

## DIVISION OF CONSUMER ADVOCACY (DCA)

website: [www.hawaii.gov/dcca/dca/](http://www.hawaii.gov/dcca/dca/)

e-mail address: [consumeradvocate@dcca.hawaii.gov](mailto:consumeradvocate@dcca.hawaii.gov)

### OVERVIEW

The Division of Consumer Advocacy (“DCA”) represents, protects, and advances the interests of consumers of utility and transportation services before regulatory agencies, primarily the Hawaii Public Utilities Commission (“PUC”) and the Federal Communications Commission (“FCC”). The DCA reviews requests for rate and tariff changes, capital improvement projects, integrated resource plans, certificates for authority to operate, and other applications filed by public utility and transportation companies, in addition to other proceedings opened by regulatory agencies to investigate or review generic issues. In representing the consumers of utility and transportation services before the PUC, the DCA must analyze financial and statistical data, prior docketed material, industry standards, and the information provided by the utility and transportation companies to support their applications. After analyzing the information, the DCA generally submits either written statements of position or testimonies explaining its analyses, findings, and recommendations to the PUC. Oral testimonies by DCA analysts, subject to utility company cross-examination, are required when an evidentiary hearing before the PUC is scheduled to resolve differences among the parties to a proceeding.

### COMPOSITION

The DCA consists of 14 employees, ranging from an administrator, a secretary, a utilities/transportation officer, a utilities/transportation specialist, an education specialist, rate analysts, researchers, engineers, attorneys, and clerical support. The DCA is located on the third floor of the King Kalakaua Building, 335 Merchant Street. Its contact information is as follows: mailing address, P.O. Box 541, Honolulu, HI 96809; phone number, 586-2800; internet address, [www.hawaii.gov/dcca/dca/](http://www.hawaii.gov/dcca/dca/).

The majority of the DCA’s professional staff is comprised of the Rate Analysis Branch, the Engineering Branch, the Research Branch, and the Legal Branch.

The *Rate Analysis Branch* reviews and analyzes economic conditions, investor requirements and returns, and other aspects relating to the capital structure of regulated public utilities and transportation companies. In addition, the Branch evaluates and develops recommendations relating to rate schedules, effects of rates, sales levels, and other pertinent considerations in establishing rates.

The *Engineering Branch* analyzes and makes recommendations on technical matters such as production capacity and efficiency, depreciation allowances, maintenance cost factors, engineering safety standards, plans for capital improvements, purchased power agreements, and quality of service standards.

The *Research Branch* analyzes and advises on matters imposed on regulated public utility and transportation industries, provides services and advice relating to the current operations of and evolving changes to regulated public utilities and transportation industries, conducts special studies on the changes in various regulatory areas, including energy and telecommunications, and assists and participates with other branches in developing data and conducting analyses on matters under examination.

The *Legal Branch* provides legal representation before regulatory agencies. The branch also provides general clerical support by updating and maintaining the DCA’s docket, general office, and

electronic data base files, formatting draft documents prepared by the technical staff and attorneys for filing with regulatory agencies and utility companies, and maintaining the office library.

Not counting the Legal Branch, the DCA is authorized to have up to nine exempt positions, under HRS § 269-52(1). Pursuant to Act 130, SLH 2010, funding was provided to restore four of the exempt positions, as well as four of the civil service positions that were abolished by the 2009 Legislature. The DCA also has a staff level position – the Public Utilities/Transportation Specialist – that assists the Public Utilities/Transportation Officer in managing the overall workload pertaining to matters filed before the regulatory agencies, such as the PUC and FCC. In addition to providing analysis on docketed filings, the Education Specialist is responsible for consumer education and outreach, which is accomplished by attending various community events throughout the State to gain public input about specific issues affecting consumers and to provide information on utility services. The Education Specialist is also responsible for updating and maintaining the DCA’s web site and publishing a quarterly newsletter.

Given the DCA’s historical difficulty in attracting and retaining staff, in 2008, the DCA received authorization to reorganize, tailoring the position descriptions to be better aligned with the position duties and work of the DCA. Since the restoration of the eight positions in FY2010, the DCA has completed revising the necessary position descriptions that would allow the DCA to recruit for these positions.

## **GOALS AND OBJECTIVES**

The DCA’s goals and objectives can be categorized generally in three broad areas: consumer advocacy, policy advancement, and consumer education and outreach. These areas are not mutually exclusive and often overlap; however, for purposes of describing the DCA’s goals and how the DCA will reach them, the goals will be described separately.

### ***Consumer Advocacy***

#### *Goal*

Ensuring that Hawaii’s consumers receive fairly priced rates for safe and reliable services, while ensuring customer and environmental protections and renewable resource use, is the DCA’s responsibility and primary goal. This goal may involve a balancing of competing interests.

#### *Planned Approach/Methods*

The DCA has and will continue to achieve this goal by advocating for consumers of regulated utility and transportation services wherever their interests are at stake. Typically, this occurs before the PUC, but may also be before other federal, State or local agencies and legislative bodies.

A majority of the DCA’s resources will continue to be focused on PUC proceedings. These proceedings often may affect the rates and the reliability of utility and transportation systems and services. The DCA’s participation in PUC proceedings will typically involve some or all of the following:

1. Review of applications to ensure compliance with regulations;
2. Participation at PUC public hearings;
3. Procurement of consultant services to manage workload and for complex cases;

4. Completion of discovery;
5. Analysis of applications and supporting documents to determine the accuracy and the reasonableness of the requests;
6. Provision of recommendations to the PUC on the merits of the applications through statements of position or direct testimonies; provision of oral testimonies, which are subject to cross-examination in proceedings where evidentiary hearings are necessary; and
7. Completion of related legal actions, such as filings of legal briefs, motions, appeals, etc., where necessary.

