

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

2004 DEC 15 P 3:15

FILED

In The Matter Of The Application Of  
HAWAIIAN ELECTRIC COMPANY, INC.

DOCKET NO. 04-0113

For Approval of Rate Increases and Revised Rate  
Schedules and Rules, and for Approval and/or  
Modification of Demand-Side and Load  
Management Programs and Recovery of Program  
Costs and DSM Utility Incentives

MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE OF  
ROCKY MOUNTAIN INSTITUTE

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE OF  
ROCKY MOUNTAIN INSTITUTE**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in opposition to the Motion to Intervene of Rocky Mountain Institute ("RMI"), dated December 6, 2004 ("RMI's Motion").

HECO opposes RMI's motion to intervene as a party on the grounds that (1) any general interest that RMI may have "about the proposed rate increases"<sup>1</sup> can be adequately represented by the Consumer Advocate; (2) RMI has not demonstrated that its participation as a party would contribute to the development of a sound record regarding the reasonableness of HECO's proposed rate increase; (3) RMI's participation as a party could unduly delay the proceedings and unreasonably broaden the issues presented in this docket; and (4) RMI has not shown that it should be granted full-party status in this proceeding, given its limited interest in the primary issues in a general rate increase proceeding (i.e., the revenue requirements issues).

RMI's focus is directed at HECO's "energy efficiency programs and the new regulatory

treatment for DSM proposed in HECO's current filing."<sup>2</sup> If RMI is allowed to participate in this docket with respect to HECO's proposed demand side management ("DSM") programs (including HECO's proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs), then RMI should be designated a participant, and not an intervenor party, and its participation should be limited to the issue of HECO's proposed DSM programs.<sup>3</sup> RMI undoubtedly has expertise with respect to DSM programs and energy efficiency. In addition, RMI's participation should not be permitted to affect the schedule of proceedings or the statement of the general rate case issues, and RMI should be required to comply with the Commission's Rules of Practice and Procedure.<sup>4</sup> The Commission in the past has denied intervenor status, but granted participation status and allowed the limited participation of persons seeking intervention on specific issues, when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

If RMI (or any other person) is granted participant status with respect to HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of DSM programs proposed by HECO, then the parties (HECO and the Consumer Advocate) and any participants, and/or the Commission should establish a separate schedule (with separate hearing date, if necessary) for such issue.

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<sup>1</sup> RMI's Motion at 2 (¶6). RMI's Motion does not contain page numbers. Therefore, reference will be made to the first page of substantive text contained in RMI's Motion as page 1, and other page designations will follow sequentially.

<sup>2</sup> RMI's Motion at 2 (¶6); see also *id.* (¶7).

<sup>3</sup> RMI mistakenly alleges that "the prior regulatory regime for DSM has been terminated with this filing". RMI's Motion at 2 (¶7). HECO's application filed November 12, 2004 did not state this. Rather, the intent is that the existing DSM programs and cost recovery, lost margins and shareholder incentives mechanisms will continue in effect until a decision and order is issued in this docket which addresses such subjects.

<sup>4</sup> Title 6, Chapter 61 of the Hawaii Administrative rules ("H.A.R.") is referred to as the "Commission's Rules of Practice and Procedure".

## I. DISCUSSION

### A. RMI Does Not Have A Statutory Right To Participate In This Docket

RMI mistakenly alleges (without providing a reference in support of its allegation) that, “[b]y opening this Docket, the Commission has invited all interested electric service providers, organizations, business groups and community groups to participate in this docket as interveners or participants.” RMI’s Motion at 1 (¶5). It appears that RMI has confused this general rate case docket with a generic investigation opened by the Commission. The Commission did not “open” this docket, or invite “all interested electric service providers, organizations, business groups and community groups to participate in this docket as interveners or participants.”

