

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to)
Investigate the Issues and)
Requirements Raised by, and)
Contained in, Hawaii's Public)
Benefits Fund, Part VII of)
Chapter 269, Hawaii Revised)
Statutes)

DOCKET NO. 2007-0323

ORDER NO. 23681

Filed Sept. 26, 2007
At 1 o'clock P.M.

Karen Higrest.
Chief Clerk of the Commission

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ORDER

By this Order, the commission initiates an investigation to examine the issues and requirements raised by, and contained in, Part VII of Chapter 269, Sections 269-121, et seq., Hawaii Revised Statutes ("HRS") pertaining to Hawaii's Public Benefits Fund. In particular, the commission initiates this proceeding to select a Public Benefits Fund ("PBF") Administrator ("PBF Administrator") and to implement a new market structure for Energy Efficiency Demand-Side Management ("Energy Efficiency DSM")¹ programs pertaining to HAWAIIAN ELECTRIC

¹For the purposes of this Order, the term "Energy Efficiency" will refer to the savings of energy usage; the term "Load Management" will refer to direct control or management of the load; and the term "Demand-Side Management" or "DSM" will refer to Energy Efficiency and Load Management collectively.

COMPANY, INC. ("HECO"),² HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"),³ and MAUI ELECTRIC COMPANY, LTD. ("MECO")⁴ (collectively, the "HECO Companies"), pursuant to HRS §§ 269-121, et seq., and Hawaii Administrative Rules ("HAR") § 6-61-71.

I.

Background

In Docket No. 05-0069 (the "Energy Efficiency Docket"), the commission examined which market structure may be the most appropriate for providing DSM programs. By Decision and Order No. 23258, filed on February 13, 2007, in Docket No. 05-0069 ("Decision and Order No. 23258"), the commission determined, inter alia, that all of the HECO Companies' Energy Efficiency DSM programs shall transition from the HECO Companies to a third-party administrator by January 2009, unless otherwise

²HECO is a Hawaii corporation and a public utility as defined by HRS § 269-1. HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii ("State").

³HELCO is a Hawaii corporation and a public utility as defined by HRS § 269-1. HELCO was initially organized under the laws of the Republic of Hawaii on or about December 5, 1894. HELCO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii in the State of Hawaii.

⁴MECO is a Hawaii corporation and a public utility as defined by HRS § 269-1. MECO was initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai, and the production, distribution, and sale of electricity on the island of Lanai in the State of Hawaii.

ordered by the commission.⁵ As described in Decision and Order No. 23258, the commission expects that the transition to a third-party administrator will (1) "remove the perceived inherent conflict between a utility's desire to generate revenues and income, and Energy Efficiency measures that serve to decrease sales and defer the need for additional plant investment"; (2) "facilitate the introduction of innovative Energy Efficiency programs to the State, resulting in greater customer choice, increased participation levels, and higher overall energy savings"; and (3) "improve the cost-effectiveness of administering DSM programs."⁶

In addition, by Decision and Order No. 23258, the commission determined that it shall establish a PBF and appoint a fund administrator to operate and manage the programs under the PBF, pursuant to HRS §§ 269-121, et seq.⁷ In Decision and Order No. 23258, the commission stated that it "will open another docket to select a PBF administrator and to refine the details of the new market structure."⁸ Accordingly, the commission is opening this docket, pursuant to HRS §§ 269-121, et seq., and consistent with its discussion in Decision and Order No. 23258.

⁵See Decision and Order No. 23258, at 35. The commission also determined that the HECO Companies' Load Management programs shall be excluded from the third-party administrator's area of responsibility. See id.

⁶Decision and Order No. 23258, at 35-36.

⁷See Decision and Order No. 23258, at 141.

⁸Decision and Order No. 23258, at 140.

II.

Discussion

A.

Investigative Authority

The commission initiates this docket pursuant to HRS §§ 269-121, et seq., and HAR § 6-61-71. As described herein, HRS § 269-121 authorizes the commission to establish a PBF, and HRS § 269-122 authorizes the commission to appoint a PBF Administrator. In addition, HAR § 6-61-71 provides that the commission may, at any time, investigate matters subject to its jurisdiction.⁹ Accordingly, pursuant to the above-mentioned authorities, the commission initiates this docket to investigate the issues and requirements raised by, and contained in, HRS §§ 269-121, et seq.