The DCA also will remain flexible and willing to work with parties to proceedings to negotiate and settle proceedings or particular issues when they are in the consumers' best interest.

#### *Measures*

To measure the DCA's performance in advocating consumer interests, the DCA will continue to track various categories of information. Among others, the DCA monitors consumer savings due to its participation in PUC proceedings, the percentage of PUC decisions that agree with the DCA's recommendations, the number of service quality investigations it participates in, and the number of filings before the PUC reviewed by the DCA.

Only some of the significant impacts that the DCA's participation may have upon consumers are easily measured. Those impacts that are not easily measured will generally be discussed below in the DCA's explanation of its policy advancement objectives.

#### *Policy Advancement*

##### *Goal*

The DCA will remain active in promoting policies to protect and advance the interests of utility and transportation consumers on the local, State, and national levels.

##### *Planned Approach/Methods*

In the PUC's generic, investigative, or policy proceedings, the DCA follows a similar approach to its review and analysis of applications. A typical investigative proceeding may involve the following steps:

- After the DCA and other parties to the proceeding state their initial positions on the issues, discovery and analyses are done to determine the reasonableness of the other parties' positions;
- Technical meetings between the parties are often held to discuss and educate each other on the issues and positions taken, and to determine where possible agreement may be reached;
- The DCA then provides the PUC with a recommendation that it believes is in the best interest of consumers; and

- Evidentiary or panel hearings are held by the PUC to take evidence provided orally by DCA witnesses or consultants hired by DCA to provide expert testimonies on specific technical issues.

Specific ongoing investigative dockets are discussed later in this report.

The DCA has monitored, and will continue to monitor, Congressional activity in the energy and telecommunications areas. The DCA will continue to maintain contact with Hawaii's Congressional delegation, particularly those members sitting on committees that deal with energy and telecommunications, and will continue to provide input where appropriate.

The DCA will also continue to be actively involved and advocate for Hawaii consumers, through its membership in the National Association of State Utility Consumer Advocates ("NASUCA"). NASUCA is active before the FCC, Congress, and the federal courts in advancing consumer interests on national issues that impact consumers locally.

The DCA will also remain actively involved with the State Legislature, which sets policy at the State level. The DCA advises legislators through testimonies that detailed consumer benefits or detriments of specific proposals the legislators were considering. The DCA has attempted to take a more proactive approach by working with legislators and policy groups on the development of proposals, while maintaining a consistent policy position as advocated by the Governor's office.

#### *Measures*

Measuring the performance of the DCA's efforts to promote policy objectives is inexact. While the DCA tracks the percentage of its positions with which the PUC ultimately agrees, the measure does not capture the efforts throughout proceedings to educate and work with other parties to come to agreement on issues. The DCA can develop similar measures (e.g., whether its recommendations are ultimately agreed with by those setting the policy) for the State and federal agency and legislative bodies, but similar challenges with the imprecise nature of the measurement is likely to result.

#### *Education & Outreach*

##### *Goal*

The DCA's goal is to encourage the public to be wiser consumers of public utility services by, among other things, emphasizing the possible effects that their consumption habits may have on utility rates and the environment. It is through the education and outreach process that the DCA aims to gather consumer input on utility issues and to encourage consumers to be more involved in utility proceedings. In addition, consumers need to be aware that many of the benefits proposed under Hawaii's Clean Energy Initiative will not be immediately apparent in their bills. Thus, education of reasonable expectations is necessary to avoid misinformation from occurring.

##### *Planned Approach/Methods*

The DCA can accomplish its goal of positively affecting the habits of consumers on a statewide basis through the use of its web site and public outreach activities. The DCA established the following action plan to accomplish its goals and objectives:

1. Update and improve its website with consumer-friendly and useful content;
2. Establish information booths and provide presentations at community events, such as home shows and public fairs throughout the State and build positive relationships with both business and individual community members;
3. Improve communications with consumers and the public through expanded distribution and publication of its newsletter; and
4. Hold informational seminars or use public service announcements to highlight different utility issues and topics.

#### *Measures*

To measure the DCA's performance and progress of its education and outreach activities, it will track the number of people reached through education and outreach events, newsletters and other publications distributed, and consumers assisted with complaints and other issues.

### **ACCOMPLISHMENTS**

In 2011, results of the DCA's efforts to protect and advance the interests of consumers were seen through its work on behalf of individual communities, as well as major utility issues that will have far-reaching impacts on people throughout the State. Several of these efforts are described below.

#### *Rate Cases*

##### *Hawaiian Electric Company, Inc.'s ("HECO") 2009 Test Year Rate Case*

On July 3, 2008, HECO filed an application for approval to increase its rates (by approximately \$97,011,000, or 5.2%, over revenues at current effective rates) and to amend its rules. The DCA and the Department of the Navy were parties in this docket and offered analyses and recommendations for the PUC's consideration. As part of the rate case, issues related to management audits were considered. The PUC's final decision and order filed on December 29, 2010, which granted an overall increase of about \$66 million or about a 5% increase over present revenues. There remain outstanding issues regarding whether it is appropriate to conduct an overall management audit of HECO or to perform more focused audits relating to certain projects in order to determine the amount that might be recoverable from ratepayers. The DCA's recommendation was that rather than require a general management audit, the ratepayers and the resulting rates may benefit from focused regulatory audits that would allow the PUC to identify the amount of costs that should be deemed unreasonable. The PUC's decision on this matter is still pending.

