

ORIGINAL

DIVISION OF CONSUMER ADVOCACY
Department of Commerce and
Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813
Telephone: (808) 586-2800

PUBLIC UTILITIES
COMMISSION

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAIIAN ELECTRIC COMPANY, INC.)	Transmittal Nos. 16-01, 16-02, 16-03
HAWAII ELECTRIC LIGHT COMPANY, INC.)	(Decoupling)
MAUI ELECTRIC COMPANY, LIMITED)	
)	Effective Date: June 1, 2016
For approval to modify the RBA Rate)	
Adjustment in Its Revenue Balancing Account)	
<u>Provision Tariff.</u>)	

DIVISION OF CONSUMER ADVOCACY'S
STATEMENT OF POSITION

Pursuant to the Hawaii Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Hawaii Administrative Rules ("HAR") § 6-61-62, the Commission's August 31, 2010 Final Decision and Order and Dissenting Opinion of Leslie H. Kondo, Commissioner in Docket No. 2008-0274 ("2008-0274 Decision and Order") and Order Nos. 31908 and 32735 issued in the decoupling investigation Docket No. 2013-0141, the Division of Consumer Advocacy ("Consumer Advocate" or "Division") offers comments for the Commission's consideration based upon the review that it has been able to conduct thus far of the decoupling rate adjustment filings of Hawaiian Electric Company, Inc. ("Hawaiian Electric") the Hawaii Electric Light Company, Inc. ("HELCO") and Maui Electric Company, Limited ("MECO," collectively,

the "HECO Companies"). Prior to 2015, the Consumer Advocate submitted its Statement of Position addressing the decoupling transmittals separately for each of the HECO Companies. However, starting last year, the substantial changes to the Rate Adjustment Mechanism ("RAM") required by the Commission within Order No. 32735 raised many common issues that were thoroughly examined and clarified after the Consumer Advocate filed its consolidated Statement of Position responsive to Transmittals Nos. 15-03, 15-04 and 15-05. The Commission's Order No. 32866 dated May 28, 2015 ("Order No. 32866"),¹ resolved several important issues surrounding the interpretation and application of Order No. 32735 in the context of last year's decoupling transmittals. Because of the commonality of remaining issues in this 2016 round of decoupling filings, the Consumer Advocate is again submitting its Statement of Position on a consolidated basis for all three utilities.

¹ Order No. 32866, Consolidating Proceedings, Providing Clarifications Regarding Decoupling Tariff Transmittal Filings, and Suspending Decoupling Tariff Transmittal Filings, was filed in the consolidated Transmittal Nos. 15-03, 15-04, and 15-05.

In their 2016 Revenue Balancing Account (“RBA”) tariff transmittals, the HECO Companies seek to implement RBA Rate Adjustments to recover the following amounts within the June 1, 2016 through May 31, 2017, recovery period:

Summary of Transmittals 16-01, 02, 03 Proposed RBA, RAM and Total Increases				
		Cumulative	Incremental	% Increase
Hawaiian Electric Company	RBA	\$ 49.8	\$ (13.6)	-2%
	RAM	\$ 88.4	\$ 11.0	2%
	Total	\$ 138.2	\$ (2.6)	0%
Hawaii Electric Light Company	RBA	\$ 5.8	\$ (2.4)	-2%
	RAM	\$ 9.0	\$ 2.8	2%
	Total	\$ 14.8	\$ 0.4	0%
Maui Electric Company	RBA	\$ 3.1	\$ (4.4)	-3%
	RAM	\$ 12.6	\$ 3.0	2%
	Total	\$ 15.7	\$ (1.4)	0%
Combined HECO Companies	RBA	\$ 58.7	\$ (20.4)	-2%
	RAM	\$ 110.0	\$ 16.8	2%
	Total	\$ 168.7	\$ (3.6)	0%

This table illustrates several points for consideration by the Commission. First, the RBA and RAM amounts are calculated on a cumulative rather than an incremental basis. In order to determine the “incremental” amounts of change now being proposed, it is necessary to compare the absolute amounts proposed in the HECO Companies’ 2016 tariff transmittals to the cumulative RBA and RAM increases that were approved last year. Second, the RBA recovery rates approved last year were again large enough to cause a net decline in all three utilities’ RBA balances during the recovery period. This outcome permits a further reduction in the required recovery rate for the RBA

balance for all three of the utilities.² This favorable result suggests that the rate of sales declines experienced by the HECO Companies continues to stabilize, relative to sales declines in the earlier years of decoupling. Third, when the lower needed RBA recovery amounts are combined with the proposed RAM increases for the three utilities, the HECO Companies have collectively proposed a near zero (i.e., a \$3.6 million net RBA/RAM reduction per the table above) overall incremental revenue change. Notably, the RAM Cap serves to constrain the RAM increases that would otherwise be implemented for Hawaiian Electric and MECO. In contrast, the traditionally calculated RAM increase for HELCO was slightly below the calculated RAM Cap for that utility, such that no Cap constraint was imposed upon HELCO.³

The near zero net overall revenue adjustments that recognize declining RBA recovery rates offset by increasing RAM recoveries still requires a small positive rate change for Hawaiian Electric and for HELCO, because of lower forecasted kWh sales volumes in the prospective recovery period beginning June 1, 2016. In contrast, MECO customers would receive an overall proposed RBA rate reduction, due in part to a somewhat higher level of forecasted sales.⁴

² This change in the RBA balance during 2015 can be observed at Schedule B for each utility. Amounts recovered through Commission-approved RBA rates can be observed in column (f) of Schedule B, while new monthly deferrals for the monthly difference between target and recorded-adjusted revenues can be observed in the "Variance to RBA" amounts in column (e).

³ Schedule A1, lines 1 through 6 for HELCO summarizes the traditionally calculated RAM of \$9.1 million, which is just below the RAM Cap of \$9.4 million summarized at lines 7 through 9.

⁴ Overall sales volumes used to set existing RBA rates last year for MECO totaled 1,066 GWH. In contrast, a higher 1,112 GWH sales forecast is used to calculate the prospective RBA rate that would be effective in June 2016 through May of 2017. See Schedule A, line 8 and WP-A-001 in each filing.

