

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Request of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAII ELECTRIC LIGHT COMPANY, INC.,)
AND MAUI ELECTRIC COMPANY, LIMITED.)
)
For Approval to Make Permanent the)
Current Accrual Method of Recognizing)
Rate Adjustment Mechanism Revenues on)
a Calendar Year Basis.)
_____)

NON-DOCKETED MOTION

ORDER NO. 34132

DENYING THE COMPANIES' MOTION FOR CALENDAR YEAR
ACCRUAL OF RATE ADJUSTMENT MECHANISM REVENUES

PUBLIC UTILITIES
COMMISSION

2016 NOV 28 A 8:59

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Request of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,) Non-Docketed Motion
HAWAII ELECTRIC LIGHT COMPANY, INC.,)
AND MAUI ELECTRIC COMPANY, LIMITED.) Order No. 34132
)
For Approval to Make Permanent the)
Current Accrual Method of Recognizing)
Rate Adjustment Mechanism Revenues on)
a Calendar Year Basis.)
_____)

DENYING THE COMPANIES' MOTION FOR CALENDAR YEAR
ACCRUAL OF RATE ADJUSTMENT MECHANISM REVENUES

By this Order, the commission denies the Motion for Calendar Year Accrual of Rate Adjustment Mechanism Revenues jointly filed by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO" or "Hawaiian Electric"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, "Companies" or "Hawaiian Electric Companies"), on November 1, 2016.¹ As a result, the commission specifically:

¹Motion for Calendar Year Accrual of Rate Adjustment Mechanism Revenues ("Motion"); Memorandum in Support of Motion ("Memorandum in Support"); Attachments A-B; Affidavit of Tayne S.Y. Sekimura ("Affidavit"); and Certificate of Service, filed on November 1, 2016 (collectively, the "RAM Motion").

1. Denies the Companies' underlying request to allow HECO to preserve and make permanent the current accrual method of recognizing (i.e., recording) Rate Adjustment Mechanism ("RAM") revenues on a calendar year basis;² and

2. Denies the Companies' corresponding request to extend the same treatment (i.e., the current accrual method) to HELCO and MECO, beginning in 2017.

I.

Background

HECO is the franchised provider of electric utility service on the island of Oahu, HELCO is the franchised provider of electric utility service on the island of Hawaii, and MECO is the franchised provider of electric utility service on the islands of Lanai, Maui, and Molokai.

Each of the company's respective decoupling mechanism tariff sheets consist of two components: (1) the RAM provision; and (2) the Revenue Balancing Account ("RBA") provision.³

²For purposes of clarity, the commission notes that the Companies, in their RAM Motion, refer to RAM Revenues as Rate Adjustment Mechanism revenues. See Motion, at 1. Conversely, the Companies, in their settlement agreement at issue in this non-docketed matter, refer to Rate Adjustment Mechanism (i.e., RAM) incremental revenues.

³See, e.g., HECO's RAM Provision, at Revised Tariff Sheets No. 93 to No. 93I; and HECO's RBA Provision, at Revised Tariff Sheets Nos. 92 to 92D.

Pursuant to the RAM provision:

1. "The RAM Period is defined as the calendar year containing the Annual Evaluation Date."

2. "The Annual Evaluation Date shall be the Date the Company will make its annual filing under this mechanism. The Annual Evaluation Date shall be no later than March 31st of each year, commencing March 31, 2011."⁴

3. The RAM Revenue Adjustment for a RAM Period is designed to be recovered through the RBA provision (i.e., the RBA Rate Adjustment), commencing on June 1 and over the subsequent twelve months following June 1. In other words, the effective date of the RBA Rate Adjustment, which incorporates the RAM Revenue Adjustment and other adjustments and credits, is June 1 for the RAM Period, i.e., the calendar year which contains the Annual Evaluation Date.⁵

4. "The RAM Revenue Adjustment established for a RAM Period calendar year that is also a rate case test year shall terminate on the effective date of tariff rates that are

⁴See, e.g., HECO's RAM Provision, at Revised Tariff Sheet No. 93; see also Memorandum in Support, at 2 n.4.

⁵See, e.g., HECO's RAM Provision, at Revised Tariff Sheets No. 93 to No. 93I.

implemented pursuant to a Commission Decision & Order for that test year, unless otherwise specified [in the RAM Provision]."⁶

With respect to the recording of RAM revenues for financial reporting purposes, the Companies explain the distinction between the current accrual method and the prior lagged method, as follows:

Under the "current accrual method," [HECO] recognizes RAM revenues on a calendar-year basis from January 1 through December 31 for the RAM Revenue Adjustment approved for a particular RAM period. [HECO] bills customers for the RAM Revenue Adjustment from June 1 of the RAM period through May 31 of the following year.

Motion, at 1-2, n.2; and Memorandum in Support, at 1-2, n.2.