*Maui Electric Company, Limited's ("MECO") 2012 Test Year Rate Case*

On July 22, 2011, MECO filed an application for approval to increase its rates (by approximately \$23,500,000 or 6.7%, over revenues at current effective rates) and to amend its rules. The DCA, among other things, participated in public hearings on each of the islands in MECO's service territory (Maui, Lanai, and Molokai), conducted inspections of company facilities and witness interviews, and has initiated an extensive discovery process. The DCA continues to examine the support for any increase in rates as well as other issues in the case, such as implementation of decoupling for MECO.

*Young Brothers, Limited's ("YB") Application for Rate Increase*

On December 23, 2010, YB filed an application for a general rate increase. DCA filed a Statement of Position ("SOP") indicating that the application was not complete, because it did not include YBs' actual results of operation for the previous calendar year. The PUC ordered YB to file a completed application no later than June 30, 2011. On May 6, 2011, YB re-filed its application for a rate increase with a 2011 test year. The re-filed application requested a 28.8% rate increase in the amount of \$16,986,000. This revenue requirement reflected the alleged negative impact that Pasha Hawaii Transport Lines LLC would have on YBs' roll on/roll off cargo volumes. (Pasha began a limited inter-island roll on/roll off service in February, 2011, pursuant to a PUC interim Decision & Order that gave Pasha a three-year certificate of public convenience & necessity.) YB argued in its application that it would lose significant revenue as a result of this competition into the inter-island shipping market. In the alternative, YB requested a revenue increase of \$13,591,000 or a 22.50% revenue increase without the "Pasha impact."

DCA filed numerous Information Requests ("IRs"); conducted interviews of YBs' financial employees; toured all of YBs' facilities; retained consultants to analyze YBs' application; and participated in public hearings on all islands served by YB.

The two most significant positions taken by DCA in this docket were that 1) YB should not get any increase for the alleged "Pasha impact" and 2) YB was not entitled to include an imputed corporate income tax allowance in its cost of service because YB and its corporate parent Saltchuk Resources, Inc. are both Subchapter S corporations and neither pay corporate income taxes. DCA refused to negotiate on either of these two items. An evidentiary hearing was held on November 1, 2011, on the phantom income tax issue. All other issues were settled, including the "Pasha impact" that YB agreed to withdraw from consideration by the PUC. The parties then briefed the income tax issue on November 16, 2011. DCA argued that Hawaii's consumers should not be required to pay the personal income taxes of Saltchuk's shareholders, which would be the result if YB was allowed to include a phantom income tax expense in its cost of service.

*Hawaii-American Water Company ("HAWC") 2011 Test Year Rate Case*

On February 22, 2011, HAWC filed an application for approval to increase its rates (by approximately \$1,764,860 or approximately a 21% increase over revenue at its prior existing rates). The DCA participated in a public hearing, conducted its review and analysis, developed testimonies, engaged in a negotiation process with HAWC to resolve the outstanding issues of this proceeding, and answered numerous information requests of the PUC. On November 21, 2011, the PUC issued its Decision and Order approving the Parties' Stipulation of Settlement Agreement in Lieu of Rebuttal Testimonies, an Evidentiary Hearing and post-hearing briefs, which specifically approved an increase in revenues over

present rates of \$1,246,630 or approximately 14.20% for HAWC based upon a total revenue requirement of \$10,026,020 for the 2011 calendar test year. Thus, the DCA was able to provide ratepayers a cost-savings of over \$500,000.

*Hawaii Water Service Company ("HWSC") General Rate Case for its Kaanapali Division*

On December 30, 2010, HWSC filed an application for approval to increase its rates (by approximately \$1,546,250 or 54.6%, over revenues at current effective rates) and to amend its rules. The DCA, among other things, participated in the public hearing, conducted discovery, inspections and witness interviews, and filed its testimonies and exhibits that recommended various adjustments to HWSC's requested increases. The DCA contended that any increase in utility rates above 25% might constitute rate shock, which generally refers to a sudden and significant increase in rates that will be difficult for the affected customers to absorb, and recommended an increase of only 18%. If the requested increase exceeded 25%, DCA recommends that a rate phase in plan be considered where the overall increase is phased in over at least two different points, with the first increase effective with the PUC's interim increase and the subsequent increases occurring after an interval that would allow residents and businesses to properly plan for that next incremental increase. In November 2011, the PUC approved requests by the parties to amend the procedural schedules. As the only two parties to the docket, HWSC and DCA are still attempting to reach a stipulated settlement in lieu of proceeding to an evidentiary hearing. The PUC approved an amended procedural schedule for the parties to resolve outstanding issues by December 12, 2011. The DCA will remain flexible and continue to work with HWSC to negotiate and settle proceedings. The PUC's decision and order is pending in this case.

