

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
)
For Approval and/or Modification of)
Demand-Side and Load Management)
Programs and Recovery of Program)
Costs and DSM Utility Incentives.)
_____)

DOCKET NO. 05-0069

ORDER NO. 22029

Filed Sept. 14, 2005
At 1 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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OF THE STATE OF HAWAII

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HAWAIIAN ELECTRIC COMPANY, INC.)	Docket No. 05-0069
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For Approval and/or Modification of)	Order No. 22029
Demand-Side and Load Management)	
Programs and Recovery of Program)	
Costs and DSM Utility Incentives.)	
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ORDER

By this Order, the commission: (1) denies the requests of the COUNTY OF KAUAI ("CoK") for reconsideration or enlargement of time; and (2) *sua sponte* makes CoK a participant in this docket, provided that its participation is limited to issues of statewide energy policies and does not broaden the issues or delay the proceeding.

I.

Introduction

By Order No. 21698, filed on March 16, 2005, in Docket Nos. 04-0113 and 05-0069, the commission: (1) separated HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO") requests for approval and/or modification of demand-side and load management programs and recovery of program costs and demand-side management ("DSM") utility incentives (collectively referred to as the "Proposed DSM Programs") from Docket No. 04-0113 (the "Rate Case Docket"),

and opened the instant docket (the "Energy Efficiency Docket") in which to consider these matters; and (2) determined the parties and participants for the Rate Case Docket and the newly formed Energy Efficiency Docket to address and examine the Proposed DSM Programs.¹ The commission noted that the deadline by which all motions to intervene in the instant docket was twenty (20) days from the date of Order No. 21698, or April 5, 2005.

By Order No. 21749, filed on April 14, 2005, the commission granted the respective motions to intervene of the DEPARTMENT OF THE NAVY, ON BEHALF OF THE DEPARTMENT OF DEFENSE ("DoD"), HAWAII SOLAR ENERGY ASSOCIATION ("HSEA"), and HAWAII RENEWABLE ENERGY ALLIANCE ("HREA").

By Order No. 21861, filed on June 7, 2005, the commission *sua sponte* named HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LTD. ("MECO"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), and THE GAS COMPANY ("TGC") as

¹By Order No. 21698, the commission granted the respective motions to intervene of LIFE OF THE LAND ("LoL") and the ROCKY MOUNTAIN INSTITUTE ("RMI") and the motion to participate of COUNTY OF MAUI ("CoM") in Docket No. 05-0069. Pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is an *ex officio* party to this proceeding.

parties to the docket, limiting their participation to the issues dealing with statewide energy policies.²

On June 17, 2005, CoK requested to participate or intervene in the instant docket.³ HECO, HELCO, and MECO did not oppose CoK's Motion to Participate, provided CoK's participation: (1) was limited to those issues that relate to statewide energy policy, as referenced in Order No. 21861; and (2) did not broaden the issues or delay the proceeding.⁴

By Order No. 21957, filed on August 3, 2005, the commission dismissed as untimely the request of CoK to participate or intervene in this docket.

CoK, by motion, requests: (1) reconsideration of Order No. 21957, pursuant to HAR § 6-61-137;⁵ or alternatively; (2) an enlargement of time to file a motion to intervene, pursuant to HAR § 6-61-23.

²HECO, the Consumer Advocate, LoL, RMI, DoD, HSEA, HREA, HELCO, MECO, KIUC, and TGC are collectively referred to as the "Parties." CoM is referred to as the "Participant."

³CoK's Motion to Participate or Intervene and Certificate of Service ("CoK's Motion to Participate"), filed on June 17, 2005.

⁴HECO, HELCO, and MECO's joint letter, dated June 27, 2005.

⁵[CoK's] Motion for Reconsideration or Enlargement of Time and Certificate of Service, filed on August 12, 2005 ("CoK's Motion for Reconsideration" and "CoK's Motion for Enlargement of Time," respectively).

II.

Discussion

A.

Motion for Enlargement of Time

A motion for enlargement of time that is filed after the expiration of a deadline must demonstrate excusable neglect for the failure to act within the specified time period. HAR § 6-61-23(a)(2).

CoK requests the commission exercise its discretion provided under HAR § 6-61-23 and order an enlargement of time in which CoK may intervene in this docket. "In support of the request, [CoK] asserts that its excusable neglect consists of the fact that Order No. 21698 did not specify that the docket involved Kaua'i or Kaua'i-related issues, thus, it had no notice of the effect of the docket on the County or its constituents until Order No. 21861."⁶

Order No. 21698 established five (5) issues - four (4) of which relate to energy efficiency goals, structures, and cost mechanisms applicable not only to HECO, but to the State of Hawaii as well. The commission finds that CoK's failure to recognize the statewide application of the issues established for this docket by Order No. 21698 does not constitute excusable

⁶CoK's Motion for Enlargement of Time at 6.

neglect. Therefore, the commission denies CoK's Motion for Enlargement of Time.

B.

Motion for Reconsideration

A motion for reconsideration must specifically set forth "the grounds on which the movant considers the [commission's] decision or order unreasonable, unlawful, or erroneous." HAR § 6-61-137.

