

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of----)
MOLOKAI PUBLIC UTILITIES, INC.,)
WAI'OLA O MOLOKA'I, INC., and)
MOSCO, INC.)
For Temporary Rate Relief.)
_____)

DOCKET NO. 2008-0115

ORDER INSTITUTING A PROCEEDING
TO PROVIDE TEMPORARY RATE RELIEF TO MOLOKAI
PUBLIC UTILITIES, INC., WAI'OLA O MOLOKA'I, INC., AND MOSCO, INC.

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PUBLIC UTILITIES
COMMISSION

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TO PROVIDE TEMPORARY RATE RELIEF TO MOLOKAI
PUBLIC UTILITIES, INC., WAI`OLA O MOLOKA`I, INC., AND MOSCO, INC.

By this Order, the commission initiates a proceeding to provide any required temporary rate relief, via a temporary surcharge, to MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), WAI`OLA O MOLOKA`I, INC. ("Wai`ola"), and MOSCO, INC. ("Mosco") (collectively, "Utilities"). In doing so, based on the commission's review and analysis of the Utilities' available financial information, the commission proposes the following temporary rate relief for MPU and Wai`ola: (1) for MPU, an increase in revenues of \$297,965, which is 40.95% more than its 2007 reported water revenues of \$727,458; and (2) for Wai`ola, an increase in revenues of \$163,839, which is 121.50% more than its 2007 reported water revenues of \$134,813. As discussed further herein, because the commission finds that Mosco is still financially viable and operating at a profit, based solely on the limited available information provided to the commission, the commission proposes a 0.00% increase over present rates for Mosco.

The temporary rate relief approved herein shall be effective for a period of six (6) months from the date of an order by the commission approving the increases; unless otherwise ordered by the commission. The commission further directs the parties¹ herein to submit comments, if any, on the proposed temporary rates within five (5) days of the date of this Order.

I.

Background

A.

Utilities

MPL, based on information provided by MPL to the commission, is affiliated with companies that provide utility services on the island of Molokai in the County, three of which -- MPU, Wai'ola, and Mosco -- are regulated by the commission. Details about the regulated utilities are described below.

1.

MPU

MPU, a Hawaii corporation, is a public utility authorized to provide water service in the Kaluakoi area on the

¹As discussed further below, the commission names as parties to this proceeding: the Utilities, Molokai Properties Limited, dba Molokai Ranch ("MPL"), the County of Maui ("County"), and the Department Of Commerce And Consumer Affairs, Division Of Consumer Advocacy ("Consumer Advocate"), an ex officio party to any proceeding before the commission (collectively, "Parties"). See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

west end of the island of Molokai. MPU was granted a certificate of public convenience and necessity ("CPCN") by the commission in Decision and Order No. 6834, filed on October 29, 1981, in Docket No. 4112. MPU provides drinking and irrigation water to the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands and Moana Makani subdivisions, and Maui County parks.

2.

Wai`ola

Wai`ola is a Hawaii corporation that is wholly owned by MPL. Wai`ola is a public utility authorized to provide water utility services to residential, commercial, and agricultural customers. Wai`ola was granted its CPCN in Decision and Order No. 12125, filed on January 13, 1993, in Docket No. 7122. Wai`ola services businesses, residences, churches and Maui County Parks located in Maunaloa, Kualapuu, Kipu, Manawainui, and the Molokai Industrial Park areas on the island of Molokai.

3.

Mosco

Mosco, a Hawaii corporation, is a wholly owned subsidiary of Kaluakoi Sewer, LLC, which is an affiliate of MPL. Mosco is a public utility that provides wastewater service in its service area of Kaluakoi on the island of Molokai, pursuant to a CPCN issued by the commission in Decision and Order No. 7141, filed on July 15, 1982, in Docket No. 4444. Specifically, Mosco

operates the wastewater treatment facility located in the Kaluakoi Resort area that services businesses and residents in the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands and Moana Makani subdivisions.

B.

Planned Termination of Utilities' Services

In late March 2008, MPL, pursuant to its announcement to cease all current business operations on Molokai, met with the commission to discuss the effect of its cessation of business on Molokai on its Utilities. At the meeting, MPL informed the commission that MPU and Wai'ola incurred substantial losses in 2007. MPL further stated that, due to the shutdown of MPL's other operations on Molokai, MPL would no longer be able to subsidize its utility companies, and it was planning for their disposal within six months.

