

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

WALTER N. FUNASAKI)

Complainant,)

vs.)

HAWAII WATER SERVICE COMPANY dba)
WEST HAWAII WATER COMPANY)

Respondent.)
_____)

DOCKET NO. 2009-0136

ORDER DIRECTING RESPONDENT TO FILE
AN ANSWER TO COMPLAINANT'S FORMAL COMPLAINT

PUBLIC UTILITIES
COMMISSION

2009 AUG 24 P 12:48

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

WALTER N. FUNASAKI)
)
 Complainant,) Docket No. 2009-0136
)
 vs.)
)
 HAWAII WATER SERVICE COMPANY dba)
 WEST HAWAII WATER COMPANY)
)
 Respondent.)
 _____)

ORDER DIRECTING RESPONDENT TO FILE
AN ANSWER TO COMPLAINANT'S FORMAL COMPLAINT

By this Order, the commission directs Respondent HAWAII WATER SERVICE COMPANY ("Respondent") to file an answer to the formal complaint filed by Complainant WALTER N. FUNASAKI ("Complainant"), attached as Exhibit A, within twenty (20) days after the date of service of this order.¹

I.

Formal Complaint

On June 22, 2009, Complainant filed a formal complaint ("Complaint") with the commission against Respondent alleging:

[Respondent's] charter permits it to charge a 6% late fee when a customer's account is 30 days past due; in flagrant violation of this charter provision, [Respondent] charges unsuspecting customers the 6% late fee when payment is received

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

as few as two days past the due date shown on their invoices.

Rule VI, Meter Reading and Rendering of Bills, of [Respondent's] charter states: "All bills shall be due and payable upon deposit in the United States mail, receipt by the customer, or other presentation to the customer;; Rule VI also provides: "All unpaid customer balances over 30 days old are subject to interest of one percent per month until paid plus a one time late charge equal to five percent (5%) of the unpaid amount as partial compensation for the administrative costs in initiating action to collect the unpaid amounts." [Respondent] sends customers a bi-monthly invoice in the form of a 4 x 6 inch card-form bill, with [a] tear-off remittance stub, about four weeks before the due date shown on the bill. [Respondent] considers the invoice to be due and payable when mailed, and the due date shown on the invoice to be the date the invoice is already 30 days past due; therefore, when a customer's payment is received two days past the printed due date, it is considered 32 days past due, and [Respondent] believes its assessment of the 6% late fee on the customer's next bill is in compliance with Rule VI. There is nothing printed on the invoice which notifies the customer that the bill is due on receipt, and that the due date shown is actually the date the bill is already 30 days past due.

. . . .

[Respondent's] deceptive billing practice was implemented in 1996. At that time, and continuing to this day, a description of its Payment Terms, commonplace on other utilities' bills, is omitted from its invoice; absent such notification, [Respondent's] customers, understandably, attach the same meaning to [Respondent's] "due date" as for the electric and telephone companies' "due date".

. . . .

. . . I provide my following estimate of late fees improperly charged unsuspecting customers:

If 30% of 2,000 residential customers' payments of their bi-monthly invoices are received 2 - 7 days after the printed due date, and the average

invoice is for \$150, the 6% late charge would total \$32,400/year. (600 customers x \$9{(\$150 x 6%) = \$5,400 x 6 Billing Cycles = \$32,400.

For the twelve years 1996 - 2008, the cumulative total is \$388,800. Although 5% of the 6% late charge is to defray collection costs, no such costs are incurred for these fallacious "delinquent accounts", so the \$388,800 of pure profit provides powerful motivation to maintain the status quo.

The [commission] is requested to require the following remedial actions by [Respondent]:

-Replace its out-dated card-form invoice (the only other card-form bill I receive is from PFI Rubbish Service, a local trash collector) with a larger invoice with sufficient space to provide printed notification to customers of its payment terms, i.e. the bill is due upon receipt, and payment must be received by the due date shown to avoid a 6% late fee;

-When a late fee is properly charged on a customer's invoice, highlight the 6% late fee, described as "Late Fee on Past Due Amount", on a single line below the total for water service charges for the billing period;

-Report the annual amounts of late fees recorded in [Respondent's] financial records from 1996 - 2008. If the 1% interest is recorded in a separate account from the 5% late charge, the twelve annual amounts for each account should be separately shown; if the 1% interest and 5% late charge are recorded in a single account, the twelve annual amounts for the single account should be shown;

-Disgorge its unfairly and deceptively obtained late fees by refunding all late fees charged customers' accounts which were not considered delinquent in the conventional sense and which were, therefore, not sent "dunning" notices, or whose accounts did not show a delinquent balance carried forward to the following bill; such refunds to customers should be for all improperly charged late fees from 1996 to the present date.

