

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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

For Approval of Amended )  
Contribution-in-aid-of-Construction )  
Fee. Transmittal No. 05-01. )

In the Matter of the Application of )  
WAIKOLOA WATER COMPANY, INC., )  
dba WEST HAWAII WATER COMPANY )

For Approval of Amended )  
Contribution-in-aid-of-Construction )  
Fee. Transmittal No. 05-01. )

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

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(CONSOLIDATED)

DECISION AND ORDER

PUBLIC UTILITIES  
COMMISSION

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FILED

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Docket No. 05-0288

(Consolidated)

DECISION AND ORDER

By this Decision and Order, the commission denies without prejudice the respective transmittals filed by WAIKOLOA RESORT UTILITIES, INC., dba WEST HAWAII UTILITY COMPANY ("WHUC"), and WAIKOLOA WATER COMPANY, INC., dba WEST HAWAII WATER COMPANY ("WHWC") (collectively, "Utilities"), which propose certain changes to the Utilities' contribution-in-aid-of-construction ("CIAC") tariff rules for water utility service.

I.

Background

A.

Waikoloa, Island of Hawaii

The Waikoloa community in the South Kohala area on the island of Hawaii consists of two utility service areas: (1) Waikoloa Village; and (2) Waikoloa Beach Resort. Within Waikoloa Village: (1) WHWC provides water utility service; and (2) West Hawaii Sewer Company ("WHSC") provides wastewater utility service. Within the Waikoloa Beach Resort, WHUC provides water and wastewater utility services.

WHUC's sole stockholder is Waikoloa Development Company ("WDC"), while Waikoloa Land and Cattle Company ("WLCC") owns all of the stock in WHWC and WHSC. WDC and WLCC, in turn, are related companies with common ownership. On August 20, 2008, the commission approved, subject to certain conditions, the sale of WHSC, WHUC, and WHWC's stock to Hawaii Water Service Company, Inc., a Maui-based public utility and a wholly-owned subsidiary of California Water Service Group.<sup>1</sup>

In 1981, WHWC entered into a Water Sharing Agreement with WHUC, which provides that the two water utilities will share in the costs of developing, operating, and maintaining the

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<sup>1</sup>See In re Waikoloa Water Co., Inc., Waikoloa Sanitary Sewer Co., Inc., Waikola Resort Util., Inc., and Hawaii Water Serv. Co., Inc., Docket No. 2008-0018, Decision and Order, filed on August 20, 2008.

existing and future potable well fields, well operating system, and any other capital improvements to the shared potable water system.

B.

CIAC

As a condition to receiving service or substantially increasing water consumption to new or substantially modified facilities, developers and commercial applicants must pay a non-refundable CIAC fee to the Utilities. WHUC Rule XI(1); and WHWC Rule XX(1).<sup>2</sup> The Utilities utilize CIAC funds for the purpose of expanding the capacity of their infrastructure. WHUC Rule XI(2); and WHWC Rule XX(2).

The CIAC fee required by each utility as a condition to receiving service by a new facility is payable only once for the facility, provided that an additional CIAC amount may be required from developers or commercial customers for facilities that are substantially modified. WHUC Rule XI(5); and WHWC Rule XX(5). Presently, the CIAC fees assessed by the Utilities for the provision of water utility service are as follows:

WHUC

\$4.34 per gallon of estimated daily water use ("EDWU")

WHWC

\$4.62 per gallon of EDWU

WHUC's Section E-4; and WHWC XX(6).

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<sup>2</sup>The CIAC requirement also applies to irrigation consumption under WHUC's Rule XI(1).

The CIAC fee assessed by each utility is calculated based on the utility's estimate of: (1) the consumer's annual average water consumption, in the case of new facilities; or (2) the consumer's increased water consumption, above historical trends, in the case of substantially modified facilities. WHUC Rule XI(7); and WHWC Rule XX(7). The present guidelines utilized by each utility to estimate water consumption include:

For WHUC

Single-family: 700 gallons per day ("gpd")

Apartment/condominiums: 700 gpd

For WHWC

Single-family: 600 gpd

Apartment/condominiums: 400 gpd

WHUC Rule XI(8)(a)(i) and (ii); and WHWC Rule XX(8)(a) and (b).

The CIAC fee for new facilities shall be estimated at the time that an applicant makes a request to the utility for a will serve letter. A subsequently issued will serve letter will guarantee only the utility's ability and willingness to supply the applicant with the requested service. The total CIAC fee to be paid by the applicant is dependent upon the rate provided for in the utility's tariff rules in effect at the time the final payment is tendered.<sup>3</sup> Any will serve letter issued

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<sup>3</sup>CIAC shall be payable: (1) fifty percent (50%) within ninety days of issuance of a will serve letter by the utility to the applicant for service; and (2) the remainder of the total CIAC is calculated at the then-current rate provided for in the utility's tariff rules, due upon the issuance of a building permit, or in the case of a single-family residential subdivision, upon the issuance of a final subdivision approval, whichever comes first. WHUC Rule XI(9); and WHWC Rule XX(9).

by the utility is not binding until payment is received. WHUC Rule XI(9); and WHWC Rule XX(9).

C.

Waikoloa Mauka, LLC

WAIKOLOA MAUKA, LLC ("Waikoloa Mauka") is a Delaware limited liability company authorized to conduct business in the State of Hawaii ("State"). On September 20, 2005, Waikoloa Mauka purchased and acquired from WDC and WLCC approximately 14,000 acres of unimproved land at Waikoloa for \$60 million (the "unimproved land"). The unimproved land purchased by Waikoloa Mauka comprises the bulk of the remaining developable land in Waikoloa, mauka of the Queen Kaahumanu Highway, and is within WHWC's service area.

In addition to the \$60 million purchase price, Waikoloa Mauka states that: (1) it has expended and will continue to expend considerable sums of money in connection with the development of the unimproved land, either by itself or through other developers; and (2) since the bulk of its unimproved land is zoned or planned for residential or commercial use, and will require water commitments from WHWC, it will be subject to the payment of CIAC fees to WHWC.

Waikoloa Mauka references five major development areas within its unimproved land. To date, WHWC and Waikoloa Mauka have engaged in discussions on the amount of CIAC to be paid by Waikoloa Mauka to WHWC, without resolution. In particular, Waikoloa Mauka has rejected the will serve letters issued by WHWC.

D.

