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COMMISSION

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FILE

The Honorable Chair and Members
of the Hawaii Public Utilities Commission
Kekuanaoa Building, First Floor
465 South King Street
Honolulu, Hawaii 96813

Dear Commissioners:

Subject: Transmittal No. 11-02 – Decoupling RBA Rate Adjustment Tariff Filing
Hawaiian Electric's Response to the Consumer Advocate's Comments

In accordance with the letter filed by Hawaiian Electric Company, Inc. ("Hawaiian Electric" or "Company") on April 18, 2011, enclosed as Exhibit 1 is Hawaiian Electric's response to the *Division of Consumer Advocacy's Comments on Attachment 5 to Hawaiian Electric Company, Inc.'s Transmittal No. 11-02*, filed on April 21, 2011.

In Transmittal No. 11-02, filed March 31, 2011, Hawaiian Electric submitted its adjustments to its decoupling tariff (in accordance with the tariff provisions) and requested that the Commission allow the Company's initial Revenue Balancing Account ("RBA") Rate Adjustment to become effective June 1, 2011.

Attachment 5 to Transmittal No. 11-02 provided an explanation of how the Revenue Adjustment Mechanism ("RAM") will be revised to reflect the effective date of the rates approved by the Commission in its interim decision and order in Hawaiian Electric's 2011 test year rate case, Docket No. 2010-0080.

At an informal meeting with the Commission, its staff and its consultant, the Consumer Advocate, and the Company on April 6, 2011 to review Transmittal No. 11-02, the Commission was informed of the disagreement between the Consumer Advocate and Hawaiian Electric with respect to the accrual of RAM revenues, which results in a significant and fundamental difference with respect to the Company's collection of RAM revenues in a rate case test year. In a follow up telephone conference involving the Consumer Advocate, Hawaiian Electric and the Commission staff (including its consultant), the parties agreed to address this issue through written comments (on April 21, 2011) and written replies (on April 29, 2011).¹

¹ Letter from Hawaiian Electric to Commission dated and filed April 18, 2011.

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Comments were filed by the Consumer Advocate and Hawaiian Electric on April 21, 2011. Hawaiian Electric hereby transmits its response to the Consumer Advocate's comments.

Hawaiian Electric appreciates the willingness of the Consumer Advocate and the Commission to address this significant issue, which is critical to the effective implementation of decoupling, in an expedited manner.

Very truly yours,



Dean K. Matsuura
Manager, Regulatory Affairs

Enclosure

cc: Division of Consumer Advocacy
Department of Defense



TRANSMITTAL NO. 11-02
HAWAIIAN ELECTRIC COMPANY, INC.
RESPONSE TO CONSUMER ADVOCATE'S COMMENTS ON ATTACHMENT 5

1. The Company's Position

Hawaiian Electric Company, Inc.'s ("Hawaiian Electric" or "Company") position is that the Rate Adjustment Mechanism ("RAM") determines an incremental revenue amount for a specific calendar year (or partial year, in the case of a rate case test year) that the Company is allowed to collect. In the case of the RAM tariff provision¹, the determination of the amount of revenues to be collected is based on the adjusted revenue requirement for the current calendar year. Collection of the annual RAM amount does not begin until June 1st of the current year. Hawaiian Electric Comments, Exhibit 1, at 5.

2. The Consumer Advocate's Position

The Consumer Advocate apparently does not view the RAM as an adjustment mechanism that necessarily allows recovery of the revenue used to calculate the RAM. Rather, it apparently views the RAM as merely setting a new rate, rather than a means to recover a certain level of revenue. Whether or not the Company recovers the intended revenue adjustment depends on whether or not the interim rate order in a test year stops the collection process.

3. The Consumer Advocate's Position Would Result in Unreasonable, Unfair and Unintended Consequences

Adoption of the Consumer Advocate's position would result in unreasonable, unfair and seriously unintended consequences.