Conversely:

Under the prior lagged method, [HECO] would recognize RAM revenues from June 1 of the RAM period through May 31 of the following year for the RAM Revenue Adjustment approved for a particular RAM period - i.e., lagged by five months. [HECO] would also bill the RAM Revenue Adjustment to customers over the same June through May period. The prior lagged method presently applies to [HELCO and MECO].

Memorandum in Support, at 2, n.5.

⁶See, e.g., HECO's RAM Provision, at Revised Tariff Sheet No. 93.

A.

Docket No. 2008-0274, Decoupling

On August 31, 2010, the commission, in In re Public Util. Comm'n, Docket No. 2008-0274 ("Docket No. 2008-0274"), issued its Final Decision and Order, which approved the implementation of a decoupling mechanism for HECO, HELCO, and MECO. In so doing, the commission approved, subject to certain modifications, the Joint Final Statement of Position between the Companies and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), filed on May 11, 2009, as subsequently amended and modified (collectively, the "Amended Joint Proposal").⁷ Thereafter, in March 2011, HECO implemented decoupling.⁸

B.

Transmittal No. 11-02
(Non-Docketed)

On May 20, 2011, the commission, in In re Hawaiian Elec. Co., Inc., Trans. No. 11-02, a non-docketed matter, issued its

⁷Docket No. 2008-0274, Final Decision and Order, filed on August 31, 2010 (Commissioner Leslie H. Kondo, dissenting).

⁸Companies' letter regarding Transmittals Nos. 16-01, 16-02, and 16-03, dated November 1, 2016 ("Companies' informal informational response"), Attachment 1, at 1.

Order Regarding Attachment 5 and Directing HECO to File Tariff Amendments ("Attachment 5 Order").

C.

Docket No. 2008-0083, HECO's 2009 Test Year Rate Case

On March 19, 2013, the commission, in In re Hawaiian Elec. Co., Inc., Docket No. 2008-0083 ("Docket No. 2008-0083"), HECO's 2009 test year rate case, issued Order No. 31126, which approved subject to certain clarifications, a settlement agreement between the Companies and the Consumer Advocate.

One of the terms of the settlement agreement approved by the commission authorized HECO, for "only" the 2014, 2015 and 2016 RAM periods, to: (1) record its 2014, 2015, and 2016 RAM incremental revenues on a calendar year basis; and (2) collect said revenues through the RBA Rate Adjustment from June 1 of each year to May 31 of the following year. As specifically stated in Order No. 31126:

For only the 2014, 2015 and 2016 RAM Periods, Hawaiian Electric will be allowed to record the 2014, 2015 and 2016 RAM incremental revenues for the January 1 through December 31 calendar year (once Hawaiian Electric is able to assess the amount), and collect the RAM incremental revenues through the RBA Rate Adjustment (which includes the RAM Revenue Adjustment) from June 1 of each year to May 31 of the following year. At the conclusion of that period, the current RAM provisions will again apply in accordance with the Amended Joint Proposal approved by the Final Decision and Order issued in the decoupling proceeding[, Docket No. 2008-0274].

Docket No. 2008-0083, Order No. 31126, at 5; see also HECO's RAM Provision, at Revised Tariff Sheet No. 93I.

The commission, in effect, by Order No. 31126, authorized the implementation of the current accrual method for HECO, limited to the calendar years 2014, 2015, and 2016.

Concomitantly, the prior lagged method: (1) applied to HECO prior to 2014 (i.e., pre-2014); and (2) applies to HELCO and MECO.

D.

Transmittals Nos. 16-01, 16-02, and 16-03
(Non-Docketed, Consolidated)

On May 24, 2016, the commission, in In re Hawaiian Elec. Co., Inc., Trans. No. 16-01, Hawaii Elec. Light Co., Inc., Trans. No. 16-02, and Maui Elec. Co., Ltd., Trans. No. 16-03, a non-docketed, consolidated matter, issued Order No. 33724, which approved, subject to certain clarifications and amendments, HECO, HELCO, and MECO's respective RBA Rate Adjustments, effective from June 1, 2016.

E.

Docket No. 2013-0141, Re-Examination of Decoupling

The commission's re-examination of the Companies' decoupling mechanism is on-going in In re Public Util. Comm'n, Docket No. 2013-0141 ("Docket No. 2013-0141").⁹

F.

Procedural Background Involving the Companies' Motion for Calendar Year Accrual of Rate Adjustment Mechanism Revenues

On November 1, 2016, the Companies jointly filed their non-docketed RAM Motion. The Companies, by their motion, request that the commission: (1) allow HECO to preserve and make permanent the current accrual method of recognizing RAM revenues on a calendar year basis, which has been in place for the last three years (2014, 2015, and 2016); and (2) extend the same treatment (i.e., the current accrual method) to HELCO and MECO, beginning in 2017.

Because the Companies' current accrual method will end on December 31, 2016, the Companies seek the commission's approval by December 31, 2016, but no later than January 31, 2017, to: (1) ensure that proper disclosures are reflected in HECO's Securities Exchange Commission Form 10-K to be made in February

⁹See Docket No. 2013-0141, Order No. 32735, filed on March 31, 2015.

