

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. 23672

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

Filed Sept. 19, 2007
At 1 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
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)	Docket No. 04-0077
Regarding Integrated Resource)	
Planning.)	Order No. 23672
_____)	

Order

By this Order, the commission denies Life of the Land's ("LOL") Motion for Reconsideration of Order No. 23564, filed on August 3, 2007 ("Motion for Reconsideration").

I.

Background

By Order No. 20953, filed on April 30, 2004, the commission opened this docket to commence MAUI ELECTRIC COMPANY LIMITED's ("MECO") third IRP cycle and examine its 3rd Integrated Resource Plan ("IRP-3"), pursuant to Section III.C.1 of the IRP Framework.¹

On June 15, 2007, LOL filed a Motion to Intervene in this proceeding ("Motion to Intervene"). By Order No. 23564, filed on July 27, 2007, the commission dismissed LOL's Motion to Intervene as untimely where "there [we]re no facts in LOL's motion to demonstrate that LOL's failure to timely file an

¹The parties to this docket are MECO and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate").

intervention motion was supported by excusable neglect."² Although the commission dismissed LOL's Motion to Intervene, it extended the public comment period in this docket until September 4, 2007, to allow LOL and any other interested persons or entities to provide comments, if any, on the issues identified in this docket.

On August 3, 2007, LOL filed a Motion for Reconsideration of Order No. 23564 in which it appears to argue that the commission has not allowed premature filings. LOL also argues that it satisfied the excusable neglect standard because it relied on a letter from the Office of the Attorney General regarding disclosure of filed documents; regularly checked the public filings at the commission office "every 5-10 days"; is on MECO's "IRP email list"; reviewed the classified ads; and regularly uses "the Google Search engine."³

On August 16, 2007, MECO filed a Request for Leave to File Reply to [LOL's] Motion for Reconsideration and Reply to

²Order No. 23564 at 8.

³Section III.E.3.c of the Framework for Integrated Resource Planning ("IRP Framework") governs the deadline for filing a motion to intervene in an IRP proceeding. It states that motions to intervene or to 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" MECO published notice of the filing of its IRP-3 on May 1 and 2, 2007, in the Maui News and Honolulu Advertiser, respectively. Pursuant to Section III.E.3.c of the IRP Framework, the deadline for LOL to file a motion to intervene in this proceeding was May 22, 2007.

[LOL's] Motion for Reconsideration ("Reply").⁴ In its Reply, MECO asserts that LOL's Motion for Reconsideration: (1) "relies on newly adduced evidence" including a letter dated May 15, 2003, from the Attorney General to LOL, "various assertions" regarding LOL's visits to the commission, the extent of LOL's involvement in the MECO IRP process and LOL's review of classified advertisements and the Internet for utility news in Hawaii; (2) does not demonstrate excusable neglect sufficient for the commission to grant its Motion for Reconsideration; and (3) does not establish that the commission acted unreasonably in denying its Motion to Intervene.

II.

Discussion

The standard for granting a motion for reconsideration is established in Hawaii Administrative Rules ("HAR") § 6-61-137, which provides in relevant part:

A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137. Thus, to succeed on a motion for reconsideration, the movant must demonstrate that the

⁴While commission rules do not authorize the submission of replies to motions, the commission in this instance deems MECO's reply to be desirable and, thus, considers it in making its determination. See Hawaii Administrative Rules § 6-61-140.

commission's decision or order was "unreasonable, unlawful, or erroneous." See id.

"[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Tagupa v. Tagupa, 108 Hawai'i 459, 465, 121 P.2d 924, 930 (2005). However, "[r]econsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Id. (citing Association of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) and quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000)).

In seeking reconsideration, LOL appears to argue that the commission erred in stating that it "has granted motions to intervene in IRP proceedings, which were filed after the IRP docket was opened, but before the IRP plan was filed. As such, LOL could have conceivably filed its motion to intervene any time between April 30, 2004, and May 22, 2007."⁵ In support of its argument, LOL cites to Order No. 22374, filed on April 6, 2006, in Docket No. 03-0253, which involved intervention in Hawaiian Electric Company's ("HECO") IRP-3 docket. In that order, the commission requested supplemental briefing on a motion to intervene, which was filed before the IRP plan was filed. The commission, however, did not deny the intervention motion on the ground that it was premature. In fact, to the contrary, the

⁵Order No. 23564 at 7.

commission recently granted intervention in HECO's IRP-4 docket prior to HECO's filing of its IRP-4 plan. In granting intervention, the commission stated that "[t]he IRP Framework, however, does not preclude the filing of a motion to intervene prior to publication of HECO's notice."⁶

In addition, LOL argues that it satisfied the excusable neglect standard because it relied on a letter from the Office of the Attorney General regarding disclosure of filed documents; regularly checked the public filings at the commission office "every 5-10 days"; is on MECO's "IRP email list"; reviewed the classified ads; and regularly uses "the Google Search engine." As MECO points out, this is new evidence and arguments that could have been provided to the commission in connection with the Motion to Intervene. As such, it would be inappropriate for the commission to consider it in support of this motion for reconsideration. See Tagupa, 108 Hawai'i at 465, 121 P.2d at 930 (2005) ("[r]econsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding").

Even if the commission were to consider LOL's new arguments and evidence, there is no basis to support reconsideration. LOL fails to provide any evidence that its Motion to Intervene was timely.⁷ Moreover, LOL fails to

⁶Order No. 23455, filed on May 23, 2007, in Docket No. 2007-0084, at 2 n.3 (citing Decision and Order No. 13839, filed on March 31, 1995, in Docket No. 7257, at 2 n.2).

⁷See id.

establish that its failure to timely file a motion to intervene was "not in consequence of [its] own carelessness, [or] inattention . . . but in consequence of some unexpected or unavoidable hindrance or accident"

Upon careful consideration, the commission finds nothing in LOL's Motion for Reconsideration that merits reconsideration of Order No. 23564. LOL has not met its burden of showing that the commission's decision is unreasonable, unlawful, or erroneous. We, thus, conclude that the Motion for Reconsideration should be denied.

III.

Order

THE COMMISSION ORDERS:

LOL's Motion for Reconsideration filed on August 3, 2007, is denied.

DONE at Honolulu, Hawaii SEP 19 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

By: Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

04-0477.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23672 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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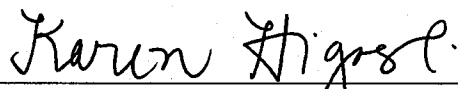
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DATED: SEP 19 2007