

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application )  
 )  
 of )  
 ) Docket No. 2009-0048  
 MOLOKAI PUBLIC UTILITIES, INC. )  
 )  
 For review and approval of rate )  
 increases; revised rate schedules; and )  
 revised rules. )  
 \_\_\_\_\_ )

MOLOKAI PUBLIC UTILITIES, INC.'S AND  
THE DIVISION OF CONSUMER ADVOCACY'S  
JOINT MOTION FOR CLARIFICATION OR, IN THE  
ALTERNATIVE, FOR RECONSIDERATION OF  
INTERIM DECISION AND ORDER FILED ON MAY 28, 2010

MEMORANDUM IN SUPPORT OF MOTION

and

CERTIFICATE OF SERVICE

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PUBLIC UTILITIES  
COMMISSION  
FILED

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This motion is filed pursuant to Hawaii Administrative Rules §§ 6-61-41 and 6-61-137, and is supported by the attached Memorandum in Support of Motion and the record and files in this case.

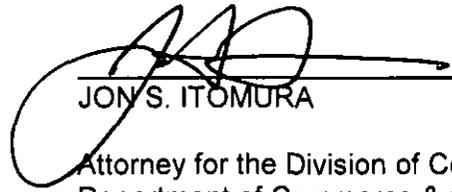
DATED: Honolulu, Hawai'i, June 9, 2010.



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Department of Commerce & Consumer Affairs



I. **Phase-In**

A. **Clarification**

The following language of the Interim D&O could be interpreted to mean that the Phase 2 rates must go into effect as interim rates immediately following a six month interim period.

MPU's interim increase in rates will be applied on an across-the-board, phased-in basis . . . . The Phase 1 rates shall take effect following the commission's review and affirmative approval of the revised tariff sheets to be filed by MPU and shall remain in effect for a **maximum period of six months**, with Phase 2 rates to follow thereafter. (emphasis added)

Interim D&O at 2.

Because this interpretation is not in accord with MPU's and the Consumer Advocate's Joint Updated Statement of Probable Entitlement filed on May 18, 2010, the Movants seek to have the Commission clarify its Interim D&O on this matter.

MPU's and the Consumer Advocate's Joint Updated Statement of Probable Entitlement reiterated their settlement agreement, which included a two-phase rate increase. *In preparing the joint statement of probable entitlement, MPU and the Consumer Advocate reached an understanding that they would jointly recommend that the interim rates would be the Phase 1 rates, and that the Phase 1 rates would be effective for the entire length of the interim period (i.e., the interval between the Commission's interim and final orders in this proceeding) or for six months, whichever was later. For example, if the interim rates went into effect on June 15, 2010 and the Commission issued its final decision and order in this case on November 1, 2010, the Phase 1 rates would be effective until December 15, 2010, after which the Phase 2 rates would become effective. On the other hand, if the interim rates went into effect on June 15, 2010 and the Commission issued its final decision and order on January 1, 2011, the Phase 1 rates would be effective until January 1, 2011 and the Phase 2 rates would become effective on January 2, 2011.*

However, under the language of the Interim D&O it is possible that the Phase 2 rates would go into effect on December 15, 2010, even if the Commission does not issue its final decision and order until January 1, 2011.

Movants understand that the Commission is not bound to accept all - or any - of the recommendations in the Joint Updated Statement of Probable Entitlement (as the Commission indeed has not). However, as there was no discussion as to why this recommendation was rejected, if indeed it was rejected, Movants seek clarification on this matter.<sup>1</sup>

#### **B. Reconsideration**

In the event that the Interim D&O did intend to authorize a "maximum" six month period for Phase 1 rates, Movants respectfully request that the Commission reconsider its Interim D&O to amend the Phase 1 rate period to mitigate the potential for rate shock and promote the best interest of the rate payers.

As discussed above, MPU's and the Consumer Advocate's Joint Updated Statement of Probable Entitlement reiterated their settlement agreement, which included a two-phase rate increase. In preparing the joint statement of probable entitlement, MPU and the Consumer Advocate reached an understanding that, in the best interest of the rate payers, they would jointly recommend that the interim rates would be the Phase 1 rates, and that the Phase 1 rates would be effective for the entire length of the interim period or for six months, whichever was later.

In its Interim D&O, the Commission acknowledged and apparently agreed with the notion of potential rate shock and the related phase-in recommendation in the Joint

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<sup>1</sup> It should further be noted that the same type of understanding regarding phase-in was reached between the Consumer Advocate and Wai'ola O Moloka'i in Docket No. 2009-0049. See Division of Consumer Advocacy's and Wai'ola O Moloka'i, Inc.'s Joint Updated Statement of Probable Entitlement filed on May 21, 2010 in Docket No. 2009-0049. In that case, the Commission appears to have adopted the interim approach proposed by the parties. See Interim Decision and Order filed on May 28, 2010 in Docket No. 2009-0049 at 15.

Updated Statement of Probable Entitlement, yet offered no discussion related to amending the Movants' recommended phase-in periods.