2017; and (2) be able to reflect said decision when the Companies close their books for January 2017.¹⁰

The Companies, on November 1, 2016, also simultaneously filed their informal informational response to the commission's request for information made "during the 2016 decoupling presentation held on April 28, 2016."¹¹

The Companies served copies of their motion and informal informational response upon the Consumer Advocate.

On November 7, 2016, the Consumer Advocate filed its statement in opposition in the Companies' motion ("Opposition"), recommending that the commission deny said motion.

On November 10, 2016, the Companies: (1) filed their motion for leave to file a reply to the Consumer Advocate's Opposition; (2) attached their reply as an exhibit to said motion ("Reply"); and (3) also filed certain calculation corrections to their RAM Motion and informal informational response.

¹⁰RAM Motion, at 2.

¹¹Companies' informal informational response, at 1.

II.

Discussion

The Companies reference the non-docketed, consolidated In re Hawaiian Elec. Co., Inc., Trans. No. 16-01, Hawaii Elec. Light Co., Inc., Trans. No. 16-02, and Maui Elec. Co., Ltd., No. 16-03 caption in filing their RAM Motion. That said, the commission, by its Order issued today, treats the Companies' RAM Motion as a non-docketed request that is separate and apart from the RBA Rate Adjustment matters adjudicated by the commission in In re Hawaiian Elec. Co., Inc., Trans. No. 16-01, Hawaii Elec. Light Co., Inc., Trans. No. 16-02, and Maui Elec. Co., Ltd., No. 16-03.

In effect, the RBA Rate Adjustment matters previously adjudicated in In re Hawaiian Elec. Co., Inc., Trans. No. 16-01, Hawaii Elec. Light Co., Inc., Trans. No. 16-02, and Maui Elec. Co., Ltd., No. 16-03 are limited to a one-year period ending May 31, 2017. Conversely, the relief requested by the Companies by their RAM Motion is on a permanent basis, effective "beginning in 2017."¹²

¹²RAM Motion, at 2.

A.

Granting the Companies' Motion for Leave to File a Reply

A reply to a memorandum in opposition to a motion is not explicitly authorized by the commission's rules governing motions practice. Hence, a motion seeking leave to file a reply is subject to the commission's discretion.¹³

The Companies, in their Reply, reiterate the arguments set forth in their RAM Motion. Concomitantly, they also appear to raise additional arguments specifically in response to the Consumer Advocate's Opposition.

The commission, consistent with its discretionary authority, finds good cause to grant the Companies' motion for leave to file a reply to the Consumer Advocate's Opposition.

B.

Companies' Position

The Companies, in support of their motion, assert:

1. The current accrual method, which recognizes RAM revenues on a calendar year basis, is consistent with:

A. Accrual accounting, a fundamental accounting principle, because it aligns revenues with the costs incurred and

¹³In re Public Util. Comm'n, Docket No. 2013-0168, Order No. 31445, filed on September 10, 2013, at 15.

benefits provided to customers for the same calendar year RAM period; and

B. The original intent of decoupling.¹⁴

2. In 2017, without preservation of the current accrual method, HECO's opportunity to earn a fair return will be significantly impaired due to the structured lag in recognizing RAM revenues.¹⁵ Specifically, HECO estimates an eight-figure negative impact to net income and a double-digit basis point negative impact to its return on equity. Such negative impacts, HECO contends, will negatively impact its credit quality.¹⁶

3. Preserving the current accrual method will not impact customers between rate cases because customers will continue to be billed for the RAM Revenue Adjustment on a lagged basis from June 1 of the RAM period through May 31 of the following year. Conversely, under the prior lagged method, when rate cases

¹⁴See Memorandum in Support, at 2 and 5-7; and Affidavit, Paragraph No. 3a, at 2; see also Companies' Reply, at 3.

¹⁵See Memorandum in Support, at 2 and 7-9; and Affidavit, Paragraph No. 3b, at 2-3; see also Companies' Reply, at 5-6.

¹⁶The Companies, in their RAM Motion, filed the specific denominations under confidential seal, including the double-digit basis point negative impact to HECO's return on equity. See Memorandum in Support, at 3 and 8-9, filed under partial confidential seal; and Affidavit, Paragraph No. 3b, at 3, filed under partial confidential seal. Subsequently, in their Reply, the Companies publicly disclose the "75 basis point negative impact on [HECO's] return on equity." Companies' Reply, at 6.

are filed, the Companies will permanently lose recovery of up to five months of a RAM Revenue Adjustment if and when an interim rate case award is issued.

Such an impairment, in turn, will:

A. Be unfair to the Companies, because customers will avoid paying benefits received; and

B. Inhibit the Companies' ability to earn their authorized rate of return, which is contrary to the intent of the decoupling mechanism and Hawaii Revised Statutes § 269-16.¹⁷

4. The preservation of the current accrual method will make HECO and its subsidiaries more consistent and predictable in terms of earnings potential, and thus, making them more comparable with other electric utilities that are considered for investment by the larger investment community.¹⁸

5. "Changed circumstances" justify preserving the current accrual method. In this regard, the calculation of the RAM has become more conservative, while the renewable portfolio standards ("RPS") have become much more ambitious and challenging.