First, there is the obvious impact in a rate case test year. A general rate increase application can be filed on July 1, using the next calendar year or a test year. The Commission's

¹ Hawaiian Electric Company, Inc. Tariff Sheets No. 93-93H, effective March 1, 2011.

interim order is due within 10 months if a hearing has been held (or as of May 1 of the test year for an application filed on July 1 of the prior year), or within 10 months plus 30 days if a hearing has not been held (or as of May 31 of the test year for an application filed on July 1 of the prior year). Thus, in the case of a rate application filed on July 1st, the RAM for the test year would be completely nullified under the Consumer Advocate's position, since it would be stopped (May 1st or May 31st) even before it started (June 1st). Hawaiian Electric Comments, Exhibit 1, at 23-24.

In addition, the "Commission may unilaterally discontinue the decoupling mechanism if it finds that the public interest requires such action." D&O, page 122. This power extends to both the RAM and the sales decoupling provisions. For example, the Commission could issue an order on January 1, 2013 discontinuing decoupling. If the Consumer Advocate's position is adopted, this order would be given retroactive effect by allowing recovery of, at most, 7/12ths of the RAM revenues attributable to 2012. Hawaiian Electric Comments, Exhibit 1, at 24.

The Company's position is that it should actually collect the revenue adjustment provided for by the RAM. The Consumer Advocate's position would effectively eliminate the recovery of the RAM adjustment in a test year

4. The Company's Position Is Supported by the Joint FSOP

On page 19 of its Comments on Attachment 5 to *Hawaiian Electric Company, Inc.'s Transmittal No. 11-02* ("Consumer Advocate Comments"), the Consumer Advocate states that "It is inappropriate and potentially misleading for HECO, in its Application at footnote 7, to now imply that statements made by the Consumer Advocate in its earliest RAM 'Conceptual Framework Proposal' are now supportive of accrual accounting for RAM revenue increases as of March 31 or any date prior to June 1." The Company takes exception to this statement because the beginning bases of the discussions between the Company and the Consumer Advocate were

each party's proposal that was filed with the Commission on January 30, 2009. The January 30, 2009 proposals identify the initial positions for each party, changes to which were the subject of discussion and negotiation throughout the rest of the docket. Therefore, it was entirely reasonable to use the proposals that were already filed with the Commission as a beginning basis for discussions for a joint decoupling proposal even if they were the earliest RAM proposals filed by the Parties. To begin discussions ignoring what was already on the record is unreasonable.

The Consumer Advocate does not deny that its initial proposal stated that "A HECO RAM [that] shall be implemented to commence with a 'base' year 2009 and with authorized revenue changes effective on January 1, 2010 and again at January 1, 2011, but with the corresponding rate adjustments delayed to May 1 of each year so that the established revenue variance will be recovered over the subsequent eight months of the year." See Division of Consumer Advocacy's HECO/MECO/HELCO Rate Adjustment Mechanism "RAM" Conceptual Framework Proposal ("Consumer Advocate's January 30, 2009 Proposal"), pages 14-15. Notably, there is also nothing in the record that reflects that the Consumer Advocate withdrew or modified its proposal (verbally or in writing) that authorized revenue changes should start from the beginning of each calendar year following a test year (i.e., on January 1 of each year), even as the start date for the collection of the revenue variance and the period over which the revenue variance is collected changed over the course of the proceeding.² Nor did the Consumer Advocate express at any point during negotiations between the Consumer Advocate

² The Consumer Advocate and Companies filed two joint statements of positions in the decoupling proceeding (Docket No. 2008-0274). The first was filed on March 30, 2009, titled "Joint Proposal on Decoupling and Statement of Position of the HECO Companies and the Consumer Advocate". The second was filed on May 11, 2009, titled "Joint Final Statement of Position of the HECO Companies and Consumer Advocate" ("Joint FSOP") which was approved by the Commission as part of the Amended Joint Proposal in the decoupling proceeding (Final Decision and Order, filed August 31, 2010, pages 1-2).

and the Company that the Consumer Advocate meant to withdraw or modify its initial proposal on when authorized revenue changes through the RAM would begin, or that there was a need to reflect such a change in the Exhibit C to the Joint FSOP³.

As reflected in the Exhibit C, the proposals initially filed on January 30, 2009, were the basis for discussions with columns that describe each party's proposal and also reflect what the negotiated agreement is in the "Agreement" column. For instance "Item A. Annual Filing Date for Approval of RBA Adjustment rates to reflect Revenue Adjustments that Conform with the RAM Provision" on page 1 of Exhibit C reflects the Companies' and Consumer Advocate's beginning positions and, on the far right, also reflects the negotiated agreement.⁴ For this item, the Agreement column states that "The parties agree to the Consumer Advocate's proposal to allow use of actual recorded data for rate base calculations and depreciation and CIAC amortization expense." Changes or modifications from each party's original January 30, 2009, proposal would have been described in Exhibit C.

