\$698)	(\$698)	(\$698)	(\$698)	(\$6,803)	(\$698)	(\$7,501)
17084	Sewer Lines (Dedicated) Kekumu II	1/1/1997	50	(75,132)	(6,011)	(1,503)	(\$7,513)	(\$1,503)	(\$1,503)	(\$1,503)	(\$1,503)	(\$13,524)	(\$1,503)	(\$15,026)
	Subtotal			(257,308)	(31,909)	(5,146)	(37,055)	(5,146)	(5,146)	(5,146)	(5,146)	(\$57,639)	(5,146)	(\$62,786)
Collection Sewers-Gravity														
17085	Sewer Transmission Line	1/1/1974	50	(871,886)	(470,818)	(17,438)	(\$488,256)	(\$17,438)	(\$17,438)	(\$17,438)	(\$17,438)	(\$558,007)	(\$17,438)	(\$575,445)
T&D Equipment														
17086	Treatment Plant-Original	1/1/1974	50	(27,009)	(14,585)	(540)	(\$15,125)	(\$540)	(\$540)	(\$540)	(\$540)	(\$17,286)	(\$540)	(\$17,826)
17087	Utility Plant Donated	10/31/1978	50	(1,319)	(585)	(26)	(\$611)	(\$26)	(\$26)	(\$26)	(\$26)	(\$717)	(\$26)	(\$743)
17009	Jaeger Pump	3/1/1977	10	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
17088	ISCO 158OR Refrig Sampler	12/31/1981	12	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
17089	Shelter for ICSO Sampler	12/31/1981	12	(2,005)	(2,005)	0	(\$2,005)	\$0	\$0	\$0	\$0	(\$2,005)	\$0	(\$2,005)
	Subtotal			(30,333)	(17,175)	(567)	(17,741)	(567)	(567)	(567)	(567)	(\$20,007)	(567)	(\$20,574)
CIAC Fees														
Villas		1/1/1979	50	(11,600)	(5,104)	(232)	(\$5,336)	(\$232)	(\$232)	(\$232)	(\$232)	(\$6,264)	(\$232)	(\$6,496)
Paniolo Club		1/1/1980	50	(4,466)	(1,876)	(89)	(\$1,965)	(\$89)	(\$89)	(\$89)	(\$89)	(\$2,322)	(\$89)	(\$2,412)
Fairway Terrace		1/1/1990	50	(86,842)	(19,105)	(1,737)	(\$20,842)	(\$1,737)	(\$1,737)	(\$1,737)	(\$1,737)	(\$27,789)	(\$1,737)	(\$29,526)
Waikoloa Hills		1/1/1990	50	(11,910)	(2,620)	(238)	(\$2,858)	(\$238)	(\$238)	(\$238)	(\$238)	(\$3,811)	(\$238)	(\$4,049)
Waikoloa Greens		8/1/1991	50	(97,759)	(18,411)	(1,955)	(\$20,366)	(\$1,955)	(\$1,955)	(\$1,955)	(\$1,955)	(\$28,187)	(\$1,955)	(\$30,142)
Waikoloa Fairways		12/1/1991	50	(50,616)	(9,195)	(1,012)	(\$10,208)	(\$1,012)	(\$1,012)	(\$1,012)	(\$1,012)	(\$14,257)	(\$1,012)	(\$15,269)
Villages @ Waikoloa Elima Lani		1/1/1992	50	(46,895)	(8,441)	(938)	(\$9,379)	(\$938)	(\$938)	(\$938)	(\$938)	(\$13,131)	(\$938)	(\$14,069)
Paniolo Estates PH-1		7/1/1992	50	(43,917)	(7,466)	(878)	(\$8,344)	(\$878)	(\$878)	(\$878)	(\$878)	(\$11,858)	(\$878)	(\$12,736)
Waikoloa Elem School		9/1/1994	50	(97,232)	(12,316)	(1,945)	(\$14,261)	(\$1,945)	(\$1,945)	(\$1,945)	(\$1,945)	(\$22,039)	(\$1,945)	(\$23,984)
Kekumu I		9/1/1994	50	(76,560)	(2,263)	(1,531)	(\$3,794)	(\$1,531)	(\$1,531)	(\$1,531)	(\$1,531)	(\$9,919)	(\$1,531)	(\$11,450)
Kekumu II		10/1/1995	50	(41,470)	(1,016)	(829)	(\$1,845)	(\$829)	(\$829)	(\$829)	(\$829)	(\$5,163)	(\$829)	(\$5,992)
Kekumu III		1/1/1997	50	(31,900)	(596)	(638)	(\$1,234)	(\$638)	(\$638)	(\$638)	(\$638)	(\$3,786)	(\$638)	(\$4,424)
Fire Station		11/1/1997	50	(10,150)	(643)	(203)	(\$846)	(\$203)	(\$203)	(\$203)	(\$203)	(\$1,658)	(\$203)	(\$1,861)
US Post Office		6/19/1999	23	(6,844)	(446)	(298)	(\$744)	(\$298)	(\$298)	(\$298)	(\$298)	(\$1,934)	(\$298)	(\$2,232)
	Subtotal			(618,161)	(89,499)	(12,524)	(102,023)	(12,524)	(12,524)	(12,524)	(12,524)	(\$152,118)	(12,524)	(\$164,642)
Misc difference							(12,730)					(12,730)		(12,730)
Rounding				3	1		1					1		0
CIAC excluding income tax portion of tariff per Dkt 00-0440 D&O				(\$1,777,685)	(\$622,130)	(\$35,674)	(\$657,804)	(\$35,674)	(\$35,674)	(\$35,674)	(\$35,674)	(\$800,501)	(\$35,674)	(\$836,177)
Adjustment to include 17th Fairways Villas				2004* 50 (62,640)				\$ (1,253)	\$ (1,253)			(\$2,506)	\$ (1,253)	(\$3,758)
Adjusted Balance in Docket 05-0329				(\$1,840,325)				(\$36,927)	(\$36,927)			(\$803,007)	(\$36,927)	(\$839,935)
Per WHSC 8-2 page 25 of 101												\$ (776,279)	\$ (33,376)	(\$809,654)
Adjustment for CIAC excluding income tax gross up amounts												(\$26,728)	(\$3,551)	(\$30,281)