In light of these changed circumstances, requiring HECO to revert to the prior lagged method, with the permanent

¹⁷See Memorandum in Support, at 3-4 and 9-11; and Affidavit, Paragraph No. 3c, at 3; see also Companies' Reply, at 5-6.

¹⁸See Memorandum in Support, at 4 and 11-12; and Affidavit, Paragraph No. 3c, at 3-4; see also Companies' Reply, at 9.

five-month lag in recognizing revenue and the severe adverse financial consequences for 2017, is neither reasonable nor necessary, and will be detrimental to achieving the new RPS targets.¹⁹

6. Making the current accrual method permanent will not alter the customer protections already embedded in the decoupling framework.²⁰

C.

Consumer Advocate's Position

The Consumer Advocate recommends that the commission deny the Companies' motion (i.e., the requested relief), asserting that:

1. The Companies seek to improperly re-litigate an issue that was already decided by the commission in its non-docketed Attachment 5 Order, issued on May 20, 2011, in In re Hawaiian Elec. Co., Inc., Trans. No. 11-02.²¹ In sum, the commission, by its Attachment 5 Order, "unequivocally adopted the Consumer Advocate's recommendation and set forth the

¹⁹See Memorandum in Support, at 4 and 12-13; and Affidavit, Paragraph No. 3e, at 4; see also Companies' Reply, at 12-14.

²⁰See Memorandum in Support, at 4 and 13-14; and Affidavit, Paragraph No. 3f, at 4.

²¹Consumer Advocate's Opposition, at 2, 3-7, 12, and 19.

established procedure that the accrual would not be reflected as of January 1, as the Hawaiian Electric Companies now seek to re-litigate in the [RAM] Motion."²²

2. The current, temporary accrual method is the result of a binding settlement agreement between the Companies and the Consumer Advocate approved by the commission in Docket No. 2008-0083, HECO's 2009 test year rate case. Pursuant to said settlement agreement: (A) the settling parties agreed to voluntarily and temporarily depart from the directions of the Attachment 5 Order with respect to HECO only in order to simplify and expedite the "affected proceedings[;]" (B) HECO sought the commission's approval to temporarily accelerate the accrual for a three-year period; and (C) it was patently clear that the current accrual method would be temporary and end as of December 2016. Now, the Companies, by their requested relief, seek to depart from the terms of the commission-approved settlement agreement, ostensibly by seeking to make permanent the agreed-upon temporary nature of the accrual method.²³

²²Consumer Advocate's Opposition, at 6-7 (underscoring in original).

²³See Consumer Advocate's Opposition, at 2, 7-8, 14, and 16-17.

3. In essence, "if the Consumer Advocate knew that the Hawaiian Electric Companies were going to seek to make permanent the current, temporary accrual method before the end of the temporary period, the Consumer Advocate would have been unlikely to allow the current temporary method as part of the Settlement Agreement."²⁴

4. The Companies' requested relief "may require revisiting all of the issues regarding decoupling and the current decoupling mechanism."²⁵

5. While the current accrual method may be consistent with accrual accounting, the prior lagged method is also consistent with accrual accounting.²⁶

6. In response to the Companies' regulatory lag arguments, the Consumer Advocate advances "two salient points", as follows:

First, the most significant reduction in regulatory lag results from having a decoupling mechanism in place. In the absence of a decoupling mechanism and a reversion to reliance on only rate cases, the regulatory lag would be greater as compared to having any form of a decoupling mechanism in place. The Hawaiian Electric Companies' focus on the relatively small regulatory lag instead of on more weighty matters such as how to push operating and maintenance costs down, cost-effectively improving their project

²⁴Consumer Advocate's Opposition, at 16-17.

²⁵Consumer Advocate's Opposition, at 8.

²⁶Consumer Advocate's Opposition, at 11-12.

management performance to ensure that plant in service items reflect reasonable final costs, and addressing concerns with the cost-effective integration of renewable energy, to name a few examples, should earn much more attention.

[Second,] some of the Hawaiian Electric Companies' own accounting practices result in a form of lag in cost recovery and a potential mismatch of revenues and costs. One such example is the Hawaiian Electric Companies' accounting practice of first recognizing depreciation expense for an item in the year following the in-service date. This clearly results in a lag and also creates a situation where, in the year following retirement of any plant-in-service item, theoretically, the Hawaiian Electric Companies will still be recovering depreciation expense for an item that was already retired.

Consumer Advocate's Opposition, at 12-13; see also id., at 12 (the difference in regulatory lag between the two accounting methods is not significant).

