



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

October 23, 2013

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki, Speaker  
and Members of the House of  
Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

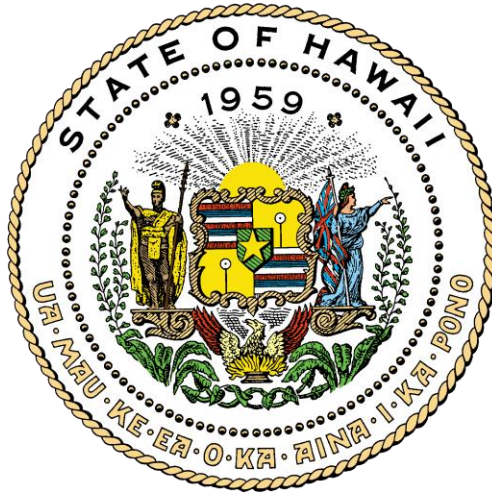
Dear President Mercado Kim, Speaker Souki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Public Utilities Commission's ("Commission") report containing its findings and recommendations from the Commission's recently concluded investigation concerning the risks of residential pest control excavation activities in Hawaii ("Report"). The Commission's final decision and order from the above mentioned investigation is included in this Report. In accordance with Section 93-16, HRS, a copy of this report has been transmitted to the Legislative Reference Bureau and the report may be viewed electronically at <http://puc.hawaii.gov>.

Sincerely,

NEIL ABERCROMBIE  
Governor, State of Hawaii

Enclosures



PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

**REPORT TO THE 2014 LEGISLATURE  
ON THE PUBLIC UTILITIES COMMISSION  
INVESTIGATION OF  
PEST CONTROL OPERATOR ACTIVITIES IN HAWAII**

ISSUED PURSUANT TO  
ACT 196, SESSION LAWS OF HAWAII 2012

June 2013

Act 196, Session Laws of Hawaii (“SLH”) 2012 (“Act 196”), requires the Public Utilities Commission (“Commission”) to 1) conduct an “investigation assessing the risk of residential pest control application” and to 2) submit a report to the Hawaii State Legislature (“Legislature”) prior to the convening of the 2014 Regular Session on the Commission’s findings and recommendations. This report, submitted along with the attached decision and order (“Order 31225” or “D&O”) issued in the course of Commission’s investigation under Docket No. 2012-0043<sup>1</sup>, summarizes the resulting decision to exempt pest control operators from the requirements of Hawaii Revised Statutes (“HRS”) Chapter 269E concerning the Hawaii One Call Center for subsurface excavation activities in the State of Hawaii (“State”).

In response to continued requests to extend the exemption for pest control operators from Hawaii’s One Call Center statutes, Act 196 amended the definition of “excavation” under HRS Chapter 269E-2 to clarify the exemption of certain pest control operator activities; extended to June 30, 2015 the sunset date for Section 5 of Act 72, SLH 2009, which originally created the current exemption for pest control operators from the Hawaii One Call Center statutes; mandated exempt pest control operators to participate in One Call Center-approved training on excavation requirements and best practices; and required the Commission to conduct a pest control operator activity investigation and submit a report as provided herein. On March 9, 2012, the Commission opened Docket No. 2012-0043 to “determine if pest control operators should be allowed partial relief from the requirements of Chapter 269E” in accordance with the requirements of Act 196. The Commission named the following entities as parties to the investigative proceeding: the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, the Hawaii Pest Control Association, The Gas Company, LLC (“TGC”), Kauai Island Utility Cooperative (“KIUC”), the

---

<sup>1</sup>Docket No. 2012-0043, instituting a proceeding to assess the excavation activities of pest control operators, was opened on March 9, 2012 in order to determine whether pest control operators should be allowed relief from the requirements found in HRS Chapter 269E.

Hawaiian Electric Companies<sup>2</sup> (“HECO Companies”), Hawaiian Telcom, Inc. (“HTI”), and One Call Concepts, Inc. Comments and statements of position were submitted by the parties and established the factual record for the Commission’s decisionmaking.

The Commission found sufficient evidence in the established record on which to base its determination that the excavation activities of pest control operators, currently, do not pose the level of risk to underground facilities in the State that would require operators to fully comply with One Call Center requirements. The record showed a low probability of damage to subsurface installations based on the nature of pest control operator excavation activities, as well as a very small number of reported incidents of damage to underground facilities caused by pest control operator digs in recent years. While the Commission found that the burdens of full compliance with the requirements of HRS Chapter 269E would be unwarranted in the case of pest control operators, the Commission also found that continuing education for exempt parties on risk identification and best practices is necessary to ensure an adequate level of public safety going forward.