I. BACKGROUND.

Prior to 2014, RBA rate adjustments were prepared by the HECO Companies in general compliance with the Commission's initial decoupling rulings within Decision and Order in Docket No. 2008-0274, which provided for implementation of annual RBA rate revisions after review and comment by the Consumer Advocate and Commission. The initial Commission-approved decoupling framework was modified on an interim basis by the Commission's Decision and Order No. 31908 that was issued in Docket No. 2013-0141 on February 7, 2014. The modifications at that time limited increases in the Rate Base RAM to 90 percent of the calculated amount above the prior year Rate Base RAM and mandated reductions in the RBA interest rate, where interest would be applied on a net-of-income taxes basis.⁵ Then, with the issuance of Order No. 32735, further modifications to the decoupling regime were implemented, including the insertion of a RAM Cap mechanism, limiting annual increases in target revenues through the RAM mechanism to not exceed the percentage change in GDPPI.

A series of complex implementation issues arising from Order No. 32735 were presented for consideration by the Commission in last year's decoupling transmittals. These issues involved the following: how to properly determine and apply the basis for the new RAM Cap, including annualization of depreciation and amortization expense; treatment of the interim 90 percent rate base factor within the basis for the Cap;

⁵ Decision and Order No. 31908 at Ordering paragraph 3 states, "The Commission orders the HECO Companies to revise their decoupling tariffs to provide that the amount of any "Rate Base RAM - Return on Investment Adjustment" ("Rate Base RAM Adjustment") applied to the determination of Target Revenues and the RBA Rate Adjustment in accordance with the existing RAM tariffs shall include the entire effective Rate Base RAM Adjustment from the prior year, plus ninety percent of the amount that the current RAM Period Rate Base RAM Adjustment exceeds the Rate Base RAM Adjustment from the prior year. If the prior year is a rate case test year, the amount of the Rate Base RAM applied to the determination of Target Revenues and the RBA Rate Adjustment shall be ninety percent of the RAM Period Rate Base RAM Adjustment."

accounting consistency problems caused by changed clearing account procedures that shifted costs from expense to capital; and whether historical or projected GDPPI values should be used to quantify the Cap percentage. Order No. 32866 addressed each of these issues and has been relied upon by the HECO Companies and the Consumer Advocate in preparing and evaluating the pending RBA/RAM filings.

The HECO Companies have calculated and applied the RAM Cap for 2016 at 1.5 percent above prior year 2015 target revenues within the pending tariff transmittals.⁶ The use of forecasted rather than historical measures of GDPPI growth for this purpose was approved by the Commission in Order No. 32866 as one of several clarifications of the prior decoupling investigation Order No. 32735.⁷ Two other adjustments to the RAM Cap basis, which were recommended by the Consumer Advocate last year and approved by the Commission in Order No. 32866, also impact the determination of the RAM Cap within the utilities' 2016 tariff transmittals. First, an adjustment was required to ensure that depreciation and amortization expense included in the RAM Cap does not exceed actual 2015 depreciation and amortization expense.⁸ Then, a second larger adjustment was imposed to recognize the expense reduction impact of changes to the HECO Companies' Energy Delivery and Power

⁶ See Schedule J, line 4 and WP-C-002 where the RAM Cap percentage is documented for each of the HECO Companies, based upon the consensus projected growth in GDPPI published by Blue Chip Economic Indicators. The RAM Cap dollar amount is then applied within new Schedule A1 at line 5.

⁷ Order No. 32866 at 16.

⁸ Order No. 32866 at 7-9. This adjustment was approved after the Commission clarified its intent to use 2014 year-end actual plant in service balances to calculate depreciation and amortization expense in determining the RAM Cap.

Supply clearing accounts, in determining the RAM increase and RAM Cap.⁹ The Consumer Advocate has verified that the HECO Companies have properly reflected these adjustments in determining the 2015 Target Revenues subject to escalation and the RAM Cap for 2016 within Schedule J of the tariff transmittals.¹⁰

The Commission also required another adjustment to the HECO Companies' 2015 proposed RAM calculations in Order No. 32866 to account for the benefits of Bonus tax depreciation that were not recognized in the prior year's (2014) Rate Base RAM calculations because, "[o]n December 19, 2014, 50 percent bonus depreciation was approved for investments in qualifying assets placed in service in the entire 2014 calendar year."¹¹ The same issue exists one year later, as more fully described below, because retroactive extension of Bonus depreciation was approved by Congress late in 2015, too late for application to estimated 2015 plant additions in last year's Rate Base RAM calculations. However, at this time, the traditional RAM Calculation and the need for a Bonus tax depreciation adjustment applies only for HELCO, simply because Hawaiian Electric and MECO are both RAM Cap constrained within the pending 2016 tariff transmittals. In other words, but for the RAM Cap constraint, the Bonus tax depreciation adjustment would have also impacted the RAM results for Hawaiian Electric and MECO.

⁹ Id. Pages 11-15.

¹⁰ See Schedule J at lines 2 and 6, with further breakdown in Notes 1 and 2.

¹¹ Order No. 32866 at 18.

Within the 2016 tariff transmittals, Schedule A1 reveals that the traditionally calculated RAM increases for Hawaiian Electric and MECO continue to exceed the GDPPI-driven RAM Cap. For these two utilities, the RAM Cap serves to reduce the cumulative traditionally calculated RAM cumulative increases for both 2015 and 2016 by \$19.5 million and \$0.6 million, respectively.¹² For HELCO, the traditionally calculated RAM adjustment for 2016 is lower than the RAM Cap, and is therefore the controlling calculation in determination of the RBA rate adjustment. Because the RAM Cap is controlling for Hawaiian Electric and MECO and the Consumer Advocate has confirmed the proper calculation and application of the Cap, the adjustments to traditional RAM calculations set forth below only have a practical application to only the RAM of HELCO.

Based on the Consumer Advocate's review to date, as set forth in the Discussion section below, the Consumer Advocate proposes only three matters requiring consideration by the Commission with respect to the HECO Companies' proposed RBA Rate Adjustment:

1. The HELCO Rate Base RAM should be reduced to account for value of the retroactive extension of bonus tax depreciation for the 2015 tax year, that was not recognized in last year's RAM adjustment. This is the same adjustment that was imposed by Order No. 32866 under identical factual circumstances last year.

