

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
KAUAI ISLAND UTILITY COOPERATIVE) Docket No. 2022-0208
)
For Approval of Rate Changes and)
Increases, Revised Rate Schedules and)
Rules, and Other Matters.)
_____)

**KAUAI ISLAND UTILITY COOPERATIVE'S
MEMORANDUM IN OPPOSITION TO MOVANT FRIENDS OF
MĀHĀ'ULEPU'S MOTION TO INTERVENE OR, ALTERNATIVELY FOR
PARTICIPANT STATUS, AND REQUEST FOR A CONTESTED CASE**

ATTACHMENTS 1 THROUGH 3

AND

CERTIFICATE OF SERVICE

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KAUAI ISLAND UTILITY COOPERATIVE (“KIUC”), by and through its attorneys, Schneider Tanaka Radovich Andrew & Tanaka, LLC, respectfully submits this Memorandum in Opposition to Movant Friends of Māhā’ulepu’s (“FOM” or “Movant”) Motion to Intervene or, Alternatively for Participant Status, and Request for a Contested Case, filed on April 10, 2023 (the “Motion to Intervene”), in the above-captioned proceeding. This Memorandum is submitted pursuant to Hawaii Administrative Rules (“HAR”) §§ 16-601-41(c) and 16-601-22.¹

¹ HAR § 16-601-41(c) provides, in pertinent part, that “[a]n opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion[.]” HAR § 16-601-22 provides, in relevant part, that “[w]hen the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation.”

I. Brief Introduction and Summary

On December 28, 2022, KIUC filed its Application² in the subject docket (also referred to herein as this “rate case”) requesting various approvals and relief from the Commission to implement KIUC’s proposed revenue and rate increases and tariff changes, to the extent required, applicable, and not otherwise waived or exempted.³

On April 10, 2023, FOM filed its Motion to Intervene⁴ requesting to intervene in this rate case pursuant to HRS § 269-16 and HAR §§ 16-601-55 and 16-601-57.⁵ Alternatively, if the Commission should deny FOM intervenor status, FOM seeks participant status pursuant to HAR § 16-601-56. FOM also requests that the Commission hold a contested case pursuant to HRS Chapter 91 on FOM’s rights and interests which FOM claims would be affected by Commission approval of the proposed “Rate Relief”⁶ and approval of other matters in the Application.

² Capitalized terms used, but not otherwise defined herein, shall have the same meanings ascribed to such terms in the subject Application filed in this docket on December 28, 2022.

³ Pursuant to Act 57, Session Laws of Hawaii 2013 (now codified as HRS § 269-31(b) and (c)), the Commission is given the authority to “waive or exempt an electric cooperative from any or all requirements of [HRS Chapter 269] or any applicable franchise, charter, decision, order, rule, or other law, upon a determination or demonstration that the requirement or requirements should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest.” Act 57 (now codified as HRS § 269-31 (b) and (c)) also provides that the Commission and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the “Consumer Advocate”) “shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative.” See Section III.A.2 (Act 57, Session Laws of Hawai’i 2013) of the Application for a further discussion.

⁴ Movant’s Motion to Intervene includes a Memorandum in Support of Motion (“Memorandum in Support”), Declaration of Bridget Hammerquist (“Declaration”), and exhibits.

⁵ See Motion to Intervene, at 1.

⁶ The term “Rate Relief” is not defined or explained by Movant, but for purposes of this Memorandum, KIUC assumes that the term is intended to refer to KIUC’s requests in the Application.

As discussed in further detail below, Movant’s Motion to Intervene does not satisfy the legal requirements for intervention as a full party under HAR § 16-601-55(b) and (d), and Movant has not met its burden to demonstrate that it has a statutory or other right to intervene or otherwise participate in this rate case. The Motion to Intervene should therefore be denied.

II. Standard for Intervention and Participation

It is well established that intervention as a party in a Commission proceeding “is not a matter of right but is a matter resting within the sound discretion of the [C]ommission.”⁷ Further, “it is the movant’s burden to demonstrate to the [C]ommission, in its motion to intervene, why the [C]ommission should exercise its discretion in movant’s favor.⁸ Specifically, HAR § 16-601-55(a) provides, in relevant part, that “[a] person may make an application to intervene . . . by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the [movant].” HAR § 16-601-55(b) further provides:

- (b) The motion shall make reference to:
 - (1) The nature of the [movant’s] statutory or other right to participate in the hearing;
 - (2) The nature and extent of the [movant’s] property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the [movant’s] interest;
 - (4) The other means available whereby the [movant’s] interest may be protected;
 - (5) The extent to which the [movant’s] interest will not be represented by existing parties;

⁷ See, e.g., Order No. 37091 issued on April 21, 2020 in Docket No. 2019-0153, at 9; *Matter of Hawai’i Elec. Light Co., Inc.*, 145 Haw. 1, 28, 445 P.3d 673, 700 (2019); and *In re Application of Hawaiian Elec. Co., Ltd.*, 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

⁸ See Order No. 34664 issued on June 28, 2017 (“Order No. 34664”) in Docket No. 2016-0328, at 77.

- (6) The extent to which the [movant's] participation can assist in the development of a sound record;
- (7) The extent to which the [movant's] participation will broaden the issues or delay the proceeding;
- (8) The extent to which the [movant's] interest in the proceeding differs from that of the general public; and
- (9) Whether the [movant's] position is in support of or in opposition to the relief sought.

Additionally, HAR § 16-601-55(d) provides that “[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.”⁹

The Commission has held that “indirect or speculative interests are insufficient to warrant intervention[,]”¹⁰ and “[g]eneral statements of interest or harm, conclusory legal statements, boilerplate language, and unsupported general claims of professional experience or expertise are not persuasive.”¹¹

Further, “the [C]ommission’s authority to ensure the orderly conduct of proceedings and to avoid undue delay . . . broadly empower the [C]ommission . . . to determine whether – in balancing the needs of the [C]ommission, the affected utilities, and the public’s interest in the timely and efficient resolution of the issues in this docket – intervention or participant status should be granted.”¹²

⁹ HAR § 16-601-55(d) (emphasis added).

¹⁰ See Order No. 34174 issued on December 6, 2016 (“Order No. 34174”) in Docket No. 2016-0342, at 21 (emphasis added).

¹¹ See Order No. 34664, at 76.

¹² See Order No. 34502 issued on April 13, 2017 (“Order No. 34502”) in Docket No. 2015-0170, at 6, citing Order No. 34174, at 19.

Pursuant to HAR § 16-601-56, the Commission “may permit participation without intervention” to a person or entity “who has a limited interest”.¹³

In determining whether to allow intervention or to permit participation without intervention and the scope of such participation, it is the Commission’s responsibility to ensure “the just, speedy, and inexpensive determination of every proceeding”, which is the overarching policy of HAR § 16-601-1 (emphasis added). This responsibility to ensure the just and speedy determination of every proceeding becomes even more paramount in the context of a rate making proceeding, as it is one of the few types of Commission proceedings that place a legislatively-mandated timeframe for the Commission to act. Specifically, under HRS § 269-16(d), the Commission in a rate case “shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application” (in this docket, nine months falls on September 28, 2023) and is required to issue at least interim rates within 10-11 months.¹⁴

The Commission’s responsibility to ensure a just, speedy, and inexpensive determination affirms that the intent of HAR § 16-601-55(d) is to limit intervention and participation only to pertinent matters. Again, this is especially important in a rate making proceeding, not only because of the above statutory timeline for the

¹³ HAR § 16-601-56(a) provides the following:

The [C]ommission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the [C]ommission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

¹⁴ HRS § 269-16(d).

Commission to act, but also because the costs of processing a rate case are recovered from the ratepayers through rates on an amortized basis.

For the reasons discussed below, Movant has not satisfied intervention requirements and has not justified Movant participation without intervention. As such, the Motion to Intervene should be denied.

III. Discussion

FOM has not satisfied its burden of meeting the legal requirements for intervention under HAR § 16-601-55(b). As discussed below, Movant has failed to reference relevant rights and interests that would be affected by the Commission's decision in this rate case and that are different from those of the general public or that cannot be adequately represented by the Consumer Advocate. Furthermore, intervention must be denied pursuant to HAR § 16-601-55(d) because FOM's allegations are not reasonably pertinent to the issues that are the subject of this rate case and would unreasonably broaden the issues already presented.

On page 1 of its Motion to Intervene, Movant states two purposes for its intervention:

- 1) “[T]o ensure that Movant’s rights and interests related to its ability to initiate, perpetuate, engage, and foster Native Hawaiian culture through ahupua`a caretaking, protocols, language, music and other means, both in local Kaua`i communities and abroad are protected”¹⁵; and
- 2) “[T]o ensure that any proposed Rate Relief, including the future repairs, expansions and/ or depreciation [sic] of certain assets (‘Related Projects’), properly accounts for and considers factors such as greenhouse gas emissions, environmental, and cultural impacts, system reliability and other ratepayer impacts, as well as engagement with community regarding

¹⁵ Motion to Intervene, at 1.

their concerns, are all addressed in Commission procedures on the proposed Rate Relief and Related Projects.”¹⁶

These stated purposes must be considered in connection with what is actually being requested of the Commission in this rate case (i.e., approvals to implement a revenue and rate increase and proposed changes to KIUC’s ERAC mechanism based on a 2023 calendar test year). KIUC is currently projected to not meet its required lender debt service coverage (“DSC”) ratio requirements, and as discussed in David Bissell’s Direct Testimony (Exhibit 10-T-100 of the Application, at 42), the relief sought in KIUC’s Application is needed to provide KIUC with an opportunity to receive sufficient revenues that would allow KIUC to remain financially stable and in compliance with its debt covenants and to maintain the ability to access long-term debt to fund capital needs. If KIUC does not meet the minimum Indenture DSC Ratio, KIUC would be precluded from borrowing any new debt under the Indenture until the deficiency has been removed for a full fiscal year.