5. The Company's Position Is Supported by the RAM Tariff

The Company's position is consistent with the language in the RAM Provision tariff, which spells out the mechanics for calculating the "RAM Revenue Adjustment". The RAM Revenue Adjustment is "the difference between the calculated Authorized Base Revenue for the RAM Period and either: 1) the previous year's calculated Authorized Base Revenue; or 2) the revenue requirement approved by the Commission in an interim or final decision in the Company's general rate case, whichever is more recent. The RAM Revenue Adjustment determined by this RAM Provision is to be recovered through the RBA Provision commencing

³ Exhibit C and Attachment 2 of Exhibit C were updated in the Consumer Advocate and Companies' letter to the Commission, "Subject: Revised and New Exhibits for the Joint SOP", dated June 25, 2009.

⁴ The "Hawaiian Electric Companies" or "Companies" are Hawaiian Electric, Maui Electric Company, Limited ("MECO") and Hawaii Electric Light Company, Inc. ("HELCO")

on June 1 and over the subsequent 12 months after June 1.” The RAM determines an incremental revenue amount for a specific calendar year (or partial year, in the case of a rate case test year) that the Company is allowed to collect. The collection (or refund) period differs from the period used to determine the RAM revenues and the sales decoupling differential. Hawaiian Electric Comments, Exhibit 1, at 5-6.

RAM Calculations for a Test Year

The Consumer Advocate argues that “HECO provides no references into the RBA or RAM tariffs or any materials filed in Docket No. 2008-0274 for this six step process or the daily prorate calculations set forth therein. The Consumer Advocate submits that these calculations are not supported by the record in the decoupling proceeding and are wholly unnecessary given the clearly defined effective dates for RAM revenue changes.” Consumer Advocate Comments at 10.

However, the RAM tariff provisions do not address the collection of RAM Revenues once there is an interim rate order, other than to state that: “The RAM Revenue Adjustment established for RAM Period calendar year that is also a rate case test year shall remain in effect until the Commission approves a base revenue level in the Company’s test year rate application.”. That would appear to be the reason that Commission staff and its consultant requested that the Company address this in Attachment 5.

Fundamentally, the Consumer Advocate relies on the fact that the RAM tariff only refers to the period over which revenues will be collected, and does not address the difference between the period over which RAM revenues are accrued, and the period over which they are collected. This is the only “evidence” the Consumer Advocate points to in support of its position that the accrual period and the collection period are the same.

The short answer to this contention is that that is true of other surcharge provisions in Hawaii. See Consumer Advocate Comments at 14-18. Moreover, the Company's position is consistent with the operation of other surcharge mechanisms in Hawaii, including the operation of the DSM surcharge, in which lost revenue margins were estimated and accrued in the calendar year that they were earned, and were collected over part of the current calendar year and part in the subsequent calendar year. The amount of the lost revenue margins were calculated for the calendar year and were presented in a DSM cost recovery filing made by March 31st of that calendar year. Collection of lost revenue margins for the calendar year commenced on April 1st of that calendar year and continued over 12 months through March 31st of the immediately succeeding calendar year through the DSM cost recovery adjustment. Hawaiian Electric Comments, Exhibit 1, at 20-23.

In addition, the Consumer Advocate ignores, or unsuccessfully attempts to discount the extensive evidence in the record showing that the accrual period tracked the calculation period for the RAM revenues, while the collection of the RAM revenues lagged the accrual period to facilitate the calculation and review of RAM filings. As is discussed below, the evidence in the record supports the Company's position.

Proration

The Consumer Advocate challenges the proration (for 306 days out of 365 days, i.e., ten months) of the estimated annual O&M RAM and Rate Base RAM to reflect the March 1, 2011, decoupling effective/implementation date, on the grounds that proration is not explicitly referred to "in the Commission-approved RBA or RAM tariffs." Consumer Advocate Comments at 8-9 & n.7.