Procedural Background

On October 31, 2005, the Utilities filed their respective transmittals, proposing certain changes to their CIAC tariff rules for water utility service.<sup>4</sup>

By their transmittals, the Utilities seek to increase the CIAC fees assessed for water utility service, as follows:

For WHUC

From \$4.34 to \$7.51 per gallon of EDWU

For WHWC

From \$4.62 to \$7.51 per gallon of EDWU

In addition, the Utilities seek to amend the present guidelines used to estimate water consumption in calculating the amount of CIAC owed by the developer or commercial applicant, as follows:

For WHUC

Single-family: from 700 to 738 gpd

Apartment/condominiums: from 700 to 593 gpd

For WHWC

Single-family: from 600 to 616 gpd

Apartment/condominiums: from 400 to 495 gpd

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<sup>4</sup>WHUC's Transmittal No. 05-01, Exhibits 1 - 17, and Certificate of Service, filed on October 31, 2005 (collectively, "WHUC's Transmittal No. 05-01"); and WHWC's Transmittal No. 05-01, Exhibits 1 - 17, and Certificate of Service, filed on October 31, 2005, as amended by letter dated November 1, 2005 (collectively, "WHWC's Transmittal No. 05-01"). The Utilities served copies of their transmittals upon 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).

On November 14, 2005, the Consumer Advocate filed Protests of both transmittals.<sup>5</sup> In its Protests, the Consumer Advocate recommended that the commission suspend both transmittals and hold a public hearing, pursuant to HRS § 269-16(b), for the proposed increase in the Utilities' CIAC fees. The Consumer Advocate disagreed with the Utilities' assessment that the proposed amended CIAC fees do not involve a rate increase to existing customers.<sup>6</sup>

On November 17, 2005, the commission: (1) consolidated and suspended the Utilities' transmittals; and (2) instructed the Utilities to file a joint position statement addressing the matters raised by the Consumer Advocate in its Protests.<sup>7</sup>

On December 2, 2005, the Utilities filed their response to the Consumer Advocate's Protest, asserting that: (1) they filed Transmittals No. 05-01 in accordance with HAR § 6-61-111 and customary practice; and (2) there was no statutory basis for imposing the requirement of a public hearing under HRS § 269-16(b).<sup>8</sup>

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<sup>5</sup>Protest by the Division of Consumer Advocacy, filed on November 14, 2005, of WHUC's Transmittal No. 05-01; and Protest by the Division of Consumer Advocacy, filed on November 14, 2005, of WHWC's Transmittal No. 05-01.

<sup>6</sup>As asserted by the Utilities in their respective transmittals, "[a]dopting th[eir] amended CIAC fee does not involve any rate increase to the existing ratepayers and, therefore, subject to the discretion of the Commission, may be established after thirty (30) days prior notice, provided in accordance with HRS § 269-16(b)." WHUC's Transmittal No. 05-01, at 7, ¶ 17; WHWC's Transmittal No. 05-01, at 7, ¶ 17.

<sup>7</sup>Order No. 22126, filed on November 17, 2005. The commission did not, by Order No. 22126, open an investigation under HAR § 6-61-57(3)(B). See Order No. 22126, at 9 n.7.



On January 27, 2006, Waikoloa Mauka filed a Motion to Intervene, pursuant to HAR §§ 6-61-41 and 6-61-55.<sup>9</sup> On February 3, 2006, the Utilities responded to the commission's information requests. On February 6, 2006, the Utilities filed their Opposition to Waikoloa Mauka's Motion to Intervene.<sup>10</sup>

On February 28, 2006, the commission: (1) held that a public hearing was not required under HRS § 269-16(b) and the facts and circumstances of this case; (2) instituted an investigation to examine the merits of the Utilities' transmittals; (3) authorized interested persons to timely file a motion to intervene or participate, pursuant to HAR § 6-61-57(3)(B); (4) granted Waikoloa Mauka's Motion to Intervene; and (5) instructed the Parties to submit a stipulated procedural schedule for the commission's review and consideration.<sup>11</sup>

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<sup>8</sup>WHUC's and WHWC's Joint Position Statement in Response to Order No. 22126, Dated November 17, 2005, Exhibit A, and Certificate of Service, filed on December 2, 2005.

<sup>9</sup>Waikoloa Mauka's Motion to Intervene and Certificate of Service, filed on January 27, 2006; Affidavit in Support of Waikoloa Mauka's Motion to Intervene and Certificate of Service; and Waikoloa Mauka's letter transmitting affiant's original signature, dated January 31, 2006 (collectively, "Motion to Intervene").

<sup>10</sup>Utilities' Opposition to Waikoloa Mauka's Motion to Intervene and Certificate of Service, filed on February 6, 2006; and Amended Certificate of Service, filed on February 6, 2006 (collectively, "Opposition"); see also Commission's letter, dated February 6, 2006.

<sup>11</sup>Order No. 22300, filed on February 28, 2006.

On April 7, 2006, the commission issued Stipulated Procedural Order No. 22377, which adopted the Parties' proposed stipulated procedural order, without change. Thereafter, the Parties engaged in discovery, with the Utilities filing their responses to information requests issued by the Consumer Advocate and Waikoloa Mauka, respectively.

On June 13, 2006, the Parties filed their Statements of Position,<sup>12</sup> and on June 27, 2006, the Consumer Advocate filed its Amended Statement of Position, which superseded its initial Statement of Position, filed on June 13, 2006.<sup>13</sup> On June 30, 2006, the Utilities filed a Response to the Consumer Advocate's Amended Statement of Position.<sup>14</sup> No evidentiary hearing is requested by the Parties.<sup>15</sup>

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<sup>12</sup>WHUC's and WHWC's Consolidated Statement of Position, Exhibits 18 - 20, and Certificate of Service, filed on June 13, 2006 (collectively, "Consolidated Statement of Position"); Waikoloa Mauka's Position Statement, Attachments 1 - 6, and Certificate of Service, filed on June 13, 2006 (collectively, "Statement of Position"); and Consumer Advocate's Statement of Position and Certificate of Service, filed on June 13, 2006.

<sup>13</sup>Consumer Advocate's transmittal letter, dated June 27, 2006, and Amended Statement of Position and Certificate of Service, filed on June 27, 2006 (collectively, "Amended Statement of Position").

<sup>14</sup>Utilities' Response and Certificate of Service, filed on June 30, 2006 (collectively, "Response").

<sup>15</sup>See Commission's letter, dated November 6, 2006; Utilities' letter, dated November 9, 2006; Waikoloa Mauka's letter, dated November 15, 2006; and Consumer Advocate's letter, dated November 16, 2006.

E.

