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PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

--- In the Matter of ---

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to
Investigate Distributed Generation
in Hawaii.

DOCKET NO. 03-0371

MOTION TO INTERVENE
AND CERTIFICATE OF SERVICE OF
JOHNSON CONTROLS, INC., AND PACIFIC MACHINERY, INC.

Pursuant to Subchapter 4 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of Hawaii ("Commission" or "PUC"), Chapter 61, Title 6, of the Hawaii Administrative Rules ("Commission's Rules of Practice and Procedure"), Johnson Controls, Inc., and Pacific Machinery, Inc. (hereinafter jointly referred to as the "Hawaii Energy Services Companies"), hereby file their motion to intervene and certificate of service in the above-captioned docket, which was instituted by the Commission in Order No. 20582, dated October 21, 2003, as an investigation to examine the potential benefits and impacts of distributed generation on Hawaii's electric distribution systems and market. In support of this pleading, the Hawaii Energy Services Companies state as follows:

I. INTRODUCTION

With Order No. 20582, the Commission has embarked upon an investigation of the potential impacts and benefits of distributed generation on Hawaii's electric distribution systems and markets. The issues surrounding distributed generation are critical to the citizens of the State of Hawaii, the ratepayers that purchase regulated utility service, the regulated utility companies, and third-party suppliers of distributed generation equipment and services, such as the Hawaii Energy Services Company. Distributed generation provides many commercial and industrial electric customers with their first real opportunity to manage their own electric requirements, thereby reducing both their cost and their dependence on utility-owned generation, while, at the same time, potentially alleviating some of the strain on the current electric distribution system.

Distributed generation is a technology that can be deployed now, as opposed to some ephemeral time in the future. As the Commission correctly recognized, "[i]t is anticipated that the use of distributed generation and DER will grow substantially in the coming years throughout the nation including Hawaii." Order No. 20582, p. 1 ("DER" refers to "distributed energy resources"). The Hawaii Energy Services Companies agree with this observation, and applaud the Commission for taking action now to investigate how and by whom such services can and should be provided in Hawaii.

Indeed, as by demonstrated by the recent filing of the Hawaiian Electric Company, Inc. ("HECO"), Maui Electric Company, Limited ("MECO"), and the Hawaiian Electric Light Company, Inc. ("HELCO"), in Docket No. 03-0366, there is already an emerging market of buyers and sellers for combined heat and power ("CHP") equipment and services (a form of distributed generation). In fact, as observed in their motion to intervene in that docket, the Hawaii Energy Services

Companies believe that the Commission's decision in that docket will directly impact their interests as third-party providers of those services, as well as the interests of the companies, the ratepayers, and the State.

Order No. 20582 is broad in scope and marks a significant step in implementing a more competitive electric industry in the State of Hawaii. The Commission's stated objective is "to develop policies and a framework for distributed generation projects deployed in Hawaii." Order No. 20582, pp. 1-2. The Commission has wisely chosen to invite ***all*** interested parties to participate in the investigation, including not only the regulated utility companies and the consumer advocate, but "all interested energy service providers and other business, environmental, cultural and community groups. . . ." *Id.*, p. 5, footnote 5. Likewise, the Commission observed that it is interested in "both the substance and the process in the deployment of distributed generation and the requisite roles and responsibilities of all players, including providers, consumers, regulators, and the society in general." *Id.*, at p. 4, footnote 4.

The Hawaii Energy Services Companies, as interested energy service providers, desire to participate fully in this investigation as intervenors. As the Commission has observed, the investigation will address a variety of complex and far-reaching issues concerning the direct and indirect impact of distributed generation on Hawaii, the community, ratepayers, regulated utilities, third-party market suppliers, and the market itself. Among the most important of these are the following:

- Should distributed generation services and equipment be offered as a regulated or quasi-regulated service?
- Should ratepayers that purchase regulated utility service be required to subsidize distributed generation?

- Are distributed generation equipment and services best provided only by unregulated suppliers (including fully-separated utility affiliates) in a competitive market?

- Will distributed generation result in net benefits to regulated utilities and their ratepayers?

