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PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

---- In the Matter of ----	)	
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PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 03-0371
	)	
Instituting a Proceeding to Investigate Distributed Generation in Hawaii	)	
	)	
	)	

POST HEARING REPLY BRIEF

OF THE

HAWAII RENEWABLE ENERGY ALLIANCE

AND

CERTIFICATE OF SERVICE

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3 **I. INTRODUCTION AND SUMMARY**

4 The Hawaii Renewable Energy Alliance hereby submits its Post-Hearing Reply Brief, dated
5 March 28, 2005, to the Public Utilities Commission (PUC), in accordance with the PUC's Prehearing
6 Order Number 20922 (Reference Docket No. 03-0371).

7 HREA observes and does not object that a number of Parties have provided new
8 information or arguments in their Opening Brief. In fact, we welcome any and all efforts to
9 clarify the Parties' positions. HREA's position remains the same as our re-stated Statement of
10 Position in our Opening Brief. HREA continues to believe that the utility's role is indeed the
11 threshold issue in this docket. We discuss further in Section II our rationale and the evidence
12 from this docket that support our recommendations that the utility not be allowed to participate
13 directly in DG market on the customer-side-of-the-meter.

14 HREA recommends that the PUC deny HECO's request to participate directly in the DG
15 market on the customer-side-of-the-meter. HREA can support utility involvement in the DG
16 market on the "utility-side-of-the-meter," provided that it is limited to DG installations at utility
17 sub-stations as proposed by HECO and that HECO procures DG equipment and services
18 competitively. HREA notes that a number of Parties have looked beyond the fact that HECO's
19 proposed CHP tariff program is inappropriate, unprecedented and unwarranted. We provide in
20 Section III overall comments regarding the sagacity of the primary arguments for utility direct
21 involvement, and in Section IV our detailed comments in reply to the parties' opening briefs.

SECTION II. CASE FOR UTILITY FACILITATION, NOT DIRECT PARTICIPATION MARKET

Overall, HREA believes that HECO and other Parties have NOT provided persuasive arguments to refute our arguments against the utility's direct participation in the DG market. These arguments are re-stated here from the introduction to our Opening Brief:

"(1)utility[1] direct participation in the DG market is inappropriate, unprecedented and will heavily tilt the field in their favor,

(2) in contrast, utility facilitation will result in a greater number of DG systems installed in a given period of time, and

(3) potential rate impacts on non-DG customers will be mitigated, especially times of capacity shortfalls, as DG systems installed will offset new load requirements."

Specifically, no Parties have challenged the legal precedents against direct participation by a public utility in DG and other energy service projects on the customer-side-of-the meter. The legal precedents distinguish the public utility's role, which is to provide electricity and energy services to all the customers on its system, with that of the private utility, which is to provide electricity, thermal power and other energy services to a limited and identifiable number of customers. These services involve energy projects on the customer-side-of-the meter, which are designed and implemented to off-set a portion up to the entire customer load. We have argued further that these customer applications are Demand-Side Management (DSM) measures and include the following:

(1) energy-efficiency (reduce the amount of electricity required to perform a certain function, such as higher-efficiency appliances and compact fluorescent lighting),

(2) energy conservation (off-set the need for electricity, such as solar hot water systems), or

(3) generate electricity or thermal power (serve customer load, such as photovoltaics, wind and CHP).

Note: this "line-in-the-sand" that we are drawing is very important. Not only does it represent a primary turf issue, i.e., no direct participation by the utility on the customer-side-of-the-line, but is also encourages a new way of planning for DSM measures, i.e., all desired DSM measures, including CHP, are identified in IRP (resulting in modifications to the utility's load forecast) and encouraged, as appropriate, in utility DSM programs and through other incentives. Supply-side measures, including DG, are then evaluated and implemented to meet the remaining customer load.

