

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
KAPALUA WASTE)
TREATMENT COMPANY, LTD.)
)
For Expansion of its Service)
Territory.)
_____)

DOCKET NO. 2006-0075

DECISION AND ORDER NO. 23261

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

2007 FEB 16 A 8:17

RECEIVED

Filed Feb. 15, 2007

At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

B.

Application

By application filed on March 30, 2006,¹ Applicant seeks commission approval to expand its existing service territory to include that certain parcel of land designated as a portion of Tax Map Key number (2)4-2-001:042, consisting of approximately 509 acres, which comprises, or will comprise, the majority portion of the Kapalua Mauka development (the "Property").² The Property is currently planned to consist of approximately one hundred ninety-five (195) single family residences, three hundred sixty-seven (367) multi-family residences, a golf course clubhouse, other commercial areas and appurtenant common areas.

Applicant states that ML&P, the developer of Kapalua Mauka, has requested that Applicant provide wastewater service to the Property. Applicant states that "[i]n consideration of this request, the need for wastewater service for this [P]roperty, and the [P]roperty's nearby location to Applicant's existing service territory, Applicant is willing to

¹Application, Exhibits A-E, Verification and Certificate of Service, filed on March 30, 2006 ("Application"). Applicant served a copy of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to HRS § 269-51. On September 20, 2006, the Consumer Advocate served information requests ("IRs") upon Applicant, to which Applicant filed responses to the IRs on October 9, 2006.

²A map of Applicant's existing service territory is attached as Exhibit A to the Application. Exhibit B to the Application is a map showing Applicant's existing service territory and the parcel of land that Applicant seeks to include in its service territory.

provide such service."³ Applicant is unaware of any other utility company willing or able to provide wastewater service to the Property.

Applicant represents that it is, or will be able to, service the Property without detriment to the level and quality of service being provided to its existing service territory, and without any rate impact on Applicant's current users. Pursuant to agreements between Applicant, ML&P and the County of Maui, Applicant collects wastewater in Applicant's service territory and delivers said wastewater to the County of Maui's Lahaina Wastewater Reclamation Facility (the "Lahaina Facility") for treatment and disposal ("Sewer Agreement"). Applicant asserts that under the Sewer Agreement, it is entitled to dispose of up to 680,000 gallons per day ("gpd") of wastewater on an average daily flow basis. Applicant's current average daily wastewater flow to the Lahaina Facility is approximately 494,660 gpd, leaving approximately 185,340 gpd of additional wastewater on an average daily flow basis that Applicant can dispose of at the Lahaina Facility. Thus, Applicant determines that it has sufficient actual capacity to handle the 175,600 gpd average daily wastewater flow currently estimated for the Property.⁴

³Application at 3.

⁴Applicant estimates that the single family residences within the Property will utilize approximately 68,250 gpd of wastewater in the aggregate; the multi-family residences will utilize approximately 91,750 gpd of wastewater in the aggregate; and the golf course clubhouse and other commercial areas are expected to have an estimated average use of 15,600 gpd in the aggregate. See Application at 3.

Applicant's proposed service to the Property will be provided by means of transmission lines and appurtenant equipment installed or to be installed by ML&P to connect Applicant's facilities to the Property. It is intended that such facilities installed by ML&P (outside of individual residential properties) will ultimately be dedicated and transferred to Applicant. Moreover, Applicant asserts that any revenue generated by the Property should offset any expenses incurred by Applicant related to the expanded service. Applicant asserts that it will not be required to pay for additional upgrades to its sewage collection system, if any, due to expansion of its service territory to include the Property.⁵ According to Applicant, the Lahaina Facility will have sufficient capacity to receive and treat wastewater generated by Applicant's existing and future customers until the year 2013.⁶

C.

Consumer Advocate's Statement of Position

On December 6, 2006, the Consumer Advocate filed its Statement of Position stating that it does not object to commission approval of Applicant's request to expand its existing service territory.

⁵Id. at 5.

⁶Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-76, Applicant incorporates by reference its unaudited financial statements filed with the commission or about September 25, 2005, and March 29, 2006, to satisfy, to the extent necessary, the requirements of HAR § 6-61-75.

In reviewing Applicant's request, the Consumer Advocate considered the following: (1) whether Applicant has the ability to provide wastewater service to customers in the existing service territory as well as the Property, and (2) whether expansion of the service territory as proposed by Applicant would negatively affect the rates charged to Applicant's existing customers.

