

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of the----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Kauai Island Utility)
Cooperative's Proposed Revised)
Integrated Resource Plan and)
Demand Side Management Framework.)

DOCKET NO. 05-0075

DECISION AND ORDER NO. 22490

Filed May 26, 2006
At 1 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

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DECISION AND ORDER

By this Decision and Order, the commission modifies KAUAI ISLAND UTILITY COOPERATIVE's ("KIUC") integrated resource plan ("IRP") and demand side management ("DSM") framework (the "IRP Framework"),¹ as described below, and closes this docket.

I.

Background

A.

KIUC's Proposed IRP Framework Revisions

By Decision and Order No. 19658, filed on September 17, 2002, as amended by Decision and Order No. 19755, filed on October 30, 2002, in Docket No. 02-0060, the commission approved

¹The IRP Framework, formally known as A Framework for Integrated Resource Planning originated from the commission's proceeding in Docket No. 6617. The commission, in Docket No. 6617, conducted a proceeding to establish rules and principles that Hawaii energy utilities would follow in performing IRP. See Docket No. 6617, Decision and Order No. 11523, filed on March 12, 1992 ("Decision and Order No. 11523"), as amended by Decision and Order No. 11630, filed on May 22, 1992.

KIUC's purchase of the electric utility on the island of Kauai from Citizens Communications Company ("Citizens"). In connection with the approval, KIUC was required to prepare and submit to the commission and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") its proposed revised IRP and DSM programs for review and consideration by December 31, 2003.

By letter filed on October 17, 2003, KIUC requested a one-year extension to file its proposed IRP and DSM program revisions to allow it to undertake a study to determine how the IRP Framework should be revised or replaced given KIUC's cooperative status and its current ownership structure.

On April 30, 2004, the commission issued Order No. 20957 in Docket No. 02-0060: (1) deferring the filing deadline of KIUC's IRP and DSM programs for one-year (until December 31, 2004); and (2) suspending the submittal of IRP and DSM filings required by or related to the existing IRP Framework until a revised framework could be prepared and approved by the commission.²

On December 23, 2004, KIUC filed its proposed revisions to its existing IRP Framework ("KIUC's Proposal"). According to KIUC, its current IRP Framework was developed by the commission with input from its predecessor, Citizens, in 1992 when all Hawaii electric utilities were investor-owned utilities ("IOUs"),

²While the requirement to file certain IRP and DSM filings was suspended, the commission specifically required the continued filing of reports that reconciled or compared KIUC's surcharges and actual expenditures for DSM programs. See Order No. 20957 at 5.

and as such, it does not provide sufficient flexibility to KIUC given its current cooperative structure.

Believing that the "IOU perspective" permeated its IRP Framework, KIUC commissioned the consulting firm of R.W. Beck to assist it in revising the IRP Framework to replace, to the extent possible, the IOU perspective with a cooperative one. In revising the IRP Framework, KIUC states that it followed the principles of: (1) sharing IRP oversight authority; (2) reducing IRP costs; and (3) increasing flexibility of IRP goals, objectives, and activities.³ Guided by these three principles, KIUC proposed numerous revisions to the IRP Framework, which it attached as Appendix C to Exhibit A of KIUC's Proposal.⁴

By Order No. 21707, filed on March 24, 2005, the commission initiated this investigation to examine KIUC's proposal to revise its IRP Framework. Attached as Exhibit A to Order No. 21707 was KIUC's IRP Framework proposal.

³In its Proposal, KIUC contended that it would be appropriate for the KIUC Board of Directors ("KIUC Board") to share oversight responsibilities with the commission and the Consumer Advocate to "reflect the fact that the utility is now a cooperative that should be free of the bias toward benefiting shareholders to the detriment of consumers." See KIUC's Proposal, Exhibit A at 4. KIUC also argued that the costs of the IRP Framework's detailed rules outweigh the benefits of cooperatives since, among other things, the "tendency toward biasing IRP activities to the benefit of shareholders and the detriment of consumers, which such rules are intended to prevent (or at least reduce), is not present in a cooperative." Ibid.

⁴A list of KIUC's attachments, including KIUC Board Resolution 10-04, which adopted the proposed revisions to the IRP Framework and a "black-lined" version of the proposed revised IRP Framework is set forth on page 2 of KIUC's Proposal.

B.