Based on its findings, the Commission has ordered that pest control operators performing excavation activities in the State are exempted from the requirements of HRS Chapter 269E, subject to certain conditions enumerated in Order 31225. Specifically, those enumerated conditions for exemption, as found on pages 28 through 30 of the attached D&O, include:

1. Pest control operators, being exempt from HRS Chapter 269E, shall continue to comply with the training requirements in accordance with the provisions of Section 3 of Act 196. In the event of non-compliance, the Commission will determine whether the exemption for pest control operators from the requirements of HRS Chapter 269E continues to be appropriate.

---

<sup>2</sup>The Hawaiian Electric Companies include Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., and Hawaii Electric Light Company, Inc.



2. TGC, HTI, the HECO Companies, and KIUC shall provide the Commission with a report listing details of incidents of damage to underground installations caused by pest control operators, and incidents of injuries resulting from damage to underground installations caused by pet control operators. The submitted reports shall be filed annually by March 31 of each year in the event that such incidents occur. Further, the Commission reserves the right to reexamine the propriety of the exemption under Order 31225 should it find an increase in the frequency and/or severity of incidents resulting in damage and/or injury, or there are substantial changes made affecting pipeline infrastructure or pipeline safety issues.

Based on the investigation described above, the Commission determined that a conditional exemption for pest control operators from general compliance with HRS Chapter 269E is just and reasonable and is in the public interest.





I.

Background

A.

Exemption for Pest Control Operators

In 2009, the Hawaii Legislature adopted Act 72, Session Laws of Hawaii, which amended the definition of "excavation" to exempt certain activities of pest control operators licensed under Chapter 460J, HRS ("pest control operators"), for three years which expired on June 30, 2012.<sup>2</sup> This exemption excluded pest control operators from the requirements of HRS Chapter 269E,<sup>3</sup> allowing them to excavate without first contacting ONE CALL CONCEPTS, also known as HAWAII ONE CALL CENTER,<sup>4</sup> a private contractor selected by the commission to carry out the requirements of HRS Chapter 269E.<sup>5</sup>

During the 2012 Hawaii Legislative Session, Senate Bill ("S.B.") 2432 and House Bill ("H.B.") 1879 were introduced to make the exemption permanent for pest control operators.<sup>6</sup> The

---

<sup>2</sup> Order No. 30256, issued on March 9, 2012 ("Order No. 30256"), at 1.

<sup>3</sup>HRS Chapter 269E is also referred to as the "Hawaii One Call Center Law."

<sup>4</sup> Order No. 30256, at 1-2; and HRS § 269E-2 (definition of "one call center")

<sup>5</sup>Order No. 30256, at 2.

<sup>6</sup>Order No. 30256, at 2, n. 1.

HPCA<sup>7</sup> and TGC, among others, submitted testimony supporting and opposing the legislation, respectively.<sup>8</sup> The commission offered, through testimony before the Hawaii Legislature, to consider whether it should issue an order that limits the requirements for pest control operators in complying with the Hawaii One Call Center law.<sup>9</sup>

On June 29, 2012, the definition of "excavation" was amended by H.B. 1879, H.D. 2, S.D. 1, C.D. 1, and enacted as Act 196 ("Act 196").<sup>10</sup> The amended definition of "excavation" exempts

---

<sup>7</sup>HPCA is an organization whose members comprise 96% of the structural licensed pest control operators in Hawaii.

<sup>8</sup>Order No. 30256, at 2, n. 2 (referencing testimony Relating to One Call Center: Hearing on S.B. 2432 Before the S. Comm. on Commerce and Consumer Protection, 26<sup>th</sup> Sess. (Haw. 2012) (Statements of The Gas Company and the Hawaii Pest Control Association)).

<sup>9</sup>Order No. 30256, at 2.

<sup>10</sup>Section 2 of Act 196 amends the definition of "excavation" in HRS § 269E-2 to read as follows:

"Excavation" [Repeal and reenactment on June 30, 2015. L 2012, c 196, §4.] means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. **"Excavation" shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of:**



the activities of pest control operators from the requirements of HRS Chapter 269E through June 30, 2015.<sup>11</sup> The Legislature specifically sets forth in Section 1 of Act 196 a finding that the definition of "excavation" had been amended due to the fact that "pest control operators do not present the risks to underground facilities that the one call center was designed to address."<sup>12</sup>

Although exempting pest control activity from the requirements of HRS Chapter 269E, the Legislature mandated that the commission require participation in training seminars on

---

. . . .

**(2) Any pest control activity involving excavation regulated under chapter 460J that is not performed under contract with any county or state agency.**

Act 196, at Section 2 (emphasis and underscoring added).

<sup>11</sup>Section 4 and Section 5 of Act 196 provide that:

Section 4. Act 72, Session Laws of Hawaii 2009, is amended by amending section 5 to read as follows:

"Section 5. This Act shall take effect on June 29, 2009; provided that section 2 of this act [defining "excavation"] shall be repealed on June 30, 2015, and section 269E-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 28, 2009."

Act 196, at Sections 4 and 5 (bracketed language and underscoring omitted).

