

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

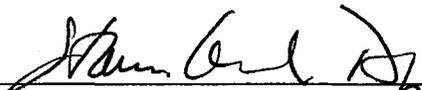
----In the Matter of----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate the Proposed Tariffs)
Filed by Kauai Island Utility)
Cooperative and Other Related)
Matters.)
_____)

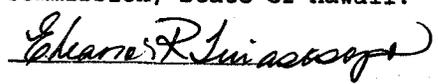
DOCKET NO. 2006-0498

ORDER NO. 23941

RECEIVED
PUBLIC UTILITIES COMMISSION
DECEMBER 28 2007

Filed December 28, 2007
At 12 o'clock P.M.

for 
Chief Clerk of the Commission

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


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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ORDER

By this Order,¹ the commission: (1) instructs KIUC, HREA, the County of Kauai, Kauai Marriott, and the Consumer Advocate (the "Stipulating Parties") to file a joint written brief or separate briefs addressing the issues identified in Section II of this Order, by January 22, 2008; (2) instructs the BluePoint Energy Intervenors to file a responsive written

¹The Parties in this proceeding are: (1) KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"); (2) HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"); (3) the COUNTY OF KAUAI; (4) CHAPEAU, INC., dba BLUEPOINT ENERGY ("BluePoint Energy"), STARWOOD HOTELS AND RESORTS WORLDWIDE, INC. ("Starwood Hotels"), and the HAWAII HEALTH SYSTEMS CORPORATION ("HHSC") (collectively, the "BluePoint Energy Intervenors"); (5) MARRIOTT HOTELS SERVICES, INC., on behalf of KAUAI MARRIOTT RESORT & BEACH CLUB ("Kauai Marriott"); and (6) the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The BluePoint Energy Intervenors, in accordance with their decision to present a unified position amongst their three entities, are required to jointly file their pleadings and designate a single representative or counsel that is authorized to bind and act on behalf of all three entities. See Order No. 23422, filed on May 8, 2007.

brief by February 6, 2008; and (3) on its own motion, schedules a non-evidentiary, oral argument hearing for February 13, 2008, 10:00 a.m., at the commission's hearing room in Honolulu (465 South King Street, #B-3).

I.

Background

A.

Procedural Background

The deadline for the Parties to have submitted a stipulated procedural schedule for the standby service portion of this proceeding, or for each of the Parties to submit its own procedural schedule, in the event that they are unable to agree on a joint procedural schedule, was November 30, 2007.²

The Parties were unable to agree on a stipulated procedural schedule for the standby service portion of this proceeding. Thus, on November 30, 2007, the "Stipulating Parties, timely submitted their "Stipulation Requesting Approval of (1) Stipulating Parties' Proposed Stipulated Procedural Order and Stipulated Regulatory Schedule, and (2) Proposal for Short Term Certainty of Standby Rates."³ The BluePoint

²See Order No. 23655, filed on September 12, 2007; and Order No. 23715, filed on October 12, 2007.

³Stipulation Requesting Approval of (1) Stipulating Parties' Proposed Stipulated Procedural Order and Stipulated Regulatory Schedule, and (2) Proposal for Short Term Certainty of Standby Rates; Exhibits 1 and 2; and Certificate of Service, filed on November 30, 2007 (collectively, "Stipulation"). Exhibit 1 of the Stipulation consists of the Stipulating Parties' Proposed Stipulated Procedural Order, including their Proposed Stipulated Regulatory Schedule ("Proposed Procedural Order").

Energy Intervenors did not submit a counter-proposal for the commission's review and consideration by November 30, 2007. Instead, by letter dated December 7, 2007, the BluePoint Energy Intervenors informed the commission of their objections to the Stipulation.

B.

Stipulating Parties' Stipulation

The Stipulating Parties request that the commission approve their Proposed Procedural Order (Exhibit 1) and Short-Term Proposal (Exhibit 2). In the Stipulating Parties' view, the Proposed Procedural Order "will provide long term certainty to existing and potential standby customers regarding the methodology and types of standby charges that will apply following the completion of KIUC's first rate case proceeding as an electric cooperative, while the [Short-Term Proposal] will provide short term certainty of stabilized standby charges during a fixed period until this methodology review can occur and ultimately be approved by the Commission and then implemented during KIUC's first rate case proceeding. In doing so, the Stipulating Parties agree that both proposals (Exhibits 1 and 2) should be approved together without modification. The Stipulating Parties believe that approving one without the other will be ineffective in addressing the need or desire for certainty with regard to KIUC's standby rates."⁴

Proposal for Short Term Certainty of Standby Rates ("Short-Term Proposal").