The tariff filings tracked those in the decoupling docket. In the decoupling docket, it was assumed that the RAM would apply to a full calendar year, beginning with the year after the test year in the 2009 test year rate case for Hawaiian Electric, or the 2010 test year rate cases for MECO and HELCO. However, implementation of decoupling was delayed until the issuance of the final D&Os in those rate cases. In order to implement decoupling prospectively, it was necessary to prorate the RAM Adjustment revenues for the first year to reflect the months in the first year left after implementation of decoupling.

To suggest, as does the Consumer Advocate, that this initial RBA Rate Adjustment should be calculated as 12/12ths of the annual 2011 RAM Revenue Adjustment (Consumer Advocate Comments at 15) is illogical as it would imply that Hawaiian Electric was eligible to recover 12-months' worth of the 2011 RAM when the rate tariff implementing decoupling was not effective prior to March 1, 2011.

Balancing Account Argument

The Consumer Advocate asserts that the balancing account would have to be adjusted up front to allow recovery of the unrecovered RAM revenues once an interim order in a subsequent rate case is effective. Consumer Advocate Comments at 16. The balancing account reflects differences between actually collected revenues and intended collected revenues.

The intention is to collect the RAM Revenues beginning with the date the RAM Adjustment goes into effect (which generally is expected to be June 1st, but could be later if the RAM Adjustment filing is suspended). Until there is a difference between the actually collected and intended collected revenues, there is no difference to be placed in the balancing account (which accrues interest on the difference). In accepting a lag in the collection of RAM Revenues, the Companies accepted that the lag would not result in the accrual of interest. They did not

anticipate that the Consumer Advocate would contend that the right to collect RAM revenues accrued during the period prior to the effective date of an interim order (or prior to an order terminating decoupling) would be nullified, and certainly did not accept that result in agreeing to the Joint Proposal.

On page 16 of its comments, the Consumer Advocate refers to Attachment 5 to Exhibit C of the Revised and New Exhibits for the Joint SOP filed June 25, 2009 by the Company and the Consumer Advocate (“June 25, 2009 Attachment 5”).

The June 25, 2009 transmittal cover letter stated that “Attachment 5 of Exhibit C provides a simplified example of the Revenue Balancing Account (‘RBA’) to illustrate the accounting process for the RBA.” Id. (emphasis added) Attachment 5 to Exhibit C was also similarly titled “Simplified Example Revenue Balancing Account” (emphasis added.)

The June 25, 2009 Attachment 5 was intended to provide a simplified illustration of the cash collection and interest accrual on the outstanding RBA balance, and the changes in the RBA balances over time from changes in the targeted revenues versus actual receipts. This simplified example does not illustrate, nor was it intended to illustrate, how RAM collection would be affected in a test year when an interim rate order is issued. Similarly, this simplified example does not illustrate, nor was it intended to illustrate, the following scenarios: (1) a calendar year when a final rate order is issued, (2) a calendar year when an exogenous tax change occurs, (3) a calendar year where the earnings sharing mechanism requires a refund to customers, and (4) changes and timing in other proceedings that could affect the RAM calculation, such as the current depreciation proceedings (Dockets Nos. 2009-0286, 2009-0321, and 2010-0053).

As stated above, the impact of the RAM during a test year when an interim rate order is issued was illustrated in the Company’s revised response to PUC-IR-14, which also was filed on

June 25, 2009. The Company's initial response to PUC-IR-14 (filed March 30, 2009) was based on its initial proposal filed January 30, 2009 (corrected February 3, 2009). The revised response to PUC-IR-14 was to reflect "the methodology and assumptions included in the Joint Proposal, as updated in the Companies and Consumer Advocate's May 11, 2009 Final Statement of Position" (See Page 1 of the June 25, 2009 Revised Response to PUC-IR-14.) On page 6 of the Revised Response to PUC-IR-14, the definition of *Revenue change per proposed decoupling* was provided:

Row 31 – Row 31 – Includes O&M RAM and rate base RAM revenue calculated in a manner consistent with the HECO Companies and Consumer Advocate's joint proposal filed March 30, 2009. RAMs are cumulative from year to year and are reset with each new test year rate case. For years where a test year rate case is assumed, one half of the projected RAM is used (with the other half of the year covered by the interim rate relief. See Row 7 definition.)