B.

Parties

Since they have information that will assist the commission in this investigation, the commission, sua sponte, names as parties to this proceeding, HECO, HELCO, MECO, and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate").¹⁰

⁹HAR § 6-61-71, Commission investigation, states that "[t]he commission may at any time investigate matters subject to its jurisdiction."

¹⁰The Consumer Advocate is an ex officio party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

At this time, the commission is uncertain as to the interests of the other parties and participants of the Energy Efficiency Docket. Rather than naming those entities as parties to this proceeding, the commission will serve them with a copy of this Order initiating this proceeding. If those entities are interested in participating in this proceeding, they may file a motion to intervene or to participate without intervention, as described in section II.D., infra.

C.

Purpose of Investigation

Through this docket, the commission intends to examine the issues and requirements raised by, and contained in, HRS §§ 269-121, et seq. These issues include, but are not limited to:

1.

Establishment of the PBF

HRS § 269-121 authorizes the commission to establish a PBF to "be used to support energy-efficiency and [DSM] programs and services." Once the PBF is established, the PBF will collect ratepayer money through a surcharge that shall be known as the "Public Benefits Fee."¹¹ In addition, the commission "may

¹¹See HRS §§ 269-121(b). Currently, the electric utilities administer their own Energy Efficiency and Load Management programs, for which they recover program costs through the DSM surcharge component of the Integrated Resource Planning ("IRP") Cost Recovery Provision on the ratepayers' billing statements.

redirect all or a portion of the funds collected through the current [DSM] surcharge by Hawaii's electric utilities into a [PBF]."¹²

The commission intends to establish the PBF in conjunction with or in preparation for the transition to a third-party administrator. Consistent with Decision and Order No. 23258, the commission intends that the PBF surcharge shall be used to fund Energy Efficiency DSM program administration by a third-party administrator.¹³ Furthermore, as indicated in Decision and Order No. 23258, until the transition to the third-party administrator is complete, the HECO Companies shall be entitled to recover utility-incurred costs in the manner described in Decision and Order No. 23258.¹⁴

2.

Request For Proposal or Other Appropriate Procedure

HRS § 269-122 provides that if the commission establishes a PBF, the commission "shall appoint a fund administrator to operate and manage any programs established under [HRS] section 269-[121]."

In the commission's preliminary vision for Energy Efficiency DSM program implementation under a third-party administrator, the commission stated that it plans to draft and

¹²See HRS § 269-121(a).

¹³See Decision and Order No. 23258, at 141.

¹⁴See Decision and Order No. 23258, at 141.

issue a Request for Proposals ("RFP") to solicit bids for a PBF Administrator.¹⁵ The commission envisioned that:

The RFP will, among other things, request that bidders propose new or improved DSM programs, consistent with the IRP Framework and other criteria. The commission, through the RFP, will identify goals and incentives for the PBF administrator, consistent with the commission's determinations in [Decision and Order No. 23258] and the IRP Framework. Additionally, the RFP will specify the standards against which the PBF administrator will be evaluated and its performance measured. Finally, the RFP will provide the scale and scope of commission oversight over the PBF administrator and the specific regulatory requirements that will apply to the PBF administrator. The commission anticipates that the term of the agreement will be a period of five (5) years, commencing January 2009.¹⁶

Consistent with the commission's preliminary vision, the commission intends to solicit bids for the PBF Administrator through an RFP or other appropriate procedure.

The commission is cognizant that the parties (and intervenors and participants, if any) may have valuable insight and recommendations with respect to the drafting and issuance of the RFP or other appropriate document. Therefore, the commission will, in this docket, provide copies of its draft RFP or other appropriate document to the parties (and intervenors and participants, if any), for their comment.

¹⁵See Decision and Order No. 23258, at 141.

