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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

In the Matter of:)	DOCKET NO. 2008-0116
)	
MOLOKAI PUBLIC UTILITIES, INC.,)	
WAI'OLA O MOLOKAI, INC., and)	MOTION TO INTERVENE
MOSCO, INC.)	
)	
)	
)	

MOTION TO INTERVENE

Comes now West Molokai Association (WMA), by and through its legal counsel, William W. Milks, pursuant to Sections 6-HAR-61-41 and 55 through 57, to move this Commission for authorization of WMA to participate as a party in the above-captioned proceeding with all of the attendant rights, including the right to be heard, to present evidence, and to cross-examine any testimonies adverse to WMA's interests.

The format and content of this motion conforms to the requirements set forth in Subsection 6-HAR-61-55(b).

NATURE OF MOVANT'S RIGHT TO PARTICIPATE AS A PARTY
[Refer Subsection 6-HAR-61-55(b)(1)]

WMA is a non-profit corporation organized to provide for the management, maintenance, protection, preservation, architectural control, and development of properties of the Island of

Molokai, within the area commonly referred to as "West Molokai" or "Kaluakoi" and to promote the health, safety, and welfare of the members of WMA.

WMA's membership is comprised of owners of the 817 properties located within the Kaluakoi/West Molokai area. Water and sewer services are provided to the members of WMA by two of the utility companies named as respondents in this Docket, namely Molokai Public Utilities, Inc and Mosco, Inc. (herein, "Utilities").

On May 30, 2008, Utilities provided notice to the Commission that unless some public or private entity assumes operations of Utilities by the end of August, 2008, Utilities would likely cease operations, resulting in the termination of essential services to customers of Utilities. Termination of essential services jeopardizes the health, safety, and public welfare of WMA's members and other individuals residing and conducting business in Utilities service area.

On June 16, 2008, The County of Maui filed a formal complaint against three utility companies which operate within the County of Maui, on the island of Molokai, namely Waiola O Molokai, Molokai Public Utilities Inc., and Mosco Inc. Only the latter two provide service to WMA's members.

Because the relief sought by County of Maui impacts WMA's interests, WMA seeks intervention as a party. Well established law governing interventions in Hawaii administrative hearings compels authorization of WMA to fully participate as a party in this proceeding.

**WMA'S PROPERTY, FINANCIAL AND OTHER INTERESTS IN THE PENDING
MATTER**

[Refer Subsection 6-HAR-61-55(b)(2)]

The Kaluakoi/West Molokai area includes homes and lots in the Papohaku Ranchlands, three condominium projects, homes and lots on the recently closed golf course, Moana Makani homes and lots, Papohaku Beach Park as well as other public beaches and facilities, and fire hydrants situated on major thoroughfares and connecting loop roads. All of these homes, condominiums, and public facilities require the essential services provided by Utilities to protect public health and safety.

As stated, supra WMA's membership owns 817 properties in Utilities service areas. Because Utilities have threatened to terminate services on August 31, 2008, WMA's members are threatened with loss of essential services.

Because County of Maui has -- at least preliminarily -- exhibited a reluctance to take over the two systems serving WMA, WMA has financial property, health and safety interests at stake.

THE EFFECT OF THE COMPLAINT INVESTIGATION ON WMA'S INTERESTS

[Refer Subsection 6-HAR-61-55(b)(3)]

As stated supra, the property and financial interests of the individual members of WMA may be severely and adversely impacted. In addition, the Commission's June 16, 2008 Order proposing a 40.95% increase for MPU's services will be born, virtually in its entirety, by individual members of WMA. The Commission has taken unprecedented action, intending to impose the consequences of Utilities' imprudent actions and inactions, squarely on WMA's members. The Commission's unprecedented step is proposed for a temporary period of six months.

Here the forms of relief sought by County of Maui in its complaint are a positive initial step – to thoroughly develop a full evidentiary record that will assist County, Commission, and WMA to evaluate the over-all situation, and to then take appropriate actions. While County of Maui's action is positive, Utilities appear uncooperative with the Commission and County of Maui (Refer, MPL's June 23, 2008 correspondence, and attachments in response to the Commissions directives/inquiries.) Thus, it appears the County's complaint proceeding against Utilities is a good first step, if it will not produce a long-lasting, positive outcome for WMA.

WMA had hoped that the Commission's initiative in HPUC Docket No. 2008-0115 would have had a positive impact on Utilities. The effect has been the opposite. By correspondence to the Commission (dated June 23, 2008), Utilities and MPL state that even with such massive rate relief the Commission's actions will not deter MPL from ceasing Utilities' operations:

"Should either the allocation proceeding (i.e. the Commission on Water Resource Management's Well 17 permit) be reconvened or the DOA require MPU to proceed with the development of an environmental assessment to determine the impact of the Utilities' use of the Molokai Irrigation System (MIS), MPU will not be able to meet those demands and will be forced to cease operation regardless of any rate increase." (Emphasis added.)

**NO OTHER FORUM GIVES PROMISE OF A SOLUTION TO THE PROBLEMS
WMA CONFRONTS**

[Subsection 6-HAR-61-55(b)(4)]

The interests of WMA's members are numerous, substantial, and varied; however, with regard to the posture taken by Utilities and MPL, the situation strongly suggests that WMA's interests are in peril. Therefore, WMA petitioned to intervene in HPUC Docket no. 2008-0115, to fully participate in that proceeding. But the outcome in that

proceeding may be a 50% increase in rates for a service Utilities says it will not provided. Therefore, this complaint proceeding may be the only means of WMA finding relief.

