

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAI`OLA O MOLOKA`I, INC.)
For Review and Approval of Rate)
Increases; Revised Rate Schedules;)
And Revised Rules.)

DOCKET NO. 2009-0049

ORDER GRANTING THE MOTIONS TO INTERVENE
FILED BY THE COUNTY OF MAUI AND STAND FOR WATER

And

OPINION OF LESLIE H. KONDO, COMMISSIONER,
CONCURRING IN PART AND DISSENTING IN PART

FILED
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PUBLIC UTILITIES
COMMISSION

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ORDER GRANTING THE MOTIONS TO INTERVENE
FILED BY THE COUNTY OF MAUI AND STAND FOR WATER

By this Order, the commission grants the motions to intervene filed by the County of Maui and Stand for Water, on September 11 and 14, 2009, respectively, subject to certain conditions. In addition, the commission, on its own motion, names Molokai Properties, Limited ("MPL"), dba Molokai Ranch, as a party to this proceeding.

I.

Background

On July 29, 2009, WAI`OLA O MOLOKA`I, INC. ("WOM")¹ filed its amended application ("Amended Application")² seeking additional revenues of \$473,431, or an approximate 382.85%

¹WOM was granted commission authority to provide water service as a public utility to residential, commercial, and agricultural customers on the island of Molokai in 1993. See In re Wai`ola O Moloka`i, Inc., Docket No. 7122, Decision and Order No. 12125, filed on January 13, 1993 ("Decision and Order No. 12125").

²WOM is ultimately a wholly owned subsidiary of MPL. See Amended Application, Exhibit WOM 2, Schedule 2.

increase, over the pro forma revenue amount of \$123,660.³ The requested increase is based on an estimated total revenue requirement of \$597,091 for the July 1, 2009 through June 30, 2010 test year, and a rate of return of 2%.⁴

Specifically, WOM is seeking to implement the proposed increase in revenues by increasing its: (1) monthly User Charge from \$1.85 per 1,000 gallons (i.e., the non-temporary charge authorized in 1993 by the commission in Docket No. 7122) to \$8.9675 per 1,000 gallons, or an approximate 384.7%⁵; (2) various

³Initially, WOM filed its application on March 2, 2009. By Order Denying Wai'ola O Moloka'i, Inc.'s Request To Submit Its Unaudited Financial Statements In Lieu Of Audited Financial Statements issued on April 2, 2009, the commission: (1) denied WOM's request to submit unaudited financial statements in lieu of audited financial statements, required under Hawaii Administrative Rules ("HAR") § 6-61-75(b); (2) dismissed WOM's March 2, 2009 application as incomplete; and (3) instructed WOM to file an amended application supported by audited financial statements. WOM's Amended Application, filed on June 29, 2009, includes as an exhibit independent audited financial statements for the 2008 calendar year. See Amended Application, Exhibit WOM 2, Schedule 4.

⁴The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is an ex officio party to this proceeding pursuant to Hawaii Revised Statutes § 269-51 and HAR § 6-61-62.

⁵On June 16, 2008, the commission, on its own motion, initiated Docket No. 2008-0115 to consider temporary rate relief for MPL's public utilities (i.e., WOM, Molokai Public Utilities, Inc. ("MPU"), and Mosco, Inc.) following MPL's announcement that it would cease providing utility services within six months ("Temporary Rate Relief Proceeding"). On August 14, 2008, the commission issued its Order Approving Temporary Rate Relief for Molokai Public Utilities, Inc. and Wai'ola O Moloka'i, Inc. in Docket No. 2008-0115 approving, among other things, a temporary increase in WOM's User Charge from \$1.85 per 1,000 gallons (approved in Decision and Order No. 12125) to \$5.15 per 1,000 gallons (effective September 1, 2008, until February 28, 2009, unless ordered otherwise by the commission). Subsequently, the February 28, 2009 date was extended to August 2009 or until the commission rules on the general rate increase applications filed by MPU and WOM (collectively, the "Utilities"). See Order

meter Service Charges by an approximate 380% to 384%, based on the size of the meters; and (3) various Private Fire Protection Charges by an approximate 380%.⁶

On September 11, 2009, the County of Maui (the "County") timely filed its Motion to Intervene in this proceeding ("County's Motion to Intervene"). On September 14, 2009, Stand for Water ("SFW") also timely filed a Motion to Intervene ("SFW's Motion to Intervene").

