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LETTER OF TRANSMITTAL

March 7, 2005

TO: Public Utilities Commission
465 S. King Street, Rm 103
Honolulu HI 96813

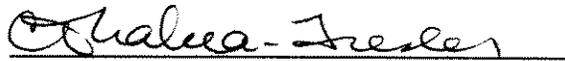
RE: Docket No. 03-0371, In the Matter of Public Utilities Commission
Instituting a Proceeding to Investigate Distributed Generation in Hawai'i

We are enclosing the following:

Original + 12 – County of Kaua'i's Post-Hearing Opening Brief and
Certificate of Service

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Enclosures
c: Parties

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of) Docket No. 03-0371
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to Investigate)
Distributed Generation in Hawai'i.)
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COUNTY OF KAUA'I'S POST-HEARING OPENING BRIEF

COMES NOW, THE COUNTY OF KAUA'I, by and through its attorneys,
and hereby submits its post-hearing opening brief.

Dated: Līhu'e, Kaua'i, Hawai'i, March 7, 2005.


LANI D. H. NAKAZAWA
CHRISTIANE L. NAKEA-TRESLER
Attorneys for the County of Kaua'i

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	Docket No. 03-0371
)	
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Instituting a Proceeding to Investigate)	
Distributed Generation in Hawai'i.)	
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I. BACKGROUND

This docket was opened by Order No. 20582, filed on October 21, 2003, to examine the potential benefits and impacts of distributed generation on Hawai'i's electric distribution systems and markets. By Order No. 20832, filed on this docket on March 3, 2004, the Commission identified the issues to be addressed in the docket as including, without limitation:

- (1) interconnection matters;
- (2) determining who should own and operate distributed generation projects;
- (3) identifying what impacts, if any, distributed generation will have on Hawai'i's electric distribution systems and market;
- (4) defining the role of regulated utility distribution companies and the commission in the deployment of distributed generation in Hawai'i;
- (5) identifying the rate design and cost allocation issues associated with the deployment of distributed generation facilities; and
- (6) developing the necessary revisions to the integrated resource planning process, if necessary.

Order No. 20832 also granted participant status to the County of Kaua'i (County). The County's interest in this docket is as a large customer of the Kaua'i Island Utility Cooperative (KIUC), as a member of the KIUC, and as the county where KIUC members reside or transact business.

The County submits this post-hearing opening brief as required by Prehearing Order No. 20922, filed on April 23, 2004.

II. APPLICABLE LAW

The Commission has broad powers under Hawai'i Revised Statutes (HRS) §§269-6 and -7 to inquire into the utilities' DG policies and to use its general supervisory powers to prescribe measures to govern such matters as utility provision of DG and utility DG interconnection practices.

HRS §269-16 (a) requires the utilities to maintain rates, fares, charges, classifications, schedules, rules, and practices which are just and reasonable.

III. POSITION OF THE COUNTY

In this docket, the County sought to promote the following concepts: (1) distributed generation (DG) policies and programs developed in this docket must be of value to KIUC and its members, and should not be unduly burdensome or costly to the members, (2) the outcome of this docket should assist and not impede the recovery of Kaua'i's electrical system from extensive damage, such as from hurricanes and (3) the docket should result in measures that enhance development opportunities on Kaua'i and promote alternative energy, while respecting county zoning requirements and community lifestyles. (Direct Testimony of Glenn Sato (COK-T-1) at page 1).

To implement these concepts, the County suggested the Commission:

- (1) continue regulatory guidance and oversight of KIUC;
- (2) mandate development of KIUC DG policies;
- (3) mandate that KIUC formulate concrete criteria for developing and evaluating DG on a uniform (as opposed to case-by-case) basis;
- (4) mandate planning processes which include consideration of the effect of proposed KIUC capital investments or strategies on the members;
- (5) mandate that KIUC to develop a DG policy that promotes a level playing field for all DG vendors; and
- (6) mandate development of systems for member input which incorporate the spirit, if not the requirements of the sunshine law (HRS chapter 92) and the state freedom of information act (HRS chapter 92F) (COK-T-1 at page 2, line 13 to page 3, line 3).

In this brief, the County wishes to emphasize the areas of greatest concern.

A. Importance of a regulatory framework

The County seeks a regulatory framework which sets forth the requirements for utility participation in DG as an outcome of this docket. The County believes that KIUC's status as a cooperative does not negate the need for a regulatory framework to govern KIUC's actions relative to DG. A regulatory framework is essential to ensure that consumers on Kaua'i realize benefits from DG. Regulatory guidance and oversight will level the playing field and ensure that all utilities and their affiliates do not hold competitive advantages or engage in cross-subsidizations. Regulatory requirements

are also essential making certain that the State's policies to promote energy self-sufficiency and non-fossil fuel generation are advanced.