<sup>12</sup>Act 196, at Section 1.

excavation requirements and best practices to minimize risks for exempt operators, and conduct an investigation assessing the risk of residential pest control application and present findings and recommendations prior to the convening of the 2014 regular session of the Legislature.<sup>13</sup>

The legislative exemption for activities of pest control operators expires on June 30, 2015. Thereafter, without further legislative action in the matter or ruling by the commission herein, the exemption will be made permanent.<sup>14</sup>

B.

#### Procedural Background

The commission initiated the instant proceeding by Order No. 30256, issued on March 9, 2012, to determine whether pest control operators should be allowed relief from the requirements of HRS Chapter 269E.<sup>15</sup> The commission asked that any interested individual, entity, agency or community or business organization file comments on this issue for the commission's

---

<sup>13</sup>Act 196, at Section 3(a) and (b).

<sup>14</sup>Act 196, at Section 1.

<sup>15</sup>Order No. 30256, at 8-9, n. 9 (discussing federal law requirements regarding participation in state one-call center programs, and enumerating factors and considerations for establishing minimum standards for state one call center notification programs set forth in 49 U.S.C. § 6103(b) (2002)).

review and consideration by April 16, 2012.<sup>16</sup> The commission's inclination was to allow pest control operators partial relief from the requirements of HRS Chapter 269E and set out the parameters for granting such relief ("Inclination").<sup>17</sup>

On March 29, 2012, the Consumer Advocate submitted a Preliminary Statement of Position.

On April 16, 2012, HPCA, TGC, and the Consumer Advocate submitted comments to the commission.<sup>18</sup>

On April 23, 2012, the commission agreed with the Consumer Advocate's comments that the record contained insufficient evidence to support its Inclination.<sup>19</sup> The commission continued the investigation to further develop the record, the Parties to this docket were named, sua sponte,<sup>20</sup> other

---

<sup>16</sup>Order No. 30256, at 3.

<sup>17</sup>Id. at 11.

<sup>18</sup>Order No. 30345, issued on April 23, 2012 ("Order No. 30345), at 3, n. 4.

<sup>19</sup>Id. at 7. The commission indicated that the record fails to provide "adequate information to determine whether pest control operators' activities do or do not pose risks to public safety, whether additional costs for pest control operators' compliance with the Hawaii One Call Center program are reasonable, whether utility ratepayers will be harmed as a result of a partial or full exemption from Hawaii One Call Center requirements, and whether other means of mitigating the pest control operators' additional costs of compliance may be utilized.

<sup>20</sup>Order No. 30345, at 8-9, n. 13 (discussing Rule 19, of the Hawaii Rules of Civil Procedure, and quoting, International Sav.



interested parties were invited to intervene or participate without formal intervention in the docket,<sup>21</sup> and the Parties were instructed to submit a proposed procedural order by May 15, 2012.<sup>22</sup>

The Parties submitted agreed-upon deadlines for the instant docket by letter dated May 15, 2012.<sup>23</sup>

On June 29, 2012, Information Requests were submitted by the Consumer Advocate to all Parties. On that same date, Information Requests were submitted by HPCA to ONE CALL CONCEPTS by letter dated June 29, 2012.<sup>24</sup>

On August 6, 2012, One Call Concepts filed its response to HPCA's Information Requests and expressed additional concerns in a letter to the commission dated September 25, 2012.<sup>25</sup>

---

and Loan Ass'n v. Carbonel, 93 Haw. 464, 470, 5 P.3d 454, 460 (2000)), and 11 (see Order No. 2).

<sup>21</sup>Id. at 12 (see ordering paragraph no. 3).

<sup>22</sup>Id. at 12 (see ordering paragraph no. 4).

<sup>23</sup>Letter dated May 15, 2012, at 1 (notations omitted) setting forth the agreed-upon deadlines as follows: Parties' Simultaneous Information Requests ("IR") to all parties, if necessary: June 29, 2012; Parties Responses to all Parties' IRs: August 16, 2012; Parties' Statements of Position ("SOPs"): September 21, 2012, and Parties' Reply SOPs, if necessary: October 5, 2012.

<sup>24</sup>A copy of HPCA's letter to One Call Concepts was filed herein on July 2, 2012.

<sup>25</sup>Letter from One Call Concepts dated September 25, 2012.

Responses to the Consumer Advocate's Information Requests were filed by TGC on August 14, 2012, by KIUC and HPCA on August 16, 2012, and by HTI and Hawaiian Electric on August 16, 2012.

On September 21, 2012, the Parties submitted their respective Statements of Position. On October 5, 2012, Reply Statements of Position were filed by TGC<sup>26</sup> and by KIUC.<sup>27</sup>

---

<sup>26</sup>TGC's Reply Statement of Position filed on October 5, 2012, at 1, corrects a discrepancy on the number of incidents of line damage caused by pest control operators. In testimony regarding S.B. 2432, TGC identified four incidents of line breaks between 2007 and 2011. In its response to the Consumer Advocate's Information Request, TGC reported only three incidents of line breaks in the same reporting period. Further research into the incidents by TGC revealed that there were three incidents, rather than four. In legislative testimony, a pest control operator was misidentified as the excavator causing the line break, when in fact, the excavator was a construction contractor doing work for Hawaiian Electric Company.