On September 18, 2009, WOM filed a Memorandum in Opposition to County of Maui's Motion to Intervene ("Opposition to County's Motion to Intervene").⁷ Then on September 21, 2009, WOM filed a Memorandum in Opposition to Stand for Water's Motion to Intervene ("Opposition to SFW's Motion to Intervene").⁸

Approving Extension of Temporary Rate Relief and Request for an Extension to File General Rate Case Applications, filed on February 24, 2009, in Docket No. 2008-0115.

⁶In addition, WOM proposes to establish an Automatic Power Cost Adjustment Clause, which permits adjustments for electric costs during the year, and amend Rule 20 of its Rules and Regulations to increase its Reconnection Charge from \$50.00 to \$100.00.

⁷The Consumer Advocate did not file a response to County's Motion to Intervene.

⁸On September 22, 2009, the County filed a Statement of No Opposition to Stand for Water's Motion to Intervene. Given that the County currently has no standing in this proceeding, its statement filed on September 22, 2009, will be given no weight. The Consumer Advocate did not file a response to SFW's Motion to Intervene.

II.

Discussion

A.

Intervention

Intervention in commission proceedings, as articulated by the Hawaii Supreme Court, "is not a matter of right but a matter resting within the sound discretion of the commission."⁹ HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;

⁹See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

1.

County's Motion to Intervene

a.

County's Motion

The County states that it should be permitted to intervene since it: (1) has an interest in this proceeding; (2) the Consumer Advocate will not adequately protect its interests; and (3) its interests differ from those of WOM's other customers. According to the County, it is seeking "to intervene to protect its interests, to ensure that the PUC and the Consumer Advocate do not take positions adverse to the County, and to ensure that a complete and full financial picture of the Utilities and its parent company are presented to the PUC."¹⁰ In the alternative, in the event that the County's Motion to

¹⁰See County's Motion to Intervene at 11.

Intervene is denied, the County states that it should be allowed to participate without intervention.

The County asserts that as a customer of WOM it depends on the utility's water service for fire protection through hydrants along Kaluakoi Road, through Maunaloa town, and in the Kualapuu area and for water for the County's Popohaku Beach and Kualapuu parks. Thus, according to the County, WOM's proposed rate increase, if granted, would have a "significant financial" impact on the County as a customer and substantially affect taxpayers of the County.

In addition, the County states that if it is not permitted to intervene it would be precluded from directly participating in the proceeding and would be precluded from an appeal, if warranted. It adds that "[t]here are no other means by which the County will be able to directly advocate its interests in this proceeding and be permitted to file an appeal should an appeal be necessary, unless it is permitted to intervene and submit the documents, testimony, and arguments necessary to present its position to the PUC."¹¹

The County also states that its interests cannot be adequately represented by any other party to this proceeding "including the Consumer Advocate, who has taken positions adverse to the County in other proceedings."¹² On this matter, the County notes that the commission named it a party to the Temporary Rate Relief Proceeding "stating [that] the County has an interest in

¹¹Id. at 9.

¹²Id. at 1.

ensuring that its citizens have access to basic water and wastewater services.”¹³ According to the County, while the commission has no statutory or legal authority “to order the County to acquire and take over the Utilities’ systems” the Consumer Advocate filed a statement of position supporting the commission’s order in the Temporary Rate Relief Proceeding.¹⁴ The County states that its position in that proceeding “was, and still is, that the County cannot be forced to acquire or to operate the Utilities, whether by order of the PUC or through action by any other state government entity.”¹⁵

Given that it was a party to the Temporary Rate Relief Proceeding, the County states that it is familiar with WOM’s positions, financial information, and organizational structure and asserts that its participation in this proceeding is needed to obtain a full and complete record. Specifically, the County states that it will be able “to provide much-needed context to the underlying issues which form the bases for Wai’ola’s and MPU’s requests for a rate increase.”¹⁶ The County also asserts that it is deeply concerned that the financials submitted by the Utilities do not fully represent the financial picture of these companies and its parent and related companies, thus, the County seeks to intervene to ensure that the commission is fully and properly informed of the Utilities’ true financial picture.

¹³Id. at 3 (internal quotes omitted).

¹⁴Id.

¹⁵Id.

¹⁶Id. at 11.