*Olowalu Water Company, Inc. ("Olowalu") 2011 Test Year Rate Case*

On December 29, 2010, Olowalu filed an application requesting an increase in both potable and non-potable water utility service revenues of 77%, amounting to additional revenues of \$60,570. This was Olowalu's first rate increase request since receiving its authority to operate as a public utility in August 2000. The DCA filed its SOP on May 7, 2011 with a recommended 28% increase for additional revenues of \$27,294. On July 1, 2011, the parties entered into a settlement agreement for an increase of 47%, resulting in additional revenues of \$43,146. The parties agreed to an across-the-board increase of 44% being phased in over two periods, with the first increase at 25% and the second at 19%. On August 17, 2011, the PUC issued its Decision and Order accepting the parties' settlement agreement.

*Hawaii Water Service Company, Inc. – Pukalani Wastewater District  
("Pukalani") 2012 Test Year Rate Case*

On August 12, 2011, Pukalani filed its application seeking a 224.7% revenue increase equal to \$1,325,924 over current revenues for wastewater service provided to residential and commercial customers in Pukalani, Maui. Pukalani is seeking cost recovery for the replacement of the wastewater treatment plant and higher operating expenses. The DCA participated in the public hearing and completed its discovery phase. The DCA's testimony and exhibits will be filed in December 2011.

*Molokai Public Utilities, Inc.'s ("MPUI") and Waiola O Molokai, Inc.'s ("WOMI") Rate Cases*

On June 16, 2008, the PUC issued an order opening a proceeding to provide temporary rate relief to two related water utilities, MPUI and WOMI. The PUC was responding to an announcement in late March 2008 by Molokai Properties, Limited, of its intention to cease all current water service operations on Molokai. During the fiscal year, the DCA participated in public hearings and meetings, interviewed customers, conducted analysis of the limited financial information available from the companies, and provided the PUC with a SOP reluctantly stating non-opposition of the significant rate increases. On August 14, 2008, the PUC approved rate increases for the companies, effective on September 1, 2008. The PUC's Decision and Order required MPUI and WOMI to file rate increase applications within six months of the date of the Decision and Order if a third party was not found to take over the utilities.

On March 2, 2009, MPUI and WOMI filed rate increase applications with the PUC, requesting revenue increases of \$562,550 and \$308,781 over revenues at present rates for MPUI and WOMI, respectively. The DCA objected via statements regarding completeness of applications to MPUI's and WOMI's requests to waive the requirement to file audited financial statements in compliance with the PUC's rules. On April 2, 2009, the PUC denied MPUI's and WOMI's requests to file unaudited financial statements, requiring the companies to obtain independently audited financial statements and to file amended applications reflecting such audited financials.

On June 29, 2009, MPUI and WOMI filed amended applications for rate increase with the PUC, seeking net revenue increases of \$886,259 and \$473,431 for MPUI and WOMI, respectively, using the pro forma revenue amounts at present rates for the 2009-2010 test year. Based on the temporary rates authorized in the Temporary Rate Order, MPUI's proposed net revenue increase amounts to \$565,939, which is an approximate 74.6% increase from the pro forma revenue amount of \$758,958 at the temporary rate for the 2009-2010 test year. Based on the temporary rates authorized in the Temporary Rate Order, WOMI's proposed net revenue increase amounts to \$308,431, which is an approximate 106.96% increase from the pro forma revenue amount of \$288,360 at the temporary rate for the 2009-2010 test year.

The DCA participated in the public hearings, and due to the presence of intervenors in both docketed proceedings, the proceedings were contentious. The DCA participated in a lengthy discovery process and submitted written testimonies. Due to concurrent civil litigation between the County of Maui and Molokai Properties, Ltd., there was a mediation process that was ongoing and the parties involved in the proceedings before the PUC were asked to participate in the mediation process, to which the DCA complied. While an agreement was reached between MPUI, WOMI and the DCA, the intervenors, County of Maui and West Molokai Association, did not enter into any settlement agreements. As there was no agreement among all of the parties, the PUC held evidentiary hearings in both dockets. The PUC filed its Interim Decision and Orders in the MPUI and WOMI cases on May 28, 2010, which adopted most of the settlement agreement between MPUI, WOMI and the DCA. This authorized MPUI to increase its rates on an interim basis by \$542,724, or an approximate increase of 125.2%. WOMI's authorized increase was \$241,478, or an approximate increase of 222.8%.

The PUC filed its Final Decision and Order in the MPUI case on September 23, 2010, which allowed the \$548,682 increase that was agreed to in settlement. The final decision in the WOMI case was filed on February 8, 2011, which allowed a \$360,238 increase or an approximate 284% increase. The PUC acknowledged the significant increase but noted that it was necessary as the utility had not requested a rate



increase for over seventeen (17) years. The PUC approved the settlement proposal between the DCA and WOMI to implement a three-step phase-in to allow ratepayers an opportunity to absorb the consequences of the rate increase over a period of twelve months.

The County of Maui has appealed both the PUC's final Decision and Orders in both the MPUI and WOMI dockets. The DCA has filed Appellee responsive brief in both appellate proceedings. Both appellate decisions are still pending before the Hawaii Intermediate Court of Appeals.

