

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
MANELE WATER RESOURCES, LLC )  
For a Certificate of Public )  
Convenience and Necessity Pursuant )  
to Section 269-7.5 to Provide )  
Sewer Service in Manele-Hulopoe, )  
Lana`i; and for Approval of Rules, )  
Regulations, and Rates. )

DOCKET NO. 2006-0166

PROPOSED DECISION AND ORDER NO. 23250

Filed Feb. 7, 2007  
At 12 o'clock P.M.

Karun Higashi.  
Chief Clerk of the Commission

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

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Commission, State of Hawaii.

Karun Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)	)	
MANELE WATER RESOURCES, LLC	)	Docket No. 2006-0166
	)	
For a Certificate of Public Convenience and Necessity Pursuant to Section 269-7.5 to Provide Sewer Service in Manele-Hulopoe, Lana`i; and for Approval of Rules, Regulations, and Rates.	)	Proposed Decision and Order No. 23250
	)	
	)	

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PROPOSED DECISION AND ORDER

By this Proposed Decision and Order, the commission approves: (1) MANELE WATER RESOURCES, LLC's ("Applicant") request for a certificate of public convenience and necessity ("CPCN") to provide sewer service in Manele-Hulopoe, Lana`i; (2) the initial rates for Applicant that were agreed upon by the Applicant and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate")<sup>1</sup> (jointly, the "Parties"); (3) the Parties' stipulated modifications to Applicant's proposed Rules and Regulations, as well as Applicant's proposed Rule 14, which seeks to implement an Automatic Power Cost Adjustment Charge ("APCAC"), that was disputed by the Parties; and (4) Applicant's request to enter into certain transactions with its affiliates for the transfer of ownership of plant and facilities, and for licenses and

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<sup>1</sup>The Consumer Advocate is an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

easements. Commission approval of Applicant's requests for a CPCN and for approval to enter into the transfer transactions are subject to the condition that Applicant submit copies of documents memorializing the transactions with its affiliates, within thirty days after the issuance of a final Decision and Order.

I.

Background

A.

Applicant

Applicant, a Hawaii limited liability company and subsidiary of Castle & Cooke Resorts, LLC ("CCR"), was recently organized in June of 2006 to provide sewer services in the Manele-Hulopoe area on the island of Lana'i, Hawaii. Applicant's sole member is CCR. Applicant is also an affiliate of Lanai Water Co., Inc. ("LWC"), a public utility authorized by the commission to provide potable water service in the following areas on the island of Lana'i: Lana'i City, Koele, Kaumalapau, Manele-Hulopoe, and Lana'i Airport.<sup>2</sup> Castle & Cooke, Inc. is the sole stockholder of LWC and the sole member of CCR.

Although Applicant was formed in June of 2006, CCR and its predecessors-in-interest have provided wastewater service in the Manele-Hulopoe area since 1991. In this regard, Applicant further explained:

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<sup>2</sup>The commission granted LWC a CPCN in Decision and Order No. 9791, filed on June 13, 1988, in Docket No. 5972.

Wastewater services were provided privately to the hotel under the same ownership as the provider in the 1991 time-frame and the Company does not believe that it would be deemed a utility service. Beginning in 1997, wastewater services were provided to new residential developments . . . Services were provided as Lanai Company, Inc. until it merged with CCR in 2000.<sup>3</sup>

Currently, wastewater service is provided, free of charge, to the Four Seasons Resort Lana'i at Manele Bay, the Challenge at Manele golf course, Manele residential units, and Hulopoe Beach Park. Applicant also intends to provide wastewater service to the Manele boat harbor upon completion of the Manele Small Boat Harbor Capital Improvement Project, as well as to customers within the Manele-Hulopoe area.

The sewer facility and related plant and equipment that provide the sewer services in the area are presently owned by CCR. Subject to commission approval in this docket, ownership in the facilities will be transferred from CCR to Applicant. The facilities consist of collection and transmission mains, a sewage treatment plant, and effluent disposal facilities. The sewage treatment plant utilizes an activated sludge process consisting of sequential batch reactors, chemical coagulation,

<sup>3</sup>See Applicant's Response to CA-IR-50(a). The Consumer Advocate further noted that, in Docket No. 96-0495, LWC filed an application on December 31, 1996, to amend its CPCN by requesting authority to provide wastewater treatment services and to distribute non-potable water for irrigation purposes in the proposed service territory in this docket. At that time, LWC planned to purchase the wastewater treatment services from Lanai Company, Inc. ("LCI"). On September 24, 1999, LWC and the Consumer Advocate filed a stipulation, which was approved by the commission, for the withdrawal of LWC's application. Although LWC did not receive a CPCN to provide wastewater treatment services, such services have been provided by LCI and subsequently, by CCR, in the proposed service area, including to new residential developments built in 1997.

filtration, and chlorine disinfection that currently complies with the primary effluent, or R-1, requirements of the State of Hawaii Department of Health ("DOH"). The effluent generated from the sewage treatment plant is then utilized as irrigation water for the Challenge at Manele golf course.