Furthermore, the County asserts that it is not seeking to intervene in this proceeding to broaden the issues or delay the proceeding, and contends that its interests differ from the interests of the general public. According to the County, in past proceedings "the PUC and the Consumer Advocate both appeared to be taking the position that the County should or could be required to take over the Utilities. The County profoundly disagrees, and therefore must participate in this proceeding in order to protect its interests."¹⁷

Finally, the County states that it opposes the pending rate application since the financial data submitted to the commission does not accurately portray WOM's complete financial picture. The County asserts that the "State Department of Health's [(DOH)] hearing officer has determined that the Utilities and the parent company, Molokai Properties, Ltd., are one and the same."¹⁸ According to the County, the parent company's finances, and all of the inter-company transactions, must be considered since the First Circuit Court affirmed the decision of the DOH hearing officer in its entirety.

b.

WOM's Opposition

WOM requests that the commission deny the County's Motion to Intervene. WOM opposes the County's Motion to Intervene on the grounds that any interests that the County may

¹⁷Id. at 12.

¹⁸Id.

allegedly have regarding WOM's requests in this proceeding are not special and unique, and are adequately and sufficiently represented by the Consumer Advocate. It further states that the County has not demonstrated or provided any reliable evidence that its intervention would contribute in any "significant or material" way to the development of a sound record regarding the reasonableness of WOM's proposed rate increase or that the County's participation would not unduly delay the proceedings or unreasonably broaden the issues presented in this docket. In the alternative, WOM contends that the "County's allegations and statements made in its Motion to Intervene indicate that its participation as a party or intervenor would indeed unduly delay the proceedings and unreasonably broaden the pertinent ratemaking issues to be decided in this docket."¹⁹

Specifically, WOM contends that the County's interests in the general ratemaking issues (i.e., revenues, expenses, rate base, etc.) in this proceeding are generally the same as that of the general public. It states that the Consumer Advocate's statutory duty to "represent, protect, and advance the interest of all consumers, including small businesses, of utility services . . . extend[s] to all consumers of Wai'ola, including residential and commercial, and private and public customers alike."²⁰ WOM contends that its request in this proceeding affects the public in general and that contrary to the County's allegations, it is not uniquely affected, and thus, the County's

¹⁹See WOM's Opposition to County's Motion to Intervene at 2.

²⁰Id. at 7 (emphasis in original).

interests in this proceeding, according to WOM, will be adequately represented by the Consumer Advocate.

Among other things, WOM states that the County's arguments "attempting" to demonstrate how its interests are different from the Consumer Advocate do not relate to general rate case issues. According to WOM, the County's arguments relate to interests in other proceedings or dockets which involve issues which are irrelevant for ratemaking and are not issues in this proceeding. WOM also questions the County's contention that "its interests differ from that of the general public's, because the PUC and the Consumer Advocate both appeared to be taking the position that the County should or could be required to take over the Utilities."²¹ Instead, WOM states that the Consumer Advocate has "emphatically taken" the position that the Utilities should be compelled to provide services. Moreover, WOM contends that "[a]ny concerns in this proceeding . . . that the County may be required to take over the Utilities, aside from being unfounded and misplaced, are outside the scope of this rate making proceeding and should not be considered as a reasonable basis for intervention."²²

In addition, WOM argues that the County's allegation that the Consumer Advocate may take a position contrary to its interests does not meet the requirements for HAR § 6-61-55(b)(5) which "requires a reference to the extent to which the

²¹Id. at 10-11 (internal quotes and citation omitted; emphasis in original).

²²Id. at 12.

applicant's interest will not be represented by existing parties."²³ According to WOM, the County's allegations are "[m]ere speculation" about the possibility of the Consumer Advocate taking a contrary position which does not fulfill the requirements for intervention. WOM also contends that the County's participation as an intervenor based on its allegations "will likely result in duplicative efforts and submissions of the Consumer Advocate, resulting in potential delays and waste of regulatory resources, and should be prohibited by the Commission."²⁴

Further, WOM contends that the County has not demonstrated how its participation would assist the commission in developing a sound record regarding WOM's revenues, expenses, and other general rate making issues. According to WOM, while claiming its participation in and familiarity with the Temporary Rate Relief Proceeding, the County fails to acknowledge the Consumer Advocate's "participation in the same proceeding and its knowledge and familiarity with the same information and underlying issues regarding Wai'ola's operations."²⁵ Noting that the County has not shown any specialized interest or knowledge that the Consumer Advocate does not itself have or could obtain through discovery, WOM claims that the County's assertions "lacks

²³Id. (internal quotes and references omitted).

