

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 2007-0416
)
Instituting a Proceeding To)
Examine Hawaiian Electric)
Company, Inc., Hawaii Electric)
Light Company, Inc., and Maui)
Electric Company, Limited's)
Proposal for a Renewable Energy)
Infrastructure Program)
_____)

ORDER NO. 23913

Filed Dec. 20, 2007
At 10:30 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

Karen Higashi

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DIV. OF CONSUMER PROTECTION
PUBLIC UTILITIES COMMISSION
HONOLULU, HAWAII

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OF THE STATE OF HAWAII

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ORDER

By this Order, the commission initiates a proceeding to examine the proposal by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO"),¹ in Docket No. 2007-0008,² for a Renewable Energy Infrastructure Program ("REI Program"), which includes a consolidation incentive mechanism ("Consolidation Incentive") that would allow the HECO Companies to recover

¹HECO, HELCO, and MECO are referred to herein as the "HECO Companies."

²In Docket No. 2007-0008 ("the RPS Docket"), the commission is examining Hawaii's Renewable Portfolio Standards Law, codified in Hawaii Revised Statutes ("HRS") §§ 269-91 - 269-95, as amended by Act 162, Session Laws of Hawaii 2006 ("RPS Law"). Under the RPS Law, renewable portfolio standard ("RPS") is defined as the percentage of electrical energy sales that is represented by renewable electrical energy. See HRS § 269-91. 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. See HRS § 269-92(a)(1)-(3).

certain costs for renewable projects built on the islands of Hawaii and Maui from Oahu ratepayers. Although the REI Program was proposed in Docket No. 2007-0008, pursuant to Decision and Order No. 23912, filed on December 20, 2007, in Docket No. 2007-0008 ("Decision and Order No. 23912"), the commission determined that a separate docket should be opened to consider the proposed REI Program.³ Accordingly, the commission initiates this proceeding pursuant to HRS §§ 269-7 and 269-16, and Hawaii Administrative Rules ("HAR") § 6-61-71.

I.

Background

A.

RPS Docket

The commission initiated the RPS Docket by Order No. 23191, filed on January 11, 2007 ("Order No. 23191"), pursuant to Act 162, Session Laws of Hawaii 2006 ("Act 162"), which amended Hawaii's RPS Law, by among other things, authorizing the commission to establish and issue penalties against electric utility companies who fail to meet the RPS. The commission named as parties to the RPS Docket, the HECO Companies, Kauai Island Utility Cooperative ("KIUC"), and the Department of Commerce and Consumer Affairs, Division of

³In addition, certain stipulating parties in the RPS Docket specifically requested that the commission initiate a follow up proceeding to consider the REI Program.

Consumer Advocacy ("Consumer Advocate").⁴ The commission also granted intervention to Life of the Land ("LOL") and Hawaii Renewable Energy Alliance ("HREA").⁵

As explained in Order No. 23191, before the RPS Law was amended by Act 162, the commission hosted several workshops to accomplish the charge set forth in HRS § 269-95(1), which requires the commission to "develop and implement a utility ratemaking structure . . . to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the [RPS.]"⁶ However, in Order No. 23191, the commission found that, by mandating the establishment of a penalty structure in Act 162, the RPS Law now simply requires compliance with the RPS and the ability to assess penalties provides sufficient incentive to electric utilities to comply with the minimum requirements of the RPS.

The commission set forth, and allowed the RPS Parties to comment on, a preliminary issue and preliminary procedural schedule in Order No. 23191. After receiving comments, the commission issued Order No. 23316 on March 23, 2007, which set forth the issues and a procedural schedule for the RPS Docket.

⁴The 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.

⁵See Order No. 23276, filed on February 23, 2007, in Docket No. 2007-0008. Thus, the parties to the RPS Docket are the HECO Companies, KIUC, the Consumer Advocate, LOL, and HREA (collectively, "the RPS Parties").

⁶HRS § 269-95(1).

Pursuant to that procedural schedule, by April 26, 2007, the RPS Parties filed their Preliminary Statements of Position ("PSOPs"), and thereafter, engaged in discovery on their PSOPs.

On June 14, 2007, in Order No. 23493, the commission amended the procedural schedule in the RPS Docket by: (1) removing the pre-hearing conference, panel hearing, and related briefing deadlines from the schedule; (2) extending the due date for the RPS Parties' Final Statements of Position ("FSOPs") from June 25, 2007 to July 25, 2007; and (3) directing the RPS Parties to each file a proposed framework (or a stipulated framework if the RPS Parties are able to agree) with their FSOPs.⁷

On July 25, 2007, the HECO Companies filed a Supplemental Preliminary Statement of Position, which described the HECO Companies' proposal for the REI Program, discussed further below.

On October 12, 2007, the HECO Companies, KIUC, the Consumer Advocate, and HREA (collectively, the "Stipulating Parties") filed a Stipulation and Joint RPS Framework ("Stipulated Framework"),⁸ which generally set forth the

⁷The RPS Parties subsequently requested, and were granted, three extensions of time to file FSOPs and proposed (or stipulated) frameworks.

