

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
WAILUKU WATER DISTRIBUTION COMPANY,))
LLC, and WAILUKU WATER COMPANY, LLC))
)
For a Certificate of Public)
Convenience and Necessity to)
Provide Non-Potable Water)
Distribution Service in the Waihee,))
Waiehu, Puuohala, Wailuku, and)
Waikapu Areas and for Approval of)
Rules and Regulations Pursuant to)
Section 269-7.5, Hawaii Revised)
Statutes; Approval of Rates and)
Contracts Pursuant to Section)
269-16, Hawaii Revised Statutes;)
Approval of Waivers Pursuant to)
Section 6-61-92, Hawaii)
Administrative Rules; and Approval)
Of Affiliate Transactions Pursuant)
To Sections 269-19 and 269-19.5,)
Hawaii Revised Statutes.)
_____)

DOCKET NO. 2008-0025

RECEIVED

2008 DEC -1 A 9 14

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

ORDER GRANTING OFFICE OF HAWAIIAN AFFAIRS'
MOTION FOR CLARIFICATION FILED ON NOVEMBER 10, 2008

FILED

2008 NOV 28 P 12:22

PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
WAILUKU WATER DISTRIBUTION COMPANY,))
LLC, and WAILUKU WATER COMPANY, LLC))
)
For a Certificate of Public)
Convenience and Necessity to)
Provide Non-Potable Water)
Distribution Service in the Waihee,))
Waiehu, Puuohala, Wailuku, and)
Waikapu Areas and for Approval of)
Rules and Regulations Pursuant to)
Section 269-7.5, Hawaii Revised)
Statutes; Approval of Rates and)
Contracts Pursuant to Section)
269-16, Hawaii Revised Statutes;)
Approval of Waivers Pursuant to)
Section 6-61-92, Hawaii)
Administrative Rules; and Approval)
Of Affiliate Transactions Pursuant)
To Sections 269-19 and 269-19.5,)
Hawaii Revised Statutes.)
_____)

Docket No. 2008-0025

ORDER GRANTING OFFICE OF HAWAIIAN AFFAIRS'
MOTION FOR CLARIFICATION FILED ON NOVEMBER 10, 2008

By this Order, the commission grants the motion for clarification filed by the OFFICE OF HAWAIIAN AFFAIRS ("OHA") on November 10, 2008. The commission clarifies that OHA may participate with respect to issues relating to rates, if any, charged to those who hold kuleana appurtenant water rights. As the commission has granted the motion for clarification, the alternate motion for reconsideration is moot.

I.

Motion

On November 10, 2008, OHA filed its "Motion for Clarification or in the Alternative Reconsideration, in Part, Order Filed October 28, 2008" ("Motion"), requesting the commission to clarify, or in the alternative, to reconsider, in part, the scope of OHA's participation in this docket, pursuant to the commission's Order: (1) Granting Participation and Motion for Leave to File Reply; (2) Clarifying the Commission's Rules Regarding Computation of Time; (3) Directing the Parties and Participants to Submit Statements of Position on the Completeness of the Application Within Twenty Days; and (4) Directing the Parties and Participants to File a Stipulated Procedural Schedule Within Forty-Five Days, filed on October 28, 2008 ("10/28/08 Order").

Specifically, OHA explains in the Motion:

In an abundance of caution, OHA wishes to clarify that, by limiting OHA's participation to "issues relating to the *distribution* of water for those having kuleana appurtenant rights" . . . , the 10/28/08 Order is not intended to preclude OHA's participation in issues relating to rates, if any, charged to those who hold kuleana appurtenant rights. OHA assumes that that [sic] it may participate in rate design issues, because such participation is necessary to effectively protect the rights of its beneficiaries with kuleana appurtenant rights, and the 10/28/08 Order appears carefully designed to allow OHA to participate to the extent required to protect those recognized interests. By this motion, OHA simply seeks to confirm that assumption at the outset to avoid any controversy later.

In the alternative, if OHA's assumption that it may participate in procedures concerning the rates, if any, charged to kuleana water users is incorrect, OHA respectfully requests that this Commission reconsider, in part, its 10/28/08 Order. The 10/28/08 Order recognizes that, "OHA, as the state agency responsible for protecting Hawaiian rights and interests, has an interest to protect in this proceeding." . . . OHA's ability to protect Hawaiian rights and interests requires that it be allowed to participate in aspects of this docket that will determine the rates and charges, if any, applicable to its beneficiaries who have appurtenant rights to use Na Wai 'Eha water. As such, this Commission should reconsider the scope of OHA's participation and allow OHA to participate fully in the rate design portion of these proceedings.¹

Upon review, the commission grants the Motion to clarify that, by limiting OHA's participation in this docket "to issues relating to the distribution of water for those having kuleana appurtenant water rights," the 10/28/08 Order does not preclude OHA's participation in issues relating to rates, if any, charged to those who hold kuleana rights. In other words, OHA may participate in rate design issues as applied to those holding kuleana appurtenant water rights.

Given that the commission clarifies the 10/28/08 Order, as requested in the Motion, the alternate request to reconsider the 10/28/08 Order is moot.

