DIVISION OF CONSUMER ADVOCACY
Department of Commerce and
Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813
Telephone: (808) 586-2800

FILED
2009 MAR 30 P 3:27
PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
WAI'OLA O MOLOKA'I, INC.	)	DOCKET NO. 2009-0049
	)	
	)	
For Review and Approval of Rate Increases; Revised Rate Schedules; and Revised Rules.	)	

DIVISION OF CONSUMER ADVOCACY'S
STATEMENT OF POSITION
REGARDING COMPLETENESS OF APPLICATION

Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-62, the Division of Consumer Advocacy ("Consumer Advocate") informs the Commission that the application filed by Wai'ola O Moloka'i, Inc. ("WOM" or "Company") on March 2, 2009 in the above docketed matter appears to have generally complied with the requirements of Subchapters 6 and 8 of the Rules of Practice and Procedure in Chapter 61 of the Commission's HAR, since the application contains most of the items required by the rules.

In many applications filed by small utility companies, those companies sought waivers of HAR § 6-61-75, which requires that audited financial statements be filed as

part of a complete application. Those waivers were generally granted by the Commission without objection by the Consumer Advocate. The Consumer Advocate asserts in this instance, however, that the Company should be required to meet the requirements set forth in HAR § 6-61-75 related to audited financial statements. The Consumer Advocate recognizes that it has generally not objected to waivers sought by other utility companies with revenues less than $2 million in past proceedings. However, this proceeding involves a case that differs significantly from those other instances.

To explain, the Company is a utility company that recently indicated its intention to abandon utility service.[1] As articulated in the statement of position filed by the Consumer Advocate in Docket No. 2008-0115, the Consumer Advocate had grave concerns with the relief contemplated in that docket that were only overcome by the belief that uninterrupted utility service must continue. That being said, the adequacy, sufficiency and nature of the supporting information and the reliability of the financial information relied upon to support the temporary rate increases were of suspect value.

As such, the Consumer Advocate recommends that the Commission require the Company to provide audited financial statements in compliance with the Commission's rules and that the instant application should not be deemed complete until the audited financial statements are provided. This recommendation is not made lightly as the Consumer Advocate is aware that the costs associated with the audit may be

---

1 WOM and an affiliated company, Molokai Public Utilities, Inc., both stated the intention of abandoning utility service. These plans were prevented by the Commission granting each company a significant rate increase based on an expedited review and action. See Order Approving Temporary Rate Relief For Molokai Public Utilities, Inc., and Wai'ola O Moloka'i, Inc. filed on August 14, 2008 ("August 14, 2008 Order") in Docket No. 2008-0115.

recoverable from ratepayers and that, when provided, the financial statements will only provide a fair representation of the Company's numbers on a financial accounting basis.[2] The Consumer Advocate contends, however, that given all of the concerns surrounding the financial condition of the Company and the reasonableness of the underlying financial information, it is imperative that a reliable starting point be established. To that end, audited financial statements should be required for the Company's rate increase application.

In addition, although not specifically stated, the Consumer Advocate assumes that no dividends were paid during the five previous calendar years.[3]

The resources available to the Consumer Advocate are limited and are currently strained by various ongoing and expected regulatory filings and this condition is expected to prevail throughout this proceeding. Nevertheless, the Consumer Advocate intends to participate in the instant proceeding and will provide its position on the Company's requested relief upon the completion of the Consumer Advocate's investigation, which will include but not be limited to discovery to be submitted at a later

---

2 While audited financial statements should be in general compliance with Generally Accepted Accounting Principles ("GAAP"), GAAP does not dictate what should be done for ratemaking purposes. That is, as is recognized by Statements of Financial Accounting Standards No. 71, *Accounting for the Effects of Certain Types of Regulation,* deviations from financial accounting standards are commonplace and appropriate to accommodate the nature of certain types of regulation, such as the public utility industry. While the temporary rate increase was granted based on the Company's financial statements, regulatory review should still be performed to determine a normalized level of activity and what should or should not be included when setting rates.

3 HAR § 6-61-75(a)(7) requires a statement as to the rate and amount of dividends paid during the five preceding calendar years. Based on the accumulated deficit in retained earnings at June 30, 2008, the Consumer Advocate assumes that no dividends were paid during the five preceding years. That being said, however, some affirmative statement should have been made. If, however, this assumption is incorrect, the Company should file supplemental information or an amended application that provides this information, upon which the Commission may choose to determine whether the application is complete.

date. The Consumer Advocate assumes that it will be required to work with the Company to submit a stipulated procedural schedule on this matter and expects that this draft schedule will be filed shortly after the period for timely intervention in this proceeding has terminated pending the determination of the completeness of application.

DATED: Honolulu, Hawaii, March 30, 2009.

Respectfully submitted,

By _____
for CATHERINE P. AWAKUNI
Executive Director

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION REGARDING COMPLETENESS OF APPLICATION** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

PETER A. NICHOLAS WAI'OLA O MOLOKA'I, INC. c/o Molokai Properties Limited 745 Fort Street Mall, Suite 600 Honolulu, HI 96813	1 copy by U.S. Mail
MICHAEL H. LAU, ESQ. YVONNE Y. IZU, ESQ. SANDRA L. WILHIDE, ESQ. MORIHARA LAU & FONG LLP 841 Bishop Street, Suite 400 Honolulu, Hawaii 96813	1 copy by hand delivery

DATED: Honolulu, Hawaii, March 30, 2009.