RMI’s Motion is governed by the Commission’s Rules of Practice and Procedure regarding intervention. The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. H.A.R. §6-61-55(d) specifically states that: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules of Practice

and Procedure as stated in H.A.R. §6-61-1. However, the “just, speedy and inexpensive determination” of a proceeding cannot be accomplished if the Commission admits every movant as a party. Based on the standards set forth above, RMI’s motion to intervene as a party should be denied.

**B. RMI’s Interests With Respect To HECO’s General Rate Increase Request Can Be Adequately Represented By The Consumer Advocate**

H.A.R. §6-61-55(b)(5) requires RMI to establish “the extent to which the applicant’s interest will not be represented by the existing parties.” H.A.R. §6-61-55(b)(8) requires RMI to establish “the extent to which applicant’s interest in the proceeding differs from that of the general public.”

RMI broadly alleges that “we are concerned about the proposed rate increases, energy efficiency DSM program and other interests implicated in this docket”, although it appears that its focus is on the regulatory treatment of DSM programs.<sup>5</sup> RMI’s Motion at 2 (¶6). RMI’s interest in general rate case issues (revenues, expenses, rate base, rate of return, cost of service and rate design) is generally the same as that of the general public. Accordingly, RMI’s interest in general rate case issues can be adequately represented by the Consumer Advocate. The Consumer Advocate is required under the Hawaii Revised Statutes to “represent, protect, and advance the interest of all consumers.” H.R.S. §269-51 (emphasis added).

**C. RMI Has Not Shown That Its Participation Would Assist The Development Of A Sound Record Regarding The Reasonableness Of HECO’s Proposed Rate Increase**

RMI alleges that it can “help to create a record that will allow the Commission to make a well reasoned decision.” RMI’s Motion at 4 (¶10). RMI undoubtedly has expertise with respect to DSM programs and energy efficiency. However, RMI does not demonstrate how its

participation would assist in the development of a sound record regarding HECO's revenues, expenses, rate base and rate of return, and reasonableness of the proposed rate increase. RMI has not provided evidence that it has experience in utility rate case proceedings, or described its participation in other types of public utilities commission proceedings.

**D. RMI's Participation Could Unduly Delay The Proceedings And Unreasonably Broaden The Issues**

RMI alleges that its participation will not broaden the issues beyond those introduced by HECO, nor will it unduly delay the proceedings. RMI's Motion at 3 ( ¶11). However, RMI has not identified any evidence that it would propose to offer regarding the reasonableness of HECO's proposed rate increase. As a result, it is difficult for the Commission to determine the merit of RMI's claim that its participation would not broaden the issues or unduly delay the proceedings.

In addition, persons allowed to intervene by the Commission in ratemaking proceedings pursuant to H.A.R. §6-61-55 generally are afforded full-party status with respect to all issues raised in the proceedings. A strong showing should be required before a person is permitted to intervene as a full party. RMI has not justified being permitted to intervene as a full party in this docket.

Further, RMI does not appear to be familiar with the Commission's Rules of Practice and Procedure and rate case proceedings in general, which could result in RMI's participation unduly delaying the proceedings.<sup>6</sup>

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<sup>5</sup> It is not apparent if HECO's proposed rate increase would directly impact RMI. RMI states that it has a "branch office in the state", however, according to RMI's address on the cover page to its motion, the branch office is located on the Big Island.

<sup>6</sup> For example, H.A.R. § 6-61-16(c) requires that documents such as RMI's Motion be signed by each party or its counsel. RMI's Motion was not signed (the certificate of service to RMI's Motion was signed, but not the motion itself). Also, as noted above, RMI mistakenly alleged that the

**E. If The Commission Finds That RMI Should Be Allowed To Participate, Then It May Be Appropriate To Allow RMI Limited Participation**

The Commission in the past has denied intervenor status, but granted participation status pursuant to H.A.R. §6-61-56, and allowed the limited participation of persons seeking intervention on specific issues, when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

