

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval of Rate Increases)
And Revised Rate Schedules and)
Rules)

DOCKET NO. 2008-0083

RECEIVED

2009 JAN -2 A 8:18

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

ORDER DENYING MOTION FOR RECONSIDERATION
AND DISMISSING AS MOOT MOTION FOR LEAVE TO FILE REPLY

~~RECEIVED~~

~~2008 DEC 33 A 8:13~~

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

PUBLIC UTILITIES
COMMISSION

2008 DEC 31 A 8:34

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.) Docket No. 2008-0083
For Approval of Rate Increases)
And Revised Rate Schedules and)
Rules)
_____)

ORDER DENYING MOTION FOR RECONSIDERATION
AND DISMISSING AS MOOT MOTION FOR LEAVE TO FILE REPLY

By this Order, the commission: (1) denies the Motion for Reconsideration filed by WAL-MART STORES, INC. and SAM'S WEST, INC. (jointly, "Wal-Mart") on November 12, 2008 ("Reconsideration Motion"); and (2) dismisses as moot the Motion for Leave to File a Reply to Wal-Mart's Reconsideration Motion, filed by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") on November 19, 2008 ("Motion for Leave").¹

I.

Background

By order issued on October 31, 2008, the commission, among other things, denied: (1) Motion to Intervene and Become a Party filed by Wal-Mart on August 20, 2008 ("Wal-Mart's First Intervention Motion"); (2) Motion to Intervene

¹The parties to this docket are: HECO, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, and the DEPARTMENT OF THE NAVY on behalf of the DEPARTMENT OF DEFENSE.

and Become a Party filed by Wal-Mart on September 2, 2008 ("Wal-Mart's Second Intervention Motion"); (3) Motion to Intervene and Become a Party filed by the HAWAII COMMERCIAL ENERGY CUSTOMER GROUP ("Commercial Group"), of which Wal-Mart was a member, on September 29, 2008 ("Commercial Group's Intervention Motion"); and (4) Commercial Group's Motion for Leave to File Reply to HECO's Memorandum in Opposition to Commercial Group's Intervention Motion, filed on October 21, 2008.²

In denying intervention to Wal-Mart and the Commercial Group in the Intervention Order, the commission stated:

Upon review of the Intervention Motions, the related filings thereto, and the entire record, the commission is convinced that intervention should be denied to Wal-Mart and the Commercial Group. First, regarding Wal-Mart, after Wal-Mart filed its First Intervention Motion and HECO filed its opposition to that motion, Wal-Mart simultaneously withdrew the First Intervention Motion and, through its Second Intervention Motion, filed an improved version of its First Intervention Motion. In addition, Wal-Mart appears to have failed to properly serve HECO with the Second Intervention Motion and the Notice of Withdrawal.

²The commission's order issued on October 31, 2008 will be referred to herein as the "Intervention Order." In the Intervention Order, the commission also dismissed as moot: (1) Motion to Appear on Behalf of Wal-Mart, filed on August 20, 2008; (2) Motion to Appear on Behalf of the Commercial Group, filed on September 29, 2008; and (3) HECO's Motion for Enlargement of Time to File a Memorandum in Opposition to Wal-Mart's Second Intervention Motion, filed on October 13, 2008.

In the commission's view, Wal-Mart's conduct thus far, quite simply, is inconsistent with the "just, speedy, and inexpensive determination" of this proceeding." Parties should not be able to file alternative motions as Wal-Mart did, as it is wasteful of the commission's and the utilities' resources.

As to Wal-Mart's First Intervention Motion, Wal-Mart withdrew that motion (and appears to have failed to properly serve HECO with the Notice of Withdrawal). Even if the commission were to consider the First Intervention Motion on its merits, the commission would deny the motion, as the support provided by Wal-Mart is conclusory and brief (i.e., less than two pages of substantive support is provided in the First Intervention Motion). With respect to Wal-Mart's Second Intervention Motion, it is, as noted above, an improved version of its First Intervention Motion. Accordingly, the commission will treat Wal-Mart's Second Intervention Motion as an unauthorized Reply Memorandum under its rules and will deny the motion. Given the commission's denial of both of Wal-Mart's intervention motions, the commission dismisses as moot Wal-Mart's Motion to Appear, and HECO's Enlargement Motion.

The commission finds the same flaws with the Commercial Group's Intervention Motion. As noted by HECO, a party seeking intervention should not be able to file alternative, parallel motions to intervene in different capacities and based on different theories. This would inevitably force the commission, as it has here, to rule on multiple motions and opposition memoranda, and is clearly contrary to the commission's obligation to ensure the "just, speedy, and inexpensive determination of every proceeding."

There are additional concerns with the Commercial Group's Intervention Motion. The Commercial Group does not appear to represent a discrete group of commercial customers who will not be adequately represented by the Consumer Advocate. To the contrary, the composition of the Commercial Group appears diverse and diluted with members being small, medium, and large

commercial customers, including "grocery stores, department stores, discount stores, specialty stores and wholesale clubs." The Commercial Group also appears to represent a non-profit organization, the Retail Merchants of Hawaii Inc., and the record is unclear as to who the members of this group are. In general, the Commercial Group appears to represent a cross-section of HECO's commercial customers. Given the ambiguity of the Commercial Group's members and their diverse interests, intervention by the Commercial Group would not lead to the development of a sound record, and would likely confuse the issues and delay this proceeding. Moreover, there is no indication in the record that the Consumer Advocate will not adequately represent the interests of the Commercial Group's members. For all of these reasons, the Commercial Group's Intervention Motion is denied. In addition, given the denial of the Commercial Group's Intervention Motion, the Commercial Group's Motion to Appear is dismissed as moot.³

On November 12, 2008, Wal-Mart timely filed its Reconsideration Motion, and on November 19, 2008, HECO filed its Motion for Leave.

