

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of )  
 )  
HAWAIIAN ELECTRIC COMPANY, INC. )  
 )  
For Approval and/or Modification of )  
Demand-Side and Load Management )  
Programs and Recovery of Program )  
Costs and DSM Utility Incentives. )  
\_\_\_\_\_ )

DOCKET NO. 05-0069

ORDER NO. 22921

Filed October 4, 2006  
At 3:30 o'clock P.M.

Rowley K. Kane  
for Chief Clerk of the Commission

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

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In the Matter of )  
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ORDER

By this Decision and Order, the commission denies Hawaiian Electric Company, Inc.'s ("HECO") Motion for Partial Reconsideration of Interim Decision and Order No. 22420 ("Motion for Reconsideration"), filed on May 15, 2006, which moves the commission to reconsider that part of Interim Decision and Order No. 22420 that requires HECO to discontinue recovery of lost gross margins and shareholder incentives for its demand-side management ("DSM") programs within thirty days of the filing of Interim Decision and Order No. 22420.<sup>1</sup>

I.

Background

By Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169 ("Order No. 19019"), the commission approved, subject to certain conditions and modifications, the stipulation by HECO and the Department of Commerce and Consumer Affairs,

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<sup>1</sup>HECO's Motion for Reconsideration at 1.

Division of Consumer Advocacy ("Consumer Advocate"), regarding HECO's existing commercial and industrial DSM programs, submitted on October 5, 2001 ("October 5, 2001 Stipulation"). Similarly, by Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209 ("Order No. 19020"), the commission approved the stipulation by HECO and the Consumer Advocate regarding HECO's existing residential DSM programs, submitted on October 12, 2001 ("October 12, 2001 Stipulation"). Among other things, by the October 5, 2001 Stipulation and the October 12, 2001 Stipulation, HECO and the Consumer Advocate agreed that HECO may continue to accrue lost margins and shareholder incentives "through the date that interim rates as a result of the next rate case are effective."<sup>2</sup> HECO also agreed that it would not seek the continuation of lost margins or shareholder incentives in its next rate case or thereafter.<sup>3</sup> In addition, the commission specifically ordered that "HECO shall be allowed to recover lost margins and shareholder incentives accrued through the date that interim rates are established as a result of its next rate case, and that such lost margins and shareholder incentives accrued

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<sup>2</sup>October 5, 2001 Stipulation, filed on October 5, 2001, in Docket No. 00-0169, at 2; October 12, 2001 Stipulation, filed on October 12, 2001, in Docket No. 00-0209, at 2-3.

<sup>3</sup>October 5, 2001 Stipulation, filed on October 5, 2001, in Docket No. 00-0169, at 2-3; October 12, 2001 Stipulation, filed on October 12, 2001, in Docket No. 00-0209, at 2-3.

until such time may be recovered through the existing surcharge mechanism."<sup>4</sup>

By Order No. 20391, filed on August 26, 2003, in Docket No. 00-0169 ("Order No. 20391"), the commission approved, subject to certain conditions and modifications, HECO and the Consumer Advocate's August 7, 2003 Stipulation to Amend Order No. 19019 ("August 7, 2003 Stipulation"). Similarly, by Order No. 20392, filed on August 26, 2003, in Docket No. 00-0209 ("Order No. 20392"), the commission approved, subject to certain conditions and modifications, HECO and the Consumer Advocate's August 12, 2003 Stipulation to Amend Order No. 19020 ("August 12, 2003 Stipulation"). The commission approved, among other things, HECO and the Consumer Advocate's agreement to delay the filing of HECO's rate case by approximately 12 additional months such that HECO would utilize a 2005 test year for the filing.<sup>5</sup>

On November 12, 2004, in Docket No. 04-0113, HECO filed an application requesting approval of rate increases and revised rate schedules and rules, and for approval and/or modification of

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<sup>4</sup>Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169, at 8 (Ordering ¶ 4); Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209, at 10 (Ordering ¶ 5).

