

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 2007-0008
)
Instituting a Proceeding To)
Examine Hawaii's Renewable)
Portfolio Standards Law, Hawaii)
Revised Statutes §§ 269-91 -)
269-95, as Amended by Act 162,)
Session Laws of Hawaii 2006.)
_____)

ORDER NO. 23191

Filed January 11, 2007
At 11 o'clock A.M.

Broderick K. Kane
for Chief Clerk of the Commission

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STATE OF HAWAII

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Commission, State of Hawaii.
Broderick K. Kane

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OF THE STATE OF HAWAII

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Examine Hawaii's Renewable)
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ORDER

By this Order, the commission initiates this proceeding pursuant to Act 162, Session Laws of Hawaii 2006 ("Act 162"), which amended Hawaii's Renewable Portfolio Standards ("RPS") Law, codified as Hawaii Revised Statutes ("HRS") §§ 269-91 - 269-95 ("RPS Law"), by among other things, authorizing the commission to establish and issue penalties against electric utility companies who fail to meet the RPS.

I.

Background

A.

RPS Workshops

The RPS Law, originally enacted in 2001 as Act 272, and modified in 2004 as Act 95, was most recently amended by Act 162 in 2006. Under the RPS Law, RPS is defined as the percentage of electrical energy sales that is represented by renewable electrical energy. Each electric utility company that sells

electricity for consumption in the State of Hawaii is required by law to meet the RPS of: (1) ten percent of its net electricity sales by December 31, 2010; (2) fifteen percent of its net electricity sales by December 31, 2015; and (3) twenty percent of its net electricity sales by December 31, 2020.

Before the RPS Law was amended by Act 162, Act 95 charged the commission with the following task:

By December 31, 2006,¹ develop and implement a utility ratemaking structure which may include but is not limited to performance-based ratemaking, to provide incentives to Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner, or as a result of circumstances beyond the control of the utility which could not have been reasonably anticipated or ameliorated[.]

Act 95, Session Laws of Hawaii 2004.

To accomplish this task, the commission hosted two two-day workshops on November 22 - 23, 2004 and October 3 - 4, 2005, as well as a technical workshop on October 5, 2005. The workshops were organized for the general purpose of gathering information, through a collaborative process, from affected electric utility companies, government agencies, and other interested persons, for use by the commission to promulgate administrative rules and implement a new RPS ratemaking structure. Over seventy interested persons participated in the first and second RPS workshops. In conjunction with each

¹Among other amendments to this section, codified as HRS § 269-95(1), Act 162 extended the commission's deadline to complete the above-described task to December 31, 2007.

workshop, the commission prepared concept papers, and allowed participants to submit comments on the concept papers prior to the workshops. The commission received a wealth of information and comments, both written and oral, from the workshop participants, and had planned on holding a third RPS workshop. As discussed during the workshops, under Act 95, compliance with the RPS was not mandatory; rather, electric utilities were required only to implement cost-effective renewable resources, using the RPS as a target.

B.

Act 162

On June 2, 2006, Senate Bill 3185, S.D. 2, H.D. 2, C.D. 1 was signed into law as Act 162. Act 162, among other things, amended the RPS Law to authorize the commission to issue penalties against electric utility companies who fail to comply with the RPS. Specifically, Act 162 added the following sections pertaining to penalties, which are codified as HRS §§ 269-92(c) and (d):

(c) If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard, after a hearing in accordance with chapter 91, the utility shall be subject to penalties to be established by the public utilities commission; provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards due to reasons beyond the reasonable control of an electric utility, as set forth in subsection (d), the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties.

(d) Events or circumstances that are outside of an electric utility company's reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:

- (1) Weather-related damage;
- (2) Natural disasters;
- (3) Mechanical or resource failure;
- (4) Failure of renewable electrical energy producers to meet contractual obligations to the electric utility company;
- (5) Labor strikes or lockouts;
- (6) Actions of governmental authorities that adversely affect the generation, transmission, or distribution of renewable electrical energy under contract to an electric utility company;
- (7) Inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;
- (8) Inability to obtain permits or land use approvals for renewable electrical energy projects;
- (9) Inability to acquire sufficient cost-effective renewable electrical energy;
- (10) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; and
- (11) Other events and circumstances of a similar nature.

HRS §§ 269-92(c), (d) (emphasis added).

By mandating the establishment of a penalty structure, the RPS Law now provides sufficient incentive to electric utilities to comply with the RPS. As such, although the

commission originally planned to hold a total of three RPS workshops and thereafter conduct rulemaking, the commission will instead proceed by way of investigatory docket.

II.

Discussion

A.

Commission Authority

The commission is authorized to initiate this proceeding pursuant to several statutes. First, as discussed above, the commission is expressly authorized to establish penalties for non-compliance with the RPS, pursuant to HRS § 269-92(c). Furthermore, the commission is granted broad regulatory authority by HRS § 269-7 and HRS § 269-6, which broadly vests the commission with "general supervision . . . over all public utilities[.]" Commission investigatory and enforcement authority is also set forth in HRS § 269-15 and Hawaii Administrative Rules ("HAR") § 6-61-71.