<sup>27</sup>KIUC's Reply Statement of Position filed on October 5, 2012 ("KIUC Reply Statement of Position").

II.

Discussion

HRS § 269-7 states, in relevant part:

(a) The public utilities commission and each commissioner shall have the power to examine 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 issuance by it of stocks and bonds, and the disposition of the proceeds thereof, 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 with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, 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. A majority of the commission shall constitute a quorum.

HRS § 269-7 (a) and (c).

HRS § 269-6 vests in the commission "general supervision . . . over all public utilities."<sup>28</sup>

HRS § 269E-3 establishes the commission's responsibilities with respect to administration of the One Call Center and provides in relevant part that the commission's duties are to "[i]ssue binding interpretations or declaratory rulings . . . ."<sup>29</sup>

Pursuant to HAR § 6-61-160, the "commission may, on its own motion or upon request and without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty."<sup>30</sup>

A.

Commission's Findings

Based on the Parties' representations, the commission sets forth the following findings:

1. HPCA represents approximately 96% of all licensed structural pest control operators in the State of Hawaii.<sup>31</sup>

---

<sup>28</sup>Commission investigatory authority is also set forth in HRS § 269-15 and Hawaii Administrative Rules ("HAR") § 6-61-71.

<sup>29</sup>HRS 269E-3(4).

<sup>30</sup>HAR § 6-61-160.

<sup>31</sup> Letter from HPCA dated April 13, 2012, at 1. The commission received no data or information from non-HPCA members.



2. Excavation practice by HPCA members on residential properties involves use of perimeter trenching with a depth of two (2) inches to four (4) inches,<sup>32</sup> and bait stations (9.35 inches in length) that must be placed and buried vertically in the ground so that the top of the bait station is installed at ground level.<sup>33</sup>
3. HPCA members perform an estimated 7,000 jobs per year and of these, approximately 4,000 jobs involve installation of bait stations.<sup>34</sup> The average home requires installation of 24 bait stations.<sup>35</sup> Based on these figures, over a three year period, approximately 288,000 holes were drilled for bait station installation.<sup>36</sup>

---

<sup>32</sup>HPCA's Response to CA-IR-10.

<sup>33</sup> HPCA's Response to CA-IR-13 and Attachment A (survey responses revealed that the maximum depth of the hole for placement of a bait station ranges from ten (10) inches to twenty-four (24) inches).

<sup>34</sup>HPCA's Response to CA-IR-15.

<sup>35</sup>HPCA's Response to CA-IR-15.

<sup>36</sup>HPCA's Response to CA-IR-15a (HPCA arrived at this figure (288,000 holes) by multiplying the approximate number of bait station jobs per year (4000) by the average number of holes per house (24) by the number of years (3)).

4. Responses to a survey of HPCA members revealed that drills, hand picks, shovels, and other hand tools such as hoes, spades and hand augers are used to dig holes,<sup>37</sup> and drilling is used to penetrate concrete slabs.<sup>38</sup>
5. HPCA members take precautions when excavating, such as the use of a pressure resistant drill bit designed to short circuit if contact is made with anything resisting pressure,<sup>39</sup> and use of "visual assessment" for possible pipeline locations.<sup>40</sup>
6. Generally, the depth of underground installations for the different utility companies varies depending on the location of the installation and applicable federal, state and/or local, and industry standards.<sup>41</sup>
7. In compliance with industry standards, the minimum depth of Hawaiian Electric's subsurface

---

<sup>37</sup>HPCA's Response to CA-IR-10.

<sup>38</sup>HPCA's Response to CA-IR-11.

<sup>39</sup>HPCA's Response to CA-IR-10.

<sup>40</sup>HPCA's Response to CA-IR-15b.

<sup>41</sup>Hawaiian Electric's, KIUC's, HTI's Responses to CA-IR-6.

installations (i.e., electrical lines) in or near customers' properties is eighteen (18) inches.<sup>42</sup>

8. In compliance with industry standards, the depth of KIUC's subsurface installations (i.e., conduit) is twenty-four (24) inches with a six (6) inch wide red marker tape placed twelve (12) inches above the installation to assist in locating and/or identifying subsurface installations.<sup>43</sup>
9. In compliance with industry standards, the minimum depth of HTI's subsurface installations (i.e., underground conduits) on private property is twelve (12) inches, although a depth of eighteen (18) inches is recommended.<sup>44</sup>
10. In compliance with federal standards relating to service line installation,<sup>45</sup> the minimum depth of TGC's subsurface installations (i.e., service lines) is twelve (12) inches.<sup>46</sup>

---

<sup>42</sup>Hawaiian Electric's Response to CA-IR-6.

