

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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 PARTICIPATE OF
JOSEPH SPERONI

AND

CERTIFICATE OF SERVICE

PUBLIC UTILITIES
COMMISSION

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**MEMORANDUM IN OPPOSITION TO THE MOTION TO PARTICIPATE OF
JOSEPH SPERONI**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in opposition to the Motion to Participate of Joseph Speroni ("Movant"), dated January 21, 2005 ("Motion").

HECO opposes the Motion on the grounds that (1) Movant has not demonstrated that his participation would aid the Commission by submitting an affirmative case regarding the general rate case issues or "communications technologies" to be used in HECO's proposed demand-side management ("DSM") programs, (2) any general interest that Movant may have about general rate case issues can be adequately represented by the Consumer Advocate, and (3) Movant's participation could unduly delay the proceedings and unreasonably broaden the issues presented in this docket. In addition, the Motion does not specify the extent to which Movant desires to participate in this proceeding. For example, the Motion does not state (a) whether Movant's participation will be limited to certain issues (although it appears that Movant wants to at least participate with respect to issues concerning the use of communications technology in HECO's

DSM programs), and (b) to what extent Movant wants to participate in this docket (e.g., filing of written testimonies, testifying and being subject to cross-examination at the evidentiary hearing, filing of post-hearing written briefs, etc.).

Movant seeks to participate in this proceeding as an individual. Movant does not allege that he has received authorization from other individuals or groups to represent their interests in this docket. Accordingly, even if he were allowed to participate, Movant could not speak on behalf of other individuals.

With respect to motions to intervene, in a number of other dockets, the Commission has denied motions to intervene filed by individuals where the individuals' interests could be adequately represented by others in a proceeding. For example, in Docket No. 94-0345 (a general rate increase proceeding for Maui Electric Company, Limited), an individual (William Ellis, Jr., proceeding on a pro se basis) filed a motion to intervene as a party, and attempted to distinguish his interest in the proceeding from that of the general public on the basis that he was a senior citizen. In denying the motion, the Commission found as follows:

The commission finds that Ellis' allegations do not establish sufficient grounds to permit him to intervene in this docket. Although Ellis is a senior citizen, he seeks to intervene in this proceeding as an individual ratepayer. Ellis has not received authorization from other senior citizen individuals or groups to represent their interests in this docket; thus, even if he were allowed to intervene or participate, Ellis could not speak on behalf of other senior citizen ratepayers on the island of Maui or in Maui county. As an individual senior citizen ratepayer, Ellis' interests can be adequately represented by the Consumer Advocate. Accordingly, we deny Ellis' motion to intervene and encourage him to work with the Consumer Advocate in this proceeding.

Re Maui Electric Co., Docket No. 94-0345, Order No. 13964 (June 20, 1995) at 4.

In Docket No. 7259, an integrated resource plan proceeding for Hawaii Electric Light Company, Inc. ("HELCO"), an individual (Brad Hauser, also proceeding on a pro se basis),

attempted to distinguish his interest from that of the general public based on his participation in HELCO's integrated resource planning advisory group process. The Commission denied the motion, and the individual's motion for reconsideration. See Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993), recon. den'd, Order No. 12951 (December 23, 1996). (At the same time, the Commission permitted seven organizations and/or entities to intervene as parties in addition to HELCO and the Consumer Advocate.)

In Docket No. 03-0417, the Commission denied motions to intervene filed on behalf of two individuals. Order No. 20862 (March 23, 2004) ("Order 20862"), Docket No. 03-0417. In denying the motions, the Commission found that each individual "failed to, among other things, satisfactorily demonstrate that her interests are reasonably pertinent to the matters presented" and that each individual "failed to substantiate how she will assist in the development of a sound record and refrain from unreasonably broadening the issues already presented". Order 20862 at 3, 4.

I. DISCUSSION

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

The Motion is governed by the Commission's Rules of Practice and Procedure regarding participation without intervention. Participation without intervention to a proceeding before the Commission is not a matter of right but is a matter resting within the discretion of the Commission. H.A.R. §6-61-56(a) specifically states that "[t]he commission may permit participation without intervention." (Emphasis added). The Commission exercises its discretion by determining whether or not a movant should be admitted as a participant in a proceeding.

