

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
For Approval of Rate Increases and)
Revised Rate Schedules.)

DOCKET NO. 05-0315

ORDER NO. 23411

Filed May 3, 2007
At 12 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

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

Karen Higashi

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Docket No. 05-0315

Order No. **23411**

ORDER

By this Order, the commission approves the stipulation between HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate")¹, filed on April 11, 2007, to, among other things, waive the evidentiary hearing scheduled to begin the week of May 7, 2007 ("Stipulation").

Also by this Order, the commission approves an amendment to the existing schedule of proceedings to allow the Keahole Defense Coalition ("KDC") to file a position statement in response to HELCO's rebuttal testimonies on April 30, 2007 ("KDC's Second Statement of Position"), and to allow HELCO and the Consumer Advocate an opportunity to respond to KDC's Second Statement of Position, such filing to be made on May 11, 2007.

In approving the Stipulation, the commission also approves the Parties' agreement that: (1) all of the written

¹The Consumer Advocate is an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62(a). Together with HELCO, they are referred to collectively hereinafter as the "Parties".

testimonies attached as Exhibit A to the Stipulation ("Exhibit A") may be submitted without the witnesses appearing at an evidentiary hearing, and shall be received as evidence; (2) the Parties agree to seek settlement on all remaining "cost of service/rate increase allocation/rate design issues," and to file a separate stipulated settlement letter documenting any agreements on "cost of service/rate increase allocation/rate design issues"; if agreement cannot be reached, those issues shall be presented subsequently in the Parties' respective briefs; (3) the Parties agree to waive their rights to (a) present further evidence on the issues; (b) conduct cross-examination of the witnesses listed in Exhibit A; or (c) ask questions of KDC² at an evidentiary hearing. This waiver shall not apply where a Party deems it necessary to respond to evidence or argument resulting from the examination of witnesses or questions asked by the commission; and (4) opening briefs will be filed by the Parties on June 4, 2007, and reply briefs will be filed on June 18, 2007.

²Pursuant to Order No. 22663, filed on August 1, 2006 in this docket, the commission granted participation status without intervention, to KDC ("Order No. 22663"). The commission limited KDC's participation to issues related to the expansion of the HELCO Keahole Generating Station. KDC's participation was further limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing. See Order No. 22663 at 7.

Rocky Mountain Institute ("RMI") was also granted participation status without intervention by the commission in Order No. 22663. By Order No. 23108, filed on December 5, 2006, the commission approved RMI's request to withdraw as a participant in the instant proceeding.

I.

Background

On May 5, 2006, HELCO filed an application for approval of a general rate increase and revised rate schedules and rules.

Pursuant to Order No. 22903, filed on September 28, 2006, the commission adopted, with modification, the Stipulated Prehearing Order submitted by HELCO, the Consumer Advocate, KDC and RMI to govern the order of proceedings in this docket ("Order No. 22903").

By Order No. 23153, filed on December 21, 2006, the commission approved an amendment to the schedule of proceedings set forth in Order No. 22903 ("Schedule of Proceedings") to give the Parties additional time to review outstanding discovery responses and to conduct additional discovery in light of the voluminous amount of discovery in the instant proceeding.

By letters dated and filed with the commission on March 19, 2007 and March 21, 2007, HELCO requested an extension of time for (1) submission of certain discovery and (2) its Statement of Probable Entitlement.³ By Order No. 23315,

³By letter dated March 19, 2007, HELCO informed the commission that it was in ongoing settlement negotiations with the Consumer Advocate and as such, requests commission approval (1) for an extension of time for the submission of HELCO's Rebuttal Testimonies, Exhibits and Workpapers, and its Statement of Probable Entitlement, due March 19, 2007, pursuant to Order No. 23153, to March 21, 2007, and (2) of additional revisions to the Schedule of Proceedings.