<sup>43</sup>KIUC's Response to CA-IR-6.

<sup>44</sup>HTI's Response to CA-IR-6.

<sup>45</sup>49 CFR § 192.361 (2003).

<sup>46</sup>TGC's Response to CA-IR-7, Attachment 1.

11. Over time and for various reasons, when digging commences, underground facilities may actually be found closer to the surface than at the time of original installation.<sup>47</sup> KIUC and HTI acknowledge that this situation may occur, and both take appropriate remedial action when it is discovered.<sup>48</sup> Hawaiian Electric and TGC acknowledge that this may occur, but have not taken similar measures to avoid or mitigate possible damage to their underground facilities.<sup>49</sup>
12. Between the years 2002 and 2011, Hawaiian Electric, KIUC, TGC and HTI had no reports of injuries resulting from damage caused by pest control operators.<sup>50</sup> TGC reported three incidents of line breaks caused by pest control operators between the year 2007 and January 2012.<sup>51</sup>

---

<sup>47</sup>Hawaiian Electric's, KIUC's, TGC's and HTI's Response to CA-IR-1.

<sup>48</sup>KIUC's and HTI's Response to CA-IR-1.

<sup>49</sup>TGC's and Hawaiian Electric's Response to CA-IR-1.

<sup>50</sup>KIUC's, TGC's Response to CA-IR-4, HTI's Response to CA-IR-4 (HTI's response covered the years 2004 through 2011), and Hawaiian Electric's Response to CA-IR-4 (no information on injuries for the years 2002 through 2011).

<sup>51</sup>TGC's Response to CA-IR-2, Attachment 1.



B.

Parties' Statements of Position

1.

HPCA

HPCA strongly urges a full and permanent exemption for pest control operators from the provisions of HRS Chapter 269E by pointing to the extraordinarily low rate of incidents versus the number of holes made or dug by pest control operators in Hawaii over a three year period (i.e., 0.00001388), the minimal cost of damage per incident (i.e., the cost of damage for the three incidents ranged from \$200 to \$958), and the estimated increase of 25% in cost to the homeowner/customer for termite treatment if compliance is required.<sup>52</sup> HPCA favors ongoing education for all pest control operators to maintain and increase awareness of the issues and challenges when working around or near underground utility lines, and suggests incorporating One Call Center topics into existing education programs.<sup>53</sup> HPCA's position is consistent with the current provisions of HRS Chapter 269E.

---

<sup>52</sup> HPCA Statement of Position filed on September 21, 2012 ("HPCA Statement of Position"), at 3-4.

<sup>53</sup>HPCA's Statement of Position, at 4.

2.

TGC

TGC opposes any exemption from the provisions of HRS Chapter 269E for any excavator, including pest control operators by focusing on promoting overall safety, preventing damage to its pipeline and injury to customers and TGC employees, and maintaining the effectiveness of the one call center law. TGC referenced the same incidents of gas pipeline breaks caused by pest control companies, although acknowledging that these incidents did not cause significant damage to either customer property or TGC pipelines, nor cause any injury either to customers or TGC employees.<sup>54</sup> TGC strongly urges the commission not to allow any exemptions, and to require that all excavators, under any circumstance, and that any excavation, without exception, comply with the provisions of HRS Chapter 269E.<sup>55</sup>

---

<sup>54</sup> TGC's Statement of Position filed on September 21, 2012 ("TGC Statement of Position"), at 5.

<sup>55</sup> TGC's Statement of Position, at 6-7.

3.

KIUC

KIUC does not oppose a permanent, full exemption<sup>56</sup> or partial exemption<sup>57</sup> of the requirements of HRS Chapter 269E provided that participation in training seminars on excavation requirements and best practices to minimize risks to damaging underground utility facilities continues to be a requirement for the pest control operators.<sup>58</sup> In support of its position favoring some form of exemption, KIUC points to the "de minimis risk" of its underground electrical facility being damaged by pest control operator activities. KIUC compared its current practices when burying underground electrical facilities<sup>59</sup> to its understanding of the types of application practices carried out by pest control operators. KIUC also cited the absence of any recorded incidents of damage to underground electrical facilities caused by pest

---

<sup>56</sup> KIUC's Statement of Position filed on September 21, 2012 ("KIUC Statement of Position"), at 4; and KIUC Reply Statement of Position filed on October 5, 2012 ("KIUC Reply Statement of Position"), at 1-3.

<sup>57</sup> KIUC's Statement of Position, at 6; and KIUC Reply Statement of Position, at 3.

<sup>58</sup> KIUC's Statement of Position, at 4, 5; and KIUC Reply Statement of Position, at 1, 2.