<sup>5</sup>Order No. 20391, filed on August 26, 2003, in Docket No. 00-0169, at 5-6; Order No. 20392, filed on August 26, 2003, in Docket No. 00-0209, at 6-7. In addition, HECO and the Consumer Advocate, among other things, agreed to: a) the temporary continuation of HECO's DSM programs until HECO's next rate case; and b) the continuation by HECO to accrue and recover the program costs, lost margins, and shareholder incentives for its DSM programs in accordance with the agreements, terms, and conditions of Order Nos. 19019 and 19020. See Order No. 20391, filed on August 26, 2003, in Docket No. 00-0169, at 5-6 n.6; Order No. 20392, filed on August 26, 2003, in Docket No. 00-0209, at 6 n.4.

demand-side and load management programs and recovery of program costs and DSM utility incentives.

By Order No. 21698, filed on March 16, 2005, in Docket Nos. 04-0113 and 05-0069 ("Order No. 21698"), the commission, among other things, separated HECO's requests for approval and/or modification of demand-side and load management programs and recovery of program costs and DSM utility incentives from Docket No. 04-0113 (the "Rate Case Docket"), and opened Docket No. 05-0069 (the "Energy Efficiency Docket") in which to consider these matters.

On December 5, 2005, HECO filed its request for commission approval of modifications to HECO's existing energy efficiency DSM programs, and also approval of a new interim DSM program, collectively referred to as HECO's "Interim DSM Proposals." HECO stated that "[t]he Interim DSM Proposals are necessary in order to provide HECO with additional megawatts ('MW') of peak demand savings in order to help address its current reserve capacity situation."<sup>6</sup> On January 10, 2006, the Consumer Advocate, the Department of the Navy on behalf of the Department of Defense ("DoD"), the Hawaii Solar Energy Association ("HSEA"), the Hawaii Renewable Energy Alliance ("HREA"), and Rocky Mountain Institute ("RMI"), filed responses

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<sup>6</sup>HECO's Request for Interim DSM Proposals, filed on December 5, 2005, in Docket No. 05-0069, at 1.

to HECO's Interim DSM Proposals.<sup>7</sup> On January 31, 2006, HECO filed its response to the comments filed by the Consumer Advocate, the DoD, HSEA, and HREA on January 10, 2006.

By Interim Decision and Order No. 22420, filed on April 26, 2006, in Docket No. 05-0069 ("Interim Decision and Order No. 22420"), the commission: (1) approved, on an interim basis, HECO's Interim DSM Proposals; and (2) required the discontinuance of HECO's recovery of lost gross margins and shareholder incentives for its DSM programs within thirty days of the filing of Interim Decision and Order No. 22420, until further order by the commission.

On May 15, 2006, HECO filed its Motion for Reconsideration, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-41 and 6-61-137. HECO requested a hearing on its Motion for Reconsideration pursuant to HAR § 6-61-41(b). On August 28, 2006, the commission conducted a hearing on HECO's Motion for Reconsideration, as requested by HECO.

## II.

### Standard

HAR § 6-61-137 provides:

Motion for reconsideration or rehearing. A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for

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<sup>7</sup>Hawaii Electric Light Company, Inc. ("HELCO"), Maui Electric Company, Ltd. ("MECO"), Kauai Island Utility Cooperative ("KIUC"), The Gas Company ("TGC"), Life of the Land ("LoL"), the County of Kauai ("CoK"), and the County of Maui ("CoM") did not file responses.

reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137. Thus, to succeed on a motion for reconsideration, the movant must demonstrate that the commission's decision or order was "unreasonable, unlawful, or erroneous." See id.

"[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Tagupa v. Tagupa, 108 Hawai'i 459, 465, 121 P.2d 924, 930 (2005). "Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Id. (citing Association of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) and quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000)).

