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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

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PUBLIC UTILITIES
COMMISSION

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAI'I ELECTRIC LIGHT COMPANY, INC.)
MAUI ELECTRIC COMPANY, LIMITED)
)
For Approval of Liquefied Natural Gas Fuel)
Supply and Transport Agreements; to Include)
the Agreements' Costs in Hawaiian Electric)
Company, Inc., Hawai'i Electric Light)
Company, Inc. and Maui Electric Company,)
Limited's Energy Cost Adjustment Clauses; to)
Commit Funds in Excess of \$2,500,000 for the)
Purchase and Installation of LNG-related)
Capital Equipment; to Recover Revenue)
Requirements for the Capital Equipment)
Through the Rate Adjustment Mechanism)
Above the RAM Cap; and Approval of Related)
Accounting Treatments.)

DOCKET NO. 2016-0135

DIVISION OF CONSUMER ADVOCACY'S
MOTION TO SUSPEND THE APPLICATION, OR,
IN THE ALTERNATIVE, TO DISMISS THE APPLICATION

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Pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-41 and 6-61-42, the
Division of Consumer Advocacy ("Consumer Advocate") moves the Hawaii Public Utilities
Commission ("Commission") to grant requested relief as follows:

1. Suspend the May 18, 2016 Application¹ (“Application”) filed by Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (collectively “Hawaiian Electric Companies”); or, in the alternative,
2. Dismiss the Application.

The requested relief is reasonable and in the public interest because the basis for this Application is dependent upon conditions or unknown future events. First, the Hawaiian Electric Companies’ Application is “conditioned” upon the Commission’s pending decision to approve the Hawaiian Electric Companies and NextEra Energy, Inc.’s Application for Approval of the Proposed Change of Control and Related Matters (“Proposed Merger”) filed in Docket No. 2015-0022.² Second, the Application relies upon assumptions and projections set forth in the Hawaiian Electric Companies’ updated Power Supply Improvement Plan (“PSIP Update Report”), filed April 1, 2016, in Docket No. 2014-0183, with an update to be filed on or around August 1, 2016. These reports and a relevant work schedule are still under review by the Commission, the Consumer Advocate, and stakeholder parties.³ Third, the Application seeks requested revenue recovery above the Revenue Adjustment Mechanism Cap (“RAM Cap”), an

¹ In brief, the Application seeks approval of a liquefied natural gas (“LNG”) fuel supply agreement between Hawaiian Electric Companies and Fortis Hawaii Energy Inc. and related construction, administrative, and service costs.

² Application, at 6.

³ A further revised PSIP Update Report is expected to be filed by the Hawaiian Electric Companies August 1, 2016. See PSIP Update Report at 9-10 in Docket No. 2014-0183.

unresolved issue before the Commission that requires a determination.⁴ Fourth, the Hawaiian Electric Companies' "plan to proceed with the LNG Project only if approval is granted for the construction of Kahe CC."⁵

The Hawaiian Electric Companies have failed to coordinate this Application with related Hawaiian Electric Companies' applications and pending Commission docketed matters. It would not be prudent to require the allocation of any resources to this proceeding until a final determination has been made in Docket Nos. 2015-0022, 2016-0136, 2016-0137, and Docket No. 2013-0141, regarding the above-RAM Cap recovery mechanism. Furthermore, there should be some form of approval or interim approval by the Commission of the Hawaiian Electric Companies' preferred plan from the PSIP docket before the Commission decides whether it is in the public's interest to import LNG to Hawaii in thousands of ISO containers as proposed by the Hawaiian Electric Companies'. The findings in the related dockets will significantly affect underlying facts, assumptions, and supporting analyses in this proceeding; therefore, a suspension of the instant application is reasonable,⁶ well within the Commission's authority, and could be expeditiously accomplished.⁷ The Consumer Advocate also acknowledges that a

⁴ See, Docket No. 2013-0141, Instituting An Investigation To Reexamine The Existing Decoupling Mechanisms For Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., And Maui Electric Company, Limited.

⁵ Application, at 5-6. Hawaiian Electric Company, Inc. filed its application, Docket No. 2016-0137, to commit funds in excess of \$2,500,000 for the Kahe Combined Cycle generating unit ("Kahe CC") and to recover revenue requirements for the Kahe CC through the rate adjustment mechanism above the RAM Cap.

