

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

ORDER NO. 22310

Filed March 7, 2006

At 2:00 o'clock P.M.

Karen Higost.
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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PUBLIC UTILITIES COMMISSION) Docket No. 03-0371
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Instituting a Proceeding to) Order No. 22310
Investigate Distributed Generation))
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ORDER

By this Order, the commission sets a deadline of March 22, 2006, for KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), LIFE OF THE LAND ("LOL"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), HESS MICROGEN, LLC, and the COUNTIES OF MAUI and KAUAI to file responses, if any, to the Motion for Clarification and/or Partial Reconsideration of Decision and Order No. 22248, filed on March 1, 2006,¹ by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, the "HECO Utilities" or "Companies").² The commission also denies the HECO Utilities'

¹HECO Utilities' Motion for Clarification and/or Partial Reconsideration of Decision and Order No. 22248, Memorandum in Support of Motion, Affidavit of Scott Seu, Affidavit of Timothy Hill, and Certificate of Service, filed on March 1, 2006 (collectively, "Motion for Clarification and/or Partial Reconsideration").

²The Parties of record in this investigative proceeding are: the HECO Utilities, KIUC, the Consumer Advocate, LOL, HREA,

request for a hearing on its Motion for Clarification and/or Partial Reconsideration.

I.

Background

On January 27, 2006, the commission issued Decision and Order No. 22248, "set[ting] forth certain policies and principles for the deployment of distributed generation in Hawaii and certain guidelines and requirements for distributed generation, some of which will be further defined by tariff as approved by the commission."³

On February 8, 2006, the HECO Utilities filed a "Motion for Enlargement of Time to File [a] Motion for Clarification and/or Motion for Reconsideration of Decision and Order No. 22248."⁴ The HECO Utilities requested an enlargement of time until March 1, 2006, to file a motion for clarification and/or reconsideration, if any.

On February 13, 2006, the commission granted the HECO Utilities' request for an enlargement of time until March 1, 2006, to file a motion for clarification and/or reconsideration of Decision and Order No. 22248.⁵

Hess Microgen, LLC, and the County of Maui. The County of Kauai is the sole Participant.

³Decision and Order No. 22248, filed on January 27, 2006, at 1.

⁴HECO Utilities' Motion for Enlargement of Time to File [a] Motion for Clarification and/or Motion for Reconsideration of Decision and Order No. 22248, Affidavit of William A. Bonnet, and Certificate of Service, filed on February 8, 2006.

⁵Order No. 22283, filed on February 13, 2006.

On March 1, 2006, the HECO Utilities filed their Motion for Clarification and/or Partial Reconsideration of Decision and Order No. 22248, with copies served on the other parties and Participant. In its motion, the HECO Utilities seek clarification and/or reconsideration of: (1) the conditions applicable to regulated utility ownership of customer-sited distributed generation ("DG"); and (2) the applicability of Decision and Order No. 22248 to renewable forms of DG. In brief, the HECO Utilities assert:

. . . . D&O 22248 provides only limited guidance as to how the Commission intends to apply the three conditions for utility ownership of customer-sited DG, and whether it intends to differentiate in its application of the conditions based on fundamental factors that are not extensively discussed in the decision, such as the DG application at issue, or the size of the DG installation relative to the utility system. Thus, if the Commission deems the requested relief to go beyond the conditions specified in the D&O, the Companies respectfully request, in the alternative, that the Commission reconsider the scope of the conditions, and allow the utilities to proceed on the basis outlined in [their] motion. . . .

HECO Utilities' Motion for Clarification and/or Partial Reconsideration, at 2.

. . . . The Companies do not request reconsideration of any of the listed actions [in Decision and Order No. 22248], and will attempt to implement the actions required by the D&O in the time frame contemplated. The Companies do request, however, a minor clarification as to the potential applicability of standby rates to renewable DG, . . . and have provided comments regarding the feasibility of acquiring peaking dispatch rights in interconnection agreements[.]

. . . . The Companies do have some concerns regarding the balance of interests under the Commission's DG competition policy, but are not requesting reconsideration of the basic policies

or conditions established in the D&O. . . .
Rather, the Companies request clarification as to
the scope and applicability of the three
conditions (or in the alternative, partial
reconsideration of the conditions)[.]

HELCO Utilities' Memorandum in Support of Motion, at 2 (emphasis
in original). See also id. at 2 - 27.

