

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding To)
Examine Hawaii's Renewable)
Portfolio Standards Law, Hawaii)
Revised Statutes §§ 269-91 -)
269-95, as Amended by Act 162,)
Session Laws of Hawaii 2006.)
_____)

Docket No. 2007-0008

DECISION AND ORDER NO. 23912

Filed Dec. 20, 2007
At 9 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

Karen Higashi

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DECISION AND ORDER

By this Decision and Order, the commission adopts the attached Framework for Renewable Portfolio Standards dated December 20, 2007 ("Framework"), in accordance with Hawaii Revised Statutes ("HRS") § 269-95(1).¹ In so doing, the commission adopts, in part, and denies, in part, the Stipulation and Joint RPS Framework filed by

¹HRS § 269-95(1) provides that the commission shall:

[b]y December 31, 2007, develop and implement a utility ratemaking structure, which may include performance-based ratemaking, to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner or as a result of events or circumstances, such as described in section 269-92(d), beyond the control of the utility that could not have been reasonably anticipated or ameliorated[.]

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"),² KIUC, the Consumer Advocate, and HREA (collectively, the "Stipulating Parties") on October 12, 2007 ("Stipulated Framework").³ Specifically, the commission adopts the proposed penalty framework in the Stipulated Framework, but denies the incentive framework in the Stipulated Framework, including the proposed Temporary REI Surcharge. Instead, the commission opens a separate docket contemporaneously with this Decision and Order, to examine the HECO Companies' proposed REI Program, which includes a consolidation incentive mechanism ("Consolidation Incentive") that would allow the HECO Companies to recover certain costs for renewable projects built on the islands of Hawaii and Maui from Oahu ratepayers.

²HECO, HELCO, and MECO are collectively referred to herein as the "HECO Companies." The Parties to this docket are the HECO Companies, KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), LIFE OF THE LAND ("LOL"), and HAWAII RENEWABLE ENERGY ALLIANCE ("HREA").

³Unless noted otherwise, the Stipulation and Joint RPS Framework will generally be referred to herein as the "Stipulated Framework." However, the Stipulation and Joint RPS Framework actually consist of: (1) the Stipulating Parties' Stipulation ("Stipulation"); (2) the Stipulated Joint RPS Framework, attached as Exhibit A to the Stipulation; (3) a description of the HECO Companies' proposed Renewable Energy Infrastructure Program ("REI Program"), Exhibit B to the Stipulation; and (4) a description of the HECO Companies' near-term renewable energy infrastructure projects under the Temporary Renewable Energy Infrastructure Surcharge ("Temporary REI Surcharge"), Exhibit C to the Stipulation.

In addition, because the commission determines herein that the subject of penalties against electric utilities for failure to meet the renewable portfolio standards ("RPS") requires further examination, the commission directs the Parties to file supplemental briefs on certain issues relating to penalties, as described herein.

I.

Background

A.

Procedural History

The commission initiated this proceeding by Order No. 23191, filed on January 11, 2007 ("Order No. 23191"), pursuant to Act 162, Session Laws of Hawaii 2006 ("Act 162"), which amended Hawaii's RPS Law, codified as HRS §§ 269-91 - 269-95 ("RPS Law"), by among other things, authorizing the commission to establish and issue penalties against electric utility companies who fail to meet the RPS.⁴

⁴Under the RPS Law, RPS is defined as the percentage of electrical energy sales that is represented by renewable electrical energy. See HRS § 269-91. Each electric utility company that sells electricity for consumption in the State of Hawaii is required by law to meet the RPS of: (1) ten percent of its net electricity sales by December 31, 2010; (2) fifteen percent of its net electricity sales by December 31, 2015; and (3) twenty percent of its net electricity sales by December 31, 2020. See HRS § 269-92(a)(1)-(3).

As explained in Order No. 23191, before the RPS Law was amended by Act 162, the commission hosted several workshops to accomplish the charge set forth in HRS § 269-95(1), which requires the commission to "develop and implement a utility ratemaking structure . . . to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the [RPS.]"⁵ However, in Order No. 23191, the commission found that, by mandating the establishment of a penalty structure in Act 162, the RPS Law now simply requires compliance with the RPS and the ability to assess penalties provides sufficient incentive to electric utilities to comply with the minimum requirements of the RPS.

The commission set forth a preliminary issue⁶ and preliminary procedural schedule in Order No. 23191, and allowed the Parties to comment on the preliminary issue and procedural schedule within forty-five days of the date of the Order. After receiving comments, the commission issued Order No. 23316 on March 23, 2007, which set forth the following issues for this proceeding:

- (1) What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to meet the RPS?

⁵HRS § 269-95(1).

⁶The commission established the following preliminary issue for this proceeding: What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to comply with the RPS? See Order No. 23191 at 6.

- (2) What is the appropriate utility ratemaking structure to establish and include in the commission's RPS framework under HRS § 269-95 to provide incentives that encourage electric utilities to use cost-effective renewable energy resources found in Hawaii to meet the RPS, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner, or as a result of circumstances beyond the control of the utility that could not have been reasonably anticipated or ameliorated?
- (3) Should the commission's RPS framework include a provision that provides incentives to encourage electric utility companies to exceed their RPS or to meet their RPS ahead of time, or both, and if so, what is the appropriate incentive to establish under HRS § 269-94?⁷

Pursuant to the procedural schedule set forth in Order No. 23191, by April 26, 2007, the Parties filed their Preliminary Statements of Position ("PSOPs"), and thereafter, engaged in discovery on their PSOPs.