In addition to our persuasive legal arguments, HREA suggests that there are quite a few practical reasons why the utility should facilitate rather than compete. Here are HREA's top ten reasons:

(1) the public utility should focus on its primary task –retail sales of their own generation and purchases of wholesale power to serve **all** customers on its system. Utility direct participation in customer-sited CHP that does not feed the grid will be an unnecessary distraction from its primary task;

(2) the public utility can still choose to compete by setting up an independent, unregulated affiliate;

(3) utility facilitation will allow the utility to extend its reach far beyond its own capabilities, e.g., its work force will be expanded dramatically as it facilitates its customers and 3rd parties to design and implement DG, and especially CHP;

(4) 3rd parties will rush to the market when they know that they will not have to compete with the utility;

(5) appropriately incentivized, the utility will excel in its facilitative role;

[1] Subject to further discussion, HREA believes that the Kauai Island Utility Cooperative should be treated separately, certainly in the short-term, given that they have excess capacity on their system.

(6) in the case of CHP, the cost and time from project conception to construction and operation will be reduced, as the utility applications will not have to be approved;

(7) 3rd parties can provide the same services as proposed by HECO;

(8) concerns about quality, safety and reliability of non-utility DG can be addressed in interconnection and power purchase agreements (both of which still need further review and comment, especially from industry);

(9) time and effort required by the PUC and the CA to review and approve utility CHP agreements, and to monitor the DG market to ensure that there is a level playing field will be avoided; and

(10) nonparticipating ratepayers will benefit by not having to pay for utility CHP investments. Especially in times of load growth, such as HECO is now experiencing, there should be no concern about the potential impacts of loss revenues to the utility.

SECTION III. OVERALL COMMENTS IN REPLY TO THE PARTIES' OPENING BRIEFS

Various arguments for utility direct involvement have been proffered to justify allowing utility direct participation in spite of precedents to the otherwise. Overall, they generally fall into the following areas.

Indications of Customer Preference. HECO mentioned several (many) times that their customer surveys indicated that existing customers wanted HECO to provide CHP services. HREA would like to observe that the HECO-conducted surveys, and more importantly the interested customers, were not made available to other Parties for review, comment and cross-examination. Similarly, HREA indicated in the hearing that we failed in our attempts to bring in witnesses from independent energy service providers (ESPs), who might have been able to shed some light on the issue of customer preference with respect to CHP. Those approached indicated that they would not testify unless subpoenaed. Consequently, given these two series of events, HREA does not believe that the PUC should give much weight to HECO's arguments about customer preference. However, if HECO's evidence is given weight, HREA recommends that the PUC consider conducting an independent survey of potential CHP customers and CHP ESPs.

Weakness of perceived 3rd party offerings. HECO mentioned many (many) times reasons why utility CHP systems would be better, safer, more reliable, etc. than 3rd Party offerings. These arguments really fly in the face of reality. First, it was 3rd Parties that brought CHP technology to Hawaii. These ESPs worked hard to overcome the early barriers erected by the utility to market entry. But for these ESPs there would be no HECO Rule 14H process for interconnections that do not result power transmitted to the grid. These ESPs designed and implemented viable CHP projects in the islands. Sure, these initial systems had some problems, but in the final assessment, the utility has provided no evidence suggesting that non-utility CHPs that meet Rule 14H will harm our island grids.