⁴Stipulation, at 8-9.

Proposed Procedural Order

In general, the Stipulating Parties' proposed procedural schedule begins with the filing of KIUC's proposed standby methodology by September 1, 2008, followed by discovery, the filing of position statements, technical meetings, and settlement discussions, culminating in the filing, by July 6, 2009, of "Settlement, Partial Settlement, and/or Final Position Statements Proposing Own Alternative Proposed Standby Methodologies for Commission review (if no settlement)."⁵

In support of their Proposed Procedural Order (including their proposed procedural schedule), the Stipulating Parties state:

1. "KIUC has already begun its efforts to develop a proposed standby methodology and has engaged a consultant or consultants to assist in this process, and KIUC believes that the time set forth in Exhibit 1 for KIUC to complete its review and submit a proposed standby methodology is reasonable and in fact necessary given the work involved, as well as the various other proceedings and matters that KIUC is involved in."⁶

⁵Proposed Procedural Order, Exhibit A, at 2.

⁶Stipulation, at 9-10.

2. The Proposed Procedural Order sets forth a schedule that provides "sufficient time for KIUC to develop and then for the parties to review and submit positions on a standby methodology to be used and implemented at the time of KIUC's first rate increase application as an electric cooperative. The objective of this schedule is to provide the parties and the community with certainty regarding the standby methodology and the types of standby-related charges that will apply following KIUC's first rate case proceeding."⁷

3. "KIUC's proposed standby methodology will identify the proper and reasonable costs that it believes should be included in the computation of an electric utility rate applicable to potential standby customers in a tariff-formatted document."⁸ The Parties "shall have the right, as set forth in the proposed procedural schedule, to propose their own alternative proposed standby methodologies for Commission review."⁹

⁷Stipulation, at 7.

⁸Stipulation, at 10.

⁹Stipulation, at 10.

Short-Term Proposal

Concomitantly, the Stipulating Parties recognize that the procedural schedule set forth in their Proposed Procedural Order:

. . . will only provide certainty once the regulatory steps proposed therein are completed and the Commission issues its determination on a proposed methodology, which, based on the proposed schedule, could be in the latter half of calendar year 2009. As such, the Stipulating Parties acknowledge that their proposed regulatory schedule alone does not provide certainty for those prospective standby customers that were either in the project and/or financial planning and analysis stage either at the time KIUC filed its fully cost-based rates of between \$31.25/kW and \$37.47/kW on November 27, 2006 and/or at the time of the Commission's public hearing held on February 27, 2007. To address and provide additional certainty for these prospective customers during the period in which the above methodology review and approval will occur, the Stipulating Parties have also agreed upon the short-term proposal attached . . . as Exhibit 2 and incorporated herein by reference. In agreeing with this proposal, KIUC was required to carefully consider the need and desire to provide these prospective standby customers with some level of certainty during this period, with KIUC's own need to limit and control the extent of financial exposure to it and all of its members. KIUC and the other Stipulating Parties believe that the proposal attached as Exhibit 2 achieves a delicate balance between these two objectives.

Stipulation, at 7-8 (emphasis added).¹⁰

¹⁰For convenience, a copy of the Stipulating Parties' Exhibit 2 is attached to this Procedural Order.

Thus, the Short-Term Proposal "is intended to provide immediate certainty, up to a certain financial threshold, to those prospective standby customers with non-renewable energy projects that were in the project and/or financial planning and analysis stage either at the time KIUC filed its fully cost-based rates of between \$31.25/kW and \$37.47/kW on November 27, 2006 and/or at the time of the Commission's public hearing held on February 27, 2007. This proposal also consists of a separate proposal covering renewable energy projects . . . which was agreed upon by the Stipulating Parties in order to recognize the public interest in facilitating the pursuit of renewables on the island of Kauai."¹¹

a.