Aqua Engineers, Inc. ("Aqua Engineers") has been under contract since 1990 to operate the wastewater treatment plant in compliance with DOH regulatory requirements. The current operating agreement with Aqua Engineers became effective on July 1, 2004; it is expected to expire on July 1, 2009.

B.

Application

1.

Procedural Background

On June 28, 2006, Applicant filed its Application for a CPCN to provide sewer service in the area of Manele-Hulopoe on the island of Lana`i, and for approval of its rules, regulations, and rates.<sup>4</sup>

By letter dated July 27, 2006, the commission informed the Parties that it would be treating the Application as an application for a CPCN under HRS § 269-7.5, and as an application for a general rate increase under HRS § 269-16(f).

On August 1, 2006, the Consumer Advocate filed a Statement of Position Regarding Completeness of Application

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<sup>4</sup>Application, Exhibits A - L, Verification, and Certificate of Service, filed on June 28, 2006 ("Application").

("Statement Regarding Completeness"), wherein the Consumer Advocate noted certain deficiencies in the Application. The Consumer Advocate recommended that the commission find the Application to be incomplete and order Applicant to address the noted deficiencies.

By letter dated August 4, 2006, the Parties informed the commission that they had discussed the issues raised in the Consumer Advocate's Statement Regarding Completeness and resolved them.<sup>5</sup> Specifically, the Parties agreed that Applicant would file a supplement to the Application to address the points raised in the Statement Regarding Completeness. The Parties also informed the commission that they agreed to waive a hearing under HRS § 269-16(d)<sup>6</sup> on the Consumer Advocate's objections to the Application.

On August 7, 2006, Applicant filed a Supplement to the Application, wherein Applicant provided additional information to support its Application in response to the Consumer Advocate's Statement Regarding Completeness. Applicant also requested waivers of the requirements to file audited financial information under HAR §§ 6-61-75(b)(1) and 6-61-75(b)(2), and to state the total increase in its proposed rates as a percent under HAR § 6-61-88(2).

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<sup>5</sup>See Letter dated and filed August 4, 2006, from Craig I. Nakanishi and Shah J. Bento to the commission.

<sup>6</sup>HRS § 269-16(d) provides that, when the Consumer Advocate objects to the sufficiency of an application filed under HRS § 269-16, the commission shall hear and determine such objections within twenty-one days after the objections are filed.

On August 9, 2006, the Consumer Advocate filed a Supplemental Statement of Position Regarding the Completeness of Application. The Consumer Advocate stated that the deficiencies raised in the Consumer Advocate's initial Statement Regarding Completeness had been addressed, and that it did not oppose the waiver requests made by Applicant in its Supplement to the Application.

On September 15, 2006, the commission filed Order No. 22859, which granted Applicant's waiver requests, and set the filing date of Applicant's completed Application, as supplemented, as August 7, 2006.

2.

#### Applicant's Requests

In its Application, Applicant requested approval of:

- (1) A CPCN to provide sewer service in the area of Manele-Hulopoe, Lana'i, and ancillary R-1 water sales;
- (2) Applicant's proposed Rules and Regulations Covering the Provision of Sewer Service ("Rules and Regulations");
- (3) Initial rates for sewer service and ancillary sales of the R-1 water;
- (4) Disposition of assets from Applicant's affiliate and affiliated transactions; and
- (5) The use of Generally Accepted Accounting Principles ("GAAP") for Applicant's system of accounts.<sup>7</sup>

As stated above, wastewater service is currently being provided free of charge within the proposed service area.

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<sup>7</sup>See Application, at 2.

Applicant proposed to commence charging for these services at the following rates:

SEWER SERVICE

Monthly Flat Rate:

Residential

Single-Family	\$100.00/Month per Dwelling
Multi-Family	\$100.00/Month per Dwelling
Hotel	\$100.00/Month per Guestroom

Monthly Usage Charges:

Commercial/Recreational\*

Non-Food Service	\$7.00 per 1,000 Gallons of Potable Water Used
Food Service	\$8.00 per 1,000 Gallons of Potable Water Used
Boat Harbor	\$8.00 per 1,000 Gallons of Wastewater Pumped from DLNR Pump Station

\* These customers will also be charged a fixed service charge of \$12.00 per month.

R-1 RECLAIMED WATER SALES

User Charge	\$0.25 per 1,000 Gallons <sup>8</sup>
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Applicant represented that the foregoing rates were designed to allow Applicant to seek only partial recovery of its operating expenses. If Applicant's actual operations do not provide sufficient revenues to cover operating expenses, Applicant stated that additional funds necessary to finance Applicant's operations will be supplied by one or more of

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<sup>8</sup>See Application, Exhibit I.

Applicant's affiliates. Applicant reserved the right to seek rate base treatment for the wastewater facilities in a future rate case.

Regarding Applicant's requests for approval of transactions with its affiliates, Applicant stated that it was organized for the sole purpose of providing the proposed wastewater services.<sup>9</sup> In order to provide the proposed services, Applicant requested that the commission approve a transfer in ownership of the wastewater plant and facilities from CCR to Applicant. Applicant also requested approval to enter into easement and licensing agreements with its affiliate companies to utilize certain lands upon which sewer and R-1 lines are located.

C.