In a rate making context, the Commission “has an independent obligation to set fair and just rates and arrive at its own conclusions.”¹⁷ In issuing its decision in this rate case, the Commission will be determining what rates and charges are just and reasonable for KIUC pursuant to HRS § 269-16 based on a revenue requirement using a 2023 calendar test year as required under HAR § 16-601-87(4)(B). This rate determination would not have any impact on either of FOM’s above-stated purposes. This is different than, for example, an application requesting approvals related to a

¹⁶ Ibid.

¹⁷ See Order No. 34502, at 7-8, citing *Application of Hawaiian Elec. Co., Inc.*, 5 Haw. App. 445, 447, 698 P.2d 304, 307 (1985).

capital project that would result in the use of imported fossil fuels, where the movant raises concerns with the project's use of such imported fossil fuels, such as in the Hawaii Gas situation discussed in Section III.A below. Movant has not demonstrated how either of its purposes referenced above would be impacted by the Commission granting KIUC's requested rate relief.

The indirect or speculative interests asserted by Movant are not relevant to what is before the Commission in this rate case and do not warrant intervention. The Motion to Intervene is based on general statements of interest or harm, conclusory legal statements, boilerplate language, and unsupported general claims of professional experience or expertise that are not persuasive for intervention and would unreasonably broaden the issues in this rate case. As noted in Section II above, the Commission has previously held that "indirect or speculative interests are insufficient to warrant intervention[.]"¹⁸ and "[g]eneral statements of interest or harm, conclusory legal statements, boilerplate language, and unsupported general claims of professional experience or expertise are not persuasive."¹⁹

A. Movant Does Not Adequately Demonstrate Any Statutory or Other Right to Participate in the Proceeding - HAR § 16-601-55(b)(1).

FOM has not met its burden to demonstrate that it has a statutory or other right to intervene or participate in the subject proceeding. In describing FOM's rights and interests pursuant to HAR § 16-601-55(b)(1), FOM first asserts on page 5 of its Memorandum in Support that it holds "statutory and constitutional rights to intervene in

¹⁸ See Order No. 34174, at 21.

¹⁹ See Order No. 34664, at 76.

the Commission’s proceedings on KIUC’s application” and that “FOM has constitutionally protected rights that entitle it to intervene in the Commission’s hearing pursuant to articles I, §5; XI, §§1, 9; and XII §7 and the U.S. Constitution, amendments V and XIV.” FOM asserts “FOM’s officers and supporters exercise Kānaka Maoli traditional and customary rights that may be infringed through the installation and operation of KIUC projects.” FOM also asserts that:

FOM’s constitutional rights under article XI, §§ 1 and 9 of the Hawai’i State Constitution as beneficiaries of Hawaii’s public trust and based on their rights to a clean and healthful environment are defined by provisions requiring consideration of GHG impacts under HRS §269-6(b). The Commission is required to consider the qualitative or quantitative impacts of GHG emissions consequent to approval of the application. HRS §269-6(b). Movant holds rights in the Commission’s consideration of the harmful impacts of GHG emissions on the earth’s climate, and more specifically, the impacts of climate change on Hawai’i and Kaua’i, pursuant to article XI, §9 of the Hawai’i Constitution. Hammerquist Decl. ¶19. See *In re: Gas Co., LLC*, 147 Hawai’i 186, 465 P.3d 633 (2020) (article XII, §7 constitutional rights considered in determining whether petitioners were persons aggrieved); *In re Hawaii Electric Light Company*, 145 Hawai’i 1, 445 P.3d 673 (2019) (article XI §9 constitutional rights require due process and a Commission hearing). Due process requires the Commission hold a contested case prior to decision making on the application because the latter will impact FOM’s rights.²⁰

KIUC does not dispute FOM’s statement that constitutional rights as beneficiaries of the public trust and under the right to a clean and healthful environment are defined by HRS §269-6(b). This is consistent with the language of Article XI, Section 9 of the Hawaii Constitution, which provides in relevant part that “[e]ach person has the right to a clean and healthful environment, as defined by laws relating to environmental quality” (emphasis added). As discussed in *In re Application of Maui Electric Company, Limited*, 141 Hawai’i 249, 253 and 261-263, 408 P.3d 1, 5 and 13-15 (2017) (“In re Maui

²⁰ ibid.

Electric”), the scope and parameters of this constitutional right are defined by then existing laws relating to environmental quality. The Hawaii Supreme Court determined that HRS § 269-6(b)²¹ is a law relating to environmental quality that defines the scope and parameters of the right to a clean and healthful environment, which requires the Commission to “consider the need to reduce the State’s reliance on fossil fuels through energy efficiency and increased renewable energy generation” and to “explicitly consider, quantitatively or qualitatively, the effect of the State’s reliance on fossil fuels on . . . greenhouse gas emissions.”²² It is important to recognize that this statutory provision, which sets forth the scope and parameter of the above-stated constitutional rights, is not focused specifically on greenhouse gases in all situations. Instead, HRS § 269-6(b) primarily focuses on imported fossil fuel, that Hawaii is “dangerously reliant

²¹ HRS § 269-6(b) currently provides as follows (emphasis added):

The public utilities commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs pertaining to electric or gas utility system capital improvements and operations, the commission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on:

- (1) Price volatility;
- (2) Export of funds for fuel imports;
- (3) Fuel supply reliability risk; and
- (4) Greenhouse gas emissions.

The commission may determine that short-term costs or direct costs of renewable energy generation that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels. The public utilities commission shall determine whether such analysis is necessary for proceedings involving water, wastewater, or telecommunications providers on an individual basis.

²² Ibid.

on imported fossil fuel”, and the “hidden and long-term costs of reliance on fossil fuels”. As a result, the Commission must consider the need to reduce the State’s reliance on fossil fuels through energy efficiency and increased renewable energy generation.²³

In addition, the mere allegation of constitutional rights does not automatically give rise to a right to intervene or participate in every Commission proceeding and also does not automatically provide contested case hearing rights. As referenced above, HAR § 16-601-55(d) expressly provides that intervention shall not be granted unless the allegations are reasonably pertinent to and do not unreasonably broaden the issues already presented. In addition, HAR § 16-601-55(b)(3) requires a demonstration of the effect that the Commission’s pending action on KIUC’s Application will have on these rights. Movant has the burden of demonstrating that the Commission’s approval of the relief sought in KIUC’s Application would unreasonably harm or adversely affect its constitutional rights.

The need to demonstrate a sufficient connection between the State action and the stated constitutional right has been recognized by the Hawaii Supreme Court. For example, in *Pele Def. Fund v. Puna Geothermal Venture*, 77 Hawai‘i 64, 68, 881 P.2d 1210, 1214 (1994), the Court concluded that an agency hearing is required when the challenged State action “adversely affects” the stated constitutionally protected right. The Hawaii Supreme Court imposed similar requirements in the two Hawaii Supreme Court cases cited by Movant on page 5 of its Memorandum in Support and referenced above (*In re Hawaii Electric Light Company*, 145 Hawai‘i 1, 445 P.3d 673 (2019) (“Matter of Hawaii Electric Light Company”) and *In re Gas Co., LLC*, 147 Hawai‘i 186,

²³ Ibid.; see also *In re Maui Electric*, 141 Hawai‘i 249, 261-263, 408 P.3d 1, 13-15 (2017).

465 P.3d 633 (2020) (“Matter of Gas Company”). In the Matter of Hawaii Electric Light Company, the Hawaii Supreme Court stated that one of the requirements that must be met for a party to have a right to a contested case hearing²⁴ is “the risk of an erroneous deprivation of such [constitutional property] interest through the procedures” used in the agency proceeding.²⁵ In the Matter of Gas Company, the Court determined that in order to have standing to appeal, the appellant must demonstrate that “their members’ right to a clean and healthful environment was specially, personally and adversely affected by the [Commission’s] Decision and Order[.]”²⁶ In the Matter of Gas Company, Life of the Land (“LOL”) raised concerns regarding two projects involving the importation of fossil fuels (specifically, liquid natural gas or LNG). The Hawaii Supreme Court determined,

²⁴ With respect to Movant’s request that the Commission hold a contested case pursuant to HRS Chapter 91 on FOM’s rights and interests which FOM claims would be affected by approval of the proposed Rate Relief and approval of other matters in the Application, KIUC acknowledges that this is a contested case as it pertains to the proposed rate increase because HRS § 269-16(b) provides that a contested case hearing shall be held in connection with any increase in rates, which may be modified or waived in accordance with HAR § 16-601-35. This does not mean that every entity involved in a rate case proceeding is entitled to a contested case hearing. See, e.g., Interim Decision and Order No. 23013 issued on November 3, 2006 in Docket No. 05-0334, at 13-14, where the Commission held that the participant in that case was not entitled to an evidentiary hearing. KIUC also notes that a “contested case” does not necessarily require trial-type proceedings (e.g., sworn witnesses and cross-examinations before the Commission) so long as the parties are afforded due process. Well-established case law instructs that due process is not a fixed concept that requires a specific procedural course in every situation, rather due process is flexible and calls for such procedural protections as the particular situation demands.” *Sandy Beach Defense Fund v. City Council of City and County of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989). As it pertains to whether Movant has a right to a contested case hearing on FOM’s rights and interests that FOM claims would be affected by approval of the proposed Rate Relief and approval of other matters in the Application, such right depends on whether, among other things, the risk of an erroneous deprivation of Movant’s constitutional rights from the State action (i.e., Commission granting KIUC its requested rate relief) is high and whether it “adversely affects” the stated constitutionally protected rights. As discussed in this Memorandum, the Commission’s approval of KIUC’s rate relief requests set forth in the Application would not adversely affect, unreasonably harm or threaten, or deprive Movant of any of its stated constitutional rights.

