

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the matter of) PUC Docket No. 04-0113
)
HAWAIIAN ELECTRIC COMPANY, INC. for)
)
Approval of Rate Increases and)
Revised Rate Schedules and Rules, and for)
Approval and/or Modification of DSM & LM Programs,)
Recovery of Program Costs and DSM Utility Incentives)
Regarding Integrated Resource Planning)
_____)

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PUBLIC UTILITIES
COMMISSION

LIFE OF THE LAND'S
MOTION TO INTERVENE
&
CERTIFICATE OF SERVICE

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Aloha Commissioners:

Hawaiian Electric Company ("HECO") filed for a general rate hike on November 12, 2004 in Docket No. 04-0113¹ ("Application"). As a result of a Stipulation between HECO and the Consumer Advocate ("CA"), Demand Side Management ("DSM") issues have been embedded into the Application. These DSM issues include: programs, shareholder incentives, lost margins. The Application also includes Time of Use ("TOU") and Combined Heat and Power ("CHP") tariffs.

Rocky Mountain Institute ("RMI") filed a Motion to Intervene ("MTI") on December 8, 2004. HECO filed a Memorandum in Opposition ("MIO") on December 15, 2004, noting "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 issue)".² The Consumer Advocate ("CA") also filed an MIO on the same day, noting "RMI has not identified what particular customer base or customer class RMI seeks to represent."³

RMI may not have identified a class that it represents, but it is unclear if there is a hierarchy among issues in the docket. HECO chose the title of the docket -- "Approval of Rate Increases and ... DSM & LM Programs" -- and it includes both items.

Life of the Land hereby files a Motion to Intervene in this docket. Should the Public Utilities Commission ("Commission"; "PUC") decide to bifurcate this process (rate case docket, efficiency docket), then Life of the Land may have to modify its Motion dependent upon the nature of the separate dockets.

Life of the Land supports extending the deadline for filing MTI. Some potential parties may

¹ In the Matter of the Application of Hawaiian Electric Company, Inc. 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

² HECO MIO page 2

³ CA MIO page 3

not be aware of the Neighbor Island implications of the Stipulation. In particular, Life of the Land would support Motions to Intervene by the County Energy Offices.

Life of the Land continues to support third party management of the DSM process. This is consistent with our position taken in Dockets No. 96-0493 (Investigation of Restructuring) and 00-0209 (HECO DSM).⁴ We believe that the third party manager should be the interface between the utility and the installers of energy efficiency devices.

Life of the Land is also concerned about giving money to utilities based upon an expectation of what they plan to do. This can lead to gold-plating (overbuilding) the system, and to excessive charges (overpayments). This is very different from the traditional "use and useful" method of passing onto ratepayers reasonable costs for up and running investments. That is, the traditional approach is to build the project, and if it is necessary for utility operations, then the costs are passed onto consumers.

Life of the Land's Motion to Intervene is filed according to the requirements of Hawaii Administrative Rules ("HAR") §6-61-55 Intervention. (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

A person may make an application to intervene (HAR §6-61-55(a)). Life of the Land is a person as defined by HAR §6-61-2. Life of the Land has filed a timely Motion to Intervene as specified under HAR §6-61-57. In this case, the Commission held a public hearing on January 12, 2005. The public has 10 days to file a Motion to Intervene. As January 22 is a Saturday, the intervention deadline is Monday, January 24, 2005. Life of the Land's Motion to Intervene was filed on Monday, January 24, 2005. Life of the Land will be represented by LOL's Vice President for Consumer Affairs, Henry Curtis, in accordance with HAR §6-61-12. Life of the

⁴ We note the United States Department of Energy's definition: "Third-party DSM program sponsor: An energy service company (ESCO) which promotes a program sponsored by a manufacturer or distributor of energy products such as lighting or refrigeration whose goal is to encourage consumers to improve energy efficiency, reduce energy costs, change the time of usage, or promote the use of a different energy source." www.eia.doe.gov/glossary/glossary_t.htm

Land does not request a public hearing, as set forth in HAR §6-61-41.

1) The nature of the applicant's statutory or other right to participate in the hearing; The Commission has the discretion to accept or reject a Motion to Intervene.

The Hawai`i State Constitution (Article XI, Section 9: Environmental Rights) states: "Each person has the right to a clean and healthy environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulations as provided by law."