1 Second, HECO initially sought to team with Hess, in large part, because of their success
2 in Hawaii and other jurisdictions. Subsequently, HECO has sought assistance from additional
3 CHP ESPs, bringing them under contract to itself so as to eliminate or control the competition.
4 So, if HECO is going to rely on the expertise of CHP ESPs, how can they say that 3rd Party
5 offerings would be inferior? We think not. We believe that 3rd Party systems are just as capable
6 of meeting safety, reliability and operational requirements as HECO claims for their system.
7 Furthermore, if the utility is seeking certain benefits, such as voltage support, load relief, or
8 locational remedies for distribution congestion, from a particular non-utility CHP facility, then
9 those benefits could be specified as part of the interconnection agreement.
10 Should these benefits go beyond the benefits strictly provided to the CHP customer,
11 then the utility should pay for those benefits. For example, if the utility wants the CHP facility to
12 be on-line at certain times of the day to provide effective capacity to grid (e.g., supplying site
13 load, so that the utility doesn't have to), then we believe the non-utility CHP facility should be
14 offered a capacity credit. Such payments play no part in HECO's proposed Schedule CHP.
15 Overall benefits to all ratepayers. HECO argued that their proposed CHP tariff would
16 result in overall system and economic benefits to all ratepayers. In HREA-RT-1 testimony, we
17 provided an analysis that raises questions about whether HECO's claims are in fact true.
18 During cross-examination in the hearing and subsequently, HECO has note refuted HREA's
19 analysis, nor updated its own, admittedly flawed, Exhibit H analysis. Moreover, HECO's claimed
20 benefits, which we believe were overstated, were modest (about $113K/year)[2]. We believe, as
21 does the COM, that "HECO did not consider the costs of accomplishing the objectives of their
22 proposed CHP program with non-utility owned DG DSM program alternatives"[3]. Consequently,
23 before giving weight to HECO's argument ratepayers, HREA recommends that the PUC
24 consider conducting an independent study of the total costs and benefits of utility vs. non-utility
25 CHP alternatives.

[2] HREA RT-1 testimony, page 18, line 8.

SECTION IV. DETAILED COMMENTS IN REPLY TO THE PARTIES' OPENING BRIEFS

HREA offers the following comments in reply to the following Opening Briefs:

A. Consumer Advocate

HREA believes that the CA Opening Brief presents an overall surprisingly narrow view of how to create and implement a competitive market for DG in Hawaii. This view appears to be rooted in continuation of a "business-as-usual" approach to the delivery of electricity and related-energy services. As evidence to support its approach, the CA appears to be unwilling to recognize or acknowledge that utility generation is generally, if not always, more expensive than non-utility generation and, consequently, there can be benefits to opening Hawaii's market to more competition. Specifically, the CA does not acknowledge that:

(1) Utility rates seem to always go up when the utility designs, constructs and operates new generation;

(2) HECO's proposed CHP Tariff program seeks to treat CHP facilities as new generation, and, thus, there will be similar pressure on utility rates due to the utility's investments in and operation of CHP;

(3) There are risks to the nonparticipating ratepayer for utility investment in CHP. For example, if the capacity is needed (as in the current period), the utility installation of CHP may provide firm capacity. If not, then the utility (after having rate-based the CHP), would be forced to install additional capacity, and the nonparticipating ratepayers would have to pay twice; and

(4) HECO's proposal could result in uneconomic commercial customer CHPs. Currently, commercial (such as hotels and resorts) class rates are higher, in part, because of their subsidy of residential and other customers. Consequently, HREA wonders why the CA does not propose correction of the subsidies. A revenue-neutral unbundling would merely expose the

[3] County of Maui Opening Brief, page 6, Section D.1.

interclass cross subsidies, permit intraclass subsidies to continue in effect, and would not assist in designing cost-based base rates or standby rates that would assist customers in making the choice whether to install nonutility CHP or continue taking electric service from the utility.

HREA does agree with the CA on one important point. **If** the utility is going to be allowed to enter the new market of customer-side-of-the-meter DG, it should not be allowed to do so on a programmatic basis. Instead, the should have to file an application with the Commission for each such project and provide notice to affected parties, such as competitor equipment and fuel suppliers, alternative energy suppliers, the CA , the Counties, property owners abutting areas where DG/CHP units are proposed to be installed, and others. These parties should be notified of the procedures to air their concerns about discounting or credits, emissions, the failure to identify the project in IRP or open it up for competitive bidding, the failure to adequately weigh externalities, etc. to the Commission, so the Commission will have all relevant information before deciding if the utility can proceed with any particular project.

Finally, the CA does nothing to refute the legal precedents that HREA has raised regarding utility ownership of CHP or HREA's proposed structured competition model for creating and implementing the DG market in Hawaii.

