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April 6, 2005

To: Stakeholders in the "Energy Efficiency Docket":
Docket No. 05-0069,
Before the Public Utilities Commission of the State of Hawaii

From: Carl Freedman

Re: Suggesting a Collaborative Process to Address Issues in the Energy Efficiency Docket

I am writing on my own behalf and as a member of the Hawaii Energy Policy Forum.

I am writing on my own behalf to encourage a collaborative process as an initial approach to addressing the issues to be considered in the newly formed Docket No. 05-0069 (Energy Efficiency Docket). Based on my understanding of the issues and the positions of the parties in this docket I believe that a collaborative process could be an efficient and productive way to start to clarify and/or resolve some of the fundamental issues.

I am not a party in the Energy Efficiency Docket. I am interested generally in a fruitful resolution to the contested issues regarding Hawaii's ratepayer-funded energy efficiency programs. I believe there is substantial agreement that these programs are an important part of Hawaii's existing and future implementation of its energy policies. Several important aspects of the implementation of these programs are ripe for complete reconsideration in this docket. There is not agreement on several fundamental issues. At the same time, some care is required to provide continuity to maintain the valuable momentum of the existing programs to the extent possible, even if the foundations and vehicles for the programs may be substantially changed as an outcome of the docket. I urge all of the parties to keep the best interests of our state in mind in deliberating these important issues.

I am also writing as a member of the Hawaii Energy Policy Forum (Forum) as part of an effort to determine whether the Forum can contribute in any constructive way regarding the disposition of the Energy Efficiency Docket. At the last meeting of the Forum on March 28, 2005 both Michael Hamnett and I were designated to explore possible collaborative approaches regarding this matter. As many of you are aware, both of us met with various stakeholders last year to organize an ad hoc collaborative process to examine some of the DSM financial recovery mechanism issues that are now being considered in the Energy Efficiency Docket. Although there was affirmative interest by the stakeholders, our previous

effort to organize a collaborative process that could be sponsored by the Forum failed for lack of funding. This letter serves to suggest generally that, if there is a role for the Forum to serve the collective interests of the parties or the Commission in this matter, a proposal to this end would be considered by the Forum. I promised to report to the Forum at its next meeting if a constructive role for the Forum is identified. Other than this conditional and exploratory expression of interest on behalf of the Forum in this matter I want to make it clear that all of the comments in this letter are made strictly on my own behalf.

ISSUES AND SCOPE OF THE ENERGY EFFICIENCY DOCKET

By Order No. 21698 dated March 16, 2005 the Public Utilities Commission of the State of Hawaii (Commission) bifurcated the pending rate case application of Hawaiian Electric Company (HECO) and opened Docket No. 05-0069 to consider those issues pertaining to the requests for approval and/or modification of the demand-side management (DSM) programs of the Hawaiian Electric Company (HECO). This newly formed "Energy Efficiency Docket" examines the following issues:

- (1) Whether energy efficiency goals should be established and if so, what the goals should be for the state;
- (2) Whether the seven (7) proposed DSM programs (i.e., the CIEE, CINC, CICR, REWH, RLI and ESH programs), the RCEA program, and/or other energy efficiency programs will achieve the established energy efficiency goals and whether the programs will be implemented in a cost-effective manner;
- (3) What market structure(s) is the most appropriate for providing these or other DSM programs (e.g., utility-only, utility in competition with non-utility providers, non-utility providers);
- (4) For utility-incurred costs, what cost recovery mechanism(s) is appropriate (e.g., base rates, fuel clause, IRP Clause); and
- (5) For utility-incurred costs, what cost level is appropriate?
(Order No. 21698, p.12, [numbering corrected])

The scope of the docket appears to include examination of the full range of potential financial recovery mechanisms, including lost margins, shareholder incentives and other financial recovery mechanisms.¹ Although not explicitly stated in Order No. 21698, it also appears that any generally applicable decisions in the Energy Efficiency Docket may also