By letter dated May 30, 2008, the Utilities later reduced their timeline for disposing of their assets. In the May 30, 2008 letter, MPL stated:

For a significant period of time, neither Wai'ola nor MPU has generated revenues sufficient to pay its operating expenses. On March 24 of this year, representatives of our parent company, [MPL,] met with the Public Utilities Commission to inform it that MPL would provide the financial support needed to cover these operating deficits only for a limited period of time. MPL sought the Commission's assistance in disposing of Wai'ola and MPU within six months.

Since that meeting, MPL has conducted meetings with Molokai resident associations, the Mayor of the County of Maui and representatives of the State of Hawaii in an effort to transfer the assets and operations of Wai'ola and MPU so that services would not be interrupted. We regret to say that those efforts have been unsuccessful. There is an obvious reluctance of those parties to take on the litigation with respect to water allocations and the other financial burdens associated with the operation of Wai'ola and MPU.

Recently a Supreme Court decision required MPU to re-apply to the State Commission on Water Resources for a permit to operate Well 17. This has confronted MPU with a dilemma. It does not have the funds to make that re-application, although it wishes to comply with the court's directive and to avoid any disruption of operations. This is an unsatisfactory situation that we lack the means to remedy.

While MPL was operating Molokai Ranch, the Ranch used water furnished by Wai'ola and MPU. MPL therefore provided Wai'ola and MPU with the funds necessary to cover the substantial deficit between the utilities' revenues and their operating costs. However, with the closing of the Ranch, Wai'ola and MPU have been advised by MPL that, after August of this year, MPL will cease providing them with funds. This will make it impossible for Wai'ola and MPU to continue in operation after August.

Although we have looked at the possibility of requesting rate increases sufficient to make Wai'ola and MPU self-sustaining, we simply do not have the funds necessary to go through such lengthy and costly proceedings.

We are therefore sending this letter to provide notice to the Commission, the County of Maui, the State of Hawaii and the customers of Wai'ola and MPU that, unless some public or private entity is located to take over the operations of these three companies by the end of August, there will probably be an unavoidable termination of services to those customers. Wai'ola and MPU and Mosco are ready to cooperate fully in

the surrender or transfer of their certificates, and in any transfer of the assets of the companies.² [Emphasis added.]

By letter dated June 5, 2008, the Consumer Advocate requested that the commission not allow the Utilities to terminate the provision of services by the end of August, asserting as follows:

As the Commission is well aware, the [Consumer Advocate] has a statutory obligation to "represent, protect, and advance the interests of all consumers, including small businesses of utility services." Haw. Rev. Stat. § 269-51. Given the Consumer Advocate's role, we are deeply troubled by Molokai Utilities' suggestion that their obligation to serve their customers may be terminated, at their discretion, as a result of their declared lack of sufficient revenues to recover the operating costs for Wai'ola and [MPU]. Because the Molokai Utilities were afforded the exclusive opportunity to provide water and wastewater services in their respective service areas pursuant to the [CPCNs] granted by the Commission, the Molokai Utilities received a benefit from such exclusive rights and accepted the corresponding obligation to provide utility services to their customers. The public utility services provided by the Molokai Utilities are deemed essential to the health and safety of their customers. As a result, their obligation to provide such necessary services cannot be carelessly abandoned, as seems to be suggested by the letter obtained by the Consumer Advocate.

The Molokai Utilities cite hardship associated with their historical operating losses as justification for terminating services. If the Molokai Utilities desire to file applications for general rate increases with the Commission, the Consumer Advocate is more than willing to commit resources to expedite its review of such applications in a timely manner. If such filings are made, the

²Letter dated and filed on May 30, 2008, from the Utilities to the commission, at 1-2.

Molokai Utilities should be required to comply with the Commission's rules governing notice requirements to customers, ensuring that customers are provided their fair opportunity to provide input to the Commission, the Molokai Utilities, and the Consumer Advocate.