On June 14, 2007, in Order No. 23493, the commission amended the procedural schedule in this proceeding by: (1) removing the pre-hearing conference, panel hearing, and related briefing deadlines from the schedule; (2) extending the due date for the Parties' Final Statements of Position ("FSOPs") from June 25, 2007 to July 25, 2007; and (3) directing the Parties to each file a proposed framework (or a stipulated framework if the Parties are able to agree) with their FSOPs.

⁷See Order No. 23316, filed on March 23, 2007, at 7.

Subsequently, the Parties requested three extensions of time to file FSOPs and proposed (or stipulated) frameworks. The commission approved the Parties' extension requests. Pursuant to the commission's last order approving the Parties' third extension request, the Parties' FSOPs and proposed (or stipulated) frameworks were due on October 12, 2007.⁸

On July 25, 2007, the HECO Companies filed a Supplemental Preliminary Statement of Position, which described the HECO Companies' proposal for the REI Program, discussed further below.

On October 12, 2007, the Stipulating Parties filed the Stipulated Framework, which generally set forth the Stipulating Parties' proposed RPS penalty and incentive frameworks. The stipulated incentive framework included a proposal for the Temporary REI Surcharge that would allow electric utilities to recover, on a temporary basis, the costs of certain near-term renewable infrastructure facilities, through a surcharge to ratepayers.

On October 12, 2007, LOL filed a separate "Final Statement of Position and Proposed Stipulated Framework" ("LOL's FSOP").⁹

⁸See Order No. 23700, filed on October 9, 2007, at 3.

⁹The HECO Companies and KIUC also filed FSOPs on October 12, 2007.

B.

The Parties' Positions

1.

The Stipulated Framework

The Stipulated Framework consists of five parts. Part I includes definitions, which according to the HECO Companies, were generally taken from the Framework for Integrated Resource Planning ("IRP Framework"), the Framework for Competitive Bidding ("Competitive Bidding Framework"), the proposed Rule 19 (establishing tariff provisions for Interconnection and Transmission Upgrades) filed by the HECO Companies on April 17, 2007 pursuant to the Competitive Bidding Framework, and the RPS Law.¹⁰ Part II provides background on the RPS Law, in conjunction with the IRP and Competitive Bidding Frameworks. Part III provides a penalty framework, and Parts IV and V, relating to incentives, discuss the REI Program. Parts III, IV, and V of the Stipulated Framework are described in further detail below.

a.

Part III of the Stipulated Framework - RPS Penalty Framework

The Stipulating Parties proposed a penalty framework with the following components:

- (1) An electric utility's compliance with the RPS for any of the three dates set forth in HRS § 269-92(a) ("Goal Dates," i.e., the year ending on

¹⁰See Final Statement of Position filed by the HECO Companies on October 12, 2007, at 5.

December 31, 2010; the year ending on December 31, 2015; and the year ending on December 31, 2020) is determined based on the twelve-month calendar year leading up to each respective Goal Date;

- (2) Electric utilities are required to annually file an RPS report ("Annual RPS Report") with the commission no later than June 30th of each year through 2021;
- (3) Under certain circumstances, the commission may require an electric utility to file and obtain commission approval of a plan for meeting the RPS ("Compliance Plan"); and
- (4) The commission has discretion to impose penalties on electric utilities that do not comply with the RPS.

Regarding the fourth component above, when the commission makes a determination as to whether to grant a waiver of penalties, allow an extension to meet the RPS, or impose penalties, the Stipulating Parties proposed that the commission must consider several factors (in addition to those already set forth in HRS § 269-92(d)), including, among others:

- (1) the extent to which the utility made good faith efforts to comply with the RPS Law or to formulate and follow a commission-approved Compliance Plan;
- (2) the gravity of the failure to comply, including without limitation, how close the utility is to meeting the RPS (from both a sales and timing standpoint); and
- (3) the ownership structure of the utility. In particular, in the case of a cooperative-owned utility (in which the owner/shareholders and customers of the utility are essentially one and the same), the commission should consider (a) that the imposition of any penalties would essentially be borne by the cooperative's member/customers

instead of by a group of shareholders, and (b) whether the cooperative's member/owners (consisting of essentially all of the utility's customers) may have a more compelling interest, need or objective that obviates or at least lessens the need for penalties or strict compliance with the RPS.¹¹

In addition, the Stipulating Parties noted that, with respect to the issue of renewable energy certificates ("RECs"), initially recommended by HREA, the Stipulating Parties agreed "that the RPS law does not list RECs as a form of renewable electrical energy by which an electric utility may meet the RPS, and the creation of [a] RECs system would present a number of implementation and other issues[.]"¹² Thus, the Stipulating Parties agreed to create an Ad Hoc Task Force to "examine whether RECs or other mechanisms can be used to increase the value of renewable energy projects in Hawaii, which could reduce the payment rates, rebates or other forms of compensation that electric utilities and demand-side management ("DSM") program administrators, and ratepayers need to pay under future power purchase agreements and DSM programs to acquire renewable electric energy[.]"¹³

¹¹See Stipulated Framework at 11-12.