As the Commission stated in Order No. 20582, its investigation will encompass "not only the physically technological and legal (statutory and regulatory) structures and features of the State's electric industry, but all aspects and arrangements that affect the manner in which electricity services are planned, produced, acquired, transported, furnished, and sold in the State of Hawaii." Order No. 20582, p. 4, footnote 4. And, more particularly, Order No. 20582 lists a number of specific issues to be explored with respect to distributed generation, including determining who should own and operate distributed generation projects, analyzing the impacts of such projects on Hawaii's electric distribution systems and markets, defining the role of the regulated electric utility distribution companies in the deployment of distributed generation, and identifying the rate design and cost allocation issues associated with the deployment of distributed generation facilities. *Id.*, p. 2.

The broad mandate established by the Commission in Order No. 20582 means that the market for distributed generation will be shaped here (as well as in any dockets dealing with individual applications, such as Docket No. 03-0366). It is therefore appropriate, as the Commission has recognized, that all parties with a stake in the outcome be permitted to take part in the proceeding if they meet the requirements for intervention or participation.

As shown in this pleading, the Hawaii Energy Services Companies meet the requirements for intervention. Indeed, as unregulated providers of distributed generation equipment and services throughout the Hawaiian islands, the Hawaii Energy Services Companies have a direct interest in

these proceedings. The Hawaii Energy Services Companies are particularly interested in issues concerning whether and how regulated utility companies will be permitted to participate in this market, how and under what rules the Hawaii Energy Services Companies and their customers will connect to the grid, and how all providers of distributed generation equipment and services can be assured that they will have access to information concerning the electric system and grid so as to be able to provide distributed generation.

II. MOTION TO INTERVENE

A. Description Of The Hawaii Energy Services Companies.

The Hawaii Energy Services Companies are businesses engaged in the provision of heating, cooling, energy conservation, and related equipment and services, including distributed generation.

Johnson Controls, Inc. ("Johnson Controls"), is a publicly-traded corporation organized under the laws of Wisconsin and is headquartered in Milwaukee, Wisconsin. For over forty years, Johnson Controls has been a contractor licensed to do business in the State of Hawaii. Johnson Controls engages in two major lines of business, the Automotive Systems Group and the Controls Group. The Controls Group sells control heating, ventilation, air conditioning, lighting, security, fire protection, and distributed generation systems (including CHP), and provides mechanical and electrical maintenance services and integrated facility management services.

Pacific Machinery, Inc. ("Pacific Machinery"), is a corporation organized under the laws of Hawaii, and is headquartered in Waipahu, Hawaii. It is the largest industrial and construction equipment distributor in Hawaii and the Pacific Basin, and has operated in Hawaii for over 75 years. Pacific Machinery, Inc., sells, leases, and services a complete range of construction, energy,

transportation, industrial, and distributed generation equipment (including CHP) manufactured by, among others, Caterpillar, Solar Turbines, Toshiba, Fuel Cell Energy, Ingersoll-Rand, Grove, Navistar, Toro, and Kubota.

B. Facts And Reasons In Support Of The Hawaii Energy Services Companies' Intervention Request.

In accordance with Rule 6-61-55 of the Commission's Rules of Practice and Procedure, the facts and reasons supporting the Hawaii Energy Services Companies' request for intervention are as follows.

1. The Nature Of The Movant's Statutory Or Other Right To Participate In The Hearing.

As described above, each of the Hawaii Energy Services Companies is a corporation and, as such, is a "person" as defined by Rule 6-61-2 of the Commission's Rules of Practice and Procedure. Therefore, each of the Hawaii Energy Services Companies has the statutory right to move to intervene and be made a party to the proceeding under Rule 6-61-55 of the Rules.

In addition, the Hawaii Energy Services Companies are, among other things, competitive third-party suppliers of distributed generation equipment and services in the State of Hawaii. As discussed above, the issues to be resolved in this proceeding will have a significant impact on the development and marketing of distributed generation in the State of Hawaii, as well as on the business of each of the Hawaii Energy Services Companies. The Hawaii Energy Services Companies are among those entities that the Commission invited to take part in this docket.

For these reasons, the Hawaii Energy Services Companies seek intervention in this proceeding on a joint and several basis.