B. County of Kauai

HREA has one comment in reply to the County of Kauai's Opening Brief as follows.

Page 4 (bottom paragraph). Perhaps this is a new point, or perhaps we missed it before: if the ratepayers are locked into higher rates due to the equity management plan strategy being pursued by KIUC, then it appears that any installation of DG could be problematic at this time, as new capacity is not needed. However, HREA can think of at least one exception: a windfarm IPP that reduces fossil fuel costs and particularly one with a contract that sells electricity to KIUC at a levelized price below today's avoided cost. Specifically, the windfarm would provide the benefit of mitigating a portion of the energy cost adjustment clause.

C. County of Maui

HREA would like to note that the County of Maui (COM) has drawn the same conclusion as HREA with respect to the overall market structure, i.e., that primary role of the public utility should be to facilitate the DG market. The COM also has indicated support for HREA's proposed Structured Competition Model. We also have comments in reply to the County of Kauai's Opening Brief as follows.

Page 24 (Reasonable Standby Rates). In general, HREA supports the COM proposal for reasonable standby rates, which would include a "small portion of the fixed costs of standby resources in a fixed charge collected every month, and the majority of the fixed costs in a daily demand charge to be recovered when the standby service is being used. Variable costs would be recovered in a time-of-use energy charge."

Other COM Proposals. HREA supports the PUC's consideration of the COM's proposed Virtual Power Plant concept, county wheeling of power, and impact fees, either as part of this docket or any follow-on dockets.

1 **D. Hawaiian Electric Company**

2 HREA has comments in reply to the Hawaiian Electric Company's (HECO's) Opening
3 Brief by page number as follows.

4 Page 20 (Performance Standards). In footnote 15, HECO states that "the party that
5 has not often suggested that the utilities can control the operation and maintenance of non-
6 utility CHP systems has been HREA – which has opposed the inclusion of certain performance
7 standards in IPP power purchase contracts." HREA thanks HECO for raising this important
8 issue. First, HREA would like to state for the record: we do support utility control of the
9 operation and maintenance of non-utility CHP systems, if such control is appropriately
10 described and included in an interconnection and/or power purchase agreement and is agreed
11 to by the DG customer or 3rd Party.

12 Second, we assume HECO's reference to our opposition to "certain performance
13 standards in IPP power purchase contracts" is, for example, to the case of Apollo Energy
14 Corporation and their petition to the PUC regarding performance standards required by HELCO
15 as part of a new PPA for Apollo's South Point windfarm. In that case, HREA argued that the
16 imposed standards were arbitrary and unnecessary, and represented a substantial risk of
17 curtailment of Apollo's proposed new windfarm.

18 We would agree that performance standards are related to operation of the windfarm,
19 and could be compared roughly to HECO's desire to control non-utility CHP. But that is about
20 as far as the comparison goes. Control of CHP is proposed to benefit the system by optimizing
21 the output of the CHPs, whereas the imposition of performance standards appeared to do
22 exactly the opposite. HREA agreed in Apollo's case that the integrity of the grid must be
23 maintained, but argued that performance standards being imposed then and now with respect
24 to utility control of CHP or other DG, must be by agreement after sufficient discussion, review
25 and approval by the PUC, and not be subject to arbitrary actions on the part of the utility.

26

Finally, HREA also would like to note that the PUC directed the parties to continue to negotiate performance standards. After some years, that is exactly what happened under the review of the PUC.

Pages 49, 50, 59 and 60 (DG and DSM Definitions). HREA agrees with the County of Maui[4], that HECO's definition of utility-owned DG as supply-side resources is a "contrived definition and should be rejected by the Commission." After further consideration, HREA believes that perhaps this issue could be clarified by revising the definitions of demand-side management and supply-side programs in "A Framework for Integrated Resource Planning" from PUC Decision and Order No. 11630, May 22, 1992 (Docket No. 6617). We recommend the definitions be revised to read as follows (proposed revisions are in ***italics***):

> "Demand-side management programs" means programs designed to influence utility customer uses of energy to produce desired changes in demand. It includes conservation, load management, efficiency resource programs ***and DG on the customer-side-of-the-meter***.
>
> "Supply-side programs" means programs designed to supply power *on the* ***utility-side-of-the-meter***. It includes renewable energy.