¹²Stipulation at 3-4.

¹³Id. at 4.

b.

Parts IV and V of the Stipulated Framework - RPS
Incentive Framework

In Parts IV and V of the Stipulated Framework, relating to incentives, the Stipulating Parties proposed a Temporary REI Surcharge. As background to this proposal, the Stipulating Parties explain that the HECO Companies proposed the REI Program (which is described in Exhibit B to the Stipulation), consisting of: (1) renewable energy infrastructure projects to encourage development of third-party renewable energy resources, maintain current renewable energy resources, and enhance energy choices for customers while maintaining acceptable levels of reliability; and (2) the creation and implementation of a Renewable Energy Infrastructure Surcharge ("REI Surcharge") that may facilitate raising capital by providing investors assurance of a mechanism to recover the utilities' investment in renewable infrastructure in a timely fashion.¹⁴

In addition, the HECO Companies proposed that the commission adopt a Consolidation Incentive that generally would operate to credit customers of electric utility affiliates within a consolidated electric utility whose service territories exceed their RPS percentage on a stand-alone basis, to be paid for

¹⁴See Stipulation at 5.

through a compensation payment or surcharge on customers of the affiliated electric utilities, if any, whose service territories fall short of their RPS percentage on a stand-alone basis.¹⁵

According to the Stipulating Parties, the Consumer Advocate and LOL expressed reservations about implementing the REI Surcharge without conducting public hearings and allowing other interested persons to comment or even intervene, particularly with respect to the Consolidation Incentive. In response, the HECO Companies maintained that the use of a REI Surcharge, at least on a temporary, limited basis, pending further review, is needed now, because: (1) the HECO Companies need the authority to offer to pay for certain interconnection facilities for independent renewable energy projects on Maui, Oahu, and the Big Island (described in Exhibit C to the Stipulation), and to recover the costs of such facilities through the proposed REI Surcharge; (2) the HECO Companies are preparing applications to install Advanced Metering Infrastructure ("AMI") in the service territories of the HECO Companies; and (3) the HECO Companies' credit quality has been degraded, and adding to the capital requirements of the HECO Companies without demonstrating support for their timely ability to earn on, and recover, that investment would exacerbate that situation.¹⁶

¹⁵See id.

¹⁶See id. at 5-6.

As a compromise, the Stipulating Parties stated that the HECO Companies proposed, and the Stipulating Parties agreed to, a Temporary REI Surcharge available to all electric utilities (including KIUC) with the following features:

- (1) The possible application of the Temporary REI Surcharge would be limited to specified projects that need to be implemented or initiated in the near-term, including currently planned projects, as more fully described in Exhibit C to the Stipulation;
- (2) Authorization to include the costs for any specific project in the Temporary REI Surcharge would be granted or denied at the time the commission issues a Decision and Order with respect to the proposed commitment of expenditures for the project, and the Stipulating Parties would reserve their rights to object to the use of the Temporary REI Surcharge to recover the costs for any specific project;
- (3) With respect to AMI, if AMI capital costs (e.g., return on and return of capital) are allowed to be recovered through the Temporary REI Surcharge, such capital costs would be offset by the net benefits of implementing AMI (e.g., cost savings and revenue enhancements offset by operating and maintenance expenses), as those net benefits are obtained by the utility;
- (4) The accrual of cost recovery under the Temporary REI Surcharge would terminate when the costs (or costs offset by net benefits in the case of AMI) are incorporated in rates in the respective utility's next rate case; provided that the accrued recovery of costs under the Temporary REI Surcharge would be terminated no later than December 31, 2010 unless the commission affirmatively authorizes its continuation (which could occur in a follow-up proceeding involving public hearings and comment); and

- (5) The Consolidation Incentive requested by the HECO Companies, which involves the recovery of certain Maui and island of Hawaii costs through an Oahu surcharge, would not be implemented until further review by the commission (which could occur in a follow-up proceeding involving public hearings and comment).

In addition, the Stipulating Parties agreed that the RPS Framework does not need to include, at least at this time, incentives to encourage electric utility companies to exceed the RPS, or to meet the RPS ahead of time.¹⁷ Further, the Stipulating Parties requested that "the Commission initiate a follow up proceeding to expeditiously consider whether the Renewable Energy Infrastructure Program proposed by the HECO Companies, as shown in Exhibit "B" attached [to the Stipulation], with or without modifications that may be proposed during the course of such proceeding, should be included in the RPS Framework[.] "¹⁸

2.

LOL's Position

LOL explains that, in response to the HECO Companies' initial proposal for the REI Surcharge:

[t]he Consumer Advocate suggested adopting the first part of the agreement (RPS penalties) but excluding the second part (transmission surcharge).

¹⁷See id. at 7.

¹⁸Id. at 9.

The Consumer Advocate felt this surcharge was a new rate structure, [and] it should be carved out and put in its own docket. The parties in the new docket would consist of the existing parties to this docket, as well as any other party that filed a Motion to Intervene and was accepted by the Commission. Also the public could voice their opinions at public hearings.