The Consumer Advocate respectfully requests that the Commission not allow the Molokai Utilities to terminate the provision of the public utility services for which they are authorized to provide at the end of August, as they suggest. The Consumer Advocate urges the Commission to inform the Molokai Utilities that the Molokai Utilities cannot cease the provision of the public utility services they provide unless and until the Commission approves either a transfer or a surrender of the Molokai Utilities' CPCNs.³

By letter dated June 5, 2008, the commission ordered the Utilities to continue providing service unless and until the commission approves a transfer or surrender of their CPCNs:

As you know, the Utilities have a duty to provide service to their customers; and, as such, they are required to provide service unless and until the Commission approves a transfer or surrender of their [CPCNs]. While the Commission is cognizant of the Utilities' present financial conditions, it cannot and will not approve a surrender or transfer of the CPCNs unless and until another public or private entity can be found to operate the water and wastewater systems. The Utilities must continue to operate to ensure the health and safety of their customers. The Commission is aware of the attempts made by [MPL] and the Utilities to secure another provider of utility services, and is also aware that the County of Maui, as an existing provider of water and wastewater services on Molokai, appears to be the most viable alternative provider. Nonetheless, until the County or other third party takes over the operation of the Utilities' water and wastewater systems, the Commission expects the Utilities and MPL to take all

³Letter dated and filed on June 5, 2008, from the Consumer Advocate to the commission, at 1-2.

necessary and prudent action to continue operations.⁴

In addition, in its June 5, 2008 letter to the Utilities, to facilitate the transition of the Utilities to a third party or parties, the commission directed the Utilities to submit, by June 12, 2008, the following required information and documentation:

- A transition plan for their continued operation beyond August 2008, which "should include a detailed description of what needs to be done to ensure that the Utilities are able to continue to provide service in the absence of a third party assuming responsibility for the systems";
- The financial requirements of each of the three Utilities to be self-sustaining and the impact on the Utilities' ratepayers, including detailed documentation as to the revenue requirements for each Utility, their expenses, and the likely resulting rates that will be required to ensure the continued provision of utility services;
- The amount of money that MPL has been providing to the Utilities over the last two years broken down by month and by Utility;
- A description of all Utility assets, ownership and valuation of the assets and the terms of any conveyance of those assets; and
- With regard to Mosco, an explanation as to why the Utilities have stated that "unless some public or private entity is located to take over the operation of these three companies" "there will probably be an unavoidable termination

⁴Letter dated June 5, 2008, from the commission to the Utilities, at 1.

of service" to Mosco customers in August.⁵

The Utilities responded to the commission's June 5, 2008 letter by letter dated June 11, 2008. In that letter, the Utilities did not provide a transition plan (or other information requested by the commission), asserting that "[t]he transition plan of the utilities is dependent on the response that we receive from the County of Maui or the State of Hawaii."⁶ The Utilities, moreover, continued their assertions that they lack the financial capacity to continue operations, and that the County is the best entity to take over the Utilities' systems.

In a letter dated June 13, 2008, the commission responded to the Utilities as follows:

By letter dated June 11, 2008, the Utilities responded to the Commission's June 5, 2008 letter stating that they lack the financial capability to provide water and wastewater services. The Utilities, however, failed to provide the information and documentation requested in the Commission's letter. The Utilities also failed to explain why Mosco lacks the financial capability to operate its wastewater system when its revenues appear to exceed its expenses.

Apart from Mosco, the Commission acknowledges as it did in its June 5, 2008 letter that MPU and Wai'ola appear to be financially unable to provide services absent a rate increase. The Commission, however, first raised the issue of the possibility of the Utilities seeking rate increases months ago and the Utilities apparently made the intentional decision to forego seeking rate relief from the Commission. Nonetheless, given the circumstances, the Commission has no choice but to take the unprecedented step of opening

⁵See id. at 2.

⁶Letter dated June 11, 2008 and filed on June 12, 2008, from the Utilities to the commission, at 1.

a rate case proceeding to order a temporary rate increase for MPU and Wai`ola. With appropriate rate relief, the Commission expects the Utilities to continue to provide service until the County or a third party can take over the Utilities' water and wastewater operations.⁷ [Emphasis added.]

