

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
 )  
For Approval of a Residential )  
Efficient Water Heating Program, )  
Recovery of Program Costs and )  
Lost Revenues, and Consideration )  
For Shareholder Incentives. )

DOCKET NO. 95-0173

In the Matter of the Application of )  
 )  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
 )  
For Approval of a Commercial and )  
Industrial Energy Efficiency )  
Program, Recovery of Program Costs )  
and Lost Revenues, and )  
Consideration for Shareholder )  
Incentives. )

DOCKET NO. 95-0174

In the Matter of the Application of )  
 )  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
 )  
For Approval of a Commercial and )  
Industrial New Construction )  
Program, Recovery of Program Costs )  
and Lost Revenues, and )  
Consideration for Shareholder )  
Incentives. )

DOCKET NO. 95-0175

In the Matter of the Application of )  
 )  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
 )  
For Approval of a Commercial and )  
Industrial Customized Rebate )  
Program, Recovery of Program Costs )  
and Lost Revenues, and )  
Consideration for Shareholder )  
Incentives. )

DOCKET NO. 95-0176

(CONSOLIDATED)

ORDER NO. 22922

Filed October 4, 2006

At 3:30 o'clock P.M.

*Bonnie 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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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

for *Bonnie K. Kane*

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Consideration for Shareholder )	
<u>Incentives.</u> )	

ORDER

By this Order, the commission grants in part and denies in part Hawaii Electric Light Company, Inc.'s ("HELCO") request

to temporarily continue accruing lost gross margins and shareholder incentives for the subject demand-side management ("DSM") programs.<sup>1</sup> HELCO may continue to recover lost gross margins and shareholder incentives until September 27, 2006, rather than May 25, 2007, as requested by HELCO.

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 Hawaiian Electric Company, Inc. ("HECO") and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), regarding HECO's existing commercial and industrial ("C&I") 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 agreed that it would not seek the continuation of lost margins or

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<sup>1</sup>The subject DSM programs include: HELCO's Residential Efficient Water Heating Program; HELCO's Commercial and Industrial Energy Efficiency Program; HELCO's Commercial and Industrial New Construction Program; and HELCO's Commercial and Industrial Customized Rebate Program (collectively, "DSM programs").

shareholder incentives in its next rate case or thereafter.<sup>2</sup> In addition, HECO agreed that:

[HELCO and MECO] will take the necessary steps to implement any changes ordered or approved by the commission in HECO's next rate case, within one year from when such costs are incorporated into HECO's rates established as a result of HECO's next rate case. At that time, HECO represents that HELCO and MECO will cease accrual of lost margins and shareholder incentives. The parties agree that HELCO and MECO would be allowed to continue the accrual and recovery of their respective DSM program costs, lost margins and shareholder incentives through their existing surcharge mechanism until the changes are implemented.<sup>3</sup>

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

By Amended Order No. 19094, filed on December 11, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176 ("Amended Order No. 19094"), the commission approved, subject to certain conditions and modifications, the stipulation by HELCO and the Consumer Advocate regarding HELCO's four existing residential and

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<sup>2</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.

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

<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).

C&I DSM programs, submitted on October 31, 2001 ("October 31, 2001 Stipulation"). HELCO and the Consumer Advocate agreed that HELCO may continue to accrue lost margins and shareholder incentives resulting from HELCO's four existing residential and C&I DSM programs (as modified by the Stipulation) until one year after the commission makes a determination in HECO's next rate case of HECO's revenue requirements in an interim decision and order or final decision and order, whichever comes first ("HELCO's DSM Temporary Continuation Period").<sup>5</sup> HELCO agreed that it would not seek continued recovery of lost margins and shareholder incentives after HELCO's DSM Temporary Continuation Period.<sup>6</sup> The commission ordered that:

HELCO shall only be allowed to recover lost margins and shareholder incentives accrued through the date that interim rates are established as a result of HECO's next rate case, and that such lost margins and shareholder incentives accrued until such time may be recovered through the existing surcharge mechanism. If necessary, HELCO may, pursuant to Hawaii Administrative [R]ules § 6-61-23, request to extend the time of such accrual and recovery of lost margins and shareholder incentives for up to a year subsequent to the date that interim rates are established as a result of HECO's next rate case.<sup>7</sup>

By Order No. 20391, filed on August 26, 2003, in Docket No. 00-0169 ("Order No. 20391"), the commission approved, subject

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<sup>5</sup>October 31, 2001 Stipulation, filed on October 31, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 1, 3.