<sup>59</sup> KIUC's Statement of Position, at 6 describing its practice of burying conductors or utility lines a minimum of 24" below the surface of the ground and laying a 6" wide red marker tape 12" below the surface to assist in locating and/or identifying KIUC's underground conductors or utility lines during excavation.

control operators over the past decade, and compared that to the significant increase in costs and burden on KIUC resources that would likely result if every pest control operator were required to notify the Hawaii One Call Center prior to commencing any excavation.<sup>60</sup>

4.

HTI

HTI supports the exemption of pest control operators from the provisions of HRS Chapter 269E.<sup>61</sup> Requests made to HTI to locate underground landline facilities on private property are infrequent and handled on a case-by-case basis,<sup>62</sup> and HTI maintains no record of the location of these systems on private property.<sup>63</sup> HTI records reveal that: (1) none of the damage related to underground facilities was caused by pest control

---

<sup>60</sup>KIUC's Statement of Position, at 5.

<sup>61</sup>HTI's Statement of Position filed on September 21, 2012 ("HTI's Statement of Position"), at 2, 4. HTI's support for the exemption of pest control operators does not diminish its strong support for the One Call Center. In prior incidents, HTI's subsurface facilities sustained serious damage resulting from excavation work, the majority of which occurred in public easements and rights-of-way and not on private property.

<sup>62</sup>HTI's Statement of Position, at 2, 3.

<sup>63</sup>HTI's Statement of Position, at 2, 3. HTI customers bear the responsibility for installation, maintenance and repair of underground conduit systems on private property.



operators (between the years 2004 and 2011); (2) HTI had no customer complaints about line damage caused by pest control operators (between the years 2002 and 2011); and (3) there were no injuries caused by damages related to pest control operators (between the years 2004 and 2011).<sup>64</sup> Relying on this record, HTI determined that the activities of pest control operators on private property appear not to have any impact on HTI facilities, and have little or no impact on public safety.

5.

Hawaiian Electric

Hawaiian Electric supports a partial exemption from the requirements of HRS Chapter 269E as set out in the commission's Inclination. Hawaiian Electric represented in responses to the Consumer Advocate's Information Requests that its lines are buried at 18 inches, and reported no damage or injuries to its lines by pest control operators. Hawaiian Electric did not address full or permanent exemption for pest control operators.

6.

Consumer Advocate

The Consumer Advocate had no objection to granting an exemption to pest control operators from the requirements of HRS

---

<sup>64</sup>HTI's Statement of Position, at 3.

Chapter 269E as set out in the commission's Inclination. The Consumer Advocate articulated numerous reasons to support the exemption including: (1) no anticipated increase in disruption of utility service as a result of the exemption as there have been so few reports and incidents of damage to utilities' underground facilities by pest control operators over the last ten years,<sup>65</sup> (2) limited reports of disruptions to utility services before 2002 and no reports of disruptions to utility services since 2009 caused by pest control operators,<sup>66</sup> (3) shallower depths excavated by pest control operators than the minimum depth excavated for underground utility service lines on residential property,<sup>67</sup> and (4) the existence of mitigation measures by utility companies and HPCA members in the event of damage to the underground utility facilities.<sup>68</sup> The Consumer Advocate determined that an exemption should not increase the

---

<sup>65</sup> Consumer Advocate's Statement of Position, at 8, noting that based on its review of historical data, the number of reports and incidents was low regardless of whether the Hawaii One Call Center requirements were in place.

<sup>66</sup> Consumer Advocate's Statement of Position, at 9.

<sup>67</sup> Consumer Advocate's Statement of Position, at 9-11. Based on the Consumer Advocate's discussions with Hawaiian Electric personnel (as no records are maintained for these lines), lines buried prior to the existing or current standards are likely to be buried between eighteen (18) and twenty (20) inches depending on circumstances.

<sup>68</sup> Consumer Advocate's Statement of Position, at 12.

risk of injury to operators or utility customers as pest control operators have not caused line damage to underground facilities of Hawaiian Electric, KIUC and HTI,<sup>69</sup> and there were no reported injuries including line damage caused by pest control operators.<sup>70</sup> In the case of the three incidents of damage to TGC underground service lines, TGC paid for two incidents of damage and the pest control operator paid for one of the incidents of damage.<sup>71</sup> Finally, the Consumer Advocate determined that granting an exemption would not cause an increase in utility prices for the customer.<sup>72</sup>

---

<sup>69</sup>Consumer Advocate's Statement of Position, at 14 referring to HECO, MECO and HELCO, KIUC and HTI.

<sup>70</sup>Consumer Advocate's Statement of Position, at 14 referring to TGC.

<sup>71</sup>Consumer Advocate's Statement of Position, at 16-17. Fault was assigned by determining the depth of the damaged TGC gas line when the damage occurred. If the gas line was at or deeper than the depth required by standards, i.e., twelve (12) inches, then the homeowner or pest control operator was responsible for the repair, but if the gas line was at a depth of twelve (12) inches or less when the damage occurred, then the utility company (TGC) was responsible for the repair.