¹ Order No. 21698 states that HECO's requests for approval and/or modification of its DSM and load management programs and recovery of program costs and DSM *utility incentives* are issues that will be separated from the rate case docket and examined in the Energy Efficiency Docket. [last sentence starting on p.11.] This statement explicitly identifies the specific utility incentive proposals made by HECO in its application. In conjunction with the very broad context of issue #3 (examining what market structure(s) is most appropriate for providing DSM programs) it also suggests that examination of all potential financial recovery mechanisms is within the intended scope of the docket.

ultimately apply to the Maui Electric Company (MECO) and the Hawaii Electric Light Company (HELCO).²

In short, the Energy Efficiency Docket will address a broad scope of DSM program implementation and financial recovery issues that will affect several utilities. These include both specific and general issues and both immediate and longer term issues. The docket will address specific issues pertaining to the programs proposed by HECO. The docket will address general issues regarding the design of DSM financial recovery mechanisms. The docket will address some immediate issues that may need prompt attention regarding the sufficiency of HECO's current generation capacity. The docket will address issues that will require a longer time to consider and implement such as whether the electric utilities or perhaps other entities should be delivering ratepayer funded DSM programs.

THE MERITS OF A COLLABORATIVE PROCESS

A collaborative process could be an efficient and productive initial approach to resolving some issues in the Energy Efficiency Docket. In this docket a collaborative process could serve several functions.

First, a collaborative process could provide a venue for open discussion to address the concerns and positions of the parties. It is clear that there are some areas where there is substantial disagreement about specific proposals. An objective of a collaborative process would be to find and promote areas of common ground by examining the underlying concerns of each party and exploring options that can address these concerns. Open discussion between the parties can be an effective approach to identifying concerns and exploring mutually acceptable options.

Second, a collaborative process could provide a means to address the important "devilish" details that are necessarily an important aspect of any specific proposals, resolutions or mechanisms. For example, the DSM financial mechanisms that are currently in effect for Hawaii's electric utilities were examined, resolved and agreed at a considerable level of detail by a collaborative work group prior to being formally proposed to the Commission.³ Resolving details is necessary

² Several stipulations and orders make the outcomes of MECO and HELCO DSM dockets contingent upon HECO's pending rate case docket. [See Order Nos. 19020, 19093, 20392.]

³ In 1992 and 1993, on its own initiative, an "ad hoc work group" convened to examine possible DSM financial recovery mechanisms for HECO and its subsidiaries. This was after the Commission issued its Framework for Integrated Resource Planning (Decision and Order No. 11523, March 12, 1992 and Decision and Order No. 11630, May 22, 1992) and before the first integrated resource plans were filed pursuant to the framework. The ad hoc work group was a subset of the parties in the integrated resource planning docket (Docket No. 6617) and the first HECO and subsidiary IRP application dockets (Docket Nos. 7257, 7258 and 7259). The ad hoc work group included the Consumer Advocate, the Department of Business and Economic Development and Tourism, the Natural Resource Defense Council and HECO. In its IRP Framework the Commission had already identified several possible approaches for the recovery of DSM program costs, lost margins and shareholder incentives. The ad hoc work group examined each approach and came to substantial agreement, including agreement on the considerable complexity of the specific formulas for cost recovery, lost margins and shareholder incentives. When these proposals were formally presented to the Commission (Appendix I of HECO's IRP Application, Docket No. 7257) the detailed mechanisms and formulas had already been examined

and important. Agreement between parties on the general issues is dependent upon the specific details of workable solutions. A collaborative venue allows extensive interchange between parties (and their consultants) that is productive in examining and resolving mechanisms that have extensive, interdependent and sometimes complex details. Litigation is generally not an ideal forum for resolving complex details.

Although a collaborative process could be productive, the amount of time and effort that is required is not trivial and should be considered carefully. A collaborative process is only worthwhile if there is sufficient promise of effective results to justify the time and effort required of the participating parties.

CONSIDERATIONS IN ESTABLISHING A COLLABORATIVE PROCESS

There are several considerations regarding how a collaborative process could be implemented. These include the type of venue, the format, means of funding and means of initiating a collaborative process. These considerations are outlined briefly below.