<sup>6</sup>October 31, 2001 Stipulation, filed on October 31, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 1, 3.

<sup>7</sup>Amended Order No. 19094, filed on December 11, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 6-7 (Ordering ¶ 4).

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>8</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 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

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<sup>8</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 August 7, 2003 Stipulation, filed on August 7, 2003, in Docket No. 00-0169, at 2-3; August 12, 2003 Stipulation, filed on August 12, 2003, in Docket No. 00-0209, at 2-3.

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. By Order No. 21861, filed on June 7, 2005, the commission sua sponte named HELCO as one of the parties to Docket No. 05-0069, limiting its participation to the issues related to statewide energy policies.

By Interim Decision and Order No. 22050, filed on September 27, 2005, in Docket No. 04-0113 ("Interim Decision and Order No. 22050"), the commission granted HECO interim rates in HECO's Rate Case Docket.

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 ordered that "HECO's recovery of lost margins and shareholder incentives for its DSM programs must be discontinued within thirty days of the filing of this Interim Decision and Order, until further order by the commission."<sup>9</sup>

A.

Applicant's Request

On May 25, 2006, HELCO filed its request to temporarily continue to accrue, through May 25, 2007, lost margins and shareholder incentives in the manner currently employed for the subject demand-side management programs ("HELCO's Request").

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<sup>9</sup>Interim Decision and Order No. 22420, filed on April 26, 2006, in Docket No. 05-0069, at 20 (Ordering ¶ 4).

According to HELCO, "[i]t was the understanding of HELCO and MECO that the temporary continuation of HECO's existing DSM programs, as a result of the bifurcation order in HECO's rate case, also had the effect of postponing the deadline for the recovery of HELCO and MECO's lost margins and shareholder incentives until resolution of the Energy Efficiency Docket."<sup>10</sup> HELCO states that it filed its request pursuant to the stipulated agreement entered into on October 31, 2001 between HELCO and the Consumer Advocate, Amended Order No. 19094, Order No. 21698, and Interim Decision and Order No. 22420.

B.

Consumer Advocate's Position

On September 19, 2006, the Consumer Advocate filed its response to HELCO's Request ("Consumer Advocate's Response"). The Consumer Advocate argues that HELCO should no longer be allowed to recover lost margins and shareholder incentives to encourage the implementation of DSM programs.<sup>11</sup> The Consumer Advocate explains:

[I]t is clear that the bifurcation of HECO's proposed DSM programs from the pending HECO rate case, Docket No. 04-0113, did not effectively postpone the deadline for the recovery of HECO's and HELCO's lost margins and shareholder incentives until resolution in the Energy Efficiency Docket, as HELCO claims. HECO and HELCO agreed to not seek continuation of lost margins and shareholder incentives in the next rate case, or after the HELCO DSM Temporary Continuation Period,

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<sup>10</sup>HELCO's Request, at 4.

<sup>11</sup>Consumer Advocate's Response at 3.

respectively. Thus, the bifurcation of the DSM programs should have no impact on whether HECO or HELCO should be allowed to temporarily continue accruing of [sic] lost margins and shareholder incentives.<sup>12</sup>

The Consumer Advocate adds that "HELCO has already received an extension since the accruals should have ceased on September 27, 2005."<sup>13</sup> In addition, the Consumer Advocate states:

Even if the Commission is inclined to provide the Company with a one-year extension, HELCO should only be allowed a one-year extension to September 27, 2006, for such accruals (i.e., one year from the date on which HECO was granted interim rate relief in its next rate proceeding (i.e., Docket No. 04-0113)).<sup>14</sup>

Finally, the Consumer Advocate highlights the need to hold parties to their settlement agreements so as not to discourage future settlement negotiations, which would harm the public interest.<sup>15</sup>

Thus, the Consumer Advocate opposes the request to temporarily accrue lost margins and shareholder incentives until May 26, 2007, and in any event, opposes any extension beyond September 27, 2006, a period of twelve months after HECO was granted interim rate relief in Docket No. 04-0113, consistent with the terms of the October 31, 2001 Stipulation.<sup>16</sup>

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<sup>12</sup>Consumer Advocate's Response at 5 (underlining in original; bold typeface omitted).

<sup>13</sup>Consumer Advocate's Response at 6.

<sup>14</sup>Consumer Advocate's Response at 6.

<sup>15</sup>Consumer Advocate's Response at 7.

<sup>16</sup>Consumer Advocate's Response at 7.

