

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAUAI ISLAND UTILITY COOPERATIVE)
For Approval of Rate Changes and)
Increases, Revised Rate Schedules)
And Rules, and Other Ratemaking)
Matters.)
_____)

DOCKET NO. 2009-0050

ORDER APPROVING PROPOSED
PREHEARING ORDER, AS MODIFIED

PUBLIC UTILITIES
COMMISSION

2009 NOV -5 P 12:33

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DoN and Kauai Marriott, respectively.³ On October 19, 2009, the Parties timely submitted their Proposed Prehearing Order for the commission's review and consideration.

II.

Discussion

Consistent with HRS § 269-16(d), the commission shall make every effort to issue its final decision by March 30, 2010. If the commission does not issue its final decision by then, the commission shall issue its interim decision by April 30, 2010, "if any, to which the commission, based on the evidentiary hearing before it, believes the public utility is probably entitled." The commission may postpone its interim decision until May 28, 2010, if the commission considers the evidentiary hearing to be incomplete.

Here, as set forth in Exhibit A of its Proposed Prehearing Order, the Parties contemplate the completion of the evidentiary hearing prior to the commission's issuance of its interim decision by April 30, 2010, and defers to the commission the selection of the specific dates for the evidentiary hearing. Upon review, the commission finds it practical to identify the dates for the evidentiary hearing, specifically, the week of April 19, 2010. The identification of the dates for the evidentiary hearing at this time will provide the Parties with

³See Order Granting Intervention to the Department of the Navy, filed on July 31, 2009; and Order Granting Intervention to Essex House Condominium Corporation on behalf of Kauai Marriott Resort & Beach Club, filed on October 6, 2009.

sufficient notice and opportunity to arrange for their witnesses to appear and testify, including any out-of-state witnesses. The commission also notes that even if the Parties waive the evidentiary hearing as part of any settlement agreement the commission may nonetheless proceed with the evidentiary hearing. Accordingly, the commission amends Procedural Steps No. 15 and No. 16 as follows:⁴

- | | | |
|-----|---|---|
| 15. | [To be determined by Commission]
<u>Week of April 19, 2010</u> | Evidentiary Hearing
[(if no settlement)] |
| 16. | No later than Thursday,
April 30, [2009] <u>2010</u> | Interim Decision and
Order* |

*Note: Footnote 6 is retained but not re-stated herein.

In addition to Exhibit A, the commission amends Section X, General, of the Parties' Proposed Prehearing Order, by removing a sentence that appears inconsistent with the preceding sentence set forth in Section X. Thus, Section X is amended as follows:⁵

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket. This Stipulated [Procedural] Prehearing Order shall control the subsequent course of these proceedings, unless modified by the Parties in writing and approved by the Commission, or upon the Commission's own motion, or upon Commission order following a motion by any party.

[Pursuant to HAR § 6-61-37, this Stipulated Prehearing Order shall control the subsequent courses of the proceedings, unless modified at or prior to the hearings to prevent manifest injustice.] This Stipulated Prehearing Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and

⁴Deletions are bracketed, additions are underscored.

⁵Deletions are bracketed, additions are underscored.

the same instrument. The parties may execute this Stipulated Prehearing Order by facsimile or electronic signatures for initial submission to the Commission to be followed by the filing of original signatures of said facsimile or electronic signature pages.

III.

Orders

THE COMMISSION ORDERS:

The Parties' Proposed Prehearing Order, filed on October 19, 2009, is approved as modified herein. Specifically:

1. Exhibit A, Procedural Steps No. 15 and No. 16, are modified to read as follows:

- | | | |
|-----|---|--------------------------------|
| 15. | Week of April 19, 2010 | Evidentiary Hearing |
| 16. | No later than Thursday,
April 30, 2010 | Interim Decision and
Order* |

*Note: Footnote 6 is retained but not re-stated herein.