See Hawaiian Electric's Comments, pages 11 to 15, for a detailed discussion of the Company's revised response to PUC-IR-14.

Collection Start Date Argument

The Consumer Advocate relies heavily on the June 1st start date for collection of RAM revenues relating to a RAM Adjustment period. See Consumer Advocate Comments at 19-20. There is no issue regarding the start date for collection of RAM Adjustment Revenues. It would be June 1st of the RAM Adjustment period, or even a later date if the adjustment is suspended. That does not determine the question at issue, however, which is whether the Company is entitled to actually collect the calculated RAM Adjustment Revenues. The evidence in the record directly supports the Company's position – there is no such evidence stating that the Company will not be allowed to collect the calculated RAM Adjustment Revenues in a rate case test year accrued in the period before an interim rate order becomes effective.

6. The Evidence in the Decoupling Docket Supports the Company's Position

Illustration of RAM Operation

During the course of the proceedings, illustrations were prepared at the Commission's request showing how revenues collected pursuant to the RAM and RBA, with a three-year rate case cycle, would compare to revenues collected under a two-year rate case cycle. The Company's position tracks the illustrations submitted. The Consumer Advocate's position does not. Hawaiian Electric Comments, Exhibit 1, at 11-15.

The Consumer Advocate did not mention or discuss these illustrations of how the RAM would operate in its limited discussion of the record in the decoupling docket.

Accrual Accounting

As discussed in Hawaiian Electric's Comments, the Company's position tracks the discussion of accrual accounting for the RAM that took place at the panel hearing for the decoupling proceeding. Again, the Consumer Advocate's position does not. The discussion centered on when RAM revenues for a specific year would first be recognized for financial reporting purposes – when the RAM adjustment filing was made on March 31 (so the revenues would be included in first quarter revenues), or when RAM collection for a specific year began (which would be June 1 if the RAM adjustment was not suspended, or later if it was). There was no issue as to whether the revenues would accrue back to the beginning of the year once the revenues were recognized. The discussion was further clarified as requested in the hearings as part of a response to Question 5 in the Companies' July 13, 2009 filing. The Companies were not the only parties that understood and agreed to this concept. Haiku Design and Analysis discussed this concept in its Opening and Reply Briefs. No one suggested, as the Consumer Advocate apparently now does, that the Companies' collection (as opposed to accrual) of the

RAM revenues would be simply cut off once there is an interim order in a rate case. Hawaiian Electric Comments, Exhibit 1, at 15-20.

The Consumer Advocate attempts to discount the testimony at the hearing regarding the difference between the accrual and collection periods as “confusing”. Consumer Advocate Comments at 13. The Consumer Advocate does not even mention at that point in its comments the Companies’ July 13, 2009 filing, which addressed any confusion resulting from the testimony at the hearing.

Earlier in its comments, the Consumer Advocate attempted to discount the “letter filed by HECO on July 13, 2009 in Docket No. 2008-0274.” Consumer Advocate Comments at 5. The “letter” was a formal filing in Docket No. 2008-0274, in which the Companies explicitly responded to requests made at the panel hearings for written clarification of the Companies’ positions and testimony made during the hearings. See Transmittal Letter filed July 13, 2009 re Questions from Panel Hearings Held on June 29 to July 1, 2009. In the Commission’s Final Decision and Order, filed August 31, 2010, approving decoupling, it approved “the decoupling mechanism proposed in the Joint Final Statement of Position of the HECO Companies and Consumer Advocate, filed on May 25, 2009 (‘Joint FSOP’), as amended by filings on June 25, 2009, and July 13, 2009, and as subsequently modified by the proposals in the HECO Companies’ Motion for Interim Approval of a Decoupling Mechanism, filed on November 25, 2009 (‘Interim Motion’) (collectively, the ‘Amended Joint Proposal’), subject to the modifications made herein.” Id. at 1-2 (emphasis added and footnotes deleted). The filing on July 13, 2009 was identified as “HECO’s responses to Questions from Panel Hearings Held on June 29 to July 1, 2009, filed July 13, 2009 (‘July 13, 2009 Responses’).” Id. at 2 n.3.