According to HECO, In re Gray Line Hawaii, Ltd., Docket No. 96-0217, Decision and Order No. 15380, filed on February 25, 1997 (citing In re Kauai Electric Division of Citizens Utilities Co., 61 Haw. 166, 195 (1978)), stands for the proposition that "[i]n evaluating motions for reconsideration, we

consider whether matters have been overlooked or mistakenly conceived."<sup>8</sup>

### III.

#### Discussion

HECO raises four arguments in support of its Motion for Reconsideration:

- (1) The question of whether HECO should continue to recover lost margins and shareholder incentives for its existing DSM programs was not properly before the Commission.
- (2) The DSM stipulations relied upon by the Commission contemplated that new DSM programs, including any new mechanisms to compensate or provide incentives for utilities to efficiently and effectively implement such programs, would be established in the same proceeding in which the existing programs and incentive mechanisms were terminated. By terminating the existing incentive mechanisms as a result of HECO's last rate case, while transferring consideration of the replacement mechanisms to a later proceeding, the Commission is effectively enforcing only a part of the stipulation, to HECO's detriment.
- (3) By discontinuing the existing incentive mechanism in ruling on the Interim DSM proposals, the Commission has denied HECO the prior hearing contemplated by the stipulation as to the appropriate replacement mechanism (which was the "next" rate case) and apparently contemplated by the bifurcation order pursuant to which the existing DSM programs have been continued (i.e., the hearing in this docket). Thus, HECO has been denied its due process right to a hearing.

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<sup>8</sup>HECO's Motion for Reconsideration at 11.

- (4) Given the wording in the Interim D&O [No. 22420] as to why the existing mechanism should be discontinued regardless of the stipulation, HECO is concerned that the Commission may have prejudged those issues in the Prehearing Order relating to DSM utility incentives (e.g., Issues 5 and 8), and respectfully requests that the Commission withhold judgment on these issues until it has had the opportunity to consider the evidence and arguments that will be submitted in the Final Statements of Position, and at the Panel Hearing.<sup>9</sup>

In the present docket, the commission finds that HECO did raise or could have raised all of the grounds presented in the Motion for Reconsideration prior to the commission issuing Interim Decision and Order No. 22420, and that the commission did not overlook or misconceive any of the matters presented. Nonetheless, without deeming any of the grounds sufficiently "new" to justify reconsideration of Interim Decision and Order No. 22420, the commission addresses each argument proffered by HECO in order to provide clarity to the record in this docket.

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<sup>9</sup>HECO's Motion for Reconsideration, at 2-3. The Prehearing Order referenced by HECO was filed with the commission on October 7, 2005, pursuant to Order No. 21698, filed on March 16, 2005, in Docket No. 05-0069. The Prehearing Order sets forth the issues, procedures, and schedule in this docket, and was approved by Order No. 22251, filed on January 31, 2006, in Docket No. 05-0069, and amended by Order No. 22319, filed on March 15, 2006, in Docket No. 05-0069. As part of the schedule, the Prehearing Order allows for the submission of Final Statements of Position. The Final Statements of Position were filed on or before June 1, 2006, pursuant to the extension granted on April 13, 2006. In addition, the Prehearing Order contemplated a Panel Hearing. The Panel Hearing was conducted on August 28, 2006 through September 1, 2006, pursuant to Order No. 22803, filed on August 25, 2006, in Docket No. 05-0069.

A.

Commission Jurisdiction

HECO argues that "[t]he question of whether HECO should continue to recover lost margins and shareholder incentives for its existing DSM programs was not properly before the Commission in ruling on HECO's [I]nterim DSM Proposals" as HECO did not request discontinuation of all lost margins and shareholder incentives in its Request for Interim DSM Proposals.<sup>10</sup> As discussed herein, we find that HECO's argument is without merit and therefore fails to form a basis for reconsideration of Interim Decision and Order No. 22420.

