

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding Under)
Hawaii's Net Energy Metering)
Law, Hawaii Revised Statutes)
§§ 269-101 - 269-111, to)
Investigate Increasing: (1) the)
Maximum Capacity of Eligible)
Customer-Generators to More Than)
Fifty Kilowatts; and (2) the)
Total Rated Generating Capacity)
Produced by Eligible Customer-)
Generators to an Amount Above)
0.5 Percent of Peak Demand)
_____)

DOCKET NO. 2006-0084

ORDER NO. 22380

Filed April 10, 2006
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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ORDER

By this Order, the commission initiates an investigation to evaluate whether the commission should increase: (1) the maximum capacity of eligible customer-generators to more than fifty (50) kilowatts ("kW"); and (2) the total rated generating capacity produced by eligible customer-generators to an amount above 0.5 percent of an electric utility's system peak demand, under Hawaii's Net Energy Metering Law, codified as Hawaii Revised Statutes ("HRS") §§ 269-101 to 269-111 ("Net Energy Metering Law"). If the commission decides to implement increases, the commission will correspondingly determine in this investigation the specific amounts of each increase. The commission initiates this investigation pursuant to HRS §§ 269-7, 269-15, 269-16, 269-101.5, 269-102, and 269-104, and Hawaii Administrative Rules ("HAR") § 6-61-71.

I.

Background

The Net Energy Metering Law, which was enacted in 2001, allows residential and commercial customers of an electric utility (including a government entity) who own and operate eligible renewable energy generators to use "net energy metering" to measure electricity usage for billing purposes. As defined by HRS § 269-101, "net energy metering" means "measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a monthly billing period[.]" In essence, eligible customer-generators who use net energy metering are billed only on the net kilowatt-hours of electricity they use (kilowatt-hours from utility - kilowatt-hours self-generated = net kilowatt-hours).

The Net Energy Metering Law specifies that a customer's generating facility must be solar, wind, biomass, hydroelectric, or a hybrid system consisting of two or more of the foregoing types of facilities. See HRS § 269-101. The law further specifies that the maximum generating capacity per customer must be no more than fifty (50) kW. See HRS § 269-101.5. The law, however, expressly authorizes the commission to increase the maximum generating capacity for customers: "The eligible customer-generator shall have a capacity of not more than fifty kilowatts; provided that the public utilities commission may increase the maximum allowable capacity that eligible customer-

generators may have to an amount greater than fifty kilowatts by rule or order."¹ (Emphasis added.)

In addition, the Net Energy Metering Law provides a cap, which is currently set at 0.5 percent of an electric utility's peak demand, on the total power producing capacity of eligible customer-generators. See HRS §§ 269-102, 269-104. As with the maximum generating capacity of individual customers established in HRS § 269-101.5, the Net Energy Metering Law authorizes the commission to "increase, by rule or order, the total rated generating capacity produced by eligible customer-generators to an amount above .5 per cent of the electric utility's system peak demand."² HRS § 269-102.³

¹Act 99, 2004 Session Laws of Hawaii, which took effect on June 2, 2004, revised the Net Energy Metering Law by, among other things, increasing the size of facilities qualifying for net energy metering from 10 kW to 50 kW. See Act 99, 2004 Haw. Sess. Laws 392 ("Act 99").

²Following Act 99, the Net Energy Metering Law was further amended by Act 104, 2005 Session Laws of Hawaii, which went into effect on June 6, 2005. See Act 104, 2005 Haw. Sess. Laws 257 ("Act 104"). Act 104 revised the law by, among other things, authorizing the commission to increase the maximum generating capacity of eligible customers (as codified in HRS § 269-101.5), and the total rated generating capacity of eligible customers (as codified in HRS §§ 269-102 and 269-104).

In Docket No. 05-0037, Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO") jointly filed three transmittals to incorporate certain legislative amendments made to the Net Energy Metering Law, including Acts 99 and 104, to Rule 18 of their respective net energy metering tariffs. In that docket, the commission specifically reserved ruling on the matter of increasing the maximum thresholds set forth in HRS §§ 269-101.5, 269-102, and 269-104, which is the purpose of this proceeding, and solely considered the proposed revisions to each utility's respective tariff. See Decision and Order No. 22313, filed on March 9, 2006, in Docket No. 05-0037, at 7 n.14. To the extent, however, that the matters raised in Docket No. 05-0037 may become relevant to this proceeding, the commission

On February 2, 2006, the commission held an informal meeting to discuss, among other topics, whether the commission should increase the above-described maximum capacities under the Net Energy Metering Law. Hawaii's regulated electric utilities -- HECO, MECO, HELCO, and KIUC -- as well as numerous other energy-related companies and organizations, and the State of Hawaii Department of Business, Economic Development, and Tourism ("DBEDT") were represented at the meeting. In furtherance of the informal meeting held on February 2, 2006, and based upon the information received by the commission at the meeting, the commission hereby institutes this investigative

hereby takes official administrative notice of the filings in Docket No. 05-0037. See HAR § 6-61-48. In addition, the commission notes that, although Kauai Island Utility Cooperative ("KIUC") is not a party to Docket No. 05-0037, KIUC has informed the commission that it will shortly be filing a transmittal to revise its net energy metering tariff in accordance with recent legislative amendments to the Net Energy Metering Law. The commission will take official notice of that docket in this investigative proceeding once it is filed.