HRS § 269-16(f)

Applicant filed its Application in accordance with HRS § 269-16(f), which streamlines the rate review process for small public utilities with annual gross revenues of less than \$2 million. Pursuant to HRS § 269-16(f)(3), the commission must make every effort to issue its Proposed Decision and Order within six months from the filing date of Applicant's complete Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene."

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<sup>9</sup>Application, at 10.

The commission timely issues this Proposed Decision and Order, in accordance with HRS § 269-16(f).<sup>10</sup>

D.

Public Hearing

On September 8, 13, 20, and 27, 2006, the commission published its Notice of Public Hearing statewide in various newspapers, in accordance with HRS §§ 1-28.5 and 269-16(c).<sup>11</sup> Applicant notified its customers of the public hearing by means of a letter mailed to all customers on September 19, 2006, consistent with HRS § 269-12(c).<sup>12</sup>

On September 29, 2006, the commission held a public hearing on the Application at Lana`i High and Elementary School in Lana`i City, Hawaii, pursuant to HRS §§ 269-12(c) and 269-16(f)(2). At the public hearing, Applicant's representative and the Consumer Advocate orally testified and submitted written comments. Several other individuals also testified in person. In addition, the commission received numerous written comments from customers in the proposed service area who were not able to

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<sup>10</sup>As discussed above, the commission ruled that the date of Applicant's completed Application, as supplemented, was August 7, 2006. See Order No. 22859, filed on September 15, 2006. Thus, the deadline for the commission to issue its Proposed Decision and Order is February 7, 2007.

<sup>11</sup>Specifically, the commission's Notice of Public Hearing was published in The Garden Island, Hawaii-Tribune Herald, Honolulu Star Bulletin, The Maui News, and West Hawaii Today.

<sup>12</sup>See Applicant's Proof of Notice to Consumers and Patrons Pursuant to Section 269-12(c) of Hawaii Revised Statutes, filed on September 25, 2006.

attend the public hearing.<sup>13</sup> In general, the customers who provided oral and written comments to the commission opposed or expressed concerns with Applicant's proposed rates or the magnitude and impact of the increase.<sup>14</sup> After all individuals were given an opportunity to present testimony, the commission closed the public hearing.

E.

#### Stipulated Issues

The Parties submitted a Stipulated Procedural Schedule, which was approved (with one modification) by the commission in Order No. 23126, filed on December 11, 2006. As set forth in the Parties' Stipulated Procedural Schedule, the issues in this case are:

1. Is Applicant fit, willing, and able to properly perform the wastewater service proposed in the Application, as supplemented, and to conform to the terms, conditions, and rules adopted by the commission regarding said service?
2. Is the proposed service set forth in the Application, as supplemented, required, or will said service be required by the present or future public convenience and necessity?

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<sup>13</sup>See Letter from the commission to the Parties, dated October 31, 2006, with enclosures. No persons moved to intervene or participate in this docket.

<sup>14</sup>In particular, a common concern shared by residential customers was that many of them are seasonal occupants of their homes on Lana'i, and therefore, they believe that Applicant's proposed fixed monthly fee of \$100 per month is unfair and excessively burdensome on residential customers.

3. Are Applicant's proposed rates, charges, and tariff rules and regulations for the proposed service in the Application, as supplemented, just and reasonable?
  - a. Are the revenue forecasts for the test year July 1, 2006 to June 30, 2007, for the proposed rates reasonable?
  - b. Are the projected operating expenses for the test year July 1, 2006 to June 30, 2007, reasonable?
4. If the commission approves the Application:
  - a. pursuant to HRS § 269-19, whether the transfer of the sewer facility and related plant and equipment from CCR to Applicant is reasonable and should be approved?
  - b. if applicable, pursuant to HRS § 269-19.5(c), whether Applicant's request to obtain easements and licenses to use the real property of its affiliates to provide utility services should be approved?
5. Whether Applicant's request to use its own chart of accounts should be approved?

F.

Discovery

In the Parties' Stipulated Procedural Schedule set forth in Order No. 23126, filed on December 11, 2006, the Parties also agreed to a schedule for discovery. Pursuant to this schedule, the Consumer Advocate served its first submission of information requests on Applicant on October 27, 2006, to which Applicant responded on November 17 and 22, and December 4, 2006. On December 11, 2006, the Consumer Advocate served its second

submission of information requests on Applicant, to which Applicant responded on December 27, 28, and 29, 2006, and on January 5 and 9, 2007.

G.

The Parties' Statements of Position

On January 18, 2007, the Consumer Advocate filed its Statement of Position,<sup>15</sup> and on January 24, 2007, Applicant filed its Reply Statement of Position.<sup>16</sup> The Parties' position statements, taken together, indicate that the Parties have reached an agreement on most of the stipulated issues in this docket. The Parties' respective positions, their areas of agreement and disagreement, and the commission's rulings on the same are discussed below.

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<sup>15</sup>Division of Consumer Advocacy's Statement of Position, Exhibits 1.0 to 5.0, and Certificate of Service, filed on January 18, 2007 ("Consumer Advocate's Statement of Position"). On January 23, 2007, the Consumer Advocate filed corrections for inadvertent typographical errors contained in its Statement of Position.