²⁵ See Matter of Hawaii Electric Light Company., 145 Haw. 1, 17, 445 P.3d 673, 689 (2019).

²⁶ See Matter of Gas Company, 147 Haw. 186, 190, 465 P.3d 633, 637 (2020).

among other matters, that the Commission did not fulfill its statutory obligation to reduce the State’s reliance on fossil fuels.^{27 28}

The requirement for a specific connection between the proposed State action and the contended property right was also set forth in *In the Matter of Maui Electric Company, Limited* (“Matter of Maui Electric Company, Limited”), 150 Hawaii 528, 506 P.3d 192 (2022), in which the Hawaii Supreme Court ruled that in order for a heightened duty to be imposed upon the State agency to assess and make specific findings about the affected trust resources to be triggered, there must be a finding of a “reasonable threat” to that trust resource.²⁹ In assessing whether there is a reasonable threat, the Court found that “[a] ‘reasonable’ threat does not mean that there must be conclusive

²⁷ See *Matter of Gas Company*, 147 Haw. 186, 190, 465 P.3d 633, 637 (2020).

²⁸ See Section III.A above for a discussion regarding HRS § 269-6(b) defining the scope of constitutional rights under the public trust and the right to a clean and healthful environment, which requires the Commission to “consider the need to reduce the State’s reliance on fossil fuels through energy efficiency and increased renewable energy generation” and to “explicitly consider, quantitatively or qualitatively, the effect of the State’s reliance on fossil fuels on . . . greenhouse gas emissions.” As discussed in this Memorandum, Movant raises concerns with the West Kauai Energy Project (WKEP) and the Waiahi hydroplants. These situations are fundamentally different than the situation in the *Matter of Gas Company* that provided LOL the right to appeal the Commissions’ actions. See *Matter of Gas Company*, 147 Hawaii 186, 189-91, 465 P.3d 633, 636-38 (2020). In the *Matter of Gas Company*, and as noted above, LOL raised concerns regarding two projects involving the importation of fossil fuels, where the Hawaii Supreme Court determined, among other matters, that the Commission did not fulfill its statutory obligation under HRS § 269-6(b) to reduce the State’s reliance on fossil fuels through increased renewable energy generation and to sufficiently consider the effect of the State’s reliance on fossil fuels on GHG emissions. As a result, the Hawaii Supreme Court determined that the constitutional rights of LOL’s members were specially, personally, and adversely affected and thus LOL had standing to bring the appeal before the Court. Unlike the situation in the *Matter of Gas Company*, WKEP and the Waiahi hydros involve projects that would increase renewable energy generation and reduce the State’s reliance on fossil fuels, consistent with and in furtherance of the Commission’s obligation under HRS § 269-6(b), and not contrary to it as in the situation in the *Matter of Gas Company*. Moreover, as discussed in Section III.C below, Commission action in this rate case (i.e., approving KIUC’s requested revenue and rate increase) is not relevant to and would not impact Movant’s stated concerns regarding environmental and cultural impacts of either WKEP or the Waiahi hydroplants.

²⁹ See *Matter of Maui Electric Company, Limited*, 150 Haw. 528, 532, 506 P.3d 192, 196 (2022), as corrected (Mar. 3, 2022) (emphasis added).

evidence of harm. But it means something more than vague and tenuous concerns about a project's surrounding environment; there must be tangible evidence that reasonably connects the threatened harm to the proposed project."^{30 31}

In this rate case, the Commission's action relates only to the determination of rates and charges that the Commission determines are just and reasonable for KIUC under HRS § 269-16. While Movant alleges various rights and possible harms, Movant has not adequately demonstrated how the determination of rates would adversely affect, erroneously deprive, unreasonably harm, or reasonably threaten Movant's stated constitutional rights and interests.

KIUC also notes that in past rate case proceedings, the Commission has granted limited participation without intervention³² and has outright denied intervention³³ to

³⁰ Ibid.

³¹ Said another way by the Court: "Hand-waving without meaningful support cannot establish a 'reasonable' threat. The heightened duty to assess and make specific findings about the affected trust resources was not triggered here. And the PUC's statutory balancing sufficiently satisfied its public trust duties." See Matter of Maui Electric Company, Limited, 150 Haw. 528, 541, 506 P.3d 192, 205 (2022), as corrected (Mar. 3, 2022).

³² See e.g., Order No. 35333 issued March 7, 2018 in Docket No. 2017-0150, at 26-27. Blue Planet alleged a constitutional right to participate in the proceeding, but the Commission ultimately concluded that:

Blue Planet's Motion to Intervene is limited to Blue Planet's interest in potential reforms to MECO's ECAC. Conversely, Blue Planet has not expressed any interest, or expertise, in the other aspects of MECO's Application, or any of the other issues in the Statement of Issues set forth in Procedural Order No. 35152. For example, Blue Planet's Motion does not discuss MECO's proposed revenue requirement, rate base, expense, cost of service, proposed rate of return, or rate design. Likewise, Blue Planet's stated interests and supporting expertise revolve around its work in developing energy policies and the work that it has already done as part of the Decoupling docket, specifically as they pertain to MECO's ECAC.

³³ See e.g., Order No. 34502, at 38-43. In Order No. 34502, the Commission denied LOL's motion to intervene and concluded that LOL has "not met its burden to establish sufficient grounds to permit intervention, or participation without intervention, in this docket." In doing so, the Commission found, *inter alia*, that (emphasis added):

certain groups who alleged a constitutional right to participate in the proceeding, but who ultimately did not show a causal connection between their stated interests/allegations and the issues in the rate case docket.

Because FOM's Motion to Intervene fails to sufficiently explain how FOM's constitutional rights would be adversely affected, erroneously deprived, unreasonably harmed, or reasonably threatened by the Commission action in this rate case, intervention or participation is not necessary or appropriate to protect these rights.

B. Movant Does Not Identify Any Property, Financial and Other Interest in the Pending Matter That Would Justify its Participation in the Proceeding - HAR § 16-601-55(b)(2).

See Section III.A above for a discussion of FOM's stated constitutional rights as applied to this rate case. FOM has also not sufficiently or adequately described any other property, financial and other interest in the pending matter that would support or justify its intervention or participation in this rate case.

In describing FOM's rights and interests pursuant to HAR § 16-601-55(b)(2), FOM asserts on pages 5-6 of its Memorandum in Support that "FOM, through its officers and supporters, holds interests in lands impacted by KIUC projects, proposed projects, and other operations. . . As nearby and adjacent landowners, FOM holds a

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- LOL's asserted interests are outside of the scope of this docket and not pertinent to the resolution of the Application, and concludes that allowing intervention by LOL is likely to delay the proceeding, will not assist in the development of a sound record, would likely cause confusion in the record, and would unreasonably broaden and shift the focus of the proceedings to LOL's interest.
 - LOL has not demonstrated a statutory right to intervene, and has not substantiated its argument for a constitutional right to intervene in this proceeding.
 - LOL's stated interests and specialized knowledge in promoting sustainable policies, increasing the use of renewable energy, and reducing fossil fuel use and greenhouse gas emissions, are not reasonably pertinent to [HELCO's] request for a general rate increase to justify intervention in this proceeding.
 - LOL's interests are adequately represented by the Consumer Advocate.

‘concrete interest’ in proceedings on proposed developments so as to satisfy standing requirements, including requirements for mandatory intervenor status.” In support of its assertions, FOM cites various cases at the top of page 6 of its Memorandum in Support that discuss standing in various land use or property right scenarios. However, none of the cited cases involves a rate case. In addition, the above-referenced statement regarding FOM’s “officers and supporters” holding “interests in lands impacted by KIUC’s projects, proposed projects, and other operations” would hold true for a large portion of KIUC’s member/customers receiving power from KIUC whose interests are already represented by the Consumer Advocate.

Furthermore, FOM’s descriptions of FOM’s interests merely consist of general statements of interest or harm (e.g., “FOM’s officers and supporters exercise Kānaka Maoli traditional and customary rights that may be infringed through the installation and operation of KIUC projects”), conclusory legal statements and boilerplate language. As noted in Section III above, the Commission has previously found such statements to not be persuasive to justify intervention.

These broad and vague statements fail to identify any specific interests that are otherwise unique and/or specific to FOM in this proceeding and that would be adversely affected by this rate case or that cannot be adequately represented by the Consumer Advocate. Furthermore, with respect to the potential financial impacts of this rate case, FOM has not demonstrated that such financial impacts would be unique to FOM as compared to the general public (and other residential customers) and that such interest cannot be represented by the Consumer Advocate as further discussed in Section III.E below.

Notably, it is also not clear who FOM's specific members are or which KIUC members/customers FOM specifically represents. KIUC's research of available public information reveals that FOM has three identified individuals/members. Throughout its Memorandum in Support, however, FOM asserts that it includes many persons with specific interests (e.g., "FOM includes many County of Kaua'i Department of Water (KDOW) customers . . ." (page 4), "FOM includes many KIUC ratepayers. . ." (page 4), "FOM includes many who will be impacted by KIUC's AES West Kaua'i Energy Project. . . ." (page 3)). FOM does not, however, specify the affiliation of such persons with FOM and does not describe how such persons comprise a discrete group of persons who would not be adequately represented by the Consumer Advocate. The Commission has previously denied intervention to a commercial group where it found that the group "does not appear to represent a discrete group of commercial customers who will not be adequately represented by the Consumer Advocate",³⁴ and has also found that the ambiguity of the group's members and their diverse interests would not help lead to the sound development of the record and would likely confuse the issues and delay the proceeding.³⁵

C. Movant Has Not Described an Effect of the Pending Order as to Its Interests That Would Justify Intervention or Participation - HAR § 16-601-55(b)(3).

FOM has not described an effect that a Commission order on KIUC's Application would have on FOM's interests that would justify its intervention or participation in this

³⁴ See Order issued October 31, 2008 in Docket No. 2008-0083, at 14-15.