¹⁶See Decision and Order No. 23258, at 141-42. The IRP Framework ("A Framework for Integrated Resource Planning," revised May 22, 1992, attached to Decision and Order No. 11630, filed on May 22, 1992, in Docket No. 6617) provides guidelines and requirements under which all of Hawaii's energy utilities must develop integrated resource plans.

3.

Qualification Requirements of the PBF Administrator

HRS § 269-123(a) requires that the PBF Administrator "shall satisfy the qualification requirements established by the [commission] by rule or order."¹⁷ HRS § 269-123(a) states that such qualification requirements "may include experience and expertise in: (1) [e]nergy-efficient and renewable technologies and methods; and (2) [i]dentifying, developing, administering, and implementing [DSM] and energy-efficiency programs."

The commission establishes that the qualification requirements shall include those listed in HRS § 269-123(a), and any other qualification requirements set forth in the RFP or other appropriate document. At this time, the commission is not establishing the weights that will be applied to each of the qualification requirements, or whether other experience or expertise may satisfy certain qualification requirements. These decisions shall be deferred to the RFP or other appropriate process.

4.

Duties and Responsibilities of the PBF Administrator

HRS § 269-123(b) requires that the PBF Administrator's duties and responsibilities shall be established by the commission

¹⁷HRS § 269-122(b) provides that "the fund administrator shall not be an electric public utility or an electric public utility affiliate."

by rule or order. HRS § 269-123(b) states that such duties and responsibilities may include:

- (1) Identifying, developing, administering, promoting, implementing, and evaluating programs, methods, and technologies that support energy efficiency and [DSM] programs;
- (2) Encouraging the continuance or improvement of efficiencies made in the production, delivery, and use of energy-efficiency and [DSM] programs and services;
- (3) Using the energy-efficiency expertise and capabilities that have developed or may develop in the State and consulting with state agency experts;
- (4) Promoting program initiatives, incentives, and market strategies that address the needs of persons facing the most significant barriers to participation;
- (5) Promoting coordinated program delivery, including coordination with electric public utilities regarding the delivery of low-income home energy assistance, other [DSM] or energy-efficiency programs, and any utility programs;
- (6) Consideration of innovative approaches to delivering [DSM] and energy-efficiency services, including strategies to encourage third[-]party financing and customer contributions to the cost of [DSM] and energy-efficiency services; and
- (7) Submitting, to the [commission] for review and approval, a multi-year budget and planning cycle that promotes program improvement, program stability, and maturation of programs and delivery resources.

In addition, in Decision and Order No. 23258, the commission stated that "the PBF administrator will be required to actively participate in the IRP process."¹⁸

The commission establishes that the duties and responsibilities of the PBF Administrator shall include those listed in HRS § 269-123(b), those described in Decision and Order No. 23258, and any other duties and responsibilities established by the commission in the Contract for Goods and Services with the PBF Administrator, or other appropriate document.

5.

Program Implementation

In the Energy Efficiency Docket, HECO requested that the HECO Companies be allowed to compete for the implementation of various Energy Efficiency programs. In Decision and Order No. 23258, the commission stated, "[a]s it may be beneficial for the HECO Companies to be allowed to compete for implementation of the Energy Efficiency DSM Programs and the [Residential Customer Energy Awareness] Program, the commission does not foreclose such possibility at this time."¹⁹ The commission also stated:

However, because the third-party administrator has yet to be selected, and the bidding process for program implementation has yet to be developed, the commission makes no determination at this time as to any of the parameters of the HECO Companies'

¹⁸Decision and Order No. 23258, at 142.

¹⁹Decision and Order No. 23258, at 40.

eligibility or the selection criteria that will be used in awarding program implementation.²⁰

Upon the selection of the PBF Administrator, the commission intends, in this docket, to determine whether the HECO Companies will be allowed to compete for the implementation of the Energy Efficiency DSM programs.

6.

Transition Plan

HRS § 269-124 states that if the commission establishes a PBF pursuant to HRS § 269-121, the commission shall "[d]evelop a transition plan that ensures that: (A) [u]tility [DSM] programs are continued, to the extent practicable, until the transition date; and (B) [t]he fund administrator will be able to provide [DSM] and energy-efficiency services on the transition date[.]"

