

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 APPROVING PROPOSED PROCEDURAL ORDER, AS MODIFIED

PUBLIC UTILITIES
COMMISSION

2009 NOV -6 P 12: 21

FILED

test year. Subsequently, the commission: (1) granted intervention to the County and SFW, and named MPL as a party to this proceeding³; and (2) instructed the Parties to submit a stipulated procedural order or individual proposed procedural orders for the commission's review and consideration within ten days of the date of the Intervention Order (i.e., October 28, 2009).⁴

On October 28, 2009: (1) WOM, MPL, and the Consumer Advocate ("Stipulating Parties") submitted their Proposed Procedural Order, and (2) the County separately submitted its own Proposed Procedural Order. On October 29, 2009, SFW belatedly submitted its Proposed Procedural Order.⁵

II.

Discussion

The Stipulating Parties assert that their Proposed Procedural Order "represents a negotiated compromise on issues, procedural steps and a procedural schedule which sets forth what the signatories thereto believe is a reasonable course for moving

³See Order Granting the Motions to Intervene Filed by the County of Maui and Stand For Water, filed on October 16, 2009 ("Intervention Order").

⁴See Order Regarding Completed Amended Application and other Initial Matters, filed on July 31, 2009, at 8. Given that the Intervention Order was issued on October 16, 2009, and the provisions of HAR § 6-61-21, the deadline to submit the Parties' proposed orders was October 28, 2009.

⁵SFW's proposal filed with the commission on October 29, 2009, is untimely and, thus, will not be considered by the commission.

forward in the proceeding"⁶ and, thus, request that the commission approve their proposal in its entirety. Moreover, in its effort to reach agreement with the County on a proposed procedural order, WOM states that:

[C]ounsel for the [County] did not agree to the attached [Stipulated procedural order ("SPO")] primarily due to differences in the list of issues which the [County] requested (as well as certain procedural matters), but which WOM would not agree to include in the SPO. It is WOM's position that the issues requested by the [County] were either (a) already included within the issues set forth in Section 1 of the SPO; (b) not normally included and addressed in ratemaking proceedings; and/or (c) would improperly expand and broaden the issues of this proceeding which would cause delay in this proceeding.⁷

In its filing, the County states that it disagrees with WOM's proposed procedural order:

- (1) Regarding the Statement of Issues, the County believes WOM's proposed statement of issues is too restrictive and that other issues needed to be included to ensure that the County is not precluded from raising these issues during this proceeding;
- (2) With respect to objections to information requests, the County agrees that objections as to relevance and materiality may be made by a party, however, the party should still be required to produce the information requested, without waiving any objections as to the admissibility of the information;
- (3) If a party objects to an information request on confidentiality grounds, the party claiming confidentiality should be required to seek a protective order in order to keep the information confidential unless the parties agree as to confidentiality;

⁶See WOM's transmittal letter, dated October 28, 2009, at 1.

⁷Id. at 2.

- (4) The County deleted limiting cross-examination to adverse witnesses. Each party should be afforded the opportunity to cross-examine any witness who presents testimony, whether oral or written, to the Commission.

.
As to the schedule for this proceeding, the County has no objection to the deadlines proposed by WOM[.]⁸

Upon review, the commission adopts, subject to certain modifications, the Stipulating Parties' Proposed Procedural Order, attached as Exhibit 1 herein, and explained below.

A.

Statement of the Issues (Section I)

The commission adopts for this rate case proceeding the issues identified by the Stipulating Parties, as set forth in Exhibit 1 herein and identified as Issue No. 1 (including sub-issues (a) through (e)).

With respect to the County's proposed issues, the commission: (1) declines to adopt the proposed revisions to the Stipulating Parties' Issue No. 1, including sub-issues (a) through (e); (2) declines to adopt as unnecessary the County's proposed Issues No. 1(g) and No. 1(h), which are implicitly incorporated in Issue No. 1 and its sub-issues; and (3) declines to adopt Issues No. 1(i) and No. 1(j).

⁸See County's Proposed Procedural order, filed October 28, 2009, at 1-3 (emphasis added).

B.

Schedule of Proceedings (Section II)

Consistent with HRS § 269-16(d), the commission shall make every effort to issue its final decision by March 29, 2010. If the commission does not issue its final decision by then, the commission shall issue its interim decision by April 29, 2010, "if any, to which the commission, based on the evidentiary hearing before it, believes the public utility is probably entitled." The commission may postpone its interim decision until May 28, 2010, if the commission considers the evidentiary hearing to be incomplete.