## II.

### Discussion

By Amended Order No. 19094, the commission ordered that:

HELCO shall only be allowed to recover lost margins and shareholder incentives accrued through the date that interim rates are established as a result of HECO's next rate case, and that such lost margins and shareholder incentives accrued until such time may be recovered through the existing surcharge mechanism. If necessary, HELCO may, pursuant to Hawaii Administrative [R]ules § 6-61-23, request to extend the time of such accrual and recovery of lost margins and shareholder incentives for up to a year subsequent to the date that interim rates are established as a result of HECO's next rate case.<sup>17</sup>

As indicated above, by Interim Decision and Order No. 22050, the commission granted interim rates in HECO's Rate Case Docket on September 27, 2005, and accordingly, HELCO should have ceased recovery of lost margins and shareholder incentives on September 27, 2005.

In its request, HELCO, however, asserts that the bifurcation of the Rate Case Docket and the Energy Efficiency Docket "had the effect of postponing the deadline for recovery of HELCO and MECO's lost margins and shareholder incentives until resolution of the Energy Efficiency Docket."<sup>18</sup> HELCO apparently construed "in the manner currently employed" in Order No. 21698 as including "continued recovery of costs using the current

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<sup>17</sup>Amended Order No. 19094, filed on December 11, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 6-7 (Ordering ¶ 4) (emphasis added).

<sup>18</sup>HELCO's Request, at 4.

mechanisms (i.e., the surcharge for incremental costs, lost margins and shareholder incentives, and base rate for costs currently recovered through base rates) . . . ."<sup>19</sup> However, in ordering paragraph 4 of Order No. 19019 and ordering paragraph 5 of Order No. 19020, the commission ordered that HELCO 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>20</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 and shareholder incentives. Therefore, continuing "in the manner currently employed" means accruing lost margins and shareholder incentives until such termination date, and the commission finds that the deadline for recovery of HELCO's lost margins and shareholder incentives was not extended.<sup>21</sup>

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<sup>19</sup>HELCO's Request, at 4 n.7.

<sup>20</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>21</sup>Indeed, the commission expected HELCO to pursue DSM programs subsequent to the termination of lost margins and shareholder incentives:

[D]espite HELCO's agreement and commitment to not seek the recovery of lost margins and shareholder incentives at the end of HELCO's DSM Temporary Continuation Period

95-0173, 95-0174, 10  
95-0175, 95-0176 (Consolidated)

Upon review of the record in this docket, the commission finds that HELCO was obligated to terminate its recovery of lost gross margins and shareholder incentives on September 27, 2005, when HECO was granted interim rates in the HECO Rate Case Docket. The commission, however, will treat HELCO's Request as a motion to extend time under HAR § 6-61-23, and will allow HELCO to continue to accrue lost gross margins and shareholder incentives until September 27, 2006.

Accordingly, consistent with Amended Order No. 19094 and Interim Decision and Order No. 22420, the commission concludes that HELCO shall discontinue recovery of lost margins and shareholder incentives for all of its DSM programs, effective September 27, 2006.

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or thereafter, we must accentuate our desires that HELCO continue to pursue a responsible balance to meet "near and long term energy needs in an efficient and reliable manner at the lowest possible 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 HELCO to have the same level of commitment subsequent to HELCO terminating the recovery of either lost margins or shareholder incentives.

Amended Order No. 19094, filed on December 11, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 5. Clearly, the commission understood that (1) HELCO would not be seeking lost margins or shareholder incentives in its next rate case or thereafter, and (2) HELCO would exhibit the same level of commitment to its DSM programs after the termination of lost margins or shareholder incentives.

III.

Orders

1. HELCO's request to temporarily continue accrual of lost margins and shareholder incentives for its DSM programs is granted in part and denied in part.

2. HELCO's recovery of lost gross margins and shareholder incentives for its DSM programs shall be discontinued effective September 27, 2006.

3. Any recovery of lost gross margins and shareholder incentives that is in excess of the recovery authorized in paragraph 2, above, shall be refunded to HELCO's ratepayers, together with interest.

DONE at Honolulu, Hawaii OCT - 4 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

Nichole K. Shimamoto  
Nichole K. Shimamoto  
Commission Counsel

95-0173cons.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22922 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

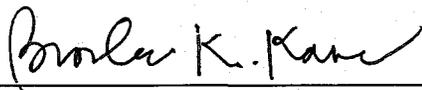
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for Karen Higashi

DATED: OCT - 4 2006