

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of----- )  
 )  
PUBLIC UTILITIES COMMISSION )  
 )  
Instituting a Proceeding to )  
Investigate the Calculation of )  
Schedule Q Payment Rates )  
\_\_\_\_\_ )

Docket No. 2008-0069

ORDER DENYING MOTION FOR INTERVENTION  
OF ZERO EMISSIONS LEASING LLC, FILED ON MAY 2, 2008

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DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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COMMISSION

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ORDER DENYING MOTION FOR INTERVENTION  
OF ZERO EMISSIONS LEASING LLC, FILED ON MAY 2, 2008

By this Order, the commission denies the Motion for Intervention filed by Zero Emissions Leasing LLC ("Zero Emissions") on May 2, 2008 ("Motion").

I.

Background

A.

Initiation of this Docket

By Order No. 24157, filed on April 18, 2008, the commission initiated this docket to consider the methodology for calculating Schedule Q payment rates. Order No. 24157 established the following preliminary issues for this proceeding:

- (1) What is the appropriate methodology or methodologies for calculating Schedule Q payment rates given the applicable law, including Hawaii Revised Statutes ("HRS") § 269-27.2(c), the Public Utilities Regulatory Policies Act of 1978, as amended, and Hawaii Administrative Rules ("HAR") Chapter 6-74.

- (2) Whether the methodologies for calculating Schedule Q payment rates proposed by Hawaii Electric Light Company, Inc. ("HELCO") are reasonable and comply with all applicable laws.
- (3) Whether a methodology other than the methodologies proposed by HELCO for calculating Schedule Q payment rates should be adopted by the commission, and, if so, is the methodology reasonable.<sup>1</sup>

Order No. 24157 also required that motions to intervene or participate in this proceeding be filed within twenty (20) days of the date of Order No. 24157.<sup>2</sup>

B.

Zero Emissions' Motion

On May 2, 2008, Zero Emissions timely filed its Motion to Intervene in this proceeding. In support of the Motion, Zero Emissions states:

[Zero Emissions] is a developer of large-scale (more than 100 kilowatt) grid-connected photovoltaic power generation systems in Hawaii that produce nonfossil fuel generated electricity supplied to and purchased by the public utility at the Schedule Q rate provided in HRS § 269-27.2. As a developer of systems that produce such nonfossil fuel generated electricity, [Zero Emissions] has a property, financial and economic interest in the pending matter because [Zero Emissions] will derive

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<sup>1</sup>Order No. 24157, filed on April 18, 2008, at 9.

<sup>2</sup>The commission designated as parties in this proceeding HELCO, Hawaiian Electric Company, Inc., Maui Electric Company, Ltd. (collectively, "HECO Companies"), the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy, an ex officio party to any proceeding before the commission, (see HRS § 269-51; HAR § 6-61-62), and Kauai Island Utility Cooperative (collectively, "Parties").

property, financial and economic benefits from the supply of such electricity to the public utility and the purchase of such electricity by the public utility at a Schedule Q rate based on the methodology established by the Commission in the pending matter.<sup>3</sup>

Zero Emissions also asserts that none of the named Parties in this proceeding has the same interests as Zero Emissions, or may fairly represent Zero Emissions, because none of the Parties is "a developer of grid-connected photovoltaic power generation systems that supply nonfossil fuel generated electricity to the public utility for purchase by the public utility at the Schedule Q rate."<sup>4</sup> In addition, Zero Emissions represents that its participation in this proceeding will not unduly broaden the issues or delay the proceeding.

C.

HECO Companies' Memorandum in  
Opposition to Zero Emissions' Motion

On May 12, 2008, the HECO Companies filed a Memorandum in Opposition to Zero Emissions' Motion ("Opp. Memo.").<sup>5</sup> The HECO Companies first argue that Zero Emissions does not have a property, financial or other interest in this docket:

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<sup>3</sup>Motion at 4.

<sup>4</sup>Id. at 5.

<sup>5</sup>No other oppositions were filed in response to the Motion.

[Zero Emissions] maintains that it is a developer of photovoltaic ("PV") systems with generation capacities "more than 100 kilowatt", and that the revenues that it will receive from energy produced from its PV systems will be impacted by the methodology established by the Commission in the pending matter for determining the Schedule Q "rate". However, Schedule Q payment rates only apply to qualifying facilities with design capacities of one hundred kilowatts or less. Thus, based on [Zero Emissions'] representations concerning the size of PV systems it develops, its facilities would not qualify for Schedule Q rates.<sup>6</sup>

In addition, the HECO Companies contend that Zero Emissions does not demonstrate in its Motion that it has substantial expertise, knowledge or experience pertinent to the development of a methodology for calculating Schedule Q payment rates. Furthermore, in response to Zero Emissions' representation that it will not unduly broaden the issues or delay this proceeding, the HECO Companies cite the commission's Net Energy Metering docket (Docket No. 2006-0084) and maintain: "[Zero Emissions'] contention is not persuasive in light of the fact that in the past, [Zero Emissions] has moved for relief that the Commission found would have unduly delayed the proceedings and been unfair to the parties, had the motion been granted."<sup>7</sup>

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<sup>6</sup>Opp. Memo. at 1-2 (emphasis in original).

<sup>7</sup>Id. at 6. On May 16, 2008, Zero Emissions filed a Reply Memorandum in support of its Motion, but as discussed further below, the Reply Memorandum was not permitted under the commission's rules of practice and procedure. Thus, Zero Emissions' Reply Memorandum is not considered herein.

## II.

### Discussion

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
  - (1) The nature of the applicant's statutory or other right to participate in the hearing;
  - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
  - (3) The effect of the pending order as to the applicant's interest;
  - (4) The other means available whereby the applicant's interest may be protected;
  - (5) The extent to which the applicant's interest will not be represented by existing parties;
  - (6) The extent to which the applicant's participation can assist in the development of a sound record;
  - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
  - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and

- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b).

HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." In addition, the Hawaii Supreme Court has stated the general rule on intervention as follows: "Intervention as a party in a proceeding before the [commission] is not a matter of right but is a matter resting within the sound discretion of the commission." In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Upon review of the entire record, the commission finds that Zero Emissions' Motion lacks sufficient support, and should be denied. As pointed out by the HECO Companies, pursuant to HAR § 6-74-22(b), Schedule Q rates only apply to "qualifying facilities with a design capacity of one hundred kilowatts or less." Thus, as a developer of large scale (i.e., greater than 100 kW) PV systems, it does not appear that Zero Emissions has a sufficient property or financial interest in the subject matter of this proceeding. Moreover, Zero Emissions did not otherwise demonstrate in its Motion that it had any expertise or knowledge that would be pertinent to the commission's determination of the issues in this docket. For these reasons, it does not appear that Zero Emissions' participation in this docket will assist in the development of a sound and complete record.

The commission does not consider Zero Emissions' Reply Memorandum because it was not permitted under the commission's rules of practice and procedure. Specifically, HAR § 6-61-41 only allows for the filing of opposition memoranda to motions, but does not authorize the filing of reply memoranda. Zero Emissions did not request leave to file the Reply Memorandum. As an unpermitted filing, the commission does not consider Zero Emissions' Reply Memorandum.

III.

Order

THE COMMISSION ORDERS:

Zero Emissions' Motion to Intervene, filed on May 2, 2008, is denied.

DONE at Honolulu, Hawaii JUN 26 2008.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel

By:   
Leslie H. Kondo, Commissioner

2008-0068.laa



CERTIFICATE OF SERVICE

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

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Certificate of Service

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