

NO. 28954

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

In the Matter of the Application of  
WAIKOLOA SANITARY SEWER COMPANY, INC.,  
dba WEST HAWAII SEWER COMPANY For Approval  
of Rate Increases and Revised Rate Schedules

APPEAL FROM THE PUBLIC UTILITIES COMMISSION  
(DOCKET NO. 00-0440)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding Judge, Nakamura and Fujise, JJ.)

Upon review of the record in this case, it appears that we lack jurisdiction over the appeal that Applicant-Appellant Waikoloa Sanitary Server Company, Inc., dba West Hawai'i Sewer Company (Appellant), has asserted from the following two orders that Appellee Public Utilities Commission of the State of Hawai'i (the PUC) issued: (1) September 7, 2007 Order No. 23635 (Order No. 23635) and (2) the December 28, 2007 Order No. 23939 (Order No. 23939). Neither of these orders appears to be a final order, as Hawaii Revised Statutes (HRS) § 269-15.5 (2007) requires.

Administrative appeals commence in a circuit court "except where a statute provides for a direct appeal to the supreme court[.]" HRS § 91-14(b) (Supp. 2007). "Matters relating to the PUC are governed by HRS ch. 269." Peterson v. Hawaii Electric Light Company, Inc., 85 Hawai'i 322, 327, 944 P.2d 1265, 1270 (1997). HRS § 269-15.5 (2007) provides in relevant part, that an aggrieved person shall appeal from a final order of the PUC directly to the intermediate court of appeals:

§ 269-15.5. Appeals. An appeal from an order of the public utilities commission under this chapter shall lie subject to chapter 602, in the manner provided for civil appeals from the circuit courts. Only a person aggrieved in a contested

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case proceeding provided for in this chapter may appeal from the order, if the order is final, or if preliminary, is of the nature defined by section 91-14(a).

(Emphases added). Cf. In re Waikoloa Sanitary Sewer Company, Inc., 109 Hawai'i 263, 270, 125 P.3d 484, 491 (2005). In the context of obtaining judicial review of administrative agency proceedings, "[g]enerally, a 'final order' is an order ending the proceedings, leaving nothing further to be accomplished." Lindinha v. Hilo Coast Processing Co., 104 Hawai'i 164, 168, 86 P.3d 973, 977 (2004) (citation and some internal quotation marks omitted). "Consequently, an order is not final if the rights of a party involved remain undetermined or if the matter is retained for further action." Gealon v. Keala, 60 Haw. 513, 520, 591 P.2d 621, 626 (1979) (citations omitted).

Order No. 23635 and Order No. 23939 do not appear to have ended the proceedings because the rights of the parties remain undetermined in that the PUC has retained this matter for further determination of the validity of Appellant's revised refund plan. Therefore, neither Order No. 23635 nor Order No. 23939 is a final order. With respect to the appealability of a preliminary ruling, HRS § 91-14(a) (1993) defines an appealable "preliminary ruling" as being "of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief[.]" HRS § 91-14(a). It does not appear from the record, nor does Appellant assert, that the deferral of review pending entry of a subsequent final decision would deprive Appellant of adequate relief. Therefore, neither Order No. 23635 nor Order No. 23939 is an appealable final order pursuant to HRS § 269-15.5.

Absent an appealable final order, this appeal is premature and we lack jurisdiction. Therefore,

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 19, 2008.

*Corinne K.A. Watanabe*

Presiding Judge

*Ces W. Nakamura*

Associate Judge

*Alexa M. Jizine*

Associate Judge