Qualified Projects/Facilities
(Non-Renewable Energy Project)

For the proposed non-renewable energy facilities that meet the Qualified Project/Facility criteria, KIUC's existing standby tariff of \$5/kW of standby demand will remain in place until January 1, 2015, or the conclusion of KIUC's next rate case proceeding ("Coverage Period"), whichever is later. This proposal, designed to cover customers that have already made significant commitments in developing their proposed facilities, is intended to provide certainty to Qualified Projects/Facilities in the short-term that KIUC's existing standby rate of \$5/kW will remain in place for their facilities until at least January 1, 2015.

¹¹Stipulation, at 10-11.

This proposal will be made available to all Qualified Projects/Facilities up to a total combined nameplate rating of 1,534 kW, which is approximately two percent of KIUC's current peak system, and will cover Kauai Marriott's proposed 810 Kw propane-fired combined heat and power ("CHP") project, leaving approximately 725 kW remaining under the two percent cap.¹²

KIUC will qualify a proposed project or facility as a Qualified Project/Facility on a first come, first-served basis, for the projects or facilities that meet each of the following requirements within sixty days following the commission's approval of the Stipulating Parties' Short-Term Proposal:

1. The prospective standby customer ("Customer Generator") has submitted to KIUC a completed interconnection application for the proposed project or facility;

¹²According to the Stipulating Parties:

This proposal is not available to KIUC's two (2) currently existing standby customers. The rationale behind this is that the purpose of this proposal is to address the uncertainty faced by potential standby customers that were in the project and/or financial planning and analysis stage at the time KIUC filed its fully cost-based standby tariff rates of between \$31.25/kW and \$37.47/kW on November 27, 2006 and/or at the time of the Commission's public hearing on February 27, 2007. With respect to the two (2) existing standby customers, their facilities have been in service since at least December of 2005, and as such have had certainty on these standby rates during this period, and will continue to have this certainty until the conclusion of KIUC's next rate proceeding.

Stipulation, at 12 n.11.

2. The Customer Generator has either: (A) signed an interconnection agreement with KIUC covering the proposed project or facility, or (B) provided KIUC with evidence satisfactory to KIUC in its sole discretion that the Customer Generator has made significant financial or contractual commitments to implement its proposed project or facility; and
3. The proposed project or facility will not result in KIUC exceeding the 1,534 kW limitation after taking into consideration any other previously-approved Qualified Projects/Facilities.

See Stipulation, at 12-13.

KIUC will also develop a wait list for Customer Generators that are able to satisfy Requirements No. 1 and No. 2, above, but are unable to qualify as Qualified Projects/Facilities because of the 1,534 kW cap.

The rate structure for Qualified Projects/Facilities during the Coverage Period will be the \$5/kW standby charge currently set forth in KIUC's existing standby service tariff. "There will be no usage charge or other standby charges. All other applicable tariff rate schedules will remain intact. Upon termination of the Coverage Period, the then applicable Commission-approved tariff rate(s) shall apply. In the event KIUC completes its first rate case proceeding as an electric cooperative before the expiration of the Coverage Period, each Customer Generator under this proposal shall have the option to opt out of the terms of this proposal and instead be covered under KIUC's new standby tariff resulting from that rate case proceeding."¹³

¹³Stipulation, at 13.

b.

Renewable Energy Projects

Under the Stipulating Parties' proposal, there will be no standby charge for Renewable Energy Projects. "In doing so, the Stipulating Parties recognize[] the overall public interest to facilitate, or at least remove certain apparent barriers to the pursuit of renewables on the island of Kauai. There will be no limit to the number of renewable energy systems that KIUC will cover under this proposal; in other words, these systems will not be included in or subject to the 1,534 KW limitation This no standby charge provision for renewable energy projects/facilities will remain in place until the conclusion of KIUC's first rate case proceeding as an electric cooperative, at which time the then Commission-approved tariff rates (including any applicable standby rate) shall apply."¹⁴

3.

Summary

In summary, the Stipulating Parties assert that their "two exhibits, taken together, will provide both short term and long term certainty to Qualified Projects/Facilities and renewable energy projects/facilities; in the short term by providing certainty regarding KIUC's standby rates until at least the conclusion of KIUC's first rate case proceeding as an electric cooperative, and in the long term through the

¹⁴Stipulation, at 14.

establishment of a standby methodology that will provide certainty regarding the types of standby-related charges that will apply following that rate case proceeding."¹⁵

C.