KIUC's organization as a cooperative does not shield it from the effects of DG.

As KIUC's witness, Joseph Freedman, testified:

"[I]f DG is built by KIUC's customers on Kaua'i, this customer owned and interconnected DG will likely have a significant impact on operations and system stability due to lightly loaded feeders. KIUC will have difficulty absorbing the impact of these lost revenues. KIUC's members and customers will as a result individually experience greater costs to absorb these lost revenues, either through increased rates, or, for members, through a decrease in patronage capital refunds/credits." (KIUC-T-2 at page 2, lines 8-15).

Moreover, another KIUC witness, Alton Miyamoto, testified that DG impacts on KIUC may be greater than on investor-owned utilities.

"For example, if one of KIUC's members were to install a distributed generator, KIUC's sales and revenues will correspondingly reduce. Because KIUC as a cooperative is owned by its members (comprising basically all of KIUC's customers), this will cause a greater impact to the entire community than if KIUC were an investor-owned utility. Some of the impacts that may result are a slower build-up of equity, reduced margins, and ultimately a reduction in patronage capital retirements to the members." (KIUC-T-1 at page 12, lines 5-12).

KIUC's vulnerability to DG increases because it maintains rates which are among the highest in the nation. The higher rate levels are part of a strategy pursued by KIUC that focuses on an equity management plan (EMP) driven by consideration of KIUC's outstanding loan obligations. (See, KIUC-T-1 at pages 3, line 11 to page 10, line 3). KIUC claims that the process includes consideration of DG, however, KIUC does not specify how DG was factored into the EMP. Further, decisions regarding DG practices and programs will be made by the KIUC's board of directors using the EMP as guidance.

"The Board, with input from its members and with the guidance of the EMP, will decide on how best it believes distributed generation should be implemented or initiated." (KIUC-T-1 at page 12, lines 7-14).

The adverse effects of DG will not be adequately addressed if DG policies are solely guided by the EMP. If the EMP alone is used as guidance, there is a significant risk that pursuit of the EMP results in rates that may hasten customer consideration of self generation options. (COK-T-1 at page 3, lines 5-8). Regulatory direction by the commission would ensure that the KIUC board establishes concrete criteria for developing and evaluating DG policies and business strategies that benefit Kaua'i consumers.

As the County's witness testified:

"Without the moderation that competition, shareholder expectations, or institutional checks and balances provide, a regulatory framework is necessary to ensure that KIUC business decisions concerning important issues such as DG are consistent with the will of the majority of the member-owners." (COK-T-1 at page 4, lines 3-6).

Good decisions regarding DG are important not only because they enable KIUC's members/ratepayers to realize benefits from DG. In its testimony, the County pointed out that sound utility planning decisions which proactively include consideration of DG are also necessary to mitigate stranded investments and revenue losses due to DG. (COK-T-1 at page 4, lines 14-24). The County urges the Commission to require KIUC's planning process to proactively include DG considerations in order to protect present and future members/ratepayers.

B. Importance of county wheeling

The County agrees with the County of Maui that county wheeling allows counties to protect their taxpayers and the environment by facilitating county investments in

renewable and energy efficient DG systems. (COM-T-1 at page 13, lines 10-15). The County's ability to wheel power through renewable resources at its disposal (methane, solid waste, solar, wind) can significantly reduce energy costs to the county, thereby benefiting residents and businesses on the island of Kaua'i.

IV. RESPONSES TO COMMISSION QUESTIONS

By a letter dated December 28, 2004, the Commission requested responses to the following questions.

1. Whether the costs and benefits of distributed generation change in times of excess capacity vs. times of shortages of capacity; if the answer is yes, then given that for the life of any long-term asset there are likely to be periods of excess capacity and shortages, please comment on the time span over which one should measure the costs and benefits of distributed generation.

Response: The County agrees that the costs and benefits of distributed generation may change; however the reasons for the changes in costs and benefits may be unrelated to capacity, for example, the cost of fuel. For this reason, we advocate that the decisionmaking analysis used by a utility in formulating its DG policy (including its decision to enter the distributed generation market as a regulated utility) should be the same as used for entry into any new regulated market. The County urges the commission to impose the regulatory requirements of HRS chapter 269 on all aspects of utility DG activity, and if regulatory exemptions or other relief are deemed appropriate, to use the criteria similar to that set forth in HRS §269-16.9 in guiding whether exemptions are appropriate.