Utilities' Methodology

The Utilities' present, respective CIAC fees consist of the following components:

<u>WHUC</u>	<u>Per Gallon of EDWU</u>
Construction costs	\$3.48
Financing	<u>\$0.86</u>
	\$4.34

<u>WHWC</u>	
Construction costs	\$3.84
Financing	<u>\$0.78</u>
	\$4.62

The Utilities seek to increase the CIAC fee to \$7.51 per gallon of EDWU, consisting of the following components (Utilities' Exhibit 4):

	<u>Per Gallon of EDWU</u>
Construction costs	\$6.74
Financing	<u>\$0.77</u>
	\$7.51

Though not explained by the Utilities, the methodology utilized in calculating the proposed increase in the CIAC fee to \$7.51 per gallon of EDWU is generally as follows:<sup>16</sup>

1. During 2004, water usage in the Waikoloa region was approximately 4.38 million gallons per day ("mgd") (Utilities' Exhibits 3 and 8). The Utilities then calculated the projected regional water demand for the years 2005 through 2012 (Utilities' Exhibit 3), based on the new residential and

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<sup>16</sup>See Utilities' Transmittals, at 6, ¶ 16, and Exhibits attached thereto.

commercial developments that are anticipated to be constructed during the years 2005 through 2012 (Utilities' Exhibits 1, 2, and 3).

Specifically, the projected new residential units consist of 5,737 units (Utilities' Exhibits 1, 2, and 3), as follows:

<u>WHUC's Service Area</u>	<u>No. of Units</u>
Single-family	28
Multi-family	1,794
Sub-total	1,822
 <u>WHWC's Service Area</u>	 <u>No. of Units</u>
Single-family	1,573
20 acre Ranch Land lots	40
5 acre Luxury Estates	40
1 acre Highlands Golf Estates	533
Multi-family	1,729
Sub-total	<u>3,915</u>
Total	5,737

The Utilities projected the residential water demand for the new single- and multi-family dwellings by multiplying the projected number of development units by the Utilities' proposed, amended water use guidelines for single- and multi-family development units, as follows (Utilities' Exhibits 2 and 3):<sup>17</sup>

For WHUC

Single-family:	738 gpd
Apartment/condominiums:	593 gpd

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<sup>17</sup>For WHUC: (1) 28 single-family units x 738 gpd = 0.02 mgd; and (2) 1,794 multi-family units x 593 gpd = 1.06 mgd. For WHWC: (1) 1,573 single-family units x 616 gpd = 0.97 mgd; and (2) 1,729 multi-family units x 495 gpd = 0.86 mgd. Utilities' Exhibits 2 and 3.

For WHWC

Single-family:	616 gpd
Apartment/condominiums:	495 gpd

Thereafter, the Utilities projected the: (1) water demand for the new twenty-acre Ranch Lands, five-acre Luxury Estates, and one-acre Highlands Golf Estates lots by calculating the demand of a typical single-family dwelling lot plus the net additional landscape irrigation (see Utilities' Exhibits 1, 2, and 3);<sup>18</sup> and (2) additional commercial water use for WHWC's Village and WHUC's Resort service areas, respectively, representing a total of 0.41 mgd (0.33 + 0.08) in future commercial demand (see Utilities' Exhibit 3).<sup>19</sup>

Thus, under the Utilities' calculations, the total projected increase in regional water demand is 7.12 mgd:

<u>WHUC's Service Area</u>	<u>Water Usage (mgd)</u>
Single-family (28 units x 738 gpd)	0.02
Multi-family (1,794 units x 593 gpd)	1.06
Commercial, Waikoloa Resort*	0.08

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<sup>18</sup>"The projected single-family ranch luxury lots demands equal the demands of a typical single family dwelling plus the net additional landscape irrigation." Utilities' Exhibit 2, footnote e. "Landscape irrigation is base[d] on 0.25 inches of watering per day, equaling 6,800 gpd per acre." Utilities' Exhibit 2, footnote f; see also Utilities' response to WML-IR-1. In addition, the twenty-acre Ranch Lands lots include ten-head of livestock, at 20 gpd per head. See Utilities' Exhibit 2 and Utilities' response to WML-IR-26.

<sup>19</sup>"Mauka commercial use in the WHWC Village area is based on 952,000 sf of commercial area, and 1,012,203 sf of landscaped area. The water use is 220 gpd per 1,000 SF of commercial use area and 156 gpd per 1,000 SF of irrigated area (0.25"/day of watering). Commercial development in the Resort WHUC area is based on 25.2 acres at 3,000 gpd per acre." Utilities' Exhibit 3, footnote a; see also Utilities' response to CA-IR-8(a) and (b).

WHWC's Service AreaWater Usage (mgd)

Single-family (1,573 units x 616 gpd)	0.97
20 acre Ranch Lands (40 units)**	0.81
5 acre Luxury Estates (40 units)**	0.40
1 acre Highlands Golf Estates (533 units)**	2.59
Multi-family (1,729 units x 495 gpd)	0.86
Commercial, Waikoloa Village*	<u>0.33</u>
Total	7.12

\*See Utilities' Exhibit 3.

\*\*See Utilities' Exhibits 1, 2, and 3.

2. The Utilities estimated the project costs for the years 2005 through 2012 at \$47,934,000 (2005 dollars), including inflationary escalations (Utilities' Exhibit 6).<sup>20</sup>

3. The Utilities divided the total estimated project cost of \$47,934,000 by the projected increase in regional water demand of 7.12 mgd (11.5 mgd minus 4.38 mgd) to calculate the CIAC fee of \$6.74 per gallon of EDWU for the project construction costs (Utilities' Exhibit 4).

4. In addition, the Utilities divided the net financing charges of \$5,508,000 (see Utilities' Exhibits 4 and 7) by the projected increase in regional water demand of 7.12 mgd to calculate the financing component of \$0.77 per gallon of EDWU.

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<sup>20</sup>Utilities' Exhibit 6, New Regional Water Supply Project Costs. "The Waikoloa region water supply projects provide capacity to both the Waikoloa Village and Waikoloa Resort service areas, run by [WHWC] and [WHUC], respectively." Utilities' Exhibit 6. "All project costs include inflationary escalations. Water tanks are purchased from suppliers expecting 10 percent annual increases in unit costs from 2006." Utilities' Exhibit 6, footnote a. According to the Utilities, the amount of the inflationary escalations used to determine the project costs were based on the Utilities' "[e]xperience in planning, budgeting, bidding, and executing similar projects." Utilities' response to CA-IR-10(b); see also Utilities' response to CA-SIR-3(c) and (d).

5. Meanwhile, the Utilities proposed, amended water use guidelines for single- and multi-family dwellings are based in general on: (A) the 2005 calendar year metered water usage data through June 2005 for single-family dwellings;<sup>21</sup> and (B) "a 79 percent ratio for the [multi-family dwelling] to [single-family dwelling] persons per household[,]" as identified in the year 2000 census statistics.<sup>22</sup>

F.