First, contrary to HECO's assertions, the issue of whether HECO should continue to recover lost margins and shareholder incentives for its existing DSM programs was squarely before the commission. In HECO's request to implement its Interim DSM Proposals, filed on December 5, 2005, HECO itself raised the issue of lost margins and shareholder incentives:

[A]n order providing for continuation of the energy efficiency DSM programs, "in the manner currently employed," includes continued recovery of costs using the current mechanisms (i.e., the surcharge for incremental costs, lost margins and shareholder incentives, and base rates for costs currently recovered through base rates). Accordingly, HECO is continuing to recover the DSM program costs, lost margins and shareholder incentives for its currently implemented DSM programs.<sup>11</sup>

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<sup>10</sup>HECO's Motion for Reconsideration at 3-5.

<sup>11</sup>HECO's Request for Interim DSM Proposals, filed on December 5, 2005, in Docket No. 05-0069, at 3.

In addition, in its Response to HECO's Request for Interim DSM Proposals, the Consumer Advocate included an entire section on HECO's continued attempts to recover lost margins and shareholder incentives.<sup>12</sup> Likewise, in its Response to HECO's Request for Interim DSM Proposals, the DoD argued that HECO should not be allowed to collect lost margins and shareholder incentives.<sup>13</sup> HECO responded to the CA and DoD's comments with its own discussion, entitled "Comments Related to Lost Margins and Shareholder Incentives."<sup>14</sup> Clearly, HECO had and took the opportunity to address the issue of whether it should continue to recover lost margins and shareholder incentives.

Second, in addition to the fact that the issue of recovery of lost margins and shareholder incentives was raised in the briefing, the commission has the authority to instruct HECO to comply with previous commission orders, either in its ruling on HECO's Interim DSM Proposals, or at any time deemed appropriate by the commission.<sup>15</sup> Relatedly, the commission also

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<sup>12</sup>Consumer Advocate's Response to HECO's Request for Interim DSM Proposals, filed on January 10, 2006, in Docket No. 05-0069, at 17-20.

<sup>13</sup>DoD's Response to HECO's Request for Interim DSM Proposals, filed on January 10, 2006, in Docket No. 05-0069, at 1.

<sup>14</sup>HECO's Sur-Response, filed on January 31, 2006, in Docket No. 05-0069, at 8-9.

<sup>15</sup>As discussed in Section II.B., infra, Interim Decision and Order No. 22420 enforces Order Nos. 19019, 19020, and 21698.

has the authority to correct a misinterpretation of one of its orders.<sup>16</sup>

Hawaii Revised Statutes ("HRS") § 269-6 provides that "[t]he public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter."<sup>17</sup> Alternatively, pursuant to HAR § 6-61-160, "[t]he commission may, upon its own motion or upon request and without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty." Indeed, HECO itself concedes that "the Commission clearly has the authority to order the discontinuation of the accrual of [lost margins and] shareholder incentives."<sup>18</sup>

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<sup>16</sup>As discussed in Section II.B., *infra*, HECO misinterprets the phrase "in the manner currently employed" in ordering paragraph 2 of Order No. 21698.

<sup>17</sup>HRS § 269-15 also provides:

If the public utilities commission is of the opinion that any public utility or any person is violating or neglecting to comply with any provision of this chapter or of any rule, regulation, order, or other requirement of the commission . . . or that in any way it is doing what it ought not to do . . . it shall in writing inform the public utility[.]

<sup>18</sup>HECO's Motion for Reconsideration at 11, n.9 (emphasis omitted); see also Transcript of Proceedings, dated August 28, 2006, at Vol. I, p. 9. HECO attempts to limit the commission's authority by imposing restrictions on the commission's authority: "the Commission should not [order the discontinuation of the accrual of lost margins and shareholder incentives] (1) before hearing and weighing the evidence regarding the benefits of utility compensation mechanisms, or (2) in a manner that eliminates the utility's ability to plan for the termination." See HECO's Motion for Reconsideration at 11, n.9. Even assuming that these two restrictions exist, (1) the commission has heard and weighed the evidence with respect to lost margins and shareholder incentives, and (2) HECO has had the ability to plan

Third, we disagree with HECO's apparent belief that the commission lacks jurisdiction to rule on an issue in a manner other than as requested by a party. In its Motion for Reconsideration, HECO states, "the Commission went well beyond any request that the Commission approve the implementation of the Interim DSM Proposals without any form of lost margin recovery and shareholder incentives."<sup>19</sup> However, there is nothing that confines the commission's jurisdiction to the request of a party. Indeed, as indicated above, the commission has broad authority to enforce its orders, terminate controversies, and remove uncertainties.