Unfortunately for WMA, its members' interests are the interests most severely adversely impacted if neither Complainant County of Maui nor Respondent MPL/Utilities acts responsibly. WMA needs to be a part of the proceeding.

**WMA'S SPECIFIC INTERESTS WILL NOT BE REPRESENTED BY ANY OF THE
EXISTING PARTIES**
[Subsection 6-HAR-61-55(b)(5)]

WMA has valuable information which may ultimately assist the County of Maui in its fact-finding efforts in HPUC Docket No. 2008-0116. For example, WMA's members have been monitoring the water and wastewater situation on the island for several years. WMA is intimately familiar with controversies regarding the permitting and transportation of water from Well No. 17 across the Molokai plateau to West Molokai.

WMA is an interested party and beneficiary of any permit issued in the CWRM contested case -- including matters appealed to the Hawaii Supreme Court and recently remanded to CWRM. Neither Utilities nor their successors will be able to provide water services to WMA members unless MPL or Utilities becomes active in the CWRM proceeding. An order compelling such action should be issued by this Commission in that regard, as well.

The interests of WMA are distinguishable and can otherwise be differentiated from the Hawaii Division of Consumer Advocacy (DCA). Because DCA must represent the interests of customers of Waiola O Molokai (which customers include Mauanaloa, Kualapuu, south Kalae and other adjacent areas in Central and West Molokai) there is less time for DCA to represent WMA's interests.

Another distinguishing feature is the fact that DCA neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer the Commission. Further, WMA has access to information not available to County or DCA, which will assist the Commission and DCA in arriving at an informed decision. That information might otherwise become available via time-consuming discovery procedures, but if WMA participates directly, fact-finding may be expected.

In light of the position taken by MPL and Utilities, it is unclear which party if any, can protect and advance WMA's interests. WMA being a party in this complaint proceeding is essential to ensure that both Utilities and County of Maui focus their efforts in a constructive direction, seeking a solution rather than the avoidance of their constitutional, legal and administrative responsibilities. For certain, WMA can fulfill a needed role if allowed to be a party to this complaint proceeding

**WMA'S PARTICIPATION WILL ASSIST IN THE DEVELOPMENT OF A SOUND
RECORD**

[Subsection 6-HAR-61-55(b)(6)]

WMA has valuable information which may ultimately assist both the County and the Commission in fact-finding efforts. For example, WMA's members have been monitoring the water and wastewater situation on the island for years. WMA is intimately familiar with controversies regarding the permitting and transportation of water from Well No. 17 across the Molokai plateau to West Molokai. With regard to permitting the future use of water extracted from Well 17, WMA's knowledge will be of great assistance in the development of a sound evidentiary record in this proceeding.

WMA is a party to the CWRM permitting process. MPL and Utilities initially represented to the CWRM in that proceeding that they were participating on behalf of their utility customers. Of late, however, MPL and Utilities have "dropped the ball" by missing filing dates, and appear to have forsaken the very interests they earlier purported to be protecting and advancing. The same may occur in this proceeding, as well. Therefore WMA is an essential party, if the County of Maui and the Commission hope to achieve a complete and reliable evidentiary record.

**WMA'S PARTICIPATION WILL NOT UNDULY BROADEN THE ISSUES OR DELAY
THE PROCEEDING**
[Subsection 6-HAR-61-55(b)(7)]

The Commission has yet to articulate the issues to be determined in this complaint proceeding. Thus, it remains uncertain as to the breadth of the issues to be resolved, or the depth with which a particular issue may be explored. Notwithstanding the uncertainty of issues, WMA herein represents that it will not unduly broaden the issues in the proceeding nor interpose requests or procedures that will unduly delay the proceeding. WMA desires to participate in a constructive fashion. As a major stakeholder in the outcome of this proceeding, WMA is motivated to articulate its position on issues formulated by the Commission, and endeavor to resolve such issues in the most informed possible manner, understanding the need for expediency.

WMA'S INTERESTS IN THE PROCEEDING DIFFER FROM THE GENERAL PUBLIC
[Subsection 6-HAR-61-55(b)(8)]

WMA's fundamental objective in the proceeding is to ensure the reliable provision of potable water for domestic use at reasonable rates over long-term. Presumably, this is the objectives of the Commission and the County, as well. The County's currently expressed interest appears to be a refusal to accept responsibility for providing basic water and sewer services if MLP and Utilities are true to their recent threats to terminate services.

In sum, WMA contends that its perspective on the anticipated issues in this case are unique, have value to the Commission, and should be heard.

WMA'S TENTATIVE POSITION ON COUNTY OF MAUI PROPOSED ACTIONS.
[Refer Subsection 6-HAR-61-55(b)(9)]

Absent any evidence that the County of Maui will take positive action to exercise its power of eminent domain or otherwise acquire Utilities, WMA takes the tentative position that this complaint proceeding should progress, that the initial fact-finding efforts of County of Maui be encouraged, and that the investigation by the Commission, with the assistance of WMA, progress in the direction that the evidence leads the parties. Neither Complainant County of Maui nor named respondents are proposing a long term solution satisfactory to WMA's urgent needs. WMA's role in this proceeding will be to foster a positive long-term solution for WMA and its membership.

CONCLUSION

Based on the foregoing, WMA respectfully requests the Commission to grant WMA full participation as a party, without limitation.

Dated: Honolulu, Hawaii, July 3, 2008.

Respectfully Submitted,

William W. Milks,
Counsel for West Molokai Association