Utilities' Position

The Utilities' position is set forth in their transmittals and other filings, including their responses to information requests and Consolidated Statement of Position. The Utilities state:

1. The Utilities' existing CIAC fees are insufficient to recover the full cost of serving new customers. The full cost of providing service to new projects should be borne by the developers, not by the utility or other customers in the service area.

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<sup>21</sup>See Utilities' Exhibits 2, 9, 10, and 11, and Utilities' responses to WML-IR-19 and WML-IR-20. The Utilities note that the January - June 2005 data represents the most recent water consumption data available when preparing the transmittals that were filed with the commission on October 31, 2005. See Utilities' response to WML-IR-23.

<sup>22</sup>Utilities' response to CA-IR-3. See Utilities' Exhibits 2, 9, 10, 11, and 12, and Utilities' response to CA-IR-5. As noted by the Consumer Advocate, "WHWC [and WHUC] applied a 79 percent reduction to the single-family water use projection to derive the multi-family water use." Consumer Advocate's Amended Statement of Position, at 11.

2. Due to projected new developments in their respective service areas, significant demands will be made upon their water systems in the near future. Thus, an increase in the CIAC fees are necessary to finance the expansion of their water utility systems to meet the anticipated increase in demand for water.

3. The identical data and projections used by the Utilities in calculating the proposed increase in the CIAC fee to \$7.51 per gallon of EDWU are attached as exhibits to both transmittals.<sup>23</sup> Current water usage in the Waikoloa region is approximately 4.38 mgd for the houses, condominium units, hotels, and other users in the area. Utilities' Exhibits 3 and 8. The Utilities estimate that: (A) from 2005 through 2012, 5,737 new residential dwelling units will be constructed within the Waikoloa Village and Resort developments, including 3,915 dwelling units in Waikoloa Village and 1,822 dwelling units in Waikoloa Resort, Utilities' Exhibit 1; and (B) by 2012, the projected regional water demand will increase by 7.12 mgd, to approximately 11.5 mgd, including 0.4 mgd in new commercial demands. Utilities' Exhibit 3.

4. The Utilities' current systems are unable to meet such demands and they must construct new wells, tanks, and lines in order to provide the necessary water supplies. The estimated costs to supply the necessary capacity for the anticipated new developments up to 2012 are approximately \$53,442,000

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<sup>23</sup>The Utilities' proposed new CIAC amount is based on dollars per gallon of projected average daily demand per water meter for the projected new developments. Utilities' Exhibits 4 and 5.



(\$47,934,000 in construction costs and \$5,508,000 in net financing charges). Utilities' Exhibit 6. The estimated construction costs include approximately \$28,700,000 to drill and outfit six new one million-gallon deep water wells,<sup>24</sup> and approximately \$16,304,000 to build six new water tanks. Utilities' Exhibit 6.

5. The project costs:

. . . are based on recent experience of constructing tanks (Tanks 300-2 & 3, two 2.5 million gallon tanks at a total cost of \$4,500,000.00) and a drinking water well (DW #6, a 1,000 gpm potable water well with already incurred drilling costs of \$1,000,000.00 and contracted outfitting costs of \$2,700,000.00), and estimates of future construction costs.

Utilities' response to CA-IR-10(a).

6. In addition, the proposed increase in the CIAC fee is generally consistent with the average projected increase in construction cost indices.<sup>25</sup>

7. While "no one can say with absolute certainty how many new dwelling units will be occupied and using water by 2012, these are WHWC and WHUC's best estimates, based upon the

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<sup>24</sup>"The new wells will be built at increasing elevations, between the 1,300 foot elevation up to the 2,500 foot elevation, increasing the cost of drilling, outfitting, and lines to the increasingly distant wells." Utilities' Consolidated Statement of Position, at 4 n.2.

<sup>25</sup>The Utilities explain that WHWC's initial CIAC fee was established in May 1989, while WHUC's initial CIAC fee was established in March 1995. "The actual construction cost index has increased by 54% from 1989 (the date of [WHWC's] original CIAC filing) through 2004 (see Exhibit 17). Assuming the 15 year actual trend continues, the projected 2012 index would be approximately 8,200 representing a 77.7% increase for the period from 1989 through 2012." WHUC's Transmittal No. 05-01, at 5; and WHWC's Transmittal No. 05-01, at 5.

information they have been given and their experience providing water service in the Waikoloa region."<sup>26</sup>

8. The Utilities intend to conduct a competitive bidding process to select contractors and procure the major materials necessary for the projects listed in their Exhibit 6.

G.

Consumer Advocate's Position

The Consumer Advocate, in its review, examined the following issues: (1) whether the Utilities' forecasted water consumption used to determine the capacity of the new plant facilities is reasonable; (2) whether the increases in plant facilities required, and the associated costs, are reasonable; and (3) whether the proposed increase in the CIAC fee is necessary, and if so, is the amount of the proposed increase reasonable.

1.

Forecasted Water Consumption

The proposed tariff changes are premised on the Utilities' forecasted water consumption of customers in future real estate development projects. Utilities' Exhibit 3. In Exhibit 3, the Utilities provided a list of the future projects and the projected water usage of customers in each future project, as indicated in the will serve letters issued by the Utilities. See Utilities' response to CA-IR-7.

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<sup>26</sup>Utilities' Consolidated Statement of Position, at 4.

The Consumer Advocate, nonetheless, expresses its concerns and uncertainty with respect to: (1) the Utilities' calculation of the forecasted irrigation water use for Waikoloa Mauka; and (2) the Utilities' proposed amended water use guidelines for single-family and multi-family dwellings upon which the forecasted water consumption for future customers is based.<sup>27</sup>

a.

Forecasted Irrigation Water Use

With respect to the Utilities' calculation of the forecasted irrigation water use by Waikoloa Mauka, the Consumer Advocate notes: (1) when asked for the basis of the Utilities' determination of the percentage of water each lot will require for landscaping purposes, WHWC stated that the projections were based on its estimates and assumptions, but did not provide documentation to support its assertions; and (2) WHWC used the maximum peak demand as the basis for determining the landscape irrigation water use of future customers in the development, rather than the average daily irrigation water use, and it is not reasonable to assume that the peak will be representative of the daily use of customers.

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<sup>27</sup>As used by the Consumer Advocate, the terms "SFD" and "MFD" refer to single-detached residences and apartment/condominiums, respectively, in the Utilities' tariff rules.

b.