As discussed above, compliance with the RPS under Act 95 was not mandatory. Thus, the commission sought to fulfill its legislative mandate under HRS § 269-95(1) to develop and implement a "ratemaking structure" that would provide "incentives" to electric utilities to meet the RPS, through the collaborative process of the RPS workshops. Given the amendments to the RPS Law by Act 162, which now require utilities to be penalized for non-compliance with the RPS (subject to commission waiver of penalties if non-compliance is a result of events or

circumstances described in HRS § 269-92(d)), the commission finds that the mandatory nature of the RPS Law now provides sufficient incentive to electric utilities to comply with the RPS. The commission accordingly will not hold a third RPS workshop, and instead, opens this docket to evaluate and consider the appropriate penalties to establish under the RPS Law, and the circumstances under which any penalties should be levied.

By separate order, the commission will file in this docket all information and comments received from the participants in the RPS workshops pursuant to HAR § 6-61-48.

B.

Preliminary Issue

The commission sets forth the following preliminary issue to be addressed in this proceeding: What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to comply with the RPS?

This is a preliminary issue for consideration. During the development of the procedural schedule for this proceeding, the parties (and intervenors and participants, if any) shall have the opportunity to comment on this preliminary issue, stipulate to resolve the issue, or suggest other issues for resolution in this proceeding for the commission's review and consideration.

C.

Named Parties

Since all regulated electric utilities in Hawaii will likely be impacted by the outcome of this proceeding, the commission will make Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), Maui Electric Company, Limited ("MECO"), Kauai Island Utility Cooperative ("KIUC"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") parties to this docket.²

At the present time, the commission is uncertain as to the interests of the remaining industry stakeholders who attended the commission's RPS workshops. Rather than naming these entities as parties to this proceeding, the commission will serve them with a copy of this Order initiating this proceeding. If these persons are interested in participating in this proceeding, they may file a motion to intervene or to participate without intervention in accordance with the requirements of HAR Chapter 6-61, Subchapter 4.

D.

Preliminary Procedural Schedule

The commission sets forth the following preliminary procedural schedule to control the course of this proceeding:

²The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an ex officio party to any proceeding before the commission. See HRS § 269-51; HAR § 6-61-62.

PROCEDURAL STEPS	DATE
Simultaneous Preliminary Statements of Position ("Preliminary SOP")	April 23, 2007
Simultaneous Information Requests to the Parties on their Preliminary SOP	May 14, 2007
Simultaneous Responses to Information Requests filed by the Parties on their Preliminary SOP	June 4, 2007
Final Statements of Position	June 25, 2007
Pre-hearing Conference	July 2, 2007
Panel Hearing (if required by the commission)	July 9 - 11, 2007
Simultaneous Post-Hearing Briefs	3 weeks after transcript completed and filed with the commission
Simultaneous Post-Hearing Reply Briefs	2 weeks after transcript completed and filed with the commission
Commission deadline to issue Decision and Order under HRS § 269-95(1)	December 31, 2007

The above is a preliminary procedural schedule for consideration. The parties (and intervenors and participants, if any) shall have the opportunity to comment on, and suggest changes to, this preliminary procedural schedule, as discussed further below.

E.

Additional Procedural Matters

Any interested individual, entity, agency, or community or business organization is invited to file a motion to intervene or participate without intervention in this docket in compliance

with the commission's rules set forth in HAR Chapter 6-61, Subchapter 4.

Within forty-five (45) days of the date of this Order, the parties (and intervenors and participants, if any) may file a preliminary statement of position as to the preliminary issue to be considered in this proceeding, see Section II.C., and on the preliminary procedural schedule set forth in Section II.E. Following the filing of the preliminary statements of position by the parties (and intervenors and participants, if any), the commission will issue a procedural order to govern the matters in this proceeding. In addition, within forty-five (45) days of the date of this Order, the parties (and intervenors and participants, if any) may file a stipulated protective order, if necessary, for the commission's review and approval.

The commission expects all parties to this proceeding to participate fully in the development of the necessary procedures and issues for the orderly conduct of this proceeding, consistent with all applicable State laws and commission rules and regulations.

III.

Orders

THE COMMISSION ORDERS:

1. This proceeding is initiated to examine the appropriate penalty framework to establish under Hawaii's RPS Law, HRS §§ 269-91 - 269-95, as amended by Act 162, for non-compliance with the RPS.

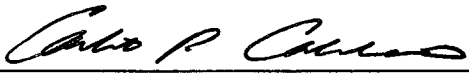
2. The commission, sua sponte, designates HECO, HELCO, MECO, KIUC, and the Consumer Advocate as parties to this proceeding.

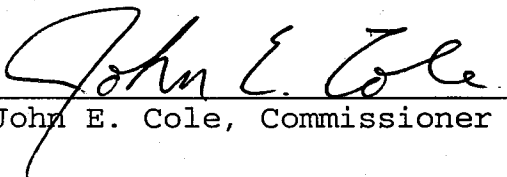
3. Any individual, entity, organization, or agency desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the date of this Order. Motions to intervene or participate without intervention must comply with all applicable rules of HAR Chapter 6-61, Rules of Practice and Procedure Before the Public Utilities Commission.

4. Within forty-five (45) days of the date of this Order, the parties (and intervenors and participants, if any) may file comments as to the preliminary issue to be considered in this proceeding, see Section II.C., and on the preliminary procedural schedule set forth in Section II.E. The parties (and intervenors and participants, if any) may also file, within forty-five (45) days of the date of this Order, a stipulated protective order, if necessary, for the commission's review and approval.


DONE at Honolulu, Hawaii JAN 11 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Kaiulani Kidani Shinsato
Commission Counsel

RPS:eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23191 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JAN 11 2007