2. The Nature And Extent Of The Movant's Property, Financial, And Other Interest In The Pending Matter.

The Hawaii Energy Services Companies are unregulated entities that provide distributed generation equipment and services. Thus, the Hawaii Energy Services Companies have a direct and immediate financial interest in the outcome of this proceeding.

As discussed, this investigation will establish the parameters for the provision of distributed generation equipment and services by regulated utilities in Hawaii. As such, it will have a direct impact on non-regulated suppliers of such equipment and services. The Commission stated that the policies and framework developed in this investigation "will form the basis of rules and regulations deemed necessary to govern participation in Hawaii's electricity market through distributed generation. " Order No. 20582, p. 2. The policies and framework developed will have a direct impact on each of the Hawaii Energy Services Companies' ability to compete for distributed generation customers within the service territories of the utilities that are regulated by the Commission. Thus, the Hawaii Energy Services Companies have an immediate, direct, substantial, and unique financial and other interest in the policies, framework, rates, terms, conditions, rules, and regulations which are applied to distributed generation.

Other ways in which the proposed CHP program could affect the property, financial, and other interests of the Hawaii Energy Services Companies are as follows.

First, whether regulated utilities are permitted to offer distributed generation equipment and services will directly impact the provision of distributed generation equipment and services by the Hawaii Energy Services Companies. The Hawaii Energy Services Companies welcome competition among themselves and other entities, but strongly believe that all entities desiring to enter this market should be required to do so on equal footing. Stated differently, if utility companies are permitted

to engage in these activities, they should be required to do so without subsidization of the programs by ratepayers, for example, by way of a totally independent affiliate.

Second, and related, by their very nature, regulated utilities are in a unique position to solicit new distributed generation customers. These companies already have in their possession information and surveys concerning customer electric loads, as well as information concerning to whom and where distributed generation would provide the most benefits not only to the customer, but to the system. While the Hawaii Energy Services Companies are capable of installing systems with similar benefits to customers and the system, in the absence of access to such information, they would be placed at a competitive disadvantage *vis-a-vis* the regulated utilities. It is the position of the Hawaii Energy Services Companies that the regulated utilities should be required to identify publicly the amounts and areas on their systems where distributed generation would provide the greatest benefits, so that all entities have an opportunity to bid for the projects on a level playing field.

Third, the Hawaii Energy Services Companies are concerned that the utilities will unfairly trade on their names and reputations as utilities to represent that they are uniquely capable, qualified, and financially able to provide distributed generation on terms more advantageous to the customer than any other participant in the marketplace.

Fourth, regulated utilities should be prevented from offering additional discounts on other rates or promotional incentives in exchange for agreeing to use the utilities as providers of distributed generation and services. This advantage should and would be eliminated if distributed generation equipment and services are provided, for example, by way of a totally independent affiliate.

Fifth, regulated utilities may propose to utilize their ability to "totalize" the customer's usage to lower unit costs. The Hawaii Energy Services Companies are unable to provide customers with this benefit, and, thus, cannot compete on this basis. Again, the regulated utilities should not be provided with an unfair competitive advantage and should only be permitted to participate in the market through an independent affiliate.

Sixth, it also appears that the regulated utilities must review and approve interconnection agreements. Obviously, it is necessary to determine standards applicable to such approval and whether it is appropriate for an entity with an interest in the outcome (*i.e.*, the regulated utility) to have the authority to rule on such agreements in the first instance. If a regulated utility is competing for distributed generation customers, it would certainly have an advantage in this regard, as well as an incentive to act less quickly on applications from competing suppliers. Thus, the Hawaii Energy Services Companies request that standards be implemented for interconnections that are (1) generally available, independently verifiable, and objective; (2) applicable to all providers; and (3) acted upon within the same timeframe.

Thus, the outcome of this investigation will have a direct, substantial, and potentially detrimental impact on the Hawaii Energy Services Companies. The Hawaii Energy Services Companies therefore seek intervention in this proceeding to address those issues and to protect their interests.

