

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
KAUAI ISLAND UTILITY COOPERATIVE )  
 )  
For a Declaratory Ruling That No )  
Modifications are Required to )  
General Order No. 6 for its Fiber )  
Optic Installations, or, in the )  
Alternative, for Approval of )  
Temporary Modifications to General )  
Order No. 6. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0444

DECISION AND ORDER NO. 23195

Filed Jan. 12, 2007  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

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

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

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	
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DECISION AND ORDER

By this Decision and Order, the commission denies KAUAI ISLAND UTILITY COOPERATIVE's ("KIUC") request for a declaratory ruling that no modifications are required to General Order No. 6, Rules for Overhead Electric Line Construction in the State of Hawaii ("G.O. No. 6"), for KIUC's installation or placement of fiber optic cables and communications lines, antennas and related equipment on utility poles and other structures. The commission, however, grants KIUC's alternative request for approval of temporary modifications to G.O. No. 6, as were previously granted to Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (collectively, the "HECO Utilities"), pursuant to Decision and Order No. 15401, filed on February 28, 1997, in Docket No. 96-0417, Decision and Order No. 16039, filed on October 24, 1997, in

Docket No. 97-0228, and Decision and Order No. 19188, filed on February 6, 2002, in Docket No. 01-0033 (collectively, "HECO G.O. No. 6 Orders").<sup>1</sup>

I.

Background

KIUC is a Hawaii non-profit cooperative association organized under the laws of the State of Hawaii with its principal place of business in Lihue, Kauai, Hawaii. An operating public utility, KIUC is engaged in the production, transmission, distribution, purchase, and sale of electric energy on the island of Kauai.

A.

Petition

On November 9, 2006, KIUC filed a petition requesting a declaratory order that no changes are required to G.O. No. 6 for KIUC to install or place fiber optic cables and communication lines, antennas, and related equipment on utility poles and other structures, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-159 ("Petition").<sup>2</sup> According to KIUC, no changes are

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<sup>1</sup>The HECO G.O. No. 6 Orders were attached as Exhibits A - C to KIUC's Petition for Declaratory Ruling, filed on November 9, 2006.

<sup>2</sup>KIUC served copies of its Petition on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex-officio party to all proceedings before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; HAR § 6-61-62. No persons moved to intervene or participate in this docket.

required to G.O. No. 6, as G.O. No. 6 "was adopted prior to, and as such does not address or contemplate, commercial development of fiber optic cable for communications, and is concerned primarily with lines capable of conducting an electrical charge, which electrically nonconductive fiber optic cable does not do."<sup>3</sup> Likewise, KIUC argues that G.O. No. 6 does not address or contemplate the installation or placement of antennas or the maintenance or operation of antenna equipment within the electric utility space. Since the installation and use of fiber optic cables and communications lines and antennas and related equipment are not prohibited by the express provisions of G.O. No. 6, KIUC requests a declaratory ruling that no modifications to G.O. No. 6 are required.

If, however, the commission determines that modifications to G.O. No. 6 are required for KIUC to install or place fiber optic cables and communication lines, antennas, and related equipment on utility poles and other structures, KIUC requests commission approval to temporarily modify certain G.O. No. 6 requirements to allow the subject installations or placements. In particular, KIUC requests that the commission grant KIUC the same temporary modifications to G.O. No. 6 that were granted to the HECO Utilities in the HECO G.O. No. 6 Orders. KIUC "agrees to abide by and be subject to the same conditions" imposed on the HECO Utilities in the HECO G.O. No. 6 Orders.<sup>4</sup>

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<sup>3</sup>Petition at 5-6.

<sup>4</sup>Petition at 8.

According to KIUC, "it has already installed and is continuing to install fiber optic cables in certain service areas and/or antennas and related equipment on utility poles and other structures to ensure adequate service and reliability of its system, and to keep up with industry standards and technology" as it was under the impression that modifications to G.O. No. 6 were not required.<sup>5</sup> Accordingly, KIUC requests that the commission rule "as soon as is reasonably possible, especially if the [c]ommission determines that changes are required to G.O. No. 6 for KIUC to make the subject installations or placements."<sup>6</sup>

B.

Consumer Advocate's Statement of Position

On December 26, 2006, the Consumer Advocate filed its Statement of Position ("CA's Statement of Position") in which it objects to KIUC's request for a declaratory order that no changes are required to G.O. No. 6 for KIUC to install or place fiber optic cables and communication lines, antennas, and related equipment on utility poles and other structures. According to the Consumer Advocate, the express language and intent of G.O. No. 6 applies to the installation and placement of fiber optic cables and antennas contemplated by KIUC.

The Consumer Advocate, however, does not object to approval of temporary modifications to G.O. No. 6, pursuant to

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<sup>5</sup>Petition at 6 n.6.

<sup>6</sup>Petition at 1 n.1. In its Petition, KIUC waived the 45-day period within which commission action must be taken on a petition for declaratory ruling. See HAR § 6-61-162.