³⁵ See *id.*, at 15 (The Commission ruled: "In general, the Commercial Group appears to represent a cross-section of HECO's commercial customers. Given the ambiguity of the Commercial Group's members and their diverse interests, intervention by the Commercial Group would not lead to the development of a sound record, and would likely confuse the issues and delay this proceeding.")

proceeding. As set forth in Section III.A. above, FOM's Motion to Intervene fails to provide an explanation of how FOM's constitutional rights would be adversely affected, erroneously deprived, unreasonably harmed, or reasonably threatened by Commission approval of KIUC's Application requests. As discussed above in Section III.B, FOM has also not sufficiently or adequately described any interest that would justify intervention or participation.

In describing the effect the relief requested in KIUC's Application would have on FOM, FOM begins by making the following assertion on page 6 of its Memorandum in Support:

KIUC's application presumes the installation and (re)operation of several highly problematic projects, including the Waiahi hydroplants and the West Kaua'i Energy Project, both of which will incur needless expenses and have environmental and cultural impacts that are not accounted for in the rate base. Additionally, KIUC participates in diverting State waters to Grove Farm lands and treated-water sale operations without, to FOM's knowledge, compensation to cooperative members and at a cost to KDOW customers. FOM's mission of increasing the quality of life for Māhā'ulepu communities, as well as those communities, will be impacted by KIUC's requested rate hikes and poor planning and should therefore be permitted to intervene in this proceeding.

As described below, these concerns raised by FOM are not pertinent to this rate case.

Commission action in this proceeding would not authorize the West Kauai Energy Project ("WKEP"). FOM's stated concerns regarding environmental and cultural impacts of WKEP are therefore not relevant to and would not be impacted by this rate case. While approximately \$222,000 of KIUC's proposed revenue requirement relates to WKEP for consultant fees and outreach and community efforts, there are no costs related to the actual construction or operation of WKEP that are being sought for

recovery in this rate case. Said another way, Commission action on KIUC's rate relief requests would not provide KIUC with any added right to proceed with WKEP. Before WKEP can be developed and operated, numerous permits, approvals and/or authorizations must be obtained from various agencies through which Movant will continue to have the right to express its concerns. The Commission has itself ensured this through its imposition of an express condition that construction of the WKEP will not commence until the Hawaii environmental review process (known as "HEPA") is completed and all required permits, approvals and/or authorizations needed to proceed with the actual implementation of the construction and/or completion of WKEP, especially on State lands, have been obtained, as further discussed in Section III.D below.

Commission action in this rate case would also not impact Movant's stated concerns with respect to the Waiahi hydros. Movant states that KIUC represented that it has not used any State waters for the Waiahi Power Station, but has been paying for a State water permit (i.e., revocable water permit) and has not released any records about power production from Waiahi, despite many requests that they do so.³⁶ KIUC has in fact relinquished its State water permit upon its expiration as of December 31, 2022 and has no ongoing monetary obligation under the expired permit.

The issues raised by Movant relating to the water diversion for the Waiahi hydros are currently the subject of ongoing litigation before the First Circuit of the State of

³⁶ See Memorandum in Support, at 1-2. Revocable water permits are issued through DLNR, which is headed by an executive board known as BLNR pursuant to HRS Chapter 171. KIUC was issued a revocable permit (RP 7340) in 2003 for water diverted from the North Fork Wailua River and the Waikoko Stream to operate two hydroelectric plants (i.e., the Waiahi hydros).

Hawaii under Case No. 1CCV-22-0000015. Movant’s stated concerns relating to the issuance of water permits, the use of state lands and/or water-related matters, fall under the authority and jurisdiction of the Department of Land and Natural Resources (“DLNR”) and its executive board (Board of Land and Natural Resources, or “BLNR”) under HRS Chapter 171³⁷ (which set forth the applicable statutory provisions relating to the Management and Disposition of Public Lands), as well as the Commission on Water Resource Management (“Water Commission”) under HRS Chapter 174C.³⁸ Issues that fall under the jurisdiction of DLNR and the Water Commission are clearly outside of the scope of this rate case and would only serve to unduly delay this proceeding.³⁹

With respect to Movant’s claims regarding Grove Farm, Movant states that (1) FOM includes many County of Kauai Department of Water (“KDOW”) customers who pay for water that KIUC passes through tail raceways, onto Grove Farm lands, where the water is further treated at Grove Farm’s Waiahi Water Treatment Plant and

³⁷ HRS § 171-3(a) states, in pertinent part, as follows:

The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. **The department shall manage, administer, and exercise control over public lands, the water resources**, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. (emphasis added)

³⁸ HRS § 174C-7(a) provides as follows:

There is established within the department a commission on water resource management consisting of seven members **which shall have exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code**, except as otherwise specifically provided in this chapter. (emphasis added)

³⁹ KIUC is authorized to continue to use the Waiahi hydros unless the agency that provided the authority determines otherwise. The appropriate means for Movant to attempt to address its concerns with the hydros is through that agency and not the Commission.

sold to the County for its municipal water system, (2) FOM has a property interest as KDOW customers, which pays for water obtained through KIUC's diversion and permitting of State waters, (3) KIUC participates in diverting State waters to Grove Farm lands and treated-water sale operations without, to FOM's knowledge, compensation to cooperative members and at a cost to KDOW customers, (4) there are no available means to protect FOM's rights and interests, and (5) no other agency has specific regulatory oversight over whether KIUC expenditures, including its land rights expenditures, are prudent and in the public interest.⁴⁰ These issues raised by Movant involve matters beyond the scope of the subject rate case and also relate to matters involving other parties (i.e., KDOW and Grove Farm) which are not involved in this proceeding.

This rate case neither impacts nor diminishes Movant's ability to continue to address Movant's stated concerns through other more appropriate venues and Movant should not be allowed to expand this rate case to include these issues.

KIUC notes that, in discussing the effect of the rate case on FOM's interests, FOM also alleges on page 6 of its Memorandum in Support that "KIUC's Application does not consider the costs of imposing controversial, poorly planned, land-intensive projects onto communities. KIUC's continued failure to engage communities, including FOM, and address concerns will only serve to increase costs and forestall beneficial projects and other changes."⁴¹ Here, FOM mentions "land-intensive projects" without providing any specific project or specific harm or interest related to this rate case. In

⁴⁰ Memorandum in Support, at 4-7.

⁴¹ Id., at 6.

fact, throughout its Memorandum in Support and attached Declaration, FOM makes various statements regarding renewable energy projects in general,⁴² and concerns about future activities (defined as “Related Projects” on page 1 of the Motion to Intervene).^{43 44} On page 11 of the Memorandum in Support, Movant states that the subject Application “presumes the installation and operation of controversial projects.” Because FOM’s Motion to Intervene only specifically refers to WKEP and the Waiahi hydros, KIUC assumes that FOM’s primary concern is with these two projects. However, if not, FOM has not adequately described the possible effects, as these statements are (a) overly broad, (b) unduly speculative through its general reference to future projects, (c) outside of the scope of this rate case’s test year, and (d) insufficient in explaining how its stated concerns are unique to FOM, that the matters affect FOM’s interests in a manner different from the general public, or how these concerns would be negatively impacted by the Commission granting KIUC’s rate relief based on a 2023 calendar test year.

FOM has not met its burden with regard to HAR § 16-601-55(b)(3) with any of its stated interests. As discussed above in Section II (Standard for Intervention and

⁴² See Memorandum in Support, at 3-4, 7, 8, and 11-12; see also Declaration, at 2-3.

⁴³ KIUC notes that footnote 2 of the Memorandum in Support appears to reference only WKEP as a future project.

⁴⁴ Page 3 of the Memorandum in Support seems to indicate that FOM is advocating a ceiling on energy users to ensure that gains of energy projects are not “eaten away.” However, this is clearly outside of the scope of the rate case proceeding, and the imposition of such a ceiling would violate KIUC’s obligation to serve as a regulated public utility, and is outside the control of both KIUC and the Commission.

Participation), it is Movant's burden to demonstrate to the Commission, in its Motion to Intervene, why the Commission should exercise its discretion in Movant's favor.⁴⁵

D. Movant has Other Means Available to Protect its Interests - HAR § 16-601-55(b)(4).

FOM has not satisfied the requirements of HAR § 16-601-55(b)(4) as there are other means available to address FOM's stated interests. In contending that it has no other available means to protect its interests, FOM states on page 7 of its Memorandum in Support that "[n]o other agency has specific regulatory oversight over whether KIUC expenditures, including its land rights expenditures, are prudent and in the public interest." FOM further contends on page 7 that "[n]o other agency has regulatory oversight over KIUC's greenhouse gas emissions or reliance on fossil fuels", noting that "KIUC's 'renewable energy' projects come with unaccounted for costs. . . ."

In claiming effects of an Order in this rate case on FOM, FOM on page 3 of its Memorandum in Support states that it includes many who will be impacted by WKEP and the resulting diversion of water from the Waimea watershed, and that "KIUC's expenditures on this project will impact ratepayers without delivering promised reductions in greenhouse gas ("GHG") emissions." However, for the reasons discussed in Section III.C above, the concerns raised by FOM regarding WKEP are not relevant to and would not be impacted by this rate case.⁴⁶

In addition, as the Commission is aware, WKEP was the subject of a previous docket (Docket No. 2020-0218) in which the Commission approved the underlying Power Purchase Agreement for WKEP. In doing so, the Commission analyzed and

⁴⁵ See Order No. 34664, at 77.

⁴⁶ See supra, n. 28.

noted the large displacement of fossil fuel and GHG emissions that would be avoided with WKEP. Although FOM did not seek to intervene or participate in Docket No. 2020-0218, FOM has utilized various other means available to protect its interests through proceedings before other agencies. FOM provided comments to the environmental assessment related to WKEP during the public comment period required under HEPA pursuant to HRS Chapter 343, which is administered by the Environmental Review Program of the State of Hawaii, Office of Planning and Sustainable Development. FOM has also participated in other proceedings before other state agencies including the DLNR and its board (i.e., BLNR), as shown by Exhibit “A” to the Declaration (which includes a portion of the transcript from BLNR’s December 10, 2021 meeting in which FOM’s Bridget Hammerquist provided public testimony concerning many of the same issues raised in the Motion to Intervene).