¹² The 2015 portion of these reductions was \$7 million and \$1.3 million for Hawaiian Electric and MECO, respectively, according to the utilities' June 3, 2015 filed amended transmittals at Schedule A1.

2. The pending application of Hawaiian Electric for recovery of certain capital project costs Through the RAM and Above the RAM Cap has created potential inconsistencies and the risk of double recovery of costs that should be clarified by the Commission in this tariff transmittal. However, the Consumer Advocate points out this issue is still pending in Docket No. 2013-0141 as well as in the pending application in Docket No. 2015-0375. Thus, proper consideration of this issue should also be reflected in those other proceedings as well.
3. Major Capital Project costs for HELCO require updating for reduced current cost estimates. Additionally, the Commission should clarify whether projects that are approved pursuant to General Order No. 7 review are entitled to Major Capital Project treatment within the RAM even when revised cost estimates fall below \$2.5 million.

The following discussion is intended to inform the Commission's determination on these three issues.

II. DISCUSSION.

The HECO Companies' calculation of proposed RBA Rate Adjustments in 2016 again includes two elements, the recovery of December 31, 2015 RBA balances and the RAM calculated (or capped) increases to such target revenues. As noted above, proposed rate reductions are needed for the RBA recovery component of the overall RBA Rates for all three utilities, because recovery of last year's (December 2014) recorded RBA balances has more than offset new RBA deferrals representing

under-recovery of targeted levels of during 2015. As of December 31, 2015, the accumulated RBA balance to be recovered represents a cumulative revenue shortfall of \$49.8 million for Hawaiian Electric, \$5.8 million for HELCO, and \$3.1 million for MECO.¹³

With respect to the RAM element of the RBA rate adjustment, for 2016 the HECO Companies have proposed incremental RAM increases of \$11.0 million for Hawaiian Electric, \$2.8 million for HELCO and \$3.0 million for MECO, driven by calculated increases in the O&M RAM, the Rate Base RAM – Return on Investment and the Depreciation & Amortization RAM Expense for each Company, with RAM Cap limitations for Hawaiian Electric and MECO, but not for HELCO.¹⁴

A. REVIEW OF THE REVENUE BALANCING ACCOUNT.

The revenue balancing account is maintained to accumulate the differences that occur each month between: 1) the target level of base revenues that the utility has been authorized to charge, and 2) the comparable amount of monthly recorded adjusted revenues that were actually earned and charged to customers. The revenue balancing

¹³ See Schedule A at line 3. These amount include revenue taxes added to the recorded RBA balances at December 31, 2015, as set forth at Schedule B for each utility.

¹⁴ See Schedule A and Schedule A1, where lines 1 through 3 summarize the RBA Balance recovery calculations and lines 4 through 7 summarize the RAM amounts to be included in the RBA Revenue Adjustment. Both the RBA and RAM adjustments are cumulative and must be compared to the previous year's RBA adjustment calculations to determine the "net" adjustment to the RBA adjustment, because the 2015 RBA Rate Adjustments serves to replace the currently effective 2014 RBA Rate. Schedules A1, J and K are used to calculate and implement the RAM Cap, with supporting workpapers underlying the Schedule J and Schedule K input amounts.

process is relatively simple to understand in concept and has been succinctly defined within the RBA Tariff.¹⁵

However, considerable complexity is involved in isolating the amount of recorded adjusted base revenue that was actually earned from serving customers each month, so as to exclude each element of non-base revenues and to properly restate for billing adjustments and error corrections impacting current and prior periods. Contributing to this complexity is the necessary inclusion of monthly accounting accruals and reversals for estimated unbilled revenues that are recorded in addition to all of the actual billed-basis revenue transactions and adjustments, because of the requirement within Generally Accepted Accounting Principles for each of the HECO Companies to report financial results on an accrual-basis of accounting. RBA accounting is limited to base rate revenues. Therefore, it is necessary to isolate and remove the revenues associated with each of the many other revenue tracking mechanisms that have been authorized by the Commission for separate recovery of fuel, purchased power, energy efficiency funding, DSM/IRP, Big Wind / REIP and other targeted cost recoveries which result in distinct billed and unbilled revenues each month to derive the residual amounts

¹⁵ According to Paragraph A: PURPOSE within the Revenue Balancing Account ("RBA") Provision tariff, "The purpose of the Revenue Balancing Account ("RBA") is to record: 1) the difference between the Hawaiian Electric Company's target revenue and recorded adjusted revenue, and 2) monthly interest applied to the simple average of the beginning and ending month balances in the RBA." In paragraph C, a single sentence defines recorded adjusted revenues, stating, "The recorded adjusted revenue is defined to include the electric sales revenue from authorized base rates, plus revenue from any authorized interim rate increase, plus revenue from any RBA rate adjustment, but excluding revenue for fuel and purchased power expenses, IRP/DSM, any Commission Ordered one-time rate refunds or credits or other surcharges, and adjusted to remove amounts for applicable revenue taxes."

of “recorded adjusted” base revenues subject to RBA reconciliation. A high level summary of the many complex elements of this monthly calculation of recorded adjusted revenues can be observed within Schedule B2 of the decoupling template calculation that is submitted by each of the HECO Companies in support of the proposed annual RBA rate adjustment.

Because of this complexity and the potential for significant errors, the HECO Companies have continued to maintain detailed reporting and internal review requirements to help ensure that the complex entries made each month to the RBA account are accurate and complete. Detailed monthly workpaper “Packets” are prepared to document the HECO Companies’ analyses in support of the RBA entries that are recorded each month, as included within pages 9A, 9A.1 and 9A.2 of the Monthly Financial Report that is submitted to the Commission. These monthly RBA information Packets are submitted to the Consumer Advocate and contain written responses to prescribed information requests that highlight any changes in procedures, billing errors or corrections, or other unusual transactions impacting the RBA entries or balance. The HECO Companies have also expanded their internal review and data validation processes to reduce the risk of errors in the recording of revenues that are subject to decoupling reconciliation. In addition, periodic internal audit reviews and annual agreed upon review procedures performed by the HECO Companies’ external auditor are undertaken to ensure the integrity of RBA accounting procedures of the HECO Companies.