BluePoint Energy Intervenors' Opposition

The BluePoint Energy Intervenors object to the Stipulation, and recommend that the commission deny the procedural schedule proposed by the Stipulating Parties. Instead, the BluePoint Energy Intervenors request a prehearing conference "to discuss the status of informal negotiations, and to demonstrate - possibly with a short evidentiary proceeding - the severe adverse consequences created by KIUC's continuing deferral of implementation of cost-based rates applicable to the provision of stand-by service to KIUC's consumers wishing to install distributed generation[['DG']/CHP facilities on their premises."¹⁶ In the alternative, the BluePoint Energy Intervenors request "an interim hearing on the status of all matters to date, including informal negotiations for settlement, the scheduling of future pre-evidentiary hearing events, and, to the extent necessary, KIUC's professed inability to ascertain any of its discreet costs for providing service to its customers."¹⁷

¹⁵Stipulation, at 14-15.

¹⁶BluePoint Energy Intervenors' letter, dated December 7, 2007, at 1.

¹⁷BluePoint Energy Intervenors' letter, dated December 7, 2007, at 3; see also id. at 1 (scheduling an interim hearing).

In objecting to the Stipulation, the BluePoint Energy Intervenors assert that, with respect to the 1.54 megawatt ("MW") cap imposed by KIUC:

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2. Terms and conditions in the Stipulation provide parties to the Stipulation individualized, self-serving provisions, while virtually precluding all other consumers or developers of CHP/DG entrance into the Kauai energy market. Having said that, BluePoint believes the other intervening parties joining in the Stipulation are not to be blamed for agreeing to a proposed set of terms and conditions which satisfy their objectives while freezing others with uncertainty, for years to come.

3. The maximum permissible limit for CHP/DG installations on the Island of Kauai was arbitrarily dictated by KIUC at 1.54 [MW], thereby eliminating any meaningful development of CHP/DG on the island. This limitation is unsupported by any empirical analysis, amounts to less than 2% of KIUC's total capacity, and should be considered arbitrary in the absence of quantified documentation. Importantly, more than half of this tiny allotment is already spoken for in Kauai Marriott Hotel's on-going project, leaving little room for any other consumers who wish to employ DG/CHP technology (other than those employing non-renewables).

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6. The KIUC Stipulation was cleverly drafted by KIUC in a manner designed to split the interests of the intervenors and to divide them by offering benefits to some and freezing out others. The consequence is that only a very few of Kauai's largest consumers may benefit from the development of DG/CHP, for years to come, leaving outsiders at a significant competitive advantage.

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BluePoint Energy Intervenors' letter, dated December 7, 2007, at 2.

II.

Discussion

On November 30, 2007, the Stipulating Parties timely filed their Proposed Procedural Order (Exhibit 1), in compliance with Order No. 23715. In addition to the Proposed Procedural Order, the Stipulating Parties filed their Short-Term Proposal (Exhibit 2) stating that it would provide short-term certainty to potential distributed generators who are considering the possibility of installing DG on the island of Kauai, and who meet the applicable Qualified Projects/Facilities or Renewable Energy Projects criteria proposed by the Stipulating Parties.

By contrast, the BluePoint Energy Intervenors failed to file their proposed procedural schedule; thus, they do not propose any alternative dates to govern the schedule in this proceeding. Instead, on December 7, 2007, the BluePoint Energy Intervenors objected to the Stipulation filed by the Stipulating Parties.

In the commission's view, the Stipulating Parties' Exhibit 2 goes beyond the scope of the commission's requirement that the Parties file their proposed procedural schedules by November 30, 2007. Moreover, it is unclear from the docket record as to whether the BluePoint Energy Intervenors knew of this proposal beforehand, as part of the process of seeking to have all of the Parties agree on a joint stipulated procedural schedule, or whether the Stipulating Parties' proposal

constitutes a "surprise" to the BluePoint Energy Intervenors.¹⁸ In addition, by the Stipulating Parties' own admission, Exhibit 2 is intertwined with Exhibit 1, and in their belief, "approving one without the other will be ineffective in addressing the need or desire for certainty with regard to KIUC's standby rates."¹⁹ For these reasons, the commission will: (1) accept the BluePoint Energy Intervenors' letter, dated December 7, 2007; and (2) give the objections and concerns raised by the BluePoint Energy Intervenors therein the appropriate consideration and weight.²⁰

Upon review, the commission finds that the Stipulation raises certain questions that merit written briefing by the Parties. Accordingly, the Stipulating Parties shall file a joint written brief or separate briefs by January 22, 2008, addressing the following issues:

¹⁸The Stipulating Parties state that "the parties have held various discussions concerning the standby service issues, including discussions of relevant issues and concerns, and potential resolution of those issues and concerns. Unfortunately, the parties in the aggregate have been unable to agree on a stipulated procedural order and/or schedule." Stipulation, at 7.