By letter dated March 21, 2007, HELCO requested commission approval (1) of a further extension of time on the due date for its Rebuttal Testimonies, Exhibits and Workpapers, and its Statement of Probable Entitlement, from March 21, 2007 to March 27, 2007, and (2) of additional revisions to the Schedule of Proceedings.

filed on March 23, 2007, the commission approved HELCO's request for an extension of time. On March 27, 2007, HELCO timely filed its Statement of Probable Entitlement pursuant to Order No. 23315. In its Statement of Probable Entitlement, HELCO informed the commission that it had reached an agreement with the Consumer Advocate on all differences pertaining to the test year revenue requirements. On March 28, 2007, the Consumer Advocate filed a response to HELCO's Statement of Probable Entitlement confirming its agreement with HELCO on revenue requirements and informing the commission that HELCO and the Consumer Advocate would continue their discussion on certain rate design matters.

By Interim Decision and Order No. 23342, filed on April 4, 2007, the commission approved, on an interim basis, HELCO's request to increase its rates to such levels as would produce, in the aggregate, \$24,564,500 in additional revenues, or 7.58 percent over revenues at present rates for a normalized 2006 test year. By Interim Decision and Order No. 23342, the commission also approved, on an interim basis, the adoption of the pension and Postretirement Benefits Other Than Pensions tracking mechanisms, and interim rates that incorporate the test year net periodic pension costs of \$2,744,000, test year net periodic benefit costs of \$1,530,400, and amortization of the pension asset of \$2,554,000.

On April 5, 2007, the Parties filed a Stipulated Settlement Letter ("April 5, 2007 Stipulated Settlement Letter")⁴ in which the Parties evidenced their agreement with regard to

⁴Pursuant to Order No. 22903, the original due date for a settlement letter from the Parties was April 23, 2007.

certain matters in this proceeding,⁵ i.e., issues impacting the test year revenue requirements and certain rate design issues.⁶

On April 11, 2007, the Parties filed the Stipulation wherein the Parties stipulated, and agreed to as follows:

1. All of the written testimonies listed in Exhibit A (and exhibits, workpapers and responses to information requests related to such testimonies) attached to the Stipulation may be submitted without the witnesses appearing at an evidentiary hearing, and shall be received as evidence;

2. The Parties agree to seek settlement on all remaining "cost of service/rate increase allocation/rate design issues," and to file a separate stipulated settlement letter documenting any agreements on "cost of service/rate increase allocation/rate design issues." If agreement cannot be reached, those issues shall be presented in the Parties' respective briefs, as noted in the Schedule of Proceedings *infra*;

3. An evidentiary hearing is not necessary in this docket and the evidentiary hearing that is presently scheduled to begin the week of May 7, 2007⁷ should be canceled;

4. The Parties agree to waive their rights to (a) present further evidence on the issues; (b) conduct cross-

⁵Also on April 5, 2007, HELCO filed its tariff for the newly implemented interim rate increase pursuant to Interim Decision and Order No. 23342.

⁶The Parties continue to have discussions on remaining rate design issues and intend to file a separate stipulated settlement letter to document the agreements reached on those remaining rate design issues. April 5, 2007 Stipulated Settlement Letter at 1.

⁷Order No. 22903 set forth that the evidentiary hearing be scheduled for the week of May 7, 2007.

examination of the witnesses listed in Exhibit A; or (c) ask questions of KDC at an evidentiary hearing. This waiver shall not apply where a Party deems it necessary to respond to evidence or argument resulting from the examination of witnesses or questions asked by the commission;

5. The Parties agree to file opening briefs on June 4, 2007; and

6. The Parties agree that reply briefs, which shall be limited to responding to any "cost of service/rate increase allocation/rate design issues" that have not been settled, should be filed two (2) weeks following the filing of opening briefs, i.e., June 18, 2007.

On April 17, 2007, KDC filed (1) [KDC's] Motion to Amend Order No. 22663 to Allow [KDC] Greater Participation in the Current Rate Case and (2) Partial Objections by [KDC] to the Stipulation Entered into by [HELCO] and the [Consumer Advocate] Dated April 11, 2007 (collectively, "KDC's Motions"). By letter dated April 14, 2007, and filed on April 17, 2007, KDC's attorney Michael J. Matsukawa queried when the commission would (1) hold a contested case hearing and (2) conduct a public hearing in the instant proceeding ("KDC Letter").