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 participant (or a party). Based on the standards set forth above, the Motion should be denied.

B. Movant Has Not Shown That His Participation Would Aid the Commission By Submitting An Affirmative Case

Movant broadly alleges that he is concerned “about ratepayers increasing costs for electricity”, and that his focus is on “communications technologies” to be used in HECO’s proposed DSM programs as the DSM programs represent “a large part” of HECO’s requested relief. Motion at 2 (¶¶4(1) and (4)).¹

Movant has not satisfied the requirements in H.A.R. §6-61-56(c)(6), which states that Movant must provide “[w]hether the applicant can aid the commission by submitting an affirmative case”. First, Movant has not shown that he will be able to aid the Commission by submitting an affirmative case regarding HECO’s revenues, expenses, rate base and rate of return, and reasonableness of the proposed rate increase. Movant has not provided evidence that he has experience in utility rate case proceedings, or described his participation in any types of public utilities commission proceedings. (As discussed below, Movant’s interest in general rate case issues can be adequately represented by the Consumer Advocate.)

Second, Movant has not demonstrated that he can aid the Commission by submitting an affirmative case regarding HECO’s proposed DSM programs. Movant does not allege that he has any knowledge and/or experience concerning the (1) design and implementation of DSM programs, or (2) the proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs.

¹ Motion at 2 (¶4.1). The Motion does not contain page numbers. Therefore, reference will be made to the first page of substantive text contained in Motion as page 1, and other page designations will follow sequentially.

Third, Movant has not demonstrated that his participation would aid the Commission in what appears to be Movant's primary area of interest - - the communication technologies to be used in the DSM programs. Movant's general description of his background (i.e., "he has been employed in the computer industry since graduation from Case Institute of Technology in 1960") and employment (i.e., he "has participated in the design, implementation and management of dozens of large IT projects, several involving worldwide communications networks") do not demonstrate that his participation would aid the Commission by submitting an affirmative case. For example, based on such generalized descriptions, it is not possible to determine whether Movant has any expertise, knowledge and experience that would be beneficial to the Commission in this proceeding.

The Commission has granted participant status in the past where a movant alleged that it had access to certain experts and resources not available to any other party. In that proceeding, the Commission was impressed by a movant's statement of expertise, knowledge and experience and permitted limited participation. These factors are not present in the Motion. (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.)

C. Movant's Interests In General Rate Case Issues Can Be Adequately Represented By The Consumer Advocate

H.A.R. §6-61-56(c)(4) requires Movant to establish "[t]he extent to which the applicant's interest will not be represented by the existing parties." Movant'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, Movant'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).

D. Movant's Participation Could Unduly Delay The Proceedings And Unreasonably Broaden The Issue

Pro se participation by Movant, coupled with the absence of experience before this Commission in a similar type of proceeding, could unduly delay the proceeding without contributing to the development of a sound record. (Commission proceedings are more rigorous, complex and judicial-like than most administrative proceedings.) HECO is concerned that the participation of numerous parties representing the same interests in a proceeding (particularly where some of the parties are participating on a pro se basis) could delay the proceeding (through repetitious questioning of witnesses, etc.), without contributing to the development of the record.

E. Movant Has Not Specified The Relief Requested

Under H.A.R. §6-61-56(a), Movant is required to provide the Commission with a "statement of the relief desired." The Motion requested participant (and not intervener) status.

However, the Motion does not state that Movant's participation will be limited to certain issues (although it appears that Movant wants to participate at least with respect to issues concerning the use of communication technology in DSM programs). In addition, the Motion does not state to what extent Movant wants to participate in this docket (e.g., filing of written testimonies, testifying and being subject to cross-examination at the evidentiary hearing, filing post-hearing written briefs, etc.).

II. CONCLUSION

Based on the foregoing, HECO respectfully requests that the Commission deny the Motion.

DATED: Honolulu, Hawaii, January 31, 2005.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
**MEMORANDUM IN OPPOSITION TO THE MOTION TO PARTICIPATE OF JOSEPH
SPERONI**, 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

Joseph Speroni
2781 Kapiolani Blvd., Suite 502
Honolulu, Hawaii 96826

DATED: Honolulu, Hawaii, January 31, 2005



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