Accordingly, the issue of whether HECO should continue to recover lost margins and shareholder incentives for its existing DSM programs was properly before the commission, and the commission finds no merit in HECO's argument that the commission lacked jurisdiction to decide the issue.

B.

Enforcement of the Commission's Prior Orders

HECO argues that the commission:

[H]as implemented only one part of the DSM stipulations upon which it relies, and did not consider that part of the stipulations that clearly contemplated that new DSM programs, including any new mechanisms to compensate or provide incentives for utilities to efficiently and effectively

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for the termination of lost margins and shareholder incentives from at least the date that HECO stipulated to terminate their recovery.

<sup>19</sup>HECO's Motion for Reconsideration at 5 (emphasis omitted).

implement such programs, would be established in the same proceeding in which the existing programs and incentive mechanisms were terminated.<sup>20</sup>

As discussed herein, we find that HECO's argument is without merit.

First, HECO's belief that Interim Decision and Order No. 22420 seeks to enforce only part of a stipulation neglects to account for the commission's orders related to that stipulation. In particular, in Order Nos. 19019 and 19020, the commission ordered that HECO may "recover lost margins and shareholder incentives accrued through the date that interim rates are established as a result of its next rate case[.]"<sup>21</sup> In addition, in Interim Decision and Order No. 21698, the commission ordered:

HECO may temporarily continue, in the manner currently employed, its existing two (2) residential DSM programs, approved in Docket Nos. 94-0206 and 92-0216 and continued in Docket No. 00-0209, and three (3) [commercial and industrial] DSM programs, approved in Docket Nos. 94-0010, 94-0011, and 94-0012 and continued in Docket No. 00-0169, until further order by the commission.<sup>22</sup>

Thus, by ordering HECO to discontinue its recovery of lost margins and shareholder incentives in Interim Decision and Order No. 22420, the commission was essentially enforcing

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<sup>20</sup>HECO's Motion for Reconsideration at 5 (emphasis in original); see also id. at 6, 10-11.

<sup>21</sup>Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169, at 8 (Ordering ¶ 4); Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209, at 10 (Ordering ¶ 5).

<sup>22</sup>Order No. 21698, filed on March 16, 2005, in Docket Nos. 04-0113 and 05-0069, at 19 (Ordering ¶ 2).

Order Nos. 19019, 19020, and 21698, and not simply relying on stipulations between HECO and the Consumer Advocate.

Second, the bifurcation of the rate case and the energy efficiency docket did not impact the commission's decision regarding lost margins and shareholder incentives. HECO urges that "[s]ince the establishment of new programs and compensation mechanisms has been deferred, the existing programs and incentive mechanisms should both be continued."<sup>23</sup> The establishment of DSM programs and compensation mechanisms is separate from the issue of lost margins and shareholder incentives. In the October 5, 2001 Stipulation, HECO and the Consumer Advocate agreed that HECO may accrue lost margins and shareholder incentives "through the date that interim rates as a result of the next rate case are effective."<sup>24</sup> In contrast, in the October 5, 2001 Stipulation, HECO and the Consumer Advocate agreed that "HECO may continue to recover the program costs for the existing three [commercial and industrial] DSM programs accrued through the date that estimated program costs are incorporated into rates as a result of the next rate case[.]"<sup>25</sup> Similarly, in the October 12, 2001 Stipulation, HECO and the Consumer Advocate agreed that "HECO may continue to recover the program costs for the existing two residential DSM programs (as they may be modified in this docket) accrued through

<sup>23</sup>HECO's Motion for Reconsideration at 12.