<sup>16</sup>Statement of Position of Manele Water Resources, LLC and Certificate of Service, filed on January 24, 2007 ("Applicant's Statement of Position").

II.

Discussion

A.

Applicant's Request for a CPCN

HRS § 269-7.5 states, in relevant part:

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules and regulations governing the proposed service.

(b) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules and regulations

proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

. . . .

HRS § 269-7.5.

Here, the Consumer Advocate does not object to the commission approving Applicant's request for a CPCN. According to the Consumer Advocate: (1) there appears to be a need for the proposed wastewater treatment service; (2) Applicant, with the financial support from its affiliates, will possess the necessary financial resources, and should be deemed to be financially fit to provide the proposed wastewater service; and (3) Applicant, through Aqua Engineers, will possess the technical expertise needed to operate the wastewater system within the prescribed regulatory requirements of the commission and DOH.<sup>17</sup> The commission agrees with the Consumer Advocate that Applicant appears fit and willing to properly perform the proposed wastewater treatment service and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is required by the present or future public convenience and necessity.

The Consumer Advocate, however, argues that approval of Applicant's CPCN should be conditioned on Applicant being required to submit documents memorializing the terms of the

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<sup>17</sup>See Consumer Advocate's Statement of Position, at 6-9.

proposed transfer of ownership in the wastewater treatment plant and related facilities from CCR to Applicant, and the terms of the proposed licenses and easements with Applicant's affiliates. In this regard, the Consumer Advocate noted that Applicant had not produced such documents, and without them, the Consumer Advocate was unable to conclude whether Applicant was physically able to provide the proposed wastewater services.

Applicant did not object to the Consumer Advocate's proposed condition that Applicant submit documents memorializing the proposed transactions with Applicant's affiliates. However, Applicant asserted that, given the statutory deadline of February 7, 2007, under HRS § 269-16(f) for the commission to issue a Proposed Decision and Order in this proceeding, the commission should approve Applicant's request for a CPCN by February 7, 2007, subject to Applicant's submission of the transfer documentation within thirty days after issuance of a decision approving the Application.<sup>18</sup>

The commission finds that the Parties' recommendation to conditionally approve Applicant's request for a CPCN is reasonable. In particular, the commission adopts Applicant's proposal, and accordingly approves Applicant's request for a CPCN, subject to the condition that Applicant is required to submit all agreements memorializing transactions with its affiliates within thirty days after issuance of a final Decision and Order. The commission will then allow the Consumer Advocate thirty days to submit comments, if any, on the documents

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<sup>18</sup>See Applicant's Statement of Position, at 4-5.

submitted by Applicant. Applicant's CPCN will remain in full force and effect, unless the commission finds that the documents indicate that Applicant lacks the ability to provide the wastewater service, based on its review of the submitted documents.

B.

Rates

In its Application, Applicant proposed the following rates:

SEWER SERVICE

Monthly Flat Rate:

Residential

Single-Family	\$100.00/Month per Dwelling
Multi-Family	\$100.00/Month per Dwelling

Hotel	\$100.00/Month per Guestroom
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Monthly Usage Charges:

Commercial/Recreational\*

Non-Food Service	\$7.00 per 1,000 Gallons of Potable Water Used
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Food Service	\$8.00 per 1,000 Gallons of Potable Water Used
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Boat Harbor	\$8.00 per 1,000 Gallons of Wastewater Pumped from DLNR Pump Station
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\* These customers will also be charged a fixed service charge of \$12.00 per month.

R-1 RECLAIMED WATER SALES

User Charge	\$0.25 per 1,000 Gallons <sup>19</sup>
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<sup>19</sup>See Application, Exhibit I.

As noted above, the foregoing rates were designed to allow Applicant to seek only partial recovery of its operating expenses.

According to the Consumer Advocate, it employed a "unique analytical approach" in determining the reasonableness of Applicant's proposed rates because, different from most rate cases, Applicant is not seeking to recover a return on its investment, nor is it seeking to "break-even" based on the level of expenses it expects to incur in providing the proposed services.<sup>20</sup> Although the Consumer Advocate made adjustments to Applicant's operating expenses (including Applicant's proposed expenses for depreciation, electricity, and for the operating agreement with Aqua Engineers), the Consumer Advocate's proposed adjustments still exceeded Applicant's requested revenues of \$465,732. Thus, citing the commission's rule that a public utility is bound by the rate relief requested in its application, and that it may not receive any higher rate relief,<sup>21</sup> the Consumer Advocate accepted Applicant's proposed revenues in its analysis for purposes of this proceeding only.<sup>22</sup>

As to Applicant's proposed costs and expenses, the Consumer Advocate was concerned with Applicant's proposed inclusion of its depreciation expense (\$541,444) in its revenue requirement for two reasons: (1) according to the

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<sup>20</sup>See Consumer Advocate's Statement of Position, at 14.

<sup>21</sup>See, e.g., In re. Hawaii Electric Light Company, Inc., Docket No. 7764, Decision and Order No. 13762, filed on February 10, 1995.

<sup>22</sup>See Consumer Advocate's Statement of Position, at 16-17.