KIUC also notes that in its Decision and Order No. 38095 issued on December 1, 2021 in Docket No. 2020-0218, the Commission imposed a requirement that construction of WKEP will not commence until the HEPA process is completed and all required permits, approvals and/or authorizations needed to proceed with the actual implementation of the construction and/or completion of the Project, especially on State lands, have been obtained. The Commission also requires KIUC to file a quarterly report on the status of WKEP in Docket No. 2020-0218. As reflected in the most recent quarterly report filed on January 26, 2023 in said Docket No. 2020-0218, KIUC has conducted extensive community efforts and outreach regarding WKEP (see Exhibit 1 of said quarterly report) and there are numerous permits and approvals still required from various agencies, including without limitation DLNR, US Army Corps of Engineers, State

of Hawaii Department of Health, as well as various land agreements that must still be entered into and obtained before WKEP can be constructed and become operational (see Exhibit 2 of said quarterly report). Movant will continue to have the right to express its concerns with WKEP with various other agencies through the remaining agency approval processes. An approval of KIUC's Application requests would not in any way impact or harm Movant's rights to continue to do so.

For the reasons discussed above and in Section III.C, the concerns raised by FOM regarding WKEP and the Waiahi hydros are not pertinent to the rate relief being requested in the Application. This is especially the case with regard to FOM's stated concerns relating to the environmental impacts of said projects, which are within the purview of other State agencies. The other agencies present other and more suitable means available to protect Movant's interests. This rate case is not the appropriate forum to discuss projects that have been or are the subject of other Commission dockets or that may be before other agencies. This rate case should not provide an opportunity to relitigate issues. Doing so would certainly unreasonably broaden the issues of this case. This would go against the Commission's responsibility to ensure the just, speedy, and inexpensive determination of this proceeding and would also significantly increase KIUC's expenses in the subject proceeding, which would ultimately be passed on to KIUC's members/customers.

Additionally, as member/customers of KIUC, FOM could also direct any comments, concerns, or questions regarding KIUC practices directly to KIUC rather than through this rate case.

E. Movant’s Interests Can Be Represented by the Consumer Advocate and are Not Different from that of the General Public - HAR §§ 16-601-55(b)(5) and (8).

Pursuant to HAR § 16-601-55(b)(5), Movant is required to establish “[t]he extent to which [its] interest will not be represented by existing parties” (which in this case are KIUC and the Consumer Advocate). Similarly, HAR § 16-601-55(b)(8) requires Movant to establish “[t]he extent to which [its] interest in the proceeding differs from that of the general public.”

On Page 8 of the Memorandum in Support, FOM alleges that “[t]he Consumer Advocate’s responsibilities are to members of the public insofar as they are consumers of a utility and do not extend to FOM’s quality of life, environmental concerns and potential irreparable harm to protected traditional and customary rights.” Pursuant to HRS § 269-51, however, the Consumer Advocate is statutorily mandated to “represent, protect, and advance the interests of all consumers”⁴⁷, and the Commission has consistently held that the Consumer Advocate appropriately advances the interests of all consumers.⁴⁸

Moreover, HRS § 269-54(c) specifically requires the Consumer Advocate to “consider the long-term benefits of renewable resources in the [C]onsumer [A]dvocate’s role as consumer advocate.” HRS § 269-54(b)(7) also provides the Consumer Advocate with the express authority to “[r]epresent the interests of consumers of utilities

⁴⁷ HRS § 269-51 (emphasis added).

⁴⁸ See e.g., Order No. 37957 issued on September 8, 2021 in Docket No. 2021-0078, at 28; Order issued on July 29, 2009 in Docket No. 2009-0168, at 12; Order issued on August 8, 2008 in Docket No. 2008-0115; Order No. 23366 issued on April 13, 2007 in Docket No. 2006-0386; Order No. 23097 issued on December 1, 2006 in Docket No. 2006-0431; Order No. 22454 issued on May 5, 2006 in Docket No. 05-0334; Order No. 19955 issued on January 14, 2003 in Docket No. 02-0371; and Order No. 13964 issued on June 20, 1995 in Docket No. 94-0345.

services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.”

As discussed above, FOM’s Motion to Intervene fails to provide an explanation supporting how FOM’s constitutional rights would be adversely affected, erroneously deprived, unreasonably harmed, or reasonably threatened by the Commission’s action in this rate case, and also fails to discuss how any of its interests are unique to FOM and cannot be represented by the Consumer Advocate. All of FOM’s other stated rights and interests (such as any concerns with the amount of the rate increase, even though FOM incorrectly calculated the impact on residential customers as further discussed in Section III.F below) are not different from that of the general public, which the Consumer Advocate is statutorily required to represent, protect and advance.

Allowing Movant to participate and raise the types of issues or allegations set forth in its Motion to Intervene would unreasonably broaden the issues and unduly delay the proceeding as further discussed below. It would consequently prevent the Commission from being able to ensure the “just, speedy and inexpensive determination” of this proceeding.⁴⁹

F. Movant’s Participation in this Docket Will Not Assist in the Development of a Sound Record and Will Unreasonably Broaden the Issues and Unduly Delay the Proceeding - HAR §§ 16-601-55(b)(6) and (7).

HAR §§ 6-61-55(b)(6) and (7) require FOM to demonstrate the extent to which its participation can assist in the development of a sound record and whether its participation will broaden the issues or delay the proceeding.

⁴⁹ HAR § 16-601-1 provides, in relevant part, that the rules should be “liberally construed to secure the just, speedy, and inexpensive determination of every proceeding.”

On pages 8-9 of its Memorandum in Support, FOM contends that:

FOM's evidence and information will assist the Commission in determining the reasonableness of KIUC's claimed costs and expenditures, in addition to assisting with community engagement through its listserv, social media, and other means of raising awareness amongst its supporters and officers, the majority of which are KIUC ratepayers on Kaua'i. FOM is concerned the Commission's qualitative or quantitative consideration of GHG emissions consequent to approval of the application and the ways KIUC's proposed hydroelectric projects will impact their constitutional rights and the safety and accommodation of the public. HRS §269-16(b)(16). FOM's interests align with the Commission's pre-existing duty to consider GHG emissions consequent to approval of the application, which issues the Commission is already required to consider as part of these proceedings, as well as the factual basis for KIUC's rate relief application. HRS §269-6(b).

The foregoing makes a sweeping general statement that FOM's evidence and information will somehow assist the Commission in determining the reasonableness of KIUC's claimed and costs expenditures, but fails to explain how FOM has the professional experience or expertise to do so in a rate making setting. For the various reasons discussed above, the rights, interests and concerns raised by FOM are not pertinent to the issues in this rate case. In addition, the significant amount of time and expense that KIUC has expended just to respond to the many unfounded and unrelated statements made by FOM in its Motion to Intervene (including to correct various incorrect statements as noted below) that go far beyond the determination of just and reasonable rates in this rate case, the resulting delay in KIUC's ability to negotiate and submit a stipulated procedural order for the Commission review, and the corresponding impact on the Commission's ability to meet its statutory timelines, demonstrate that Movant's participation in this proceeding would undoubtedly broaden the issues, delay the proceeding, result in additional and unnecessary costs and resources that will be

borne by KIUC's members/customers, and hinder the development of a sound record in this proceeding.

FOM's Motion to Intervene contains various statements and assertions that unreasonably broaden the issues in the subject rate case and/or which would delay the proceeding and create undue confusion, including the statements and assertions described below.

1. False or Misleading Statements. The Motion to Intervene includes various statements which, whether intentional or not, are false or misleading. These false and misleading statements include multiple errors with respect to topics that Movant claims to have unique experience and knowledge. They also spotlight Movant's lack of experience in rate making. This is of special concern given the extent to which Movant has been publicizing incorrect statements, especially regarding the percentage rate increase (see Item 1 in chart below), and the extent of comments received both in and outside of this docket proceeding that have focused on FOM's inaccurate statements about the percentage increase. Portions of the community have been riled up based on a falsehood.

These false and misleading statements would undoubtedly create confusion in the record, unreasonably broaden the issues before the Commission in this rate case, and would result in KIUC, the Commission and the Consumer Advocate being forced to devote substantial time and effort to address false or misleading statements. This would in turn hinder the development of a sound record with respect to the matters that are relevant to this rate case. Such efforts would be costly to KIUC's members/customers (through increased rate case costs that would ultimately be passed

on to KIUC’s members/customers) and unreasonably protract this proceeding.⁵⁰ See Order No. 34502, at 26 and 38-39, which denied intervention and participation to two movants on the grounds that they would “likely cause confusion in the record” and delay the proceeding, not assist in the development of a sound record, unreasonably broaden the issues at hand, and/or unreasonably broaden and shift the focus of the proceeding to the movant’s interests. See also Order Denying Motions to Intervene and Motion for Leave to File a Reply, issued on October 31, 2008 in Docket No. 2008-0083, at 15, which denied participation to a movant group on the basis that the group “would not lead to the development of a sound record, and would likely confuse the issues and delay the proceeding.”

Examples of FOM’s false and misleading statements in the Motion to Intervene and other statements that are clearly outside the scope of this rate case are described in the chart below. These demonstrate how Movant’s participation would impede the development of a sound record on the matters that are pertinent to this rate case proceeding.