2. How should non-utility owned distributed generation be incorporated into the IRP process, in a manner comparable to the treatment of utility-owned distributed generation, so that there is no market or regulatory advantage of one type over another?

Response: The IRP process, in essence, is commission intervention into the utility planning process. The commission should consider requiring utilities to incorporate the effects of DG provided by both utility and non-utility vendors into their planning processes, including the IRP planning process, to ensure that the result promotes state energy policies, the development, maintenance, and operation of effective and economically efficient electric service and the furnishing of electric services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the electric industry. In creating a result which meets these goals, all DG should be evaluated similarly, regardless of ownership. The County notes with concern that KIUC's Proposed Revised Integrated Resource Plan and Demand Side Management Framework, filed on December 23, 2004, in Docket No. 02-0060, proposes to replace the Commission's statewide IRP framework and IRP oversight with a process defined and reviewed by the KIUC board of directors. The County reiterates that KIUC should be subject to an IRP process defined and reviewed by the Commission.

3. Whether transmission and distribution costs will be substantially reduced for CHP or other distributed generation projects set up for peak shaving only.

Response: The County believes that the benefits of DG are not confined to projects set up for peak shaving only, and agrees with the position of Maui County that

the one effect of DG on Hawaii's electric transmission and distribution systems and market will be to reduce costs and improve reliability if reasonable interconnection rules and reasonable standby rates are offered. (Testimony of Kal Kobayashi (COM-T-1) at page 19).

4. Whether potential loss of revenues to investor owned utilities, due to advancements in technology and the development of new markets is a risk for which the utility has been and is compensated through its approved rate of return; and which forms of distributed generation, if any, would fall into the category of advancement risks for which the utility already receives compensation.

Response: The County has no comments regarding this issue, because its interest is in KIUC, which is not an investor owned utility. However, the County notes that since KIUC's rates are maintained at the same levels as when it was an investor-owned utility, any potential loss of revenues to KIUC due to advancements in technology or development of new markets, whether related to DG or not, are risks for which KIUC was and is being compensated through current rates.

5. Whether the utility would have stranded costs in periods of load growth.

Response: A utility may potentially experience stranded costs in periods of positive and negative load growth if its planning process is not accurate. As there is no such thing as a perfect planning process (because the unexpected cannot be predicted), the County urges the Commission to incorporate incentives to good utility planning and disincentives to poor planning into its DG regulatory scheme, so ratepayers are not required to bear the burden of DG-related stranded costs caused by

a flawed utility planning process. The application of these incentives can be determined in rate case or complaint proceedings.

6. Is it reasonable to expect identification of individual projects or project zones in the IRP process? What specific modifications to the IRP process should the Commission consider to facilitate such identification?

Response: The County does not have a sufficient understanding of identification of individual projects or project zones to enable it to respond to this question. However, as stated in response to question 2, the County believes that DG deployment should be considered in the IRP process and in the utility's normal planning process. DG technology is real, reliable, and cost-effective and must be considered in utility planning as a technology that offers utility benefits as well as a potential source of revenue loss.

7. Under each of the two scenarios for participation in distributed generation - utility participation and utility affiliate participation- what rules and restrictions are necessary to assure that the competition between non-utility projects and utility-owned (or affiliate-owned) projects is evenhanded, meaning that the utility or utility affiliate has no unearned competitive advantage?

Response: As stated in the County's testimony, the utility has a tremendous competitive advantage in the DG market because it possesses vast amounts of historical customer and network information. The utility also has the ability to cross-subsidize its DG operations and encourage or discourage DG through its business practices, including interconnection standards, standby charges, and customer retention contracts or penalties. (COK-T-1 at page 5, lines 6-15). In order to create a level playing field in the DG market, the Commission may consider implementing rules and

restrictions governing access to customer and network information so that any subdivision or affiliate of a utility is provided no more information than its non-utility related competitor. Utility rates should be revised to remove implicit subsidies, strong rules to prevent cross-subsidization should be adopted, and utilities should be required to provide unaffiliated entities interconnection terms equal to the terms provided to its related entities. It is the also the County's position that utilities and non-utilities should abide by the same rules, that is, utilities and their affiliates should be required to pay standby charges.

Dated: Līhu'e, Kaua'i, Hawai'i, March 7, 2005.



LANI D. H. NAKAZAWA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Post Hearing Brief of the County of Kaua'i, together with this Certificate of Service, were served by first class mail, postage prepaid to the following:

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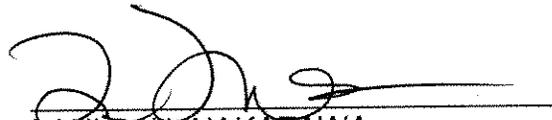
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