Consumer Advocate, Applicant did not adequately address "the rebuttable presumption" that costs to construct the wastewater facilities have already been recouped through the proceeds of the sale of residential homes built in 1997 (or by some other means), which would amount to a double recovery if Applicant is allowed to also recover plant costs through rates; and (2) if the commission allows Applicant's depreciation expense, it may be necessary to adjust the expense to account for any excess capacity associated with plant facilities.

Besides depreciation, the Consumer Advocate also made adjustments to Applicant's proposed expenses for electricity and for the operating agreement Applicant has with Aqua Engineers. The Consumer Advocate's proposed adjustments totaling \$509,229, however, still exceeded Applicant's requested test year revenues of \$465,732. Thus, the Consumer Advocate accepted Applicant's requested revenues of \$465,732 in formulating its proposed rates, shown above, and concluded that Applicant's proposed rates (notwithstanding the Consumer Advocate's proposed adjustments) are still non-compensatory.

The Consumer Advocate, however, after reviewing Applicant's information pertaining to water usage and projected revenues associated with each customer class, and considering projected future developments within the proposed service area, modified rates among Applicant's customer classes to propose the following:

Monthly Flat Rate:

Residential

Single-Family	\$56.74/Month per Dwelling
Multi-Family	\$42.21/Month per Dwelling

Hotel	\$92.12/Month per Guestroom
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Monthly Usage Charges:

Commercial/Recreational\*

Non-Food Service	\$9.98 per 1,000 Gallons of Potable Water Used
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Food Service	\$10.07 per 1,000 Gallons of Potable Water Used
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Boat Harbor	\$10.05 per 1,000 Gallons of Wastewater Pumped from DLNR Pump Station
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\* These customers will also be charged a fixed service charge of \$12.00 per month.<sup>23</sup>

In Applicant's Statement of Position, Applicant did not object to the Consumer Advocate's proposed rates, with the inclusion of Applicant's originally proposed charge of \$0.25 per 1,000 gallons for R-1 water sold to the Challenge at Manele Golf Course. Applicant did object to the Consumer Advocate's arguments regarding depreciation and the rebuttable presumption. In this regard, Applicant asserted that it is not seeking rate base or rate of return treatment in this docket. Applicant argued, therefore, that the Consumer Advocate's arguments regarding rate base, rebuttable presumption, valuation,

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<sup>23</sup>See id. at 30-31.

and contribution are irrelevant to this proceeding, and should be reserved for Applicant's next general rate case.<sup>24</sup>

The commission finds that the Parties' agreed-upon rates are just and reasonable in this case. The commission acknowledges that Applicant is not seeking compensatory or "break-even" rates, nor is Applicant seeking rate base or rate of return treatment in this docket. For this reason, the commission reserves ruling on the treatment of Applicant's depreciation expense, the rebuttable presumption, and related issues, and finds, as asserted by Applicant, that these issues will be more appropriately evaluated in Applicant's next rate proceeding.

C.

Rules and Regulations; Applicant's Request for an APCAC

During discovery, the Consumer Advocate proposed modifications to numerous sections of Applicant's proposed Rules and Regulations, and Applicant agreed to most of the proposed changes. The Parties' stipulated modifications are attached to the Consumer Advocate's Statement of Position as Exhibit 5.0.

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<sup>24</sup>Applicant also clarified that it included the depreciation expense in its operating costs because Applicant has not recovered the costs of building the treatment plant from sales of homes, and to indicate that Applicant believes it is reasonable for Applicant to recover, at least, the depreciation expense on the remaining net book value of the assets. Applicant nevertheless claimed that the issue is moot, given the Parties' agreement on rates. See Applicant's Statement of Position, at 9-10 n.17.

The Consumer Advocate, however, noted two sections in the proposed Rules and Regulations for which the Parties did not reach agreement: (1) Applicant's proposed Rule 3, paragraph 2, which the Parties later reached agreement on;<sup>25</sup> and (2) Applicant's proposed Rule 14, which allows Applicant to implement an APCAC.

With respect to the APCAC, the Consumer Advocate argued that the primary purpose of an APCAC is to provide the utility with a greater opportunity to earn its authorized rate of return and recover its expenses without the need to file a general rate increase application. Because Applicant's requested revenues in this case are well below Applicant's cost of operations, the Consumer Advocate contended that Applicant's "need for the APCAC is dubious."<sup>26</sup> The Consumer Advocate, however, stated that it is willing to consider the appropriateness of allowing Applicant to

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<sup>25</sup>The Parties have since agreed to the following language for Applicant's proposed Rule 3, paragraph 2, as recommended by the Consumer Advocate. The commission approves this language, with two minor corrections, shown below:

Unless otherwise provided by mutual written agreement between the Company and the Customer, charges will begin upon approval of the rates by the Public Utilities Commission or on the date of the Company's Sewerage System is available for a Service Connection to the Building Sewer, whichever occurs later, and will continue thereafter until one of the following events occurs: (a) service is discontinued upon the request of the Customer, or (b) until service is discontinued by the Company for failure of the Customer to comply with these Rules and Regulations.

<sup>26</sup>Consumer Advocate's Statement of Position, at 33.

implement an APCAC in a future rate proceeding when Applicant seeks approval for compensatory rates.

