

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
MILLER AND LIEB)
WATER COMPANY, INC., nka HAWAIIAN)
BEACHES WATER COMPANY, INC.)
)
For Review and Approval of (a) a)
Rate Increase and Revised Rate)
Schedules and (b) Certain Financing)
Arrangements for New Utility)
Improvements.)
)

DOCKET NO. 2006-0442

ORDER NO. 23513

Filed June 27, 2007
At 10 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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

2007 JUN 29 A 9:20

RECEIVED

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

Karen Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
MILLER AND LIEB)
WATER COMPANY, INC., nka HAWAIIAN)
BEACHES WATER COMPANY, INC.)
)
For Review and Approval of (a) a)
Rate Increase and Revised Rate)
Schedules and (b) Certain Financing)
Arrangements for New Utility)
Improvements.)
_____)

Docket No. 2006-0442
Order No. 23513

ORDER

By this Order, the commission approves MILLER AND LIEB WATER COMPANY, INC. ("Miller & Lieb"), now known as HAWAIIAN BEACHES WATER COMPANY, INC.'s ("HBWC")¹ request for commission approval of the proposed financing and mortgaging of certain water system improvements, including the drilling and outfitting of a new water production well and pump and associated storage facilities under Hawaii Revised Statutes ("HRS") §§ 269-17 and 269-19 ("Proposed Financing") as initially set

¹In March 2007, the commission conditionally approved the joint application filed by Miller & Lieb and HBWC to sell and transfer Miller & Lieb's utility assets and operations to HBWC ("Change of Control"). See In re Miller and Lieb Water Company, Inc. and Hawaiian Beaches Water Company, Inc., Docket No. 2006-0437, Decision and Order No. 23313, filed on March 21, 2007 ("Transfer Docket"). By letter dated and filed on April 3, 2007, HBWC notified the commission that the Change of Control became "effective" on April 1, 2007, and stated that: (1) HBWC has assumed and succeeded to all of Miller & Lieb's interest in this proceeding; and (2) therefore, all references to Miller & Lieb in this proceeding should now be referred to as HBWC.

forth in its application² filed on November 8, 2006.³ As a result, the commission allows the increase in rates approved by Proposed Decision and Order No. 23423, filed on May 8, 2007 ("Proposed Decision and Order"), which was adopted by Decision and Order No. 23469, filed on May 31, 2007 ("Decision and Order No. 23469"). Accordingly, HBWC may now increase its rates to produce additional revenues of \$374,134, or approximately 118.0%, over revenues at present rates, as detailed in the Proposed Decision and Order and authorized by Decision and Order No. 23469. In particular, HBWC may implement the first phase of its approved rate increase (i.e., increasing its monthly charge to \$28.73), effective July 1, 2007.

I.

Background

A.

Proposed Decision and Order No. 23423

On May 8, 2007, the commission timely issued the Proposed Decision and Order, as mandated by HRS § 269-16(f),

²On November 8, 2006, HBWC filed its Application; Exhibits MLW 1 - MLW 10; Exhibit MLW-T-100; Exhibit MLW-T-200; Verification (a notarized version of which was filed on November 13, 2006); and Certificate of Service (collectively, the "Application").

³The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), is an ex officio party to this proceeding pursuant to HRS § 269-51 and Hawaii Administrative Rules § 6-61-62. HBWC and the Consumer Advocate, the sole parties to this proceeding, are hereafter collectively referred to as the "Parties."

and in connection with HBWC's Application. In the Proposed Decision and Order, the commission conditioned its approval of an increase in additional revenues of \$374,134, or approximately 118.0%, over revenues at present rates for HBWC's services on the issuance of a subsequent and separate commission order approving the Proposed Financing. Related to this condition, the commission required: (A) HBWC to file the loan commitment papers and a written update to support its financing request detailing, at minimum, the terms and conditions regarding the loans (related to the USDA and HEDCO programs, as applicable)⁴ and a narrative to support its request for commission approval under HRS §§ 269-17 and 269-19, as soon as practicable; and (B) the Consumer Advocate to file its position statement with regards to the Proposed Financing, within fifteen (15) days of HBWC's filing.

Additionally, related to the above, the commission approved in part, and denied in part, the Parties' "Stipulation of Settlement Agreement in Lieu of [HBWC's] Rebuttal Testimonies" filed on April 4, 2007 ("Stipulation"). In particular, the commission denied: (A) the Parties' agreement to implement a volumetric rate of \$2.07 starting on July 1, 2009, or six (6) months after the implementation of the fourth phase of the rate increase; and (B) the stipulated July 1, 2007 effective date of the first phase of the rate increase. Instead, the commission ordered that the effective date of the first phase of the rate

⁴"USDA" is the acronym for United States Department of Agriculture while "HEDCO" is the acronym for Hawaii Economic Development Corporation.

increase shall be July 1, 2007 (as agreed-upon) or upon issuance of a subsequent and separate commission order approving the Proposed Financing, whichever is later. Through its partial approval of the Stipulation, the commission authorized HBWC to increase its rates to produce additional revenues of \$374,134, or approximately 118.0%, over revenues at present rates, representing an increase in HBWC's revenue requirement to \$691,294 for the test year ending December 31, 2007 ("Test Year") based on a stipulated 9.0% rate of return on HBWC's stipulated average rate base for the Test Year. However, the commission ordered that the effective date of the rate increase would be consistent with the commission's determination related to the matters discussed in the paragraph directly above.

Furthermore, the commission ordered HBWC to continue charging its customers the \$48.06 monthly service charge, after implementation of the fourth phase, until a reasonable and more reflective volumetric rate could be determined in HBWC's next rate proceeding. To this end, the commission ordered HBWC to file an application for review of its rates in a rate proceeding six (6) months after it completes its meter installation program or when sufficient data is available for HBWC to propose and support a rate design that includes a volumetric rate, whichever is earlier. The commission also instructed the Parties to notify the commission, within ten (10) days of the issuance of the Proposed Decision and Order, as to whether they each accept, in toto, or do not accept, in whole or in part, the Proposed Decision and Order, as mandated by HRS § 269-16(f)(3); and HBWC

to promptly file its revised tariff sheets and rate schedules for the commission's review and approval ("Revised Tariff").

By letter dated and filed on May 10, 2007, the Consumer Advocate notified the commission that it did not object to the commission's findings in the Proposed Decision and Order. Subsequently, on May 17, 2007, HBWC notified the commission that it accepts, in toto, the Proposed Decision and Order.⁵

On May 31, 2007, the commission issued Decision and Order No. 23469 adopting the Proposed Decision and Order, filed on May 8, 2007, as its decision and order in this proceeding.

B.

HBWC's Proposed Financing

In compliance with Ordering Paragraph 1 of the Proposed Decision and Order, HBWC, by letter dated and filed on June 13, 2007, submitted its loan commitment papers, a summary of the Proposed Financing, and a narrative to support its request for approval of the Proposed Financing ("Compliance Filing"). HBWC represents that it intends to enter into the Proposed Financing in accordance with the loan commitment papers attached to its Compliance Filing to pay for certain water system improvements including the drilling and outfitting of a new water production well and associated storage facilities ("System Improvements"). HBWC contends that the loan commitment papers evidence that it received loan commitments from Bank of

⁵HBWC's letter dated and filed on May 17, 2007.

Hawaii ("BOH") and the HEDCO. With regards to the total cost of the System Improvements,⁶ HBWC represents that: (1) approximately 50% of the costs will be financed through the BOH credit facility; (2) approximately 35% of the costs will be financed through a HEDCO loan; and (3) HBWC will assume the remaining 15% of the costs of the improvements through an equity contribution.

Specifically, HBWC states that BOH will be issuing two term loans to the utility. Under the first term loan ("Facility I"), BOH has committed to lending HBWC \$475,000 for a 10-year fixed term with a rate tied to the Federal Home Loan Bank of Seattle's 10-year fixed rate plus 2.0%.⁷ HBWC states that it will be repaying the principal and interest on the Facility I loan to fully amortize the loan over the 10-year period. To secure this loan, HBWC represents that it will be granting BOH an ALTA insured first mortgage on its fee simple property and a first position security interest in HBWC's accounts receivable, inventory, furniture, fixtures, equipment, general intangibles and contract rights. Moreover, Katherine Prescott, a co-owner of HBWC, will assign and pledge her Saddleback Bancorp shares to BOH which will be held as collateral.

⁶The total cost of the System Improvements is estimated to be approximately \$1,000,000. See Application, Exhibit MLW-T-100 (Testimony of Katherine M. Prescott) at 5.

⁷According to HBWC, based on current rates set by the Bank of Seattle, the interest rate for the Facility I loan would be 7.86%. See Compliance Filing at 2 n.1.

The second BOH loan will be an interim loan ("Facility II") which will mature six months after completion of the System Improvements. For the Facility II loan, BOH will lend HBWC \$349,475 for a six-month term with an interest rate set at BOH's base rate plus 1.5%.⁸ The Facility II loan represents required interim funding for the HEDCO loan. On this loan, HBWC states that it will be paying interest only at monthly intervals and will repay the principal at maturity. To secure financing on this second loan, HBWC represents that it will be granting BOH an ALTA insured second mortgage on its fee simple property and a second position security interest in HBWC's accounts receivable, inventory, furniture, fixtures, equipment, general intangibles and contract rights. Similarly, Katherine Prescott will assign and pledge her Saddleback Bancorp shares to BOH which will be held as collateral.

Third, HEDCO,⁹ a Hawaii non-profit corporation that assists small businesses in rural areas, agreed to lend HBWC \$349,475 at a fixed interest rate for a 20-year term.¹⁰

⁸According to HBWC, based on BOH's current base rate, the interest rate for the Facility II loan would be 9.75%. See Compliance Filing at 2 n.2.

⁹HBWC states that HEDCO is a Certified Development Company ("CDC") established to contribute to the economic development of its community. CDCs work with the Small Business Administration ("SBA") and private-sector lenders to provide financing to small businesses.

¹⁰HBWC states that the interest rate for this portion of the Proposed Financing will be established approximately one week prior to funding. According to HBWC, the interest rate for the month of June 2007 is set at 5.78856%, with an effective rate of 6.68%; however, since interest rates are currently increasing,

This aspect of the Proposed Financing is backed by a 100% SBA-guaranteed debenture, which allows the commercial lender (in this case BOH) to lend 50% of the funds at an interest rate tied to standard commercial lending rates. According to HBWC, the HEDCO loan will be used to pay off the balance of BOH's Facility II loan. To secure this loan, HBWC will be granting HEDCO a second mortgage on its land and improvements, as well as a second position security interest in HBWC's personal property including any proceeds and products acquired with the loan proceeds. Additionally, Katherine Prescott will pledge her Saddleback Bancorp shares to the CDC.

Finally, the remaining 15% of the costs of the System Improvements (approximately \$149,775) will be borne by HBWC through an equity contribution.

Regarding the above, HBWC represents that the Proposed Financing arrangements are for the purposes permitted under HRS § 269-17 and that the proposed purposes will not have an adverse effect on its operations. Moreover, according to HBWC, the Proposed Financing arrangements are "reasonable and consistent with the public interest under HRS §§ 269-17 and 269-19 because the consummation of the Proposed Financing [a]rrangements will not have a negative impact on its ability to provide safe and reliable services to its customers."¹¹

HBWC anticipates that the interest rate will be higher by the time HEDCO funds HBWC's loan. See Compliance Filing at 3 n.4.

¹¹Id. at 4.

C.

Consumer Advocate's Position

On June 14, 2007, the Consumer Advocate filed a letter setting forth its position on HBWC's Proposed Financing ("CA's Statement") in compliance with the Proposed Decision and Order. The Consumer Advocate states that it does not object to approval of HBWC's request to enter into the Proposed Financing arrangements. Its position is based on a number of factors.

First, according to the Consumer Advocate, HBWC's Proposed Financing satisfies HRS § 269-17 since HBWC represents that the proceeds from the Proposed Financing will be used for System Improvements (i.e., the drilling and outfitting of a new water production well and associated storage facilities). According to the Consumer Advocate, it previously acknowledged the need for the System Improvements in the Transfer Docket wherein the Consumer Advocate stated that the "new well and storage facilities are necessary to enable HBWC to provide water distribution service to new customers on the premise that the demand of HBWC's existing customers presently utilize the capacity of the existing water system."¹²

Second, the Consumer Advocate represents that it considered the potential costs of the Proposed Financing in determining the Test Year revenue requirements. The Consumer Advocate states that the cost of the Proposed Financing is "expected to be at interest rates that are

¹²See CA's Statement at 2.

reasonably close to the debt rate utilized in determining the overall rate of return."¹³ Moreover, it contends that HBWC appears to have the ability to repay the loans in accordance with the terms and conditions of the arrangements.

Finally, the Consumer Advocate claims that the Proposed Financing is in the public interest since it will allow HBWC the opportunity to obtain facilities it deems necessary at reasonable costs for the provision of public utility service.

II.

Discussion

Under HRS § 269-17, a public utility must obtain prior commission approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months after the date of issue. This section restricts the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property or the construction, completion, extension, or improvement of, or addition to its facilities or services. Additionally, HRS § 269-19, states as follows:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having

¹³Id.

secured from the public utilities commission an order authorizing it so to do. 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.