	False or Misleading Statement in FOM Motion to Intervene	Comment / Correction
1.	“On or about March 23, 2023, ratepayers received notice of the public hearing describing a 9.4% increase, while describing in very small font, <u>rates that will impact</u>	This is not correct. With the exception of Street Lighting, KIUC’s application proposes that all customer classes (including residential) receive an approximate 9.4%

⁵⁰ See Order No. 34502 involving a Hawaii Electric Light Company, Inc. rate case, at 26 and 38-39, which denied intervention and participation to two movants on the grounds that they would “likely cause confusion in the record” and delay the proceeding, not assist in the development of a sound record, unreasonably broaden the issues at hand, and/or unreasonably broaden and shift the focus of the proceeding to the movant’s interests; see also Order Denying Motions to Intervene and Motion for Leave to File a Reply, issued on October 31, 2008 in Docket No. 2008-0083 , at 15 (wherein the Commission denied intervention to a Commercial group in a rate case proceeding and noting that such intervention “would not lead to the development of a sound record, and would likely confuse the issues and delay the proceeding).

	False or Misleading Statement in FOM Motion to Intervene	Comment / Correction
	<p><u>residential consumers between 18.5% and 19.5%</u> depending on their kilowatt consumption.” Memorandum in Support, at 2 (underlined emphasis added).</p>	<p>increase. See Daniel Koehler Direct Testimony (Exhibit 10-T-500 of Application). FOM’s calculation erroneously excludes existing ERAC revenues (based on the 2023 calendar test year) in the current rate/revenues calculation, and as a result materially understates the current bill and overstates the impact of the proposed rates. See Attachment 1 for a spreadsheet showing these corrections. See also Attachment 2 for an article by The Garden Island newspaper and Attachment 3 for an email that KIUC sent to its Constant Contact list regarding FOM’s erroneous calculation.</p>
2.	<p>“KIUC cooperative members pay much higher rates for electricity than other ratepayers in the State.” – Memorandum in Support, at 54.</p>	<p>This is incorrect. KIUC’s rates have been the lowest in the State for about a year, and is a fact that has been widely publicized by KIUC since May 2022 and noted by KIUC in the subject Application. See Application, David Bissell Testimony (Exhibit 10-T-100), at 48. See also KIUC’s public hearing testimony,⁵¹ page 3 of Powerpoint presentation.</p>
3.	<p>“KIUC has rebuffed FOM’s concerns raised during State Land Board proceedings, stating KIUC would have to request a rate increase through ratemaking [sic] proceedings to recuperate costs associated with State Land Board permits and the costs of system maintenance, land rights, and the like, which are eligible for rate recovery in such proceedings.” – Declaration, at 3.</p>	<p>KIUC did not rebuff such concerns relating to the Waiahi hydros. At the direction of BLNR, KIUC engaged in a 3-month mediation process in the first quarter of 2019 to attempt to address concerns raised, which included a number of entities. Ms. Hammerquist (who signed the Declaration) attended and/or participated in at least one of these mediation sessions.</p>
4.	<p>“Since June 2019, KIUC represented it has not used any</p>	<p>KIUC relinquished Revocable Permit No. 7340, upon its expiration as of</p>

⁵¹

<https://dms.puc.hawaii.gov/dms/DocumentViewer?pid=A1001001A23C31B54740F00369>

	False or Misleading Statement in FOM Motion to Intervene	Comment / Correction
	State waters for the Waiahi power station but has anyway been paying for a State water permit and has not released any records about power production from Waiahi, despite many requests that they do so." Memorandum in Support, at 1-2."	December 31, 2022, and has no ongoing monetary obligation under the expired permit. KIUC has released records regarding power production at Waiahi, and this information is included in KIUC's Annual Report to its membership, which is available to the general public on KIUC's website (kiuc.coop). ⁵² Information regarding power production as a percentage of sales from "Waiahi Hydro" is included in the KIUC 2021 Annual Report, p. 15. ⁵³ Production data for the Waiahi hydros is also included in KIUC's annual Renewable Portfolio Standards Report.
5.	"FOM includes many who will be impacted by KIUC's AES West Kaua'i Energy Project, LLC for which a minimum of 11 million gallons per day (mgd) and upwards of 20 mgd (as much as 7.3 billion gallons annually) will be diverted from the Waimea watershed." – Memorandum in Support, at 3.	WKEP will not use "a minimum of 11 million gallons of water (MGD) per day and upwards of 20 MGD per day." 11 MGD is a projected rolling average of such water use and it is anticipated that there will be many days when substantially less water will be used. Water use matters were analyzed and extensive public information was provided and placed in the record in Commission Docket No. 2020-0218, which can be accessed on the Commission's Document Management System. Additional information can also be found on the Water Commission's website.
6.	"FOM includes many County of Kaua'i Department of Water (KDOW) customers. FOM pays for water that KIUC passes through tail raceways, onto Grove Farm lands, where the water is further treated at Grove Farm's Waiahi	This is a mischaracterization. It is KIUC's understanding that KDOW does not purchase water from Grove Farm. KDOW reimburses Grove Farm for expenses relating to treating and delivering water for domestic use.

⁵² A copy of the most recent Annual Report (2021) can be found at: https://kiuc.coop/sites/default/files/documents/annual_reports/AnnualReport21.pdf.

⁵³ See *supra*, n. 52.

	False or Misleading Statement in FOM Motion to Intervene	Comment / Correction
	Water Treatment Plant and sold to the County for its municipal water system. Hammerquist Decl. ¶12.” – Memorandum in Support, at 4.	See https://www.grovesfarm.com/news/grovesfarm-newsletter-september-2020-edition .

2. County General Plan. FOM expresses concern that KIUC's rate increase and the operations and projects proposed by KIUC ignore the policies and goals of the County General Plan.⁵⁴ FOM's stated concern regarding KIUC's compliance with the County General Plan demonstrates that FOM is simply raising issues without a legitimate basis to the matters in this rate case, and how FOM's involvement would unreasonably broaden the issues to involve matters that are not pertinent to this rate case, in contravention to HAR § 16-601-55(d).

The County General Plan Ordinance (Title IV, Chapter 7 of the Kauai County Code) provides that the purpose of the County General Plan is to establish policies for the long-range development, conservation, use, and allocation of land, water, and other resources in the County of Kauai. Contrary to FOM's statement that KIUC's operations and projects described in this rate case ignore "the policies and goals of the County General Plan", Section VIII of the County General Plan specifically highlights KIUC's efforts and contributions toward the County of Kauai's progression towards energy independence and a carbon-neutral future. In fact, the County General Plan expressly states that the General Plan Energy Sustainability actions "are intended to support the efforts of KIUC and renewable energy providers in reaching the goal of energy independence . . ."

⁵⁴ Memorandum in Support, at 6-7.

The subject rate case is not the appropriate forum to address FOM's concerns regarding KIUC's compliance with the County General Plan. The County Planning Department, and not the Commission, is charged with administering the County General Plan. Any concern about KIUC's compliance with the County General Plan should be raised with the County of Kauai pursuant to and in accordance with County of Kauai policies, procedures and/or requirements.

G. Intervention Should Be Denied Because Movant's Allegations Do Not Demonstrate That: (1) Its Interests Are Reasonably Pertinent to the Issues Already Presented in this Docket; and (2) It Will Not Unreasonably Broaden the Issues Already Presented in This Docket - HAR § 16-601-55(d).

As set forth throughout this Section III (Discussion), Movant has failed to demonstrate that its participation would assist in the development of a sound record and not unreasonably broaden the issues. To the contrary, Movant has demonstrated that its involvement would not assist in the development of a sound record and would instead confuse the issues, unreasonably broaden the issues and unduly delay the proceeding. Pursuant to HAR § 16-601-55(d), which provides that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented"⁵⁵, Movant's motion to intervene should be denied. Because Movant's allegations do not demonstrate: (1) that its concerns and interests are reasonably pertinent to the issues already presented in this docket; and (2) that FOM's participation will not unreasonably broaden the issues already presented in this docket, HAR § 16-601-55(d) mandates that the Commission deny Movant's Motion to Intervene.

⁵⁵ HAR § 16-601-55(d) (emphasis added).

IV. Participation Without Intervention

As discussed above, Movant has clearly not satisfied its burden of meeting the legal requirements to be granted intervention in this docket. With respect to Movant's alternative request for participant status, the Commission is likewise guided by the overarching policy set forth in HAR § 16-601-1 of ensuring "the just, speedy, and inexpensive determination of every proceeding" in determining whether to permit participation without intervention and the scope of such participation under HAR § 16-601-56(a). For the reasons discussed above, Movant has not provided any reasons or stated any rights or interests that are reasonably pertinent to the issues presented in this rate case and KIUC's Application to justify participation in this type of proceeding. The issues raised by Movant in its Motion to Intervene would unreasonably broaden the issues and unduly delay the proceeding, and would clearly not contribute to the just, speedy, and inexpensive determination of this proceeding. This is of special concern to KIUC as a member-owned cooperative because this would increase the amount of rate case expenses that would be recovered through its revenue requirement, which in turn affects the electric bill of the customer/member.

KIUC also notes that in Section III of its Memorandum in Support, Movant provides the following two reasons as to why it "currently opposes the bases for the proposed rate increase and therefore seeks to intervene, or alternatively to participate in the instant proceedings":

- A. Upon its review, it believes that "KIUC's application for rate may inequitably distribute rate increases between small residential cooperative members who will pay increases of 19.7% as opposed

to larger, commercial energy users, who will experience a 5-6% increase”; and

- B. KIUC’s application presumes the installation and operation of controversial projects.

With respect to Item A above, Movant’s concern has already been addressed. As discussed in Section III.F above, Movant’s calculation regarding the 19.7% increase is incorrect. With the exception of Street Lighting, KIUC’s Application proposes that all other customer classes (including residential) receive an approximate 9.4% increase.⁵⁶ But, in any event and as further discussed in Section III.E above, Movant’s interest in this proceeding as it pertains to Item A is no different from that of the general public (and in particular KIUC’s residential customer class), whose interests the Consumer Advocate is statutorily obligated to represent, protect and advance under HRS § 269-51.

