

I.

Background

KIUC is a not-for-profit electric cooperative that provides electric utility service on the island of Kauai to its owner/members. KIUC represents that over 99.5% of Kauai's electric customers are members of KIUC.

On June 30, 2009, KIUC filed its application for a general rate increase and other related matters. On July 31, 2009, the commission granted DoN's motion to intervene.² On August 17, 2009, Kauai Marriott filed its Motion to Intervene. Kauai Marriott requested a hearing on its motion, provided that if the commission decides to grant intervention to Kauai Marriott, "there would be no need for a hearing."³ On August 25, 2009, KIUC filed its memorandum in opposition to Kauai Marriott's motion.⁴

Also on August 25, 2009, the commission held a public hearing in Lihue, Kauai, for the purpose of providing interested persons with the opportunity to appear and comment on KIUC's requests. Three representatives from Kauai Marriott appeared, submitted written comments, and orally testified at the public hearing, including its counsel.

²Order Granting Intervention to the Department of the Navy, dated July 31, 2009.

³Kauai Marriott's Motion to Intervene, at 32.

⁴Memorandum in Opposition to Motion to Intervene of Essex House Condominium Corporation on Behalf of Kauai Marriott Resort and Beach Club; and Certificate of Service, filed on August 25, 2009 ("Memorandum in Opposition to Kauai Marriott's Motion").

On September 1, 2009, Kauai Marriott filed its Motion for Leave, and also requested a hearing on its motion, provided that if the commission decides to grant Kauai Marriott's underlying Motion to Intervene, "there would be no need for a hearing."⁵ On September 14, 2009, the commission granted Kauai Marriott's Motion for Leave, thereby rendering moot the movant's request for a hearing on such motion.⁶

On September 29, 2009, the commission held a hearing on Kauai Marriott's Motion to Intervene. Counsel for Kauai Marriott, KIUC, and the Consumer Advocate appeared and participated in the hearing.

A.

Kauai Marriott's Motion to Intervene

Kauai Marriott, in support of its Motion to Intervene, asserts:

1. Kauai Marriott is one of the major resorts on the island of Kauai, with 356 hotel rooms, 232 timeshare units, and over 500 employees.

2. Kauai Marriott is a customer and member of the cooperative, and takes service from KIUC pursuant to Schedule L, Large Power Primary Service, and Rider S, Standby, Auxiliary,

⁵Motion for Leave to File Reply Memorandum in Support of Motion to Intervene and Memorandum of Essex House Condominium Corporation on behalf of Kauai Marriott Resort & Beach Club; Reply Memorandum in Support of Motion to Intervene ("Reply Memorandum"); Exhibit A; and Certificate of Service, filed on September 1, 2009 (collectively, "Kauai Marriott's Motion for Leave"), at 7.

⁶See Commission's letter, dated September 14, 2009.

Supplementary or Breakdown Service for Customers with Demands of 30 Kilowatts or More, of the cooperative's tariff rules.⁷ Specifically, Kauai Marriott: (A) has installed distributed generation/combined heat and power equipment ("DG/CHP") with a faceplate rating of 810 kilowatts ("kW"); (B) its monthly average billing demand under Schedule L for the twelve months ending July 2009 was 1,836 kW; and (C) it takes 810 kW of standby service under Rider S. Moreover, as a large customer of KIUC, it is one of only sixteen customers that purchases electricity from the electric cooperative pursuant to Schedule L.

3. "Kauai Marriott was an active intervenor party, as well as a signatory to the settlements, in the recent docket[] concerning the technical requirements for connecting certain customer-owned generating equipment to KIUC's system and KIUC's rates for standby service (Docket No. 2006-0498)."⁸

⁷According to Kauai Marriott:

Essex House Condominium Corporation (a corporate affiliate of Marriott International, Inc.) is the lessee of the Kauai Marriott Resort & Beach Club and, as such, it is responsible for all operation and maintenance requirements for the facilities of the Kauai Marriott Resort & Beach Club. As relevant here, Essex House Condominium Corporation is directly responsible for managing the electric system and controlling electricity costs for the Kauai Marriott Resort & Beach Club, and is directly responsible for the planning, installation, and operation of the DG/CHP equipment.

Kauai Marriott's Motion to Intervene, at 4.

⁸Kauai Marriott's Motion to Intervene, at 5.