²⁴Id. at 14.

²⁵Id. at 15.

credibility and is without merit."²⁶ Moreover, WOM asserts the following:

The County's stated concern with respect to its interests in other dockets is wholly irrelevant to this ratemaking proceeding, would unduly broaden and/or confuse the issues and cause potential delays. Moreover, it is apparent from the County's Motion to Intervene that it intends to utilize the proceeding as a means to raise and address issues regarding Wai'ola fitness and/or "piercing the corporate veil" that are either irrelevant or are more properly addressed in other dockets or proceedings. Accordingly, the Commission should not consider these allegations and/or alleged factual representations, and should prohibit the County from utilizing the intervention process to unreasonably broaden the ratemaking issues already presented and to unduly delay the proceedings.²⁷

Finally, with respect to the County's alternative request for participation without intervention, WOM states that if the commission is inclined to allow the County to participate in this proceeding, WOM would not object to the County being granted participant status, without intervention, subject to certain conditions and limitations.²⁸

²⁶Id. at 16.

²⁷Id. (citation omitted).

²⁸The limitations and/or conditions articulated by WOM regarding the County's participation in this proceeding are as follows: "(1) the County's participation does not in any manner duplicate the efforts of the Consumer Advocate, unreasonably broaden the pertinent issues already presented, or unduly delay the proceeding; (2) the County's participation may be reconsidered by the Commission if it determines that any of the County's efforts in this proceeding are duplicative, unreasonably broaden the pertinent issues in this docket or unduly delay the proceeding; (3) the County shall not be permitted to participate in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of issues; and (4) the County shall be required to comply with the Commission's Rules of Practice and Procedure." See WOM's Opposition to County's Motion to Intervene at 17.

c.

Discussion

Here, the commission finds that the County has a significant interest in the matters of this docket. As articulated in the order initiating the Temporary Rate Relief Proceeding, "the County has an interest in ensuring that its citizens have access to basic water and wastewater services."²⁹ The commission's initial assessment regarding the extent of the County's interests with respect to WOM is not altered. In general, the commission is not persuaded by WOM's opposition to the County's Motion to Intervene. Rather, the commission agrees with the County that its interests are distinct from that of the general public and that no existing party to this proceeding, including the Consumer Advocate, can sufficiently represent or protect its interests.

Moreover, the County notes certain concerns with respect to WOM's financials which will directly affect rate making issues in this proceeding. Given its involvement in the Temporary Rate Relief Proceeding and other matters involving WOM and its parent, MPL, the commission agrees with the County that its involvement, as an intervenor, in this proceeding can assist the commission in developing a sound record. Accordingly, the commission finds that the County's interests are reasonably pertinent to the matters raised in this docket, and that its

²⁹See In re Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Masco, Inc., Docket No. 2008-0115, Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc., issued on June 16, 2008.

intervention will not unreasonably broaden the issues presented or unduly delay the proceedings.

Based on the foregoing, the commission concludes that the County's Motion to Intervene should be granted.

2.

SFW's Motion to Intervene

a.

SFW's Motion

SFW is an unincorporated Hawaii association on the island of Molokai whose members are "water ratepayers and residents" of the island. In short, SFW states that the concerns it "seeks to address as an Intervenor are reasonably pertinent to this rate case, and will not unreasonably broaden the issues already presented."³⁰ It represents that should the commission grant its motion, SFW will retain representation of an attorney in good standing and entitled to practice before the Hawaii Supreme Court, consistent with HAR § 6-61-12.

SFW states that it was organized in response to the rate increase applications filed by WOM and MPU and that its mission is to insure: (1) water utility rates and charges are just and reasonable; (2) drinking water supplied by the Utilities are safe; (3) water delivery infrastructure is kept in good repair; (4) the legal obligations to supply water are honored; and (5) the island's limited water resources are protected. Referencing the Temporary Rate Relief Proceeding, SFW states that

³⁰See SFW's Motion to Intervene at 1.

it is seeking to intervene in this proceeding to provide material information that was unavailable to the commission during the Temporary Rate Relief Proceeding.