⁶ The Consumer Advocate contends, however, that the Commission will need to evaluate whether a revised and updated application is required upon the resumption of the suspended procedural schedule.

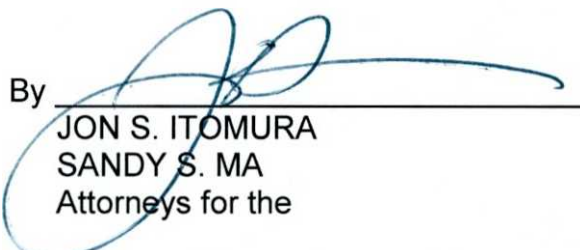
⁷ HAR § 6-61-41(e) authorizes action by the chairperson or a commissioner for motions that do not involve the final determination of a proceeding. Thus, since suspension of the schedule cannot be

dismissal in the instant proceeding can serve the same purpose⁸ as suspending the application.

The Consumer Advocate does not request a hearing on this motion.

DATED: Honolulu, Hawaii, June 1, 2016.

Respectfully submitted,

By 
JON S. ITOMURA
SANDY S. MA
Attorneys for the
DIVISION OF CONSUMER ADVOCACY

deemed to be the final determination of proceeding, the chairperson or a commissioner could expeditiously grant the motion to suspend the procedural schedule.

⁸ The Hawaiian Electric Companies could then refile an application that reflects the most current facts, assumptions, and supporting analyses after the Commission has filed the relevant decision and orders in Docket Nos. 2015-0022 and 2016-0137.

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MEMORANDUM IN SUPPORT OF THE CONSUMER ADVOCATE'S
MOTION TO SUSPEND THE APPLICATION, OR,
IN THE ALTERNATIVE, TO DISMISS THE APPLICATION

The Consumer Advocate seeks to suspend the May 18, 2016, Application¹
("Application") filed by Hawaiian Electric Company, Inc., Hawaii Electric Light

¹ In brief, the Application seeks approval of a liquefied natural gas ("LNG") fuel supply agreement between Hawaiian Electric Companies and Fortis Hawaii Energy Inc. and related construction, administrative, and service costs.

Company, Inc., and Maui Electric Company, Limited (collectively "Hawaiian Electric Companies") or, in the alternative, to dismiss the Application.

I. BACKGROUND.

In Docket No. 2015-0022, a final decision, regarding the Approval of the Proposed Change of Control and Related Matters ("Proposed Merger") is pending. Although the Hawaiian Electric Companies and NextEra Energy, Inc. ("NextEra Energy") requested a final decision on or before June 3, 2016, the Commission has publicly stated that the Commission is not bound by that request.²

On May 18, 2016, the Hawaiian Electric Companies filed the instant Application and represented that execution of any plans related to this LNG Project are conditioned upon the Commission's approval of the Proposed Merger.³

In Docket No. 2014-0183, Hawaiian Electric Companies filed a required update to the Power Supply Improvement Plan ("PSIP") on April 1, 2016 ("PSIP Update Report").⁴ The Hawaiian Electric Companies state their intent to file another update, or an "addendum," of its PSIP Update Report on or around August 1, 2016.⁵

² See, <http://www.bizjournals.com/pacific/print-edition/2016/05/06/puc-chairman-won-t-promise-a-decision-on-deal-by.html>.

³ Application at 6.

⁴ Application at 1.

⁵ See, PSIP Update Report at 9-10 in Docket No. 2014-0183.

II. ARGUMENT.

A. **HAWAIIAN ELECTRIC COMPANIES' APPLICATION IS PREMATURE AND MUST BE SUSPENDED OR DISMISSED, AS IT IS CONTINGENT UPON THE COMMISSION'S APPROVAL OF THE PROPOSED MERGER BETWEEN THE HAWAIIAN ELECTRIC COMPANIES AND NEXTERA ENERGY IN DOCKET NO. 2015-0022.**

The Hawaiian Electric Companies' has failed to effectively coordinate the recent filing of related applications⁶ and pending dockets. Rather than allowing the Commission and stakeholder parties the opportunity to complete reviews of the inter-related issues that may impact the instant Application, the Hawaiian Electric Companies attempt to advocate the merits of prior or concurrent applications through this instant Application.