<sup>72</sup> Consumer Advocate's Statement of Position, at 15-17 (recommending that should damages to utility infrastructure occur that costs should not be borne by the utility ratepayers, but by the party causing the damage, the property owner, or the utility).

C.

Commission's Analysis: Exempting Pest Control Operators from the Requirements of HRS Chapter 269E is Supported by the Record

At the time this investigation was opened on March 9, 2012, the commission was inclined to grant a partial exemption to pest control operators from the requirements of HRS Chapter 269E.

The 2012 Legislature thereafter amended the definition of "excavation." In so doing, certain activities of pest control operators were excluded from the definition and exempted from complying with the requirements of HRS Chapter 269E. For those exempt operators, however, training and education is mandatory.

Having received and considered the comments and additional information provided by the Parties to date, the commission has developed a sufficient record upon which to base its decision. Based on the record herein, the commission finds support for the Legislature's finding that "pest control operators do not present the risks to underground facilities that the one call center was designed to address." For the reasons discussed below, the commission finds that it is in the interests of pest control operators, the utility companies and consumers to exempt pest control operators engaged in activity involving excavation regulated under HRS Chapter 460J that is not performed under contract with any county or state agency from the



requirements of HRS Chapter 269E, subject to further conditions imposed by the commission.

1.

Activities by Pest Control  
Operators Do Not Pose Risks to Public Safety

The commission finds that the nature of the excavation activities of pest control operators in or on residential property does not pose the risks to the safety of the public, the operator, or utility companies that might otherwise demand strict compliance with the HRS Chapter 269E.

Excavations by pest control operators typically involve digging for perimeter trenching or bait station installation. The depth required for perimeter trenching is between two (2) inches and four (4) inches, and the depth required for bait station installation is nearly ten (10) inches to accommodate placement of the station so that its top will be at ground level when buried. Workers make visual assessments for possible pipeline locations and use various handheld tools and implements, or drills equipped with pressure sensitive drill bits to accomplish their work. HPCA members perform an estimated 7,000 jobs per year, and over half of those jobs involve bait station installation.

Subsurface installations belonging to Hawaiian Electric, KIUC, HTI, and TGC are installed in accordance with

applicable federal, state and/or local, and industry standards. At the time of the initial installation, the depth of utility facilities is deeper than the maximum depth required for perimeter trenching or bait station installations. So long as other factors remain constant (i.e., there are no changes to the original installation depth), which is not always the case, the likelihood of a pest control operator encountering an underground installation while excavating should be an unlikely occurrence.

2.

Damage to Underground Installations  
by Pest Control Operators is Minimal

The record before the commission reveals limited risk of harm or damage to the utilities' subsurface installations by pest control operator activity, and further reveals that the cost of repair, where damage occurred, was recovered from the homeowner, pest control operator, or utility company.

TGC sustained three gas line breaks caused by pest control operators between the years 2007 and January 2012. No other utility reported any damage to subsurface installations or injuries resulting from damage caused by pest control operators between the years 2002 and 2011. The incidents of damage compared to the number of holes dug (excavations) resulted in an extremely low incident rate (i.e., 0.00001388). The damage caused to TGI's subsurface installations was minimal and did not

cause any injury to utility workers, operators, or the consumer. The costs to repair the damaged gas lines were allocated based on the depth of the line at the time it was damaged. Repair costs were recovered from the homeowner or from the pest control operator where the damage occurred at depths below twelve (12) inches (the standard depth for TGC gas lines), and from the utility where the damage to the line was at a depth shallower than regulation. In the case of the reported incidents, no costs of repair were charged to the customer base. In the absence of a higher incident rate of damage or injury caused by pest control operator activity, the commission is inclined to favor an exemption of pest control operators from the requirements of HRS Chapter 269E.

3.

Compliance with the One Call Center  
Laws by Pest Control Operators

The commission finds the assertions made by Hawaiian Electric, KIUC, HPCA, and the Consumer Advocate persuasive that requiring pest control operators and the utilities to comply with HRS Chapter 269E would be burdensome. A review of the historical data reveals a record of de minimis risk of damage and absence of injury to utility workers and consumers, and does not support the level of compliance urged by TGC. Compliance would likely result

in a significant increase in calls to the Hawaii One Call Center. This would, in turn, increase the burden on utility workers and increase costs for utility companies, pest control operators, and consumers alike.

The commission acknowledges TGC's assertion in its Statement of Position that, "all it takes is one instance of oversight or misjudgment that could lead to a significant line break and injuries to the public and employees."<sup>73</sup> However, given the pest control operators' established safety record, it appears to the commission that on balance, there are no additional benefits to be gained by requiring compliance with the statutory requirements of HRS Chapter 269E that outweigh the costs associated with requiring compliance.

Instead, the commission believes that a reasonable course of action under these circumstances would be to continue its monitoring of the activities of pest control operators for the duration of the exemption period. If, in that time, there is an increase in the frequency of incidents or in the frequency and/or severity of damage, then the commission will revisit the matter for appropriate action.