The Consumer Advocate is continuing to review the RBA calculations within the HECO Companies' decoupling filings, the monthly informational packets and responses to informal information requests, but has at this time identified no needed adjustments to the December 31, 2015 recorded balances as submitted by the HECO Companies.

B. REVIEW OF RAM – CA PROPOSED ADJUSTMENTS.

The HECO Companies' proposed RAM Revenue Adjustment amount is comprised of the O&M RAM, Rate Base RAM – Return on Investment, and the Depreciation and Amortization RAM Expense, as summarized on Schedule A in the Company's tariff transmittal. Starting last year, the overall RAM adjustment each year is to be limited by the RAM Cap approved by the Commission in Order No. 32735, which serves to limit overall RAM increases to the level of general inflation, as measured by forecasted GDPPI.

Based upon the Consumer Advocate's review to date, there appear to be only two exceptions to the HECO Companies' traditional RAM calculations for 2016, including the RAM Cap limitations, to be in general compliance with the tariff and are based upon verified input data and appropriate computations.

1. Bonus Depreciation Approved for 2015.

The RAM Rate Base Adjustment includes within the updated rate base an accounting for Accumulated Deferred Income Taxes ("ADIT") at line 19 of Schedule D1, which amounts are developed in two parts. First, Adjusted Recorded amounts of ADIT are summarized with certain adjustments on Schedule D4, while additional finely

detailed workpapers supporting these input amounts appear in the associated WP-D4-001 through 004 workpapers for each utility. These amounts represent the recorded ADIT balances as of December 31, 2015, that make up the front “half” of the two-point average used to quantify Rate Base RAM for 2016 on Schedule D1. The back “half” of the average ADIT balance included in Rate Base RAM is developed in Schedule F1 and Schedule F2, where projected tax depreciation on Baseline Plant Additions and Major Capital Projects is estimated and then translated into ADIT amounts (on Schedule F) to project the change in property-related ADIT balances that can be expected to occur throughout the RAM year.

The United States Congress has complicated the determination of projected property-related ADIT amounts by repeatedly passing legislation very late in the year that retroactively reinstates certain “bonus” tax depreciation laws that were expiring under prior laws and that provided for only temporary, year-by-year extensions of such bonus depreciation tax deductions. In the last two years, 2014 and 2015, bonus tax depreciation deductions were unavailable under current law until very late in the calendar year, when new legislation provided for retroactive reinstatement of such deductions.

In the 2014 decoupling tariff transmittals submitted two years ago by the HECO Companies, dramatic reductions in projected tax depreciation amounts on Schedule F1 were caused by the scheduled expiration of so-called “bonus” tax depreciation after 2013, under current tax laws existing at that time. When projecting the growth in ADIT balances expected to occur during 2014 arising from tax depreciation, the HECO Companies assumed that no 50% bonus depreciation would be deductible on

Vintage 2014 baseline plant additions. In its Statement of Position two years ago, the Consumer Advocate expressed its concern that federal tax legislation later that year may serve to retroactively reinstate bonus depreciation for all of the 2014 tax year. The Consumer Advocate's Statement of Position at that time recommended that, if 50% bonus depreciation was ultimately approved in legislation for the 2014 tax year, the HECO Companies' target revenues as of June 1, 2014, should be reduced by an amount shown as the "Impact to RB RAM – Return on Investment" within calculations that were attached to the HECO Companies' responses to a CA-submitted information requests. The HECO Companies responded to the Consumer Advocate's concern within documents filed on May 14, 2014 in the decoupling transmittal proceedings that year, indicating agreement that, "...if a bonus tax depreciation provision is enacted in 2014, the benefit derived by such provision should accrue to the customer by way of an adjustment to target revenues. The methodology and impact of the benefit to the rate base RAM should be addressed at the time of enactment in order that the parties can apply the law, when and if revised, to all the relevant facts at that time."

Acting upon this agreement in reviewing decoupling transmittals last year, the Consumer Advocate recommended in its Statement of Position, "...it is reasonable to expect that some adjustment to the overstatement of last year's target revenues is now appropriate, because Bonus tax depreciation was retroactively approved for the 2014 tax year within the Tax Increase Prevention Act of 2014 that was signed into law by President Obama on December 19, 2014. However, the HECO Companies' have proposed no such adjustments." Out of concern that the retroactive reinstatement of bonus depreciation occurred late in the tax year, the Consumer Advocate reduced its

proposed adjustment for bonus depreciation benefits, to include a ratable adjustment for only the five months (January through May of 2015), after the changes in bonus depreciation were enacted in December of 2014. The Commission rejected this moderated adjustment in its Order and required that full 2014 bonus depreciation effects be fully considered in determination of Rate Base RAM target revenues:

In Order No. 32866, the Commission stated:

28. The HECO Companies argued that, because estimated tax payments were made throughout 2014 based on currently applicable tax laws without bonus depreciation, the Companies did not receive a benefit from bonus depreciation in 2014; any benefits would only be realized in 2015; and therefore no adjustments to 2014 target revenues are necessary.
29. The Commission does not agree with the HECO Companies' assertion that no tax deferral benefits accrued to the Companies in 2014. Although it may be true that no cash benefits were obtained through reductions in periodic tax payments made during 2014, the Companies accrued a tax deferral benefit in 2014, amounting to the effects of 50% bonus depreciation applicable to qualified investments placed in service in the full 2014 year. The Companies acknowledge this tax deferral benefit as a credit that could be refunded to the Companies or applied to tax liabilities in 2015 and recorded this benefit in ADIT at the close of the 2014 year.
30. The commission recognizes that the inclusion of the ADIT adjustment for bonus depreciation at the end of 2014 effects and lowers the 2015 RAM Cap and 2015 RAM Revenue Adjustment calculations. This adjustment, however, affects the determination of 2015 target revenues and does not constitute an adjustment to 2014 target revenues as agreed by the Companies on May 14, 2014.

