

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----In the Matter of----

PUBLIC UTILITIES COMMISSION

DOCKET NO. 2007-0008

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.

ORDER RELATING TO RPS PENALTIES

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CONSUMER AFFAIRS  
STATE OF HAWAII

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COMMISSION

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Session Laws of Hawaii 2006.	)	
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ORDER RELATING TO RPS PENALTIES

By this Order, the commission approves a penalty of \$20 for every megawatt-hour ("MWh") that an electric utility is deficient under Hawaii's Renewable Portfolio Standards Law, Hawaii Revised Statutes ("HRS") §§ 269-91 to 269-95 ("RPS Law").<sup>1</sup> This penalty, however, may be reduced, in the commission's discretion, based on the factors listed in HRS § 269-92(d) and in the Framework for Renewable Portfolio Standards, attached as Exhibit A to Decision and Order No. 23912, filed on December 20, 2007 ("RPS Framework"), Section III.C.5.

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<sup>1</sup>Under the RPS Law, a renewable portfolio standard ("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).

In addition, the commission orders that: (1) any penalties assessed against HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED (collectively, "HECO Companies")<sup>2</sup> for failure to meet the RPS shall go into the account established under HRS §§ 269-121 to 269-124 for the collection of public benefits fees, unless otherwise directed; (2) any RPS penalties assessed against KIUC shall be paid into the commission's special fund, unless otherwise directed; and (3) electric utilities, except KIUC, shall be prohibited from recovering any RPS penalty costs through rates.

I.

Background

By Order No. 23316, filed on March 23, 2007, the commission established 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?
- (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

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<sup>2</sup>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"), an ex officio party pursuant HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, LIFE OF THE LAND ("LOL"), and HAWAII RENEWABLE ENERGY ALLIANCE (collectively, "Parties").

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?<sup>3</sup>

On October 12, 2007, the Parties filed a Stipulation and Joint RPS Framework ("Stipulated Framework").

By Decision and Order No. 23912, filed on December 20, 2007, the commission adopted, in part, and denied, in part, the Stipulated Framework.<sup>4</sup> In addition, because the commission determined that the subject of penalties against electric utilities for failure to meet the RPS required further examination, the commission directed the Parties to file supplemental briefs on the following issues:

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?

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<sup>3</sup>Order No. 23316, filed on March 23, 2007, at 7.

<sup>4</sup>In particular, the commission adopted, with certain modifications, the sections of the Stipulated Framework pertaining to penalties, but declined to adopt the sections of the Stipulated Framework pertaining to incentives and the HECO Companies' proposed Renewable Energy Infrastructure Program ("REI Program"). Instead, the commission opened a separate docket, Docket No. 2007-0416, to consider the REI Program.

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?<sup>5</sup>

On March 17, 2008, the HECO Companies, KIUC, and the Consumer Advocate filed Supplemental Briefs on the foregoing issues. On March 27, 2008, LOL filed a Reply Supplemental Brief, and on April 1, 2008, the HECO Companies filed a Reply Brief.

## II.

### Discussion

Act 162, Session Laws of Hawaii 2006 amended the RPS Law to authorize the commission to issue penalties against electric utility companies who fail to comply with the RPS. Specifically, Act 162 added the following sections pertaining to penalties, which are codified as HRS §§ 269-92(c) and (d):

(c) If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard, after a hearing in accordance with chapter 91, the utility shall be subject to penalties to be established by the public utilities commission; provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards due to reasons beyond the reasonable control of an electric utility, as set forth in subsection (d), the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties.

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<sup>5</sup>Decision and Order No. 23912, filed on December 20, 2007, at 23.

(d) Events or circumstances that are outside of an electric utility company's reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:

- (1) Weather-related damage;
- (2) Natural disasters;
- (3) Mechanical or resource failure;
- (4) Failure of renewable electrical energy producers to meet contractual obligations to the electric utility company;
- (5) Labor strikes or lockouts;
- (6) Actions of governmental authorities that adversely affect the generation, transmission, or distribution of renewable electrical energy under contract to an electric utility company;
- (7) Inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;
- (8) Inability to obtain permits or land use approvals for renewable electrical energy projects;
- (9) Inability to acquire sufficient cost-effective renewable electrical energy;
- (10) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; and
- (11) Other events and circumstances of a similar nature.

HRS §§ 269-92(c), (d) (emphasis added).

The commission finds that a penalty, in a specific dollar per MWh amount, which the commission may assess against a non-compliant utility, will provide clarity and transparency to the RPS Framework. Based on the authority cited above, and upon review of the entire record, the commission finds it appropriate to approve a penalty of \$20/MWh that the commission may assess against an electric utility that falls short of the RPS. Thus, if a utility fails to meet the RPS and, after a hearing, the commission decides that penalties are warranted, a penalty of \$20 for every MWh that the utility is deficient of an applicable RPS, will be imposed unless the commission decides to assess a lesser penalty than \$20/MWh depending on the particular facts of the case and consideration of the factors outlined above in HRS § 269-92(d) and in the RPS Framework, Section III.C.5. In particular, if KIUC fails to meet the RPS, in considering the amount of penalty to assess against KIUC, if any, the commission will consider the fact that KIUC is a not-for-profit member-owned cooperative. See RPS Framework, Section III.C.5.j.

