

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

DOCKET NO. 95-0139

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

DOCKET NO. 95-0140

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

DOCKET NO. 95-0141

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

DOCKET NO. 95-0142

(CONSOLIDATED)

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

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ORDER NO. 22927

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At 1 o'clock P.M.

Broderick K. Kane
for Chief Clerk of the Commission

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
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MAUI ELECTRIC COMPANY, LIMITED) Docket No. 95-0139
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For Approval of a Residential)
Efficient Water Heating Program,)
Recovery of Program Costs and)
Lost Revenues, and Consideration)
For Shareholder Incentives.)

In the Matter of the Application of)
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MAUI ELECTRIC COMPANY, LIMITED) Docket No. 95-0140
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For Approval of a Commercial and)
Industrial Energy Efficiency)
Program, Recovery of Program Costs)
and Lost Revenues, and)
Consideration for Shareholder)
Incentives.)

In the Matter of the Application of)
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MAUI ELECTRIC COMPANY, LIMITED) Docket No. 95-0141
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For Approval of a Commercial and)
Industrial New Construction)
Program, Recovery of Program Costs)
and Lost Revenues, and)
Consideration for Shareholder)
Incentives.)

In the Matter of the Application of)
)
MAUI ELECTRIC COMPANY, LIMITED) Docket No. 95-0142
)
For Approval of a Commercial and) (Consolidated)
Industrial Customized Rebate)
Program, Recovery of Program Costs) Order No. 22927
and Lost Revenues, and)
Consideration for Shareholder)
Incentives.)

ORDER

By this Order, the commission grants in part and denies
in part Maui Electric Company, Limited's ("MECO") request to

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

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

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

margins or shareholder incentives in its next rate case or thereafter.² 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.³

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."⁴

By Order No. 19093, filed on November 30, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176 ("Order No. 19093"), the commission approved, subject to certain conditions and modifications, the stipulation by MECO and the Consumer Advocate regarding MECO's four existing residential and

²October 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.

³October 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.

⁴Order 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"). MECO and the Consumer Advocate agreed that MECO may continue to accrue lost margins and shareholder incentives resulting from MECO'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 ("MECO's DSM Temporary Continuation Period").⁵ MECO agreed that it would not seek continued recovery of lost margins and shareholder incentives after MECO's DSM Temporary Continuation Period.⁶

The commission ordered that:

MECO 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, MECO may, pursuant to HAR § 6-61-23, request to extend the time of such accrual and recovery of lost margins and shareholder incentives for up to one year subsequent to the date that interim rates are established as a result of HECO's next rate case.⁷

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

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

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

⁷Order No. 19093, filed on November 30, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 8-9 (Ordering ¶ 5).

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.⁸

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 recovery of program costs and DSM utility incentives from Docket No. 04-0113 (the "Rate Case Docket"), and opened

⁸Order 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.

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 MECO 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."⁹

A.

Applicant's Request

On May 25, 2006, MECO 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 ("MECO's Request"). According to MECO, "[i]t was the understanding of MECO and HELCO that the temporary continuation of HECO's existing DSM programs, as a result of the bifurcation order in HECO's rate case, also

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

had the effect of postponing the deadline for the recovery of MECO and HELCO's lost margins and shareholder incentives until resolution of the Energy Efficiency Docket."¹⁰ MECO states that it filed its request pursuant to the stipulated agreement entered into on October 31, 2001 between MECO and the Consumer Advocate, Order No. 19093, 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 MECO's Request ("Consumer Advocate's Response"). The Consumer Advocate argues that MECO should no longer be allowed to recover lost margins and shareholder incentives to encourage the implementation of DSM programs.¹¹ 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 MECO's lost margins and shareholder incentives until resolution in the Energy Efficiency Docket, as MECO claims. HECO and MECO agreed to not seek continuation of lost margins and shareholder incentives in the next rate case, or after the MECO DSM Temporary Continuation Period, respectively. Thus, the bifurcation of the DSM programs should have no impact on whether HECO or MECO should be allowed to temporarily continue accruing of [sic] lost margins and shareholder incentives.¹²

¹⁰MECO's Request, at 4.

