

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MAUI ELECTRIC COMPANY, LIMITED)
Regarding Integrated Resource)
Planning.)
_____)

DOCKET NO. 04-0077

ORDER NO. 23564

Filed July 27, 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.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MAUI ELECTRIC COMPANY, LIMITED)
Regarding Integrated Resource)
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_____)

Docket No. 04-0077

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Order

By this Order, the commission dismisses Life of the Land's ("LOL") motion to intervene in this docket as untimely.

I.

Background

On March 12, 1992, the commission established a framework for integrated resource planning ("IRP Framework"), and ordered all electric and gas utilities, including MAUI ELECTRIC COMPANY, INC., to submit their integrated resource plans and program implementation schedules for commission approval, in accordance with the IRP Framework.¹ By Order No. 20953, filed on April 30, 2004, the commission opened this docket to commence MECO's third IRP cycle and examine its 3rd Integrated Resource Plan ("IRP-3"), pursuant to Section III.C.1 of the IRP Framework.²

¹Decision and Order No. 11523, filed on March 12, 1992, in Docket No. 6617 (as amended by Decision and Order No. 11630, filed on May 22, 1992).

²The parties to this docket are MECO and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY

On April 30, 2007, MECO filed its IRP-3. Pursuant to Section III.E.3.a of the IRP Framework, MECO published notice of the IRP-3 filing on May 1 and 2, 2007, in the Maui News and Honolulu Advertiser, respectively. Accordingly, pursuant to Section III.E.3.c of the IRP Framework, the deadline to file a motion to intervene in this proceeding was May 22, 2007.³

A.

LOL's Motion to Intervene

On June 15, 2007, LOL filed a Motion to Intervene in this proceeding ("Motion to Intervene") in which it acknowledges that the deadline for intervention has passed,⁴ but also argues

("Consumer Advocate"). Pursuant to Section II.E.2 of the IRP Framework, the Consumer Advocate "shall be a party to each utility's [IRP] docket and a member of any and all advisory groups established by the utility in the development of its integrated resource plan."

³Section III.E.3.c of the IRP Framework provides in pertinent part that applications to intervene or participate without intervention:

are subject to [Subchapter 4 of the Rules of Practice and Procedure Before the Public Utilities Commission]; **except that such applications may be filed with the commission not later than 20 days after the publication by the utility of a notice informing the general public of the filing of the utility's application for commission approval of its integrated resource plan, notwithstanding the opening of the docket before such publication.**

(Emphasis added).

⁴See Motion to Intervene at 2 ("Henry Curtis, Executive Director of [LOL], visited the [c]ommission office on June 7, 2007 and found that the deadline had past [sic] for intervening in the MECO IRP")

that the Motion to Intervene is timely because it was "made within 10 days of the docket being publicly listed at the Commission's office." In the Motion to Intervene, LOL states that it was "closely tracking biofuel legislation and regulation" and mailed to the commission and the Consumer Advocate a letter dated March 16, 2007, with the subject line, "Notice of Intent to Intervene," which stated LOL's "intent to intervene in the next biofuel docket" ("Notice of Intent to Intervene"), and its intent to "supplement this action at the appropriate time."

LOL asserts that its intervention in the instant proceeding is "appropriate" because this docket is a long-term planning docket, which will consider the use of biofuels, which neither MECO, nor its IRP Advisory Group had the opportunity to review. LOL states that:

[c]ritical issues include accurately measuring the greenhouse gas emissions of various options, life cycle assessments, avoided cost calculations, load management, the construction of baseload and intermittent renewable energy systems, energy efficiency and distributed energy resources.⁵

LOL also asserts that the Consumer Advocate will not adequately represent LOL's environmental position, in particular, LOL's position with regard to climate change; and that granting LOL intervention in this proceeding will not unreasonably broaden the issues nor cause delay.⁶

⁵Id. at 3.

⁶Id. at 5-7.

B.

MECO's Memorandum in Opposition to LOL's Motion to Intervene

On June 22, 2007, MECO filed a Memorandum in Opposition to Life of the Land's Motion to Intervene ("Memorandum in Opposition") in which MECO argues that the Motion to Intervene was untimely; and that LOL failed to file a motion to enlarge time or demonstrate excusable neglect in its failure to timely file its Motion to Intervene. MECO adds that LOL's Notice of Intent to Intervene "is not even a document that is recognized by the [c]ommission's Rules of Practice and Procedure."⁷

In addition to being untimely, MECO contends that LOL's Motion to Intervene is inappropriate in that LOL could have provided its input during the public participation process while IRP-3 was being developed, rather than moving to intervene after the plan was developed.⁸ If the commission finds that LOL should be involved in this proceeding, MECO requests that LOL's participation be limited to participation without intervention status, pursuant to HAR § 6-61-56.

II.

Standard

It is well established that intervention as a party in a commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the commission."

⁷Memorandum in Opposition at 4.