4. Kauai Marriott has direct and substantial interests (financial, property, other) in the outcome of this proceeding that cannot be adequately represented by any other party. In particular:

A. Kauai Marriott's overall electricity cost for the twelve-month period ending July 10, 2009 was approximately \$2.84 million, with the Energy Rate Adjustment Clause comprising approximately \$1.4 million of that total. Thus, KIUC's proposed 10.5% increase in its rates directly impacts Kauai Marriott.⁹

B. KIUC seeks a 10.47% increase in its revenues, but a 10.5% increase in its rates, with the disparity apparently due to the rates KIUC pays to three independent power producers ("IPPs"). According to KIUC, because it is unable to adjust the rates paid to the three IPPs without negotiating amendments to the applicable power purchase agreements, the increased revenues that would have been recovered from the three IPPs must instead be recovered from all other customer classes. Thus, "KIUC's decision to reallocate the increased revenues to remaining customer classes results in subsidization of these customers by

⁹See Kauai Marriott's Motion to Intervene, Section II.A.2(a), KIUC's Proposal to Increase Rates by 10.5% Directly Impacts the Interests of the Kauai Marriott, at 5-7; Section II.A.2(b), KIUC's Proposal to Implement any Rate Increase on an Across-the-Board Basis will Have a Direct and Detrimental Impact on the Interests of the Kauai Marriott, and is Neither Just, Reasonable, nor Fair, at 7-11; see also Section II.A.2(d), KIUC's Proposal to Implement a 2.5 Times TIER Directly Impacts the Interests of the Kauai Marriott, at 12-13, Section II.A.2(f), KIUC's Projected Levels of Revenues, Expenses, and Sales Directly Impact the Interests of the Kauai Marriott, at 14-15, and Section II.A(h), Economic Impacts of KIUC's Rate Increase Filing on the Interests of the Kauai Marriott, at 16-17.

the Kauai Marriott and others, and demonstrates a financial and property interest."¹⁰

C. According to KIUC's cost-of-service study, revenues derived from the Schedule L customer class should be reduced by 3.4%. Thus, KIUC's proposal to increase its rates by an across-the-board percentage will have the effect of increasing, rather than reducing, the subsidization of other customer classes by Schedule L customers. Specifically, based on Kauai Marriott's analysis, "under KIUC's proposal, the subsidy provided by Schedule 'L' customers, including Kauai Marriott, increases from 3.4% to 12.6% over and above what would be a fair allocation of the cost of service to Schedule 'L'."¹¹ "For these reasons, the Kauai Marriott opposes KIUC's proposal to apply the rate increase on an across-the-board basis. Instead, whatever the level of any increase, it should be spread so as to bring all classes of service to (or, at a minimum, closer to) their allocated cost of service."¹² "KIUC's proposed across-the-board 10.5% rate increase [will] result in an 'overpayment' by the Kauai Marriott of 12.6% as compared to rates which are designed to properly reflect each customer class' fair share of any approved cost of service."¹³

¹⁰Kauai Marriott's Motion to Intervene, at 6-7.

¹¹Kauai Marriott's Motion to Intervene, at 9.

¹²Kauai Marriott's Motion to Intervene, at 10-11.

¹³Kauai Marriott's Motion to Intervene, at 7.

D. In addition to KIUC's proposed increase in rates, the electric cooperative's other proposals also directly impact Kauai Marriott's interests.¹⁴

E. Kauai Marriott has an interest in, and seeks to comment on KIUC's future rate design once it is proposed by the electric cooperative as part of the latter phase of this proceeding or as a separate proceeding.¹⁵ Of particular note, KIUC is considering a new methodology for determining standby rates and intends to submit its proposal as part of its future rate design. The new methodology that is under consideration by KIUC "would, if accepted, almost double the current standby charge paid by the Kauai Marriott from \$5.00 per kW per month to \$9.03 per kW per month Based on the Kauai Marriott's current level of standby demand, its monthly charge would

¹⁴See Kauai Marriott's Motion to Intervene, Section II.A.2(c), KIUC's Proposal to Permit KIUC's Board of Directors to Determine How Much and When Patronage Capital Retirements Should be Made to Members Directly Impacts the Interests of the Kauai Marriott, at 11-12, Section II.A.2(e), KIUC's Proposal to Remove the ERAC and to Implement the COPA in its Place Directly Impacts the Interests of the Kauai Marriott, at 13-14, and Section II.A.(2)(g), KIUC's Proposal to Clarify that "Standby Demand" Means the "Design Capacity" of a Generating System Directly Impacts the Interests of the Kauai Marriott, at 15-16.