This is a reasonable approach that [LOL] can support.¹⁹

However, LOL opposes, among other things, the ultimate inclusion of the temporary surcharge in the Stipulated Framework. Specifically, LOL states:

[LOL] opposes embedding a rate case in a non-rate case docket, excluding public input, denying intervention by those affected, and the establishment of unreasonably minimal timelines which unfairly squeeze public review. In our humble opinion, this subverts the process and denies the Commission access to helpful input needed which can assist them in reaching a decision that is fair and reasonable to all parties and in the public interest.

We ask that HECO's proposed Transmission Infrastructure Project be fully vetted in a contested case hearing process from which the PUC can make a sound, rational decision which would survive appeals.²⁰

¹⁹LOL's FSOP at 16 (emphasis in original).

²⁰Id. at 18-19.

II.

Discussion

After consideration of the Parties' positions and the Stipulated Framework, the commission adopts the Framework that is attached hereto as Exhibit A to govern electric utilities' compliance with RPS.²¹ In developing the attached Framework, the commission started with the Stipulated Framework, and modified it. Generally, the commission found the proposed penalty framework in Part III of the Stipulated Framework to be reasonable and in the public interest. However, because the commission finds that this section of the Framework requires further development and examination, it directs the Parties to file supplemental briefs on certain issues regarding penalties that are listed below.

With regard to the REI Program outlined in Part V of the Stipulated Framework and Exhibit B of the Stipulation, the commission finds that the surcharges proposed by this program, including the surcharge to Oahu ratepayers in connection with the Consolidation Incentive, represent new rate structures that should be more appropriately considered in a separate docket with full public notice and input, and intervention or participation by interested parties. The commission notes that the REI Program was proposed in late July 2007, after discovery

²¹In adopting the attached Framework, the commission accepts the Stipulating Parties' agreements: (1) not to implement a RECs system at this time; and (2) that the Framework does not need to include, at least at this time, incentives to encourage electric utility companies to exceed the RPS, or to meet the RPS ahead of time.

had been completed by the Parties, and only a few months before the filing of the Stipulated Framework and FSOPs. Under these circumstances, with an incomplete and deficient record, it would be unreasonable and against the public interest for the commission to review and approve, even on a temporary basis, the REI Program and any projects and surcharges related to it.²² Accordingly, the commission declines to adopt Parts IV and V of the Stipulated Framework, and instead, consistent with the Stipulating Parties' request in the Stipulation, opens a separate docket contemporaneously with this Decision and Order to examine the HECO Companies' proposed REI Program.

The commission's modifications to the Parties' Stipulated Framework, as reflected in the attached, approved Framework, are discussed below.²³

²²The commission recognizes that the Stipulated Framework provides that authorization to include the costs for any specific project in the Temporary REI Surcharge would be granted or denied at the time the commission issues a Decision and Order with respect to the proposed commitment of expenditures for the project. Notwithstanding that provision, however, the commission is unwilling to approve the REI Program, as presented in the Stipulated Framework, based on an incomplete record, and without a full and fair opportunity for public comment and participation.

²³Only the commission's more significant, substantive modifications to the Stipulated Framework will be addressed; non-substantive formatting changes will not be noted.

A.

Part I - Definitions

The commission made three primary changes to Part I of the Stipulated Framework: (1) it removed the definitions that are no longer referenced in the Framework due to the commission's removal of Parts IV and V from the Stipulated Framework; (2) it added a definition for the term "Compliance Plan;" and (3) where terms were already defined in the RPS Law, the commission revised the definitions of those terms to reference their respective definitions in the statute.

In other respects, the commission generally found the definitions in the Stipulated Framework to be reasonable, and therefore, adopted those definitions in the attached Framework.

B.

Part II - Introduction to RPS Statutory Framework

As with Part I, the Definitions section, the commission removed Section B "Relationship to Integrated Resource Planning and Competitive Bidding" from Part II of the Stipulated Framework, because a background discussion on IRP and competitive bidding were no longer relevant due to the commission's removal of Parts IV and V from the Stipulated Framework. In addition, for clarity, the commission made certain changes to Section II.2.d of the Stipulated Framework so that all five subparts of HRS § 269-95 are referenced, and the language of this section more closely follows the language of the statute.

C.

Part III, Section A - RPS Reporting

The commission found reasonable, and therefore adopted, the following provisions on RPS Reporting in the Framework:

- (1) the twelve-month measurement period in Section III.A.1;
- (2) the provisions for measuring (i) electrical energy generated using renewable energy sources, (ii) electrical energy savings brought about by the use of renewable displacement or off-set technologies, and (iii) electrical energy savings brought about by the use of energy efficiency technologies in Sections III.A.2, III.A.3, and III.A.4, respectively; and
- (3) the timing of filing Annual RPS Reports under Section III.A.5.a.

Under Section III.A.5.b, pertaining to the scope of Annual RPS Reports, the commission added three factors for electric utilities to address when reporting on their total renewable electrical energy for a Reporting Year:

- (1) Electrical energy generated using renewable energy as the source (required to be at least fifty percent of the RPS);
- (2) Electrical energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating, seawater air-conditioning district cooling systems, solar air conditioning, and customer-sited, grid-connected renewable energy systems; and

- (3) Electrical energy savings brought about by the use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.