By letter dated and filed on April 23, 2007, the Consumer Advocate informed the commission that after discussions with KDC's counsel,⁸ KDC is withdrawing (1) KDC's Motions and

⁸As set forth in the Consumer Advocate's Letter, KDC (1) was unsure whether the Statement of Position it filed on February 20, 2007 ("Statement of Position") would be considered as a part of the record in this proceeding, and (2) mistakenly believed that an evidentiary hearing was necessary to introduce its

(2) the requests for a commission response made in the KDC Letter ("Consumer Advocate's Letter"). Accordingly, KDC's request for relief as set forth in KDC's Motion, is moot. Further, to address the concerns of KDC, the Consumer Advocate requests approval for the following amendments to the Schedule of Proceedings: (1) that KDC be allowed to file a Second Position Statement in response to HELCO's rebuttal testimonies, to be filed on April 30, 2007, which shall be limited to twenty (20) pages in length; and (2) that HELCO and the Consumer Advocate be permitted to respond to KDC's Second Statement of Position, if the Parties think it necessary to respond, such filing to be made on May 11, 2007, and similarly limited to twenty (20) pages in length ("Request to Amend the Schedule of Proceedings").⁹

II.

Discussion

With regard to KDC's Motions and the KDC Letter, from the commission's initial approval of KDC's request for participant status in Order No. 22663, and in subsequent rulings

Statement of Position into the record as "evidence". Consumer Advocate's Letter at 1.

⁹The Consumer Advocate's Letter was not signed by HELCO or KDC. The Consumer Advocate represented that KDC and HELCO did not object to the contents the Consumer Advocate's Letter.

by the commission, the commission was unequivocal regarding the extent of KDC's grant of participation.¹⁰

Any concern KDC had with the parameters of its participation as set forth in Order No. 22663 should have been raised immediately. Instead, KDC remained silent over a period of eight (8) months between the issuance of Order No. 22663 and the filing of KDC's Motions and the KDC Letter. KDC's delay in moving for an expanded role in this proceeding was unreasonable and disruptive to the contested case hearing process.

Having said that, the commission finds the Parties' Stipulation, as described above, to be reasonable in light of the Parties' agreement to waive the evidentiary hearing and the Parties' settlement of the issues affecting the test year revenue requirements and certain rate design issues. The commission finds that it would be prudent, however, to require the Parties to file a final separate stipulated settlement letter evidencing the Parties' remaining agreements, if any, by a date certain¹¹ to ensure a timely conclusion to the instant proceeding. The commission also finds reasonable the Consumer Advocate's Request to Amend the Schedule of Proceedings to give KDC a second opportunity to make a statement to the commission, and to allow

¹⁰See Order No. 22903, filed on September 28, 2006 at 2 ("Both KDC and [the Rocky Mountain Institute] [are] limited to responding to any discovery requests, filing a statement of position and responding to questions at any evidentiary hearing."); Order No. 22663 (affirming the limits of KDC's participatory role); Order No. 23315, filed on March 27, 2007, at 1, n.2 (reiterating KDC's limited participatory role); and Interim Decision and Order No. 23342, filed on April 4, 2007, at 4, n.6 (restating KDC's limited role in this proceeding).

¹¹See n.6, *supra*.

HELCO and the Consumer Advocate an opportunity to respond to KDC's Second Statement of Position. The commission also finds that KDC should file with the commission an affirmative notice of withdrawal of the KDC Motions to be made a part of the record in this proceeding, such notice of withdrawals to be received by the commission within five (5) days from the filing of this Order.

Accordingly, the commission concludes that the Parties' Stipulation filed on April 11, 2007, and the Consumer Advocate's Request to Amend the Schedule of Proceedings should be approved, with the additional modification, as discussed above, that the Parties file a final separate stipulated settlement letter with the commission by June 1, 2007.¹² The commission also concludes that KDC should file a notice of withdrawal of the KDC Motions, within the time frame set forth, above.