7. The Consumer Advocate agrees with the Companies that the RAM has become more conservative and that the RPS goals have become more ambitious than in 2011. That said, the Companies have not shown how the revised RPS goals "should affect the appropriate accruals associated with the decoupling mechanism, which was the result of a recent comprehensive review in Docket No. 2013-0141, nor justify a piecemeal review of the current temporary accrual method which could have been reviewed as part of Docket No. 2013-0141."²⁷

²⁷Consumer Advocate's Opposition, at 13.

8. In response to the Companies' arguments regarding the possible negative impacts to HECO's net income, return on equity, and ultimately, HECO's credit quality:

The Hawaiian Electric Companies' constant refrain that the capital markets will view certain regulatory actions (or inactions) as a negative sign and could result in a credit rating downgrade is wearisome. The Hawaiian Electric Companies' constant warnings with no credible support will, at some point, be reminiscent of the boy who cried wolf and no attention to those claims will be given, even if warranted. The Consumer Advocate acknowledges that there are regulatory actions that could result in adverse credit rating agency actions and the Commission should carefully weigh those types of actions.

In this instance, however, the Consumer Advocate contends that the Hawaiian Electric Companies' assertions do not bear weight and should be ignored. It should be made clear that the current temporary accrual method is the result of the Settlement Agreement. In the Settlement Agreement, it was patently clear that the current method would be temporary and end as of December 2016. Thus, it cannot be argued that the end of the current temporary method was unexpected or unlikely[.]

Consumer Advocate's Opposition, at 14.

Moreover:

A. The Companies' temporary earnings "bump" attributable to the current, temporary accrual method was the result of the commission-approved settlement agreement. Such "information was made available to the credit markets. Thus, it is misleading to assert that the market was unaware of this fact and/or misleading to assert that the market did not

already take the temporary nature of the current method in current credit ratings."²⁸

B. "[HECO] realized a comparable one-time benefit to net income at the front-end of the three-year temporary RAM accrual relief period prescribed in the Settlement Agreement with full knowledge that, at the expiration of this temporary period, the RAM accruals would reverse with negative income impacts for the Hawaiian Electric Companies. It is disingenuous and unfair to ratepayers for the Hawaiian Electric Companies to have taken the temporary financial benefits as part of the Settlement Agreement in 2014 and now argue that the always expected payback upon reversal of the RAM accruals in 2017 is now unreasonable."²⁹

C. At the time the current accrual method was approved by the commission in March 2013, its temporary nature was already known. Allowing the termination to occur as scheduled, effective January 2017, will not: (1) be a surprise or qualify as a new development; or (2) "jeopardize the [Companies'] ability to recover investments; the reversion slightly affects the timing of recovery not the amount that is authorized for recovery."³⁰

²⁸Consumer Advocate's Opposition, at 14-15.

²⁹Consumer Advocate's Opposition, at 10 (footnote, citation, and text therein omitted).

³⁰Consumer Advocate's Opposition, at 15.

D. The Companies' reported earnings for the third quarter of 2016, as reflected in Hawaiian Electric Industries, Inc.'s ("HEI") Form 8-K, released on November 4, 2016, are "very positive" due to contributing factors "such as the one-time increase related to the recent termination of the NextEra Energy, Inc. merger proposal. Even in the absence of the one-time impacts, it appears that the earnings would still reflect positive results."³¹

E. In effect, any concerns associated with the negative impact of the known termination of the current, temporary accrual method, should be offset by the contribution of the one-time merger fee to the Companies' earnings.³²

9. In response to the Companies' argument that terminating the current accrual method will result in lower customer RAM payments:

[T]he Consumer Advocate is aware of various instances where the Hawaiian Electric Companies have acknowledged that the primary benefit of the current temporary method is for financial reporting purposes, where the Hawaiian Electric Companies were allowed to reflect revenue accrual on an earlier basis due to the current temporary method, but that the consumers would not pay more. However, in the Hawaiian Electric Companies' [RAM] Motion, they seem to be asserting that there will be a difference in the net amount of revenues that will be collected from customers. The variability of the Hawaiian Electric Companies' message - at times

³¹Consumer Advocate's Opposition, at 17.

³²Consumer Advocate's Opposition, at 17.

asserting that there is no net impact to customers and also saying that the Hawaiian Electric Companies will be taking a net earnings hit - raises many questions regarding the veracity of the statements at various times.

Consumer Advocate's Opposition, at 18-19 (footnote and citation therein omitted).

D.