H.A.R. §6-61-56(a) provides that:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, in Re Hawaii Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) ("Order No. 17532"), the Commission denied the attempt of Citizen Utilities Company dba The Gas Company ("TGC") to intervene in Hawaii Electric Light Company, Inc.'s ("HELCO") rate case. However, the Commission granted TGC participant status, limited to HELCO's proposed Standby Rider A. The Commission stated:

the commission believes that TGC's limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR §6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;<sup>7</sup> provided that TGC's participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commissions review, it is concluded that TGC's efforts duplicate those of the Consumer

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Commission invited specified groups "to participate in this docket as interveners or participants" (RMI's Motion at 1 [¶5]).

<sup>7</sup> Unless ordered otherwise, TGC's participation will extend no further. We also make clear that as part of its on-going review of HELCO's request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC's participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

Advocate's, the commission will reconsider TGC's further participation in this docket.

Order No. 17532 at 5-6 (footnote 6 omitted).

In addition, in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) ("Order No. 10399"), the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participation would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. (PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.)

Further, in Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) ("D&O 11668"), the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a Maui Electric Company, Limited ("MECO") rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. D&O 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's involvement in the proceeding. The Commission denied Legal Aid's

Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participation status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

RMI has not requested participation status. However, if the Commission finds that RMI should be allowed to participate in this proceeding and that the Consumer Advocate would not adequately represent RMI's interest involving HECO's proposed DSM programs, then RMI's participation should be limited to HECO's proposed DSM programs (including HECO's proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs).

Moreover, if RMI (or any other person) is granted participant status with respect to HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of DSM programs proposed by HECO, then the parties (HECO and the Consumer Advocate) and any participants, and/or the Commission should establish a separate schedule (with a separate hearing date, if necessary) for such issue. This was done with respect to an avoided cost issue raised in the rate case for HELCO using a 1990 test year in Docket No. 6432, and with respect to the standby charge issue raised in HELCO's 2000 test year rate case in Docket No. 99-0207.

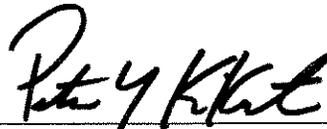
HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of its DSM programs, are being proposed in HECO's rate case because of Commission-approved stipulations allowing the continuation of HECO's existing DSM programs. See Order No. 19019, issued November 15, 2001, in Docket No. 00-0169, and Order No. 19020, issued November 15, 2001, in Docket No. 00-0209. DSM programs, and related mechanisms for the recovery of program costs, utility incentives and lost margins, generally are addressed in

proceedings separate and apart from rate cases.

## II. CONCLUSION

Based on the foregoing, HECO respectfully requests that the Commission deny RMI's motion to intervene as a party. If RMI is allowed to participate in this docket, however, then RMI should be designated a participant, and not an intervenor party, and its participation should be limited to HECO's proposed DSM programs (including HECO's proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs). Moreover, RMI's participation should not be permitted to affect the schedule of proceedings or the statement of the issues, and RMI should be required to comply with the Commission Rules of Practice and Procedure. If RMI (or any other person) is granted participant status with respect to HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of DSM programs proposed by HECO, then the parties (HECO and the Consumer Advocate) and any participants, and/or the Commission should establish a separate schedule (with separate hearing date, if necessary) for such issue.

DATED: Honolulu, Hawaii, December 15, 2004.



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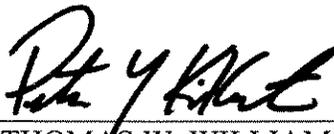
**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing  
**MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE OF ROCKY  
MOUNTAIN INSTITUTE**, together with this Certificate of Service, by hand delivery and/or by  
mailing a copy by United States mail, postage prepaid, to the following

Division of Consumer Advocacy (2)  
Department of Commerce and Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813

Kyle Datta  
Rocky Mountain Institute  
P.O. Box 390303  
Keauhou, HI 96739

DATED: Honolulu, Hawaii, December 15, 2004



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