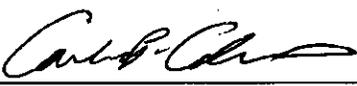
2. Section X, General, is modified to read as follows:

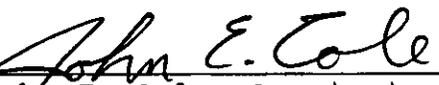
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This Stipulated Prehearing Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Prehearing Order by facsimile or electronic signatures for initial submission to the Commission to be followed by the filing of original signatures of said facsimile or electronic signature pages.

DONE at Honolulu, Hawaii NOV - 5 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:


Michael Azama
Commission Counsel

2009-0050.laa

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KAUAI ISLAND UTILITY COOPERATIVE) Docket No. 2009-0050
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For Approval of Rate Changes and)
Increases, Revised Rate Schedules and)
Rules, and Other Ratemaking Matters.)
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PUBLIC UTILITIES
COMMISSION

2009 OCT 19 P 2:36

FILED

STIPULATED PREHEARING ORDER

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Attorney for ESSEX HOUSE
CONDOMINIUM CORPORATION on behalf
of KAUAI MARRIOTT RESORT & BEACH
CLUB

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OF THE STATE OF HAWAII

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KAUAI ISLAND UTILITY COOPERATIVE) Docket No. 2009-0050
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For Approval of Rate Changes and)
Increases, Revised Rate Schedules and)
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STIPULATED PREHEARING ORDER
EXHIBIT "A"
and
CERTIFICATE OF SERVICE

PUBLIC UTILITIES
COMMISSION

2009 OCT 19 P 2:36

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
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KAUAI ISLAND UTILITY COOPERATIVE)	Docket No. 2009-0050
)	
For Approval of Rate Changes and)	
Increases, Revised Rate Schedules and)	
Rules, and Other Ratemaking Matters.)	
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STIPULATION FOR PREHEARING ORDER

KAUAI ISLAND UTILITY COOPERATIVE ("KIUC" or "Applicant"), a Hawaii not-for-profit electric cooperative, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("the Consumer Advocate"), the DEPARTMENT OF NAVY, and ESSEX HOUSE CONDOMINIUM CORPORATION on behalf of KAUAI MARRIOTT RESORT & BEACH CLUB, by and through their respective attorneys, do hereby stipulate to the following provisions of this Stipulated Prehearing Order as mutually acceptable to each.

ACCORDINGLY, IT IS ORDERED that the following Statement of Issues, Schedule of Proceedings, and procedures shall be utilized in this docket:

1.

STATEMENT OF THE ISSUES

The issues in this case are:

1. Whether KIUC's present rates and charges for its customers are unjust and unreasonable and will not allow KIUC to earn a sufficient level of revenues in order to ensure its ability to comply with its debt loan targets and covenants, meet its funding needs, and build sufficient equity to ensure its ongoing financial health and viability.

2. Whether the Hawaii Public Utilities Commission ("Commission") should (a) approve, pursuant to Hawaii Revised Statutes ("HRS") § 269-16, as amended, the rates and charges proposed by KIUC as set forth in Exhibit KIUC 5 of the June 30, 2009 Application, together with the tariff changes resulting therefrom or set forth therein, and (b) authorize KIUC to place into effect the proposed rates, charges and changes after the date of authorization by the Commission.

3. Whether the Commission should approve, pursuant to HRS § 269-16, as amended, and Hawaii Administrative Rules ("HAR") § 6-60-6, the request to (a) modify KIUC's existing Energy Rate Adjustment Clause ("ERAC") to remove the efficiency component in the existing ERAC such that KIUC will recover only actual fuel and purchased power costs, and (b) rename it the Cost of Power Adjustment.

4. Whether the Commission should approve the removal of the condition/requirement imposed upon KIUC pursuant to Ordering Paragraph No. 8.b (Part VIII, subpart 8.b) of Decision and Order No. 19658, issued on September 17, 2002, in Docket No. 02-0060, which requires KIUC to seek approval from its lender to retire patronage capital of twenty-five percent (25%) of its margins on an annual basis, to instead allow KIUC to have the discretion to decide when and how much patronage capital should be retired in any given year?

5. Whether KIUC should be granted other relief as may be just and reasonable under the circumstances.

II.

SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule ("Schedule of Proceedings") attached hereto as Exhibit "A." Notwithstanding the above, the parties shall have the right to amend the Schedule of

Proceedings as may be agreed in writing from time to time; provided that the requesting party or parties receive the Commission's approval in accordance with HAR § 6-61-23, to the extent applicable. However, the intent of the parties in agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

III.

REQUESTS FOR INFORMATION

A party to this proceeding may submit information requests to another party within the time schedule specified in this Stipulated Prehearing Order and shall simultaneously serve a copy of such information requests on each other party to the proceeding. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information. If the parties are unable to agree, the inquiring party may seek approval from the Commission and make a showing of good cause. It is then within the Commission's discretion to allow additional information requests.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials (e.g., documents over 50 pages), the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette, the party responding to the information request may make the diskette available to the other party and the Commission. Subject to objections that may be raised and to the extent practicable, the electronic files for spreadsheets shall contain all cell

references and formulae intact, and shall not be converted to values prior to submission. A party shall not be required, in a response to an information request, to provide data that *is/are already on file with the Commission or otherwise part of the public record*, or that may be stipulated to pursuant to Part VI, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

For each response to an information request, the responding Party should identify the person who is responsible for preparing the response as well as the witness(es) that will be responsible for sponsoring the response at the hearing.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to a protective order.

A party seeking production of documents, notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

The responses of each party to information requests shall adhere to a uniform numbering agreed upon by the parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-IR-1," and a response to this information request shall be referred to and designated as "Response to CA-IR-1."

Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference the attached responsive document, indicating the respondent for each response.

IV.

WITNESSES

Witnesses shall submit pre-filed written testimony and exhibits and shall be made available for cross-examination at the hearing. Witnesses shall file with their pre-filed written testimony and exhibits, the work papers used in preparing the evidence they sponsor at the hearing. Witnesses will not be permitted to read prefiled testimony at the hearings.

In the oral presentation of the testimony, each witness may give a brief summary of the testimony and exhibits and shall summarize the issues raised by such testimony. Each witness shall be subject to cross-examination for both direct and rebuttal testimony and exhibits.

The parties in this case should cooperate to accommodate the schedules of any mainland witnesses and should inform the Commission in advance of any scheduling difficulties of mainland witnesses. If any party has any objection to scheduling a witness in advance of other witnesses, the party should make a timely objection to the Commission.

V.

FORM OF PREPARED TESTIMONY

All prepared testimony, including text and exhibits, shall be prepared in written form on 8-1/2" x 11" paper with line numbers, and shall be served on the dates designated in the Schedule of Proceedings.

Each party shall be permitted to follow its own numbering system for written testimony and exhibits, provided that the numbering system utilized is consistent and is clearly understandable. Each document of more than one page shall be consecutively numbered. Each party shall prepare a list of its exhibits by exhibit numbers and titles.

The parties shall be permitted to make revisions to exhibits after the designated dates appearing in the Schedule of Proceedings. Revisions shall bear appropriate revision dates. However, revisions or additions that do more than correct typographical errors, update facts, or give numerical comparisons of the positions taken by the parties shall not be submitted.

Generally, exhibits should include appropriate footnotes or narratives in the exhibits or the related testimony setting forth the sources of the information used and explaining the methods employed in making statistical compilations or estimates.

VI.

MATTERS OF PUBLIC RECORD

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that KIUC has filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly

identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission may rule on whether the identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

VII.

COPIES OF TESTIMONIES, EXHIBITS AND INFORMATION REQUESTS

Public Utilities Commission 465 South King Street First Floor Honolulu, HI 96813	Original plus 8 copies
Division of Consumer Advocacy 335 Merchant Street Room 326 Honolulu, HI 96813	6 copies
James N. McCormick, Esq. Theodore E. Vestal, Esq. Naval Facilities Engineering Command, Pacific 248 Makalapa Drive, Suite 100 Pearl Harbor, HI 96860-3134	1 copy
Dr. Kay Davoodi Utilities Rates and Studies Office NAVFACHQ 1322 Patterson Avenue, S.E. Suite 1000 Washington Navy Yard, DC 20374-5065	1 copy
Thomas C. Gorak, Esq. Gorak & Bay, L.L.C. 1161 Ikena Circle Honolulu, HI 96821	1 copy

Kent D. Morihara, Esq.
Michael H. Lau, Esq.
Kris N. Nakagawa, Esq.
Sandra L. Wilhide, Esq.
Morihara Lau & Fong LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

1 copy

All pleadings, briefs and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to HAR § 6-61-15.

Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or U.S. mail, first class, postage prepaid. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette, compact disc or e-mail in a standard electronic format that is readily available to the parties. The parties agree to use Word 97, Word 2000, or Word 2003 as the standard programming format for filings in this case. However, if work papers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such work papers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a filing, information request or information request response is delivered to a party via diskette, compact disc or e-mail unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or via U.S. mail, first class, postage prepaid, as provided above.

VIII.

ORDER OF EXAMINATION

Consistent with the requirements set forth under HAR § 6-61-31, KIUC's witnesses shall open with its direct case. The Consumer Advocate's direct case shall be presented after KIUC's direct case. The Department of Navy and Essex House Condominium Corporation on behalf of Kauai Marriott Resort & Beach Club shall present their direct case following the Consumer Advocate. KIUC shall close with its rebuttal case.

Examination of any witness shall be limited to one attorney for a party. The parties shall avoid duplicative or repetitious cross-examination. Friendly cross-examination shall not be permitted. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Re-cross-examination shall be limited to the extent of material covered in redirect examination unless otherwise permitted by the Commission.

IX.

COMMUNICATIONS

HAR § 6-61-29 concerning *ex parte* communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel through their own counsel or designated official only as to matters of process and procedure.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party as provided in Part VII above.

All motions, supporting memoranda, briefs, and the like shall also be served on opposing counsel.

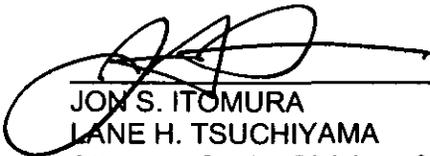
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GENERAL

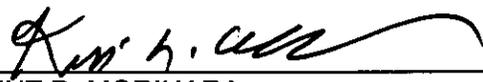
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DATED: Honolulu, Hawai'i, October 19, 2009.



JON S. ITOMURA
LANE H. TSUCHIYAMA
Attorneys for the Division of Consumer
Advocacy, Department of Commerce and
Consumer Affairs



KENT D. MORIHARA
MICHAEL H. LAU
KRIS N. NAKAGAWA
SANDRA L. WILHIDE
Morihara Lau & Fong LLP
Attorneys for Kauai Island Utility
Cooperative

JAMES N. McCORMICK
THEODORE E. VESTAL
Attorneys for the Department of Navy

THOMAS C. GORAK
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X.

GENERAL

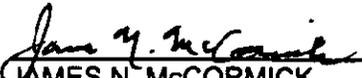
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Attorney for Essex House Condominium
Corporation on behalf of Kauai Marriott
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X.

GENERAL

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THOMAS C. GORAK
Gorak & Bay, L.L.C.
Attorney for Essex House Condominium
Corporation on behalf of Kauai Marriott
Resort & Beach Club

APPROVED AND SO ORDERED AT HONOLULU, HAWAII THIS _____ day of
_____, 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:

Michael Azama
Commission Counsel

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE
KAUAI ISLAND UTILITY COOPERATIVE ("KIUC")
Docket No. 2009-0050