Companies' Reply

The Companies, in response to the Consumer Advocate's Opposition, counter:

1. The Companies are not attempting to re-litigate the past. Instead, based on changed circumstances, they assert that it is reasonable and appropriate to continue (i.e., preserve) the current accrual method for HECO, and to extend the same treatment for HELCO and MECO.³³

2. The Consumer Advocate's contention that the Companies' requested relief violates the settlement agreement is erroneous. Instead: (A) the Companies have faithfully abided by, and customers have benefitted from, the settlement agreement; and (B) the settlement agreement does not state that the Companies

³³Companies' Reply, at 5.

could never seek future RAM accounting changes, including those it seeks now.³⁴

3. Adjudicating the Companies' requested relief will not require re-visiting the entire decoupling mechanism.³⁵

4. The Consumer Advocate does not: (A) explain why the prior lagged method represents a "better accounting practice" than the current accrual method; or (B) explain "why impairing the Companies' ability to recover for investments made between rate cases is fair or beneficial in the long run."³⁶

5. The Consumer Advocate's assertion that "regulatory lag is beneficial tracks an older regulatory view that was more common when sales growth was available to offset cost increases[,] and is inconsistent with the "[m]odern regulation" of public utilities.³⁷

6. With respect to regulatory lag associated with the Companies' accounting for depreciation expense, the Companies previously proposed to change the timing of depreciation accrual as far back as HELCO's 1990 test year rate case, In re Hawaii Elec. Light Co., Inc., Docket No. 6432. The Consumer Advocate,

³⁴Companies' Reply, at 11-12.

³⁵Companies' Reply, at 13.

³⁶Companies' Reply, at 3.

³⁷Companies' Reply, at 4.

in response, "conceded that the average monthly balance method better matched the recovery of investment through depreciation over an asset's service life, but opposed the request at that time."³⁸

7. With respect to changed circumstances:

While reversion to the prior lagged method was foreseeable when the Companies signed the settlement agreement [in January 2013], the magnitude of the impact and other material developments since then were not - the Companies could not have reasonably been expected to foresee the RAM cap, the change to the RPS law, filing abbreviated rate cases, and the proposed merger, to name a few. The financial markets also expect to see regulatory mechanisms evolve with changed circumstances.

Companies' Reply, at 12.

8. The Consumer Advocate's contention that "potential negative financial consequences 'should be ignored,' that references to such potential consequences are 'wearisome,' and that such references are 'reminiscent of the boy who cried wolf,'" is not a sound response. Instead, given the Companies' current circumstances, "the Companies are legitimately concerned about an increase in regulatory lag and a significant deficit in utility earnings, and the Commission should reject the Consumer Advocate's attempt to minimize or ignore such matters."³⁹

³⁸Companies' Reply, at 5 (citation therein omitted).

³⁹Companies' Reply, at 6-7.

9. HECO estimates an eight-figure negative impact to its net income in 2017, which is contrary to the Consumer Advocate's assertion that the difference between the two accounting methods is not significant.⁴⁰

10. "No single event usually determines the Companies' credit ratings, and the Companies do not claim that failure to act favorably on this motion will result in a downgrade. But the facts are that the Companies' credit ratings have deteriorated, and that a critical element of the credit rating assessment is the presence or lack of regulatory support. The outcome of [the RAM] motion will affect that assessment."⁴¹ Furthermore, "a utility's actual return demonstrates its ability to timely recover its costs, provide adequate returns to its investors and, therefore, affects its credit ratings."⁴²

11. "[C]ontrary to the Consumer Advocate's claims, discontinuing the current accrual method would not have only a one-time impact." Instead, such a discontinuance "would affect financial reporting in every year and the amount of recovery in rate case test years."⁴³

⁴⁰Companies' Reply, at 4; see also id., at 5-6.

⁴¹Companies' Reply, at 8 (boldface in original) (footnote, citations, and text therein omitted).

⁴²Companies' Reply, at 8.

⁴³Companies' Reply, at 9.

12. HEI's one-time gain in 2016 as a result of the merger termination fee will not address or justify HECO's financial underperformance in 2017, which will be repeated in perpetuity if the requested relief is not granted by the commission.⁴⁴ In effect, the Companies "are not entitled to one-time gains at the HEI level (although they will benefit through investment by HEI in the [electric] utilities)."⁴⁵

E.

Denying the Companies' RAM Motion

The commission denies the Companies' underlying request to allow HECO to preserve and make permanent the current accrual method of recognizing (i.e., recording) RAM revenues on a calendar year basis. In support thereto, the commission specifically finds and concludes:

1. On May 20, 2011, the prior lagged method of recognizing (i.e., recording) RAM revenues for financial reporting purposes was implemented by the commission pursuant to its Attachment 5 Order.⁴⁶

⁴⁴Companies' Reply, at 9-10.

⁴⁵Companies' Reply, at 10.

⁴⁶See, e.g., Companies' informal information response, Attachment 1, at 3-4; and Consumer Advocate's Opposition, Section I.A, at 3-7.

2. On March 19, 2013, the current accrual method of recognizing RAM revenues for financial reporting purposes was authorized by the commission for HECO, limited to the calendar years 2014, 2015, and 2016, based on the commission's approval of the settlement agreement between the Companies and the Consumer Advocate.⁴⁷

3. As a result thereto, HECO: (A) recorded the full amount of 2014 RAM revenues in its 2014 financial statement; (B) recorded the full amount of 2015 RAM revenues in its 2015 financial statement; and (C) will record the full amount of 2016 RAM revenues in its 2016 financial statement. In sum, for financial statement purposes, HECO's 2014, 2015, and 2016 RAM revenues are or will be recorded in the applicable calendar year.⁴⁸

4. Effective January 2017, HECO's recognition of RAM revenues for financial reporting purposes will revert back to the prior lagged method, consistent with the commission's Attachment 5 Order and Order No. 31126.⁴⁹

⁴⁷Docket No. 2008-0083, Order No. 31126.