As part of their response to Question 5, the Companies stated that “there would be a lag in the revenues for the first five months of the year, at which time we would accrue the revenues to ‘catch-up’ to the target revenues allocated through May. Thereafter, revenues would accrue based on the target revenues based on the monthly allocation factors.” (Emphasis added.) An excerpt of the July 13, 2009 Responses was attached to Hawaiian Electric’s Comments as Exhibit 3.

In its entirety, the response to Question 5 reads as follows:

Response: Based on the Joint Final Statement of Position, the Company would submit its annual RAM filing by March 31 of each year. The RAM filing would include the proposed target revenues for the year, based on the rate adjustment mechanism described in the proposed tariff. Thereafter, the Consumer Advocate and Commission would have 60 days to review the annual RAM filing, and tariffs based on the filing would become effective on June 1 of the year.

Because this mechanism is new, initially the new target revenues for the year would be established upon the completion of the review period (June 1). While described as an automatic adjustment mechanism, as a new mechanism, until the review period is completed, there is uncertainty that the proposed target revenues will be the revised target revenues for the year (revenues adjusted for the RAM filing), until it has been reviewed.

After the review period has elapsed (and adjustments to the RAM filing, if any, are made), the new target revenues have been established, and the collectability of the revised target revenue becomes certain. At that point, the HECO Companies would begin to accrue the difference between the revised target revenues and the actual revenues through the end of May, based on the monthly allocation of target revenues.

This is different from other automatic adjustment clauses, as this is a new mechanism and there is an explicit period in the tariff for review of the filing by the Commission and Consumer Advocate before it becomes effective. [Footnote] Thus there would be a lag in the revenues for the first five months of the year, at which time we would accrue the revenues to “catch-up” to the target revenues allocated through May. Thereafter, revenues would accrue based on the target revenues based on the monthly allocation factors.

Footnote: If after the RAM mechanism has been in place for a period of time, and the review process does not result in adjustments, there may be a basis to conclude that there is certainty that the revised proposed target revenues at the time of the RAM filing will be

collected, and accrual of the target revenues allocated through March 31 could be accrued at that time.

If the RBA tariff provision does not include the terms or method of accrual identified above, it is not because the accrual was not approved by the Commission. (In approving the Joint Proposal, the Commission explicitly incorporated the clarifications included in the July 13, 2009 Responses.) If it is desirable to expressly refer to the difference between the collection and referral periods, then the RBA tariff provision should be so modified.

7. Regulatory Policy Considerations Support the Company's Position

Consumer Advocate Principles

The Consumer Advocate cites the following principles, and alleges that they support its position:

- Any decoupling mechanism should be conservative in design, while balancing the interests of ratepayers and shareholders in just and reasonable rates.
- Decoupling should employ simple and administratively workable methods, with filings and review procedures that can be efficiently reviewed and approved.
- Ratepayer safeguards must be designed into the decoupling mechanism, to provide additional assurance of just and reasonable rates.

Consumer Advocate Comments at 20-22.

The Company agrees that the RAM is calculated in a conservative manner. For example, under the Joint Proposal, the estimates used in the rate base RAM proposal are inherently conservative. First, the base line plant additions estimate is based on a five year average, and not a trended estimate, as was originally proposed by the Companies. Thus, the estimates do not incorporate the impact of inflation. Second, only the G.O.7 projects that are expected to go into service in the first three quarters of the year are included in the major project estimate. Moreover, if major projects that do not actually go into service in the first three quarters were included,

there is a refund condition to protect the interests of ratepayers. Third, the estimated costs that are used in the estimated major plant additions component are limited to the estimates approved in the G.O.7 proceedings. As a result of a revision proposed after the hearing (in the briefs), the Rate Base RAM component includes actual costs for major projects, limited to the G.O.7 authorized amounts (unless a higher amount was allowed in a rate case). For those major projects with recorded costs less than the G.O.7 authorized amounts, the RAM will only include the recorded amount.

However, a RAM that is administered in a manner that nullifies the ability to actually collect those (conservatively calculated) RAM revenues cannot fairly be characterized as being “conservative” – such a RAM would simply contradict itself.