According to SFW, its members have a substantial interest in the outcome of this rate case and that their financial interests are threatened by the rate increase proposed by WOM. In addition, SFW states that its members have a critical health and safety interest in the outcome of the rate increase proceeding. According to SFW, the water supplied by WOM "routinely fails water quality tests for toxins and sediments" and despite the temporary rates approved in 2008, WOM has not used the extra revenues generated to make water system repairs or to improve the quality of the purification procedures.³¹ SFW states that the commission should not grant WOM's request for additional rate increases without requiring the utility to address these health and safety concerns. Further, SFW states that its members have a strong interest in the legality of WOM's water system. SFW assert that "[n]either Wai`ola nor its parent [] has a valid permit to pump water from well 17, which supplies a portion of the water delivered to Wai`ola customers."³² SFW contends that in December 2006, the Hawaii Supreme Court invalidated all pumping permits for the well and that neither the utility nor its parent company, MPL, has filed for new permits. Moreover, SFW states that its members have a substantial interest in the reliability of both the utility and MPL. SFW contends

³¹Id. at 3.

³²Id. at 4.

that even after the Temporary Rate Relief Proceeding, "MPL refused to commit to continue operating the utilities."³³

Among other things, SFW also contends that the commission proceeding is the only forum to address its concerns and that there are no other means by which SFW can protect its interests. In addition, SFW also states that there is no other existing or prospective party to this proceeding that has the responsibility to protect its interests. Specifically, SFW's states that the Consumer Advocate will be focused on determining whether the proposed rates and charges are justified, as opposed to SFW concerns regarding "health and safety, water quality, or the legality and reliability of the system."³⁴

In addition, SFW contends that its members include individuals with intimate knowledge of MPL's water systems and business practices. SFW contends that the knowledge of its members will be extremely valuable in guiding discovery, analyzing data, and cross examining the utility. SFW states that it intends to provide expert testimony on a number of subjects including, but not limited to: (1) MPL's accounting procedures, internal operations, and water delivery and distribution systems; and (2) Well 17 and Molokai's irrigation systems. SFW provides the names, subjects, and areas of expertise of the individuals who have already agreed to serve as "expert witnesses" in the proceeding on pages 6-7 of its Motion to Intervene.

³³Id.

³⁴Id. at 6.

Further, SFW contends that: (1) it will address issues that are "entirely relevant" to this proceeding as described in its motion; (2) to the extent that the issues must be considered by the commission, addressing the issues will not constitute undue delay; (3) its interests are different from the public in general; and (4) it opposes WOM's application.

b.

WOM's Opposition

WOM requests that the commission deny SFW's Motion to Intervene. It opposes SFW's motion based on the grounds that SFW failed to satisfy the intervention requirements of HAR § 6-61-55 and that the "allegations raised in SFW's Motion to Intervene are not reasonably pertinent to the ratemaking proceedings and unreasonably broaden the issues already presented, contrary to HAR §§ 6-6[1]-55(d) and (b)."³⁵

WOM argues that any interests that SFW allegedly has regarding WOM's Amended Application are not special and unique and are adequately and sufficiently represented by the Consumer Advocate. WOM also notes that while all of SFW members have not been identified, "it appears by its own admission that several, if not many, are not even customers of the utility."³⁶ WOM further contends that SFW failed to demonstrate or provide any reliable evidence that its intervention as a party would

³⁵See WOM's Opposition to SFW's Motion to Intervene at 2 (emphasis in original).

³⁶Id.

contribute in any significant or material way to the development of a record regarding WOM's proposed rate increase or would not unduly delay the proceedings or unreasonably broaden the issues presented. "In fact, Wai`ola contends that SFW's allegations and statements made in its Motion to Intervene clearly indicate that its participation as a party or intervenor would unduly delay the proceedings and unreasonably broaden the pertinent ratemaking issues to be decided in this docket."³⁷

In addition, WOM contends that SFW's Motion to Intervene should be denied since SFW fails to satisfy a majority of the intervention requirements of HAR § 6-61-55(b). In particular, WOM contends that SFW failed to meet the requirements of HAR §§ 6-61-55(b)(1), (4), (5), (6), (7) and (8). For instance, with respect HAR § 6-61-55(b)(1), which requires SFW to reference the nature of its statutory or other right to participate in the hearing, WOM contends that SFW makes no mention of a statutory or other right to participate and thus fails to satisfy this requirement. In addition, with respect to HAR § 6-61-55(b)(8), under which SFW must establish the extent to which its interests in the proceeding differ from those of the general public, WOM claims that SFW fails to substantiate its assertion and, thus, fails to satisfy this requirement.