Proposed Amended Water Use Guidelines

The Consumer Advocate notes that the estimated amount of water consumption for customers in the future developments serves as the basis for determining the expected demand of future customers in single-family and multi-family dwellings. That said, the Consumer Advocate expresses its concerns with the Utilities' proposed amended water use guidelines for single-family and multi-family customers, asserting that: (1) the Utilities failed to adequately support the basis for the proposed changes to the water use guidelines, and thus, failed to support the basis for their claim that additional facilities are needed to serve future customers;<sup>28</sup> and (2) the proposed changes in water usage for single-family and multi-family dwellings are based on only six months of actual water consumption for WHWC's existing customers in 2005 (January to June 2005).<sup>29</sup> Without adequate support, the Consumer Advocate contends that "it is not reasonable to simply assume that the water use of existing customers for a six-month period should represent the water use of future customers."<sup>30</sup>

Despite its concerns with the Utilities' proposed amended water use guidelines for customers in single-family and multi-family dwellings, the Consumer Advocate notes that a comparison of the daily water use for future customers under

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<sup>28</sup>Consumer Advocate's Amended Statement of Position, Section II(C)(1)(b)(1), at 11-12.

<sup>29</sup>Consumer Advocate's Amended Statement of Position, Section II(C)(1)(b)(2), at 12-13.

<sup>30</sup>Consumer Advocate's Amended Statement of Position, at 13.

the existing and proposed amended water use guidelines results in a nominal difference in water use, and that the requirement of future plant facilities remains unchanged.<sup>31</sup> Thus, in the Consumer Advocate's view, "the critical issue that remains to be addressed is the reasonableness of the forecasted irrigation water use, and the impact of this forecast on the need for additional facilities."<sup>32</sup>

2.

Increase in Plant Facilities and Associated Costs

As stated by the Consumer Advocate, in calculating the additional facilities required to serve future customers, the existing capacity and demands of the Utilities' current customers must first be determined, followed by the available capacity that currently exists to meet future demands, "and compare that available capacity to the total expected demand of future customers to determine the amount of additional plant required to meet customers['] needs in the future. Thus, the additional plant facilities that are needed to serve future customers are dependent on the water use projections of these customers."<sup>33</sup>

Because the Consumer Advocate is unable to ascertain the reasonableness of the water use projections of the Utilities' future customers, it is also unable to determine the reasonableness of the plant facilities the Utilities claim are

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<sup>31</sup>Consumer Advocate's Amended Statement of Position, Table 1, Additional Water Demand in WHWC and WHUC Service Areas, at 14.

<sup>32</sup>Consumer Advocate's Amended Statement of Position, at 14.

<sup>33</sup>Consumer Advocate's Amended Statement of Position, at 14.

needed to serve customers. Specifically, while the Consumer Advocate is able to determine that additional facilities are needed to meet future customer demands,<sup>34</sup> it is unable to determine the extent of additional facilities the Utilities claim is needed, "because any adjustment to the water use projections of the [Utilities'] future customers will result in a corresponding adjustment to the plant facilities needed to serve the customers."<sup>35</sup> Likewise, the Consumer Advocate is unable to determine the reasonableness of the costs of the additional facilities.

While the projected costs of the additional facilities appear overstated, the extent of the over projection will be dependent upon the amount of facilities needed to meet the expected demand of the Utilities' future customers, and the revised estimate of the expected costs of these facilities in the future.

### 3.

#### Necessity and Reasonableness of the Proposed CIAC Increase

As stated by the Consumer Advocate, to ascertain the reasonableness of the proposed CIAC tariff changes, the reasonableness of the water use projections for future customers must first be determined, followed by the

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<sup>34</sup>The Consumer Advocate also states that the Utilities' methodology for calculating the maximum peak demand appears reasonable. See Consumer Advocate's Amended Statement of Position, Section II(C)(2)(b), at 15-16.

<sup>35</sup>Consumer Advocate's Amended Statement of Position, at 15. In other words, any adjustment to the water use projections for the Utilities' future customers will result in a corresponding adjustment to the facilities needed to serve these customers.

reasonableness of the facilities that are needed to meet the forecasted water consumption, taking into consideration the existing plant capacity and customer demand, followed by the reasonableness of the costs of the additional facilities. The Consumer Advocate reiterates that it is unable to determine the reasonableness of any of these components.

The availability of funds to defray some of the costs of the additional facilities must also be reviewed. In this regard, the Consumer Advocate notes that the Utilities "may not have properly considered CIAC funds that may be currently available to defray the costs of the additional plant facilities, resulting in an overstatement of the proposed CIAC tariff."<sup>36</sup> Specifically, the Consumer Advocate expresses its concern with two sources of CIAC funds: (1) the monies collected pursuant to the Utilities' CIAC tariff rule to pay income taxes, which have not been remitted to the taxing authorities;<sup>37</sup> and (2) the deferred CIAC, with accrued interest.<sup>38</sup>

The Consumer Advocate, in Docket No. 05-0288, maintains the same position as in Docket No. 00-0440: the monies collected to pay for the income taxes assessed on the CIAC funds received, but retained by the utility due to negative taxable income in certain years, which was recorded in the income taxes payable account, should properly be reclassified as CIAC and

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<sup>36</sup>Consumer Advocate's Amended Statement of Position, at 19.

<sup>37</sup>The Consumer Advocate cites to In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Docket No. 00-0440 ("Docket No. 00-0440"), WHSC's 2001 calendar test year rate case.

<sup>38</sup>The Consumer Advocate cites to In re Waikoloa Resort Util. Inc., dba West Hawaii Util. Co., Docket No. 96-0366 ("Docket No. 96-0366"), WHUC's 1997 calendar test year rate case.

recognized in the rate setting process, consistent with the Hawaii Supreme Court's decision in In re Waikoloa Sanitary Sewer Co., dba West Hawaii Sewer Co., 109 Hawai'i 263, 125 P.3d 484 (Haw. 2005) ("In re WHSC"). According to the Consumer Advocate:

. . . the issue of the proper ratemaking treatment of the monies collected to pay income taxes pursuant to the [Utilities'] CIAC tariff exists in the instant proceeding. In response to CA-IR-6-a,b,c, it is clear that the [Utilities] have collected . . . funds to pay income taxes related to CIAC. Depending on the company, there may still be issues related to whether all of the collected monies were remitted to the taxing authorities. In addition, while the CIAC net of tax gross up may have been considered when setting rates, it is not clear that the CIAC collected for the gross up were reflected in rates. Without more certainty on these matters it is difficult to conclude that these funds have been considered in determining the monies needed to construct new plant facilities that should be collected through a revised CIAC charge.