⁴⁸Companies' informal informational response, at 2; and Attachment 1 thereto, at 2-3.

⁴⁹Companies' informal informational response, at 2; and Attachment 1 thereto, at 3.

5. As a result:

[HECO] will not record 2017 RAM revenue in the period January - May 2017. If there is no order adjusting rates for the 2017 test year rate case, [HECO] will record the 2017 RAM revenue monthly beginning in June 2017 through May 2018. The 2017 RAM revenue will cease if there is an order adjusting rates[.]

. . . .

In the transition back to the lagged treatment of revenue recognition in 2017, where revenue is recorded when billed (effective June 1 of each year to May 31 of the following year), the accounting treatment will be reversed[.]

Companies' informal informational response, Attachment 1, at 3-4.

Absent [commission] approval to continue the calendar year accrual of RAM revenues being requested, in June 2017 and thereafter, the revenue recognition for financial statement purposes would be based on the customer billings based on the annual RAM filing (reverting to the provisions specified in the [Attachment 5 Order]). As such, [HECO] would record the 2017 RAM revenue monthly beginning in June 2017 through May 2018.

Companies' informal informational response, at 2.

6. From a procedural prospective:

A. HECO essentially seeks to reconsider Order No. 31126, issued on May 19, 2013, in its 2009 test year rate case, Docket No. 2008-0083. However, the deadline to timely move for reconsideration expired on April 1, 2013, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-21(e), 6-61-22, and 6-61-137. In addition, HECO did not serve a copy of the

RAM Motion upon the federal Department of Defense, a party to Docket No. 2008-0083, pursuant to HAR §§ 6-61-21(b) and 6-61-41(b).

B. Moreover, HELCO and MECO, as non-parties to Docket No. 2008-0083, appear to lack the requisite standing to seek the reconsideration of Order No. 31126 (see HAR § 6-61-137, limiting the filing of a motion for reconsideration to a "party"). That said, the commission recognizes that certain terms of the settlement agreement between the Companies and the Consumer Advocate apply (i.e., bind) to non-parties HELCO and MECO.

7. From a substantive perspective:

A. The current accrual method of recognizing RAM revenues for financial reporting purposes was intended as a temporary measure, limited to HECO, for the calendar years 2014, 2015, and 2016. This measure was one of several provisions in the settlement agreement that were approved conjunctively, recognizing that individual elements of the settlement agreement provided balancing costs and benefits to the Companies and ratepayers. Of particular note, in exchange for the Companies' agreement to write-off, for accounting and ratemaking purposes, a total of \$40 million in capital costs for two projects:

(1) The Companies were no longer required to conduct two commission-mandated regulatory audits for the two projects;

(2) For the Companies and their investors, the "substantial uncertainty as to when and how much of" the Companies' investment in the two projects would be recovered was resolved; and

(3) For financial reporting purposes, HECO was allowed to utilize the current accrual method of recognizing RAM revenues, limited to the calendar years 2014, 2015, and 2016.⁵⁰ In this regard, as noted by the Consumer Advocate, HECO did and will realize "a comparable one-time benefit to net income at the front-end of the three-year temporary RAM accrual relief period prescribed in the Settlement Agreement with full knowledge that, at the expiration of this temporary period, the RAM accruals would reverse with negative income impacts for the Hawaiian Electric Companies."⁵¹

B. Upon the conclusion of the 2014-2016, three-year period, "the current RAM provisions will again apply in accordance with the Amended Joint Proposal approved by the

⁵⁰See Docket No. 2008-0083, Settlement Agreement Letter, filed on January 28, 2013, at 1-3; and Companies' Reply, at 10-11 (Companies' explanation of their adherence to the terms of the settlement agreement).

⁵¹Consumer Advocate's Opposition, at 10 (footnote, citation, and text therein omitted); see also id., at 18 (the Companies have acknowledged that the primary benefit of the current accrual method is for financial reporting purposes, where the Companies were allowed to reflect accrual on an earlier basis due to the current temporary method, but that ratepayers would not pay more).

Final Decision and Order issued in the decoupling proceeding[,] [Docket No. 2008-0274]."⁵²

C. The Consumer Advocate, as a party to the settlement agreement, represents that the current accrual method agreed-upon between the Companies and the Consumer Advocate was intended to be temporary in nature, limited to the 2014, 2015, and 2016 calendar year periods.⁵³

D. Contrary to the pertinent terms of the commission-approved settlement agreement between the Companies and the Consumer Advocate, the Companies, by their RAM Motion, now apparently seek to withdraw from said settlement agreement, by seeking to permanently utilize the current accrual method of recognizing RAM revenues from January 2017, onward, for HECO. Such action is inconsistent in practice and/or principle with certain underlying terms of the settlement agreement, which state in part that: (1) the settling parties shall support and defend said agreement before the commission; and (2) if the commission adopts an order approving all material terms of the settlement agreement, the settling parties will support and defend the

⁵²Docket No. 2008-0083, Settlement Agreement Letter, at 2; and Exhibit 1 thereto, at 3.