As described in Decision and Order No. 23258, until the PBF Administrator is able to provide Energy Efficiency DSM services, on or about January 2009, the HECO Companies will be responsible for administering their commission-approved DSM programs.²¹ As indicated in Decision and Order No. 23258, the commission will provide a transition period to minimize any breaks in the provision of Energy Efficiency programs, and to ensure that the PBF Administrator will be ready to provide the Energy Efficiency programs on the transition date. "[T]he HECO

²⁰Decision and Order No. 23258, at 40.

²¹See Decision and Order No. 23258, at 148.

Companies are required to cooperate fully and promptly to ensure that the [transition to the PBF Administrator] is as smooth as possible for all entities involved or impacted, particularly ratepayers."²²

Finally, in order to facilitate the ability of the PBF Administrator to provide Energy Efficiency DSM programs on the transition date, the commission is considering utilizing the DSM surcharge component of the IRP Cost Recovery Provision to collect start-up funds that will be transferred to the PBF, pursuant to HRS § 269-121(a). The commission intends to allow the parties (and intervenors and participants, if any) an opportunity to provide comments on this issue prior to any adjustment of the DSM surcharge.

7.

Opportunity to Comment

The foregoing constitutes the primary purposes of this investigative docket and are the primary matters and issues to be considered and resolved in this docket. During the course of this investigation, the parties (and intervenors and participants, if any) shall have the opportunity to propose refinements to the foregoing purposes, matters and issues to be considered and resolved in this proceeding.

²²Decision and Order No. 23258, at 148.

D.

Procedural Matters

HAR ch. 6-61, Rules of Practice and Procedure Before the Public Utilities Commission, will apply to this proceeding. Any interested individual, entity, agency, or community or business organization desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the date of this Order, pursuant to HAR ch. 6-61, subch. 4. An individual, entity, agency, or community or business organization that files a motion to intervene or participate without intervention is required to disclose whether it is a potential bidder to be the PBF Administrator. Motions to intervene or participate without intervention must comply with all applicable rules of HAR ch. 6-61.

Subsequent to determining the parties and participants in this docket, the commission may issue an order establishing, among other things, the schedule of proceedings, issues, hearing date(s), if any, and other procedures needed to govern the instant proceeding. Alternatively, the commission may require the parties (and intervenors and participants, if any) to submit a stipulated prehearing (or procedural) order for the commission's review and approval.

The commission expects all parties to this proceeding to participate fully in the development of the necessary procedures and issues for the orderly conduct of this investigatory proceeding, consistent with all applicable State

laws and commission rules and regulations. Moreover, if necessary or appropriate, the parties to this proceeding will be expected to actively participate in a commission hearing or other procedures authorized by State law.

III.

Orders

THE COMMISSION ORDERS:

1. An investigative proceeding is initiated to select a PBF Administrator and to refine the details of the new market structure, pursuant to HRS §§ 269-121, et seq.

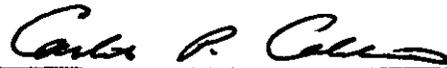
2. The commission, sua sponte, designates HECO, HELCO, MECO, and the Consumer Advocate as parties to this investigative proceeding.

3. Any interested individual, entity, agency, or community or business organization desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the date of this Order, pursuant to HAR ch. 6-61, subch. 4. An individual, entity, agency, or community or business organization that files a motion to intervene or participate without intervention is required to disclose whether it is a potential bidder to be the PBF Administrator. Motions to intervene or participate without intervention must comply with all applicable rules of HAR ch. 6-61.

DONE at Honolulu, Hawaii

SEP 26 2007

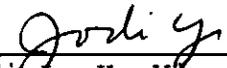
PUBLIC UTILITIES COMMISSION
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By 
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By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
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PUC\initiating\invest.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23681 upon the following entities, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such entity.

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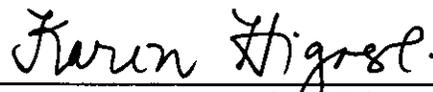
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DATED: **SEP 26 2007**