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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of HAWAIIAN ELECTRIC COMPANY, INC. For Approval and/or Modification of Demand-Side and Load Management Programs and Recovery of Program Costs and DSM Utility Incentives.	)	DOCKET NO. 05-0069

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COUNTY OF KAUA`I'S MOTION
FOR RECONSIDERATION OR ENLARGEMENT OF TIME

AND

CERTIFICATE OF SERVICE

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MOTION FOR RECONSIDERATION OR ENLARGEMENT OF TIME

The County of Kaua'i (County) respectfully requests the Commission reconsider and modify its denial of intervention by the County in Order No. 21957, filed on August 3, 2005 and vacate the provisions of that order denying the County intervention. Alternatively, the County requests the Commission grant the County an enlargement of time to file a motion for intervention. The motion for reconsideration is made pursuant to Rule 6-61-137 of the Commission's Rules of Practice and Procedure (Title 6, Chapter 61 of the Hawai'i Administrative Rules, hereinafter "Rules"). The alternative motion for enlargement of time is made pursuant to Rule 6-61-23 of the Rules.

In support of its motion, the County states:

1. Background

By Order No. 21698, filed on March 16, 2005, the Commission, among other matters, opened this docket to consider Hawaiian Electric Company's (HECO's) requests for approval and/or modification of demand-side (DSM) and

load management programs and recovery of program costs and DSM utility incentives (collectively, "Proposed DSM Programs) and determined the parties and participants for this docket.[1] By Order No. 21861, filed on June 7, 2005, Commission held that the docket issues, identified in Order No. 21698 "relate not only to HECO's Proposed DSM Programs, but to statewide energy policies as well." Order No 21861 at 5 (emphasis added). Having extended the scope of the docket from HECO's Proposed DSM Programs to include statewide energy issues, the Commission then made all energy utilities parties to the docket, finding that the remaining energy utilities operating in the State, namely Hawai'i Electric Light Company (hereinafter "HELCO"), Maui Electric Company, Ltd. (hereinafter MECO"), the Kaua'i Island Utility Cooperative (hereinafter "KIUC"), and The Gas Company (hereinafter "TGC") have interests relating to the subject docket and their failure to participate in the docket may impair their ability to protect those interests. Order No. 21861 at 5.

On June 17, 2005, the County filed a motion to intervene in the docket. No party opposed the County's motion to intervene. While not opposing the County's motion to intervene, the HEI companies stated that the County's intervention should be limited to those issues that relate to statewide energy policy.[2]

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[1] As of the date of the order, the parties to this docket were HECO, the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (hereinafter "CA"), Rocky Mountain Institute (hereinafter "RMI"), Life of the Land (hereinafter "LOL"), and the County of Maui (hereinafter "COM"). Subsequently, the following were added as parties: the Department of the Navy, on behalf of the Department of Defense (hereinafter "DOD"), Hawai'i Solar Energy Association (hereinafter "HSEA"), and the Hawai'i Renewable Energy Alliance (hereinafter "HREA").

[2] Letter dated June 27, 2005 from Robert A. Alm, HECO Senior Vice President, Public Affairs, to the Commission and the parties.

2. The County meets the procedural requirements of Rule 6-61-137

Under Rule 6-61-137, the County must file a motion for reconsideration within ten days after the decision or order is served upon the party. This motion is timely filed within ten days of August 3, 2005, the date of service of Order No. 21957. Rule 6-61-137 also requires the County to specify the nature of its prayer. The County prays for reconsideration and modification of Order No. 21957 to allow intervention by the County and vacation of the provision in Order No. 21957 which denies intervention to the County.

Finally, Rule 6-61-137 requires the County to state why the decision or order is unreasonable, unlawful, or erroneous. Order No. 21957 is unreasonable and erroneous because it effectively precludes the County from participating in the docket. The County urges the Commission to consider the County's impossible situation. Even if the County filed a motion to intervene within twenty days of March 16, 2005, as required by Order No. 21957, it would not have been able to show an interest in the docket, since the scope of the docket at that time was limited to the proposed DSM programs of HECO and its affiliated utilities. The Commission's orders show that intervention was allowed to other parties in the docket because they were affected by the policies of HECO and its affiliates as follows: DOD ("maintains numerous military installations within the State that obtain and use electric services from **HECO**" (Order No. 21698 at 13), "**HECO**'s Proposed DSM Programs have the potential to have great impact to DoD" (Order No. 21749 at 4)); HSEA ("represents the majority of the solar manufacturers, suppliers and contractors participating in **HECO**'s existing DSM programs" (Order