The Consumer Advocate asserts that the proper ratemaking treatment of the available funds collected through the CIAC tariff provisions that [were] in effect when the CIAC funds were subject to income taxes, and recorded in the income taxes payable account must be addressed to determine the CIAC fees in the instant docket. If the monies were not previously used to acquire existing plant facilities, then the monies should be used to defray the costs of the new plant facilities and only the "net" costs should be collected from developers. On the other hand, if the monies were used to acquire plant facilities similar to the representation made in Docket No. 00-0440, the monies should be recognized in the rate setting process for WHUC and WHWC.

Unfortunately, it is difficult to determine whether the funds were in fact used to acquire existing plant. The reason is because the [Utilities] did not reconcile the CIAC funds received from developers to the plant facilities that are currently utilized in the provision of the regulated service.

Consumer Advocate's Amended Statement of Position, at 20-21 (footnotes and text therein omitted).



The Consumer Advocate also asserts that in Docket No. 96-0366, certain CIAC-funded dormant projects were at issue, including the Elleair Lots 2, 4, and 5 Project (the "Elleair Project"). The commission held that "the CIAC funds related to [the Elleair Project] should continue to be reflected as a deferred credit and that interest should be imputed on the balance until the funds are utilized for the acquisition of plant . . . . 'The imputed interest, in lieu of rate base offset, is intended to compensate the ratepayers for WHUC's use of the funds.'"<sup>39</sup> Based on the commission's ruling in Docket No. 96-0366, the Consumer Advocate presumes that a similar treatment of the CIAC funds recorded as deferred credits is applicable in Docket No. 05-0288. Ultimately, the Consumer Advocate argues that the amount of interest the Utilities have been imputing on CIAC monies currently in their deferred credit accounts should be recognized in determining the additional funds needed to defray the cost of the additional facilities in Docket No. 05-0288, absent a showing by the Utilities that the monies have already been spent for existing facilities.

In sum, the Consumer Advocate contends that the Utilities must reconcile the CIAC funds collected to date (inclusive of the amounts collected to pay income taxes, and the amounts recorded in the deferred CIAC account) to

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<sup>39</sup>Consumer Advocate's Amended Statement of Position, at 7 (citing Docket No. 96-0366, Decision and Order No. 16372, filed on June 9, 1998, at 11).

the plant facilities that have been acquired with such CIAC funds. This reconciliation will enable the commission to determine the amount of CIAC funds needed to pay for the costs of constructing the necessary facilities. Based on its calculations, the Consumer Advocate asserts that the Utilities appear to retain between \$5.8 million and \$6.2 million in funds that might be available for future projects.<sup>40</sup>

4.

Recommendation

The Consumer Advocate recommends that the commission proceed cautiously, in order to avoid the situation where the utility inadvertently collects more CIAC funds than is necessary to defray the costs of constructing the plant facilities needed to serve future customers. Until the concerns identified by the Consumer Advocate are appropriately addressed, including the furnishing of additional information and data to ensure a complete docket record, the Consumer Advocate objects to the commission's approval of the Utilities' proposed tariff changes.

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<sup>40</sup>Consumer Advocate's Amended Statement of Position, Table 2, WHWC and WHUC additional CIAC funds, at 24. According to the Consumer Advocate, "this assessment is based on the assumption that none of the deferred credits, together with the imputed interest were considered when the [Utilities] developed WHWC and WHUC Exhibit 5. Including the above [amount] will reduce the increase of CIAC fees proposed by the [Utilities]." Id.

H.

Waikoloa Mauka's Position

Waikoloa Mauka challenges the water usage estimates utilized by WHWC in calculating the amount of CIAC required by WHWC for water service to the various development areas owned by Waikoloa Mauka. Waikoloa Mauka also questions the costs of each of the plant additions set forth in WHWC's transmittal.

1.

Water Usage Estimates

Waikoloa Mauka asserts that: (1) the water usage estimated by WHWC, as reflected in the will serve letters issued to Waikoloa Mauka, is substantially different from the water usage estimated by WHWC in its transmittal; and (2) WHWC presented no support for any of the elements of its calculation of gallons per day contained in the will serve letters and in WHWC's transmittal.

Based on the different water usage estimates in the will serve letters and WHWC's transmittal, Waikoloa Mauka contends that: (1) WHWC has provided two significantly different set of calculations, thus calling into question WHWC's process for determining the components of its estimates; (2) WHWC did not provide any support for any of the key components of either set of calculations; and (3) neither set of WHWC's calculations can be used by the commission to set the level of CIAC to be charged to Waikoloa Mauka for any of its five development areas.<sup>41</sup>

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<sup>41</sup>Waikoloa Mauka's Statement of Position, Section II(C), WML's Position, at 5-10.

Waikoloa Mauka contends that by letter dated July 21, 2005, it provided WHWC with Waikoloa Mauka's proposed water requirements for each of the development areas.<sup>42</sup> For at least three of the development areas, significant differences exist between the water usage projected by Waikoloa Mauka, and the estimates provided by WHWC in the will serve letters and WHWC's transmittal. In addition, for its Highlands development area, Waikoloa Mauka provided WHWC with a copy of a Landscape Irrigation Water Study, prepared by Hawaii Design Associates, Inc., and dated August 2005 (the "Highlands Water Study").<sup>43</sup>

According to Waikoloa Mauka, the Highlands Water Study "outlines the plans for use of water conservation measures and covenants, conditions and restrictions to be provided in all deeds for lots in Highlands. These same plans and covenants would be applied to the other development areas, supporting the water use estimates provided by [Waikoloa Mauka]."<sup>44</sup>

In various discussions with WHWC, Waikoloa Mauka proposed to include restrictive covenants in the Highlands deeds to establish a maximum water use level of 2,000 gpd, which if exceeded for some specified period of time (i.e., two or three months), will require the landowner to provide additional CIAC payments to WHWC. Such a requirement, Waikoloa Mauka notes,

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<sup>42</sup>Waikoloa Mauka's Statement of Position, Attachment 4.

<sup>43</sup>Waikoloa Mauka's Statement of Position, Attachment 5.

<sup>44</sup>Waikoloa Mauka's Statement of Position, at 11.

is similar to an existing provision in WHWC's CIAC Rule XX,<sup>45</sup> and will "allow WHWC to collect additional CIAC where customers of Highlands and the other [Waikoloa Mauka] development areas exceed the limitations established in the restrictive covenants which would be agreed to by WHWC and included in the deeds of the customers."<sup>46</sup>

Waikoloa Mauka proposes additional language to WHWC's CIAC Rule XX, which will match the restrictive covenants in the deeds for each of the developments.<sup>47</sup> Under this scenario:

- (1) WHWC will be protected if any of the customers in the Waikoloa Mauka developments exceed the water use; and
- (2) conversely, it will protect Waikoloa Mauka's interest in that it will not need to pay exorbitant CIAC fees which WHWC will demand on the basis that the water utility will suffer losses due

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<sup>45</sup>By analogy, Waikoloa Mauka appears to refer to Rule XX, Paragraph 4, governing substantially modified facilities:

Substantially modified facilities shall mean premises or facilities to which any material change is made in the size of the premises or facilities, or in the character or extent of any commercial activities conducted at the premises or facilities, that results in an estimated increase in annual average water usage by the customer in excess of 300 gallons per day.