	DATE	PROCEDURAL STEPS
1.	Tuesday, June 30, 2009	Application Filed at Commission
2.	Tuesday, August 25, 2009	Public Hearing
3.	Through Monday, December 14, 2009	Parties' Submissions of Information Requests (IRs) to KIUC ¹
4.	Note: January 4, 2010 last day for responses	KIUC's Responses to IRs ²
5.	Monday, January 11, 2010	Filing of Direct Testimonies and Exhibits by Parties
6.	Monday, January 18, 2010	KIUC's and Other Parties' Submission of IRs to Parties (Not Including KIUC) on Direct Testimonies and Exhibits (as applicable); Settlement Discussions (if any) ³
7.	Monday, February 8, 2010	Party Responses to IRs on Direct Testimonies
8.	Monday, March 1, 2010	KIUC's Rebuttal Testimonies to Direct Testimonies and Exhibits ⁴

¹ During the period until December 14, 2009, the Parties have the right to issue IRs on KIUC at any time. In doing so, this deadline is being established to provide the Commission with sufficient time to meet their statutory timeline requirements to issue a final decision and/or interim rate decision under Hawaii Revised Statutes (HRS) §269-16(d). Upon receipt of these IRs, KIUC agrees to use its best efforts to provide a response to each IR to the party issuing the IR within 21 days from the date the particular IR was submitted to KIUC. The IRs and responses will initially only be shared between KIUC and the party issuing the IR in question and, simultaneously, between KIUC and any other party that has requested a copy of the IR and response in question. However, in periodic intervals, but in no event later than seven (7) days after the date the Direct Testimonies and Exhibits are filed with the Commission, KIUC and the parties will compile and file with the Commission all IRs and responses provided during the time period.

² Id.

³ The parties reserve the right to (collectively or individually) engage in settlement discussions at any time on any and/or all disputed issues that may exist between any of the parties' respective positions in the subject docket. In the event a settlement is reached by all or any of the parties, the respective parties will notify the Commission and any other parties accordingly and make such changes to the remaining procedural steps as may be applicable or prudent under the circumstances, including but not limited to waiving any rights to an evidentiary hearing or limiting the scope of the hearing to any unresolved issues.

⁴ To the extent applicable, KIUC's Rebuttal Testimonies shall include the simultaneous submission of all exhibits, workpapers, studies, reports, analyses, electronic files and other information relied upon by KIUC in preparing its Rebuttal Testimonies.

	DATE	PROCEDURAL STEPS
9.	Monday, March 8, 2010	Party Submission(s) of Rebuttal IRs to KIUC
10.	Monday, March 15, 2010	KIUC's Responses to Rebuttal IRs
11.	Monday, March 22, 2010	Settlement Letter/Agreement (if any) to Commission ⁵
12.	Monday, March 29, 2010	Simultaneous filing of Statement of Probable Entitlement if no settlement
13.	Monday, April 5, 2010	KIUC and Party Response(s), if any, to Statement of Probable Entitlement
14.	To be determined by Commission	Pre-Hearing Conference
15.	To be determined by Commission	Evidentiary Hearing (if no settlement)
16.	No later than Thursday, April 30, 2009	Interim Decision and Order ⁶
17.	3 weeks after transcript completed and filed with the Commission	Simultaneous Post-Hearing Briefs from KIUC and Parties (as applicable)
18.		Decision and Order

⁵ Id.

⁶ Pursuant to Order Regarding Completed Application and Other Initial Matters, filed on July 29, 2009, the Commission determined, among other things, that the date of the completed Application, filed on June 30, 2009, is June 30, 2009. As such, under HRS § 269-16(d), KIUC is entitled to a final decision on its Application no later than March 30, 2010 (aka, nine-month final decision and order) and, at the very minimum, interim relief by April 30, 2010 if the Commission determines based on the evidentiary record before it that KIUC is probably entitled to such interim relief. The Commission may postpone its interim rate decision for thirty days (i.e., by May 30, 2010) if the Commission considers the evidentiary hearings incomplete. By stipulating to this regulatory schedule, KIUC does not waive its right to a nine-month final decision and order and interim relief within ten months or, if deemed necessary, eleven months consistent with the requirements set forth under HRS § 269-16(d). In that connection, the parties will make every effort to expedite the discovery process, if possible, to provide the Commission with a sufficient and complete evidentiary record to render at least an interim relief decision within the ten-month or, if deemed necessary, eleven-month period.

CERTIFICATE OF SERVICE

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

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