The commission adopts the terms and conditions governing the Schedule of Proceedings, as reflected in Section II of Exhibit 1 herein, which reflect the consensus of the Stipulating Parties and the County. With respect to the corresponding Regulatory Schedule, which is attached as Exhibit A herein, the commission finds that the following modification is appropriate:⁹

- | | | |
|-----|--------------------------------|---------------------------------------------|
| 18. | To be determined by Commission | Evidentiary Hearing
[(if no settlement)] |
|-----|--------------------------------|---------------------------------------------|

The commission notes that even if the Parties waive the evidentiary hearing as part of any settlement agreement the commission may nonetheless proceed with the evidentiary hearing.

⁹Deletions are bracketed, additions are underscored.

C.

Requests for Information (Section III)

For purposes of clarity, the following phrase on page 4 of Exhibit 1 attached herein, governing Section III, Requests for Information, is modified to read as follows, consistent with the County's proposed revision:¹⁰

A party seeking production of documents notwithstanding a party's claim of relevance, materiality, or confidentiality, may file a motion to compel production with the Commission.

D.

Witnesses (Section IV), Form of Prepared Testimony (Section V),
Matters of Public Record (Section VI), Copies of Testimonies,
Exhibits and Information Requests (Section VII),
Order of Examination (Section VIII),
Communications (Section IX), and General (Section X)

The commission adopts without change the terms and conditions set forth in Sections IV, V, VI, VII, IX, and X of Exhibit 1 attached herein, which reflect the consensus of Stipulating Parties and the County. The commission also adopts without change the terms and conditions set forth in Section VIII, Order of Examination, of Exhibit 1 attached herein, which generally reflects the commission's prohibition of "friendly" cross-examination in proceedings that involve three or more parties, subject to the discretion of the chairperson.

¹⁰Deletions are bracketed, additions are underscored.

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 WAI'OLA O MOLOKA'I, INC.)
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 For review and approval of rate)
 increases; revised rate schedules;)
 and revised rules.)
_____)

Docket No. 2009-0049

FILED
2009 OCT 28 P 4:18
PUBLIC UTILITIES
COMMISSION

STIPULATED PROCEDURAL ORDER
EXHIBIT A
and
CERTIFICATE OF SERVICE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)	
)	
of)	
)	Docket No. 2009-0049
WAI'OLA O MOLOKA'I, INC.)	
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For review and approval of rate)	
increases; revised rate schedules;)	
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_____)	

STIPULATION FOR PROCEDURAL ORDER

WAI'OLA O MOLOKA'I, INC. ("WOM" or "Applicant"), a Hawaii corporation, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (the "Consumer Advocate"), the COUNTY OF MAUI ("County"), STAND FOR WATER ("SFW"), and MOLOKAI PROPERTIES LIMITED ("MPL"), by and through their respective attorneys or representatives, do hereby stipulate to the following provisions of this Stipulated Procedural Order as mutually acceptable to each.

ACCORDINGLY, IT IS ORDERED that the following Statement of Issues, Schedule of Proceedings, and procedures shall be utilized in this docket:

I.

STATEMENT OF THE ISSUES

The issues in this case are:

1. Are WOM's proposed rate increases just and reasonable?
 - a. Are the proposed tariffs, rates and charges just and reasonable?

- b. Are the revenue forecasts for the July 1, 2009 to June 30, 2010 Test Year ("Test Year") at present rates and proposed rates just and reasonable?
- c. Are the projected operating expenses for the Test Year just and reasonable?
- d. Is the projected rate base for the Test Year just and reasonable, and are the properties included in the rate base used or useful for public utility purposes?
- e. Is the rate of return requested fair?

II.

SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached hereto as Exhibit "A." Notwithstanding the above, the parties may amend the Stipulated Regulatory Schedule (aka, Schedule of Proceedings) as may be agreed in writing from time to time; provided that the requesting party or parties receive the Commission's approval in accordance with Hawaii Administrative Rules ("HAR") § 6-61-23, to the extent applicable. However, the intent of the parties in agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

III.

REQUESTS FOR INFORMATION

A party to this proceeding may submit information requests to another party within the time schedule specified in this Stipulated Procedural Order. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information. If the parties are unable to agree, the inquiring party may seek approval from the Commission and make a showing of good cause. It is then within the Commission's discretion to allow additional information requests.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials (e.g., documents over 50 pages), the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or compact disc, the party responding to the information request may make the diskette or compact disc available to the other party and the Commission. A party shall not be required, in a response to an information request, to provide data that is/are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part VI, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute

ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to the protective order governing this docket.

A party seeking production of documents notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

The responses of each party to information requests shall adhere to a uniform system of numbering agreed upon by the parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-IR-1," and a response to this information request shall be referred to and designated as "Response to CA-IR-1."

Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference the attached responsive document, indicating the name of the respondent for each response.