⁸Unless noted otherwise, the Stipulation and Joint RPS Framework will generally be referred to as the "Stipulated Framework." However, the Stipulation and Joint RPS Framework actually consist of: (1) the Stipulating Parties' Stipulation ("Stipulation"); (2) the Stipulated Joint RPS Framework, attached as Exhibit A to the Stipulation; (3) a description of the REI Program, Exhibit B to the Stipulation; and (4) a description of the HECO Companies' near-term renewable energy infrastructure projects under the Temporary Renewable Energy Infrastructure

Stipulating Parties' proposed RPS penalty and incentive frameworks. The stipulated incentive framework included a proposal for a Temporary REI Surcharge that would allow electric utilities to recover, on a temporary basis, the costs of certain near-term renewable infrastructure facilities, through a surcharge to ratepayers.⁹

On December 20, 2007, the commission issued Decision and Order No. 23912, which as more fully described below, adopted, in part, and denied, in part, the Stipulated Framework. The commission also stated in Decision and Order No. 23912 that it would contemporaneously open a separate docket to consider the proposed REI Program.

B.

REI Program

Exhibit B of the Stipulated Framework sets forth the proposed REI Program. As background, the Stipulating Parties explain that the HECO Companies proposed the REI Program, consisting of: (1) renewable energy infrastructure projects to encourage development of third-party renewable energy resources, maintain current renewable energy resources, and enhance energy choices for customers while maintaining acceptable levels of reliability; and (2) the creation and implementation of a Renewable Energy Infrastructure Surcharge ("REI Surcharge") that

Surcharge ("Temporary REI Surcharge"), Exhibit C to the Stipulation.

⁹On October 12, 2007, LOL filed a separate "Final Statement of Position and Proposed Stipulated Framework."

may facilitate raising capital by providing investors assurance of a mechanism to recover the utilities' investment in renewable infrastructure in a timely fashion.¹⁰

In addition, the HECO Companies proposed that the commission adopt a Consolidation Incentive that generally would operate to credit customers of electric utility affiliates within a consolidated electric utility whose service territories exceed their RPS percentage on a stand-alone basis, to be paid for through a compensation payment or surcharge on customers of the affiliated electric utilities, if any, whose service territories fall short of their RPS percentage on a stand-alone basis.¹¹

According to the Stipulating Parties, the Consumer Advocate and LOL expressed reservations about implementing the REI Surcharge without conducting public hearings and allowing other interested persons to comment or even intervene, particularly with respect to the Consolidation Incentive. In response, the HECO Companies maintained that the use of a REI Surcharge, at least on a temporary, limited basis, pending further review, is needed now, because: (1) the HECO Companies need the authority to offer to pay for certain interconnection facilities for independent renewable energy projects on Maui, Oahu, and the Big Island (described in Exhibit C to the Stipulation), and to recover the costs of such facilities through the proposed REI Surcharge; (2) the HECO Companies are preparing applications to install

¹⁰See Stipulation at 5.

¹¹See id.

Advanced Metering Infrastructure ("AMI") in the service territories of the HECO Companies; and (3) the HECO Companies' credit quality has been degraded, and adding to the capital requirements of the HECO Companies without demonstrating support for their timely ability to earn on, and recover, that investment would exacerbate that situation.¹²

As a compromise, the Stipulating Parties stated that the HECO Companies proposed, and the Stipulating Parties agreed to, a Temporary REI Surcharge available to all electric utilities (including KIUC) with the following features:

- (1) The possible application of the Temporary REI Surcharge would be limited to specified projects that need to be implemented or initiated in the near-term, including currently planned projects, as more fully described in Exhibit C to the Stipulation;
- (2) Authorization to include the costs for any specific project in the Temporary REI Surcharge would be granted or denied at the time the commission issues a Decision and Order with respect to the proposed commitment of expenditures for the project, and the Stipulating Parties would reserve their rights to object to the use of the Temporary REI Surcharge to recover the costs for any specific project;
- (3) With respect to AMI, if AMI capital costs (e.g., return on and return of capital) are allowed to be recovered through the Temporary REI Surcharge, such capital costs would be offset by the net benefits of implementing AMI (e.g., cost savings and revenue enhancements offset by operating and maintenance expenses), as those net benefits are obtained by the utility;

¹²See id. at 5-6.

- (4) The accrual of cost recovery under the Temporary REI Surcharge would terminate when the costs (or costs offset by net benefits in the case of AMI) are incorporated in rates in the respective utility's next rate case; provided that the accrued recovery of costs under the Temporary REI Surcharge would be terminated no later than December 31, 2010 unless the commission affirmatively authorizes its continuation (which could occur in a follow-up proceeding involving public hearings and comment); and
- (5) The Consolidation Incentive requested by the HECO Companies, which involves the recovery of certain Maui and island of Hawaii costs through an Oahu surcharge, would not be implemented until further review by the commission (which could occur in a follow-up proceeding involving public hearings and comment).