Also by letter dated June 13, 2008, the commission informed the County that, "[t]o address the financial issues raised by the Utilities as the basis for their inability to continue operations," the commission would be opening a docket to temporarily increase the water rates for MPU and Wai`ola, so that these Utilities would be able to provide uninterrupted water service, temporarily.⁸ The commission recognized in its letter that: a temporary rate increase is only a short-term solution; the commission cannot compel the Utilities to operate in perpetuity; and there is no guarantee that ratepayers can afford the increased rates. As such, the commission stated:

As it is the County's responsibility to ensure that its citizens have access to basic water and wastewater service, the Commission urges the County to act expeditiously to do what is necessary to acquire the water and wastewater systems. While the Commission will do all it can within its authority to seek to ensure that continued provision of water and wastewater service for as long as possible, we ask that the County be ready to take these systems over when the Utilities eventually discontinue providing service.⁹

⁷Letter dated June 13, 2008, from the commission to the Utilities, at 2.

⁸See Letter dated June 13, 2008, from the commission to the County, at 1.

⁹Id.

Based on the foregoing background, the commission initiates this proceeding.

II.

Discussion

A.

Commission Authority

The commission is authorized to initiate this proceeding pursuant to several statutes. First, the commission is granted broad regulatory authority by HRS § 269-7, which provides, in relevant part:

(a) The public utilities commission and each commissioner shall have the power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, . . . the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws . . . and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

. . . .

(c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint.

HRS § 269-7(a) and (c) (emphasis added).¹⁰

Similarly, in HRS § 269-6, the commission is broadly vested with "general supervision . . . over all public utilities[.]" More particularly, under HRS § 269-16, the commission is authorized to regulate the rates, charges, and practices of a public utility:

- (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission
- (b) No rate, fare, charge, classification, schedule, rule, or practice, . . . shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges.

HRS § 269-16(a) and (b).

In addition, under HRS § 269-16(c), the commission may in its discretion, after public hearing, "authorize temporary increases in rates, fares, and charges[.]"

B.

Temporary Proposed Rate Relief

As set forth above in Section I.B., to address the Utilities' alleged financial inability to continue utility services beyond August 2008, the commission deems it necessary in

¹⁰Commission investigatory authority is also set forth in HAR § 6-61-71.

these exigent circumstances to initiate, sua sponte, this proceeding to provide temporary rate relief to the Utilities. The rate increases approved herein are to provide only temporary relief to the Utilities, until the County or a third party is ready to take over the Utilities' systems. Thus, the rate increases approved herein shall be effective for a period of six (6) months from the date of an order by the commission approving the increases; unless otherwise ordered by the commission.

The commission is also concerned about the effect the temporary rate increases will have on ratepayers. Nonetheless, given the circumstances, the commission has no choice but to take the unprecedented step of opening this proceeding and ordering temporary rate increases to ensure the continuation of water and wastewater utility services that are vital to the health and welfare of the residents of West Molokai.

Based on currently available financial information for the Utilities -- specifically, their most recent 2007 Annual Financial Reports filed with the commission, the commission proposes the following rate increases for each Utility:

1.

MPU

MPU may increase its rates, on an interim basis, to such levels as will produce, in the aggregate, \$297,965 in additional revenues (40.95% more than its 2007 reported water revenues of \$727,458). This will result in total revenues of

\$1,025,423, which should cover MPU's regulated operating expenses. The increase will be in the form of a temporary surcharge to be applied to MPU's user and standby charges. Specifically, a surcharge of 40.95% will be applied to the total of a customer's monthly user charge (including water consumption charge, if applicable), which is currently \$3.18 per 1,000 gallons,¹¹ and standby charge, which varies based on meter size. As stated above, the temporary rate increase for MPU shall be effective for a period of six (6) months from the date of an order by the commission approving the increase; unless otherwise ordered by the commission.

2.

Wai'ola

Wai'ola may increase its rates, on an interim basis, to such levels as will produce, in the aggregate, \$163,839 in additional revenues (121.50% more than its 2007 reported water revenues of \$134,813). This will result in total revenues of \$298,652, which should cover Wai'ola's regulated operating expenses. The increase will be in the form of a temporary surcharge to be applied to Wai'ola's user and service charges. Specifically, a surcharge of 121.50% will be applied to the total of a customer's monthly user charge, which is currently \$1.85 per

¹¹Applying the 40.95% temporary surcharge to MPU's user charge will result in an increase in the user charge, from \$3.18 to \$4.48 per 1,000 gallons.