### ***Generic and Other Proceedings***

#### *Feed-in Tariff Investigative Proceeding*

On October 24, 2008, the PUC initiated an investigation into the implementation of feed-in tariffs ("FIT") for the service territories of HECO, Hawaii Electric Light Company, Inc. ("HELCO") and MECO (collectively, the "HECO Companies"). On September 25, 2009, the PUC issued a Decision and Order establishing several policy principles that would guide the development and implementation of a FIT program for the HECO Companies' service territories. Throughout 2011, the DCA participated in numerous formal and informal meetings dedicated to the further development, implementation, and/or refinement of the FIT program for the HECO Companies' service territories. On June 3, 2011, the PUC issued a procedural order discussing the need to further refine and/or develop Tier 3 of the HECO Companies' FIT program. Following a series of filings made by the PUC-approved Independent Observer, on October 4, 2011, the DCA provided its comments with respect to Tier 3 of the HECO Companies' FIT program. In the view of the DCA, Tier 3 of the HECO Companies' FIT program should be implemented without modifications. As of the end of November 2011, the PUC has yet to rule upon Tier 3 of the HECO Companies' FIT program.

#### *Decoupling Investigative Proceeding*

On October 24, 2008, the PUC initiated a proceeding to investigate the implementation of a decoupling mechanism for the HECO Companies, pursuant to the recommendation of the signatories to the Energy Agreement. Generally, decoupling is a regulatory tool designed to separate a utility's revenue from changes in energy sales. The prospect of decoupling was one of the items that were enumerated in the Energy Agreement signed on October 20, 2008 by parties including the Governor Lingle, the HECO Companies, and the DCA. The DCA engaged in a lengthy process of evaluating and analyzing various decoupling proposals and developed a proposal consistent with the Energy Agreement but with modifications meant to help protect consumers' interests to which the HECO Companies agreed. The PUC filed its final decision and order on August 31, 2010 that implemented the joint proposal that was filed. The actual implementation of decoupling was contingent on the PUC being able to approve electric rates that reflect a return on equity that has been adjusted for decoupling. The PUC has had filed its decision and order for HECO in Docket No. 2008-0083 and the first decoupling filing occurred in 2011. Since that time, the DCA has been working with the PUC and the HECO Companies to further refine and improve the filing process in anticipation of HECO's next filing in 2012 as well as the possibility of additional decoupling filings by MECO and HELCO.

*AT&T And T-Mobile USA Merger*

On April 21, 2011, AT&T filed an application for either the PUC's waiver to consider AT&T's Stock Acquisition of T-Mobile or in the alternative, approval of such transaction.

On August 24, 2011, the DCA filed its SOP representing that it had concerns regarding the overall impact on the market share of telecommunication service in the State of Hawaii relating to this transaction but also stated that such consideration is at issue at the national corporate level and better left to the Federal Communication Commission and the United States Department of Justice's ("DOJ") investigation and disposition.

On August 31, 2011, the DOJ filed its complaint in the District Court for the District of Columbia seeking to enjoin the transaction. Pursuant to a Stipulated Scheduling and Case-Management Order issued on September 23, 2011, U.S. District Judge Ellen Segal Huvelle set February 13, 2012, as the date to begin trial which is estimated to take four to six weeks to complete. On November 10, 2011, the PUC filed its Order suspending this docket pending the disposition of the DOJ complaint.

*Biodiesel Supply Contract with Aina Koa Pono-Ka'u LLC*

HELCO filed its application on January 6, 2011, for the PUC's approval for a fuel purchase contract with Aina Koa Pono-Ka'u LLC ("AKP") for 16 million gallons per year of locally produced biofuel over twenty years. The application also requested the establishment of a Biofuel Surcharge Provision that will pass through the differential between the cost of the biofuel and the cost of the petroleum fuel that the biofuel is replacing, in the event the cost of the biofuel is higher than the cost of the petroleum fuel, for the customers of HECO, HELCO, and MECO based on the customers' kilowatt-hour ("kWh") usage.

AKP is a Hawaii-based limited liability company, formed to develop renewable energy solutions which are sustainable, reliable, and environmentally sound, with an emphasis on actively generating local economic development opportunities in the State. AKP sought to build and operate a bio-refinery project in the Ka'u District of the Island of Hawaii ("Facility") in order to produce, among other products, biodiesel to meet AKP's delivery obligations under the Biodiesel Supply Contract dated January 6, 2011.

Initially, the PUC issued an order that if AKP's biodiesel was to be purchased by HELCO only, then the surcharge could not be spread across all HECO Companies' ratepayers. However, as a result of the passage of Act 69, SLH 2011, the Legislature authorized a surcharge for companies that aggregate their respective Renewable Portfolio Standards (RPS) requirements to allocate costs associated with meeting the RPS where reasonable. HECO subsequently withdrew its request to include MECO in the surcharge, but still included HELCO and HECO.

The DCA, in its SOP concerning HECO's application for approval of the AKP contract, noted strong consumer opposition due to environmental, cultural and cost concerns but ultimately supported the application. As part of its consideration, the Consumer Advocate took note of the State Administration's support for the concept of the project that serves a number of principles that are set forth in the "New Day Plan," in particular the need to reduce Hawaii's dependence on petroleum oil.

The DCA further noted the benefit of the fixed-priced for AKP's contract over the 20-year period. Although higher than the price of petroleum diesel, the fixed AKP contract price would mitigate against the

price volatility of petroleum. The Consumer Advocate also found that the AKP contract price was consistent with other biofuel contracts that had been previously approved by the PUC. The DCA then recommended that the PUC approve the HECO/AKP biodiesel contract with the suggestion that HELCO should also be excluded from the surcharge.

On September 29, 2011, the PUC filed its Decision and Order denying the application, noting that the commitment to purchase 16 million gallons per year of AKP produced biofuel at the proposed price was too high in comparison to known petroleum fuel costs. The PUC compared the biodiesel contract price against the Annual Energy Outlook (published by the United States Department of Energy) reference forecasts for the price of oil in determining that AKP's price was too high.