<sup>24</sup>October 5, 2001 Stipulation, filed on October 5, 2001, in Docket No. 00-0169, at 2 (emphasis added); October 12, 2001 Stipulation, filed on October 12, 2001, in Docket No. 00-0209, at 2-3 (emphasis added).

<sup>25</sup>October 5, 2001 Stipulation, filed on October 5, 2001, in Docket No. 00-0169, at 2 (footnotes omitted; emphasis added).

the date that estimated program costs are incorporated into rates as a result of the next rate case[.]”<sup>26</sup> Clearly, HECO and the Consumer Advocate were aware of how to draft their stipulations to incorporate lost margins and shareholder incentives into rate recovery. Indeed, the commission expected HECO to pursue DSM programs subsequent to the termination of lost margins and shareholder incentives:

[D]espite HECO’s agreement and commitment to not seek the recovery of lost margins and shareholder incentives in its next rate case or thereafter, we must accentuate our desires that HECO continue to pursue a responsible balance to meet “near and long term energy needs in an efficient and reliable manner at the lowest reasonable cost” while, at the same time, also providing ample opportunities to ratepayers to strive for energy efficiency through the various DSM programs such as those programs it proposes to implement in this docket . . . . We, however, expect HECO to have the same level of commitment subsequent to HECO terminating the recovery of either lost margins or shareholder incentives.<sup>27</sup>

Clearly, the commission understood that (1) HECO would not be seeking lost margins or shareholder incentives in its next rate case or thereafter, and (2) HECO would exhibit the same level of commitment to its DSM programs after the termination of lost margins or shareholder incentives.

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<sup>26</sup>October 12, 2001 Stipulation, filed on October 12, 2001, in Docket No. 00-0209, at 2 (footnotes omitted; emphasis added).

<sup>27</sup>Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169, at 7; Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209, at 8-9.

Third, HECO mistakenly relies on an incorrect interpretation of the phrase "in the manner currently employed" in Order No. 21698. HECO argues:

The Commission's order providing for continuation of the energy efficiency DSM programs, "in the manner currently employed", [sic] can and should be construed to include continued recovery of costs using the current mechanisms (i.e., the surcharge for incremental costs, lost margins and shareholder incentives, and base rates for costs currently recovered through base rates).<sup>28</sup>

HECO apparently interprets the phrase "in the manner currently employed" in Order No. 21698 as permitting continued recovery of lost margins and shareholder incentives. However, in ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020, the commission ordered that HECO may only recover lost margins and shareholder incentives "accrued through the date that interim rates are established as a result of its next rate case."<sup>29</sup> The phrase "in the manner currently employed" does not vacate ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020. Moreover, nowhere in Order No. 21698 does the commission state that it is vacating ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020. Indeed, ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020 establish the termination date for the accrual of lost margins

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<sup>28</sup>HECO's Motion for Reconsideration at 10.

<sup>29</sup>Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169, at 8 (Ordering ¶ 4); Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209, at 10 (Ordering ¶ 5).

and shareholder incentives. Therefore, continuing "in the manner currently employed" means accruing lost margins and shareholder incentives until such termination date.

Fourth, a stipulation between the parties does not override a commission order. HECO argues:

HECO attempted to make it clearer in the 2003 agreements that it planned to seek alternative incentive mechanisms for DSM programs in its rate case, by indicating that it was agreeing to not pursue the continuation of lost margins and shareholder incentives through a surcharge mechanism in the next rate case or thereafter.<sup>30</sup>

However, as discussed above, ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020 provide that HECO may only recover lost margins and shareholder incentives "accrued through the date that interim rates are established as a result of its next rate case."<sup>31</sup> In issuing Order No. 20391, the commission did not amend or vacate ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020:

Order No. 19019 is amended consistent with the new agreements, terms and conditions set forth in the August 7, 2003 Stipulation to Amend Order No. 19019. In the event any provision of the August 7, 2003 Stipulation to Amend Order No. 19019 conflicts with any provision of the October 5, 2001 Stipulation, the August 7, 2003 Stipulation to Amend Order No. 19019 shall control. In all other

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<sup>30</sup>HECO's Motion for Reconsideration at 9 (emphasis in original).