WOM also asserts that certain SFW's members lack the requisite standing to intervene. According to WOM, SFW has not provided a list of all of its members so there is no way to verify that SFW is composed of WOM ratepayers and WOM notes that

³⁷Id.

SFW admitted that its members include non-ratepayer who rely on the same infrastructure.³⁸ WOM argues that “[g]iven that SFW has not explained or demonstrated how these non-customers have a financial or property interest that will be impacted by this ratemaking proceeding, certain of SFW’s members clearly lack standing to intervene in this proceeding.”³⁹

c.

Discussion

Although it appears that SFW’s motion may be somewhat lacking, the commission finds SFW’s involvement in this proceeding, as an intervenor, to be appropriate. The circumstances surrounding the filing of WOM’s Amended Application are highly unusual. This proceeding is the result of the Temporary Rate Relief Proceeding which the commission instituted, on its own motion, due to MPL’s March 2008 announcement that it planned to cease operation of its utilities within six months. MPL’s March 2008 announcement of the shut down of its utility services appears to have profoundly affected WOM’s ratepayers and their interests, financial and otherwise, appear to have been substantially impacted through the commission-initiated Temporary

³⁸In addition, WOM questions Timothy Brunnert’s claim to be acting on behalf of SFW in signing SFW’s Motion to Intervene. On this issue, WOM claims that Mr. Brunnert failed to provide any factual support or verification to identify the members of SFW, to establish the SFW members as Wai’ola customers/ratepayers, and to establish that he has authorization to represent SFW’s interest as a group. Thus, WOM claims that the commission should treat Mr. Brunnert as solely an individual customer/ratepayer as opposed to an authorized representative of SFW.

³⁹See WOM’s Opposition to SFW’s Motion to Intervene at 11.

Rate Relief Proceeding. While in most cases the commission would agree that the interests of a utility's customers can be sufficiently represented by the Consumer Advocate, this may not be the case here due to the unusual circumstances of this docket. Thus, the commission finds it appropriate and reasonable in this case to side on inclusion as opposed to exclusion.

In addition, upon review, the commission is persuaded by SFW's claim that it can assist the commission in developing a sound record. The list of SFW's potential witnesses, their backgrounds, and areas of expertise with respect to WOM, its system, and operations, among other areas, is noteworthy. It appears that SFW's involvement in this proceeding, as an intervenor, may be worthwhile. Moreover, SFW states that it will secure representation from an attorney in good standing and licensed to practice before the Hawaii Supreme Court.

Based on the foregoing, the commission concludes that SFW's Motion to Intervene should be granted.

3.

Conditions for Intervention

With respect to intervention, however, the commission will preclude any effort by the County or SFW to unreasonably broaden the pertinent issues or unduly delay the proceeding. Similarly, the commission will reconsider the County's and SFW's intervention in this docket if, at any time during the course of this proceeding, the commission determines that the County or SFW is unreasonably broadening the pertinent issues or unduly

delaying the proceeding. In particular, SFW must ensure that its stated intention of seeking appropriate representation shall not in any way delay this proceeding.

In addition, the County and SFW are reminded that they must comply with the commission's Rules of Practice and Procedures set forth in HAR Chapter 6-61 and all commission orders and requirements during the course of this proceeding.

B.

Designation of MPL

In the Temporary Rate Relief Proceeding, the commission named MPL as a party to the docket since "MPL is affiliated with the Utilities, and owns property associated with the Utilities' service territories[.]"⁴⁰ The commission reaffirmed its decision to name MPL as a party to Temporary Rate Relief Proceeding in a subsequent order stating that MPL was a necessary party to the proceeding to "flesh out the issue[s]".⁴¹ In particular, the commission maintained that a potential issue is MPL's promise made in WOM's "application for a certificate of public convenience and necessity ("CPCN") that losses sustained by [Wai'ola] in its operations will be covered by additional capital contributions from Molokai Ranch, Limited [nka, MPL] or by

⁴⁰See Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and MOSCO, Inc., filed on June 16, 2009, in Docket No. 2008-0115, at 15.