¹⁵See Kauai Marriott's Motion to Intervene, Section II.A.2(i)(1), KIUC's Future "Proposed Rate Design"/Consistent with the July 29 Order, the Kauai Marriott Would Comment on KIUC's Proposal to Defer General Rate Design Issues at the Appropriate Time, at 17-20, and Section II.A.2(2), KIUC's Future "Proposed Rate Design"/the Kauai Marriott Would Comment on KIUC's Proposal with Respect to the Standby Rate Design at the Appropriate Time, at 20-22.

increase from \$4,050 per month to \$7,314, or an increase of approximately 80%."¹⁶

F. Kauai Marriott's interests are not represented by any of the other parties in this proceeding and that of the general public, and in many significant instances, may be in direct opposition thereto.¹⁷ In effect, "Kauai Marriott is a large customer that has specific interests in the proposed rates and tariffs, some of which are at odds with those of residential and other customers that are not large power customers [T]he Consumer Advocate represents a much broader range of interests, including those of residential customers and may, in fact, take positions that are adverse to the Kauai Marriott's interests here."¹⁸

5. Kauai Marriott will assist the commission in developing a sound record. Specifically:

The Kauai Marriott intends to file testimony concerning the issues addressed herein by its own staff personnel, which possess both engineering and financial expertise, and which have detailed knowledge of the Kauai Marriott's operations. At this juncture, if intervenor status is granted, the Kauai Marriott would file testimony by Jeff Poullath, Director of Engineering for the Kauai Marriott, Tyrone Crockwell, Area Director of Engineering for Marriott Resort Asia and Pacific, and/or Jeff Nisenoff, Director of Finance for the

¹⁶Kauai Marriott's Motion to Intervene, at 21.

¹⁷See Kauai Marriott's Motion to Intervene, Section II.A.4, The Other Means Available Whereby the Movant's Interests Will be Protected, at 23-24, Section II.A.5, The Extent to Which the Movant's Interests Will Not be Represented by Existing Parties, at 24-27, and Section II.A.8, The Extent to Which the Movant's Interests in the Proceeding Differ From That of the General Public, at 29-30.

¹⁸Kauai Marriott's Motion to Intervene, at 29.

Kauai Marriott. The Kauai Marriott may also consider hiring a consultant to testify on the matters identified herein.

Kauai Marriott's Motion to Intervene, at 27.

6. Kauai Marriott agrees to address the identified issues; "will accept any procedural schedule established by the existing Parties . . . and would be pleased to join in the discussions concerning that schedule should the Commission direct it to do so[;]" and will comply with the procedural schedule established by the commission. Thus, Kauai Marriott's participation as an intervenor will neither broaden the issues nor delay the proceeding.

7. The commission, in past rate case proceedings, has granted intervention to large-use customers.¹⁹

8. Other states with intervention standards similar to the commission have granted intervention to large-use customers under circumstances similar to Kauai Marriott's.²⁰

B.

KIUC's Opposition

KIUC opposes Kauai Marriott's intervention, contending that:

¹⁹See Kauai Marriott's Memorandum in Support, Section I.A, General Principles Concerning Intervention in Commission Proceedings, at 2-5; see also id. at 11.

²⁰See Kauai Marriott's Memorandum in Support, Section I.B, Other States With Intervention Standards Similar to Hawaii Have Granted Intervention to Large Customers in Circumstances Similar to Those Presented Here, at 5-8.

1. Kauai Marriott's asserted interests are generally the same as other large commercial customers, are neither special nor unique, and instead, are adequately and sufficiently represented by the Consumer Advocate and KIUC's Board of Directors.²¹ In essence, Kauai Marriott's intervention herein is self-serving, contrary to the public interest, and "will likely create a lack of balance between the interests of Kauai Marriott and the interests of KIUC's other customers/members in this proceeding, create an unfair advantage for Kauai Marriott, and may result in an unduly preferential rate structure which does not promote fair, economical and just and reasonable rates."²²