note: In Docket No. 04-0343, Mr. Spetich represented that this project was completed in 2004.

Amortization of Contributions in Aid of Construction
Income Tax Payments Made Pursuant to WHSC CIAC Tariff and excluding additional adjustment for Paniolo Estates

			CIAC Tax Gross Up	Balance @ 2000	2001	2002	2003	2004	2005	Balance @ 2005	2006	Balance @ 2006
Collection Sewers Force												
17000 Sewer Lines (Dedicated) Schuler	5/14/1993	50	\$ 87,644	\$0	\$ (1,753)	\$ (1,753)	\$ (1,753)	\$ (1,753)	\$ (1,753)	\$ (8,764)	\$ (1,753)	\$ (10,517)
17001 Sewer Lines (Dedicated) Kekumu I & II	4/4/1996	50	21,654	0	\$ (433)	\$ (433)	\$ (433)	\$ (433)	\$ (433)	\$ (2,165)	\$ (433)	\$ (2,598)
Sewer Lines (Dedicated) Kekumu III	1/1/1997	50	-									
			<u>\$ 109,298</u>	<u>\$0</u>	<u>\$ (2,186)</u>	<u>\$ (2,186)</u>	<u>\$ (2,186)</u>	<u>\$ (2,186)</u>	<u>\$ (2,186)</u>	<u>\$ (10,930)</u>	<u>\$ (2,186)</u>	<u>\$ (13,116)</u>
Collection Sewers Gravity												
17085 Sewer Transmission Line	1/1/1974	50	\$ -	\$ -						\$ -		\$ -
T&D Equipment												
17086 Treatment Plant-Original	1/1/1974	50	\$ -	\$ -						\$ -		\$ -
17087 Utility Plant Donated	10/31/1978	50	-	-						-		-
17089 Shelter for ICSO Sampler	12/31/1981	12	-	-						-		-
Rounding			-	-						-		-
			<u>\$ -</u>	<u>\$ -</u>						<u>\$ -</u>		<u>\$ -</u>
CIAC Fees												
Villas	1/1/1979	50	\$ -	\$0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Paniolo Club	1/1/1980	50	-	0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fairway Terrace	1/1/1990	50	53,158	0	\$ (1,063)	\$ (1,063)	\$ (1,063)	\$ (1,063)	\$ (1,063)	\$ (5,316)	\$ (1,063)	\$ (6,379)
Waikoloa Hills	1/1/1990	50	7,290	0	\$ (146)	\$ (146)	\$ (146)	\$ (146)	\$ (146)	\$ (729)	\$ (146)	\$ (875)
Waikoloa Greens	8/1/1991	50	48,416	0	\$ (968)	\$ (968)	\$ (968)	\$ (968)	\$ (968)	\$ (4,842)	\$ (968)	\$ (5,810)
										\$ -		\$ -
Waikoloa Fairways	12/1/1991	50	30,984	0	\$ (620)	\$ (620)	\$ (620)	\$ (620)	\$ (620)	\$ (3,098)	\$ (620)	\$ (3,718)
Villages @ Waikoloa Elima Lani	1/1/1992	50	28,705	0	\$ (574)	\$ (574)	\$ (574)	\$ (574)	\$ (574)	\$ (2,871)	\$ (574)	\$ (3,445)
Paniolo Estates PH-1	7/1/1992	50	26,883	0	\$ (538)	\$ (538)	\$ (538)	\$ (538)	\$ (538)	\$ (2,688)	\$ (538)	\$ (3,226)
			-							\$ -		\$ -
										\$ -		\$ -
Waikoloa Elementary School	9/1/1994	50	59,518	0	\$ (1,190)	\$ (1,190)	\$ (1,190)	\$ (1,190)	\$ (1,190)	\$ (5,952)	\$ (1,190)	\$ (7,142)