WHWC Rule XX(4).

<sup>46</sup>Waikoloa Mauka's Statement of Position, at 12.

<sup>47</sup>Specifically, Waikoloa Mauka proposes a Paragraph 11 to read as follows:

11. Notwithstanding anything contained herein to the contrary, an additional contribution in aid of construction may be required from customers whose water consumption results in an increase in annual average water usage in excess of the greater of 300 gallons per day or 20% over the annual average water consumption that was utilized in calculating the contribution in aid of construction initially paid by a developer in the case of new facilities pursuant to paragraphs 7 and 8 hereof.

to higher consumption by consumers once the developments are completed.

Lastly, with respect to the reasonableness of its water usage estimates, Waikoloa Mauka cites to confidential workpapers in In re KRWC Corp., dba Kohala Ranch Water Co. ("KRWC"), Docket No. 05-0334, which reflect actual water use for KRWC customers (5/8" or 1" meters) for 2005 and pro forma for KRWC's 2006 test year. The actual water usage data for KRWC's customers, Waikoloa Mauka notes, is in-line with its water use projections for the Highlands, Luxury Estates, and Ranch Lands.

## 2.

### Costs of the Plant Additions

Referring to WHWC's Exhibit 6, Waikoloa Mauka expresses its concern with: (1) WHWC's projected costs of the plant additions; and (2) WHWC's inclusion of facilities in 2005 as part of the forecasted plant to be included in the proposed new CIAC amount. That said, Waikoloa Mauka does not present a position on the cost or amount of the facilities required, and instead, defers to the Consumer Advocate to validate the cost of the new facilities. At a minimum, Waikoloa Mauka asserts that the estimate of future water usage should be: (1) reduced to reflect the overstated estimates presented by WHWC; and (2) replaced with the estimates provided by Waikoloa Mauka for its developments.

3.

Recommendation

Waikoloa Mauka recommends that the commission reject the proposed increase in the CIAC fee. Waikoloa Mauka concludes that the commission should:

1. At a minimum, use Waikoloa Mauka's water use projections for each of the development areas.

2. Approve the covenant restrictions and related change in WHWC's CIAC Rule XX to reflect the right of WHWC to collect additional CIAC if a customer's usage consistently exceeds the maximum gpd usage over a three-month period.

3. Further modify the requested increase in the CIAC fee to reflect the changes recommended by the Consumer Advocate related to the costs of the facilities and other elements of the calculation.

I.

Utilities' Reply

The Utilities take issue with certain statements and conclusions in the Consumer Advocate's Amended Statement of Position, which they assert are inaccurate.<sup>48</sup> Contrary to the Consumer Advocate's position, the Utilities contend:

1. The unchallenged information produced by WHWC in its 2005 calendar test year rate case, In re Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 04-0373

<sup>48</sup>The Utilities' rebuttal position is set forth in their Response, which solely responds to the Consumer Advocate's Amended Statement of Position. The Utilities' response to Waikoloa Mauka's position is set forth in their Statement of Position.

("Docket No. 04-0373"), shows that WHWC recorded taxable income in every year in which taxable CIAC was received. Similarly, WHUC has no available monies collected to pay income taxes through its CIAC tariff rule.<sup>49</sup>

2. The Consumer Advocate's Table 2 is misleading and inaccurate.

3. The Consumer Advocate "made absolutely no effort to use its assertions and assumptions to calculate its own proposed 'reasonable' increase in the CIAC tariff."<sup>50</sup>

With respect to Waikoloa Mauka, the Utilities, in their Consolidated Statement of Position, contend that Waikoloa Mauka: (1) is attempting to utilize this proceeding in Docket No. 05-0288 to gain some leverage to obtain a reduced CIAC fee for its properties; and (2) declined to sign the will serve letters issued by WHWC, "presumably because [Waikoloa Mauka] did not want to pay the up front CIAC fees required."<sup>51</sup> The Utilities also reject as unrealistic the Highlands Water Study. The Utilities conclude by expressing their willingness for WHWC to meet with Waikoloa Mauka, outside the commission and this proceeding, to discuss its development plans, provided that Waikoloa Mauka provides certain information to WHWC.

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<sup>49</sup>The Utilities cite to information produced by WHUC in Docket No. 96-0366.

<sup>50</sup>Utilities' Response, at 4.

<sup>51</sup>Utilities' Consolidated Statement of Position, at 7.



## II.

### Discussion

This Decision and Order addresses whether the Utilities' proposed tariff changes to their CIAC tariff rules are just and reasonable.<sup>52</sup>

HRS § 269-16 states in pertinent part:

**Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding to ensure fairness and to provide due process to parties that may be affected by rates approved by the commission, the evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony

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<sup>52</sup>The Parties, in Stipulated Procedural Order No. 22377 or in their Statements of Position, do not seek or request an evidentiary hearing.

to the commission concerning the increase. The commission, upon notice to the public utility, may:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom;
- (2) After a hearing by order:
  - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable;  
.....
- (3) Do all things that are necessary and in the exercise of the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the utility actually used or useful for public utility purposes.

HRS § 269-16(a) and (b).

HRS § 269-12(b) provides in respective part:

**Notices. . . .**

(b) Any notice provided pursuant to section 269-16(b), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established, abandoned, modified, or departed from and the proposed effective date thereof and shall be given by filing the notice with the commission and keeping it open for public inspection.

HRS § 269-12(b).

CIAC is calculated based on the water utility's estimate of the consumer's annual average water consumption in the case of new facilities, or the consumer's increased water consumption, above historical trends, in the case of substantially modified facilities. WHUC Rule XI(7); and WHWC Rule XX(7). As described in Section I.E of this Decision and Order, above, the Utilities, based on the new residential and commercial developments that are anticipated to

be constructed during the years 2005 through 2012: (1) estimated the increase in regional water demand at 7.12 mgd, and the project costs at \$47,934,000 (\$2005 dollars, including inflationary escalations), in calculating the CIAC fee of \$6.74 per gallon of EDWU for the project construction costs; and (2) divided the net financing charges of \$5,508,000 by the projected increase in regional water demand of 7.12 mgd to calculate the financing component of \$0.77 per gallon of EDWU. These amounts, the Utilities state, represent their best estimates based on the available information and their experience in providing water utility service to the Waikoloa region.