The commission added these factors because they comprise the definition of "renewable electrical energy" under the RPS Law and the Framework. Moreover, the first factor is particularly important because, under the RPS Law, electrical energy generated using renewable energy as the source is required to be at least fifty percent of the RPS.

D.

Part III, Section B - Compliance Plans

The commission found reasonable, and therefore adopted, Section III.B on Compliance Plans in the Framework. As stated earlier, the commission added a definition for "Compliance Plan" in Part I of the Framework.

E.

Part III, Section C - RPS Penalties

In the Stipulated Framework, the Stipulating Parties proposed that, upon receipt of an "Explanation" under HRS § 269-94 (as defined in the Framework) from an electric utility for its failure to meet the RPS, the commission be required to conduct "an analysis, inquiry or investigation regarding the reasons why the electric utility did not meet the RPS."²⁴ The Stipulating Parties also proposed:

As part of its analysis, inquiry or investigation, the Commission shall also make a preliminary determination as to whether there may be reasonable grounds to impose penalties on the electric utility for its failure to meet the RPS. If so, then the Commission shall hold a hearing in accordance with [the Hawaii Administrative Procedure Act] and HRS § 269-92(c), at which time the utility may be subject to penalties to be established by the Commission.²⁵

KIUC, in its FSOP, provided further explanation on this process:

[T]he type and extent of the analysis, inquiry or investigation (e.g., ranging from a formal investigation and hearing, a "less formal" docketed investigation with the issuance of discovery followed by position statements and/or a Commission order/determination with no hearing, to simply informal non-docketed inquiries and discussions) should be established by the Commission based on the facts and circumstances at that time, in particular the explanation provided by the utility for its non-compliance with the RPS.²⁶

²⁴Stipulated Framework at 11, Section III.C.2.

²⁵Id. at Section III.C.4.

²⁶Final Statement of Position of Kauai Island Utility Cooperative, filed on October 12, 2007, at 4.

The commission has considered this proposal for an informal analysis, inquiry, and "preliminary determination," but declines to adopt it. Instead, the commission will follow present procedural practice by opening an investigation if an electric utility fails to meet the RPS, even if such non-compliance may arguably be de minimis. The commission is resolved that fundamental fairness and due process considerations mandate an open, docketed procedure for investigating an electric utility's failure to meet the RPS. Stated differently, the commission is reluctant to make any determinations regarding extensions, waivers, or penalties for non-compliance with the RPS, even if possibly nominal or excusable, through an informal, non-docketed process. For these reasons, the commission rejected the provisions for an informal process in the Stipulated Framework, and modified the Stipulated Framework to reflect: (i) that the commission will initiate an investigation if an electric utility does not comply with the RPS; and (ii) the hearing procedure for penalties already provided in section 269-92(c) of the RPS Law.

In addition, as discussed above, the Stipulating Parties proposed that, when the commission makes a determination on extensions, waivers, or penalties under the RPS Law, the commission must consider several factors, in addition to those already set forth in HRS § 269-92(d). Upon review of the additional factors, the commission generally found them to be reasonable, and therefore, adopted the additional factors in the Framework. However, in the first sentence of

Section III.C.5.b in the Stipulated Framework, the commission substituted the word "may" for "shall," making its consideration of the additional factors discretionary, rather than mandatory. This change is reasonable, particularly when HRS § 269-92(d) already provides eleven factors, including a broad catch-all provision in HRS § 269-92(d)(11), for the commission to consider in determining whether an electric utility's failure to meet the RPS was due to events or circumstances that were outside of its reasonable control.

The commission found the other provisions in Section III.C to be reasonable, and therefore, adopted those provisions in the attached Framework.

F.

Supplemental Briefing Regarding Penalties

Although the commission generally adopted the Stipulating Parties' penalty provisions in Section III.C, with the modifications noted above, the commission finds that the issue of penalties needs further examination in this docket and development in the Framework.²⁷ In particular, the commission understands that a number of states' RPS statutes include a specific dollar amount of penalty (expressed in \$/MWh or \$/kWh) that may be assessed against an electric utility that fails to

²⁷The Framework approved herein provides the basis for RPS compliance, but is subject to further development by the commission pending supplementary examination of the issues addressed below regarding penalties.

meet the RPS in that state.²⁸ The commission finds that a range of penalties, in specific dollar per MWh amounts, which the commission may assess against a non-compliant utility would be useful in providing clarity and transparency to the Framework. The commission accordingly directs the Parties in this docket to file supplemental briefs on the following issues relating to penalties:

1. What is a reasonable range of penalties (in \$/MWh) to include in the Framework that the commission may use when assessing how much, if any, an electric utility should be penalized for failing to meet the RPS?
2. If an electric utility is required to pay penalties for non-compliance with the RPS, where should the penalties be paid (i.e., to a special fund or to the State of Hawaii), and if applicable, how should the money be used?
3. Should the commission expressly prohibit electric utilities from recovering costs of any penalties for non-compliance with the RPS through electric rates?

Supplemental briefs should be filed no later than January 31, 2008, with reply briefs due no later than February 15, 2008. If the Parties are able to reach agreement on the foregoing issues, briefs may be jointly filed.