⁸For instance, MECO notes that it "held more than ten public meetings . . . concerning objectives and four public

See In re Application of Hawaiian Elec. Co., Ltd., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975); see also In re Paradise Merger Sub, Inc. et al., Docket No. 04-0140, Order No. 21226 (Aug. 6, 2004).

HAR § 6-61-55 sets forth the requirements for intervention. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
 - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
 - (9) Whether the applicant's position is in support of or in opposition to the relief sought.

meetings . . . regarding Finalist Plans and Draft Preferred Plan." Id. at 5.

HAR § 6-61-55(a) and (b). Section 6-61-55(d), HAR, however, states that "[i]ntervention *shall not* be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." (Emphasis added).

III.

Discussion

MECO argues that LOL's Motion to Intervene should be denied as untimely. The commission agrees and dismisses the motion.

Section III.E.3.c of the IRP Framework governs the deadline for filing a motion to intervene in an IRP proceeding. It states that applications to intervene or participate without intervention "may be filed with the commission not later than 20 days after the publication by the utility of a notice informing the general public of the filing of the utility's application for commission approval of its integrated resource plan, notwithstanding the opening of the docket before such publication."

Here, as noted above, MECO published notice of the IRP-3 filing on May 1 and 2, 2007, in the Maui News and Honolulu Advertiser, respectively, pursuant to Section III.E.3.a of the IRP Framework. Accordingly, pursuant to Section III.E.3.c of the IRP Framework, the deadline to file a motion to intervene in this proceeding was May 22, 2007.

LOL, however, filed its Motion to Intervene on June 15, 2007, and thus, the motion is untimely.

In its Motion to Intervene, LOL argues that its motion was timely because it was "made within 10 days of the docket being publicly listed at the Commission's office." As noted above, however, the deadline for motions to intervene is triggered by publication of notice of the filing of the IRP plan, not by any particular filing with the commission. Indeed, this docket was, in fact, opened on April 30, 2004, and accordingly, has been identified as an open docket for the last three years.

In addition, the commission has granted motions to intervene in IRP proceedings, which were filed after the IRP docket was opened, but before the IRP plan was filed.⁹ As such, LOL could have conceivably filed its motion to intervene any time between April 30, 2004, and May 22, 2007.

LOL, moreover, argues that it "did not want to accidentally miss a deadline for intervention in a docket dealing with biofuels," and thus sent the commission a letter dated March 16, 2007, with the subject line "Notice of Intent to Intervene," which stated LOL's "intent to intervene in the next biofuel docket." The Notice of Intent to Intervene, however, did not reference any specific docket, and expressly stated that it would "supplement this action at the appropriate time." As such, the commission does not construe the Notice of Intent

⁹See Decision and Order No. 13839, filed on March 31, 1995, in Docket No. 7257, at 2 n.2.

to Intervene, which clearly does not satisfy the requirements of HAR § 6-61-55, as a motion to intervene in this docket.

In addition, as pointed out by MECO, LOL is required to show excusable neglect to justify an untimely motion. Here, however, there are no facts in LOL's motion to demonstrate that LOL's failure to timely file an intervention motion was supported by excusable neglect. Accordingly, the commission dismisses LOL's Motion to Intervene as untimely.

Although the commission herein dismisses LOL's Motion to Intervene, the commission may find it useful to receive comments from LOL, if any, on the issues identified in this docket. Accordingly, to give LOL and others an additional opportunity to provide the commission with comments without intervening, the commission will extend the public comment period and accept written public comments in this docket until September 4, 2007. The Parties may file a response to any public comments that are filed in this docket by September 18, 2007.

IV.

Orders

THE COMMISSION ORDERS:

1. LOL's Motion to Intervene, filed on June 15, 2007, is dismissed as untimely.

2. All persons or entities interested in providing written comment to the commission on the MECO IRP-3 plan should file such comments with the commission by September 4, 2007.

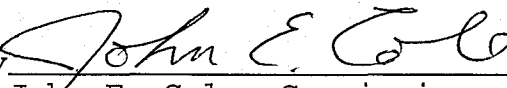
All comments shall be submitted to the commission at its Honolulu office at 465 South King Street, Room 103, Honolulu, 96813. To be considered by the commission, all written comments shall include the commenter's name, group affiliation if applicable, and contact information, e.g., street or email address.

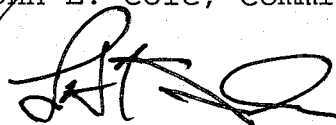
3. Any response by the Parties to the public comments that are filed in this docket shall be filed by September 18, 2007.

DONE at Honolulu, Hawaii JUL 27 2007.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

04-0077.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23564 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

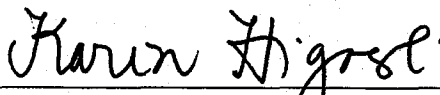
EDWARD L. REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LTD.
P. O. Box 398
Kahului, HI 96732

WILLIAM A. BONNET
VICE PRESIDENT - GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

Counsel for MAUI ELECTRIC COMPANY, LTD.

HENRY Q. CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817



Karen Higashi

DATED: JUL 27 2007