For the HECO Companies, unless otherwise directed, penalties shall be paid into the account established under HRS §§ 269-121 to 269-124 for the collection of public benefits fees that will be operated and managed by a third-party administrator. Moneys in this account "shall be used to support energy-efficiency and demand-side management programs and services, subject to the review and approval of the public utilities commission. These moneys shall not be available to

meet any current or past general obligations of the State." HRS § 269-121(b). Because the programs associated with the public benefits account are not available to KIUC customers,<sup>6</sup> KIUC shall pay any penalties assessed by the commission into the commission's special fund, unless otherwise directed.

Furthermore, the HECO Companies shall be prohibited from recovering any penalty costs through rates; rather, such costs shall be borne by the HECO Companies' shareholders. However, given KIUC's structure as a not-for-profit member-owned cooperative without shareholders, KIUC may recover any penalty costs from its members or ratepayers.

Given the commission's rulings, above, relating to RPS penalties, it is necessary to amend the RPS Framework. The commission hereby adopts the amended RPS Framework, attached hereto as Exhibit A, which reflects the commission's rulings on penalties in this Order. The amended RPS Framework attached as Exhibit A shall supersede the RPS Framework approved by the commission in Decision and Order No. 23912, filed on December 20, 2007.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. A penalty of \$20 for every MWh that an electric utility is deficient under an applicable RPS, is approved, for the commission to assess if an electric utility fails to meet

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<sup>6</sup>See Decision and Order No. 23258, filed on February 13, 2007, in Docket No. 05-0069 (Energy Efficiency).



the RPS. This penalty, however, may be reduced, in the commission's discretion, based on the factors listed in HRS § 269-92(d) and in the RPS Framework, Section III.C.5.

2. Any RPS penalties assessed against the HECO Companies for failure to meet the RPS shall go into the account established under HRS §§ 269-121 to 269-124 for the collection of public benefits fees, unless otherwise directed.

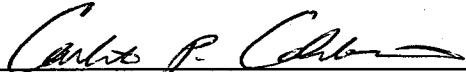
3. Any RPS penalties assessed against KIUC for failure to meet the RPS shall be paid into the commission's special fund, unless otherwise directed.

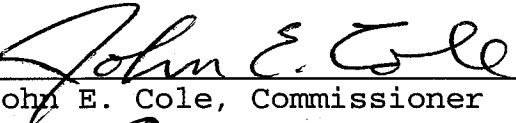
4. The HECO Companies shall be prohibited from recovering any RPS penalty costs through rates, but KIUC may recover any penalty costs from its members or ratepayers.


5. The amended RPS Framework, attached hereto as Exhibit A, which reflects the commission's rulings on penalties in this Order, is adopted and shall govern electric utilities' compliance with the RPS. The amended RPS Framework shall supersede the RPS Framework approved by the commission in Decision and Order No. 23912, filed on December 20, 2007.

DONE at Honolulu, Hawaii DEC 19 2008.


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 19, 2008**

**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**

**EXHIBIT A**

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**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION**

**FRAMEWORK FOR RENEWABLE PORTFOLIO STANDARDS  
December 19, 2008**

**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 31<sup>st</sup> 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.

"KIUC" means Kauai Island Utility Cooperative.

"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 30<sup>th</sup> 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 (set forth in No. 7., below); 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.
7. If an electric utility fails to meet the RPS and, after a hearing, the commission decides that penalties are warranted, the commission may consider a penalty of \$20/MWh that the utility is deficient of an applicable RPS. The commission may decide to assess a lesser penalty than \$20/MWh depending on the particular facts of the case and consideration of the factors outlined above in HRS § 269-92(d) and in Section III.C.5 of this Framework. In particular, if KIUC fails to meet the RPS, in considering the amount of penalty to assess against KIUC, if any, the commission will consider the fact that KIUC is a not-for-profit member-owned cooperative (see Section III.C.5.j., above).
8. Any penalties assessed against the HECO Companies for failure to meet the RPS shall be paid into the account established under HRS §§ 269-121 to 269-124 for the collection of public benefits fees that will be operated and managed by a third-party administrator. Pursuant to Decision and

Order No. 23258, filed on February 13, 2007, in Docket No. 05-0069, the programs associated with the public benefits account are not applicable to KIUC. KIUC shall accordingly pay any penalties assessed by the commission into the commission's special fund, unless otherwise directed.

9. The HECO Companies shall be prohibited from recovering any penalty costs through rates; rather, such costs shall be borne by the HECO Companies' shareholders. However, given KIUC's structure as a not-for-profit member-owned cooperative without shareholders, KIUC may recover any penalty costs from its members or ratepayers.



CERTIFICATE OF SERVICE

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

CATHERINE P. AWAKUNI  
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