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**DEPT. COMM. NO. 36**

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**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
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March 11, 2008

The Honorable Colleen Hanabusa  
President of the Senate  
State Capitol, Room 409  
415 South Beretania Street  
Honolulu, Hawaii 96813

The Honorable Calvin K.Y. Say  
Speaker of the House  
State Capitol, Room 431  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: PUC Docket No. 2006-0409, Waikoloa Resort Utilities, Inc., dba West Hawaii  
Utility Company – Application for Approval to Increase Rates

Dear Senate President Hanabusa and House Speaker Say:

The Public Utilities Commission ("Commission") respectfully submits this report in accordance with Hawaii Revised Statutes ("HRS") § 269-16(d). With respect to a public utility's completed rate case application filed with the Commission, HRS § 269-16(d) states in relevant part:

(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedule that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision.

. . . . if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in

this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares, and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete . . . .

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the consumer advocate . . . . If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

HRS § 269-16(d).

The Parties in this rate case proceeding are Waikoloa Resort Utilities, Inc., dba West Hawaii Utility Company ("WHUC"), and 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 Hawaii Administrative Rules § 6-61-62(a). WHUC is a public utility that provides water and wastewater services to the condominiums, hotels, and other commercial establishments located within the Waikoloa Beach service area on the island of Hawaii. WHUC also provides irrigation water service to two golf courses.

By way of background:

1. On December 29, 2006, as supplemented on January 26, 2007, WHUC filed its application seeking the Commission's approval to increase its water and wastewater rates, and of other related matters. The date of WHUC's completed application was January 26, 2007. Thus, pursuant to HRS § 269-16(d), the Commission was required to "make every effort to complete its deliberations and issue its decision as expeditiously as possible" by October 26, 2007, "provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules that it establishes."
2. On November 28, 2007, the Parties filed their Joint Statement of Probable Entitlement for interim relief purposes, and on December 21, 2007, the Commission issued Interim Decision and Order No. 23925, pursuant to

HRS § 269-16(d), which granted WHUC an interim increase in its water and wastewater rates.

3. On December 11, 2007, the Parties filed their Stipulation in Lieu of Hearing, which represented a global settlement on the merits of all the issues, and on March 10, 2008, the Commission issued Decision and Order No. 24085. In effect, the changes in WHUC's rates that were initially approved by the Commission in Interim Decision and Order No. 23925, will remain in effect pursuant to Decision and Order No. 24085. A copy of Decision and Order No. 24085 is enclosed for your information.

Here, as explained below, the Commission was not able to issue its final decision by October 26, 2007, as the Parties did not comply with the procedural time schedules established by the Commission in this proceeding, and waived the Commission's issuance of its final decision by October 26, 2007. Specifically:

1. On April 10, 2007, the Commission, by Order No. 23351, issued the procedural time schedule to govern this proceeding. In effect, the Commission, by Order No. 23351, adopted the deadline dates the Parties proposed to "comply strictly with" in order for the Commission to timely issue its final decision by October 26, 2007.

Specifically by Order No. 23351, the Commission, as proposed by the Parties, established pre-hearing deadline dates up to the filing of WHUC's Reply Statement of Position by June 22, 2007. As a result, the Commission "set a deadline of June 29, 2007 for the Parties to submit their proposed hearing schedule to the commission, or to notify the commission of their agreement to waive the evidentiary hearing, and that the proceeding is ready for decision-making by the commission." Order No. 23351, filed on April 10, 2007, at 2-3.

2. On June 29, 2007, the Parties timely submitted their proposed supplemental stipulated procedural order for the Commission's review and consideration, in compliance with Order No. 23351. However, the Parties' proposal included one or more deadline dates that would occur after October 26, 2007, including the deadline for the Parties to file their post-hearing reply briefs. By proposing one or more deadline dates that would occur after October 26, 2007, the Parties, in effect, voluntarily and intentionally waived the Commission's issuance of its final decision by October 26, 2007.

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3. On July 18, 2007, the Commission, by Order No. 23551, approved the Parties' voluntary and intentional waiver of issuance of the Commission's final decision by October 26, 2007.
4. On September 21, 2007, the Commission, by Order No. 23675, also approved the Parties' request to continue the prehearing conference and evidentiary hearing, and to reset the corresponding deadline dates for the proceeding. As a result, the Commission adopted a new procedural schedule to govern the remainder of the proceeding, including a deadline date of December 11, 2007, for the Parties to file their settlement agreement on the merits, if any.

In summary, based on the Parties' actions, specifically their voluntary and intentional waiver of the Commission's issuance of the final decision by October 26, 2007 (approved on July 18, 2007, by Order No. 23551), and their subsequent request to continue certain matters and to reset certain deadline dates (approved on September 21, 2007, by Order No. 23675), there was no strict compliance with the procedural time schedules established by the Commission in this proceeding. Thus, the Commission was unable to issue its final decision by October 26, 2007, i.e., within the nine-month period set forth in HRS § 269-16(d).

Thank you for the opportunity to submit this report. Should you have any questions regarding this matter, please contact me at 586-2020 or Michael Azama, Commission Counsel, at 586-2033.

Sincerely,



Carlito P. Caliboso  
Chairman

CPC:MA:sl

Enclosure

- c: Bruce D. Voss, Esq./Lori N. Tanigawa, Esq., counsel for WHUC  
(w/o enclosure)  
Bruce Moore, Waikoloa Land and Cattle Company (w/o enclosure)  
Catherine P. Awakuni, Division of Consumer Advocacy (w/o enclosure)