Conversely, the BluePoint Energy Intervenors claim, without further explanation, that "BluePoint was not part of the concluding negotiations which set the overall time frame and the specific dates in HPUC Docket No. 2006-0498." BluePoint Energy Intervenors' letter, dated December 7, 2007, at 2.

¹⁹Stipulation, at 9.

²⁰Concomitantly, the commission declines the BluePoint Energy Intervenors' request for a prehearing conference and a "short evidentiary proceeding." Instead, by this Order, the commission will schedule a non-evidentiary, oral argument hearing.

Exhibit 1

1. The reasons why KIUC needs until September 1, 2008, to develop and submit its proposed standby methodology to the commission.
2. The reasons why the Stipulating Parties propose a procedural schedule with the final step not being completed until July 6, 2009, approximately eighteen months from the date of this Order.
3. The effects of the commission "moving up" or advancing the procedural dates proposed by the Stipulating Parties in Exhibit 1.

Exhibit 2

1. The identity of KIUC's two existing standby service customers.
2. KIUC's estimated timeframe as to when it intends to file its application for a general rate case, and the test year it intends to utilize.
3. The specific meaning ascribed by the Stipulating Parties to the phrase, "the conclusion of KIUC's next rate case proceeding."
4. The reasons and basis for selecting January 1, 2015 as the date the existing standby charge of \$5/kW will remain in place for Qualified Projects/Facilities, assuming that "the conclusion of KIUC's next rate case proceeding" occurs prior to January 1, 2015.
5. The reasons and basis for the proposed 1.534 MW cap for Qualified Projects/Facilities, which amounts to approximately two percent of KIUC's current peak system.
6. The reasons and basis for why it appears to be technically feasible for Renewable Energy Projects "not [to] be included or subject to" the 1.534 MW cap, while the 1.534 MW cap is imposed on Qualified Projects/Facilities.
7. The reasons and basis for proposing the sixty-day time limit for applicants to meet the Qualified Projects/Facilities criteria.

8. The reasons and basis for the apparent disparate treatment in the proposed duration of the existing \$5/kW standby charge between: (A) Qualified Projects/Facilities and those that do not meet the Qualified Projects/Facilities criteria; (B) Qualified Projects/Facilities and KIUC's two existing standby service customers; and (C) Qualified Projects/Facilities and Renewable Energy Projects.²¹

The BluePoint Energy Intervenors shall file a responsive written brief by February 6, 2008.

The commission, on its own motion, will schedule a non-evidentiary, oral argument hearing on the written briefs, for February 13, 2008, 10:00 a.m., at the commission's hearing room in Honolulu (465 South King Street, #B-3). The Parties' counsel or authorized, designated representatives shall appear and participate at the oral argument hearing.

III.

Orders

THE COMMISSION ORDERS:

1. The Stipulating Parties shall file a joint written brief or separate briefs addressing the issues identified in Section II of this Order, by January 22, 2008.
2. The BluePoint Energy Intervenors shall file a responsive written brief by February 6, 2008.

²¹Assumption: "[T]he conclusion of KIUC's next rate case proceeding" occurs prior to January 1, 2015. Thus, the existing \$5/kW standby charge will remain in effect until January 1, 2015 for Qualified Projects/Facilities.

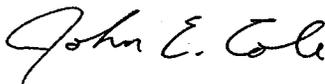
3. A non-evidentiary, oral argument hearing on the written briefs, is scheduled for February 13, 2008, 10:00 a.m., at the commission's hearing room in Honolulu (465 South King Street, #B-3). The Parties' counsel or authorized, designated representatives shall appear and participate at the oral argument hearing.

4. KIUC shall proceed forthwith with the development of its proposed standby methodology, without delay.

DONE at Honolulu, Hawaii DEC 28 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By 
Leslie H. Kondo, Commissioner

2006-0498. laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23941 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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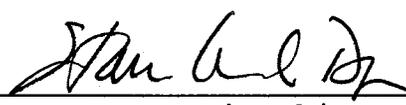
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for

Karen Higashi

DATED: DEC 28 2007