31. The commission concurs with the Consumer advocate that adjustments should be made to 2014 RAM Period target revenues but does not concur that the adjustment should be limited to the five month period of 2014 RAM Period target revenues in 2015. The purpose of the adjustment agreed to by the HECO Companies is to pass the benefit of 2014 bonus depreciation to customers. The commission sees no reason to limit the adjustment to a fraction of the actual benefits of the bonus depreciation provisions. The HECO Companies shall adjust the target revenues calculated for the 2014 RAM Period and applied to the twelve month period of June 2014 through May 2015, so as to pass through to customers the benefits of the full 2014 RAM benefit of the bonus depreciation target revenue impacts estimated by the Companies and enumerated in the SOP. The Companies shall make appropriate adjustments to target revenues, RBA accounts and the associated regulatory asset accounts to ensure that the 2014 bonus depreciation benefits accrue to customers as provided above.

With respect to bonus tax depreciation, history has a way of repeating. Again in last year's Rate Base RAM calculations, when preparing the 2015 tax depreciation estimates that were used to calculate changes to ADIT in 2015, bonus depreciation was scheduled to expire under then current law. This fact caused the projected year-end 2015 ADIT balances in the HECO Companies' filed Schedule F1 to be reduced due to the absence of bonus depreciation deductions. Because of this recurring uncertainty, the Consumer Advocate again recommended last year in its SOP that, "[f]or the 2015 RAM year, if bonus depreciation is again reinstated by tax legislation that has yet to occur, any benefit derived by such provision should accrue to the customer by way of an adjustment to target revenues, as agreed upon with the HECO Companies in last year's decoupling review, recognizing the impact of the newly implemented RAM Cap within the current calculations."¹⁶

¹⁶ Consumer Advocate Statement of Position dated May 15, 2015.

On December 18, 2015, bonus depreciation was again extended as part of the Protecting Americans from Tax Hikes (PATH) Act of 2015. This recent legislation sets in motion the same set of facts for the 2015 RAM year that were addressed by the Consumer Advocate and the Commission in last year's decoupling review. In its response to informal CA-IR-2, the Company acknowledges that its filing last year assumed no bonus depreciation and the PATH Act retroactively extended bonus tax depreciation for the entire year. That response also restates the HECO Companies' previous cash flow arguments surrounding delayed enactment of the legislation that were rejected by the Commission last year. A copy of this response is attached to this Statement of Position as Attachment 1.

Because the RAM increases for Hawaiian Electric and MECO are constrained by the RAM Cap based upon GDPPI changes, the required adjustment for correction of last year's bonus depreciation assumption applies only to HELCO. No bonus tax depreciation adjustments are needed for Hawaiian Electric or MECO because the RAM Cap serves to escalate the RAM amount after the basis for the Cap was reduced for bonus depreciation last year. The needed downward adjustment to the HELCO Rate Base RAM arising for retroactive inclusion of 2015 bonus depreciation has been quantified by the HECO Companies, in their response to Informal CA-IR-44, as a \$373,000 reduction to the Rate Base RAM. This response is included as Attachment 2.¹⁷

¹⁷ The Attachments to CA-IR-44 are not included, but the Consumer Advocate has confirmed the adjustment amount by comparing these attachments to the 2015 Rate Base RAM calculations to verify the difference created by recognizing bonus tax depreciation on Schedule F1.

2. Above the RAM Cap Project Identification.

In October 2015, Hawaiian Electric and MECO filed applications seeking recovery of revenue requirements associated with certain 2015 plant addition costs pursuant to the HECO Companies' proposed Through the RAM above the RAM Cap (i.e., "Above the RAM Cap") mechanism in Docket Nos. 2015-0375 and 2015-0376, respectively. Footnote 6 of the cover letter to the HECO Companies' capital improvements GO7 filing on March 29, 2016 (Docket No. 03-0257) indicated that Hawaiian Electric and MECO had made these Above the RAM Cap filings. However, due to the impact of bonus depreciation and lower recorded 2015 net plant additions than originally projected, MECO determined that it could adequately recover the revenue requirement associated with all of its 2015 net plant additions below the RAM Cap. On March 29, 2016, MECO withdrew its application in Docket No. 2015-0376. On April 18, 2016, HECO filed a revision to its requested relief in Docket No. 2015-0375, reducing its original Above the RAM Cap net plant additions estimate from \$40.3 million to \$35.7 million.

As discussed previously, Decision and Order No. 32735 modified the decoupling regime to include a RAM Cap, limiting annual increases in target revenues through RAM to not exceed the percentage change in GDPPI. Schedules A1 and J, of the pending tariff transmittals, show how the HECO Companies calculated and applied the RAM Cap for 2016 at 1.5 percent (based on forecasted GDPPI) above prior year 2015 target revenues. Because the RAM Cap is applied holistically to the overall RAM adjustment, Hawaiian Electric's Above the RAM Cap proposals are unable to accurately apportion the perceived shortfall in the current RAM increase due to the RAM Cap

limitation between the three RAM components (O&M RAM, Rate Base RAM – Return on Investment or the Depreciation & Amortization RAM Expense).¹⁸ If the financial impact of the RAM Cap grows in the future, while the HECO Companies actual incurred O&M, depreciation and amortization expenses, actual rate base investments and actual cost of capital continue to change, it will become increasingly impossible to determine how much new capital investment can be funded “below the RAM Cap” with each passing year.

In addition, Hawaiian Electric’s original application in Docket No. 2015-0375 selectively identified \$40.3 million of capital project costs to form the basis for its incremental Above the RAM Cap proposal for a piecemeal additional revenue increase. Hawaiian Electric’s revised application then arbitrarily reduced those capital project costs identified in the Above the RAM Cap to \$35.7 million. As stated in its Statements of Position filed on June 30, 2015, in Docket No. 2013-0141 and on November 13, 2015 in Docket No. 2015-0375, the Consumer Advocate does not agree with the fundamental premise or the inherently suspect assumptions employed within the HECO Companies’ proposed Above the RAM Cap mechanism, which will be further addressed as necessary by the Consumer Advocate in either Docket No. 2013-0141 or Docket No. 2015-0375 (or both, if necessary).

