

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAUAI ISLAND UTILITY COOPERATIVE)
For Approval of Changes to its)
Tariff, Net Energy Metering.)
Transmittal No. 06-01.)
_____)

DOCKET NO. 2006-0134

ORDER NO. 22666

Filed August 2, 2006
At 10 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
KAUAI ISLAND UTILITY COOPERATIVE)	Docket No. 2006-0134
For Approval of Changes to its)	Order No. 22666
Tariff, Net Energy Metering.)	
Transmittal No. 06-01.)	
_____)	

ORDER

By this Order, the commission approves, with modification, the Parties' proposed Stipulated Procedural Order submitted to the commission on July 6, 2006.¹

I.

Stipulated Procedural Order

On July 6, 2006, the Parties timely submitted their proposed Stipulated Procedural Order to the commission for review and approval, in accordance with Order No. 22475, filed on May 18, 2006. The Stipulated Procedural Order, as proposed, provides in part that the Parties shall have the right to amend the Stipulated Regulatory Schedule as may be agreed in writing from

¹The Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), is an *ex officio* party to this proceeding. See Hawaii Revised Statutes § 269-51; and Hawaii Administrative Rules ("HAR") § 6-61-62(a). KAUAI ISLAND UTILITY COOPERATIVE and the Consumer Advocate are collectively referred to as the "Parties." The proposed Stipulated Procedural Order is attached as Exhibit 1 to this Order.

time to time,² and that the Stipulated Procedural Order shall control the subsequent course of the proceeding, unless modified by the parties in writing or to prevent manifest injustice.³

HAR § 6-61-23 governs commission action for extensions of time requested by a party, whether the request is made prior to or on the deadline date (good cause) or thereafter (excusable neglect).⁴ The Parties proposed Stipulated Procedural Order does not cite or refer to HAR § 6-61-23, and instead, appears to authorize the Parties to unilaterally extend deadline dates upon their written agreement. Accordingly, the commission, on its own motion, hereby amends Section II of the Parties' proposed

²Proposed Stipulated Procedural Order, Section II, Schedule of Proceedings, at 3.

³Proposed Stipulated Procedural Order, Section IV, General, at 5.

⁴HAR § 6-61-23 states:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed or as extended by a previous order; or
- (2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action on jurisdictional matters and where any order expressly provides that no enlargement shall be granted.

(b) Motions for extensions of time and requests or stipulations for continuances must be in writing, except when made at hearing. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the commission.

HAR § 6-61-23.

Stipulated Procedural Order by referring to HAR § 6-61-23, as follows:⁵

II.

SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached hereto as Exhibit "A." Notwithstanding the above, the parties [shall have the right to] may amend the Stipulated Regulatory Schedule as may be agreed in writing from time to time[.]; provided that the requesting party or parties receive the commission's approval in accordance with HAR § 6-61-23, to the extent applicable. However, the intent of the parties in agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

The commission also amends Section VI of the Parties' proposed Stipulated Procedural Order, as follows:⁶

III.

GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket.

[Pursuant to HAR § 6-61-37, this]This Stipulated Procedural Order shall control the subsequent course[s] of these proceedings, unless modified by the parties in writing [or to prevent manifest injustice.] and approved by the commission, or upon the commission's own motion. This Stipulated Procedural Order may be executed by the parties in counterparts, each of which

⁵Deletions are bracketed, additions are underscored.

⁶Deletions are bracketed, additions are underscored.

shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Procedural Order by facsimile or electronic mail for initial submission to the Commission to be followed by the filing of originals of said facsimile or electronic mail pages.

The commission approves the proposed Stipulated Prehearing Order, as modified herein.

IV.

Order

THE COMMISSION ORDERS:

The proposed Stipulated Prehearing Order, attached as Exhibit 1 herein, is approved as modified, consistent with the terms of this Order.


DONE at Honolulu, Hawaii AUG - 2 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2006-0134.eh

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of the Application of-----)

KAUAI ISLAND UTILITY COOPERATIVE)

For Approval of Changes to its Tariff, Net)
Energy Metering. Transmittal No. 06-01.)
_____)

Docket No. 2006-0134

PUBLIC UTILITIES
COMMISSION

2006 JUL -6 P 3: 20

FILED

STIPULATED PROCEDURAL ORDER NO. _____

EXHIBIT "A"

and

CERTIFICATE OF SERVICE

Filed _____, 2006

At _____ o'clock ____m.

Chief Clerk of the Commission

EXHIBIT 1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of the Application of-----)	
)	
KAUAI ISLAND UTILITY COOPERATIVE)	Docket No. 2006-0134
)	
For Approval of Changes to its Tariff, Net)	
Energy Metering. Transmittal No. 06-01.)	
)	

KIUC/NET METERING/2006 TARIFF CHANGE/PROCEDURAL ORDER/STIPULATED PROCEDURAL ORDER (FINAL) (7-6-06)

STIPULATED PROCEDURAL ORDER

KAUAI ISLAND UTILITY COOPERATIVE ("KIUC") and DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (the "Consumer Advocate") (collectively, "parties"), through their respective attorneys and pursuant to Order No. 22475, filed on May 18, 2006 ("Order No. 22475"),¹ do hereby stipulate to the following provisions of this Stipulated Procedural Order as mutually acceptable to each.

ACCORDINGLY, IT IS ORDERED that the following Statement of the Issue, Schedule of Proceedings, and other procedures shall be utilized in this docket.

I.