²⁸For example, the commission is aware that California, Connecticut, and Texas, among other states, have such penalty provisions in their RPS statutes.

III.

Orders

THE COMMISSION ORDERS:

1. The Framework for Renewable Portfolio Standards dated December 20, 2007, attached hereto as Exhibit A, is approved, and shall govern electric utilities' compliance with the RPS.

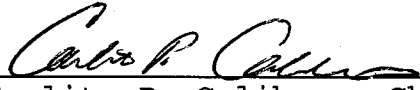
2. The commission denies the proposal in the Stipulated Framework for the implementation of a Temporary REI Surcharge. Instead, the commission opens a separate docket contemporaneously with this Decision and Order, to examine the HECO Companies' proposed REI Program, which includes the Consolidation Incentive.

3. By January 31, 2008, the Parties are directed to file supplemental briefs on these three issues, with reply briefs due on February 15, 2008:

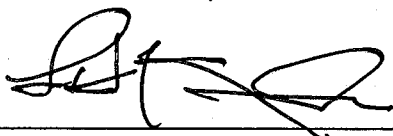
1. What is a reasonable range of penalties (in \$/MWh) to include in the Framework that the commission may use when assessing how much, if any, an electric utility should be penalized for failing to meet the RPS?
2. If an electric utility is required to pay penalties for non-compliance with the RPS, where should the penalties be paid (i.e., to a special fund or to the State of Hawaii)?
3. Should the commission expressly prohibit electric utilities from recovering costs of any penalties for non-compliance with the RPS through electric rates?

DONE at Honolulu, Hawaii DEC 20 2007.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Kaiulani Kidani Shinsato
Commission Counsel

2007-0008.laa

FRAMEWORK FOR RENEWABLE PORTFOLIO STANDARDS
December 20, 2007

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION

EXHIBIT A

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**STATE OF HAWAII
PUBLIC UTILITIES COMMISSION**

**FRAMEWORK FOR RENEWABLE PORTFOLIO STANDARDS
December 20, 2007**

I. DEFINITIONS

As used in this Framework, unless the context clearly requires otherwise:

"Action Plan" means a Program Implementation Schedule generated pursuant to Section III.A.2 of the IRP Framework.

"Annual RPS Report" means a report filed pursuant to Section III.A.5 of this Framework.

"Commission" means the Public Utilities Commission of the State of Hawaii.

"Compliance Plan" means a plan that the Commission may in its discretion require an electric utility to file, in accordance with Section III.B of this Framework, if the utility did not meet the RPS at its most recent Goal Date, or if the Commission determines that the utility will likely be unable to meet the RPS at its next Goal Date.

"Compliance Year" means a Reporting Year ending on one of the three dates stated in HRS § 269-92(a), i.e., (1) the year ending on December 31, 2010; (2) the year ending on December 31, 2015; and (3) the year ending on December 31, 2020.

"Cost-effective" is defined in accordance with HRS § 269-91.

"DSM" means demand-side management.

"Demand-side management program" means a program designed to influence utility customer uses of energy to produce desired changes in demand. It includes conservation, load management, and energy efficiency resource programs.

"Electric utility" or "utility" is defined in accordance with the definition of "Electric utility company" in HRS § 269-91.

"Explanation" means a filed explanation of a utility's failure to comply with the RPS statute, as required by HRS § 269-94.

"Framework" means this RPS framework.

"Goal Date" means December 31st of each Compliance Year.

"HECO" means Hawaiian Electric Company, Inc.

"HECO Companies" means HECO, MECO and HELCO, collectively.

"HELCO" means Hawaii Electric Light Company, Inc.

"HRS" means the Hawaii Revised Statutes.

"IPP" means an independent power producer that is not subject to the Commission's regulation or jurisdiction as a public utility.

"IRP" means integrated resource planning.

"IRP Framework" means the Commission's Framework for Integrated Resource Planning, dated May 22, 1992, as amended by In re Pub. Util. Comm'n, Docket No. 05-0075, Decision and Order No. 22490, filed on May 26, 2006.

"IRP Plan" means an electric utility's Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility's IRP proceeding, in accordance with the Commission's IRP Framework. The overall goal of integrated resource planning is the identification of the resources or the mix of resources for meeting near and long term customer energy needs in an efficient and reliable manner at the lowest reasonable cost. Each electric utility is responsible for developing an IRP Plan that meets the energy needs of its customers. The IRP Framework requires each electric utility to develop a long-range, twenty (20)-year plan and a medium-range five (5)-year Action Plan to be submitted on a three (3)-year planning cycle for the Commission's review and approval. The IRP process is a vehicle for the Commission, the electric utilities, energy stakeholders, and the public to understand and influence the planning process involved in identifying and evaluating the mix of demand-side and supply-side energy resources needed to meet near and long-term energy needs in an efficient and reliable manner at the lowest reasonable cost.

"MECO" means Maui Electric Company, Limited.

"RPS" or "Renewable Portfolio Standard" is defined in accordance with HRS § 269-91.

"Renewable electrical energy" is defined in accordance with HRS § 269-91.

"Renewable energy" is defined in accordance with HRS § 269-91.

"Reporting Year" means the calendar year prior to the date on which a utility is required to file an Annual RPS Report pursuant to Section III.A.5 of this Framework.