<sup>31</sup>Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169, at 8 (Ordering ¶ 4); Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209, at 10 (Ordering ¶ 5).

respects, Order No. 19019 shall remain unchanged.<sup>32</sup>

By Order No. 20392, the commission similarly amended Order No. 19020.<sup>33</sup> Therefore, regardless of any "clarifications" that HECO attempted to insert into its Stipulation with the Consumer Advocate, ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020 remain unchanged.<sup>34</sup>

Fifth, HECO misinterprets the Integrated Resource Planning ("IRP") Framework. HECO argues that under the IRP Framework, "approval of DSM programs in general, and the energy efficiency DSM programs in particular, includes approval of the mechanism(s) to be used in recovering program costs, as well as any lost margins and shareholder incentives that are allowed to be recovered."<sup>35</sup> However, the IRP Framework does not automatically include approval of lost margins and shareholder incentives. Rather, the IRP Framework provides that lost margins and shareholder incentives may be recovered:

2. Under appropriate circumstances, the utility may recover the net loss in revenues sustained by the utility as a result of successful implementation of full-scale demand-side management programs sponsored or instituted by the utility.

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<sup>32</sup>Order No. 20391, filed on August 26, 2003, in Docket No. 00-0169, at 9 (Ordering ¶ 2) (emphasis added).

<sup>33</sup>Order No. 20392, filed on August 26, 2003, in Docket No. 00-0209, at 9 (Ordering ¶ 2).

<sup>34</sup>Order No. 19019, filed on November 15, 2001, in Docket No. 00-0169, at 8 (Ordering ¶ 4); Order No. 19020, filed on November 15, 2001, in Docket No. 00-0209, at 10 (Ordering ¶ 5).

<sup>35</sup>HECO's Motion for Reconsideration at 10.

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3. Under appropriate circumstances, the commission may provide the utility with incentives to encourage participation in and promotion of full-scale demand-side management programs.<sup>36</sup>

Indeed, as conceded by HECO, the IRP Framework provides that "[t]he commission may terminate any and all incentives whenever circumstances or conditions warrant such termination."<sup>37</sup>

Accordingly, Interim Decision and Order No. 22420 was not a partial implementation of the stipulations between HECO and the Consumer Advocate, but commission enforcement of its prior orders.

C.

Due Process

HECO argues that it "has been denied its due process right to a hearing."<sup>38</sup> Specifically, HECO argues that the commission "has denied HECO the prior hearing contemplated by the stipulations as to the appropriate replacement mechanism for the

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<sup>36</sup>Decision and Order No. 11630, filed on May 22, 1992, in Docket No. 6617, at 17-18 (emphases added). In addition, the commission notes that HECO's citation to In re Hawaiian Electric Co., Docket No. 7257, Decision and Order No. 13839, filed on March 31, 1995, at 37, 39-40, does not support HECO's assertion.

<sup>37</sup>Decision and Order No. 11630, filed on May 22, 1992, in Docket No. 6617, at 19; HECO's Motion for Reconsideration at 11 n.9 (quoting same).

<sup>38</sup>HECO's Motion for Reconsideration at 12.

existing lost margins and shareholder incentives surcharge mechanism."<sup>39</sup> The commission disagrees.