The Consumer Advocate has recognized the critically vital role community groups play in utility decision making procedures (1997): "Over the years, unfunded groups have been credited with raising important public issues to the PUC's attention. ... Similarly, long-range energy planning (called integrated resource planning) is in part the result of several parties, many of them community groups and unfunded, requesting the PUC to act. Generally, community intervenors have been forced to rely on free legal and consulting services. Yet, they have infused we so-called 'experts' with new ideas. They have reminded us of the critical impact of essential utility services on life's basic necessities. With a modest funding source, these and other groups should be able to continue and enhance their role. Another situation where ... there are consumer groups with conflicting interests. At that point, our office is forced to select and advocate one position."⁵

2) The nature and extent of the applicant's property, financial, and other interest in the pending matter; Life of the Land is Hawai`i's own environmental and community action group advocating for the people and the land since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and to promote open government through research, education, advocacy, and when necessary, litigation.

⁵ Senate Bill No. 1918 (1997).

Presentation of the Department of Commerce and Consumer Affairs to the Senate Committee on Commerce, Consumer Protection and Information Technology. Regular Session of 1997. February 10, 1997.

Life of the Land is a 501(c)3 non-profit organization.

Life of the Land's Petition and Charter of Incorporation and Grant of Charter dated December 16, 1970 states: "The organization is organized for the following purposes: "... G. To assure by representation of the public interest in administrative and legislative procedures that approval of governmental or private projects be based on complete consideration of the long term public good; H. To bring, finance, support, encourage, or otherwise intervene in legal matters as may be appropriate to promote the public health, safety and welfare, conserve resources, preserve or restore natural beauty or correct environmental abuse."

Life of the Land's Energy Policy Goals and Objectives were formally adopted at its Board Meeting on July 13, 1981. "Problem: Hawaii's dependence on imported oil, increasingly expensive and in short supply, can and should be reduced. Goal: To meet the State's energy needs through conservation and low-cost, non-polluting resources."

Life of the Land's Board of Directors is authorized to act on behalf of its members. On Friday, September 22, 2000, the Life of the Land Board of Directors approved continuing to intervene in energy dockets as a means of promoting sustainable policies.

Life of the Land supports increasing the use of renewable energy; increasing our reliance on indigenous, non-geothermal fuels; decreasing the footprint of energy facilities; minimizing harmful environmental impacts to the planet (global warming); minimizing pollution impacts to water, land, and air; minimizing aesthetic impacts; being mindful of social impacts, environmental justice, and human health; increasing the use of electronic (non-tree) filings in administrative proceedings; and opening up the governmental process.

The issues in this docket directly affect our organization and our members. HECO proposes to increase our rates. The issues raised in this docket also affect other dockets that Life of the Land is involved in, including, but not limited to, Distributed Generation (PUC No. 03-0371), and the East Oahu Transmission Project (PUC No. 03-0417), dockets that we have requested to be in such as HECO's Integrated Resource Planning ("IRP") docket, and other energy actions we are involved in.

Life of the Land was accepted as an intervenor in HECO's recently concluded DSM Docket 00-0209. HECO's Application calls for the DSM program to be embedded within the rate case.

Life of the Land participated in HECO's Third Integrated Resource Planning ("IRP-3") Advisory Group. Much to our chagrin, all of HECO's proposed alternative scenarios⁶ proposed had identical DSM penetration levels. Although there were multiple scenarios presented, HECO would not look at one iota of difference in how DSM was treated in each scenario. Furthermore, all but one scenarios had identical Combined Heat and Power ("CHP") components. Again, this critical component was not on the table for discussion. Nor was variation in the Load Management programs analyzed within the different scenarios. Partly as a result of this, Life of the Land has filed a Motion to Intervene in HECO's IRP-3 Docket 03-0253. The Commission has yet to rule on our Motion.

HECO's Application comes at a time when the Commission is considering revamping the ratemaking structure, that is, moving from a traditional Cost of Service ("COS") approach to a Performance Base Ratemaking ("PBR") approach. This adds a layer of complexity to this current rate case process. Will the Application be amended mid-stream?

There are major environmental implications associated with the expansion of DSM, CHP and Load Management programs and policies. The Commission is being asked to support a rate hike to cover these critical issues. It is imperative that we are able to protect our interests and the interests of our members in this crucial docket.