Kekumu I	9/1/1994	50	10,935	0	\$ (219)	\$ (219)	\$ (219)	\$ (219)	\$ (219)	\$ (1,094)	\$ (219)	\$ (1,312)
Kekumu II	10/1/1995	50	5,923	0	\$ (118)	\$ (118)	\$ (118)	\$ (118)	\$ (118)	\$ (592)	\$ (118)	\$ (711)
Kekumu III	1/1/1997	50	4,556	0	\$ (91)	\$ (91)	\$ (91)	\$ (91)	\$ (91)	\$ (456)	\$ (91)	\$ (547)
Fire Station	11/1/1997	50	-									
U. S. Post Office	6/19/1999	23	-									
Rounding			(16)									
			<u>\$ 276,352</u>	<u>\$ (5,527)</u>	<u>\$ (5,527)</u>	<u>\$ (5,527)</u>	<u>\$ (5,527)</u>	<u>\$ (5,527)</u>	<u>\$ (5,527)</u>	<u>\$ (27,637)</u>	<u>\$ (5,527)</u>	<u>\$ (33,164)</u>
Subtotal			\$ 385,650	\$ -	\$ (7,713)	\$ (7,713)	\$ (7,713)	\$ (7,713)	\$ (7,713)	\$ (38,567)	\$ (7,713)	\$ (46,280)
Waikoloa Heights - recorded as deferred credit			295,750									
Total at issue in Docket No. 00-0440			<u>\$ 681,400</u>									
Tax on additional CIAC for Kekumu projects to reflect amounts per WHSC's CIAC tariff												
Kekumu I	50	\$ 12,825	\$ (257)	\$ (257)	\$ (257)	\$ (257)	\$ (257)	\$ (257)	\$ (257)	\$ (1,283)	\$ (257)	\$ (1,539)
Kekumu II	50	6,947	\$ (139)	\$ (139)	\$ (139)	\$ (139)	\$ (139)	\$ (139)	\$ (139)	\$ (695)	\$ (139)	\$ (834)
Kekumu III	50	5,344	\$ (107)	\$ (107)	\$ (107)	\$ (107)	\$ (107)	\$ (107)	\$ (107)	\$ (534)	\$ (107)	\$ (641)
			<u>\$ 25,116</u>	<u>\$ (502)</u>	<u>\$ (502)</u>	<u>\$ (502)</u>	<u>\$ (502)</u>	<u>\$ (502)</u>	<u>\$ (502)</u>	<u>\$ (2,512)</u>	<u>\$ (502)</u>	<u>\$ (3,014)</u>
Total Amortization for Dkt 05-0329			<u>\$ 410,766</u>	<u>\$ (8,216)</u>	<u>\$ (8,216)</u>	<u>\$ (8,216)</u>	<u>\$ (8,216)</u>	<u>\$ (8,216)</u>	<u>\$ (8,216)</u>	<u>\$ (41,078)</u>	<u>\$ (8,216)</u>	<u>\$ (49,294)</u>

Depreciation Expense Support

		<u>w/o add'l Paniolo adj</u>		<u>with add'l Paniolo adj</u>	
		<u>50 yr</u>	<u>40 yr</u>	<u>50 yr</u>	<u>40 yr</u>
Total Depreciation Expense	WHSC 7.1 and 7.2	\$ 109,182	\$ 109,182	\$ 109,182	\$ 109,182
Amortization of CIAC					
net of income tax	CA-102, p 2 of 3	\$ (36,927)	\$ (36,927)	\$ (44,262)	\$ (44,262)
income tax gross up	CA-102, p 3 of 3	\$ (8,216)	\$ (10,270)	\$ (10,227)	\$ (12,783)
Total Amortization of CIAC	CA-102, p 1 of 3	\$ (45,143)	\$ (47,197)	\$ (54,489)	\$ (57,045)
Net Depreciation Expense		<u>\$ 64,039</u>	<u>\$ 61,985</u>	<u>\$ 54,693</u>	<u>\$ 52,137</u>

CERTIFICATE OF SERVICE

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

CATHERINE P. AWAKUNI
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