Waikoloa Mauka and the Consumer Advocate object to the commission's approval of the Utilities' proposed changes to their CIAC tariff rules. The objections to the Utilities' proposed increase in the CIAC fee to \$7.51 per gallon of EDWU (\$6.74 + \$0.77) is traced to the non-refundable aspect of the CIAC tariff rules. Waikoloa Mauka, in essence, does not intend to pay more than what is necessary to obtain water utility service for its unimproved lands, knowing that any excess monies paid to WHWC, if any, under the water utility's CIAC tariff rule, will not be subject to refund to the developer. Likewise, the Consumer Advocate cautions that the new CIAC fees approved by the commission should not result in the Utilities "inadvertently collect[ing] more CIAC funds than is necessary to defray the cost of constructing the plant facilities needed to serve future customers."<sup>53</sup> Moreover, significant differences in water use estimates exist between Waikoloa Mauka and WHWC,

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<sup>53</sup>Consumer Advocate's Amended Statement of Position, at 25.

largely attributable to differences in the forecasted amounts of landscaping/irrigation water required for the future developments. In this regard, Waikoloa Mauka states its intent to impose certain restrictions upon its developments in order to minimize the use of irrigation water, including the "use of water conservation measures and covenants, conditions and restrictions to be provided in all deeds for lots in Highlands. These same plans and covenants would be applied to the other development areas, supporting the water use estimates provided by [Waikoloa Mauka]."<sup>54</sup>

Upon review, the commission concurs with Waikoloa Mauka and the Consumer Advocate's assessment that the Utilities have not met their burden of proving that the proposed tariff changes are just and reasonable. While the Utilities state that their proposed new CIAC fees reflect their best estimates, and the Consumer Advocate acknowledges the difficulty in predicting with any degree of certainty what the future costs will be several years into the future, the commission finds that more certainty, in the form of sufficient data, documentation, and information, including information from third-party sources, is essential for determining whether the proposed tariff changes are just and reasonable. The commission, thus, denies without prejudice the transmittals filed by WHUC and WHWC.

Any new transmittals filed by WHUC and WHWC to increase their CIAC fees must include sufficient data, documentation, and information to support the Utilities' water usage forecasts of customers in the future developments, estimates on the extent of

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<sup>54</sup>Waikoloa Mauka's Statement of Position, at 11.

the expanded plant facilities and capacity, as well as the project cost estimates. In this regard, the Utilities shall take into consideration the other parties' stated concerns regarding: (1) the Utilities' forecasted irrigation water use for Waikoloa Mauka;<sup>55</sup> (2) the extent of the additional plant facilities required by the future developments, and the forecasted costs of the additional plant facilities;<sup>56</sup> and (3) an accounting of the amounts in WHUC's deferred credits account that may be available to defray the costs to construct the additional facilities, due to the dormant nature of the Elleair Project since the 1990's,<sup>57</sup> and a similar such accounting for WHWC.

For water utilities that operate within the State, WHUC and WHWC's CIAC tariff rules appear unique in the sense that their rules provide a specific, non-refundable dollar amount, in per gallons of EDWU, as the contribution for new or substantially modified facilities, in lieu of providing the developer with the option of constructing and dedicating the completed additional facilities to the water utility, or having the developer pay for the actual costs of constructing the completed additional facilities, with subsequent dedication to the water utility. Accordingly, the Utilities shall also consider the feasibility of adopting language in their CIAC tariff rules for one or both of the following options:

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<sup>55</sup>See, e.g., Utilities' responses to WML-IR-1, WML-IR-2, WML-IR-3, WML-IR-4, WML-IR-5, WML-IR-6, and WML-IR-7.

<sup>56</sup>See, e.g., Utilities' responses to CA-IR-9, CA-IR-10, CA-IR-11, CA-SIR-3c and d, and WML-IR-36.

<sup>57</sup>See Utilities' responses to CA-IR-6-a, b, c, d (partially confidential) and CA-SIR-6 (partially confidential).

(1) the developer has the option of constructing and dedicating the completed additional facilities to the water utility, at the developer's cost and in accordance with the water utility's specifications;<sup>58</sup> or (2) the applicant may pay for the actual cost of constructing the completed additional facilities, with subsequent dedication to the water utility.<sup>59</sup> Finally, the Utilities are urged to meet with the other parties for the purpose of jointly developing any new transmittals that propose to change WHUC and WHWC's CIAC tariff rules, before such transmittals are filed with the commission. As noted by the Utilities, WHWC expresses its willingness to meet with Waikoloa Mauka to discuss the developer's plans "outside the Commission and this proceeding."<sup>60</sup>

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<sup>58</sup>See, e.g., Kaupulehu Water Company, Rule XXVIII, Requirements for Development Water Systems; see also Kealia Water Co. Holdings, LLC, Rule 7.7, Plant Expansion Charge.

WHWC does not object to Waikoloa Mauka constructing the water production and storage facilities to WHWC's specifications and dedicating such facilities to WHWC, based on the understanding that such construction and dedication will be in addition to and not in lieu of CIAC fees required for the project. Utilities' responses to WML-IR-37 and WML-SIR-13. WHWC does not explain why a developer that constructs and dedicates the additional completed facilities to the water utility, ostensibly at the developer's cost and in accordance with WHWC's specifications, must also pay a CIAC fee to WHWC.

<sup>59</sup>See, e.g., Hawaii Water Service Co., Inc., Rule XXVI, Requirements for Subdivision Water Systems; and Kealia Water Co. Holdings, LLC, Rule 7.7, Plant Expansion Charge.

<sup>60</sup>Utilities' Consolidated Statement of Position, at 9; see also Utilities' responses to WML-IR-2, WML-IR-3, WML-IR-4, WML-IR-5, WML-IR-6, WML-IR-7, WML-IR-15, WML-IR-16, WML-IR-17, WML-IR-18, WML-IR-21, WML-IR-22, WML-IR-26, WML-IR-35, WML-IR-37; and WML-SIR-1.

III.

Orders

THE COMMISSION ORDERS:

1. The transmittals filed by WHUC and WHWC on October 31, 2005, as amended on November 1, 2005 for WHWC, are denied without prejudice.


2. The Utilities shall serve a copy of any new transmittals filed to amend their CIAC tariff rules upon counsel of record for Waikoloa Mauka, in addition to the Consumer Advocate.

DONE at Honolulu, Hawaii DEC 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

05-0288.laa

CERTIFICATE OF SERVICE

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

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