STATEMENT OF THE ISSUE

The sole issue in this proceeding is whether the tariff changes proposed by KIUC in Transmittal No. 06-01 should be approved and allowed to take effect in

¹ Order No. 22475, among other things, suspended KIUC's Transmittal No. 06-01, filed on April 25, 2006 and, as a result, initiated an investigative proceeding to provide for further opportunity to review said transmittal. Order No. 22475 also required the parties to develop a stipulated procedural schedule to govern the matters of this investigation for the Hawaii Public Utilities Commission's ("Commission") review and approval within thirty (30) days of the date of Order No. 22475. On July 19, 2006, KIUC requested an extension of time until July 7, 2006 to file the parties' stipulated procedural schedule, which was approved by the Commission's letter, dated June 20, 2006.

accordance with Hawaii Revised Statutes ("HRS") § 269-16 and Hawaii Administrative Rules ("HAR") § 6-61-111.

II.

SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached hereto as Exhibit "A." Notwithstanding the above, the parties shall have the right to amend the Stipulated Regulatory Schedule as may be agreed in writing from time to time. However, the intent of the parties in agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

III.

MATTERS OF PUBLIC RECORD

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that KIUC has filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule

on whether the identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

IV.

COPIES OF PLEADINGS, BRIEFS AND OTHER DOCUMENTS

Public Utilities Commission 465 South King Street First Floor Honolulu, HI 96813	Original plus 8 copies
Division of Consumer Advocacy 335 Merchant Street Room 326 Honolulu, HI 96813 Facsimile Number: 586-2780	3 copies
Kent D. Morihara, Esq. Michael H. Lau, Esq. Morihara Lau & Fong LLP Davies Pacific Center 841 Bishop Street, Suite 400 Honolulu, HI 96813 Facsimile Number: 531-8466	1 copy
Mr. H.A. "Dutch" Achenbach President and Chief Executive Officer Kauai Island Utility Cooperative 4463 Pahe'e Street Lihue, Hawaii 96766-2032 Facsimile Number: (808) 246-4335	1 copy
Mr. Joseph M ^c Cawley Manager, Regulatory & Legislative Affairs Kauai Island Utility Cooperative 4463 Pahe'e Street Lihue, Hawaii 96766-2032 Facsimile Number: (808) 246-8268	1 copy

All pleadings, briefs and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to HAR § 6-61-15.

V.

COMMUNICATIONS

HAR § 6-61-29 concerning ex parte communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel through their own counsel or designated official only as to matters of process and procedure.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party as provided in Article IV above.

All motions, supporting memoranda, briefs, and the like shall also be served on opposing counsel.

VI.

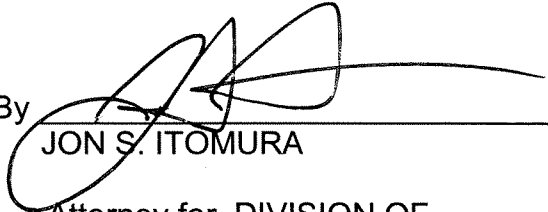
GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket.

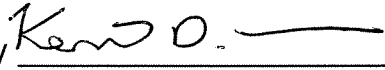
Pursuant to HAR § 6-61-37, this Stipulated Procedural Order shall control the subsequent courses of the proceedings, unless modified by the parties in writing or to prevent manifest injustice. This Stipulated Procedural Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Procedural Order by facsimile or electronic mail for initial submission to

the Commission to be followed by the filing of originals of said facsimile or electronic mail pages.

Dated: Honolulu, Hawaii, July 6, 2006.

By 
JON S. ITOMURA

Attorney for DIVISION OF
CONSUMER ADVOCACY,
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

By 
KENT D. MORIHARA
MICHAEL H. LAU

Attorneys for KAUAI ISLAND UTILITY
COOPERATIVE

APPROVED AND SO ORDERED AT HONOLULU, HAWAII THIS _____ day of
_____, 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura, Commissioner

By _____
John E. Cole, Commissioner

APPROVED AS TO FORM:

Michael Azama
Commission Counsel

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE
Docket No. 2006-0134

	DATE	PROCEDURAL STEPS
1.	Thursday, May 18, 2006	Order No. 22475 issued initiating investigation
2.	Thursday, October 26, 2006	Consumer Advocate's Statement of Position Addressing Issue stated in Stipulated Procedural Order
3.	Thursday, November 9, 2006	KIUC's Reply to the Consumer Advocate's Statement of Position, if necessary ¹
4.		Decision and Order

¹ The parties reserve their right to, collectively or individually, engage in settlement discussions at any time on any and/or all disputed issues that may exist between any of the parties' respective positions in the subject docket. In the event a settlement is reached by all or any of the parties, the respective parties will notify the Commission accordingly and make such changes to the remaining procedural steps as may be applicable or prudent under the circumstances.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were duly served on the following parties, by having said copies delivered as set forth below:

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
250 S. King Street
Room 825
Honolulu, Hawaii 96813

KENT D. MORIHARA, ESQ.
MICHAEL H. LAU, ESQ.
Moriwara Lau & Fong LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

MR. H.A. "DUTCH" ACHENBACH
President and Chief Executive Officer
Kauai Island Utility Cooperative
4463 Pahe'e Street
Lihue, Hawaii 96766-2032

MR. JOSEPH M^CCAWLEY
Manager, Regulatory & Legislative
Affairs
Kauai Island Utility Cooperative
4463 Pahe'e Street
Lihue, Hawaii 96766-2032

DATED: _____, 2006.

Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22666 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JOSEPH McCAWLEY
MANAGER - REGULATORY AND LEGISLATIVE AFFAIRS
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, HI 96766-2032

H.A. "DUTCH" ACHENBACH
PRESIDENT AND CHIEF EXECUTIVE OFFICER
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, HI 96766-2032

KENT D. MORIHARA, ESQ.
MICHAEL H. LAU, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for KIUC



Karen Higashi

DATED: AUG - 2 2006