

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
KILAUEA IRRIGATION COMPANY, INC. )  
Investigation into the Breach of )  
The Kaloko Reservoir That Occurred )  
In Kilauea, Hawaii on March 14, 2006. )

DOCKET NO. 2006-0089

ORDER NO. 23813

Filed Nov. 8, 2007  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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

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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 ----- )  
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KILAUEA IRRIGATION COMPANY, INC. ) Docket No. 2006-0089  
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Investigation into the Breach of ) Order No. 23813  
The Kaloko Reservoir That Occurred )  
In Kilauea, Hawaii on March 14, 2006.)  
----- )

ORDER

By this Order, the commission suspends the investigation it initiated in this proceeding by Order No. 22390, filed on April 13, 2006 ("Order No. 22390").

I.

Suspension

By Order No. 22390, the commission opened the investigation herein concerning KILAUEA IRRIGATION COMPANY, INC. ("KICI"), a regulated public utility in the State of Hawaii, and the breach of the Kaloko Reservoir in Kilauea, Hawaii on March 14, 2006, as it pertains to the operations and services provided by KICI.

The commission opened the investigation pursuant to Hawaii Revised Statutes ("HRS") § 269-9, which provides:

Every public utility shall report to the public utilities commission all accidents caused by or occurring in connection with its operations and service, and the commission shall investigate the causes of any accident which results in loss of life, and may investigate any other accidents which in its opinion require investigation.

HRS § 269-9.

The commission set forth the following issues to be investigated in this proceeding:

- a. Whether the breach of the Kaloko Reservoir was caused, to any degree, by KICI's operations and services as a regulated public utility;
- b. Whether any statute or rule within the jurisdiction of the commission was violated;
- c. The subsequent impact of the breach of the Kaloko Reservoir on KICI's operations; and
- d. In the event a causal connection between KICI's provision of utility services and the breach of the Kaloko Reservoir is found, the steps, if any, that may be taken to avoid similar accidents in the future.<sup>1</sup>

The commission, however, noted that:

By opening this investigation as required under HRS § 269-9, the commission does not at this point intend to imply or presume wrongdoing by the utility and conducts this investigation cognizant of its limited jurisdiction over public utilities, as further investigation and additional information will be required prior to making such a determination. In addition, in opening this investigation, the commission is cognizant that others, including the State Attorney General's office, are investigating the breach of the Kaloko Reservoir. It is the commission's understanding that the Attorney General's office, in particular, is already well underway with its investigation and appears to be expending considerable resources on its investigation of the Kaloko Reservoir breach. Consequently, it may be appropriate to await the results of the Attorney General's investigation to the extent information relevant to the

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<sup>1</sup>Order No. 22390 at 2-3.

commission's jurisdiction is made available by the Attorney General's office.<sup>2</sup>

Since the commission opened this docket, Special Deputy Attorney General Robert Carson Godbey conducted a civil investigation, which concluded with the issuance of the "Report of the Independent Civil Investigation of the March 14, 2006, Breach of Ka Loko Dam" ("Civil Investigation Report") in January 2007. As noted in the Civil Investigation Report, at least three civil lawsuits, as well as potential criminal investigations are still pending in connection with the breach of the Kaloko Reservoir.<sup>3</sup> Although the Civil Investigation Report provides detailed factual findings and legislative recommendations, the Civil Investigation Report expressly states that it "does not draw conclusions as to legal blame, civil liability, or criminal guilt[.]"<sup>4</sup> In particular, noting the pending litigation, the Civil Investigation Report states: "To draw conclusions as to legal blame would be irrelevant and distracting to those legal proceedings that will, in fact, determine legal blame. It could also unfairly prejudice the rights of one or more of the parties."<sup>5</sup>

Upon review and based on the above, the commission finds it appropriate and prudent at this juncture to suspend the investigation in this docket until, at a minimum, issues of fault and liability are finally determined in the pending civil

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<sup>2</sup>Id. at 3.

<sup>3</sup>See Civil Investigation Report at 5.

<sup>4</sup>Id.

<sup>5</sup>Id. (footnote omitted).

lawsuits. The commission makes this determination recognizing, that the issues in this docket, while intended to be narrowly drawn as pertaining to the service and operations of KICI, a regulated utility, may nevertheless be broadly construed to encompass final issues of legal blame, civil liability, or criminal guilt in connection with the breach of the Kaloko Reservoir. Accordingly, similar to the reasons discussed above in the Civil Investigation Report, the commission suspends this docket at least until liability is further determined and apportioned by the appropriate courts of law in which the civil lawsuits are pending.<sup>6</sup>

## II.

### Order

#### THE COMMISSION ORDERS:

This docket is suspended until further order of the commission.

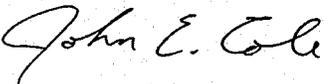
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<sup>6</sup>The commission clarifies that its decision herein suspends the investigation the commission opened pursuant to Order No. 22390 pertaining to the breach of the Kaloko Reservoir, but in no way infringes on the commission's continuing authority to regulate and monitor the operations of KICI as a regulated public utility.

DONE at Honolulu, Hawaii NOV - 8 2007.

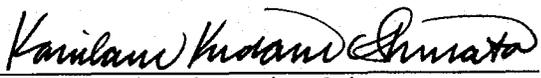
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel

2006-0089.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23813 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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THOMAS A. HITCH  
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Karen Higashi  
Karen Higashi

DATED: NOV - 8 2007