2. Kauai Marriott has not demonstrated or provided any reliable evidence that its intervention as a party will contribute in any significant or material way to the development of a sound record. Of particular note, "Kauai Marriott has failed to establish why its staff personnel's detailed knowledge of Kauai Marriott's operations is reasonably pertinent to KIUC and KIUC's ratemaking matters in this proceeding. Kauai Marriott has not shown, therefore, any specialized interest or knowledge that the Consumer Advocate could not obtain through discovery

²¹See Memorandum in Opposition to Kauai Marriott's Motion, Section III.B.1, Kauai Marriott's interests in this proceeding are generally the same as other large commercial customers/members, at 12, Section III.B.2, Kauai Marriott's interests in this proceeding are represented by the Consumer Advocate, at 12-17, and Section III.B.3, Kauai Marriott's interests in this proceeding were and can continue to be adequately represented by KIUC's Board, at 18.

²²Memorandum in Opposition to Kauai Marriott's Motion, at 11.

with KIUC or other means or that would justify intervenor status in this proceeding."²³

3. Kauai Marriott's participation as an intervenor will unduly delay the proceedings, unreasonably broaden the issues already presented, and deter the commission from ensuring the just, speedy, and inexpensive determination of this proceeding.

4. The past commission rate cases cited to by Kauai Marriott in support of its proposition that the commission has granted intervention to large-use customers are distinguishable on the basis that the large customers authorized to intervene in those cases -- the City and County of Honolulu and the United States Department of Defense -- are governmental entities that allegedly had not only financial interests at stake, but more importantly, allegedly other non-financial interests."²⁴

5. Kauai Marriott's citation to cases from other jurisdictions "are not controlling and inapposite in this proceeding, particularly because the Commission's intervention requirements (albeit similar) and the majority (if not all) of the cases referenced by Kauai Marriott do not involve rate case applications filed by an electric cooperative."²⁵

²³Memorandum in Opposition to Kauai Marriott's Motion, at 16 (emphasis in original); see also id. at 19-20.

²⁴Memorandum in Opposition to Kauai Marriott's Motion, at 6 n.9.

²⁵Memorandum in Opposition to Kauai Marriott's Motion, at 6 n.9.

6. Kauai Marriott's intervention in Docket No. 2006-0498 should not transfer to the granting of intervenor status in KIUC's general rate case proceeding. Docket No. 2006-0498 involved a fact-finding proceeding initiated by the commission's investigation of a particular subject-matter, while Docket No. 2009-0050 "involves a rate relief proceeding initiated by the utility subject to specific statutory timelines for the purpose of determining an appropriate revenue requirement for the utility and how that revenue should be spread out amongst all of the utility's respective rate classes."²⁶

Accordingly, "Kauai Marriott should not be permitted to intervene in the instant proceeding as part of the initial development of KIUC's revenue requirement to provide KIUC rate relief via said proposed across-the-board rate increase. Any 'to-be-proposed rate design' matters, as disclosed in the General Rate Case Application, can be addressed by Kauai Marriott and other interested persons in the next phase or separate proceedings as stated in KIUC's response to PUC-IR-102."²⁷

7. Nonetheless, if the commission is inclined to allow Kauai Marriott to participate in this proceeding, KIUC requests that the commission grant Kauai Marriott participant status limited to the issues of rate design, including the standby service issues addressed in Docket No. 2006-0498.

²⁶Memorandum in Opposition to Kauai Marriott's Motion, at 21 n.26.

²⁷Memorandum in Opposition to Kauai Marriott's Motion, at 22 (footnote and text therein omitted).

C.

Kauai Marriott's Reply

Kauai Marriott, in its Reply Memorandum, states that: (1) KIUC's Board of Directors does not adequately represent Kauai Marriott's interests; (2) the Consumer Advocate cannot adequately represent Kauai Marriott's interests; and (3) KIUC's other arguments in support of denying Kauai Marriott intervenor status is unsupported and without merit. Of particular note, Kauai Marriott asserts that: (1) despite its status as a large-use customer, it has only a single vote in cooperative matters, and thus, has little influence over KIUC's Board of Directors; (2) Kauai Marriott seeks to have all customers pay their fair share of the cost of service; (3) cases from other jurisdictions support the granting of intervenor status in rate cases filed by cooperatives; and (4) it opposes KIUC's alternative position that Kauai Marriott be granted participant status in lieu of intervention.

II.

Discussion

The standard for granting intervention is set forth in HAR § 6-61-55, which requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. HAR § 6-61-55 provides:

§6-61-55 Intervention. (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.