Rules 15 and 16 of G.O. No. 6, as consistent with the HECO G.O. No. 6 Orders. As a condition of approval, the Consumer Advocate requests that KIUC be required to abide by the same conditions set forth by the commission in the HECO G.O. No. 6 Orders, and that KIUC be required to maintain the same guidelines discussed in the June 5, 1997 letter filed in Docket No. 96-0417, to the extent the HECO Utilities continue to maintain those guidelines.

## II.

### Discussion

#### A.

#### Declaratory Relief

KIUC argues that modifications to G.O. No. 6 are not required for KIUC to install or place fiber optic cables and communication lines, antennas, and related equipment on utility poles and other structures, as G.O. No. 6 does not address, contemplate or prohibit such installations or placements. However, as pointed out by the Consumer Advocate, the purpose of G.O. No. 6 is to "insure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general."<sup>7</sup> Consistent with that intent, G.O. No. 6 expressly states that it "appl[ies] to all overhead electrical supply and communications lines which come within the jurisdiction of this Commission,

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<sup>7</sup>G.O. No. 6 ¶ 11, at 5.

located outside of buildings."<sup>8</sup> It also states that "[n]othing in these rules shall be construed as permitting the unauthorized attachment, to supply or communication poles, of radio antennas, ropes, signs, and any such equipment foreign to the purposes of overhead electric line construction."<sup>9</sup> Indeed, the commission has already approved temporary modifications to G.O. No. 6, as evidenced by the HECO G.O. No. 6 Orders. Accordingly, the commission finds that G.O. No. 6 applies to KIUC's installation or placement of fiber optic cables and communication lines, antennas, and related equipment, and thus denies KIUC's request for declaratory relief.

B.

Approval of Temporary Modifications to G.O. No. 6

In the alternative, KIUC requests commission approval to temporarily modify certain G.O. No. 6 requirements to allow the subject installations or placements, pursuant to Rules 15 and 16 of G.O. No. 6.

Rule 15 of G.O. No. 6 states, in relevant part:

If, in a particular case or a special type of construction, exemption from or modification of any of the requirements herein is desired, the Commission will consider an application for such exemption or modification when accompanied by a full statement of conditions existing and the reasons why such exemption or modification is asked and is believed to be justifiable. It is to be understood that, unless otherwise ordered, any exemption or modification so granted shall be

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<sup>8</sup>G.O. No. 6 ¶ 12, at 5 (emphasis added).

<sup>9</sup>G.O. No. 6 ¶ 34, at 34 (emphasis added).

limited to the particular case or the special type of construction covered by the application.

In addition, Rule 16 of G.O. No. 6 states:

The Commission reserves the right to change any of the provisions of these rules in specific cases when, in the Commission's opinion, public interest would be served by so doing.

Compliance with these rules is not intended to relieve a utility from any statutory requirement.

KIUC requests that the commission grant it the same temporary modifications to G.O. No. 6 that were granted to the HECO Utilities in the HECO G.O. No. 6 Orders pursuant to Rules 15 and 16. In exchange, KIUC "agrees to abide by and be subject to the same conditions" imposed on the HECO Utilities in the HECO G.O. No. 6 Orders.<sup>10</sup>

Here, KIUC's request for temporary modification to G.O. No. 6 appears reasonable and in the public interest. As KIUC asserts, "the installation of the subject fiber optic installations or placements have now become industry standard and are a necessary and critical component of today's electric utility communications" providing protective relaying for transmission lines and a means by which internal voice and data can be transmitted throughout KIUC's system, including its offices, production facilities, transmission and distribution substations and its switchyard.<sup>11</sup> In addition, the same considerations that merited approval of temporary modifications to G.O. No. 6 for the HECO Utilities appear to be present here

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<sup>10</sup>Petition at 8.

<sup>11</sup>Petition at 8-9.



for KIUC. Accordingly, the commission finds that approval of temporary modifications to G.O. No. 6, as requested by KIUC, is appropriate.

The commission, however, will condition its approval on KIUC complying with the same conditions set forth in the HECO G.O. No. 6 Orders, in the same time frames set forth in the HECO G.O. No. 6 Orders. Also, as recommended by the Consumer Advocate, KIUC should maintain the guidelines discussed in the June 5, 1997 letter filed in Docket No. 96-0417 to the extent that the HECO Utilities continue to maintain those guidelines.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. KIUC's request for a declaratory ruling that no modifications are required to G.O. No. 6 for KIUC's installation or placement of fiber optic cables and communications lines, antennas and related equipment on utility poles and other structures, is denied.

2. KIUC's request for temporary modifications to G.O. No. 6 is approved.

3. KIUC shall comply with all of the conditions set forth in Decision and Order No. 15401, filed on February 28, 1997, in Docket No. 96-0417, Decision and Order No. 16039, filed on October 24, 1997, in Docket No. 97-0228, and Decision and Order No. 19188, filed on February 6, 2002, in

Docket No. 01-0033, in the same time frames set forth in those orders.

4. KIUC shall maintain the guidelines discussed in the June 5, 1997 letter filed in Docket No. 96-0417 to the extent that the HECO Utilities continue to maintain those guidelines.

DONE at Honolulu, Hawaii JAN 12 2007.

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:

Stacey Kawasaki Djou  
Stacey Kawasaki Djou  
Commission Counsel

2006-0444.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23195 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 12 2007