III.

Orders

THE COMMISSION ORDERS:

1. The Stipulation, as described herein, is approved.
2. KDC shall file with the commission, within five (5) days from the date of this Order, notice of withdrawals of the KDC Motions. Failure of KDC to comply with this condition shall constitute cause for the commission to void all or any part of this Order.

¹²The commission will not alter the requirement that the Parties, by their own Stipulation, file opening and reply briefs by June 4, 2007 and June 18, 2007, respectively.

3. Section II of the Schedule of Proceedings, is amended and restated in its entirety to read as follows:

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| HELCO Application, Direct Testimonies, Exhibits and Workpapers | May 5, 2006 |
| Public Hearings | June 26-27, 2006 |
| Consumer Advocate Information Requests ("IRs") To HELCO | July 25, 2006 August 25, 2006 September 8, 2006 September 25, 2006 October 18, 2006 November 1, 2006 November 20, 2006 |
| HELCO Responses to Consumer Advocate IRs | August 15, 2006 September 15, 2006 September 29, 2006 October 16, 2006 November 8, 2006 December 1, 2006 December 11, 2006 |
| HELCO Remaining Responses to CA-IRs Through Round 6 | Continuous to December 1, 2006 |
| Consumer Advocate Supplemental IRs ("SIRs") To HELCO | Continuous to December 22, 2006 |
| HELCO Responses to Consumer Advocate SIRs | Continuous to January 15, 2007 |
| HELCO Filing of Act 162 Direct Testimonies and Consultant Report | December 29, 2006 |
| Consumer Advocate IRs on HELCO Act 162 Direct Testimonies and Consultant Report | January 10, 2007 |
| HELCO Responses to Consumer Advocate Act 162 Information Requests | January 24, 2007 |
| Consumer Advocate SIRs on HELCO Act 162 Direct Testimonies and Consultant Report | January 31, 2007 |
| HELCO Responses to Consumer Advocate Act 162 SIRs | February 9, 2007 |

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|---|------------------------------|
| Consumer Advocate Testimonies, Exhibits and Workpapers Participants' Statement of Position | February 21, 2007 |
| HELCO IRs to Consumer Advocate And KDC; Consumer Advocate IRs to KDC | February 22-28, 2007 |
| Consumer Advocate and KDC Responses to HELCO IRs KDC Responses to Consumer Advocate's IRs | March 1-7, 2007 |
| Settlement Proposal Submitted to Consumer Advocate | March 2, 2007 |
| First Settlement Discussion between HELCO and Consumer Advocate | March 7-8, 2007 |
| HELCO Rebuttal Testimonies, Exhibit And Workpapers HELCO Statement of Probable Entitlement | March 27, 2007 12 noon |
| Consumer Advocate Response to HELCO Statement of Probable Entitlement | March 28, 2007 |
| Consumer Advocate Rebuttal IRs ("RIRs") to HELCO | March 22 to April 3, 2007 |
| HELCO's Responses to Consumer Advocate's RIRs | April 16-24, 2007 |
| Second Settlement Discussion Between HELCO and the Consumer Advocate | April 17-19, 2007 |
| Settlement Letter to the Public Utilities Commission | April 23, 2007 |
| KDC's Second Statement of Position | April 30, 2007 |
| Prehearing Conference | Cancelled |
| Evidentiary Hearing | Waived |
| HELCO's and the Consumer Advocate's Responses to KDC's Second Statement Of Position | May 11, 2007 |
| Final Settlement Letter to the Public Utilities Commission | June 1, 2007 |

Simultaneous Opening Briefs by
Parties

June 4, 2007

Simultaneous Reply Briefs by Parties

2 weeks after
Opening Briefs,
i.e., June 18, 2007

4. In all other respects, the Stipulated Prehearing Order approved by the commission in Order No. 22903, as amended by Order Nos. 23153 and 23315, remains unchanged.

DONE at Honolulu, Hawaii MAY - 3 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

05-0315.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23411 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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Karen Higashi

DATED: MAY - 3 2007