The Hawaiian Electric Companies represent that the LNG Project is conditioned upon the Commission's approval of the Hawaiian Electric Companies' and NextEra Energy's Proposed Merger, filed in Docket No. 2015-0022.⁷ Section 2.3.1(a) of the "LNG Fuel Supply Agreement" provides a "condition precedent," requiring that: "HEI and NEE have closed the merger between their respective companies in accordance with the Merger Agreement;..."⁸

Docket No. 2015-0022 is still pending before the Commission and there are no indications whether the Commission will approve the Proposed Merger or file a decision in time to satisfy the procedural schedule that the Hawaiian Electric Companies have proposed in this Application.⁹ Thus, any efforts to conduct discovery and adhere to

⁶ See, Docket No. 2016-0136 and Docket No. 2016-0137.

⁷ Application at 6, 64.

⁸ Application, Exhibit A, at 43 of 287.

⁹ Application at 16-17. It should be made clear, however, that this reference should not be inferred to mean that the Consumer Advocate agrees with the proposed schedule.

procedural deadlines in this proceeding consistent with the proposed schedule are premature and may result in a waste of valuable time and resources.

Notwithstanding a final determination in Docket No. 2015-0022, this Application also seeks cost recovery through the revenue adjustment mechanism ("RAM") above the RAM Cap. The Consumer Advocate opposed the Hawaiian Electric Companies' position on this issue in Docket No. 2013-0141, Instituting An Investigation To Reexamine The Existing Decoupling Mechanisms For The Hawaiian Electric Companies. On June 30, 2015, the Consumer Advocate filed comments opposing the Hawaiian Electric Companies' proposed "Standards And Guidelines For Eligibility Of Projects For Cost Recovery Through The RAM Above The RAM Cap."¹⁰

Through this Application, the Hawaiian Electric Companies seek "Commission approval to recover the revenue requirements associated with the LNG net plant additions through the Ram above the RAM Cap..."¹¹ While the Hawaiian Electric Companies assert that Order No. 32735 may be interpreted to authorize the piecemeal review of requests to seek recovery through the RAM above the RAM Cap,¹² the Commission's final decision on the establishment of evaluative criteria to determine prudence and reasonableness is necessary to allow sufficient review in the instant proceeding.¹³

¹⁰ In addition, the Consumer Advocate has objected to the use of the Above the RAM Cap in Docket No. 2015-0375, Docket No. 2015-0376, Transmittal No. 16-01, Transmittal No. 16-02, and Transmittal No. 16-03.

¹¹ Application at 93.

¹² Application at 93, footnote 40.

¹³ See, Order No. 33724, at 10. Commission stated that it will address concerns related to requested revenue recovery for projects above the RAM Cap in the appropriate pending proceedings.

This Application must be suspended or dismissed¹⁴ until the Commission issues a final decision and order regarding the Proposed Merger and addresses the utilities' access to cost recovery above the RAM Cap.

B. HAWAIIAN ELECTRIC COMPANIES' APPLICATION IS PREMATURE AND MUST BE SUSPENDED OR DISMISSED, AS IT IS BASED ON AN INCOMPLETE PSIP UPDATE REPORT AND CONTINGENT ON OTHER DOCKETS.

In addition to reliance upon the Commission's final decision in Docket No. 2015-0022, the value proposition of the LNG Project is also linked to the Hawaiian Electric Companies PSIP and contingent upon Commission approvals for Docket No. 2016-0136 and Docket No. 2016-0137.

The PSIP Update Report includes this LNG Project in its preferred Theme 2, Modernization using LNG Fuel planning scenario. This planning scenario requires "NextEra Energy's financial backing..."¹⁵ and, therefore, is also "inextricably linked" to Commission approval of the Proposed Merger. The Commission has not approved any portions of PSIP and a revised PSIP Update Report is scheduled to be filed on August 1, 2016.¹⁶

¹⁴ Hawaiian Electric Companies' Application may be premature (or is unripe) for determination as it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-581 (1985) (quoting 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532, p. 112 (1984)).

¹⁵ See, Docket No. 2014-0183, PSIP Update Report, at 3-3, 3-4.

¹⁶ See, Docket No. 2014-0183, PSIP Update Report, at 9-10.