IV.

WITNESSES

Witnesses shall submit pre-filed written testimony and exhibits and shall be made available for cross-examination at the hearing. Witnesses shall file with their pre-filed written testimony and exhibits, the work papers used in preparing the evidence they sponsor at the hearing. Witnesses will not be permitted to read pre-filed testimony at the hearings.

In the oral presentation of the testimony, each witness may give a brief summary of the testimony and exhibits and shall summarize the issues raised by such testimony. Each witness shall be subject to cross-examination for both direct and rebuttal testimony and exhibits.

The parties in this case should cooperate to accommodate the schedules of any mainland witnesses and should inform the Commission in advance of any scheduling difficulties of mainland witnesses. If any party has any objection to scheduling a witness in advance of other witnesses, the party should make a timely objection to the Commission.

V.

FORM OF PREPARED TESTIMONY

All prepared testimony, including text and exhibits, shall be prepared in written form on 8-1/2" x 11" paper with line numbers, and shall be served on the dates designated in the Schedule of Proceedings.

Each party shall be permitted to follow its own numbering system for written testimony and exhibits, provided that the numbering system utilized is consistent and is clearly understandable. Each document of more than one page shall be consecutively numbered. Each party shall prepare a list of its exhibits by exhibit numbers and titles.

The parties shall be permitted to make revisions to exhibits after the designated dates appearing in the Schedule of Proceedings. Revisions shall bear appropriate revision dates. However, revisions or additions that do more than correct typographical errors, update facts, or give numerical comparisons of the positions taken by the parties, shall not be submitted.

Generally, exhibits should include appropriate footnotes or narratives in the exhibits or the related testimony setting forth the sources of the information used and explaining the methods employed in making statistical compilations or estimates.

VI.

MATTERS OF PUBLIC RECORD

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that WOM has filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of

the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule on whether the identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

VII.

COPIES OF TESTIMONIES, EXHIBITS AND INFORMATION REQUESTS

1. Testimonies and Exhibits:

Public Utilities Commission 465 South King Street First Floor Honolulu, HI 96813	Original plus 8 copies
Division of Consumer Advocacy 335 Merchant Street Room 326 Honolulu, HI 96813 Facsimile Number: 586-2780	3 copies
Michael H. Lau, Esq. Yvonne Y. Izu, Esq. Sandra L. Wilhide, Esq. Moriwara Lau & Fong LLP Davies Pacific Center 841 Bishop Street, Suite 400 Honolulu, HI 96813 Facsimile Number: 566-0800	1 copy

Margery S. Bronster, Esq. 1 copy
Jeannette H. Castagnetti, Esq.
Bronster Hoshibata
2300 Pauahi Tower
1003 Bishop Street
Honolulu, HI 96813
Facsimile Number: 599-1881

Timothy Brunnert* 1 copy
President
Stand For Water
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Maunaloa, HI 96770
Facsimile Number: (808) 552-0003

Andrew V. Beaman, Esq. 1 copy
Chun Kerr Dodd Beaman & Wong, LLLP
Topa Financial Center
Fort Street Tower
745 Fort Street, 9th Floor
Honolulu, HI 96813
Facsimile Number: 536-5869

*** To be substituted once counsel is selected.**

2. Information Requests and Responses:

Public Utilities Commission Original plus 8 copies
465 South King Street
First Floor
Honolulu, HI 96813

Division of Consumer Advocacy 3 copies
335 Merchant Street
Room 326
Honolulu, HI 96813
Facsimile Number: 586-2780

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*** To be substituted once counsel is selected.**

All pleadings, briefs and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to HAR § 6-61-15.

Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or U.S. mail. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette, compact disc or e-mail in a standard electronic format that is readily available by the parties. For the issuance of information requests to other parties, the parties agree to use Word 97, Word 2000, or Word 2003 as the standard programming format for such submissions. However, if work papers, documentation, or exhibits attached to any filing are not readily available

in an electronic format, a party shall not be required to convert such work papers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a filing, information request or information request response is delivered to a party via diskette, compact disc or e-mail, unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or U.S. Mail as provided above.

VIII.

ORDER OF EXAMINATION

Consistent with the requirements set forth under HAR § 6-61-31, WOM shall open with its direct case. MPL's direct case, if any, shall be presented after WOM's direct case. The Consumer Advocate's direct case shall be presented after MPL's direct case, if any. The County and SFW shall present their direct case following the Consumer Advocate. WOM shall close with its rebuttal case.

Examination of any witness shall be limited to one attorney for a party. The parties shall avoid duplicative or repetitious cross-examination. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Re-cross-examination shall be limited to the extent of material covered in redirect examination unless otherwise permitted by the Commission.