In response, Applicant maintained that it is even more important for a company that does not earn enough in revenues, like Applicant, to have an APCAC in order to keep up with rising electricity costs.<sup>27</sup> Applicant also contended that it would be unfair for the commission to approve an APCAC, or similar clauses, to some utilities, but deny them to others.<sup>28</sup>

Having reviewed the record, the commission finds reasonable the Parties' stipulated modifications to Applicant's Rules and Regulations, as set forth in the Consumer Advocate's Exhibit 5.0, subject to the commission's modification of Applicant's Rule 3 described in footnote 26, above.

As to Applicant's request for an APCAC, the commission finds sufficient basis in the record to grant Applicant an APCAC. Specifically, the commission finds that the APCAC proposed by Applicant is sound and reasonable, and that Applicant has sufficiently demonstrated a need for the APCAC, based on the historical data of electricity usage and sewage influent submitted by Applicant, especially given the fact that the rates Applicant seeks in this proceeding are non-compensatory, and indeed, well below Applicant's cost of operations. Under these circumstances, the commission concludes that approving an APCAC for Applicant is reasonable.

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<sup>27</sup>Applicant's Statement of Position, at 12.

<sup>28</sup>Id. at 13.

D.

Transfer of Ownership; Grants of Licenses and Easements

In its Application, Applicant requested commission approval of the proposed transfer of ownership in certain wastewater facilities, and the proposed grants of easements and licenses. According to Applicant, it was organized for the sole purpose of providing the proposed wastewater services. To provide the proposed services, Applicant requests that the commission approve a transfer in ownership of the wastewater plant and facilities from CCR to Applicant. Applicant also requests approval to enter into easement and licensing agreements with its affiliate companies to utilize certain lands upon which sewer and R-1 lines are located.

According to the Consumer Advocate, Applicant's proposed transfer of ownership in the wastewater facilities from CCR to Applicant, and its proposed license and easement agreements to use real property of its affiliates to provide utility services, are regulated by the commission under HRS § 269-19.5.<sup>29</sup> The Consumer Advocate stated, however, that because

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<sup>29</sup>Specifically, the Consumer Advocate cited HRS § 269-19.5(c), which provides, in relevant part:

No contract or agreement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or agreement for the purchase, sale, lease, furnishing or exchange of any real or personal property rights, including but not limited to real estate, improvements on land, equipment, leasehold interests, easements, rights-of-way, franchises, licenses, permits, trademarks, and copyrights, made or entered into after July 1, 1988, between a public

the necessary transfer, licensing, and easement agreements have not been provided by Applicant, the Consumer Advocate is unable to presently state its position on the proposed transfer of ownership and grant of easements and licenses from Applicant's affiliates.

In addition, the Consumer Advocate noted that the commission is not required to approve agreements submitted under HRS § 269-19.5.<sup>30</sup> Thus, the Consumer Advocate explained that its recommendations on Applicant's proposed transactions with its affiliates pertain more to the cost implications of the transactions for rate-setting purposes. Specifically, the Consumer Advocate recommended that the commission determine, prior to authorizing any transfer of assets, whether the transfer will be reflected as contributed capital due to the rebuttable presumption, mentioned above, or for value to be included in the rate-setting process as plant facilities in rate base, and in a corresponding depreciation expense.

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utility and any affiliated interest shall be valid or effective unless and until the contract or agreement has been received by the commission. It shall be the duty of every public utility to file with the commission a verified copy of any contract or agreement with an affiliate having a face value of at least \$300,000, or a verified summary of any unwritten contract or agreement having a face value of at least \$300,000 within forty-five days of the effective date of the contract or agreement.

<sup>30</sup>HRS § 269-19.5(c) states: "No affirmative action is required by the commission in regards to the filing of the contract or agreement[.]"

In Applicant's Statement of Position, Applicant reiterated its request for approval of the proposed transactions with its affiliates under HRS §§ 269-19 and 269-19.5(c), to the extent applicable. Applicant represented that HRS § 269-19.5(c) may not apply because Applicant does not have contracts with any affiliates having a face value of \$300,000 or more. Moreover, the proposed transactions may be exempted from HRS § 269-19.5 if the commission finds that Applicant and CCR are "affiliated Hawaii based utilities."<sup>31</sup> In addition, Applicant represented that documentation memorializing the proposed transactions can be submitted within thirty days of the commission's approval of the CPCN, rates, and Rules and Regulations in this docket.

The commission finds that HRS §§ 269-7(a) and 269-19 apply to the transfer of ownership and grants of licenses and easements proposed by Applicant.<sup>32</sup> HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under HRS § 269-7(a), the

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<sup>31</sup>HRS § 269-19.5(h) provides: "Transactions between affiliated Hawaii based utilities shall be exempt from the provisions of this section." Although Applicant does not believe that CCR acted as a public utility in the past, if the commission finds as such, then Applicant believes that exemption from HRS § 269-19.5 may be appropriate. See Applicant's Statement of Position, at 11.

<sup>32</sup>The commission finds that there is insufficient evidence in the record to support the application of HRS § 269-19.5 to the proposed transactions.

commission will approve a proposed transaction if it is reasonable and consistent with the public interest.