No. 21749 at 5)); RMI ("interest in ...ensuring regulatory treatment of DSM that aligns **HECO**'s financial interest with the path that represents the least cost to society" (Order No. 21698 at 16)); LOL ("interests relate and are more reasonably pertinent to **HECO**'s proposed DSM matters" (Order No. 21698 at 17)); COM ("decisions relating to [**HECO**'s DSM] programs may apply to Maui **Electric Company** and thereby affect the County of Maui" (Order No. 21698 at 17)); HREA ("interests are reasonably pertinent to **HECO**'s Proposed DSM Programs" (Order No. 21749 at 6)). (Emphasis added.) Thus, the County would not have been able to show any interest in the docket and HECO's proposed DSM programs since it is not a ratepayer of HECO or its affiliates and the County's constituents are not served by HECO or its affiliates. Moreover, the County would have no interest in the practices of HECO and other investor-owned utilities. Kaua'i's electric utility is a ratepayer-owned utility cooperative. DSM and load management programs, recovery or program costs, and DSM management utility incentives are different for investor-owned utilities like the HEI companies than they would be for a cooperative. For example, loss gross margin incentives are inappropriate for a cooperative. The County did not have the ability or standing to intervene until June 7, 2005, when Order No. 21861 extended the geographic scope of the docket statewide and included the utilities serving Kaua'i in the docket (KIUC and TGC).

It is also important to note that during the period of intervention (twenty days from March 16, 2005) the County did not have notice that the docket would

involve Kaua'i or KIUC issues, since the scope of the docket was expanded to affect Kaua'i by Order No. 21861 on June 7, 2005.

The Commission has the discretionary authority allow the County into this docket. Rule 6-61-57(3)(B), cited in Order 21957 as specifying the "normal period by which persons were to file motions to intervene or participate"[3] is not jurisdictional. Kepo`o, et. al v. Kane, et. al, 106 Hawai'i 270, 103 P.3d 939 (2005). In the Kepo`o case, the Supreme Court of Hawai'i held that an administrative rule requiring filing of a motion to intervene was not jurisdictional, that intervention is governed by Rule 24, of the Hawai'i Rules of Civil Procedure,[4] which allows timely motions for intervention, and whether a motion is "timely" is a matter within the discretion of the court. Id. at 285.

The County contends there are good reasons for the Commission to find that the County's motion was timely. As stated above, the County filed its motion within twenty days from the time its interest in the docket was created by Order No. 21957. The outcome of the docket will affect the County and its constituents, because the County and its constituents are owners and members of its primary electric utility. The desired outcome of the docket will be diminished if the County is not allowed to become a party. Kaua'i's utility has a unique ownership structure and there are no other Kaua'i-specific parties to add to the discussions of the effect of policies on Kaua'i. The County is also not aware of any other county in Hawai'i which has been denied intervention in utility or energy matters affecting the county.

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[3] Order No. 21957 at 6.

[4] Rule 6-61-1 requires liberal construction of the rules and allows reference to the Hawai'i Rules of Civil Procedure as guidance.

For these reasons, the County respectfully requests the Commission exercise its discretion, and (1) reconsider and modify Order No. 21861 to grant the County's motion for intervention and (2) vacate the portions of Order No. 21861 which result in denial of intervention to the County. The County urges the Commission to consider the following: (1) no party opposed the County's limited intervention and (2) since the docket process is still evolving, the County can commit that its intervention will not disrupt the process or require modifications to the schedule in the docket.

3. The County meets the requirements of Rule 6-61-23

Alternatively, the County respectfully requests the commission to exercise its discretion pursuant to Rule 6-61-23 and order an enlargement of time in which the County may intervene in this docket. In support of the request, the County asserts that its excusable neglect consists of the fact that Order No. 21698 did not specify that the docket involved Kaua'i or Kaua'i-related issues, thus, it had no notice of the effect of the docket on the County or its constituents until Order No. 21861. While it could be argued that the County should have been aware, when the Commission extended the scope of the docket and added additional parties, sua sponte, it became evident that the docket had statewide implications. The County notes that the County's motion for intervention could be considered as timely, since it was filed within twenty days of the date the County's interests were manifested by the issuance of Order No. 21861.

DATED: Līhu`e, Kaua`i, Hawai`i, August 11, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served copies of the foregoing **COUNTY OF KAUA`I'S MOTION FOR RECONSIDERATION OR ENLARGEMENT OF TIME** in Docket No. 05-0069 upon the following parties, by causing copies hereof to be mailed, postage prepaid, and properly addressed to each such party, as noted below.

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DATED: Līhu`e, Kaua`i, Hawai`i, August 11, 2005.

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