IX.

COMMUNICATIONS

HAR § 6-61-29 concerning ex parte communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel through their own counsel or designated official only as to matters of process and procedure.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party as provided in Article VII above.

All motions, supporting memoranda, briefs, and the like shall also be served on opposing counsel.

X.

GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket.

This Stipulated Procedural Order shall control the subsequent course of these proceedings, unless modified by the parties in writing and approved by the Commission, or upon the Commission's own motion. This Stipulated Procedural Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Procedural Order by facsimile or electronic mail for initial submission to the Commission to be followed by the filing of originals of said facsimile or electronic mail pages.

DATED: Honolulu, Hawaii, October 28, 2009.



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TIMOTHY BRUNNERT

President, Stand For Water



ANDREW V. BEAMAN

Chun Kerr Dodd Beaman & Wong, LLLP
Attorney for Molokai Properties Limited

APPROVED AND SO ORDERED THIS _____,

at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
John E. Cole, Commissioner

By _____
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Commission Counsel

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE
WAI'OLA O MOLOKA'I, INC. ("WOM")
Docket No. 2009-0049

	DATE	PROCEDURAL STEPS
1.	June 29, 2009	Amended Application Filed at Commission
2.	September 3, 2009	Public Hearing
3.	Thursday, November 12, 2009	Parties' Submission of Information Requests ("IRs") to WOM
4.	Friday, November 13, 2009	Submission of Amendment to Stipulated Protective Order to Commission
5.	Wednesday, November 25, 2009	WOM's Response to IRs
6.	Wednesday, December 9, 2009	Parties' Submission of Supplemental IRs to WOM
7.	Wednesday, December 23, 2009	WOM's Responses to Supplemental IRs
8.	Friday, January 8, 2010	Filing of Direct Testimonies and Exhibits by Parties
9.	Friday, January 22, 2010	WOM's and Other Parties' Submission of IRs to Parties (other than WOM) on Direct Testimonies and Exhibits (as applicable); Settlement Discussions (if any)
10.	Monday, February 1, 2010	Party Responses to IRs on Direct Testimonies
11.	Wednesday, February 10, 2010	WOM's Rebuttal Testimony(ies) to Direct Testimonies and Exhibits ¹
12.	Friday, February 19, 2010	Party Submission(s) of Rebuttal IRs to WOM
13.	Friday, February 26, 2010	WOM's Responses to Rebuttal IRs
14.	Thursday, March 4, 2010	Settlement Letter/Agreement (if any) to Commission
15.	Thursday, March 11, 2010	Simultaneous filing of Statement of Probable Entitlement if no Settlement Pre-Hearing Conference
16.	Friday, March 19, 2010	WOM and Parties Responses, if any, to Statement of Probable Entitlement
17.	To be determined by Commission	Pre-Hearing Conference
18.	To be determined by Commission	Evidentiary Hearing (if no settlement)

¹ The parties reserve the right to, collectively or individually, engage in settlement discussions at any time on any and/or all disputed issues that may exist between any of the parties' respective positions in the subject docket. In the event a settlement is reached by all or any of the parties, the respective parties will notify the Commission and any other parties accordingly and request such changes to the remaining procedural steps as may be applicable or prudent under the circumstances.

	DATE	PROCEDURAL STEPS
19.	No later than April 29, 2010	Interim Decision and Order ²
20.	3 weeks after transcript completed and filed with Commission	Simultaneous Post-Hearing Briefs from WOM and Parties (as applicable)
21.		Decision and Order

² Pursuant to Order Regarding Completed Amended Application and Other Initial Matters, filed on July 31, 2009, the Commission determined, among other things, that the date of the completed Amended Application, filed on June 29, 2009, is June 29, 2009. As such, under HRS § 269-16(d), WOM is entitled to a final decision on its Amended Application no later than March 29, 2010 (aka, nine-month final decision and order) and, at the very minimum, interim relief by April 29, 2010 if the Commission determines based on the evidentiary record before it that WOM is probably entitled to such interim relief. The Commission may postpone its interim rate decision for thirty days (i.e., by May 29, 2010) if the Commission considers the evidentiary hearings incomplete. By stipulating to this regulatory schedule, WOM does not waive its right to a nine-month final decision and order and interim relief within ten months or, if deemed necessary, eleven months consistent with the requirements set forth under HRS § 269-16(d). In that connection, the parties will make every effort to expedite the discovery process, if possible, to provide the Commission with a sufficient and complete evidentiary record to render at least an interim relief decision within the ten-month or, if deemed necessary, eleven-month period.

CERTIFICATE OF SERVICE

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

CATHERINE P. AWAKUNI
Executive Director
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CERTIFICATE OF SERVICE

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