In addition, the Stipulating Parties requested that "the Commission initiate a follow up proceeding to expeditiously consider whether the Renewable Energy Infrastructure Program proposed by the HECO Companies, as shown in Exhibit "B" attached [to the Stipulation], with or without modifications that may be proposed during the course of such proceeding, should be included in the RPS Framework[.]"¹³

C.

Decision and Order No. 23912

In Decision and Order No. 23912, the commission approved the RPS Framework attached as Exhibit A to Decision and

¹³Id. at 9.

Order No. 23912.¹⁴ Generally, the commission found the proposed penalty framework in Part III of the Stipulated Framework to be reasonable and in the public interest, and therefore adopted it, with modifications. However, because the commission found that this section of the Framework requires further development and examination, it directed the RPS Parties to file supplemental briefs on certain issues regarding penalties.

With regard to the REI Program outlined in Part V of the Stipulated Framework and Exhibit B of the Stipulation, the commission found:

the surcharges proposed by this program, including the surcharge to Oahu ratepayers in connection with the Consolidation Incentive, represent new rate structures that should be more appropriately considered in a separate docket with full public notice and input, and intervention or participation by interested parties. The commission notes that the REI Program was proposed in late July 2007, after discovery had been completed by the Parties, and only a few months before the filing of the Stipulated Framework and FSOPs. Under these circumstances, with an incomplete and deficient record, it would be unreasonable and against the public interest for the commission to review and approve, even on a temporary basis, the REI Program and any projects and surcharges related to it. Accordingly, the commission declines to adopt Parts IV and V of the Stipulated Framework, and instead, consistent with the Stipulating Parties' request in the Stipulation, opens a separate docket contemporaneously with this Decision and Order to examine the HECO Companies' proposed REI Program.¹⁵

¹⁴The commission noted that, in developing the RPS Framework attached as Exhibit A, it started with the Stipulated Framework, and modified it.

¹⁵Decision and Order No. 23912 at 15-16.

Consistent with the commission's ruling in Decision and Order No. 23912, the commission opens this docket to review the HECO Companies' proposed REI Program.

II.

Discussion

A.

Commission Authority

The commission is authorized to initiate this proceeding pursuant to several statutes. First, the commission is granted broad regulatory authority by HRS § 269-7, which provides, in relevant part:

(a) The public utilities commission and each commissioner shall have the power to examine the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, . . . and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

.

(c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint.

HRS § 269-7(a) and (c) (emphasis added).

Similarly, in HRS § 269-6, the commission is broadly vested with "general supervision . . . over all public utilities[.]" More particularly, under HRS § 269-16, the

commission is authorized to regulate the rates, charges, and practices of a public utility:

- (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission
- (b) No rate, fare, charge, classification, schedule, rule, or practice, . . . shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges.

HRS § 269-16(a) and (b).¹⁶

B.

Named Parties

Since all regulated electric utilities in Hawaii will likely be impacted by the outcome of this proceeding, the commission will make the HECO Companies, KIUC, and the Consumer Advocate parties to this docket. In addition, because the commission finds that the issues to be determined in this docket arose out of, and are substantially related to, the RPS Framework, the commission will make the remaining parties in the RPS Docket, HREA and LOL, parties in this proceeding.

¹⁶Commission investigatory authority is also set forth in HAR § 6-61-71.

C.

Procedural Matters

Any interested individual, entity, agency, or community or business organization may 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.

The parties (and intervenors and participants, if any) shall develop a stipulated protective order if necessary, and a stipulated prehearing (or procedural) order to govern the matters of this investigation for the commission's review and approval within forty-five (45) days of the date of this Order. If the parties (and intervenors and participants, if any) are not able to stipulate, each of them shall file proposed orders for the commission's consideration by such date.

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. Moreover, if necessary or appropriate, the parties to this proceeding will be expected to actively participate in a commission hearing or other procedures authorized by State law including, but not limited to, those set forth in HRS § 269-15.6.

III.

Orders

THE COMMISSION ORDERS:

1. This proceeding is initiated to examine the HECO Companies' REI Program that was initially proposed in the RPS Docket.

2. The commission, sua sponte, designates the parties in the RPS Docket, the HECO Companies, KIUC, the Consumer Advocate, HREA, and LOL, as parties in this proceeding.

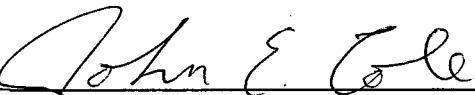
3. Any individual, entity, organization, or agency desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the date of this Order. Motions to intervene or participate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

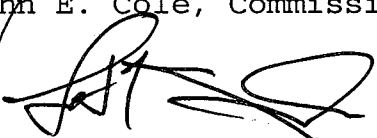
4. Within forty-five (45) days of the date of this Order, the parties (and intervenors and participants, if any) shall develop a stipulated protective order, if necessary, and a stipulated prehearing (or procedural) order to govern the matters of this proceeding for the commission's review and approval. If the parties (and intervenors and participants, if any) are not able to stipulate, each of them shall file proposed orders for the commission's consideration by such date.

DONE at Honolulu, Hawaii DEC 20 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:


Kaiulani Kidani Shinsato
Commission Counsel

RE Program:eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23913 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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Certificate of Service

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