Pages 59 and 60 (DG as a DSM). As argued in the hearing by Mr. Bollmeier, all alternatives employed by a customer to reduce his demand are, as the definition above states: "uses of energy to produce desired changes in demand." These include all measures in the proposed revision of the DSM program definition above, and as discussed further in Section II. Consequently, PV and CHP on the customer-side-of-the-meter are DSM measures, and the utility should identify and evaluation them as such in IRP (see also our discussion of how to improve IRP in our Opening Brief).

[4] County of Maui Opening Brief, page 13.

1 Pages 84 and 108-111 (What are supply-side resources?) HREA has argued that
2 supply-side resources should be those to supply power on the utility-side-of-the-meter, while
3 HECO has argued that a CHP on the customer-side-of-the-meter is a supply-side resource. In
4 the referenced pages, HECO discusses the overall interconnection requirements and
5 specifically indicates that CHP should not island, i.e., continue to operate in the case of a utility
6 fault condition. Why is this important?

7 HECO claims CHP on customer-side-of-the-meter is a supply-side resource, hence like
8 a conventional generator, only smaller. The utility's conventional generators are designed to run
9 continuously, and will stay connected to the grid if there is a fault (Note: if conventional
10 generators were to disconnect during a fault condition, there is a serious probability that the
11 entire grid could go down).

12 However, HECO wants CHP on customer-side-of-the-meter to disconnect and not
13 island, and thus CHP doesn't look the same as a supply-side resource. Let's look at two more
14 examples. HECO has and continues to require DG, such as PV and wind turbines on the
15 customer-side-of-the-meter, to disconnect during faults to prevent islanding. On the other
16 hand, HECO now requires windfarms, which are on the utility-side-of-the-meter to "ride through
17 faults" just like the utility's convention steam turbines, diesel electric generators and combustion
18 turbines and combined cycle units.

19 Ergo, CHP on the customer-side-of-the-meter is a demand-side resource.

20 Page 119 (DG Deployment). HECO states that, as the deployment of distributed
21 generation proceeds, interclass and intraclass cross-subsidization becomes untenable. HREA
22 agrees with this statement, and believes that the move to cost-based rates becomes critical to
23 avoid "uneconomic DG/CHP," as well as to avoid "uneconomic bypass." The alignment of rates
24 with costs should take the highest priority, whether or not the utilities are allowed to engage in
25 the new business of customer-sited DG, in order to send correct price signals to all Hawaii's
26 consumers.

1 Page 122 (Rate Unbundling). HECO argues that there is no need to deliver or wheel
2 power across the utility's system from one entity to another, so unbundling transmission and
3 distribution from generation and ancillary services is not necessary. Yet, if one county's facility
4 or one location owned by a hotel chain has the necessary load profile, space, and other
5 conditions to install self-generation that exceeds its needs at the site, then we believe it should
6 have the opportunity to wheel any excess power across the utility's lines for consumption at
7 another location, rather than purchasing the power at the other locations entirely from the utility.
8 Unbundled rates are the first step needed to allow such wheeling to occur.

9 Pages 128 - 130 (HELCO's Standby Rate), HREA notes that HELCO has offered to
10 eliminate its standby rate if it is allowed to implement CHP service, because it applies that rate
11 only to CHP service by others.[5] To further level the playing field if the HECO Companies are
12 allowed to enter the business of customer-sited DG, the HECO Companies should be
13 prohibited from combined-billing customer-sited DG with supplemental grid service for purposes
14 of charging the customers a lower rate block charge. In addition, the HECO Companies should
15 clarify that nonparticipating customers would bear none of the costs of discounting, including
16 the discount "floor" based on 85% availability of the customer-sited units.