#### *Energy Efficiency Portfolio Standards*

On March 8, 2010, the PUC initiated an investigation into the establishment and implementation of energy efficiency portfolio standards ("EEPS") for the State of Hawaii ("State") pursuant to Act 155, Session Laws of Hawaii 2009, and Hawaii Revised Statutes § 269-96. The PUC's investigation into the establishment and implementation of an EEPS for the State arises out of the Energy Agreement entered into by the State, the Department of Business, Economic Development, and Tourism, the DCA, and the HECO Companies on October 20, 2008. Following numerous technical meetings and exchanges of information attended by or conducted on behalf of the parties participating in the PUC's EEPS Docket, on August 29, 2011, the parties to the PUC's EEPS Docket, including the DCA, filed Statements of Position outlining the parties' respective positions on the Framework for Energy Efficiency Portfolio Standards proposed by the PUC on August 5, 2011. As of the end of November 2011, the PUC has yet to issue a decision and order pertaining to the establishment and implementation of an EEPS for the State.

#### *Reliability Standards Working Group ("RSWG")*

In August 2010, the PUC filed an order approving, with modifications, the HECO Companies' proposal for a Reliability Standards Working Group to assist in facilitating the continued movement toward a clean energy future and ensure reliability throughout the HECO Companies' service territories. The DCA, as a member of the RSWG, has participated, and will continue to participate, in workshops and webinars to address reliability issues to facilitate the interconnection of renewable energy resources to meet the State's sustainability and renewable energy goals.

On September 8, 2011, the PUC initiated an investigation into the implementation of reliability standards for the service territories of HECO, HELCO, and MECO, the HECO Companies. The PUC initially approved of the development of reliability standards in the PUC's on-going investigation into the establishment of FIT for the service territories of the HECO Companies. (See the PUC's Decision and Order filed on September 25, 2009 in PUC Docket No. 2008-0273, the PUC's investigation into establishing a FIT program for the HECO Companies' service territories; see also the DCA's participation in Docket No. 2008-0273 in the summer of 2011). Throughout the fall of 2011, the DCA, through its designated representative, has been participating in numerous meetings dedicated to the identification of the scope, duties, and responsibilities of the PUC-approved RSWG. As of the end of November 2011, work on and for the RSWG is still on-going.

*Kapolei Substation*

On February 3, 2011, HECO filed an application seeking PUC approval to commit funds estimated at approximately \$9.85 million, excluding customer contributions, for the purchase, construction and installation of the Kapolei Substation, Kapolei Transformers #1 and #2, and associated 46kV and 12kV circuits, related equipment, and easements. The DCA, among other things, participated in the public hearing, conducted a rigorous review, submitted information requests and filed a SOP to address concerns raised by State Senator Gabbard, State Representative Har, the Villages of Kapolei Association, and several area residents.

*Recovery of Deferred Costs for Big Wind Implementation Studies through the Renewable Energy Infrastructure Program Surcharge*

On May 17, 2011, HECO filed an application respectfully requesting PUC approval to recover approximately \$3,912,952 for Stage 1 Big Wind Implementation Studies costs through the Renewable Energy Infrastructure Program ("REIP") Surcharge approved by the PUC in Docket No. 2007-0416, the PUC's investigation into the establishment and implementation of a REIP for HECO, HELCO and MECO. Previously, HECO requested, and the PUC approved, the deferral of Stage 1 Big Wind Implementation Studies costs in Docket No. 2009-0162.

On October 7, 2011, the DCA submitted IRs to HECO seeking further support, clarification, and/or information with respect to certain matters presented by HECO in its application filed on May 17, 2011. On October 28, 2011, HECO responded to the IRs issued by the DCA in the Big Wind Implementation Studies Cost Recovery Docket.

In December 2011, the DCA filed a SOP ("SOP") detailing its position regarding the request to recover Big Wind Implementation Studies costs through HECO's REIP Surcharge. As of December 2011, the PUC has yet to issue a decision and order pertaining to HECO's request to recover Big Wind Implementation Studies costs through HECO's REIP Surcharge.

*Big Wind Assignment of Non-Conforming Bid to Molokai Renewables*

Pursuant to a previous PUC Decision & Order, Castle & Cooke had been granted a non-conforming bid to develop 400 MW of wind-generated electricity that would be delivered to Oahu via an undersea transmission cable. Hawaii Holding, LLC dba First Wind Hawaii was granted a similar non-conforming bid for a wind farm on Molokai. HECO was given until March 31, 2011 to submit term sheets for contracts on the non-conforming bids. First Wind was not able to secure the necessary property rights from Molokai Ranch; therefore, HECO was not able to submit a term sheet for a Molokai project. HECO requested that Castle & Cooke be allowed to assign 200 MW of its Lanai project to a new wind farm developer, Molokai Renewables (a joint venture between Molokai Ranch and Pattern Energy). DCA submitted a letter indicating that it did not agree that Castle & Cooke had a legally assignable right that it could assign to Molokai Renewables. On the other hand, in order to keep the Molokai wind farm project viable, DCA recommended that the PUC accept Molokai Renewable's proposal. The PUC agreed with DCA that Castle & Cooke did not have a legally assignable right, but disagreed with DCA that it should accept Molokai Renewable's proposal. The PUC then opened a new docket for RFPs for 200 MW of renewable energy to be delivered to Oahu.