First, HECO was not entitled to a hearing. Contrary to HECO's assertion, even if the stipulations contemplated that HECO would be entitled to a hearing prior to any determination by the commission on the issue of lost margins and shareholder incentives, such stipulations would not themselves entitle HECO to a hearing. Furthermore, in the present docket, a hearing was not necessary because, as discussed in Section II.B., supra, the commission was simply enforcing its previous orders and, to the extent necessary, clarifying a misinterpretation by HECO of its previous orders.<sup>40</sup>

Second, HECO did not request a hearing. As discussed in Section II.A., supra, the issue of lost margins and shareholder incentives was clearly raised and briefed. The commission understands HECO's position that it did not consider the issue of lost margins and shareholder incentives to be before the commission. Nonetheless, there were sufficient written submissions that HECO should have known that the issue was before the commission, and therefore, the fact remains that HECO could have requested a hearing.

Third, any absence of a hearing on the issue of lost margins and shareholder incentives was cured. As discussed in Section II.D., infra, HECO requested that the commission consider the evidence and arguments in the Final Statements of Position

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<sup>39</sup>HECO's Motion for Reconsideration at 5.

<sup>40</sup>Moreover, under HAR § 6-61-160, the commission may issue a declaratory order without notice or hearing.

and at the Panel Hearing. The commission received the Final Statements of Position and completed the Panel Hearing. Accordingly, the commission finds that even if HECO was entitled to a hearing, the absence of a hearing was cured and there is no harm or prejudice to HECO.

Accordingly, HECO has not been denied any due process right to a hearing, and the commission finds that HECO's argument is without merit and fails to form a basis for reconsideration of Interim Decision and Order No. 22420.

D.

Sufficient Record

HECO expressed a concern that "the Commission may have prejudged those issues in the Prehearing Order relating to utility DSM incentive mechanisms," and HECO therefore requested that "the Commission withhold judgment on these issues until it has had the opportunity to consider the evidence and arguments that will be submitted in the Final Statements of Position, and at the Panel Hearing."<sup>41</sup>

First, the commission did not prejudge the issues in this proceeding when it issued Interim Decision and Order No. 22420. HECO identifies two "utility DSM incentive mechanism" issues: (1) whether DSM incentive mechanisms are appropriate to encourage the implementation of DSM programs, and, if so, what is the appropriate mechanism(s) for such DSM incentives, and (2) whether HECO's proposed DSM Utility Incentive

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<sup>41</sup>HECO's Motion for Reconsideration at 13-14.

is reasonable, and should be approved, approved with modifications, or rejected.<sup>42</sup> The commission did not prejudge these issues, and in deciding these issues, the commission will consider the entire record in these proceedings, including the arguments set forth at the Panel Hearing.

Second, notwithstanding the foregoing, the commission notes that it has complied with HECO's request to consider the evidence and arguments submitted in the Final Statements of Position, and at the Panel Hearing. There was nothing presented in the Final Statements of Position or at the Panel Hearing that forms a basis for reconsideration of Interim Decision and Order No. 22420.

Based on the foregoing, the commission finds that HECO has not established sufficient grounds for reconsideration of Interim Decision and Order No. 22420. Therefore, the commission denies HECO's Motion for Reconsideration and affirms its ruling in Interim Decision and Order No. 22420.

#### IV.

#### Order

THE COMMISSION ORDERS:

HECO's Motion for Partial Reconsideration of Interim Decision and Order No. 22420 is denied.

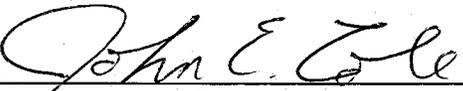
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<sup>42</sup>HECO's Motion for Reconsideration at 14.

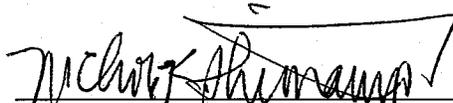
DONE at Honolulu, Hawaii OCT - 4 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Nichole K. Shimamoto  
Commission Counsel

05-0069.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22921 upon the following parties and participants, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party and participant.

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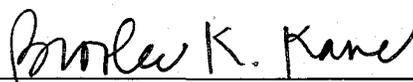
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DATED: OCT - 4 2006