1,000 gallons,¹² and service charge, which varies based on meter size. As stated above, the temporary rate increase for Wai`ola shall be effective for a period of six (6) months from the date of an order by the commission approving the increase; unless otherwise ordered by the commission.

3.

Mosco

Mosco reports regulated net income of \$97,952, which results in an operating ratio of 47.30%. Consistent with prior commission decisions on operating ratios, Mosco's operating ratio is reasonable. Thus, the commission finds that no rate adjustment is required for Mosco at this time.

C.

Named Parties

The commission names the Utilities and the Consumer Advocate, which is an ex officio party to every proceeding before the commission, as parties to this proceeding. In addition, because MPL is affiliated with the Utilities, and owns property associated with the Utilities' service territories, the commission names MPL as a party to this proceeding.

The affected service territories and customers are part of the County of Maui. Moreover, the County already provides water and wastewater service in other areas on the island of

¹²Applying the 121.50% temporary surcharge to Wai`ola's user charge will result in an increase in the user charge, from \$1.85 to \$4.10 per 1,000 gallons.

Molokai. As addressed in the commission's June 13, 2008 letter to the County, the County has an interest in ensuring that its citizens have access to basic water and wastewater services.¹³ Accordingly, the commission finds good cause to include the County as a party to this proceeding.

D.

Comments on Proposed Rates

Due to the expedited nature of this proceeding, within five (5) days of the date of this Order, the Parties may provide comments on the proposed temporary rate increases, including, if applicable, financial information or documentation that would justify higher (or lower) temporary increases. If a Party seeks higher temporary increases, specific proposals for the increases, expressed in dollar figures or percentages, shall be provided.

E.

Continuation of Services

Pursuant to HRS § 269-7.5 and its legislative history, the commission orders the Utilities to continue to provide services unless and until the commission approves a transfer or surrender of their CPCNs, or otherwise ordered by the commission. Given the interim rate relief to be granted in this proceeding, the Utilities should now be financially capable of continuing operations, temporarily, until the County or a third party takes

¹³Also, the commission has been informed that the County is involved with at least one of MPL's unregulated utilities.

over the operation of the Utilities' water and wastewater systems.

F.

Public Hearing

Pursuant to HRS §§ 269-16 and 269-12, the commission will hold a public hearing in this docket on the island of Molokai as follows:

DATE: Tuesday, July 15, 2008
TIME: 10:00 a.m.
LOCATION: Maunaloa Elementary School
128 Maunaloa Road
Maunaloa, HI 96770

The commission will publish notice of the hearing statewide, including publication in The Molokai Times and the Molokai Dispatch. Pursuant to HAR § 6-61-57(1), motions to intervene or participate in this proceeding shall be filed with the commission no later than ten days after the public hearing, or by July 25, 2008.

III.

Orders

THE COMMISSION ORDERS:

1. This proceeding is initiated to provide the proposed temporary rate relief, as set forth in Section II.B, to MPU and Wai'ola.

2. The Parties to this proceeding shall be: MPU, Wai'ola, Mosco, the Consumer Advocate, MPL, and the County of Maui.

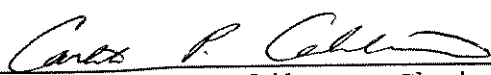
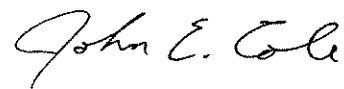
3. Within five (5) days of the date of this Order, the Parties may file comments on the proposed rate increases with the commission. If a Party seeks higher temporary increases, specific proposals for the increases, expressed in dollar figures or percentages, shall be provided.

4. The Utilities shall continue to provide utility services unless and until the commission approves a transfer or surrender of their CPCNs to a public or private third party, or otherwise ordered by the commission.

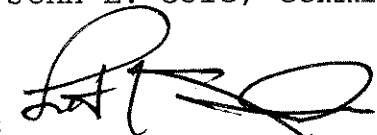
5. Failure to comply with paragraph 4, above, may subject the Utilities (and any other parties deemed to be responsible) to penalties as authorized by law.


DONE at Honolulu, Hawaii JUN 16 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By  By: 
Carlito P. Caliboso, Chairman John E. Cole, Commissioner

APPROVED AS TO FORM:

By: 
Leslie H. Kondo, Commissioner


Kaiulani Kidani Shinsato
Commission Counsel

2008-0115.s1

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
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