II.

Discussion

HAR chapter 6-61, subchapter 14, governs motions for reconsideration filed with the commission. HAR §§ 6-61-137 and 6-61-140 state:

§6-61-137 Motion for reconsideration or rehearing. 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 be filed within ten days after the decision or order is

³Intervention Order at 13-15 (footnotes omitted).

served upon the party, setting forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

§6-61-140 Replies to motions. The commission may allow replies to a motion for rehearing or reconsideration or a stay, if it deems those replies desirable or necessary.

HAR §§ 6-61-137, 6-61-140 (emphasis added).

In the Reconsideration Motion, Wal-Mart asserts that "the Commission's decision to deny intervention on the basis of procedural defects would be unreasonable in this case as the procedural issues addressed in the Order are not related to the factors to be analyzed under HAR § 6-61-55[,]"⁴ which govern the commission's decision on intervention. The commission disagrees. HAR § 6-61-55(7) specifically states that the commission may consider, in deciding intervention, "[t]he extent to which the applicant's participation will broaden the issues or delay the proceeding[.]" Another relevant factor is listed in HAR § 6-61-55(6), which states: "[t]he extent to which the applicant's participation can assist in the development of a sound record[.]"

Here, as discussed in detail in the Intervention Order, Wal-Mart (by itself and also as a member of the Commercial Group) filed several alternative motions to intervene in this proceeding that resulted in multiple responsive filings by HECO. Most glaring of Wal-Mart's procedural defects was its filing of the Second Intervention Motion while simultaneously withdrawing the First Intervention Motion after HECO filed an opposition

⁴Reconsideration Motion at 7.

to the First Intervention Motion. This is simply not permitted under the commission's rules, and Wal-Mart provides no reasonable justification for this in its Reconsideration Motion. In the commission's view, Wal-Mart's actions were exactly counter to HAR §§ 6-61-55(7) and 6-61-55(6), and the commission's obligation in HAR § 6-61-1 "to secure the just, speedy, and inexpensive determination of every proceeding."

Moreover, Wal-Mart's procedural mistakes were completely its own, and its arguments that the commission should now consider the merits of Wal-Mart's intervention motions are unpersuasive. The Second Intervention Motion was simply not authorized. As for the First Intervention Motion, it was withdrawn by Wal-Mart (albeit after HECO opposed the First Intervention Motion and Wal-Mart effectively replaced that motion with a new and improved Second Intervention Motion). As the commission stated in the Intervention Order, even if the commission were to consider the merits of the First Intervention Motion, it would have denied that motion since it lacked support and was conclusory and brief (i.e., less than two pages of substantive support was provided in the First Intervention Motion).

Wal-Mart also requests in its Reconsideration Motion that it be allowed to participate in this proceeding. Wal-Mart's request is procedurally flawed. Wal-Mart could have requested participant status earlier, but chose not to do so. It is inappropriate for Wal-Mart to now ask for participant status in the Reconsideration Motion. The commission denies this request.

In sum, Wal-Mart has not shown that the commission's decision in the Intervention Order was "unreasonable, unlawful, or erroneous." The commission accordingly denies the Reconsideration Motion. Under HAR § 6-61-140, the commission may allow replies to a motion for reconsideration if it deems those replies desirable or necessary. However, given the commission's denial of the Reconsideration Motion, the commission dismisses HECO's Motion for Leave as moot.

III.

Orders

THE COMMISSION ORDERS:

1. Wal-Mart's Reconsideration Motion is denied.
2. HECO's Motion for Leave is dismissed as moot.

DONE at Honolulu, Hawaii DEC 31 2008.

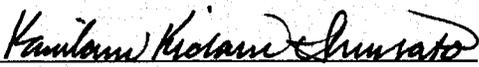
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Kaiulani Kidani Shinsato
Commission Counsel

2008-0083.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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

DEAN K. MATSUURA
MANAGER - REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

Counsel for Hawaiian Electric Company, Inc.

DR. KAY DAVOODI
NAVFAC HQ ACQ-URASO
1322 Patterson Avenue, SE Suite 1000
Washington Navy Yard
Washington, DC 20374-5065

RICHARD W. CARLILE, ESQ.
ASSOCIATE COUNSEL
NAVAL FACILITIES ENGINEERING COMMAND, PACIFIC
258 Makalapa Drive, Suite 100
Pearl Harbor, HI 96860-3134

Counsel for the Department of the Navy
on behalf of the Department of Defense

Certificate of Service
Page 2

BRUCE A. NAKAMURA, ESQ.
JOSEPH A. STEWART, ESQ.
KOBAYASHI SUGITA & GODA
999 Bishop Street, Suite 2600
Honolulu, HI 96813

Counsel for Wal-Mart Stores, Inc.
and Sam's West, Inc.