Even if the commission were to adopt TGC's position and require compliance with all requirements of HRS Chapter 269E for every pest control related excavation, without exception, that

---

<sup>73</sup>TGI's Statement of Position, at 5.



alone would not guarantee an improved safety record, or assure that future incidents, such as the three incidents reported to this point, would be avoided.

4.

Training and Education is Mandatory for Exempt Operators

Exempting pest control activities from the requirements of HRS Chapter 269E does not and is not intended to relieve an exempt operator from taking reasonable steps to ensure that all aspects of digging are carried out in a safe manner and in accordance with practices aimed at preventing damage and injury.

Although Act 196 exempted activities of pest control operators from the requirements of HRS chapter 269E, it included a requirement that exempt operators participate in training seminars for education on excavation requirements and best practices to minimize risks. Education of this sort is aimed at increasing awareness of potential risks and dangers associated with excavating around or near subsurface installations. In addition to an education component, the commission encourages voluntary compliance with HRS Chapter 269E requirements and use of one call center services in appropriate situations.

Safety, and damage minimization and prevention are common goals and the shared responsibility of all the parties who work around or near subsurface installations. For exempt

operators, the exercise of reasonable care in preparation for and during excavation, the education and training of workers on risks and on recognizing unsafe conditions when excavating, ensuring that workers know what to do in the event of damage to an underground installation or in the event of an emergency is critical. Continuing education and training will be especially important if the exemption for pest control operators becomes permanent.

For the foregoing reasons, the commission finds that the record supports granting an exemption to pest control operators from the requirements of HRS Chapter 269E, subject to the conditions set forth below.

### III.

#### Orders

THE COMMISSION DECLARES that pest control operators are exempt from the requirements of HRS Chapter 269E, subject to the following conditions.

#### THE COMMISSION ORDERS:

1. The pest control operators, as exempt from HRS Chapter 269E, shall comply with the training requirements in accordance with the provisions of Section 3 of Act 196. In the event of non-compliance, the commission will determine whether

the exemption for pest control operators from the requirements of HRS Chapter 269E continues to be appropriate.

2. TGC, HTI, Hawaiian Electric, and KIUC shall provide the commission with a report listing incidents of damage to underground installations caused by pest control operators, and incidents of injuries resulting from damage to underground installations caused by pest control operators. The report shall be filed with the commission on an annual basis, not later than March 31 of each year, and only in the event that such incidents occurred. The information in the report should include, but not be limited to, the date or dates of the incident, the location of the incident, the cause of damage to subsurface installation or injury resulting from damaged subsurface installation, a description of the damage caused or injury sustained, the depth of the subsurface installation at the time contact made or damage occurred, the cost of the damage and repair, the utility owning the damaged subsurface installation, the pest control operator, and the party or parties responsible for the cost of repair.

In the event of an increase in the frequency and/or severity of incidents of damage and/or the incidents of damage and injury, or substantial changes are made with regard to pipeline infrastructure or to address pipeline safety issues, the commission will determine whether the exemption for pest control

operators from the requirements of HRS Chapter 269E continues to be appropriate.

3. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii           MAY - 9 2013          .

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By           Hermina Morita            
Hermina Morita, Chair

By           Michael E. Champley            
Michael E. Champley, Commissioner

By           Lorraine H. Akiba            
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:

          Catherine P. Awakuni            
Catherine P. Awakuni  
Commission Counsel

2012-0043.do



CERTIFICATE OF SERVICE

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

JEFFREY T. ONO  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

TIM LYONS  
EXECUTIVE DIRECTOR  
HAWAII PEST CONTROL ASSOCIATION  
1188 Bishop Street, Suite 1003  
Honolulu, HI 96813-3304

S. THOMAS KOBASHIGAWA  
DIRECTOR OF REGULATORY AFFAIRS  
THE GAS COMPANY LLC  
745 Fort Street, 18<sup>th</sup> Floor  
Honolulu, HI 96813

STEVE GOLDEN  
VICE PRESIDENT OF EXTERNAL AFFAIRS  
HAWAIIAN TELCOM, INC.  
1177 Bishop Street  
Honolulu, HI 96813

DEAN K. MATSUURA  
MANAGER, REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

KENT D. MORIHARA, ESQ.  
KRIS N. NAKAGAWA, ESQ.  
LAUREN M. IMADA, ESQ.  
Moriyara Lau & Fong LLP  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

Counsel for KAUAI ISLAND UTILITY COOPERATIVE

FRANK PLANTON  
DIRECTOR OF CUSTOMER RELATIONS  
ONE CALL CONCEPTS, IONC.  
305 NE 102<sup>nd</sup> Avenue, Suite 300  
Portland, OR 97220

AMERICAN WATER WORKS ASSOCIATION,  
HAWAII SECTION  
P. O. Box 22614  
Honolulu, HI 96823-2614

Provided as a Courtesy