3) The effect of the pending order as to the applicant's interest; Life of the Land is a non-profit Hawaii-based organization. Life of the Land is both a HECO ratepayer and a Hawaiian Electric Industries (HEI) stockholder. Some of our members are HECO ratepayers, and some are Hawaiian Electric Industries (HEI) stockholders. This docket will directly and substantially impact our organization and our members in a number of significant ways, including rate impact, environmental, cultural and quality of life issues. Our members live,

⁶ Officially called Finalist Plans

work and recreate on O`ahu. They are concerned about energy policy, and the impact our energy choices have on land use, the environment, quality of life, aesthetics, and health, among other things.

4) **Other Means Available Wherein Applicant May Protect His Interest.** There are no other means available to protect our interests. Dropping the ball at this point by not intervening would be foolish at best. The environmental interests must be represented in this crucial docket.

5) **Other Parties Do Not Represent Movants' Interests.** The existing parties are the fossil fuel based utilities (over 99.5% of electricity generated Hawaii utility-owned generators is created from oil), and the Consumer Advocate which "protects and advances the interests of consumers of regulated utility and transportation services in regulatory proceedings." (www.state.hi.us/dcca/dca/index.htm). The PUC noted: "The director of commerce and consumer affairs, as the consumer advocate and through the division of consumer advocacy, has the statutory responsibility to represent, protect, and advance the interest of consumers of utility services. The consumer advocate, therefore, has the duty to ensure that the utility's integrated resource plan promotes the interest of utility consumers."⁷

Life of the Land represents environmental interests. Life of the Land's mission is to preserve and protect the life of the land through sustainable land use and energy policies and to promote open government through research, education, advocacy, and when necessary, litigation. Consumer and environmental issues are distinct, although they may overlap. Consumers buy goods and services, while environmentalists preserve and protect ecosystems. During the past several years, Life of the Land and the Consumer Advocate have often clashed at the Legislature over proposed policy and legislation. Our views have historically been quite distinct and divergent.

In this docket, HECO supports an expanded DSM program, the CA supports ending shareholder incentives and Life of the Land continues to support third party management of the DSM

⁷ Ibid. IRP Framework Section II.E

programs. In this docket HECO supports up front funding for some programs while Life of the Land continues to support the "use and useful" approach.

6) **Movants' Participation will Assist the Development of a Sound Evidentiary Record.**

Life of the Land participation will assist in the development of a sound record. Our familiarity with key documents and issues will help us to educate PUC staff and Commissioners. LOL's extensive knowledge of the merits of this docket will enable the Commission to view and consider all of the pertinent available information. Our expert witnesses will include Henry Curtis.

7) **Movants' Participation Will Neither Unduly Broaden The Issues Nor Delay This Proceeding.**

Life of the Land has a history of following PUC directives in previous dockets we have intervened in. We have not asked for any time extensions, nor have we asked to expand the scope of dockets. In the absence of any evidence to the contrary, the PUC should accept our commitment to participate in good faith in this docket. Our testimonies, expert witnesses and exhibits will be provided so as to strengthen the defensibility of the PUC decision. Our Motion to Intervene at this early stage is intended to bring issues to light long before we would have to identify them if we were to delay our Motion to Intervene by 6 or 12 months.

8) **Movants' Interests Differ From Those Of Those Of The General Public.** The general public is represented by the Consumer Advocate who represents all consumers. The Consumer Advocate is bound by the law to represent the interests of the general public. Life of the Land believes that the interest of the general public, as perceived by the CA, is the delivery of electricity at the cheapest cost. Life of the Land is concerned with environmental impacts, and total costs including externalities.

9) **Whether the applicant's position is in support of or in opposition to the relief sought.** This Application is large, complex and multi-faceted. Life of the Land supports parts of it, and opposes other parts. We do not believe that the full rate increase is reasonable nor is it in the public interest. It is more efficient and less costly to ratepayers to have an "efficiency utility" manage DSM. HECO has a natural conflict between shareholder interests (making money by selling electricity) and ratepayers interests (minimizing total costs). This

conflict has lead to a costly and inefficient DSM program that is top-heavy, bloated and undesired.

CONCLUSION

For the above stated reasons Life of the Land respectfully request that the Commission grant our Motion to Intervene.

Dated January 24, 2005

Henry Q Curtis

Henry Q Curtis

VICE PRESIDENT FOR CONSUMER ISSUES

LIFE OF THE LAND

Certificate of Service

I hereby certify that I have this date served a copy of the foregoing Motion to Intervene by Life of the Land, Docket Number 03-0253, upon the following parties. The original and 8 copies to the PUC. Two copies to the Consumer Advocate. Three copies to HECO.

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Dated January 24, 2005



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