In support of its Motion for Reconsideration, CoK "urges the [c]ommission to consider [its] impossible position."⁷ CoK argues that even if it had timely filed a motion to intervene within twenty (20) days of March 16, 2005, as required by Order No. 21698, "it would not have been able to show an interest in the docket, since the scope of the docket at that time was limited to the [P]roposed DSM [P]rograms of HECO and its affiliated utilities."⁸ We disagree. The commission's establishment of the additional issues for this docket adequately demonstrated a desire to examine these matters on a statewide level.

CoK has not met its burden of showing that the commission's decision in Order No. 21957 to dismiss as untimely CoK's Motion to Participate was unreasonable, unlawful, or

⁷CoK's Motion for Reconsideration at 3.

⁸*Id.*

erroneous. Accordingly, the commission denies CoK's Motion for Reconsideration.

C.

Additional Party

Hawaii Rules of Civil Procedure Rule 19 requires the joinder of parties, if feasible, in certain instances.⁹ The commission finds compelling the following facts: (1) CoK has continued to express an interest in participating in this docket for the purpose of developing a sound record; (2) it is a member and large customer of KIUC and its constituency consists of

⁹HAR Chapter 6-61 is silent in setting forth the standard for determining persons to be joined as a party in a docket. As such, consistent with HAR § 6-61-1, we refer to the Hawaii Rules of Civil Procedure ("HRCP") for guidance. HRCP Rule 19 provides as follows:

(a) Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable....

members of KIUC; and (3) the Parties and Participants did not object to CoK's participation in this docket. The commission finds that CoK has an interest relating to the subject docket, and its failure to participate in the docket may impair or impede its ability to protect those interests. Accordingly, we conclude that CoK should participate in this docket, provided that its participation is limited solely to those issues that relate to statewide energy policies rather than to HECO's Proposed DSM Programs. Such a limitation allows HECO the best opportunity to expeditiously prosecute its application for the Proposed DSM Programs.

III.

Orders

THE COMMISSION ORDERS:

1. CoK's Motion for Reconsideration, filed on August 12, 2005, is denied.

2. CoK's Motion for Enlargement of Time, filed on August 12, 2005, is denied.

3. CoK is *sua sponte* made a participant in this docket, provided that its participation is limited to issues of statewide energy policies, and does not broaden the issues or delay the proceeding.

4. CoK shall participate in the on-going attempt to formulate the stipulated prehearing order, which the Commission has ordered be filed on or before September 16, 2005. Alternatively, if such stipulated order has already been filed,

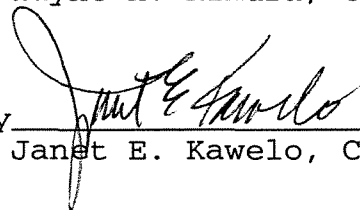
CoK shall be bound by the stipulated prehearing order, and shall have the same deadlines as the CoM.

DONE at Honolulu, Hawaii SEP 14 2005.

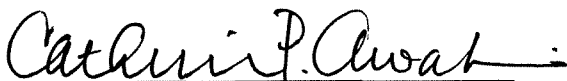
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

05-0069.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22029 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

WILLIAM A. BONNET
VICE PRESIDENT - GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

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

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

DR. KAY DAVOODI
UTILITIES RATES AND STUDIES OFFICE
NAVFAC WASHINGTON
1314 Harwood Street, S.E.
Washington Navy Yard, DC 20374-5018

RANDALL Y.K. YOUNG, ESQ.
NAVAL FACILITIES ENGINEERING COMMAND PACIFIC
258 Makalapa Drive, Suite 100
Pearl Harbor, HI 96860-3134

Certificate of Service

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E. KYLE DATTA
ROCKY MOUNTAIN INSTITUTE
P. O. Box 390303
Keaunou, HI 96739

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817

BRIAN T. MOTO, ESQ.
CINDY Y. YOUNG, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 South High Street
Wailuku, HI 96793

RICHARD R. REED
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P. O. Box 37070
Honolulu, HI 96837

WARREN S. BOLLMEIER, II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, HI 96744

EDWARD REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LTD.
P. O. Box 398
Kahului, HI 96733-6898

WARREN LEE
PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
P. O. Box 1027
Hilo, HI 96721-1027

Certificate of Service

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H. A. "DUTCH" ACHENBACH
PRESIDENT AND CEO
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahee Street
Lihue, HI 96766-2032

JOSEPH McCAWLEY
REGULATORY MANAGER
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahee Street
Lihue, HI 96766-2032

JIM R. YATES
PRESIDENT
THE GAS COMPANY
P. O. Box 3000
Honolulu, HI 96802

STEVEN P. GOLDEN
DIRECTOR EXTERNAL AFFAIRS & PLANNING
THE GAS COMPANY
P. O. Box 3000
Honolulu, HI 96802

LANI D. H. NAKAZAWA, ESQ.
LAUREL LOO, ESQ.
JAMES K. TAGUPA, ESQ.
OFFICE OF THE COUNTY ATTORNEY
COUNTY OF KAUAI
4444 Rice Street, Suite 220
Lihue, HI 96766-1300



Karen Higashi

DATED: SEP 14 2005