*Kauai Island Utility Cooperative ("KIUC") Financing*

On June 1, 2011, KIUC requested approval to obtain \$42 million in financing and security arrangements from the U.S. Department of Agriculture Rural Utilities Service for planned capital improvements. After reviewing the financial documentation and budgeted capital improvements, the DCA supported KIUC's financing request. The PUC issued its Decision and Order on August 25, 2011 approving KIUC's request.

*MECO's Application for Approval of Power Purchase Agreement with Auwahi Wind Energy LLC, and Determination that the Maui Electric-Owned Interconnection Facilities be Constructed Above the Surface of the Ground Pursuant to HRS 269-27.6(a)*

On March 17, 2011, MECO filed an application for PUC approval of a purchase power agreement ("PPA") with Auwahi Wind Energy LLC ("AWE"), in which AWE would furnish, install, operate and maintain an approximately 21 MW wind farm facility on 'Ulupalakua Ranch, in the Hana, Kula and Kihei districts on the Island of Maui. After reviewing the Company's responses to the IRs, the DCA filed its SOP on June 8, 2011, stating that it did not object to the PUC's approval of the Company's application. On June 15, 2011, the PUC issued its final Decision and Order, approving the instant application. However, the PUC stated in its Decision and Order that any requests for recovering MECO-caused cost overruns related to the MECO-owned Interconnection Facilities will be subject to review in MECO's next rate proceeding or equivalent cost-recovery mechanism (e.g., decoupling) following the completion of the MECO-owned Interconnection Facilities. Also, due to the PUC's concerns about lingering uncertainties in the PPA (i.e.: 1) the type, number and location of the turbines; 2) the type and configuration of the battery energy storage system; 3) progress of the permit process; 4) progress of interconnection costs; and 5) documentation of existing or, if necessary, establishment of acceptable post-project site restoration requirements; and 6) progress of project completion), it required MECO to file quarterly progress reports until the project's completion.

*The Gas Company, Inc.'s ("TGC") Feedstock Alternative to Producing Synthetic Natural Gas*

On December 22, 2010, TGC filed an application for approval to 1) expend in excess of \$2,347,367 to design, implement and install its Bio Synthesis Gas Pilot Project to test the feasibility of producing synthetic natural gas ("SNG") from feedstock derived from canola oil or other virgin animal fats and oils (collectively, "Triglycerides"); and 2) include the project's fuel cost in its fuel adjustment calculation. On March 3, 2011, the PUC issued an order denying intervention by Life of the Land. During the year, the DCA issued numerous IRs seeking further support and clarification from TGC. DCA acknowledges TGC's efforts to support the State's objectives of sustainability and recognizes that TGC is proposing a pilot program to further investigate the use of bio-feedstock. The PUC also issued IRs to TGC seeking additional information. The PUC has not yet filed a decision and order in this case.

*Pa Makani dba Sandwich Isles Wireless's Application for Designation as an Eligible Telecommunications Carrier*

On June 3, 2011, Pa Makani dba Sandwich Isles Wireless ("Sandwich Isles Wireless") filed an application for a certificate of registration ("COR") in Docket No. 2011-0131. On June 27, 2011, while

Docket No. 2011-0131 was still pending, Sandwich Isles Wireless filed an application with the PUC for designation as an eligible telecommunications carrier (“ETC”). Soon after, Coral Wireless, LLC dba Mobi PCS (“Mobi”) filed a letter with the PUC raising the following issue: “Is the PUC required to dismiss without prejudice the application in HPUC Docket No. 2011-0145 due to fact that at the time of filing such application Sandwich Isles Wireless was not a Hawaii certificated public utility holding the requisite Certificate of Registration (COR)?” Sandwich Isles Wireless responded to Mobi’s letter. Also on that day, Mobi filed with the PUC a Motion to Intervene as a Party to the Proceeding. On August 25, 2011, the PUC filed an order granting: 1) the Motion to Strike Coral Wireless, LLC’s Memorandum in Response to Pa Makani’s Statement of Opposition filed on August 12, 2011, by Pa Makani, LLC dba Sandwich Isles Wireless; and 2) the Motion of Coral Wireless, LLC to Intervene as a Party to the Proceeding filed on July 18, 2011, by Mobi. The DCA submitted its IRs to Sandwich Isles Wireless and subsequently received the Company’s responses. The DCA filed its SOP on September 30, 2011, stating that it did not object to the PUC’s approval of Sandwich Isles Wireless’ designation as an ETC.

On November 10, 2011, Mobi filed a Motion for Summary Judgment recommending that the PUC dismiss Sandwich Isles Wireless’ application because: 1) the FCC’s rules do not permit wireless resellers to receive universal service support [47 C.F.R. § 54.201(1)]; and 2) Sandwich Isles Wireless leased spectrum without first notifying and receiving approval from the FCC. The final decision and order in this proceeding is pending.

### ***Advocacy through Participation on Committees and Boards***

#### ***Enhanced Wireless 911 Services***

The DCA has been an active participant in the State’s implementation of an order issued by the FCC mandating that enhanced 911 (“E-911”) services be provided by wireless telecommunication carriers. The passage of Act 159 (SLH 2004) provided the framework to implement the State’s wireless E-911 system to route emergency calls to emergency responders along with the wireless callers’ identification and location. Act 159 (SLH 2004) also established a Wireless Enhanced 911 Board that oversees the collection and distribution of money collected by the E-911 special fund designates the Executive Director of the DCA as a member of the board. The DCA through its Executive Director has continued to be an active participant in the implementation of this system which is critical to the public safety of both Hawaii residents and visitors.