However, if the Commission decides to accept Hawaiian Electric’s arbitrary apportionment of the perceived RAM Cap shortfall to the Rate Base RAM – Return on Investment component of RAM and provide Hawaiian Electric with an additional revenue recovery (e.g., return on and/or return of the designated Above the RAM Cap

¹⁸ See the HECO Companies response to informal CA-IR-57(c).

project costs), then the Commission should require that those net capital project additions be excluded completely from all future calculations of the RAM. Otherwise, the HECO Companies would have the opportunity to recover a return on and of such investment via the Above the RAM Cap mechanism while also allowing those very same underlying project costs to influence the Rate Base RAM – Return on Investment and Depreciation & Amortization RAM Expense. The allowance of the proposed recovery would further complicate the reconciling and review of the decoupling filings but, more importantly, such a double recovery opportunity should not be allowed.¹⁹

The Consumer Advocate has not quantified any adjustment to the current Hawaiian Electric RBA/RAM filing to isolate and remove Hawaiian Electric's selected Above the RAM Cap capital project costs, but merely seeks to notify the Commission of the need for careful synchronizing Rate Base RAM adjustments in the event any piecemeal cost recovery Above the RAM Cap is allowed in response to Hawaiian Electric's revised Application in Docket No. 2015-0375. Should the Commission allow some level of Above the RAM Cap revenue recovery effective in 2016, the Consumer Advocate would encourage the Commission to direct Hawaiian Electric to resubmit the 2016 RBA/RAM filing to completely remove any current impact of those projects and direct Hawaiian Electric to continue such exclusion from future RBA/RAM filings.

¹⁹ According to the HECO Companies response to informal CA-IR-57(d), the utilities (in this case Hawaiian Electric alone) have not proposed to remove any of the Above the RAM Cap projects from the 2016 RAM filings in light of the application seeking to recover the revenue requirement for such projects through the Above the RAM Cap mechanism.

3. Revised HELCO Major Project Cost Estimates.

As noted above, only the RAM for HELCO relies upon the traditional calculation methods that yield a result that is below the RAM Cap. HELCO has included two 2016 Major Capital Projects on Schedule D3 in calculation of the Rate Base RAM amount. Each of these projects cost estimates are expected to be revised downward, and such revisions should be included in HELCO's final RBA rate adjustment approved for implementation this year. First, in response to Informal CA-IR-45, HELCO stated, "Based on the work completed to date, the Company is in the process of preparing an updated project cost estimate that is lower than the \$4,211,952 included in Schedule D3 and anticipates providing that updated estimate to the Consumer Advocate in time such that the lower cost can be incorporated in the final 2016 RAM calculations." Similarly, in response to CA-IR-46(c) HELCO stated, "Subsequent to the Decoupling filing on March 31, 2016, the Company has further reduced the CT-5 Overhaul cost estimate by an additional \$62,864 from \$2,094,421 to \$2,031,557 as shown in Attachment 1 in this response." At a minimum, updated lower estimated cost levels should be included in the RAM calculations and RBA rate change charged to customers.

Another issue is raised by HELCO's inclusion of the CT-5 Overhaul project that should be clarified by the Commission. The cost of the CT-5 project is clearly below the \$2.5 million threshold normally applied to isolate Major Capital Projects. According to the Company's response to CA-IR-46(d):

Recovery of the costs for the CT-5 overhaul as a major project through the 2016 RAM is appropriate because the project fits the definition of major project as defined in Hawai'i Electric Light's RAM Provision tariff,²⁰ and because there is past precedent. Hawai'i Electric Light's RAM

²⁰ Revised Sheet No. 89, effective June 1, 2013.

Provision tariff defines Major Capital Projects as, “those capital investment projects that require an application before and approval by the Commission under the Commission’s General Order No. 7, but excluding those projects included in the Clean Energy Infrastructure Surcharge.”[Emphasis added.]²¹ The Commission approved the Company’s request to commit funds for the Keahole CT-4 and CT-5 Major Overhaul Projects in accordance with Paragraph No. 2.3(g)(2) of General Order No. 7, Standards for Electric Utility Service in the State of Hawai’i, as modified by Decision and Order No. 21002 in Docket No. 03-0257,²² which is prima facie evidence that the CT-5 overhaul project meets the definition of Major Capital Project in accordance with Hawai’i Electric Light’s RAM Provision tariff.

In addition, there is past precedent as a similar situation arose in Hawaii Electric Light’s 2014 RAM in which the costs for the Company’s CT-4 overhaul, at \$2,092,000, were less than \$2,500,000 but were nonetheless included in the final 2014 RAM²³ which was approved by the Commission in Order No. 32112 issued May 30, 2014 and went into effect June 1, 2014

The Consumer Advocate recommends that the Commission clarify whether or not Major Capital Projects approved by the Commission pursuant to a General Order No. 7 proceeding should later still be treated as a Major Capital Project in determining the Rate Base RAM adjustment, even when the projected cost of the work declines to below \$2.5 million. With this clarification, HELCO should be directed to submit a recalculated RBA Rate Adjustment for updated estimates of both 2016 Major Project additions to rate base, either including or excluding the CT-5 project on Schedule D3.

²¹ Ibid, page 2, Definition h).

²² Decision and Order No. 31707 issued November 26, 2013 in Docket No. 2013-0144, at 1 to 2.

²³ The Company’s Statement of Position and Revised RBA Rate Adjustment filed May 14, 2014 in Transmittal No. 14-04 (Decoupling), Schedule D3.

III. CONCLUSIONS AND RECOMMENDATIONS.

For the reasons set forth herein, the Consumer Advocate recommends that the calculated adjustment to revenues proposed by the HECO Companies in its Transmittal Nos. 16-01, 16-02 and 16-03 should be approved, with the modifications described herein for Hawaii Electric Light Company. The Consumer Advocate also requests that the Commission consider the Consumer Advocate's recommended clarifications and provide the appropriate guidance for future filings and urges the Commission to adopt the Consumer Advocate's recommended position on the Above the RAM Cap mechanism in order to protect the consumers' interests.

DATED: Honolulu, Hawaii, May 6, 2016.