With respect to the first issue of whether Applicant has the ability to serve its existing territory as well as the Property, the Consumer Advocate determined that, based on average daily wastewater flow estimates and forecasted wastewater flows,⁷ the existing capacity of the Lahaina Facility is sufficient to receive and treat the wastewater generated by present and future customers in Applicant's existing service territory and on the Property until the year 2013.⁸ As such, the Consumer Advocate asserts that Applicant has the ability to serve customers in the existing service territory and will have access to additional resources to provide wastewater services in the expanded territory when that need arises.

For the second issue, the Consumer Advocate considered whether expanding Applicant's service territory would negatively affect the current rates for wastewater service being charged to existing customers. Specifically, the Consumer Advocate considered the cost of new facilities required to serve customers in the expanded service area, and concluded that should the

⁷See Statement of Position at 5.

⁸Id. at 4-7.

Lahaina Facility need to be expanded to service customers beyond 2013, no costs will be allocated to Applicant, as all costs associated with the expansion of the Lahaina Facility will be incurred by ML&P, Applicant's parent company.⁹ The Consumer Advocate also considered the additional costs that may be incurred to operate and maintain the new facilities, and concluded that there would be no change to Applicant's net plant-in-service value for rate-making purposes, as new gravity sewer lines will be installed by ML&P will ultimately be dedicated and transferred to Applicant, and will likely be treated as an in-kind contribution. Another concern explored by the Consumer Advocate was the effect of any additional revenues that Applicant will receive from customers in the proposed expanded service area. The Consumer Advocate concluded that any increase in revenues should be fairly nominal as the projected increase in revenues is based on full build out, which is not expected to occur until 2018. Finally, the Consumer Advocate considered whether Applicant would be filing for a rate increase due to the expanded service area, and concluded that any need by Applicant to file for a future rate increase would not be based on Applicant's proposed expansion of its service territory.¹⁰ Based upon the above, the Consumer Advocate stated that it does not object to the commission approving Applicant's request to expand its existing service territory.

⁹Consumer Advocate's Statement of Position at 9. See also Applicant's Response to the Consumer Advocate's IR-7a.

¹⁰See Consumer Advocate's Statement of Position at 11-12.

II.

Discussion

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. Because Applicant's authority pursuant to its CPCN does not currently authorize it to provide wastewater service to the Property, commission approval is required to amend Applicant's service territory to include the expanded service area.

Here, Applicant appears to be fit, willing, and able to provide the expanded wastewater service, and provision of the service is required by the present or future public convenience and necessity. Applicant appears to be able to provide the wastewater service to the proposed additional service area, and will be able to do this without detriment to the level and quality of service currently being provided to its existing customers. Applicant is entitled to dispose of up to 680,000 gpd of wastewater on an average daily flow basis. Its current average daily wastewater flow to the Lahaina Facility is approximately 494,660 gpd, leaving Applicant sufficient capacity to handle the estimated 175,600 gpd average daily wastewater flow from the Property.

The commission, moreover, notes that the Property is adjacent to properties currently being serviced by Applicant, thereby facilitating the provision of service to the new Property. In addition, the occupants of the Property must be afforded a means to treat their wastewater, and the commission is

unaware of any other wastewater utility willing or able to service the Property. Accordingly, for the foregoing reasons, the commission concludes that Applicant's request for commission approval to expand its existing wastewater service territory, as shown in Exhibit B to the Application, should be approved.

III.

Orders

THE COMMISSION ORDERS:

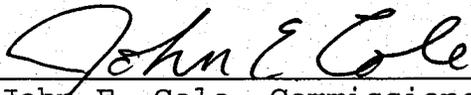
1. Applicant's Application, filed on March 30, 2006, for commission approval to expand its existing service territory, as reflected in Exhibit B to the Application, is approved.

2. Applicant shall promptly file with the commission its revised tariff sheets, incorporating its expanded service territory. The revised tariff sheets will take effect upon filing. Failure to promptly comply with this requirement may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

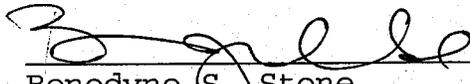
DONE at Honolulu, Hawaii FEB 15 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

2006-0075.sl

CERTIFICATE OF SERVICE

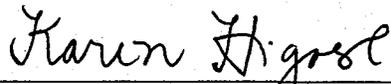
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23261 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant Street, Room 326
Honolulu, HI 96813

RYAN CHURCHILL
JEFFREY T. PEARSON, P.E.
Kapalua Waste Treatment Company, Ltd.
1000 Kapalua Drive
Lahaina, HI 96768

KENT D. MORIHARA, ESQ.
MICHAEL H. LAU, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Attorneys for KAPALUA WASTE TREATMENT COMPANY, LTD.



Karen Higashi

DATED: FEB 15 2007