"Total electrical energy sales" or "net electricity sales" means the total MWhs of electrical energy sold by a utility to its customers during a given year.

II. INTRODUCTION TO RPS STATUTORY FRAMEWORK

1. This Framework applies to electric utilities.
2. Renewable Portfolio Standards.
 - a. Pursuant to HRS § 269-92(a), each electric utility company that sells electricity for consumption in Hawaii shall establish a RPS of:
 - (i) 10% of its net electricity sales by December 31, 2010;
 - (ii) 15% of its net electricity sales by December 31, 2015; and
 - (iii) 20% of its net electricity sales by December 31, 2020.
 - b. Pursuant to HRS § 269-92(b), the Commission may establish standards for each utility that prescribe what portion of the RPS shall be met by specific types of renewable electrical energy resources; provided that:
 - (i) At least 50% of the RPS shall be met by electrical energy generated using renewable energy as the source;
 - (ii) Where electrical energy is generated or displaced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy; and

(iii) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to generate renewable electrical energy (electricity) in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels.

c. Pursuant to HRS § 269-93, an electric utility and its electric utility affiliates may aggregate their renewable portfolios in order to achieve the RPS.

d. Pursuant to HRS § 269-95, the Commission shall:

(i) By December 31, 2007, develop and implement a utility ratemaking structure, which may include performance-based ratemaking, to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the RPS, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner or as a result of events or circumstances such as described in HRS § 269-92(d), beyond the control of the utility that could not have been reasonably anticipated or ameliorated;

(ii) Gather, review, and analyze empirical data to determine the extent to which any proposed utility ratemaking structure would impact electric utility companies' profit margins and to ensure that the electric utility companies' opportunity to earn a fair rate of return is not diminished;

(iii) Contract with the Hawaii Natural Energy Institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts, which shall include findings and recommendations regarding, among other factors: the capability of Hawaii's electric utility companies to achieve the RPS in a cost-effective

manner; impact on consumer rates; utility system reliability and stability, costs and availability of appropriate renewable energy resources and technologies; and projected RPS to be set five and ten years beyond the then current standards;

- (iv) Revise the standards based on the best information available at the time if the results of the studies conflict with the RPS established by HRS § 269-92; and
- (v) Report its findings and revisions to the RPS to the Hawaii State Legislature no later than 20 days before the convening of the regular session of 2009, and every five years thereafter.

III. RPS PENALTY FRAMEWORK

A. RPS REPORTING

1. Twelve month measurement period. An electric utility's compliance or non-compliance with HRS § 269-92(a) for a given Goal Date shall be determined based on the utility's renewable electrical energy and total electrical energy sales during the corresponding Compliance Year. Accordingly, a utility's RPS percentage for a given Goal Date shall be calculated by dividing the utility's renewable electrical energy (MWh) during the Compliance Year by the utility's total electrical energy sales (MWh) during the same Compliance Year.
2. Electrical energy generated using renewable energy sources shall be determined using actual recorded net generation of electrical energy (i.e., excluding auxiliary loads). For electrical energy generated by IPPs, this would typically be the net electrical energy sold to the utility. For electrical energy generated by utility-owned generation, this would typically be the recorded net generation. This would not include electrical energy generated by customer-sited generation systems, which would be included in electrical energy savings brought about by the use of renewable displacement or off-set technologies.

3. Electrical energy savings brought about by the use of renewable displacement or off-set technologies shall be determined using actual recorded energy produced by the displacement or off-set technologies, if that information is available to the utility, and the corresponding estimated electrical savings. Where the recorded energy produced by the displacement or off-set technologies is not available to the utility, as in the case of customer-sited renewable energy systems, the utility may make reasonable estimates of the energy produced by such systems, and provide an explanation of the calculation of the estimates. The electrical energy savings shall be expressed at a comparable level to the electrical energy generated using renewable energy sources (i.e., at the net generation level).
4. Electrical energy savings brought about by the use of energy efficiency technologies shall be determined using the actual gross energy savings (i.e., gross of (including) free-riders) reported by the utility or third-party DSM administrator in its annual DSM program report to the Commission excluding any electrical energy savings brought about by the use of renewable displacement or off-set technologies. The electrical energy savings shall be expressed at a comparable level to the electrical energy generated using renewable energy sources (i.e., at the net generation level).
5. Annual RPS Reports. Beginning in 2008 and ending in 2021, each electric utility shall annually file an Annual RPS Report with the Commission. Affiliated electric utility companies aggregating their renewable portfolios pursuant to HRS § 269-93 may file an Annual RPS Report on a consolidated basis.
 - a. Timing of filing. Annual RPS Reports shall be filed by June 30th of each year covering the prior calendar year (i.e., Reporting Year), provided that a utility that files an Explanation pursuant to HRS § 269-94 shall be relieved of its obligation to file an Annual RPS Report for the same Reporting Year if: (1) the utility's Explanation specifically states that it is

intended to also serve as the utility's Annual RPS Report; and (2) the Explanation provides all of the information that the utility would otherwise have been required to submit in its Annual RPS Report.

b. Scope of reports. Every Annual RPS Report shall state:

(i). the utility's total electrical energy sales for the Reporting Year;

(ii) the utility's total renewable electrical energy for the Reporting Year, with details including;

- Electrical energy generated using renewable energy as the source (required to be at least fifty percent of the RPS);
- Electrical energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating, seawater air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; and
- Electrical energy savings brought about by the use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.