(c) The motion shall be filed and served by the applicant in accordance with sections 6-61-21 and 6-61-57.

(d) Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.

HAR § 6-61-55. Moreover, intervention "is not a matter of right but is a matter resting within the sound discretion of the commission." In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

This docket represents KIUC's first rate case proceeding as an electric cooperative. In this regard, KIUC proposes to establish its new, higher rates based on a TIER methodology, in lieu of the traditional rate base/return of return methodology generally applied by the commission to investor-owned public utilities. KIUC also intends to propose a future rate design for the commission's review and consideration as part of the latter phase of this proceeding or as a separate proceeding.²⁸

In In re Public Util. Comm'n, Docket No. 2006-0498 ("Docket No. 2006-0498"), the commission opened an investigation to review KIUC's proposed interconnection and standby service tariffs; named KIUC and the Consumer Advocate as parties to its investigation; and granted intervenor status to all four movants, including Marriott Hotel Services, Inc., on behalf of Kauai Marriott.²⁹ The commission subsequently approved in part and denied in part the parties' settlement agreement with respect to KIUC's standby service Rider S.³⁰ As a result, the commission instructed as follows:

²⁸See Order Regarding Completed Application and Other Initial Matters, filed on July 29, 2009, Section II.D, Future Rate Design, at 9-10 (like the Consumer Advocate, the commission intends to review the validity of KIUC's future "proposed rate design" once the electric cooperative files its proposal with the commission).

²⁹See Docket No. 2006-0498, Order No. 23172, filed on December 28, 2006 (initiating order); and Order No. 23422, filed on May 8, 2007 (granting intervention to the movants).

³⁰See Docket No. 2006-0498, Decision and Order, filed on June 24, 2008; Order Denying Motions to Stay the Decision and Order Filed on June 24, 2008, and Scheduling a Hearing on the

THE COMMISSION ORDERS:

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2. KIUC's monthly standby service charge of \$5.00 per kW for standby demand will remain in place for all distributed generation customer facilities (excluding renewable energy systems and projects, which are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding. Following the completion of KIUC's general rate case, the new standby service charge that is established and approved by the commission will apply.

3. Until KIUC's general rate case proceeding is completed by the commission, at which time a new standby service charge will be established and approved by the commission, the commission approves: (A) the retention of KIUC's \$5.00 monthly charge for non-renewable projects or facilities; and (B) the exemption of renewable energy systems and projects from the \$5.00 monthly charge.

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5. KIUC shall promptly file revised tariff sheets for Rider S, with applicable issued and effective dates, to reflect that: (A) the monthly standby service charge of \$5.00 per kW for standby demand only applies to non-renewable energy projects or facilities; and (B) renewable energy systems and projects are exempt from the \$5.00 monthly charge.

6. KIUC shall submit a proposed revised standby service tariff as part of its next general rate case.

Decision and Order, filed on June 24, 2008, Section III, Orders, at 27-28.

As noted by Kauai Marriott: (1) it actively participated as an intervenor in Docket No. 2006-0498; (2) as the operator of a DG/CHP facility, it currently receives standby

Motions for Reconsideration, filed on July 18, 2008; and Order Denying Motions for Reconsideration of the Decision and Order Filed on June 24, 2008, filed on October 7, 2008.

service pursuant to KIUC's Rider S; and (3) KIUC's new standby service methodology, as currently proposed, would almost double the amount of the standby charge assessed to Kauai Marriott from \$5.00 per kW per month to \$9.03 per kW per month. Moreover, Kauai Marriott opposes the subsidization of residential customers by large-use customers such as itself, and in particular, opposes KIUC's proposal to increase the amount of such subsidization by large-use customers. Instead, Kauai Marriott asserts that it seeks to have all customers pay their "fair share" of the cost of service.

Furthermore, in response to the commission's query at the hearing on the intervention motion, the Consumer Advocate stated that it had not made a determination as to whether it adequately represents Kauai Marriott's interests. The Consumer Advocate also stated that: (1) it does not object to Kauai Marriott's intervention herein; and (2) its normal practice is to defer to the commission on the issue of whether a movant should be allowed to intervene.