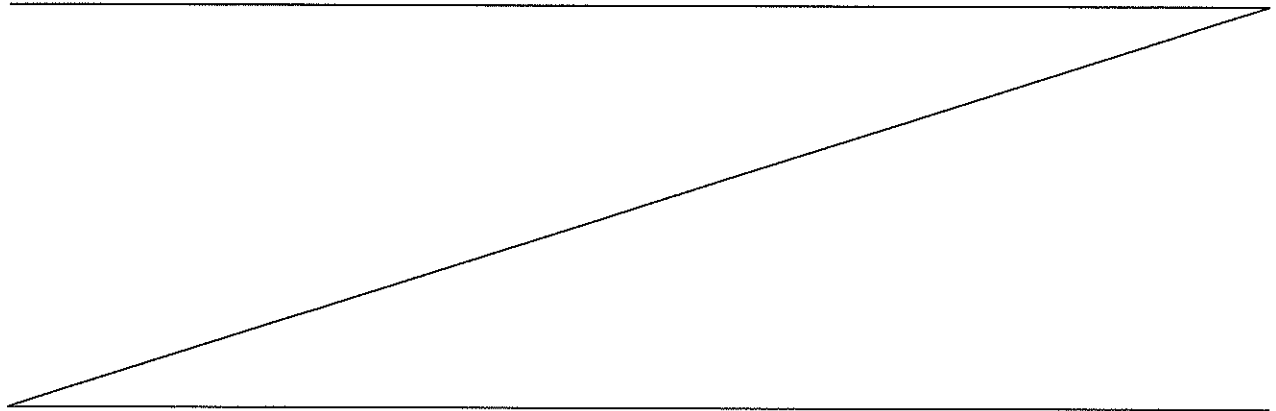
⁵³See Consumer Advocate's Opposition, at 7, 8-10, and 14-19.

commission's order before any court or regulatory agency in which said order [i.e., Order No. 31126] may be at issue.⁵⁴

E. As succinctly noted by the Consumer Advocate: (1) reverting back to the prior lagged method will not affect the amount of RAM revenues that are authorized for recovery from ratepayers; and (2) the termination of the current accrual method at the end of the three-year period constitutes a fully anticipated result and not a "changed circumstance" as asserted by the Companies in their RAM Motion.⁵⁵

Given the commission's denial of the Companies' underlying request, the commission likewise denies the Companies' corresponding request to extend the same treatment (i.e., the current accrual method) to HELCO and MECO, beginning in 2017.

The commission, in sum, denies the Companies' RAM Motion.



⁵⁴Docket No. 2008-0083, Settlement Agreement Letter, at 4.

⁵⁵Consumer Advocate's Opposition, at 15.

III.

Orders

THE COMMISSION ORDERS:

1. The Companies' Motion, filed on November 10, 2016, for Leave to File a Reply to the Division of Consumer Advocacy's Statement of Opposition, is granted.

2. The Companies' Motion for Calendar Year Accrual of Rate Adjustment Mechanism Revenues, filed on November 1, 2016, is denied. As a result, the commission specifically:

A. Denies the Companies' underlying request to allow HECO to preserve and make permanent the current accrual method of recognizing (i.e., recording) RAM revenues on a calendar year basis; and

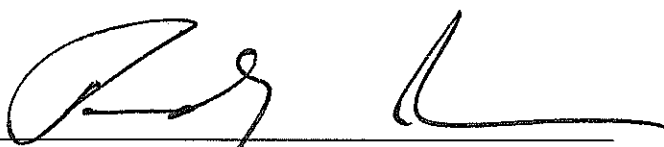
B. Denies the Companies' corresponding request to extend the same treatment (i.e., the current accrual method) to HELCO and MECO, beginning in 2017.

3. Effective January 2017, the accrual method of recognizing RAM revenues for financial reporting purposes, as approved by the commission's Attachment 5 Order, shall apply once again for HECO.

4. Any "unwinding" of HECO's regulatory asset due to the three-year accelerated RAM accrual will be separately addressed as part of the commission's review of HECO's forthcoming 2017 non-docketed decoupling transmittal filing.

DONE at Honolulu, Hawaii NOV 28 2016.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Lorraine H. Akiba, Commissioner

By 
Thomas C. Gorak, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

Non-Docketed Motion.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

DEAN NISHINA
ACTING EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

DEAN K. MATSUURA
MANAGER, REGULATORY RATE PROCEEDINGS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

KEVIN M. KATSURA, ESQ.
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

Counsel for HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED