

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
)  
KUKUI`ULA SOUTH SHORE COMMUNITY )  
SERVICES, LLC and HOH UTILITIES, LLC )  
)  
For Review and Approval of Will )  
Serve Agreement. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0492

DECISION AND ORDER NO. 23654

Filed Sept. 12, 2007  
At 12 o'clock P.M.

Karen Higashi.  
Chief Clerk of the Commission

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Commission, State of Hawaii.

Karen Higashi.

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In the Matter of the Application of )  
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Docket No. 2006-0492  
Decision and Order No. 23654

DECISION AND ORDER

By this Decision and Order, the commission approves the Will Serve Agreement (the "Agreement") entered into by and between KUKUI`ULA SOUTH SHORE COMMUNITY SERVICES, LLC ("KSS") and HOH UTILITIES, LLC ("HOH") (collectively, "Applicants"), pursuant to Hawaii Revised Statutes ("HRS") § 269-7(a) and Hawaii Administrative Rules ("HAR") § 6-61-110.

I.

Background

A.

Description of Applicants

1.

KSS

KSS is a privately owned public utility company in the business of collecting and treating wastewater.<sup>1</sup> Its service

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<sup>1</sup>KSS received its certificate of public convenience and necessity ("CPCN") from South Shore Community Services, LLC, in a transfer approved by the commission in Decision and Order No. 20676, filed on November 25, 2003, in Docket No. 03-0144.

area is the Kukui`ula area and certain adjacent areas. KSS currently serves approximately one hundred households, treating approximately 40,000 gallons per day ("gpd") of wastewater. It is a wholly owned subsidiary of Kukui`ula Development Company (Hawaii), LLC ("KDCH"), which is the developer of Kukui`ula, a one thousand acre residential subdivision in Kukui`ula, Kauai ("Kukui`ula").

2.

HOH

HOH, a Hawaii limited liability company, is a public utility that provides wastewater treatment services to approximately seventy-six bulk and individual customers in the Poipu area, including the Kauai Sheraton Resort, Marriott Resort, Kiahuna Shopping Village, Kiahuna Tennis Club, Kiahuna Golf Clubhouse, Kiahuna Golf Village Subdivision, Kiahuna Plantation Condominium, Plantation Gardens Restaurant, and the Poipu Kapili Condominium.<sup>2</sup> HOH's existing plant capacity

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<sup>2</sup>HOH received its CPCN from the commission in a transfer from the Poipu Wastewater Corporation, which was approved by the commission in Decision and Order No. 17562, filed on February 25, 2000, in Docket No. 99-0343.

Pursuant to Decision and Order No. 21334, filed on September 3, 2004, in Docket No. 04-0094, the commission approved the joint application of HOH, Obayashi Hawaii Corporation ("OHC") and Marriott Ownership Resorts, Inc. ("MORI") regarding (a) the transfer of OHC's and MORI's respective interests in the Poipu Water Reclamation Facility ("PWRP"); (b) an amendment of HOH's CPCN to expand HOH's service territory to cover the geographic areas comprising the properties controlled, or previously controlled by, OHC and MORI; and (c) the establishment of initial rates for the provision of wastewater treatment services for the hotel properties. Furthermore, in Decision and Order No. 22117, filed on November 10, 2005, in Docket No. 04-0340, the commission approved HOH's application to

is 800,000 gpd, and its current plant flow average is approximately 350,000 gpd.<sup>3</sup>

B.

Will Serve Agreement

By Application filed on December 22, 2006,<sup>4</sup> Applicants request commission approval of the Agreement between KSS and HOH, pursuant to HRS § 269-7(a)<sup>5</sup> and HAR § 6-61-110.<sup>6</sup> In general, the Agreement will require HOH to reserve, set aside, and make available to KSS 200,000 gpd of treatment capacity at the PWRF to treat wastewater generated from Kukui`ula. In return, KSS paid HOH a one time contribution-in-aid-of-construction ("CIAC") of \$2,400,000 in accordance with HOH's tariff.

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(a) expand its service territory to cover additional properties within the Poipu area, and (b) allow HOH to acquire the remaining and outstanding 16.67% interest in PWRF from CTF Hotel Sewage Treatment Corporation.

<sup>3</sup>See KSS and HOH Responses to [Consumer Advocate's] Submission of Information Requests ("IRs"), filed on January 23, 2007, CA-IR-1.

<sup>4</sup>Application; Exhibits "A" and "B"; Verifications; and Certificate of Service of KSS and HOH, filed on December 22, 2006 ("Application").

On December 22, 2006, the Application was served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to HRS § 269-51 and HAR § 6-61-62(a).

<sup>5</sup>HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its "financial transactions, its business relations with other persons, companies, or corporations," and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

<sup>6</sup>HAR § 6-61-110 allows applications "not relating to matters not [otherwise] mentioned" in previous subchapters of Chapter 61, HAR.

KDCH anticipates the need for wastewater treatment services for the initial phase of the Kukui`ula development beginning with minimal flows on July 1, 2008, and increasing to average daily flows of approximately 200,000 gpd over the subsequent three years. According to Applicants, Kukui`ula will eventually generate approximately 700,000 gpd of average daily wastewater flow at full build-out of its development.

In anticipation of the proposed development, KDCH conducted an engineering study of the KSS plant in August 2005. According to Applicants, the study concluded that the existing KSS plant "is not currently capable of supplying advanced effluent treatment that would permit the reuse of treated effluent for irrigation of landscaping areas within the development."<sup>7</sup> Based on this report, KDCH designed a replacement plant with a more advanced treatment system, which was approved by the State Department of Health.

However, Applicants are considering an alternate approach, which involves the construction of a regional treatment facility. According to Applicants, since 2006, landowners, developers, HOH, KSS and the County of Kauai have been discussing the need and feasibility of constructing a regional wastewater treatment plant to treat wastewater flows from Koloa, Poipu, and Kukui`ula. The area is now served by a mixture of individual resort treatment plants, septic systems, and cesspools. While no decisions have been made at this time regarding construction of a regional plant, Applicants contend that several of the smaller

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<sup>7</sup>Application at 3-4.

plants in the area will require expansion or upgrades in order to meet the expected increased demand and treatment requirements.

Given the cost of building a replacement plant at Kukui`ula and the possibility that those funds could be used for a regional plant that could serve the Kukui`ula development, Applicants agreed that HOH would treat wastewater from the initial phase of the Kukui`ula development while a determination is made as to whether a regional facility will be constructed. According to Applicants, the PWRP, which is owned by HOH, currently has, and will continue to have, sufficient excess capacity to treat the 200,000 gpd that would be generated from the initial phase of the Kukui`ula development, and HOH is willing to provide bulk wastewater treatment service to KSS.

Applicants state that KSS will continue to treat the wastewater of its existing customers at its plant, but that HOH currently has the capacity to treat the initial phase of Kukui`ula development, which is anticipated to be completed in 2010. If no regional plant will be constructed, KSS intends to construct a replacement plant on site to treat the remaining flows generated from Kukui`ula. Thus, the Agreement will ensure that KSS can provide wastewater service to its customers in the initial phase of Kukui`ula, while providing flexibility in determining how to provide wastewater treatment services to Kukui`ula customers and the Koloa-Poipu community in the future.

According to Applicants, their decision to enter into the Agreement is based on the following factors: (1) the existing KSS wastewater treatment plant utilizes outdated technology and is not capable of supplying advanced effluent treatment that

would permit reuse of treated effluent for irrigation purposes; (2) the Kukui`ula property is located near HOH's existing service territory; (3) HOH has the capacity to provide bulk wastewater treatment services to KSS; (4) Applicants are unaware of any other wastewater utility willing or able to provide this service to KSS in the amounts set forth in the Agreement; and (5) the Agreement will allow KSS to continue to service its existing customers and provide wastewater service to the initial phase of Kukui`ula, while providing flexibility in determining how to provide wastewater treatment services to Kukui`ula customers and to the Koloa-Poipu community in the future.

Under the Agreement, KDCH is required to design and construct the necessary pipelines, pump stations and related facilities necessary to deliver the flows from Kukui`ula to the PWRF collection system at a manhole located immediately outside of the PWRF. Applicants state that the KSS Transmission System will be dedicated to and operated by KSS, who will also have the obligation to repair and maintain the collection system within Kukui`ula and the KSS Transmission System to the connection point with the PWRF. KDCH and/or KSS will have the responsibility to obtain any easements or access rights to install, operate, and maintain the KSS Transmission System.<sup>8</sup>

Under the Agreement, KSS will pay a wholesale monthly service charge to HOH for wastewater treated at the PWRF in an amount to be mutually agreed upon by KSS and HOH and submitted for commission approval by means of a 30-day tariff filing.

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<sup>8</sup>Application at 5.

Applicants state that the wholesale monthly service charge will be based upon HOH's cost of providing service to KSS, and will exclude costs that are not incurred in providing such service, e.g., the cost to operate and maintain the collection and transmission system of HOH.

Applicants contend that customers within Kukui`ula will continue to be customers of KSS, and will continue to be charged the rates currently approved by the commission until such time as KSS requests commission approval for a rate increase.<sup>9</sup>

C.

Consumer Advocate's Statement of Position

On February 12, 2007, the Consumer Advocate filed its statement of position ("Statement of Position") in which it stated that it does not object to commission approval of the Agreement, with certain conditions, set forth below. According to the Consumer Advocate, it considered whether: (1) HOH is fit, willing, and able to provide quality utility service to its own customer base in addition to the KSS customer base covered by the Agreement; (2) the terms and conditions of the Agreement, including the CIAC amount, are reasonable; and (3) the proposed Agreement is in the public interest.

First, with regard to whether HOH is fit, willing, and able to provide utility service to its own customer base as well as KSS' customer base, the Consumer Advocate states that in a previous rate increase proceeding involving HOH,

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<sup>9</sup>Applicants assert that KSS has no immediate plans to request a rate increase. Id. at 6.