#### ***One Call Center Advisory Committee***

The Executive Director of the DCA is also a member of the One Call Center Advisory Committee, which makes recommendations to the PUC regarding the implementation of Chapter 269E, Hawaii Revised Statutes (Act 141, SLH 2004). This advisory committee was integral in developing the request for proposals for a vendor to operate a “call-before-you-dig” system. The system, which was operational on January 1, 2006, will reduce the risk of critical services being disrupted because utility systems were inadvertently damaged due to excavation work conducted in areas where the systems are placed in underground facilities. This will ensure greater public health and safety, and ultimately save excavators time and money.

#### **Hawaii Clean Energy Initiative (“Hawaii Clean Energy Initiative”)**

On January 31, 2008, the State of Hawaii and the United States Department of Energy (“U.S. DOE”) launched the HCEI, an agreement, which among other things, established for the State a goal of 70% clean energy resource use by 2030. The State and the U.S. DOE formed various committees designed to examine differing aspects of the State’s energy use – transportation, electricity, energy efficiency, etc. The DCA is participating in the HCEI’s Integration Committee, which, with the aid of U.S. DOE experts, seeks to consolidate the themes and suggestions put forth by the remaining committees.

As part of HCEI, the Executive Director of DCA also participates in the Steering Committee, which deals with the high level planning associated with various aspects of the technical committees that are analyzing various areas (electricity, end-use efficiency, transportation, fuels, and outreach) that are expected to be integral to the success of HCEI.

The DCA also participates in the Technical Advisory Group (“TAG”) that is responsible for evaluating the energy efficiency process that has been transitioned from the HECO Companies to a third-party administrator. As part of this process, the TAG currently meets on a quarterly basis and evaluates various aspects of the measures being implemented to help plan, evaluate, and implement energy efficient programs in the service territories of the HECO Companies. Using the monies collected through the Public Benefits Fund surcharge, the TAG evaluates the use of the monies to help Hawaii’s efforts to reduce its over-reliance on imported fossil fuels.

### ***Education and Outreach***

During the past year the DCA has continued to focus on expanding its education and outreach activities. This has allowed the DCA to increase its ability to educate consumers and extend its reach into communities throughout the State.

The DCA continued distributing its newsletter at public fairs and festivals throughout the State, and has vastly increased its electronic distribution list during the 2010 – 2011 fiscal year. DCA targets those events most likely to produce consumers interested in utility and conservation matters, increasing the overall number of consumers reached. The DCA also used other communications tools such as press releases, its web site, and other in-house produced publications to reach the public. These tools were used to highlight various utility issues and to encourage greater participation in PUC public hearings, energy conservation and efficiency efforts, and to help consumers make wise choices when purchasing telecommunications services.

### ***Interactive Participation with Other State Agencies***

#### ***Department of Business, Economic Development and Tourism’s (“DBEDT”) Hawaii’s Electric Vehicle (“EV”) Rebate Program***

Hawaii residents and businesses may qualify for rebates of up to \$5,000 when purchasing and installing qualified electric vehicles and charging equipment. In May 2010, the DBEDT and the DCCA signed a Memorandum of Agreement (“MOA”), which outlined DCCA’s role in implementing DBEDT’s EV Rebate Program. In October 2010, the DCA’s Education Specialist was assigned as the Electric Vehicle Rebate Project Administrator. The administrator handles all public inquiries, rebate applications, mailing of rebate checks, record keeping, and reporting to DBEDT. On average, from October 2010 through October 2011, DCA used a little under 12.5 work hours per month related to the rebate program. It

should be noted; however, the workload started slow, but picked up dramatically starting in the second quarter of 2011 once electric vehicles became available in Hawaii. A more accurate representative monthly average runs closer to 20 hours per month. The time spent by DCA's Education Specialist to work on the EV Rebate Program took away from his duties within the division (and DCCA), and therefore was billed to DBEDT.

While originally slated to conclude in September 30, 2011, DBEDT extended the rebate program to run through January 31, 2012. Note that this date reflects the deadline for the public to submit an application. The processing and administering of the program and wrapping up the program with DBEDT will likely carry on for several weeks after January 31, 2012. In addition, the funding for the rebate program later increased to \$1,666,837 and DCCA Director, Keali'i Lopez, signed an amendment to the MOA on November 8, 2011.

To date (as of November 18, 2011), DCCA processed 404 rebates, totaling \$1,144,006.

### ***Document Management System***

The DCA, in partnership with the PUC, developed a new docket and document management system to improve internal efficiencies and to make documents filed with the PUC available to the public in electronic format. This new system may be found at: <http://dms.puc.hawaii.gov/dms/>.

### ***Financial Summary***

The CRF financial summary relating to DCA for FY 10-11 is as follows:

Personnel Expenses	Operating Expenses	Total Expenses	Revenues Received
\$926,980	\$748,549	\$1,675,529	\$2,414,736

### **CONCLUSION**

The DCA will continue to prioritize its caseload to target projects and consumer issues that have the greatest impact on the ratepayers of utility and transportation services in Hawaii. In addition, the DCA is expanding its education and outreach efforts. Together, this places the DCA in a better position to take a more proactive approach to address specific consumer issues and to gain greater public participation in decisions that affect their public utility and transportation services.