The Company also agrees that the RAM should be administratively simple – as long as it accomplishes its intended objectives. For example, the period over which the annual RAM revenues (in a non-test year) or the pre-interim RAM revenues (in a rate case test year) would be collected changed during the development of the decoupling provision for various reasons. For example, the Company proposed to begin collecting RAM revenues on January 1st of a RAM year. The Company agreed to the Consumer Advocate’s proposal to begin collecting RAM revenues on May 1st of a RAM year (with the collections to take place over 8 months) so that the calculation of the RAM could take into account actual year-end rate base balances for the prior year. The collection period was extended to 12 months (reducing the amount collected each month) to reduce the potential impact on customers. The collection start period was moved to June 1st to permit more review time. None of these changes were intended to somehow reduce or eliminate the recovery of RAM revenues in a rate case test year – which is what the Consumer Advocate’s proposal would do. Hawaiian Electric Comments, Exhibit 1, at 6-7.

In addition, the Company agrees that the RAM was designed to incorporate provisions to safeguard consumers, such as the earnings sharing credit proposed by the Consumer Advocate, and accepted by the Company.

However, the Consumer Advocate's position would distort the application of the earnings sharing credit component of the RAM. Under the RAM Provision, the Earnings Sharing Revenue Credit (if any) is calculated based on the positive difference (if any) between the achieved return on average common equity ("ROE") (using the ratemaking methodology) and the authorized ROE for the Evaluation Period. The Evaluation Period is defined as the historical twelve month period ending December 31st of each calendar year preceding the Annual Evaluation Date. The Company would compute the achieved ROE based on the accrued revenues from the base rates, RAM and RBA (and any other applicable rates) for the Evaluation Period. There is also a special refund provision applicable if the RAM revenue accrued in a test year (prior to an interim increase) exceeds what the utility would have collected under the new base rates ultimately set in the rate case had been in effect for that period. This provision would be irrelevant if the Consumer Advocate's proposal was accepted. Hawaiian Electric Comments, Exhibit 1, at 24-25.

IRP Planning Cost Decision

The Consumer Advocate cites the Commission's decision regarding the recoverability of general planning costs for Integrated Resource Planning, in which the Commission did not allow surcharge recovery of incremental labor planning costs incurred in years concurrent with the rate case test years in which surcharge recovery was discontinued.⁵

⁵ Consumer Advocate Comments at 22-23, citing Decision and Order filed January 6, 2011 in Docket Nos. 94-0316, 95-0362, 96-0341, 97-0358, 98-0339, 99-0338, 00-0360, 01-0409, 02-0359, 03-0276, 04-0295, 05-0273, 2006-0393 (Consolidated).

There is a fundamental, fatal flaw in the Consumer Advocate's argument based on the treatment of IRP planning costs. In negotiating the Joint Proposal, the Consumer Advocate agreed to the Company's proposal to have both a RAM and an interim rate increase in a rate case test year. The Consumer Advocate cannot now argue that that should not be the case. In effect, it is seeking to nullify its agreement to include both.

If a RAM year is also a test year, the Consumer Advocate initially proposed to have a RAM adjustment, but not an interim rate increase in the rate case. Division of Consumer Advocacy's HECO/MECO/HELCO Rate Adjustment Mechanism "RAM" Conceptual Framework Proposal (filed January 30, 2009) at 10. The Companies' position was that: "The Companies should still be able to file and implement the RAM for a test year, given the regulatory lag that is inherent in the rate case process." Section V.F, Exhibit C to Joint FSOP. The resolution was that the RAM would be allowed in a rate year, along with the interim increase, with "any RAM increase in Base Authorized Revenues in the test year deemed interim and subject to refund if the Commission ultimately orders lower Base Authorized Revenues for that test year." Exhibit C to Joint FSOP. The Joint FSOP explicitly states: "Since estimated O&M, depreciation, amortization and tax expenses, as well as the return on investment on projected rate base continues to increase even as the Commission considers on-going rate proceedings, an annual filing under the RAM Provision is expected to be filed during the test year." Id. at 13. Note that the specific reason for having a RAM in a test year was to help address regulatory lag.

Thus, although the Consumer Advocate asserts that the Company is seeking to modify the Joint Proposal,⁶ it is the Consumer Advocate that, in effect, is seeking to nullify an important concession it made with respect to the Joint Proposal.