Docket No. 05-0024, HOH was found to have been able to treat its wastewater in accordance with State Department of Health regulations. In addition, according to the Consumer Advocate, in its response to CA-IR-1,<sup>10</sup> HOH represents that it has sufficient capacity and ability to continue providing utility service to its customers and the KSS customers covered by the Agreement. HOH contends that its current plant flow average is approximately 350,000 gpd, while its plant capacity is 800,000. Moreover, HOH states that development of its surrounding area has lagged behind earlier estimates, and it does not expect flows to its plant from new developments until at least the second quarter of 2008. In addition, HOH represents that its current and forecasted flows will total 770,000 gpd, and with the addition of the 200,000 gpd for the Agreement, the projected customer demand will increase to 970,000 gpd. HOH contends, however, that with the CIAC contribution from the Agreement, completion of Phase III of its plant expansion would bring the plant's capacity up to 1,000,000 gpd.<sup>11</sup>

Second, with respect to the reasonableness of the terms and conditions of the Agreement, including the amount of CIAC paid, the Consumer Advocate, in general, asserts that such terms are reasonable, but notes some concerns and recommends certain conditions to address those concerns as follows: (1) Applicants should be required to revise Section B of the Agreement to reflect that the current treatment capacity of PWRP is 800,000

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<sup>10</sup>Consumer Advocate's Submission of IRs, filed on January 9, 2007.

<sup>11</sup>See CA-IR-1.

gpd, not 1,000,000 gpd, as currently stated; and (2) Applicants should be required to include cost support information with the filing of the wholesale monthly service charge to KSS by HOH for wastewater treatment at PWRP to allow the commission to assess the reasonableness of the proposed tariff.

Third, The Consumer Advocate states that the proposed Agreement is in the public interest in that the Agreement allows KSS to provide wastewater service for the initial phase of Kukui`ula thus making more housing available and making use of HOH's excess treatment capacity while not impacting Applicants' existing tariff rates and customer services. The Consumer Advocate adds that the Agreement also gives KSS the timing flexibility to determine the best use of its funds to either build its own replacement plant or contribute to building a new regional plant; both of which should utilize more advanced effluent treatment technology.

Finally, the Consumer Advocate has the following additional recommendations: (1) any ratemaking impact resulting from the proposed Agreement should be addressed in the next rate proceeding should an application for rate adjustment be filed using a test year that falls within the term of the Agreement; (2) all transaction costs associated with the Agreement should not be included in Applicants' rate bases and/or revenue requirements for ratemaking recovery purposes; (3) Applicants should separately record all the transaction and transition costs associated with the execution of the Agreement to allow for a review in any such rate case proceeding; (4) KSS should be required to make a decision on its permanent long term plan

(i.e., a KDCH designed replacement plant, regional treatment plant, or other alternative, to provide wastewater treatment service to its customers) and submit a report on its decision to the commission and the Consumer Advocate<sup>12</sup>; (5) should Applicants determine that the terms of the Agreement will be permanent, increase in size, or extend significantly beyond the 3-year range of the Kukui`ula development's initial phase, Applicants should be required to file for commission approval of the proposal to extend the existing arrangement or continue the service on modified terms, or in the alternative, HOH should request commission approval to expand its service territory.

## II.

### Discussion

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 commission will approve the Agreement if it is reasonable and consistent with the public interest.<sup>13</sup> A transaction is reasonable and in the public interest if it will not adversely affect the carrier's fitness,

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<sup>12</sup>In its response to CA-IR-3b, Applicants state that KSS will make a decision by the end of 2007.

<sup>13</sup>See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

willingness, and ability to provide wastewater services in Hawaii, as authorized by the commission.<sup>14</sup>

Upon a review of the record in this docket, the commission finds the Agreement to be reasonable and in the public interest. The commission finds that the Agreement will allow Applicants the flexibility to determine the best way to provide long term wastewater treatment to the Kukui`ula customers and the Koloa-Poipu community; and the Agreement will not have any negative impact on Applicants' existing operations nor will it impact Applicants' existing tariff rates or customer services. Accordingly, the commission concludes that the Agreement should be approved, pursuant to HRS § 269-7(a), subject to the conditions identified by the Consumer Advocate as set forth above in section I.C.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The Agreement, as described in the Application, is approved, subject to the conditions set forth in section I.C, above.

2. Failure to promptly comply with the conditions set forth above may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

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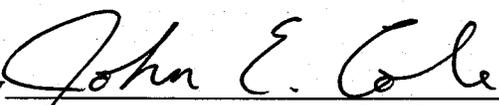
<sup>14</sup>See Decision and Order No. 19304, filed on April 17, 2002, in Docket No. 02-0041.

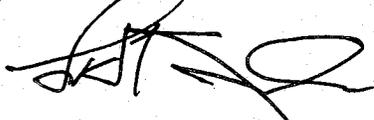
3. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii SEP 12 2007.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Benedyne S. Stone  
Commission Counsel

2006-0492.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23654 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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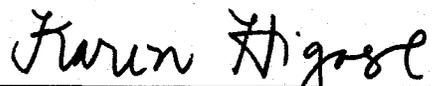
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DATED: SEP 12 2007