Formal Complaint, at 1-3.

Upon review, the Complaint appears to substantially comply with HAR Title 6, Chapter 61, Subchapter 5 of the commission's Rules of Practice and Procedure. Therefore, pursuant to HAR § 6-61-67(e), Respondent must file an answer to the Complaint within twenty (20) days after the date of service of this Order.

II.

Order

THE COMMISSION ORDERS:

Respondent shall file an answer to the attached Complaint with the commission within twenty (20) days after the date of service of this order.

DONE at Honolulu, Hawaii AUG 24 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

Jodi L. K. Yu
Jodi L. K. Yu
Commission Counsel

2009-0136.cp

FILED

2009 JUN 22 P 12:41

PUBLIC UTILITIES
COMMISSION

2009-0136

June 1, 2009

Public Utilities Commission
465 South King Street, Room 103
Honolulu, HI 96813

RE: FORMAL COMPLAINT AGAINST HAWAII WATER SERVICE COMPANY dba WLST
HAWAII WATER COMPANY

Dear Commission Members:

My name is Walter N. Funasaki and I reside in California at 64 Saint Timothy Court, Danville, CA 94526. I own a vacation home in Waikoloa Village on the Big Island at 68-1823 Puu Nui Street, Waikoloa, HI 96738, which is served by West Hawaii Water Company (WHWC), whose address is 150 Waikoloa Beach Drive, Waikoloa, HI 96738. WHWC provides water service to homes, condominiums, hotels, golf courses and shops at Waikoloa Beach Resorts and in Waikoloa Village, and has about 2,000 residential accounts, most of which are in Waikoloa Village. WHWC was acquired by Hawaii Water Service Company (HWSC) in 2008.

HWSC's charter permits it to charge a 6% late fee when a customer's account is 30 days past due; in flagrant violation of this charter provision, HWSC charges unsuspecting customers the 6% late fee when payment is received as few as two days past the due date shown on their invoices.

Rule VI, Meter Reading and Rendering of Bills, of HWSC's charter states: "All bills shall be due and payable upon deposit in the United States mail, receipt by the customer, or other presentation to the customer"; Rule VI also provides: "All unpaid customer balances over 30 days old are subject to interest of one percent per month until paid plus a one time late charge equal to five percent (5%) of the unpaid amount as partial compensation for the administrative costs in initiating action to collect the unpaid amounts." HWSC sends customers a bi-monthly invoice in the form of a 4 x 6 inch card-form bill, with tear-off remittance stub, about four weeks before the due date shown on the bill. HWSC considers the invoice to be due and payable when mailed, and the due date shown on the invoice to be the date the invoice is already 30 days past due; therefore, when a customer's payment is received two days past the printed due date, it is considered 32 days past due, and HWSC believes its assessment of the 6% late fee on the customer's next bill is in compliance with Rule VI. There is nothing printed on the invoice which notifies the customer that the bill is due on receipt, and that the due date shown is actually the date the bill is already 30 days past due.

HWSC's unconventional billing practice is at odds with those of all other utilities and the vast majority of commercial companies on the Big Island, where bills are mailed three or four weeks before the due date shown, and are considered delinquent only if unpaid 30 days past the printed due date; payments received after the printed due date, but

EXHIBIT A

within a 7 - 10 day grace period, are not considered delinquent, but regarded as "on-time payments".

HWSC's deceptive billing practice was implemented in 1996. At that time, and continuing to this day, a description of its Payment Terms, commonplace on other utilities' bills, is omitted from its invoice; absent such notification, HWSC's customers, understandably, attach the same meaning to HWSC's "due date" as for the electric and telephone companies' "due date". Fair and honest dealing with its customers obligated HWSC to provide a clear description of its unconventional billing practice to customers from the date of its implementation; currently, customers are completely unaware that from the date of mailing the bill, a 30 day "delinquency period" is already tolling, and that if payment is even a day past the due date shown, a 6% late fee will be charged on the following bill; then, when a late fee is charged on the next bill, the 6% late fee is purposely "masked" by showing the 1% interest charge on a separate line described as "Previous Balance", and the 5% late charge on another line shown as "Late Penalty (Prev)". If the average customer's bi-monthly bill is \$150, the 1% interest would be \$1.50, and the 5% late charge would be \$7.50, and these amounts are nominal enough to escape notice of the customer. HWSC's withholding of a description of its payment terms is deceptive at best, and predatory at worst.