¹Motion at 1-2 (citations omitted) (*italics in original*). No oppositions were filed in response to the Motion.

II.

Orders

THE COMMISSION ORDERS:

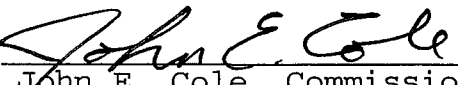
1. The Motion is granted and the commission clarifies that the 10/28/08 Order does not preclude OHA's participation in this docket in issues relating to rates, if any, charged to those who hold kuleana appurtenant water rights.

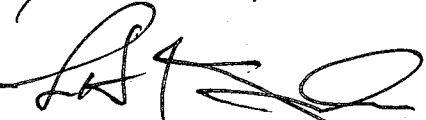
2. OHA's alternate request for reconsideration is moot.

DONE at Honolulu, Hawaii NOV 28 2008.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Kaiulani Kidani Shinsato
Commission Counsel

2008-0025.laa

CERTIFICATE OF SERVICE

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

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

CRAIG I. NAKANISHI, ESQ.
SHAH J. BENTO, ESQ.
RUSH MOORE LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Counsel for Applicants WAILUKU WATER DISTRIBUTION
COMPANY, LLC and WAILUKU WATER COMPANY, LLC

AVERY B. CHUMBLEY
PRESIDENT AND CHIEF OPERATING OFFIER
WAILUKU WATER DISTRIBUTION COMPANY, LLC
255 East Waiko Road
Wailuku, HI 96893

BRIAN T. MOTO, ESQ.
CORPORATION COUNSEL
JANE E. LOVELL, ESQ.
DEPUTY CORPORATION COUNSEL
COUNTY OF MAUI
200 South High Street
Wailuku, Maui, HI 96793

Counsel for COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY

DEAN T. YAMAMOTO, ESQ.
JODI S. YAMAMOTO, ESQ.
ALISON H.C. KUNISHIGE, ESQ.
YAMAMOTO & SETTLE LLLC
700 Bishop Street, Suite 200
Honolulu, HI 96813

Counsel for MMK MAUI L.P.

Certificate of Service

Page 2

ISAAC H. MORIWAKE, ESQ.
D. KAPUA`ALA SPROAT, ESQ.
KOALANI L. KAULUKUKUI, ESQ.
EARTHJUSTICE
223 South King Street, Suite 400
Honolulu, HI 96813

Counsel for HUI O NA WAI `EHA and
MAUI TOMORROW FOUNDATION, INC.

PAMELA W. BUNN, ESQ.
LINDSEY KASPEROWICZ, ESQ.
PAUL JOHNSON PARK & NILES
1001 Bishop Street
Suite 1300, ASB Tower
Honolulu, HI 96813

Counsel for OFFICE OF HAWAIIAN AFFAIRS

MICHAEL W. ATHERTON DEVELOPMENT, INC.
WILLIAM S. FILIOS, Trustee of the William Filios Separate
Property Trust
BOYCE HOLDINGS, INC.
MTP OPERATING COMPANY, LLC
MAALAEA PROPERTIES, LLC
WAIKAPU PROPERTIES, LLC
C/O MICHAEL W. ATHERTON
MAUI TROPICAL PLANTATION
1670 Honoapiilani Highway
Wailuku, HI 96793

J. DOUGLAS ING, ESQ.
PAMELA J. LARSON, ESQ.
LISA S. HIRAHARA, ESQ.
WATANABE ING & KOMEIJI LLP
999 Bishop Street, 23rd Floor
First Hawaiian Center
Honolulu, HI 96813

Counsel for MICHAEL W. ATHERTON DEVELOPMENT, INC.,
WILLIAM S. FILIOS, TRUSTEE, BOYCE HOLDINGS, INC.,
MTP OPERATING COMPANY, LLC, MAALAEA PROPERTIES, LLC, AND
WAIKAPU PROPERTIES, LLC

Certificate of Service

Page 3

FARROKH A. IRANI
PRESIDENT, BOARD OF DIRECTORS
WAILUKU COUNTRY ESTATES IRRIGATION CO.
WAILUKU COUNTRY ESTATES COMMUNITY ASSOC., INC.
P.O. Box 491
Wailuku, HI 96793

JUDITH NEUSTADTER NAONE, ESQ.
P.O. BOX 1401
Wailuku, HI 96793

Counsel for WAILUKU COUNTRY ESTATES IRRIGATION COMPANY
And WAILUKU COUNTRY ESTATES COMMUNITY ASSOCIATION, INC.

NELSON CHUN, ESQ.
HAWAIIAN COMMERCIAL & SUGAR COMPANY,
A DIVISION OF ALEXANDER & BALDWIN, INC.
822 Bishop Street
Honolulu, HI 96813

KENT D. MORIHARA, ESQ.
YVONNE Y. IZU, ESQ.
MORIHARA LAU & FONG LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for HAWAIIAN COMMERCIAL & SUGAR COMPANY,
A DIVISION OF ALEXANDER & BALDWIN, INC.