Concomitantly, MPU agrees to phase-in the interim rates, thereby voluntarily foregoing the assessment and collection of additional revenues to which it is entitled, in order to minimize the potential for rate shock amongst its ratepayers. **Accordingly**, the Phase 1 rates shall take effect following the commission's review and affirmative approval of the revised tariff sheets to be filed by MPU and shall remain in effect for a maximum period of six months, with Phase 2 rates to follow thereafter. (emphasis added)

Interim D&O at 16.

Hawaii Administrative Rules § 6-61-137 requires a showing that the Interim D&O was unreasonable, unlawful or erroneous. Movants offer that a plain reading of the Interim D&O infers the Commission's acknowledgment of the potential for rate shock amongst ratepayers. Thus, the need to set a period of no less than six months for Phase 1 rates would be consistent with that concern and a reasonable result. The current language may have unintentionally and erroneously referred to a "maximum" six month Phase 1 rate period. In addition, the Movants asserts that setting a maximum six month Phase 1 rate period is unreasonable as both the Consumer Advocate and MPU have agreed that a rate design incorporating a phase-in of rates allowing for a potential Phase 1 period of less than six months, but possibly longer, would be in the benefit of the rate payers. A Commission decision in contrast to that settlement position would arguably favor the utility's financial circumstances over the rate payers' potential rate shock. That decision, however, is in contrast with the utility's position as provided in the Joint Updated Statement of Probable Entitlement filed on May 18, 2010.

Therefore, based upon the foregoing, the Movants respectfully request that the Commission reconsider its interim decision to have Phase 1 rates remain in effect for a maximum period of six months. It was the Movants' intent and recommendation that it was in the rate payers' best interest that the Commission consider the six month period to be a "minimum period" as opposed to a "maximum period" in order to allow rate

payers as much time as possible to accommodate their transition to paying higher rates. Further, considering that Movants advocated for and requested almost the identical relief in Docket No. 2009-0049, the Movants request that the Commission consider language similar to what was provided in the Commission's Interim Decision and Order, filed on May 28, 2009 in the Wai'ola O Moloka'i, Inc. rate case Docket No. 2009-0049.

Therefore, the Phase 2 rates should become effective at the end of the six-month period following the effective date of the commission's review and affirmative approval of the revised tariff sheets, or as of the effective date of the commission's final decision and order, whichever comes later.

See Docket No. 2009-0049, Interim D&O at 14.

## II. Refund

Based on the following analysis, the Movants seek confirmation that, in the event a refund is required, the refund amounts will not include any interest payments.

In the event that the final rates determined by the commission are less than the interim rates, the law requires MPU to refund to its customers any excess amounts collected. Accordingly, the Commission ordered:

MPU will be required to refund to its customers any excess amounts collected under this Interim Decision and Order, together with such interest as provided for by HRS § 269-16(d), if the total final increase approved by the commission is less than the total interim increase granted by this Interim Decision and Order.

Ordering Paragraph No. 3, Interim D&O at 20.

Under HRS § 269-16(d) the interest required to be refunded shall be "at a rate equal to the rate of return on such public utility's rate base found to be reasonable by the commission[.]" In this case, the rate of return was approved by the Commission for interim rates was zero.

For purposes of probable entitlement, the commission accepts MPU's and the Consumer Advocate's break even, no rate of return on rate base approach, which is the same methodology initially advocated by the Consumer Advocate in its statement of probable entitlement.

Interim D&O at 14.

Consequently, if a refund is required when the final rates are determined, no interest amounts would be included in the refunded amounts.

**III. Request**

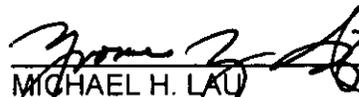
Based on the foregoing, Movants respectfully request that the Commission:

- (1) clarify, or in the alternative, reconsider, the order regarding the phase-in such that the Phase 2 rates shall become effective at the end of the six-month period following the effective date of the Commission's review and affirmative approval of the revised tariff sheets, or as of the effective date of the Commission's Final Decision and Order, whichever comes later; and
- (2) confirm that, in the event a refund is required, that no interest amounts need be refunded.

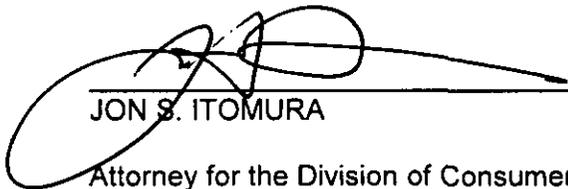
Pursuant to Hawaii Administrative Rules § 6-61-41(b), Movants assert that they do not request a hearing for the determination of either the motion for clarification or in the alternative, the motion for reconsideration.

DATED: Honolulu, Hawai'i, June 9, 2010.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I (we) hereby certify that copies of the foregoing document were duly served on the following parties, by having said copies delivered as set forth below:

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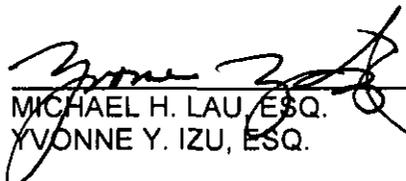
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