(iii) whether the utility expects to meet, exceed or fall short of the RPS at its next Goal Date.

B. COMPLIANCE PLANS

1. The Commission may in its discretion require an electric utility to file and obtain Commission approval of a Compliance Plan if the utility did not meet the RPS at its most recent Goal Date, or if the Commission determines that the utility will likely be unable to meet the RPS at its next Goal Date.
2. Purpose of Compliance Plan. The purpose of requiring a Compliance Plan is to promote communication, transparency, cooperation and accountability with respect to meeting the RPS. Whereas Action Plans in the IRP generally do not focus on the specifics of projects to be implemented, a Compliance Plan will, to the extent practicable, include project schedules showing the timelines for permitting and approval, equipment acquisition and construction for specific projects.
3. If required, a Compliance Plan filed pursuant to this RPS Framework shall be filed in addition to the filing of an IRP Plan under the IRP Framework.
4. Contents of Compliance Plan. A Compliance Plan shall specify, to the extent practicable:
 - a. the renewable energy resources that an electric utility intends to utilize in meeting the RPS;
 - b. a timetable for achieving compliance; and
 - c. other pertinent information as requested by the Commission.

C. RPS PENALTIES

1. In any year immediately following a Compliance Year, an electric utility that has not complied with its most recent RPS shall file an Explanation for its non-compliance within ninety days of the missed Goal Date, as required by HRS § 269-94.

2. Upon receipt of the Explanation, the Commission shall conduct an investigation regarding the reasons why the electric utility did not meet the RPS. In doing so, pursuant to HRS § 269-94, the Commission shall have the option to grant a waiver from the RPS or an extension for meeting the prescribed standard.
3. In addition, pursuant to HRS § 269-95(1), the Commission shall allow for deviation from the RPS in the event that the RPS cannot be met in a cost-effective manner, or as a result of events or circumstances beyond the control of the utility that could not have been reasonably anticipated or ameliorated.
4. The Commission shall determine any waivers, extensions or penalties, if any, on a case-by-case basis.
5. In making its determination as to whether to grant a waiver, provide an extension, or impose a penalty, the Commission may consider:
 - a. the processes employed by the utility to acquire the renewable electrical energy needed to meet the RPS, and the prudence of the utility in administering those processes;
 - b. the extent to which the utility made good faith efforts to comply with the RPS statute and/or to formulate and follow a Commission-approved Compliance Plan;
 - c. the specific reasons or factors for not meeting the RPS, and the extent to which said reasons or factors are beyond the control of the utility and/or could have been reasonably anticipated or ameliorated;
 - d. the gravity of the failure to comply, including without limitation, how close the utility is to meeting the RPS (from both a sales and timing standpoint);
 - e. the number of times the utility has failed to comply in the past;
 - f. the appropriateness of the size of any penalty to the size of the utility;

- g. the likelihood and amount of renewable energy that will be added to the utility's renewable energy portfolio in the near future;
- h. the extent to which the utility complied with its applicable IRP Plan, approved by the Commission;
- i. for the HECO Companies, after transfer of the administration of energy efficiency DSM programs to a third-party administrator, as required by Decision and Order No. 23258, filed on February 13, 2007, in Docket No. 05-0069, the electric utility's ability to obtain future electrical energy savings through implementation of energy efficiency DSM programs will depend on the third-party administrator, who will be supervised under its contract with the Commission;
- j. the ownership structure of the utility. In particular, in the case of a cooperative-owned utility (in which the owner/shareholders and customers of the utility are essentially one and the same), the Commission may consider: (a) that the imposition of any penalties would essentially be borne by the cooperative's member/customers instead of by a group of shareholders; and (b) whether the cooperative's member/owners (consisting of essentially all of the utility's customers) may have a more compelling interest, need or objective that obviates, or at least lessens the need for penalties or strict compliance with the RPS;
- k. any other reasonable factor that, in the Commission's discretion, should be taken into consideration.

6. Pursuant to HRS § 269-92(c), if the Commission determines that an electric utility failed to meet the RPS, after a hearing in accordance with HRS Chapter 91, the utility shall be subject to penalties to be established by the Commission; provided that if the Commission determines that the electric utility is unable to meet the RPS due to reasons beyond the reasonable control of an electric utility, the Commission, in its discretion, may waive, in whole or in part, any otherwise applicable penalties. Pursuant to HRS § 269-92(d), events or circumstances that are outside of an electric utility's reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:
- a. weather-related damage;
 - b. natural disasters;
 - c. mechanical or resource failures;
 - d. failure of renewable electrical energy producers to meet contractual obligations to the electric utility;
 - e. labor strikes or lockouts;
 - f. actions of governmental authorities that adversely affect the generation, transmission, or distribution of renewable electrical energy under contract to an electric utility;
 - g. inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;
 - h. inability to obtain permits or land-use approvals for renewable electrical energy projects;
 - i. inability to acquire sufficient cost-effective renewable electrical energy;
 - j. substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; and
 - k. other events and circumstances of a similar nature.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23912 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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