- TYPE OF VENUE
 - Parties (or some subset of parties) could convene on their own initiative, ad hoc
 - A collaborative could be part of the schedule of proceedings for the docket
 - As an initial effort to scope and clarify issues and areas of agreement
 - As a means to resolve particular issues
 - A collaborative could be convened by an independent entity or sponsor
- FORMAT
 - Parties could meet informally for discussion of issues
 - Parties could meet with the assistance of a process facilitator
 - A structured facilitated process could be used
 - Technical and/or research support services could be available to the collaborative
- FUNDING AND/OR ADMINISTRATIVE SUPPORT (if necessary)
 - An informal collaborative without facilitation could be implemented without funding
 - Resources and support could be provided directly by one or more of the parties
 - Funding could be provided by one or more parties through an independent entity⁴
 - Funding and support could be provided by the Commission directly or through another entity⁵

by and incorporated the concerns of the ad hoc work group participants. There were outstanding issues that were not agreed by the parties, but these remaining issues were limited and clearly framed.

⁴ The Hawaii Energy Policy Forum could possibly be a viable entity through which to fund and/or administer a collaborative process. It would not be appropriate for the Forum to take any position on any matters to be considered by a collaborative since the Forum includes several of the parties to the Energy Efficiency Docket as well as the Commission. The potential role of the Forum would be limited to providing a vehicle through which individual parties could objectively fund a collaborative and, to the extent appropriate, to provide logistical or administrative support. Inquiries about any possible services to be provided by the Forum could be directed to Carl Freedman (808-572-2519) or Michael Hamnett (808-988-8311). Any proposals would have to be presented to the Forum for approval.

⁵ The Commission previously funded and administered a collaborative process in the "Renewables" Docket No. 94-0226.

- MEANS OF INITIATING A COLLABORATIVE PROCESS
 - On the initiative of the parties (or some subset of the parties)
 - By agreement of the parties in stipulating a schedule of proceedings
 - By suggestion or motion at a prehearing conference
 - By action of the Commission

SUMMARY

A collaborative process could be an efficient and productive way to start to clarify and/or resolve some of the fundamental issues in the Energy Efficiency Docket. I encourage the parties and/or the Commission to initiate some form of a collaborative forum for a productive discussion of the issues in this docket.

If there is interest in any constructive role for the Hawaii Energy Policy Forum please contact either Carl Freedman (808-572-2519) or Michael Hamnett (808-988-8311).

I certify that this letter was mailed by first class mail to the service list below.

Respectfully submitted,



Carl Freedman

This letter was mailed by first class mail to the stakeholders listed below. This service list includes the Commission, all parties and petitioners of record in Docket No. 04-0113 and Docket No. 05-0069 (to the addresses on the service list of Order No. 21698) and to additional petitioners in Docket No. 05-0069 known to me as of April 6, 2005:

Carlito P. Caliboso, Chairman, Public Utilities Commission of the State of Hawaii
 Department of Commerce and Consumer Affairs, Division of Consumer Advocacy
 William A. Bonnet, Hawaiian Electric Company
 Patsy H. Nanbu, Hawaiian Electric Company
 Thomas W. Williams, Jr., Esq., Goodsill Anderson Quinn & Stifel
 Dr. Kay Davoodi, Utilities Rates and Studies Office, NAVFAC Washington
 Randal Y.K. Young, Esq., Naval Facilities Engineering Command Pacific
 E. Kyle Datta, Rocky Mountain Institute
 Henry Q. Curtis, Life of the Land
 Brian T. Moto, Esq., Department of Corporation Counsel, County of Maui
 Joseph Speroni
 Warren Bollmeijer, Hawaii Renewable Energy Alliance
 Rick Reed, Hawaii Solar Energy Association

cc: Sharon Miyashiro, Hawaii Energy Policy Forum
 Michael Hamnett, Hawaii Energy Policy Forum
 Maurice Kaya, DBEDT Energy, Resources & Technology Division