There is also an erroneous assumption underlying the Consumer Advocate's argument – that somehow there would be some form of duplicative recovery. There is no duplication. The RAM covers the period prior to the effective date of an interim order in a rate case test year. The Company would only recover the RAM Revenues applicable to the period prior to the effective date of the interim order. The interim order covers the period after to the effective date of an interim order in a rate case test year.

Interestingly, the Consumer Advocate somehow believes that the prospective nature of an interim rate order somehow supports its position – when, in fact, it points out the very reason why the Company negotiated with the Consumer Advocate to have a RAM Revenue Adjustment in a rate case test year. The Company agrees (and have pointed out many times) that if an “interim decision and order is filed after the start of the test year, the utility company is not allow to recover the incremental, increased revenues for the months preceding the date of the interim decision and order.” See Consumer Advocate Comments at 22. That is precisely why the Companies took the position in negotiating the Joint Proposal with the Consumer Advocate that the Companies should receive the RAM Revenue Adjustment for the period prior to the effective date of the Interim D&O. If the Consumer Advocate's position is accepted, that part of the Joint Proposal would be nullified.

⁶ The Consumer Advocate asserts that “approval [of HECO's proposed RAM rate adjustment calculations] may constitute a modification of the existing decoupling mechanism so as to expand the scope of revenue relief that was agreed upon in the Joint Final Statement of Position submitted by HECO and the Consumer Advocate in Docket No. 2008-0274.” Consumer Advocate Comments at 14.

In addition, the Consumer Advocate's strained interpretation of the RAM could also nullify recovery of RAM revenues relating the calendar year prior to a rate case test year. An interim order can be issued sooner than 10 or 11 months after the filing of a rate case application.⁷ An interim order can and has in prior rate cases take effect as early as January 1st of a test year.⁸ In the latter case, the Consumer Advocates' proposed implementation of the RAM would require that it be discontinued as of January 1st, when the Company would have collected, at most, 7/12ths of the RAM revenues for the prior calendar year (and less than that if the implementation date of the RAM was suspended until after June 1st of the prior year).

Retroactive Ratemaking

The Consumer Advocate attempts to mischaracterize the Company's position as somehow resulting in "retroactive" recovery of RAM Revenues. See Consumer Advocate Comments at 16, 17, 22. Clearly, that is not the case. The RAM Revenue accrual period follows the effective date of decoupling. If an interim rate case order is allowed to nullify the right to collect accrued revenues (i.e., if it is given retroactive effect), then that would be retroactive ratemaking.

Purpose of Including a Revenue Adjustment Mechanism

The Company's position also is consistent with the purpose of including a revenue adjustment mechanism in a decoupling mechanism. In the *Joint Proposal on Decoupling and Statement of Position of the HECO Companies and Consumer Advocate* (March 30, 2009), the Joint Parties stated that "[t]he purpose of the Revenue Adjustment Mechanism is to adjust

⁷ For example, in Hawaiian Electric's 1992 test year rate case, Docket No. 6998, the Commission authorized the interim increase after eight months. (Interim Decision and Order No. 11559 was issued March 31, 1992, and Hawaiian Electric's application was filed July 29, 1991.)

⁸ In Hawaiian Electric's 1995 test year rate case, Docket No. 7766, the Commission issued Interim Decision and Order No. 13716 on December 30, 1994, allowing an interim rate increase to become effective on January 1, 1995.

revenues decoupled from sales to reflect changes in revenue requirements between rate cases, which should help maintain the utility's financial integrity and ability to invest in the infrastructure necessary to meet Hawaii's 70% clean energy objective, while maintaining reliable service to customers." Hawaiian Electric Comments, Exhibit 1, at 9-11.

In its final Decision and Order issued December 29, 2010 in Docket No. 2008-0083, the Commission reduced Hawaiian Electric's authorized rate of return on common equity ("ROE") to reflect the reduction in business risk resulting from implementation of the "HCEI-related cost-recovery mechanisms" Id. at 25-28. The major cost recovery mechanism is the RAM. The Consumer Advocate's position, if adopted, would effectively delay most of the benefit of the RAM to June 2012, over a year after Hawaiian Electric's authorized ROE will have been reduced, based in major part, on the assumption that it is currently benefitting from the RAM. The Company's position would allow it to receive the full benefit of the RAM effective March 1, 2011, concurrent with the effectiveness of new rates reflecting the lower authorized ROE.