With respect to Item B above regarding FOM’s statement that KIUC’s Application presumes the installation and operation of controversial projects, this statement was addressed in Section III.C above. As discussed therein, because FOM’s Motion to Intervene only specifically refers to WKEP and the Waiahi hydros, KIUC assumes that these concerns were focused or mainly focused on these two projects. If not, FOM has failed to identify what other “controversial projects” it is referring to, and such indirect,

⁵⁶ KIUC also notes that in a Facebook video post on the Friends of Maha’ulepu group page (<https://www.facebook.com/1307541181/videos/453825190236885/>), starting at about the 1 minute, 41 second mark, Ms. Bridget Hammerquist (who submitted the Declaration attached to the Motion to Intervene) states the following, in relevant part: “. . . they say they’re asking the PUC to . . . let them increase their revenue (of course, we have to pay it) by 9.7%. That doesn’t sound too bad.”

speculative and general statement should be disregarded by the Commission.⁵⁷ As it pertains to WKEP and the Waiahi hydros, the discussions in Sections III.C and III.D above demonstrate that FOM's concerns related to these projects are not pertinent to the issues in this rate case, are not impacted by the Commission approving KIUC's requested rate relief, and FOM has various other and more appropriate venues that it has utilized and can utilize to continue to express these concerns and protect its interests.

As a result, it is KIUC's position that Movant's entire Motion to Intervene should be denied and it should not be granted either intervention or participant status in this rate case. However, if the Commission nevertheless determines that Movant may be able to provide certain limited information that could assist the Commission in its review of the subject Application despite it having no right to intervene or participate, and thus decides to grant Movant participation without intervention under HAR § 16-601-56(a), KIUC contends that such participation should be limited through the following requirements and/or limitations that are consistent with what the Commission has done in other proceedings:

- (1) Movant's participation is limited solely to setting forth a position statement⁵⁸ as to the reasonableness of the recovery of any costs

⁵⁷ As noted in Section II (Standard for Intervention and Participation) above, the Commission has held that "indirect or speculative interests are insufficient to warrant intervention[.]" and "[g]eneral statements of interest or harm, conclusory legal statements, boilerplate language, and unsupported general claims of professional experience or expertise are not persuasive."

⁵⁸ See Order No. 19955 issued on January 14, 2003 in Docket No. 02-0371 ("Order No. 19955"), which involved a rate case requested by Molokai Public Utilities, Inc. under HRS § 269-16 and a motion to intervene filed by West Molokai Citizens Committee ("WMCC"), described as a specially-formed and narrowly-focused interest group. In Order No. 19955, at 4-5 and 6-7, the Commission denied WMCC's motion because it did not convince the Commission that the Consumer

prudently included as part of KIUC's 2023 test year revenue requirement pertaining to WKEP and the Waiahi hydros. However, the Commission should caution Movant against litigating the merits of WKEP and the Waiahi hydros, in recognition that this is a rate case proceeding and Movant has numerous other and more appropriate avenues outside of the Commission's jurisdiction to have its interests protected as to the merits of WKEP and the Waiahi hydros.⁵⁹

- (2) Movant shall have the right to issue information requests to KIUC, limited only to the issues identified in Item (1) above, in accordance with the schedule to be established in this proceeding.⁶⁰ Movant shall also respond to information requests issued to it by KIUC, the Consumer Advocate and the Commission, as applicable, but may not issue information requests to the Consumer Advocate or the Commission;
- (3) Movant's access to and treatment of confidential and/or restricted information shall be governed by the protective order to be issued in this

Advocate cannot sufficiently represent its interests, that WMCC's allegations were reasonably pertinent to the issues presented in that docket and that it would not unduly broaden them. However, the Commission granted WMCC participation without intervention limited to, among other things, the filing of a position statement and also did not allow WMCC to participate in formulating or submitting the issues, procedures, and schedule for the docket.

⁵⁹ See Order No. 37691 issued on March 22, 2021 ("Order No. 37691") in Docket No. 2020-0218, at 35 (providing for limited participation and cautioning the participant against litigating the merits of water rights issues or environmental compliance which are the subject of other agency jurisdictions and proceedings).

⁶⁰ See Order No. 37238 issued on July 29, 2020 ("Order No. 37238") in Docket No. 2020-0080, at 28-29; Order No. 37090 issued on April 20, 2020 ("Order No. 37090") in Docket No. 2019-0333, at 22-23; and Order No. 36906 issued on December 19, 2019 ("Order No. 36906") in Docket No. 2019-0085, at 34.

proceeding,^{61 62} including provisions establishing a tiered level of confidentiality between any allowed parties and/or participants;

- (4) Movant shall be allowed to file a statement of position on the issue identified in (1) above, to which KIUC and the Consumer Advocate shall be allowed to file a response in accordance with the schedule to be established in this proceeding;⁶³
- (5) Movant shall not be permitted to file motions or responses concerning procedural and legal matters (such as those pertaining to scheduling,⁶⁴ future changes in the scope of the proceeding, or other matters pertaining to the conduct of the proceeding);^{65 66} and
- (6) As a condition of being allowed to participate in this proceeding, Movant shall be precluded from commenting on issues outside of the scope of the

⁶¹ On November 2, 2022, KIUC filed a Motion for Protective Order in the subject docket.

⁶² See Order No. 38015 issued on October 8, 2021 (“Order No. 38015”) in Docket No. 2021-0098, at 30; Order No. 37090, at 23; Order No. 37238, at 28; and Order No. 37691, at 36.

⁶³ See Order No. 37090, at 23 (providing that Participants may file a statement of position, as may be specifically allowed or required in further orders in the subject docket); Order No. 34268 issued on December 29, 2016 (“Order No. 34268”) in Docket No. 2016-0232, at 14 and 17; Order No. 34174, at 25-26; and Order No. 37542 issued on January 11, 2021 (“Order No. 37542”) in Docket No. 2020-0089, at 4 (wherein the Commission ordered that all statements of position filed in the subject docket shall be limited to the issues raised in the Application, i.e., only those issues that pertained to the Applicant’s request for a temporary rate increase).

⁶⁴ See Order No. 37090, at 1-2 and 24-25 (wherein the Commission directed Hawaiian Electric Light Company, Inc. and the Consumer Advocate to collaborate and file a stipulated procedural schedule for the Commission’s review and consideration and noted that said stipulated procedural schedule shall assign the Participants the same deadline dates as the Consumer Advocate); Order No. 34174, at 1-2 and 26; Order No. 37691, at 1-2 and 36-37; Order No. 36906, at 2 and 36-37; and Order No. 37238, at 1-2 and 29-30.

⁶⁵ See Order No. 36906, at 34, Order No. 37238, at 27-28, and Order No. 38015, at 29-30.

⁶⁶ See supra, n. 24.

issue identified in (1) above,⁶⁷ from any attempts to unreasonably broaden the issue for which Movant has been granted participant status, and from unduly delaying the proceeding. The Commission will reconsider Movant's inclusion in this docket if, at any time during the course of this proceeding, the Commission determines that Movant's actions are inconsistent with the above and/or is otherwise attempting to unreasonably broaden the pertinent issues established by the Commission in this docket, is unduly delaying the proceeding, is exceeding its prescribed scope of participation, or is not assisting in the development of a sound record in this docket.⁶⁸

As noted above, it is KIUC's position that Movant's entire Motion to Intervene should be denied and it should not be granted either intervention or participant status in this rate case. But, if the Commission is inclined to allow Movant to be involved in this docket as a participant without intervention, the above requirements/limitations would provide the appropriate balance between any participation that the Commission may grant to Movant and the Commission's responsibility to provide a "just, speedy, and inexpensive determination of every proceeding."

In addition, KIUC notes that in Order No. 39092 issued on March 21, 2023 ("Order No. 39092") in the subject docket, the Commission, among other things, instructed the Parties at that time (i.e., KIUC and the Consumer Advocate) to (1) initiate

⁶⁷ See Order No. 37090, at 24; Order No. 36906, at 25; Order No. 37238, at 28-29; and Order No. 34664, at 79-80.

⁶⁸ See Order No. 37691, at 36; and Order No. 37238, at 28-29.

the discovery process forthwith; and (2) submit a stipulated procedural order for the Commission's review and consideration, to be due as follows: if no motions to intervene or participate are filed in this proceeding, the Parties shall submit a stipulated procedural order or individual proposals within three business days following the deadline to file any such motions to intervene or participate.⁶⁹ However, if one or more motions to intervene or participate are filed, the Parties and designated intervenors and participants, if any, shall file their stipulated procedural order within six business days of the filing of the Commission's decision on the motions to intervene or participate.⁷⁰

KIUC notes that the above appears to be a departure from relatively recent orders by the Commission where only the applicant and the Consumer Advocate, and not any authorized participants were allowed to submit a proposed or stipulated procedural order for the Commission's consideration.⁷¹ Especially in light of the Commission's timeline to issue a final decision and/or interim decision pursuant to HRS § 269-16(d), KIUC respectfully requests that to the extent the Commission does decide to allow Movant to be involved in this docket as a participant without intervention under HAR § 16-601-56(a) as provided above and to ensure Movant does not unduly broaden the issues or delay this proceeding, KIUC requests that the Commission require KIUC

⁶⁹ See Order No. 39092, at 19.

⁷⁰ Ibid.

⁷¹ See Order No. 37691, at 36-37 (requiring KIUC and the Consumer Advocate to submit a procedural order for the Commission's review and consideration, and that the "Commission will preclude any attempts by [participants] to broaden the issues or unduly delay the proceeding") and Order No. 37238, at 28-30 (requiring the Applicants and the Consumer Advocate to submit a proposed stipulated procedural order and that the Commission "will preclude any attempt [by participants] to broaden the issues or to unduly delay the proceeding").

and the Consumer Advocate to collaborate and file a stipulated procedural order (or separate procedural orders if a stipulation cannot be reached) for the Commission's review and consideration that will require Movant to comply with the stipulated or proposed procedural order as adopted or modified by the Commission.⁷²

V. Conclusion

Based on the foregoing reasons and authorities cited above, KIUC respectfully requests that the Commission issue an order denying Movant's Motion to Intervene.