3. The Effect Of The Pending Order On The Movant's Interest.

As discussed at length in this pleading, Order No. 20582 will directly and substantially impact the interests of the Hawaii Energy Services Companies. Suffice it to say that Order

No. 20582 will map the course for the future development of distributed generation in the State of Hawaii. As the Commission has recognized, given the broad scope of its intended investigation, it is in the best interests of all concerned to receive input from all of the affected players, including interested energy service providers such as the Hawaii Energy Services Companies. The issues are complex, and their resolution (along with the resolution of issues raised in dockets such as Docket No. 03-0366) will shape the market for distributed generation throughout Hawaii, potentially for years to come. Hence, the pending order has a direct, substantial, and far-reaching impact on the interests of the Hawaii Energy Services Companies.

4. The Other Means Available Whereby The Movant's Interest Will Be Protected.

Other than direct participation as intervenors in this docket, the Hawaii Energy Services Companies have no other means to protect their interests. As discussed above, this investigation is designed to establish the parameters of distributed generation for the State of Hawaii, and may do so for years to come. While the Hawaii Energy Services Companies have moved to intervene in Docket No. 03-0366 in order to protect their interest, that docket will consider only an immediately pending application by HECO, MECO, and HELCO, to implement a CHP program. CHP is only one form of distributed generation. This investigation is designed to consider all forms of distributed generation, and is designed to consider a large panoply of issues pertaining to distributed generation.

As discussed, the interests of the Hawaii Energy Services Companies will be directly impacted by outcome of this investigation. Hence, there are no other means by which the Hawaii Energy Services Companies' interests may be protected, and intervention is appropriate.

5. **The Extent To Which The Movant's Interest Will Not Be Represented By Existing Parties.**

The existing parties are HECO, MECO, HELCO, the Kauai Island Utility Cooperative, Inc. ("KIUC"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). As explained in this pleading, the Hawaii Energy Services Companies' interests will not be represented by the Companies. The Consumer Advocate, by statute, represents the interests of consumers of electric utility services, and, particularly, residential customers.

Thus, the Hawaii Energy Services Companies' interests are not represented by existing or expected parties. Any fair discussion of distributed generation should include the participation of unregulated suppliers of distributed generation equipment and services, such as the Hawaii Energy Services Companies.

6. **The Extent To Which The Movant's Participation Can Assist In The Development Of A Sound Record.**

The Hawaii Energy Services Companies' participation will assist in the development of a sound record by ensuring that all entities with a stake in the development distributed generation in Hawaii are fully represented in this investigation. Given that the Hawaii Energy Services Companies have a direct stake in the outcome of this investigation, their participation will ensure that the viewpoint of distributed generation equipment and service suppliers other than regulated utilities are placed in the record.

7. **The Extent To Which The Movant's Participation Will Broaden The Issues Or Delay The Proceeding.**

The interests of the Hawaii Energy Services Companies are directly related to the scope of this docket. In fact, as the Commission observed in a footnote, it intends to address issues raised in an informal complaint previously filed against HECO, MECO, and HELCO, by the Hawaii Energy Services Companies and Noresco, Inc. Order No. 20582, p. 2, footnote 1 (*citing* Informal Complaint No. IC-03-098, filed on July 2, 2003). Thus, the Hawaii Energy Services Companies' participation will neither broaden the issues nor delay the proceedings. Indeed, as discussed above, their participation will engender a full and frank discussion of the issues from a viewpoint that is not represented by any of the current parties.

8. **The Extent To Which The Movant's Interest In The Proceeding Differs From That Of The General Public.**

The Hawaii Energy Services Companies' interest in this proceeding differs from that of the general public because, as described herein, the Hawaii Energy Services Companies are entities that desire to compete to provide distributed generation equipment and services.

9. **Whether The Movant's Position Is In Support Of Or In Opposition To The Relief Sought.**

As providers of distributed generation equipment and services, the Hawaii Energy Services Companies strongly support the development of a vibrant competitive market for distributed generation in Hawaii. Similarly, the Hawaii Energy Services Companies do not object to competing against each other and other entities to provide distributed generation equipment and services. However, the Hawaii Energy Services Companies are strongly opposed to permitting regulated utilities to compete against them to provide this equipment and services on a basis which provides the utilities with a significant competitive advantage.

The Hawaii Energy Services Companies strongly support the Commission's decision to launch an investigation of the policies and framework for the offering of distributed generation equipment and services in Hawaii. Establishing a proper framework for the provision of such services now will ensure that the market for distributed generation will be a truly competitive market in the future.