⁴¹See Order Directing MPL to Participate in this Proceeding, filed on June 23, 2008, in Docket No. 2008-0115, at 5.

loans.”⁴² As noted in that order, MPL’s promise was acknowledged by the commission in granting WOM’s its CPCN.⁴³

Consistent with the above, the commission finds that designation of MPL as a party to this proceeding to be appropriate and reasonable. Through this designation, the commission is assured that WOM, whether individually or jointly through its parent entity, MPL, should be able to provide the commission and other parties to this proceeding with the information needed to develop a complete record in this proceeding.

Based on the foregoing, the commission concludes that MPL should be designated as a party to this proceeding.

III.

Orders

THE COMMISSION ORDERS:

1. The County’s Motion to Intervene, filed on September 11, 2009, is granted, subject to the conditions set forth in Section II.A.3 of this Order.

⁴²Id. (citing WOM’s Application for a Certificate of Public Convenience and Necessity, filed on October 14, 1991, in Docket No. 7122, at 6).

⁴³Id. (citing to Decision and Order No. 12125 and noting that “Applicant anticipates that operating expenses will exceed gross revenues in the near term. However, Applicant believes that revenues will increase with the development of Maunaloa Village. Applicant represents that any losses it sustains in its operations will be covered by additional capital contributions from Molokai Ranch or by loans. Molokai Ranch hopes to recoup its investment in the long term through future increases in rates and tap-in charges.”).

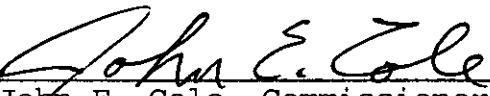
2. SFW's Motion to Intervene, filed on September 14, 2009, is granted, subject to the conditions set forth in Section II.A.3 of this Order.

3. MPL is named as a party to this proceeding."


DONE at Honolulu, Hawaii OCT 16 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2009-0049.cp

"Given the commission's decisions herein, the parties' (i.e., WOM, the Consumer Advocate, and MPL) and intervenors' stipulated procedural order, or respective proposed orders, shall be filed within ten days of the date of this Order. See Order Regarding Completed Amended Application and other Initial Matters, filed on July 31, 2009 at 8.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAI`OLA O MOLOKA`I, INC.)
For Review and Approval of Rate)
Increases; Revised Rate Schedules;)
And Revised Rules.)
_____)

Docket No. 2009-0049

OPINION OF LESLIE H. KONDO, COMMISSIONER,
CONCURRING IN PART AND DISSENTING IN PART

I respectfully concur in part and dissent in part.

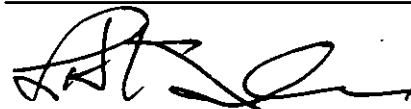
I do not believe that it is appropriate for the commission to name Molokai Properties, Ltd. ("MPL") as a party to the docket. MPL does not currently hold a commission-issued certificate of public convenience and necessity, and based on the current record, is not subject to regulation by the commission. Moreover, in my opinion, MPL's participation in the docket is not necessary for the commission to establish appropriate rates and charges or to consider the other relief requested in the Amended Application.

I concur with the majority with respect to all other matters set forth in the Order.

DONE at Honolulu, Hawaii

OCT 16 2009

By



Leslie H. Kondo, Commissioner

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

PETER A. NICHOLAS
MOLOKAI PROPERTIES LIMITED
119 Merchant Street, Suite 408
Honolulu, HI 96813

MICHAEL H. LAU, ESQ.
YVONNE Y. IZU, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for WAI`OLA O MOLOKA`I, INC.

BRIAN T. MOTO, CORPORATION COUNSEL
JANE E. LOVELL, DEPUTY CORPORATION COUNSEL
EDWARD S. KUSHI, JR., DEPUTY CORPORATION COUNSEL
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 South High Street
Wailuku, HI 96793

Counsel for County of Maui

Certificate of Service

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MARGERY S. BRONSTER, ESQ.
JEANNETTE H. CASTAGNETTI, ESQ.
BRONSTER HOSHIBATA
Pauahi Tower, Suite 2300
1003 Bishop Street
Honolulu, HI 96813

Counsel for County of Maui

TIMOTHY BRUNNERT
PRESIDENT
STAND FOR WATER
P.O. Box 71
Maunaloa, HI 96770