HRS § 269-19 (emphasis added).

Here, the commission finds the Proposed Financing, as represented by HBWC, to be reasonable and consistent with the public interest. The funds obtained from the Proposed Financing arrangements will be used for water system improvements, including the drilling and outfitting of a new water production well and pump and associated storage facilities, which are contemplated and permissible under HRS § 269-17. The System Improvements are necessary to provide potable water service to new customers in its service area that are currently without water service. According to HBWC, it cannot add new customers until a new well is constructed since its existing well is running at capacity.¹⁴ It further represents that the System Improvements are needed to provide a reliable supply of water to its existing customers and to also provide service to an anticipated 150 new customers (137 of whom were on a waiting list for service as of July 2006).¹⁵ Additionally, HBWC represents that the Proposed Financing will not have a material adverse effect on HBWC's utility operations.¹⁶ The related encumbrances

¹⁴See Application, Exhibit MLW-T-200 (Testimony of Robert L. O'Brien) at 12.

¹⁵Id.

¹⁶See Compliance Filing at 4.

of HBWC's assets including, but not limited to, the anticipated mortgages on its real property and the grant of a security interest in HBWC's proceeds, products, equipment, and accounts receivables, as detailed in its Compliance Filing, appear to be reasonable and necessary in the performance of HBWC's duties as a public utility. Moreover, our determination is also based on the Consumer Advocate's assertion that the cost of the Proposed Financing is expected to be at levels reasonably close to the debt rate utilized in determining HBWC's overall rate of return which the Parties stipulated to and the commission ultimately approved in Decision and Order No. 23469.

Based on the foregoing, the commission concludes that HBWC's Proposed Financing and associated arrangements should be approved under HRS §§ 269-17 and 269-19. Additionally, pursuant to the Proposed Decision and Order and Decision and Order No. 24369: (1) the increase in rates approved by the commission in the Proposed Decision and Order shall be allowed to take full effect; and (2) HBWC may now increase its rates to produce additional revenues of \$374,134, or approximately 118.0%, over revenues at present rates, as detailed in the Proposed Decision and Order and authorized by Decision and Order No. 23469. In particular, HBWC may implement the first phase of its approved rate increase (i.e., increasing its monthly charge to \$28.73), effective July 1, 2007

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Financing and associated arrangements, as described in HBWC's Compliance Filing submitted on June 13, 2007, are approved under HRS §§ 269-17 and 269-19.

2. The increase in rates approved by the commission in the Proposed Decision and Order and Decision and Order No. 23469 shall be allowed to take effect. Accordingly, HBWC may now increase its rates to produce additional revenues of \$374,134, or approximately 118.0%, over revenues at present rates, as detailed in the Proposed Decision and Order and authorized by Decision and Order No. 23469. In particular, HBWC may implement the first phase of its approved rate increase (i.e., increasing its monthly charge to \$28.73), effective July 1, 2007.

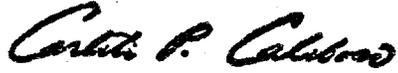
3. HBWC shall file its Revised Tariff which implements the increases in rates and charges consistent with and ultimately authorized by the commission in Decision and Order No. 23469, with applicable issued and effective dates.

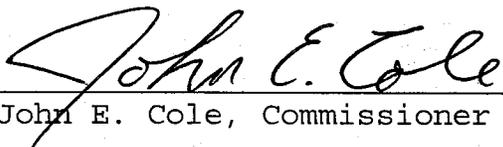
4. Unless ordered otherwise by the commission, HBWC's Revised Tariff, with the applicable issued and effective dates, shall be deemed approved upon filing and this docket shall be closed.

DONE at Honolulu, Hawaii

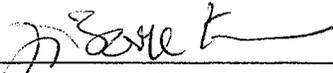
JUN 27 2007

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chalirman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2006-0442.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23513 upon the following Petitioners, 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
P.O. Box 541
Honolulu, HI 96809

KATHERINE M. PRESCOTT
MARK J. PRESCOTT
HAWAIIAN BEACHES WATER COMPANY, INC.
(fka, MILLER AND LIEB WATER COMPANY, INC.)
P.O. Box 22
Pahoa, HI 96778

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

Regulatory Counsel for
HAWAIIAN BEACHES WATER COMPANY, INC.

THOMAS R. SALTARELLI, ESQ.
SALTARELLI LAW CORPORATION
P.O. Box 10367
4695 MacArthur Court, Suite 310
Newport Beach, CA 92658-0367



Karen Higashi

DATED: JUN 27 2007