In addition, HRS § 269-19 provides that no public utility corporation shall "directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the . . . commission an order authorizing it so to do." HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

The record reflects that Applicant is fit and willing to provide the proposed wastewater services<sup>33</sup> and that in order for Applicant to provide the services, the proposed transfer of ownership in the wastewater facilities from CCR to Applicant, and the proposed grants of easements and licenses from Applicant's affiliates, are necessary. As such, the commission finds that the proposed transactions are reasonable and in the public interest. Accordingly, the commission concludes that the proposed transactions should be approved, pursuant to HRS §§ 269-7(a) and 269-19, subject to the condition that Applicant submit all agreements memorializing the transactions with its affiliates within thirty days after the commission issues a final Decision and Order. Within thirty days of that submission, the Consumer Advocate may comment, if any, on Applicant's submission. The commission's approval of the proposed transactions herein will remain in full force and effect, unless the commission finds

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<sup>33</sup>See supra Section II.A.

that the documents indicate that Applicant lacks the ability to provide the wastewater service, based on its review of the submitted documents.<sup>34</sup>

E.

System of Accounts

Applicant initially requested approval to use generally accepted accounting principles ("GAAP") for its system of accounts. As explained in the Consumer Advocate's Statement of Position, utilities regulated by the commission generally utilize the National Association of Regulatory Utility Commissioner's ("NARUC") Uniform System of Accounts for the maintenance of accounting records. During discovery, Applicant indicated that it no longer requests approval to maintain its financial accounts according to GAAP, and will conform its accounts to the NARUC system.<sup>35</sup> Accordingly, the commission need not decide this issue.

F.

Delayed Filing

In its Statement of Position, the Consumer Advocate expressed concerns with the extended period of time that passed before the instant Application was filed with the commission. According to the Consumer Advocate, Applicant's affiliate, LWC,

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<sup>34</sup>The commission further notes that, for the reasons discussed above in Section II.B., it is reserving ruling on the treatment of the transfer assets for rate-setting purposes until Applicant's next rate proceeding.

<sup>35</sup>See Applicant's Response to CA-IR-100a, b, and c.

filed an application to provide the wastewater treatment service at issue in Docket No. 96-0495, but the application was withdrawn. The Consumer Advocate further pointed out that, during the time between the withdrawal of the application in Docket No. 96-0495 and the filing of the instant Application, Applicant's affiliated entities have offered the proposed utility service without the proper certification to do so.<sup>36</sup> Although the Consumer Advocate stated that the commission could impose fines and penalties on Applicant for failing to obtain a CPCN sooner, the Consumer Advocate ultimately recommended that fines should not be imposed because that would not be in the public interest at this point.

The commission agrees with the Consumer Advocate's assessment and will not impose any penalties on Applicant. The commission, however, advises Applicant, as suggested by the Consumer Advocate, to seek informal opinions or declaratory orders from the commission to avoid similar oversights or violations of the commission's regulatory requirements in the future.

### III.

#### Summary of Findings and Conclusions

1. Applicant's request for a CPCN should be granted, subject to the condition that Applicant shall submit, within thirty days after the commission issues a final Decision and Order, documents memorializing the transfer of ownership of the

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<sup>36</sup>Consumer Advocate's Statement of Position, at 37.

wastewater plant and facilities from CCR, and grants of easements and licenses from its affiliates.

2. The initial rates and charges agreed upon by the Parties and authorized herein, set forth in Section II.B. above, including Applicant's charge for R-1 water sales, are just, reasonable, and non-discriminatory.

3. The Parties' stipulated revisions to Applicant's Rules and Regulations, as set forth in Exhibit 5.0 attached to the Consumer Advocate's Statement of Position (and including the commission's language for Applicant's Rule 3, paragraph 2, set forth in footnote 26 above), are reasonable.

4. Applicant's Rule 14, which allows Applicant to implement an APCAC, is reasonable and should be approved.

5. Applicant's proposed transactions with its affiliates should be approved, pursuant to HRS §§ 269-7(a) and 269-19, subject to the condition that Applicant submit all agreements memorializing such transactions within thirty days after the commission issues a final Decision and Order.

#### IV.

##### Acceptance or Non-Acceptance

Consistent with HRS § 269-16(f)(3), by February 20, 2007, each of the Parties shall notify the commission as to whether it:<sup>37</sup>

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<sup>37</sup>This deadline date is consistent with the deadline to move for reconsideration of a commission decision or order. See HAR §§ 6-61-137 (ten-day deadline to file motions for reconsideration); 6-61-21(e) (two days added to a prescribed period for service by mail); and 6-61-22 (computation of time).

1. Accepts, in toto, the Proposed Decision and Order. If the Parties accept the Proposed Decision and Order, they "shall not be entitled to a contested case hearing, and [HRS] section 269-15.5 shall not apply."<sup>38</sup>

2. Does not accept, in whole or in part, the Proposed Decision and Order. If so, said Party shall give notice of its objection or non-acceptance and set forth the basis for its objection or non-acceptance.<sup>39</sup> Moreover, the Party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record, i.e., the materials available to the commission at the time of its issuance of the Proposed Decision and Order.