In my informal complaint to the PUC which preceded this formal complaint, I recommended that a report of the annual amounts of late fees collected from customers from 1996 to 2008 be obtained from HWSC; the PUC investigator neglected to obtain such report. Lacking such report, I provide my following estimate of late fees improperly charged unsuspecting customers:

If 30% of 2,000 residential customers' payments of their bi-monthly invoices are received 2 - 7 days after the printed due date, and the average invoice is for \$150, the 6% late charge would total \$32,400/year. (600 customers x \$9{ \$150 x 6% } = \$5,400 x 6 Billing Cycles = \$32,400.

For the twelve years 1996 - 2008, the cumulative total is \$388,800. Although 5% of the 6% late charge is to defray collection costs, no such costs are incurred for these falacious "delinquent accounts", so the \$388,800 of pure profit provides powerful motivation to maintain the status quo.

The PUC is requested to require the following remedial actions by HWSC:

- Replace its out-dated card-form invoice (the only other card-form bill I receive is from PFI Rubbish Service, a local trash collector) with a larger invoice with sufficient space to provide printed notification to customers of its payment terms, i.e. the bill is due upon receipt, and payment must be received by the due date shown to avoid a 6% late fee;

- When a late fee is properly charged on a customer's invoice, highlight the 6% late fee, described as "Late Fee on Past Due Amount", on a single line below the total for water service charges for the billing period;

- Report the annual amounts of late fees recorded in HWSC's financial records from 1996 - 2008. If the 1% interest is recorded in a separate account from the 5% late charge, the twelve annual amounts for each account should be separately shown; if the 1% interest and 5% late charge are recorded in a single account, the twelve annual amounts for the single account should be shown;

- Disgorge its unfairly and deceptively obtained late fees by refunding all late fees charged customers' accounts which were not considered delinquent in the conventional sense and which were, therefore, not sent "dunning" notices, or whose accounts did not show a delinquent balance carried forward to the following bill; such refunds to customers should be for all improperly charged late fees from 1996 to the present date.

Enclosed with this letter are eight additional copies; two copies of the letter have also been sent to: Division of Consumer Advocacy, 335 Merchant Street, Room 326, Honolulu, HI 96813.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter N. Funasaki".

Walter N. Funasaki

LINDA LINGLE
GOVERNOR



CARLITO P. CALIBOSO
CHAIRMAN

JOHN E. COLE
COMMISSIONER

LESLIE H. KONDO
COMMISSIONER

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

Telephone: (808) 586-2020
Facsimile: (808) 586-2068

e-mail: Hawaii.PUC@hawaii.gov

June 5, 2009

PUBLIC UTILITIES
COMMISSION

2009 JUN 22 P 12:41

FILED

Walter N. Funasaki
64 Saint Timothy Court
Danville, CA 94526

Re: Formal Complaint Against Hawaii Water Service Company dba West Hawaii Water Company


Dear Mr. Funasaki:

On June 4, 2009, the State of Hawaii Public Utilities Commission ("Commission") received your formal complaint dated June 1, 2009 against Hawaii Water Service Company dba West Hawaii Water Company.

Because your filing is deficient of a \$30 required filing fee under HAR § 6-61-24, the Commission is unable to process your documents and is hereby returning them to you. For your information, the foregoing administrative rules may be viewed at www.hawaii.gov/budget/adminrules/har6-61.htm.

If you have any questions, please contact the undersigned at (808) 586-2020.

Sincerely,


Brooke K. Kane
Administrative Director

BKK:et

June 19, 2009

Brooke K. Kane
Administrative Director

Enclosed is the \$30 filing fee.

Sincerely,



P.S. Attached is Hawaii Water Service Company's notification of address change.