¹¹Consumer Advocate's Response at 3.

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

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

Even if the Commission is inclined to provide the Company with a one-year extension, MECO 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)).¹⁴

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.¹⁵

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.¹⁶

II.

Discussion

By Order No. 19093, the commission ordered that:

MECO 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

¹³Consumer Advocate's Response at 6.

¹⁴Consumer Advocate's Response at 6.

¹⁵Consumer Advocate's Response at 7.

¹⁶Consumer Advocate's Response at 7.

case, and that such lost margins and shareholder incentives accrued until such time may be recovered through the existing surcharge mechanism. If necessary, MECO may, pursuant to HAR § 6-61-23, request to extend the time of such accrual and recovery of lost margins and shareholder incentives for up to one year subsequent to the date that interim rates are established as a result of HECO's next rate case.¹⁷

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, MECO should have ceased recovery of lost margins and shareholder incentives on September 27, 2005.

In its request, MECO, 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 MECO and HELCO's lost margins and shareholder incentives until resolution of the Energy Efficiency Docket."¹⁸ MECO apparently construed "in the manner currently employed" in Order No. 21698 as including "continued recovery of costs using the current mechanisms (i.e., the surcharge for incremental costs, lost margins and shareholder incentives, and base rate for costs currently recovered through base rates)"¹⁹ 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

¹⁷Order No. 19093, filed on November 30, 2001, in Docket Nos. 95-0173, 95-0174, 95-0175, and 95-0176, at 8-9 (Ordering ¶ 5) (emphasis added).

¹⁸MECO's Request, at 4.

¹⁹MECO's Request, at 4 n.7.

the date that interim rates are established as a result of its next rate case."²⁰ 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 MECO's lost margins and shareholder incentives was not extended.²¹

²⁰Order 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).

²¹Indeed, the commission expected MECO to pursue DSM programs subsequent to the termination of lost margins and shareholder incentives:

[D]espite MECO's agreement and commitment to not seek the recovery of lost margins and shareholder incentives at the end of MECO's DSM Temporary Continuation Period or thereafter, we must accentuate our desires that MECO 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 MECO to have the same level of commitment subsequent to MECO terminating the recovery of either lost margins or shareholder incentives.

Upon review of the record in this docket, the commission finds that MECO 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 MECO's Request as a motion to extend time under HAR § 6-61-23, and will allow MECO to continue to accrue lost gross margins and shareholder incentives until September 27, 2006.

Accordingly, consistent with Order No. 19093 and Interim Decision and Order No. 22420, the commission concludes that MECO shall discontinue recovery of lost margins and shareholder incentives for all of its DSM programs, effective September 27, 2006.

III.

Orders

1. MECO'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. MECO'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

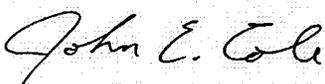
commission understood that (1) MECO would not be seeking lost margins or shareholder incentives in its next rate case or thereafter, and (2) MECO would exhibit the same level of commitment to its DSM programs after the termination of lost margins or shareholder incentives.

paragraph 2, above, shall be refunded to MECO's ratepayers,
together with interest.

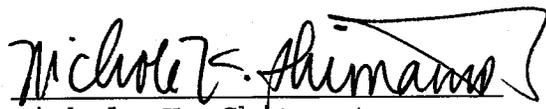
DONE at Honolulu, Hawaii OCT - 5 2006

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Nichole K. Shimamoto
Commission Counsel

95-0139 (CONSOLIDATED).eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22927 on the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

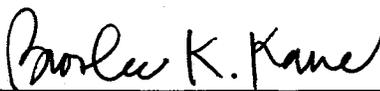
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DATED: OCT - 5 2006