Respectfully submitted,

By 
FOR JEFFREY T. ONO
Executive Director

DIVISION OF CONSUMER ADVOCACY

INFORMAL CA-IR-2

In Order No. 32866 resolving last year's decoupling transmittals, paragraph 31 (page 20) required the HECO Companies to "...adjust the target revenues calculated for the 2014 RAM Period and applied to the twelve month period of June 2014 through May 2015, so as to pass through to customers the benefits of the full 2014 RAM benefit of the bonus depreciation target revenue impacts estimated by the Companies and enumerated in the SOP [footnote omitted]. The Companies shall make appropriate adjustments to target revenues, RBA accounts and associated regulatory asset accounts to ensure that the 2014 bonus depreciation benefits accrue to customers as provided above." Please provide the following additional information:

- a. Provide a detailed statement of each of the adjustments recorded by each utility and reflected within RBA calculations to implement the ordered adjustments for bonus tax depreciation.
- b. Provide detailed calculations in support of the amounts set forth in your response to part (a).
- c. Explain whether the utilities intend to claim bonus tax depreciation for the 2015 tax year and what modifications to previously approved Rate Base RAM target revenues are needed to reflect such tax deductions, if any.

Hawaiian Electric Companies Response:

- a. Hawaiian Electric's adjustment for the full 2014 RAM impact of bonus depreciation target revenues (\$1,673,734) was made directly to the 2015 RAM Revenue Adjustment as a decrease to the 2015 RAM Revenue Adjustment, as reflected on Schedule A, Footnote 3 and 3b of its 6/3/15 Decoupling Filing. Maui Electric and Hawai'i Electric Light reflected their adjustments (\$295,057 for Maui Electric and \$431,234 for Hawai'i Electric Light) for the impact of 2014 bonus depreciation in the same manner. The 2015 RAM is included in 2015 target revenues, which is compared against recorded adjusted revenues to determine the RBA adjustment recorded to the RBA.
- b. As stated in Footnote 3b of each Company's 6/3/15 Decoupling Filings, adjustments above include revenue tax and agree to Footnote 30 of Order No. 32866.

The amounts were previously provided in the Companies' responses to Consumer Advocate Informal IRs HECO-CA-IR-2, HELCO-CA-IR-4, and MECO-CA-IR-3 in review of the Companies' 2014 decoupling filing, and are also included as Attachments 1-3 in this response.

- c. The Utilities did not make an adjustment for bonus tax depreciation for 2015. As stated in Footnote 3b of the Utilities' 6/3/15 Decoupling Filings, Order No. 32866 states the following: "the Commission recognizes that the inclusion of the ADIT adjustment for bonus depreciation at the end of 2014 effects and lowers the 2015 RAM Cap and 2015 RAM Revenue Adjustment." Therefore, for Hawaiian Electric and Maui Electric, both of whom were subject to the RAM Cap in 2015, an adjustment for 2015 bonus depreciation is not necessary since the basis used to calculate the RAM Cap for 2015 and subsequent years already includes the impact of bonus depreciation.

Hawai'i Electric Light's 2015 RAM was not subject to the RAM Cap. Hawai'i Electric Light did not include an adjustment for 2015 Bonus Depreciation in its 2016 Decoupling Filing. Based on Order No. 32866 issued May 28, 2015, the Company adjusted the RAM amount for 2015 for the enactment of bonus depreciation for 2014. However, the Company requests reconsideration on the issue, as the end of year enactment of bonus depreciation, similar to the timing of enactment in 2014, did not provide a reduction in tax payments in 2015 and consequently, the Company realized no related benefit in 2015. The Company will reflect the larger ADIT balance as of the end of 2015 for purposes of determining the 2016 target revenues.

The impact of bonus depreciation should consider all the relevant facts at the time of enactment, including whether, in fact, the enactment of bonus depreciation resulted in a decrease of cash payments for Hawai'i Electric Light in 2015.

Bonus depreciation allows the Company to take additional deductions on its 2015 income tax return and creates a book/tax difference related to depreciation expense.

The tax effect of this difference is embodied in the accumulated deferred income taxes (ADIT) recorded on the books. The ADIT represents taxes deferred into the future. This tax benefit on accelerated depreciation is required to be normalized, which in this case means the Company retains this ADIT benefit and customers realize the benefit over the book depreciation life of the related assets. The ADIT is effectively an interest free loan from the government for use in providing service to customers. In this case, the interest free loan is in the form of lower income tax payments in the initial years resulting from the accelerated depreciation rates authorized by the bonus depreciation tax law that generates the ADIT. As the ADIT reverses over the book life of the assets, the Company pays back the loan (through higher income tax payments) but does not charge the customer (taxes paid are greater than the taxes charged to customers). Since the ADIT has no borrowing costs (interest) associated with it, ADIT is subtracted from rate base, as the Company has neither a debt nor equity cost associated with these funds.

The point made here is the benefit of ADIT related to bonus depreciation is realized by the Company in the form of the interest free loan from the government (i.e., less payments to the government than indicated per book expense). Consequently, the timing of when the enactment took place is important. Throughout most of 2015,

bonus depreciation had sunset as of December 31, 2014 with no assurance of it extending through 2015. Therefore, with no legislation to support the extension, Hawai'i Electric Light was required to make 2015 estimated tax payments throughout the year based on the tax law in effect at the time of payment, the last of which occurred on December 15, 2015. Subsequent to the last tax payment of 2015, bonus depreciation was enacted as part of the Protecting Americans from Tax Hikes (PATH) Act of 2015 on December 18, 2015. Thus, all of the Company's estimated income tax payments were made assuming no bonus depreciation. If the additional ADIT balance associated with 2015 bonus depreciation were included in the Company's 2015 Rate Base RAM-Return on Investment, the calculation would inaccurately assume that the Company did indeed receive the interest free loan (i.e., lower income tax payments) in 2015, and therefore, the cost of other borrowings was not necessary. However, this was not the case. In effect, the interest free loan from the federal government did not occur in 2015 as the Company paid its taxes assuming no bonus depreciation in compliance with the law then in effect and its 2015 cost of funds were not impacted by the new law¹. Consequently, Hawai'i Electric Light had no benefit (in the form of no cost funds) to pass on to customers in 2015 and target revenues should not be adjusted for the 2015 RAM Revenue Adjustment.