Under the circumstances, the commission finds persuasive Kauai Marriott's assertion that the Consumer Advocate and other parties, in this specific instance, do not appear to adequately represent Kauai Marriott's interests. However, while Kauai Marriott appears to have an interest in this proceeding that may not necessarily be represented by the other parties, based on the existing docket record, the commission is not convinced that its three potential witnesses, who are all employees of Kauai Marriott or Marriott Resort Asia and Pacific,

will assist the commission in developing a sound record in this rate case proceeding as a whole. Rather, the engineering and financial expertise of these three witnesses, in Kauai Marriott's own words, appears limited to "hav[ing] detailed knowledge of the Kauai Marriott's operations."³¹ Nonetheless, Kauai Marriott notes that it "may also consider hiring a consultant to testify on the matters identified herein."³² Kauai Marriott, moreover, reiterated this representation at the motions hearing.

Kauai Marriott, at the hearing on the motion, also reiterated its representations that it will: (1) present evidence to assist the commission in developing a sound record, and will comply with any procedural schedule/order issued by the commission; and (2) not broaden the issues or unduly delay the proceeding. KIUC, by contrast, was unable to convincingly rebut Kauai Marriott's representations.

Based on the foregoing reasons, the commission finds that Kauai Marriott's participation as an intervenor herein will neither broaden the issues nor unduly delay the proceeding. The commission, thus, in this specific instance, grants Kauai Marriott's Motion to Intervene, subject to: (1) the applicable conditions set forth in Section III of this Order, below; and

³¹Kauai Marriott's Motion to Intervene, at 27; see also Kauai Marriott's Reply Memorandum, at 23-25.

³²Kauai Marriott's Motion to Intervene, at 27; see also Kauai Marriott's Reply Memorandum, at 24 (in addition to its staff, Kauai Marriott may decide to retain any outside consultant regarding certain issues in this case; such a determination will be made, if and when, its intervention motion is granted).

(2) the requirement that, on public utility ratemaking matters, including revenues, expenses, cost of service, and rate design, and other issues requiring specialized knowledge, Kauai Marriott offer testimony and other relevant evidence through qualified expert witnesses. The commission's decision to allow Kauai Marriott to intervene is based, to a significant extent, on Kauai Marriott's assurances that it will provide meaningful assistance to the commission. Accordingly, the commission expects Kauai Marriott, at its expense, to retain one or more qualified experts to provide such testimony, if necessary.

III.

Orders

1. Kauai Marriott's Motion to Intervene, filed on August 17, 2009, is granted, subject to the following conditions. Kauai Marriott's participation as an intervenor in this docket will be limited to the issues raised in this docket. The commission will: (A) preclude any effort by Kauai Marriott to unreasonably broaden the issues or unduly delay the proceeding; and (B) require Kauai Marriott to meaningfully participate in this docket through qualified expert witnesses on public utility ratemaking matters, including revenues, expenses, cost of service, and rate design, and other issues requiring specialized knowledge. The commission will reconsider Kauai Marriott's participation as an intervenor in this docket if, at any time, during the course of this proceeding, the commission determines that Kauai Marriott is: (A) unreasonably broadening the pertinent

issues raised in this docket; (B) unduly delaying the proceeding; or (C) failing to contribute to the development of a sound record, meaningfully participate in this proceeding, or follow the commission's rules or orders.

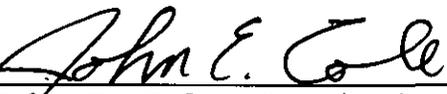
2. The Parties shall submit a stipulated prehearing order for the commission's review and consideration. If the Parties are unable to agree on a stipulated prehearing order, each of the parties shall submit its own proposed prehearing order. If no agreement is reached on a stipulated prehearing order that conforms to the foregoing parameters, the commission will issue its own prehearing order. The deadline for the filing of the joint or individual proposed prehearing orders is October 19, 2009.

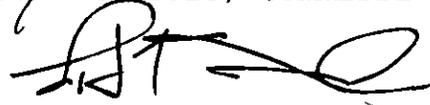
3. In the event that the Parties file individual proposed prehearing orders due to their lack of agreement on a stipulated prehearing order, the commission will not hold a hearing on the proposed prehearing orders.

DONE at Honolulu, Hawaii OCT - 6 2009

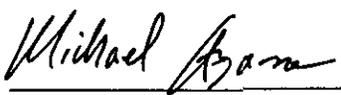
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


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2009-0050.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:

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Certificate of Service

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