17 Pages 136 - 138 (No Changes are Needed to HECO's Current Interpretation and
18 Implementation of Its IRPs). HECO states at several places in its brief that it intends to offer
19 customer-sited CHP, subject to Commission approval, in any situation where it is cost-effective
20 to do so, as long as offering such a service does not unduly burden nonparticipating customers.
21 That is, HECO does not propose to have to show the need for more generation, that a
22 particular installation is the least cost plan, that it has identified particular installation in an IRP
23 Plan, that it has held competitive bidding for the facility, etc. In doing offering customer-sited
24 CHP anywhere on its system, HECO would be acting like a nonutility competitor, not a utility. If

[5] Although HECO has offered in its current rate case to eliminate its customer retention rate, (page 133) there is no mention about whether HELCO is willing to do likewise; it is merely "reevaluating" the contracts.

1 the Commission were to approve the wide-open Schedule CHP tariff, it would lose all control
2 over the installation and costing of these facilities. The HECO Companies could offset
3 uneconomic projects with arguably economic ones, with nonparticipating ratepayers footing the
4 bill. There would be no prior or after-the-fact review of the prudence of the utility in undertaking
5 any specific installation. Installing customer-sited DG is a new and risky, traditionally non-utility
6 business venture for the HECO Companies, and not a venture that deserves less Commission
7 review than regular utility decisions to install and operate generating facilities.

1 **E. Hess-Microgen**

2 HREA has comments in reply to the Hess-Microgen's (Hess's) Opening Brief as follows.

3 A Competitive Posture. HREA concurs with Hess's proposal for rules pertaining to
4 interconnection standards, and its desire for there to be no incremental standby charges on the
5 HECO companies' systems. Hess also expresses concerns about the potential for predatory
6 pricing practices on the part of HECO. HREA observes that these positions appear to be in line
7 with a company that would seek to compete with HECO. In doing so, Hess would presumably
8 consider selling equipment to DG customers, as well as continuing to provide electricity and
9 thermal power to customers, as they have done already in Hawaii. HREA notes this tends to
10 contradict HECO's claims that 3rd Parties would not provide the same service that HECO
11 proposes, i.e., the DG customer does not have to invest in the equipment, HECO does that,
12 and the DG customer then pays for electricity and thermal power as provided by HECO.

13 A Supplier Posture. HREA also notes that Hess has indicated a preference to supply
14 equipment to HECO as part of HECO's proposed CHP tariff program.

15

16 **F. Kauai Island Utility Cooperative**

17 HREA has the following comments in reply to the Kauai Island Utility Cooperative's
18 (KIUC's) Opening Brief. To date KIUC has not filed a request for a CHP tariff. KIUC has
19 indicated interest in studying the costs and benefits of DG on its system, including renewables
20 and CHP. KIUC has expressed concerns regarding the impacts of implementing CHP during
21 their current situation of over capacity. Given this and the structure of KIUC and its relationship
22 to its customers/members, HREA supports continuation of the discussion of potential DG
23 strategies, including a right of first refusal for certain technologies, such as CHP. This could
24 mirror the approach used by their predecessor, Kauai Electric, for its last fossil facility.

G. Life-of-the-Land

HREA has one comment in reply to the Life of the Land's Opening Brief as follows.

HREA agrees with LOL that it is not within the utility franchise authority of the HECO Companies to enter the non-utility market of customer-sited DG/CHP, just as the Commission found it was not within HECO's utility franchise authority to put private, non-utility, fiber optic cable in its existing underground ducts in competition with Hawaiian Telephone Service.

DATED: March 28, 2005, Honolulu, Hawaii

President, HREA

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply Brief upon the following parties by causing a copy hereof to be hand-delivered or mailed, postage prepaid, and properly addressed the number of copies noted below to each such party:

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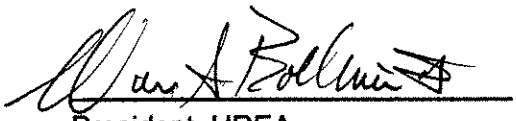

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