³HRS § 269-104 similarly provides:

Notwithstanding section 269-102, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak generating capacity of all eligible customer-generators served by all the electric utilities in that service area furnishing net energy metering to eligible customer-generators equals .5 per cent of the system peak demand of those electric utilities; provided that the public utilities commission may increase, by rule or order, the allowable percentage of the electric utility's system peak demand produced from eligible customer-generators in the electric utility's service area, whereupon the electric utility will be obligated to provide net energy metering to additional eligible customer-generators in that service area up to the increased percentage amount. (Emphasis added.)

docket to evaluate whether, and to what extent, the maximum capacities established in HRS §§ 269-101.5, 269-102, and 269-104 should be raised.

II.

Discussion

A.

Investigation

The commission is authorized to initiate this investigation 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 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, . . . 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).

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 as prescribed in section 269-12(b) to the commission and prior approval by the commission for any increases in rates, fares, or charges.

HRS § 269-16(a) and (b).

Furthermore, as discussed above, the commission is expressly authorized to increase the maximum capacities for eligible customer-generators and the total rated generating capacity produced by eligible customer-generators pursuant to HRS §§ 269-101.5, 269-102, and 269-104. Commission investigatory authority is also set forth in HRS § 269-15 and HAR § 6-61-71.

B.

Named Parties

Since all regulated electric utilities in Hawaii will likely be impacted by the outcome of this investigation, the commission will make HECO, HELCO, MECO, KIUC, and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") parties to this docket.⁴

At the present time, the commission is uncertain as to the interests of DBEDT and the remaining energy-related companies

⁴The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an *ex officio* party to any proceeding before the commission. See HRS § 269-51; HAR § 6-61-62.

and organizations who attended the commission's February 2, 2006 informal meeting. Rather than naming these entities as parties to this proceeding, the commission will serve them with a copy of this Order initiating this proceeding. If these entities are interested in participating in this proceeding, they may file a motion to intervene or to participate without intervention in accordance with the requirements of HAR Chapter 6-61, Subchapter 4.

C.

Preliminary Issues

The commission sets forth the following preliminary issues to be addressed in this proceeding:

- (1) Whether the maximum capacity for eligible consumer-generators established in HRS § 269-101.5 should be increased to an amount above 50 kW, and if so, to what amount?
- (2) Whether the total rated generating capacity produced by eligible consumer-generators established in HRS §§ 269-102 and 269-104 should be increased to an amount above 0.5 percent of an electric utility's system peak demand, and if so, to what amount?

These are preliminary issues for consideration. During the development of the prehearing (or procedural) order for this proceeding, the parties (and intervenors and participants, if any) shall have the opportunity to restructure

these preliminary issues, stipulate to eliminate them, or suggest other issues for resolution in this proceeding for the commission's review and consideration.

D.

Procedural Matters

Any interested individual, entity, agency, or community or business organization is invited to file a motion to intervene or participate without intervention in this docket in compliance with the commission's rules set forth in HAR Chapter 6-61, Subchapter 4.

The parties (and intervenors and participants, if any) shall develop a stipulated protective order if necessary, and a stipulated prehearing (or procedural) order to govern the matters of this investigation for the commission's review and approval within forty-five (45) days of the date of this Order. If the parties (and intervenors and participants, if any) are not able to stipulate, each of them shall file proposed orders for the commission's consideration by such date.

The commission expects all parties to this proceeding to participate fully in the development of the necessary procedures and issues for the orderly conduct of this investigatory proceeding, consistent with all applicable State laws and commission rules and regulations. Moreover, if necessary or appropriate, the parties to this proceeding will be expected to actively participate in a commission hearing or other

procedures authorized by State law including, but not limited to, those set forth in HRS § 269-15.6.

III.

Orders

THE COMMISSION ORDERS:

1. An investigative proceeding is initiated to examine whether, and to what extent, the commission should increase the maximum capacity of eligible customer-generators, and the total rated generating capacity produced by eligible customer-generators under Hawaii's Net Energy Metering Law, HRS §§ 269-101.5, 269-102 and 269-104.

2. The commission, *sua sponte*, designates HECO, HELCO, MECO, KIUC, and the Consumer Advocate as parties to this investigative proceeding.

3. Any individual, entity, organization, or agency desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the date of this Order. Motions to intervene or participate without intervention must comply with all applicable rules of HAR Chapter 6-61, Rules of Practice and Procedure Before the Public Utilities Commission.

4. Within forty-five (45) days of the date of this Order, the parties (and intervenors and participants, if any) shall develop a stipulated protective order, if necessary, and a stipulated prehearing (or procedural) order to govern the matters

of this investigation for the commission's review and approval. If the parties (and intervenors and participants, if any) are not able to stipulate, each of them shall file proposed orders for the commission's consideration by such date.

DONE at Honolulu, Hawaii APR 10 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By *Carlito P. Caliboso*
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By *Janet E. Kawelo*
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Kaiulani E.S. Kidani
Kaiulani E.S. Kidani
Commission Counsel

Net Energy Metering.oh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22380 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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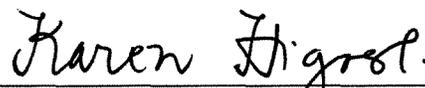
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DATED: April 10, 2006