Any Party that does not accept the Proposed Decision and Order "shall be entitled to a contested case hearing; provided that the [P]arties to the proceeding may waive the contested case hearing."<sup>40</sup> The commission shall make every effort to complete its deliberations and issue its Decision and Order by May 7, 2007.

The underlying purpose of HRS § 269-16(f) is to expedite the ratemaking process for public utilities with annual gross revenues of less than \$2 million. Consistent thereto, the commission has completed its review and timely issues this Proposed Decision and Order. Nonetheless, the commission makes it clear that if it is required to issue a Decision and Order due

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<sup>38</sup>HRS § 269-16(f)(3).

<sup>39</sup>Id.

<sup>40</sup>Id.

to the non-acceptance of the Proposed Decision and Order by one or both of the Parties, the commission is free to review anew the entire docket and all issues therein.

V.

Orders

1. Applicant's request for a CPCN to provide sewer service in Manele-Hulopoe, Lana'i, as shown in Exhibit D of the Application, is approved, subject to the condition that Applicant shall submit, within thirty days after the commission issues a final Decision and Order, documents memorializing the transfer of ownership of the wastewater plant and facilities from CCR, and grants of easements and licenses from Applicant's affiliates. Within thirty days of that submission, the Consumer Advocate may file comments, if any, on the documents submitted by Applicant. Applicant's CPCN will remain in full force and effect, unless the commission finds that the documents indicate that Applicant lacks the ability to provide the wastewater service, based on its review of the submitted documents.

2. The commission approves the initial rates and charges agreed upon by the Parties, set forth in Section II.B. above, including Applicant's charge for R-1 water sales.

3. The commission approves the Parties' stipulated revisions to Applicant's Rules and Regulations, as set forth in Exhibit 5.0 attached to the Consumer Advocate's Statement of Position (including the commission's language for Applicant's Rule 3, paragraph 2, set forth in footnote 26 above).

4. Applicant's Rule 14, which allows Applicant to implement an APCAC, is approved.

5. Applicant's requests to approve a transfer in ownership of the wastewater plant and facilities from CCR to Applicant, and to enter into easement and licensing agreements with its affiliate companies to utilize certain lands upon which sewer and R-1 lines are located, are approved, subject to the condition that Applicant shall submit all agreements memorializing such transactions within thirty days after the commission issues a final Decision and Order. Within thirty days of that submission, the Consumer Advocate may file comments, if any, on Applicant's submission. The commission's approval of the proposed transactions herein will remain in full force and effect, unless the commission finds that the documents indicate that Applicant lacks the ability to provide the wastewater service, based on its review of the submitted documents.

6. Applicant shall file with the commission revised tariff sheets and rate schedules, reflecting the initial rates and charges and changes to its Rules and Regulations authorized by this Proposed Decision and Order. The revised tariff sheets and rate schedules shall be served on the Consumer Advocate and filed with the commission within fifteen days of the issuance of the final Decision and Order. Applicant's tariff changes and initial rates and charges shall take effect upon the commission's review and approval of this filing.

7. By February 20, 2007, each of the Parties shall notify the commission as to whether it accepts, in toto, or does

not accept, in whole or in part, this Proposed Decision and Order. A Party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record.

8. Pursuant to HRS § 269-8.5, Applicant shall file with the commission and serve on the Consumer Advocate an annual financial report in accordance with NARUC's *Uniform Systems of Accounts-1996* covering its sewerage service operations, commencing with the year ending December 31, 2007, and each calendar year thereafter. The annual financial reports shall be filed no later than March 31 of each year, for the immediate past calendar year, with the first report due no later than March 31, 2008.

9. Within thirty days of the date of this Proposed Decision and Order, Applicant shall remit a public utility fee of \$60, pursuant to HRS § 269-30(b). In addition, beginning July 31, 2008 and December 31, 2008, and each calendar year thereafter, Applicant shall pay a public utility fee that shall be equal to one-fourth of one percent (0.25%) of the gross income from its public utility business during the preceding year, or a sum of \$30, whichever is greater, in accordance with HRS § 269-30(b).

10. Within thirty days from the date of this Proposed Decision and Order, and pursuant to HRS § 269E-6, Applicant shall also pay to the commission a one-time registration fee of \$350 for the administration and operation of the commission's One Call Center, established under HRS Chapter 269E, and by

Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195.

11. Within thirty days of the date of this Proposed Decision and Order, Applicant shall notify, in writing, each of its existing customers of its certification as a public utility and the availability of its published rates and charges, and Rules and Regulations governing its wastewater utility service; and file with the commission, with service on the Consumer Advocate, a copy of the written notification.

12. Failure to comply with any of the commission's orders, noted above, may constitute cause to void this Proposed Decision and Order, Applicant's CPCN, and/or the Applicant's proposed transactions with its affiliates, and may also result in further regulatory action as authorized by State law.

DONE at Honolulu, Hawaii FEB - 7 2007.

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:

Kaiulani Kidani Shinsato  
Kaiulani Kidani Shinsato  
Commission Counsel

2006-0166.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Proposed Decision and Order No. 23250 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: FEB - 7 2007