In addition, the HECO Utilities request a hearing on
their motion, in accordance with HAR § 6-61-41(f), or in the
alternative, oral argument consistent with HAR § 6-61-142.
As they explain:

The Companies respectfully request that a
hearing be held on this motion. If the Commission
does not require testimony regarding the 'facts'
presented by affidavit (which simply concern the
Companies' possible DG plans), then it would be
appropriate to limit the hearing to oral argument.
The 'facts' consist of the Companies' potential
plans to do customer-sited DG. The purpose of
stating the Companies' potential plans is simply
to show that the potential for customer-sited DG
going beyond the potential for customer-sited CHP
systems is not simply a hypothetical possibility.
Nonetheless, if the Commission deems these facts
to constitute 'additional evidence' necessary to
decide this motion, then the Companies request
further hearing in which to present the facts.
The Companies' plans have developed since the
conclusion of the panel hearings, which is the
reason they were not previously adduced.⁶ See
H.A.R. § 6-61-139.

HECO Utilities' Motion for Clarification and/or Partial
Reconsideration, at 3 (footnote and text therein included).

⁶The potential for a CHP system at Manele Bay Hotel was
known at the time of the hearing, and was cited in the Companies'
filings in this proceeding, as well as in Docket No. 03-0261.

II.

Discussion

A.

Responses to the Motion

Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 14, governs the filing of motions seeking any change in a commission decision or order. HAR §§ 6-61-137, 6-61-139, and 6-61-140 of subchapter 14, provide:

§6-61-137 Motion for reconsideration or rehearing. A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

.

§6-61-139 Additional evidence. When, in a motion filed under this subchapter, a request is made to introduce new evidence, the evidence adduced shall be stated briefly, that evidence must not be cumulative, and an explanation must be given why that evidence was not previously adduced.

§6-61-140 Replies to motion. The commission may allow replies to a motion for rehearing or reconsideration or a stay, if it deems those replies desirable or necessary.

HAR §§ 6-61-137, 6-61-139, and 6-61-140. See also HAR § 6-61-41(f) (the movant may request a hearing on the motion).

Having reviewed the HECO Utilities' Motion for Clarification and/or Partial Reconsideration, the commission finds it "desirable [and] necessary" to allow the other parties and Participant to respond to said motion, in accordance with HAR

§ 6-61-140. Accordingly, the commission sets a deadline of March 22, 2006 for KIUC, the Consumer Advocate, LOL, HREA, Hess Microgen, LLC, and the Counties of Maui and Kauai to file responses, if any, to the HECO Utilities' Motion for Clarification and/or Partial Reconsideration.

B.

Hearing on the Motion

HAR § 6-61-142 states in relevant part:

Oral argument shall not be allowed on a motion for reconsideration, rehearing, or stay, unless requested by the commission or a commissioner who concurred in the decision.

HAR § 6-61-142. Under the plain language of section 6-61-142, oral argument is not permitted "unless requested by the commission or a commissioner who concurred in the decision."

Here, the applicable rules do not allow for oral argument on a motion for reconsideration upon the request of a party.⁷ Having considered the HECO Utilities' Motion for Clarification and/or Partial Reconsideration, the commission declines to request oral argument at this time. Instead, the

⁷By way of their two (2) supporting affidavits, the HECO Utilities seek to introduce certain "new evidence" regarding HECO's possible installation of DG units on Oahu military bases, and Castle & Cooke Resort, LLC's preference to work with MECO on a combined heat and power project at the Four Seasons Resort Lanai at Manele Bay. See HECO Utilities' Motion for Clarification and/or Partial Reconsideration, at 3; Affidavit of Scott Seu; and Affidavit of Timothy Hill. The HECO Utilities also explain why this evidence was not previously "adduced" during the December 8 - 10, 2004 Panel Hearing. See HAR § 6-61-139. The commission intends to give the HECO Utilities' "new evidence" the appropriate weight, if any, in its review and adjudication of the Motion for Clarification and/or Partial Reconsideration.

commission intends to proceed on an expedited basis, consistent with the electric utilities' deadline to file with the commission their respective tariffs that implement the policies, guidelines, and findings set forth in Decision and Order No. 22248 by July 2006.⁸ Should circumstances warrant a hearing either to provide additional evidence or oral argument, the commission may reconsider its decision on its own motion.

III.

Orders

THE COMMISSION ORDERS:

1. The deadline for KIUC, the Consumer Advocate, LOL, HREA, Hess Microgen, LLC, and the Counties of Maui and Kauai to file responses, if any, to the HECO Utilities' Motion for Clarification and/or Partial Reconsideration, is March 22, 2006.

2. The HECO Utilities' request for a hearing on its Motion for Clarification and/or Partial Reconsideration is denied.

⁸Decision and Order No. 22248, Ordering Paragraph No. 10, provides in part that "[t]ariffs required by this Decision and Order shall be filed with the commission within six (6) months from the date of this Decision and Order[.]"

DONE at Honolulu, Hawaii MAR - 7 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

03-0371.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22310 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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