Consumer Advocate's Statement of Position

On November 1, 2005, the Consumer Advocate filed its Statement of Position ("CA's Statement of Position") informing the commission that it does not support KIUC's proposed revisions to its IRP Framework, as set forth in KIUC's Proposal. In sum, the Consumer Advocate contends that KIUC's proposed revisions to the existing IRP Framework are not necessary at this time. While recognizing that the IRP Framework was adopted before the utility became a cooperative, the Consumer Advocate states that there can be no sharing of authority between the KIUC Board, the commission, and the Consumer Advocate, under KIUC's current state of regulation. Moreover, the Consumer Advocate maintains that the existing IRP Framework is broadly written to allow for the flexibility that KIUC is seeking through its proposed revisions.

The Consumer Advocate asserts that under Hawaii Revised Statutes ("HRS") Chapter 269, the KIUC Board, the commission, and the Consumer Advocate cannot share authority since each have distinct and separate responsibilities. The Consumer Advocate specifically notes that while the KIUC Board is elected by the cooperative's membership to represent their interest in decisions affecting the utility, the commission under HRS Chapter 269, is statutorily responsible for regulating the utility, and the Consumer Advocate is responsible for representing, protecting, and advancing the interest of all consumers, including small businesses of utility services under HRS § 269-51.

Moreover, the Consumer Advocate states that it is premature to revise the IRP Framework to reduce regulatory oversight since KIUC is still currently regulated by the commission. The Consumer Advocate notes that in a stipulation filed and approved in Docket No. 02-0060, KIUC agreed to not petition the commission or seek legislation to reduce or eliminate commission jurisdiction over KIUC until December 31, 2007.⁵ The Consumer Advocate states that it would be inappropriate to revise the IRP Framework to reflect a sharing of authority between the KIUC Board, commission, and the Consumer Advocate until a determination is made that public interest regulation is served by exempting KIUC from commission oversight. According to the Consumer Advocate, the delineation of responsibilities between the KIUC Board and KIUC Management should be set forth in an internal document.

With regard to KIUC proposing IRP Framework revisions for additional flexibility to reduce IRP costs, the Consumer Advocate asserts that it opposes the revisions since language in the IRP Framework already exists to allow KIUC the flexibility that it is seeking. The Consumer Advocate points to specific language in the IRP Framework that: (1) recognizes the need to "allow each utility flexibility in fashioning a process that fits its particular characteristics"; and (2) states that each utility is free to develop their processes and plans as they

⁵See Docket No. 02-0060, Decision and Order No. 19658, filed on September 17, 2002, approving the Stipulation in Lieu of Preliminary Position Statements filed on July 18, 2002.

see fit.⁶ The Consumer Advocate also contends that it is unclear why KIUC assumes that its proposed changes will result in cost savings since: (1) utility planning is an on-going and continuous process that must be performed to ensure that resources are available and service is reliable; and (2) there will always be costs associated with conducting utility planning as a cooperative or an IOU. Additionally, among other things, the Consumer Advocate states that: (1) the need for an open planning process is more essential for KIUC since most of KIUC's customers are effectively its owners; and (2) KIUC failed to provide support for its assertion that the costs of carrying out the requirements of the IRP Framework for KIUC, as a small utility, are very high.

Finally, the Consumer Advocate contends that the existing IRP Framework provides for reasonable flexibility. For instance, the Consumer Advocate argues that while the IRP Framework requires formal filings on a three (3)-year cycle, KIUC is not prohibited from requesting a waiver from the formal filing of a "new" plan if the existing plan is not expected to change over the next five (5)-year action plan period. Alternatively, the Consumer Advocate suggests that KIUC could simply re-file the existing plan and extend it by two (2) years to cover the "new" 20-year planning period.

Nevertheless, the Consumer Advocate acknowledges that the existing IRP Framework does not recognize that: (1) the

⁶See CA's Statement of Position at 13-14 (citing Decision and Order No. 11523).

electric utility on Kauai is now KIUC (requiring a correction to the reference in Section II.B.1.a of the IRP Framework); and (2) the commission approved the increase of the filing threshold for paragraph 2.3.g.2 of General Order No. 7 ("G.O. No. 7") from \$500,000 to \$2.5 million.⁷ Thus, the Consumer Advocate states that the IRP Framework may need to be modified to recognize KIUC and to reflect the new threshold for filing under paragraph 2.3.g.2 of G.O. No. 7.

C.

KIUC's Response to the CA's Statement of Position

On November 10, 2005, KIUC filed its response to the CA's Statement of Position ("KIUC's Response") in which KIUC indicated that it is no longer seeking any changes to its IRP Framework aside from the two (2) non-substantive changes noted in the CA's Statement of Position.⁸

While KIUC agrees that there can be no sharing of responsibilities between the KIUC Board, the commission and the Consumer Advocate, KIUC clarifies that it did not intend for its proposed IRP Framework revisions to impact the current regulatory

⁷See In re Kauai Island Utility Cooperative, Docket No. 03-0256, Decision and Order No. 21001, filed on May 27, 2004.