¹ In other words, by not having the benefit of lower income tax payments in 2015 as a result of bonus depreciation, the Company had to utilize debt and/or equity in that amount to contribute to the funding of its operations. But the Company incurred a cost of capital for the use of those funds – they were not interest free. Therefore, there was no benefit of bonus depreciation to pass on to customers in 2015.

Only when the Company is refunded in 2016 for the effect of bonus depreciation would the benefit of the interest free loan be realized. Note that the benefit of "no-cost borrowing" from the period prior to the refund receipt is never realized because tax refunds are not received "with interest." As a result of the enactment in December 2015, Hawai'i Electric Light accrued in December 2015, the deferred taxes due to bonus depreciation, and a larger ADIT balance was reflected on the on the Company's books as of 12/31/15. The benefit is reflected in the 2016 ADIT beginning balance in determining the 2016 Rate Base RAM and 2016 target revenues. Additionally, the 2016 Rate Base RAM calculation incorporates the impact of 2016 bonus depreciation, as provided in the PATH Act, in the change in the 2016 ADIT balance. It should also be noted that the PATH Act of 2015 extended 50% bonus depreciation through 2017 and decreased the percentage to 40% and 30% for 2018 and 2019, respectively.

INFORMAL CA-IR-44

Ref: HECO Response to Informal INFORMAL CA-IR-2 (Bonus Depreciation in 2015).

The Company's response indicates that retrospective consideration of Bonus Tax Depreciation in 2015 for HECO and MECO is "...not necessary since the basis used to calculate the RAM Cap for 2015 and subsequent years already includes the impact of bonus depreciation" but for the HELCO, "...the Company requests reconsideration on the issue, as the end of year enactment of bonus depreciation, similar to the timing of enactment in 2014, did not provide a reduction in tax payments in 2015 and consequently, the Company realized no related benefit in 2015." Please respond to the following:

- a. Provide a calculation of the impact upon last year's HELCO Rate Base RAM if bonus depreciation had been assumed to be effective at the time the RAM increase was calculated, showing the impacts upon all affected workpapers and schedules.
- b. Explain what specific facts and circumstances are different at this time, compared to the information that existing during the last RAM cycle that is believed to merit "reconsideration on the issue".
- c. Provide the dates and amounts of each of the 2015 estimated tax payments that HECO actually made, in support of the statement, "...Hawai'i Electric Light was required to make 2015 estimated tax payments throughout the year based on the tax law in effect at the time of payment."
- d. Provide a schedule showing the dates and amounts of all federal income tax payments and credits made between each subsidiary of HEI (utilities, ASB, etc.), along with any information required to reconcile such intercompany amounts to the actual federal income tax payments remitted to the IRS by HEI for tax year 2015.

Hawaiian Electric Companies Response:

- a. The Companies previously provided calculations of tax depreciation with bonus depreciation for Hawai'i Electric Light's RAM Schedules F1 and F2 in their response to CA-IR-16, Attachment 1, pages 3 and 4, in Transmittal Nos. 15-03, 15-04, and 15-05. If bonus depreciation had been assumed to be effective at the time the 2015 RAM Revenue Adjustment was calculated, the impact (based on the response to CA-IR-16, Attachment 1, pages 3 and 4) would

have been a decrease of approximately \$373,000 (\$6,290,000 - \$6,663,000¹) to Hawai'i Electric Light's Total RAM Revenue Adjustment (Schedule A, line 4). See Attachment 1, revisions to Schedules A, A1, D, D1, F and F1.

- b. The facts and circumstances in 2015 were generally the same as in 2014, since in each of those years, the bonus depreciation provision was enacted after all the estimated payments were due and paid. The request for reconsideration is not based on a change in facts but rather on the issue of whether the Company received a tax benefit associated with 2015 bonus depreciation that should be reflected in the revenue requirements in the 2015 RAM year.

This tax benefit is reflected in the rate base RAM reduction for the accumulated deferred income taxes ("ADIT") associated with the bonus depreciation to be taken on the 2015 federal income tax return. In effect, a rate base RAM reduction for ADIT assumes Hawai'i Electric Light received the tax benefit of an interest-free loan from the government. This interest-free loan occurs when the Company includes the effect of the bonus depreciation deduction in its estimated tax payments (lower taxes paid) throughout the year. However, in 2015, Hawai'i Electric Light's estimated taxes did not assume it would have a deduction for bonus depreciation because the law did not provide for 2015 bonus depreciation until after all 2015 estimated tax payments were made.

¹ See Transmittal No. 15-04, Schedule A, filed June 3, 2015. RAM Revenue Adjustment of \$6,663,000 is derived by removing the Adjustment for 2014 Bonus Tax Depreciation (\$431,234) from the Total Revenue RAM Adjustment Allowed calculation in Note 3.

Consequently, the benefit of the interest-free loan from the government was never realized in 2015 and only when Hawai'i Electric Light receives a refund in 2016 for the effect of bonus depreciation does the Company realize the tax benefit. This tax benefit is appropriately reflected in the 2016 ADIT beginning balance in determining the 2016 Rate Base RAM and 2016 target revenues. Refer to the Company's response to Informal CA-IR-2 for a complete discussion of the Company's position on the effect of 2015 bonus depreciation.

- c. See Attachment 2 for a schedule showing the tax payments made for 2015. The total column on the left represents payments/refunds to and from the Internal Revenue Service ("IRS"). In the first and fourth quarter installments, Hawaiian Electric did not remit any taxes to HEI since the estimates reflect Hawaiian Electric standalone net operating loss carryforwards that eliminated its estimated annualized 2015 taxable income.
- d. See Attachment 2 showing the details of payments making up the total payments and refunds from the IRS.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

DEAN K. MATSUURA
MANAGER, REGULATORY RATE PROCEEDINGS
Hawaiian Electric Company, Inc.
P. O. Box 2750
Honolulu, Hawaii 96840

1 copy
by hand delivery

DATED: Honolulu, Hawaii, May 6, 2016.