HAWAII WATER SERVICE COMPANY

P.O. BOX 384809

WAIKOLOA, HI 96738 • (808) 883-2046

FILED

2009 JUN 22 P 12:41

PUBLIC UTILITIES
COMMISSION

June 16, 2009

Dear Hawaii Water Customer:

To better serve our customers, we are moving into our new office in the Waikoloa Village at the Waikoloa Highlands Center. We will be open for business at this location beginning Monday, June 22, 2009, from 8 a.m. to 4:30 p.m. Monday through Friday. Our new physical address is:

Hawaii Water Service Company
68-1845 Waikoloa Road, Unit #116
Waikoloa, HI 96738

Our mailing address remains the same as before:

Hawaii Water Service Company
P.O. Box 384809
Waikoloa, HI 96738

If you ever have any questions or need assistance, you can also reach us by phone at our new number: (808) 883-2046. We look forward to serving you from our new location.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry S. Tamble".

Terry S. Tamble
General Manager



HAWAII WATER SERVICE COMPANY

P.O. BOX 384809

WAIKOLOA, HI 96738 • (808) 883-2046

Pre-Sorted
First Class
U.S. Postage
PAID
Permit #234
Lomita, CA

PUNABAKI, WALTER

Or Current Resident

PO BOX 384677

WAIKOLOA HI 96738-4677



LINDA LINGLE
GOVERNOR



CARLITO P. CALIBOSO
CHAIRMAN

JOHN E. COLE
COMMISSIONER

LESLIE H. KONDO
COMMISSIONER

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
• 465 S. KING STREET, #103
HONOLULU, HAWAII 96813

Telephone: (808) 586-2020
Facsimile (808) 588-2088

e-mail Hawaii.PUC@hawaii.gov

July 27, 2009

Walter N. Funasaki
64 Saint Timothy Court
Danville, CA 94526

Re: Docket No. 2009-0136
Formal Complaint Against Hawaii Water Service Company

Dear Mr. Funasaki:

After reviewing your complaint against Hawaii Water Service Company, please be advised that we are not able to process it until you comply with all of the requirements set forth in Hawaii Administrative Rules ("HAR") chapter 6-61.¹ In particular, pursuant to HAR § 6-61-17, the complaint must also include a signed verification. A sample verification can be located under HAR § 6-61-170.

Accordingly, please submit a signed verification in accordance with HAR § 6-61-17 to the Public Utilities Commission and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy within ten days from the date of this letter.

We appreciate your attention and cooperation in this matter. Should you have any questions, please contact the undersigned at (808) 586-2017.

Sincerely,

Jodi Yi
Commission Counsel

JKY:ps

Enclosure

c: Division of Consumer Advocacy

¹These rules may be viewed at: www.hawaii.gov/budget/adminrules/public-utilities-commission

PUBLIC UTILITIES
COMMISSION

2009 AUG 10 P 12: 29

FILED

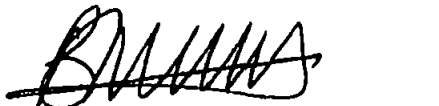
STATE OF HAWAII)
) ss
County of HAWAII)

Walter N. Funasaki, being first duly sworn, deposes and says: That he is the complainant in the above matter, that he has read the foregoing complaint, and knows the contents thereof, and that the contents of the complaint are true.

Walter N. Funasaki

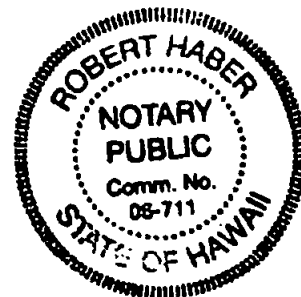
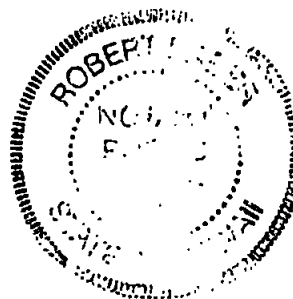
(Name of Complainant)

Subscribed and sworn to before me this 6TH day of AUGUST 2009.



Notary Public
State of Hawaii

My commission expires 11-19-2010.



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

(2 COPIES)

HAWAII WATER SERVICE COMPANY
68-1845 Waikoloa Road, Unit #116
Waikoloa, HI 96738

HAWAII WATER SERVICE COMPANY
P.O. Box 384809
Waikoloa, HI 96738

WALTER N. FUNASAKI
64 Saint Timothy Court
Danville, CA 94526

WALTER N. FUNASAKI
P.O. Box 384677
Waikoloa, HI 96738