C. Persons Designated To Receive Service.

Correspondence and communications should be addressed to:

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Controls Group
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Jim Reisch
Vice President, General Manager -- Engine Division
Pacific Machinery, Inc.
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Gorak & Bay, L.L.C.
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Kailua-Kona, HI 96740
Telephone: 808-331-2027
Facsimile: 808-331-2027

D. Hearing On Motion.

No hearing is requested on the motion to intervene; however, the Hawaii Energy Services Companies would be pleased to respond to any questions that the Commission may have through further pleadings or a hearing.

III. CONCLUSION

WHEREFORE, the Hawaii Energy Services Companies, Johnson Controls, Inc., and Pacific Machinery, Inc., respectfully request that the Commission grant their motion to intervene in this docket and that they each be granted party status in this docket with all rights appurtenant to that status.

Respectfully submitted,

JOHNSON CONTROLS, INC.

PACIFIC MACHINERY, INC.

By their attorney:

Thomas C. Gorak
Hawaii Bar No. 0007673

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808-331-2027

November 7, 2003

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

Jim Reisch, being first duly sworn, deposes and says that he is the duly appointed representative of Pacific Machinery, Inc., and that he has read the foregoing "Motion To Intervene And Certificate Of Service Of Johnson Controls, Inc., And Pacific Machinery, Inc.," in Docket No. 03-0371, before the Public Utilities Commission of the State of Hawaii, and that he knows the contents thereof; and that he is authorized by Pacific Machinery, Inc., to verify that the contents of the pleading are true.

Vice President

Subscribed and sworn to before me this
6th day of November, 2003.

Notary Public
State of Hawaii , 1st Judicial Circuit

My commission expires: 08-29-07

SUZANNA J. BOCOBO
NOTARY PUBLIC
STATE OF HAWAII

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

Thomas C. Gorak, attorney for Johnson Controls, being first duly sworn, deposes and says that he is the duly appointed representative of Johnson Controls, Inc., and that he has read the foregoing "Motion To Intervene And Certificate Of Service Of Johnson Controls, Inc., And Pacific Machinery, Inc." in Docket No. 03-0371, before the Public Utilities Commission of the State of Hawaii, and knows the contents thereof; and that he is authorized by Johnson Controls, Inc., to verify that the contents of the pleading are true. He is filing this verification on behalf of Johnson Controls, Inc., due to the absence from the State of Hawaii of Gordon Bull, the person authorized by the officers of Johnson Controls, Inc., to verify the contents of the pleading.

Thomas C Gorak

Subscribed and sworn to before me this
7th day of November, 2003.

Arnold K Kanai

Notary Public
State of Hawaii

ARNOLD K. KANAI

My commission expires: 08-31-07

ARNOLD K. KANAI NOTARY PUBLIC STATE OF HAWAII

CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the foregoing "Motion To Intervene And Certificate Of Service Of Johnson Controls, Inc., And Pacific Machinery, Inc.," by depositing same in the United States Mail, first class postage prepaid, and addressed to the following:

William A. Bonnet, Vice President
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, HI 96840-0001

Edward L. Reinhardt, President
Maui Electric Company, Limited
P.O. Box 398
Kahului, HI 96733-6898

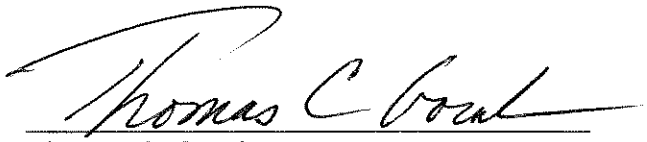
Warren H.W. Lee, President
Hawaii Electric Light Company, Inc.
P.O. Box 1027
Hilo, HI 96721-1027

Alton Miyamoto, President & CEO
Kauai Island Utility Co-Op
2970 Haleko Road
Suite 202
Lihue, HI 96766

And two copies by making personal service to the following:

Division of Consumer Advocacy
Department of Commerce and Consumer Affairs
250 South King Street, 8th Floor
Honolulu, HI 96813

Dated: Honolulu, Hawaii, November 7, 2003.



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