The Hawaiian Electric Companies have also requested Commission review of the LNG Project application “prior to or contemporaneously with the [Kahe CC application]... and that the Commission consider the Kahe CC GO7 Application as inextricably linked to the LNG Application...,”¹⁷ subject of Docket Nos. 2016-0136 and 2016-0137. If the Commission denies the requested relief in either Docket No. 2016-0136 (the requested waiver from the competitive bidding process), which would make any action in this proceeding premature, or Docket No. 2016-0137 (the GO 7 application for the Kahe CC project), which would eliminate the value of the proposed LNG project, all efforts in this proceeding will be wasted.

The Hawaiian Electric Companies’ request is not prudent and could lead to an unreasonable allocation of resources and effort. If the LNG project is dependent and inextricably linked to the Commission’s determination on the ownership by NextEra Energy and the Kahe CC project moving forward, it is patently clear that the Commission must decide those two matters first instead of squandering limited and valuable resources in this proceeding while those other proceedings are still pending.

Thus, the Application must be suspended or dismissed until the Kahe CC project has been thoroughly reviewed by the Consumer Advocate, stakeholder parties, and the Commission.

¹⁷ Application, at 5.

C. GIVEN THAT HAWAIIAN ELECTRIC COMPANIES' APPLICATION IS PREMATURE, THE COMMISSION SHOULD SUSPEND OR DISMISS THE APPLICATION BASED ON EFFICIENT ECONOMY OF RESOURCES.

Based on the Hawaiian Electric Companies' assertions, the value of the proposed LNG plan is dependent on NextEra Energy's ownership and related docket determinations. Therefore, if the Commission denies the Proposed Merger in Docket No. 2015-0022, any analyses, reviews, filings, etc. in this proceeding will have no value.

Hawaiian Electric Companies' Application, as discussed *supra* in Sections II.A and II.B, will be moot depending on conditions precedent. Therefore, the Commission must consider the necessary allocation of limited time and resources that is required to review currently pending dockets, e.g., the Proposed Merger filed in No. 2015-0022 and the PSIP Update Report filed in Docket No. 2014-0183, as well as the necessary analysis in Docket No. 2016-0136 and Docket No. 2016-0137. The Commission has previously ordered a temporary suspension upon similar grounds. In Docket No. 2007-0176, Instituting Proceedings To Investigate The Implementation Of IntraGovernmental Wheeling Of Electricity, the Commission issued its Order Approving Request to Temporarily Suspend the Docket, filed on December 8, 2008, reasoning that "the suspension of the Docket No. 2007-0176 will 'allow for the conservation of limited resources while the necessity of an intra-governmental wheeling proceeding is evaluated...'"¹⁸ The Consumer Advocate urges the Commission to find that, similar to its reasoning in Docket No. 2007-0176, suspension, or dismissal, of the instant application would be a prudent action.

The deadline for motions to intervene by interested parties, as incorporated in the Hawaiian Electric Companies' proposed procedural steps, is June 7, 2016, four days

¹⁸ See, Docket No. 2007-0176, Order Approving Request to Temporarily Suspend the Docket, at 8-9.

following the requested deadline for a Commission decision on the Proposed Merger application. It would be just and reasonable for the Commission to determine, at this juncture, whether interested parties may defer to a later date, the necessary time and resources to review this Application.

The uncertainty that remains in pending dockets and the need to promote the efficient allocation of resources calls for the immediate suspension or in the alternative, a dismissal of the Application.

III. CONCLUSION.

For the above stated reasons, the Consumer Advocate requests that the Commission suspend or, in the alternative, dismiss the Application.

DATED: Honolulu, Hawaii, June 1, 2016.

Respectfully submitted,

By



JON S. ITOMURA
SANDY S. MA
Attorneys for the

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S MOTION TO SUSPEND THE APPLICATION, OR, IN THE ALTERNATIVE, TO DISMISS THE APPLICATION** was duly served upon the following parties by electronic service pursuant to HAR § 6-61-21(d).

DANIEL G. BROWN
MANAGER, REGULATORY NON-RATE
PROCEEDINGS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, Hawaii 96840-0001

1 copy
by hand delivery

DATED: Honolulu, Hawaii, June 1, 2016.

Kadalu