DATED: Honolulu, Hawaii, April 14, 2023.

/s/ Kent D. Morihara

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COOPERATIVE

⁷² See Order No. 37090, at 24-25 (wherein the Commission directed Hawaiian Electric Light Company, Inc. and the Consumer Advocate to collaborate and file a stipulated procedural schedule for the Commission's review and consideration and noted that said stipulated procedural schedule shall assign the Participants the same deadline dates as the Consumer Advocate); Order No. 34174, at 1-2 and 26; Order No. 37691 at 1-2 and 36-37; Order No. 36906, at 1-2 and 36-37; and Order No. 37238, at 1-2 and 29-30.

ATTACHMENT 1

Kauai Island Utility Cooperative
Rate Impact From Proposed Rate Increase: Residential based on 500 kWh

KIUC Rate Case Application		April, 2023	
Current Bill with 2023 TY Fuel		kWh	Total
Non-Fuel Energy Charge	500	\$ 0.15600	\$ 78.00
Fuel and Purchase Power Energy			
Base Fuel Charge	500	0.19143	95.72
Energy Rate Adjustment Clause	500	0.03261 a)	16.305
Total Fuel and Energy Charge per kWh		\$ 0.38004	
Customer Charge			10.58
Total Bill			<u>\$ 200.60</u>
Proposed Rates		kWh	Total
Non-Fuel Energy Charge	500	\$ 0.21019	\$ 105.10
Fuel and Purchase Power Energy			
Base Fuel Charge	500	0.20188	100.94
Energy Rate Adjustment Clause	500	- a)	0
Total Fuel and Energy Charge per kWh		\$ 0.41207	
Customer Charge			13.50
Total Bill			<u>\$ 219.54</u>
Increase			<u>9.44%</u>

FOM Incorrect Calculation		April, 2023	
Current Bill		kWh	Total
Non-Fuel Energy Charge	500	\$ 0.15600	\$ 78.00
Fuel and Purchase Power Energy			
Base Fuel Charge	500	0.19143	95.72
Energy Rate Adjustment Clause	500	b)	0
Total Fuel and Energy Charge per kWh		\$ 0.34743	
Customer Charge			10.58
Total Bill			<u>\$ 184.30</u>
FOM Proposed Rates		kWh	Total
Non-Fuel Energy Charge	500	\$ 0.21019	\$ 105.10
Fuel and Purchase Power Energy			
Base Fuel Charge	500	0.20188	100.94
Energy Rate Adjustment Clause	500	- a)	0
Total Fuel and Energy Charge per kWh		\$ 0.41207	
Customer Charge			13.50
Total Bill			<u>\$ 219.54</u>
Increase			<u>19.12% b)</u>

Notes:

a) Energy Rate Adjustment for Test Year 2023. For proposed rates, this amount is zeroed out and added to Non-Fuel Energy Charge. Customer bills will adjust monthly, up or down, based on actual fuel charges when new rates go into effect
b) FOM incorrect Energy Rate Adjustment amount of \$0 in Current Bill calculation. So, FOM Current Bill calculation is incorrect and understated, resulting in overstated percentage increase.

ATTACHMENT 2

Motion to intervene filed against KIUC rate hike

By [Jackson Healy The Garden Island](#) | Wednesday, April 12, 2023, 12:05 a.m.

Share this story

LIHU‘E — Local activist group Friends of Maha‘ulepu has filed a motion to intervene in the Kaua‘i Island Utility Cooperative’s request to increase electric rates by an average 9.42 percent.

The motion, if passed, would not immediately kill the proposed rate increase. However, it would grant the group a seat at the table as the state Public Utilities Commission decides whether to approve or deny KIUC’s request, allowing them to directly make their case to the ultimate authority on the matter.

In the filing’s text, Friends of Maha‘ulepu argues their organization has a right to intervention based on their emphasis of cultural and environmental issues — issues they say no currently involved group represent.

“Because our members are cultural practitioners and have a different interest than either the consumer advocate will have or KIUC has exhibited in their application ... we bring to the table something that some cases say make our inclusion mandatory,” said Friends of Maha‘ulepu President Bridget Hammerquist.

Specifically, the filing references the Waiahi hydroplants and proposed West Kaua‘i Energy Project, as being “highly problematic” and having both environmental and cultural consequences not currently accounted for.

Additionally, Hammerquist and Friends of Maha‘ulepu have taken aim at KIUC’s proposed rates, particularly for residents.

In both the filing and statements made to The Garden Island, Hammerquist has made claims that the cooperative’s claims of a 9.42 percent rate increase are misleading. Hammerquist instead argues while commercial resort ratepayers would receive smaller increases, residents would be hit with increases between 18.5 and 20 percent.

However, KIUC has refuted these claims, arguing Friends of Maha‘ulepu is falsely representing its proposed rates.

“Analyzing the impact of a rate increase on customer bills is a rather complex calculation and requires a comprehensive understanding of utility rates,” said KIUC communications manager Beth Amaro.

“Unfortunately, in Ms. Hammerquist’s case, rather than requesting clarification from KIUC on how the 9.4 percent increase is calculated, she chose to go public with her incorrect and misleading information.”

Amaro says the confusion likely comes down to a technical change in how KIUC calculates its bills.

Previously, the cooperative’s fluctuating fuel expenses were included as its own distinct charge. Under the newly proposed rates, these expenses would be embedded in other charges, such as non-fuel energy charge and base fuel charge.

“This amount would be in member bills regardless of our rate filing, and should not be characterized as an increase from the rate case,” Amaro said. “Ms. Hammerquist incorrectly includes fuel increase amounts as an increase from the rate filing and inflates the rate case increase to 19 percent.”

Amaro also denied rates between classes being significantly different from each other.

“Overall, the estimated revenue increase in our rate filing is \$16.7 million, or 9.42 percent,” she said. “This increase was essentially applied equally against all major customer classes. Claims that residential customers are receiving a higher percentage increase than commercial or industrial customers is incorrect.”

Amaro said KIUC intends to formally file a response on the motion with the Public Utilities Commission within the required five-day period.

KIUC has argued the 9.42 percent rate increase is necessary to address several economic factors, including rising inflation and growing operation and maintenance costs. Additionally, the cooperative is seeking to recover \$12.8 million in revenue that had been deferred during the COVID-19 pandemic.

Individuals looking to provide comments on the proposed rate hike can send them to puc.comments@hawaii.gov. All comments must reference Docket No. 2022-0208 — the rate case’s formal title — and include the person’s name, as well as whether the person is representing an entity or organization.

•••

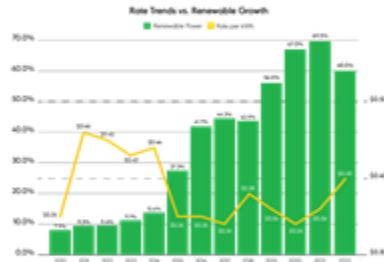
Jackson Healy, reporter, can be reached at 808-647-4966 or jhealy@thegardenisland.com.

ATTACHMENT 3

KIUC ADDRESSES MISINFORMATION CIRCULATING ABOUT PENDING RATE CASE

Let's start with the good news: KIUC's residential rates are the lowest of any island in the State of Hawaii, and have been so for the past 12 months.

This accomplishment is largely due to replacing oil-fired generation with lower-cost, fixed-price renewables. This graph gives you a picture of the stabilizing effect renewables have had on our rates.



While we've been successful in stabilizing rates, for only the second time in our 20-year history KIUC has filed for an increase in our base rates. This is necessary because, since our last rate adjustment in 2010, inflation in Hawaii has increased cumulatively 37%, while our energy sales have grown by only 5%. This is an unsustainable model for any business.

KIUC has requested a 9.4% overall revenue increase. KIUC does not take a rate increase request lightly. We know there is no "good time" for a rate increase. This request, if taken over the 13-year period since the last increase, equates to less than 1% per year: far below the rate of inflation. We realize that any increase will be difficult for some of our members to absorb, and we've dedicated a [page](#) on our website to providing information and answering question you may have.

Even with these readily available resources, there is **FALSE** information circulating that the proposed increase will have a far greater impact on residential members than commercial members. The **TRUTH** is that our residential and commercial classes would each be generating an additional 9.4% in revenues, and are being treated equally under the KIUC proposal.

This does not mean, however, that every member of KIUC can expect a 9.4% increase in their monthly bills. There are many factors that contribute to how much your bill would be impacted. For residential members, the increase will range from 10.8% for members using 250 kWh per month, to 8.9% for members using 1,000 kWh per month. Our average member uses 500 kWh per month, for which the increase is projected to be 9.4% per month. More information on projected increases by rate class and energy usage can be found [here](#).

The final decision on an appropriate rate increase for KIUC rests with the Hawaii Public Utilities Commission (PUC), which conducts a rigorous review process that includes input from the State's Consumer Advocate (broadly representing the interests of KIUC members), KIUC, and other parties as determined by the PUC. The general public may also provide feedback to the PUC.

Anyone interested in following the rate case proceedings can do so at the PUC's website [docket management system](#), under Docket No. 2022-0208.

Please feel free to [contact us](#) with your questions about the rate case. Mahalo!

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was duly served upon the following party electronically to the email addresses shown below pursuant to HAR § 16-601-21(d), as modified by Order No. 38720 Setting Forth Public Utilities Commission Electronic Filing and Service Procedures, issued on March 14, 2022, and which set forth e-filing procedures as authorized by Act 72, Session Laws of Hawaii 2021.

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DATED: Honolulu, Hawaii, April 14, 2023.

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