⁸In KIUC's Response, KIUC indicated that the Response was in lieu of responses to the commission's information requests ("IRs") issued on September 20, 2005. Given KIUC's assertion that revisions to its IRP Framework are no longer necessary, the commission will accept the filing of KIUC's Response in lieu of filing specific responses to the IRs issued on September 20, 2005. Thus, no additional filing is necessary regarding the commission issued IRs.

structure, and that it intends to fully comply with its prior agreement to not seek to reduce commission jurisdiction over KIUC until at least through December 31, 2007. With regard to the delineation of responsibilities between the KIUC Board and Management, KIUC agrees with the Consumer Advocate that such delineation should not be included in the IRP Framework and that KIUC should establish roles and responsibilities for the KIUC Board and Management through internal guidelines and documentation instead of within the existing IRP Framework. In addition, having further evaluated and discussed the issue with the Consumer Advocate, KIUC has determined that "KIUC does indeed have the same flexibility that it was seeking as part of its proposed revisions" to the IRP Framework and that the existing IRP Framework "has sufficient flexibility to pursue its IRP goals, objectives and activities and to reduce its IRP costs."⁹

KIUC, moreover, states that it supports the two (2) non-substantive revisions to the IRP Framework, which were set forth on Page 18 of the CA's Statement of Position that reflect: (1) the name change to KIUC; and (2) the increased filing threshold under paragraph 2.3.g.2 of G.O. No. 7. In addition, KIUC states that it intends to proceed with integrated resource planning under its existing IRP Framework, and requests that the commission issue an order opening an investigation into KIUC's integrated resource planning efforts, pursuant to its existing IRP Framework.

⁹See KIUC's Response at 8.

II.

Findings and Conclusions

Having reviewed the record in its entirety, the commission finds that the substantive revisions proposed by KIUC to its IRP Framework are unnecessary. As the Consumer Advocate argued, KIUC's revisions regarding the sharing of authority between the KIUC Board, the commission, and the Consumer Advocate, would be inappropriate under the existing provisions of HRS Chapter 269 given that KIUC has agreed to submit to commission jurisdiction and has agreed to refrain from seeking to eliminate or reduce commission jurisdiction over KIUC until at least December 31, 2007, and as such, it would be premature to revise the IRP Framework to "reduce" commission oversight through a sharing of authority. Moreover, the IRP Framework appears to be broadly written to already allow for the flexibility that KIUC was seeking through its proposed revisions.

The non-substantive changes to the IRP Framework noted by the Consumer Advocate and agreed to by KIUC regarding the utility's name change to KIUC and the increased filing threshold under paragraph 2.3.g.2 of G.O. No. 7, are both appropriate. Modifying the IRP Framework to update and reflect the existing regulatory environment and requirements is reasonable and consistent with the public interest.

Based on the above, the commission concludes that KIUC's existing IRP Framework should be modified to reflect the non-substantive changes described above; in all other respects, the IRP Framework should remain unchanged. As requested by KIUC

in its Response, the commission will issue an order initiating an investigation of KIUC's integrated resource planning efforts in a new and separate docket. In addition, given the decision to retain KIUC's existing IRP Framework, aside from the two non-substantive revisions described above, the suspension of IRP and DSM filings required by or related to the existing IRP Framework as set forth in Docket No. 6617, as approved in Order No. 20957, should be lifted.

III.

Orders

THE COMMISSION ORDERS:

1. KIUC's existing IRP Framework shall be modified to recognize the utility's name change to KIUC and the increased filing threshold under paragraph 2.3.g.2 of G.O. No. 7; in all other respects, the IRP Framework shall remain unchanged.

2. The suspension of IRP and DSM filings required by or related to KIUC's existing IRP Framework as set forth in Docket No. 6617, approved in Order No. 20957, is lifted. Accordingly, KIUC shall resume filing all IRP and DSM reports required by or related to its existing IRP Framework as set forth in Docket No. 6617, beginning in 2006. For any reports that were due in the first half of 2006, they shall be filed within thirty (30) days of the date of this Decision and Order.

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

DONE at Honolulu, Hawaii this MAY 26 2006.

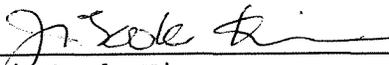
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22490 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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DATED: MAY 26 2006