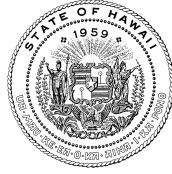


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October 27, 2023

The Honorable Cathy McMorris Rodgers
Chair, Committee on Energy and Commerce

The Honorable Jeff Duncan
Chair, Subcommittee on Energy, Climate, and Grid Security

The Honorable H. Morgan Griffith
Chair, Subcommittee on Oversight and Investigations

RE: Hawaii Public Utilities Commission ("Commission") Response to Additional Questions for the Record from the US House Committee on Energy & Commerce

Dear Chairwoman Rodgers, Chairman Duncan, and Chairman Griffith:

Given the isolation of our islands, we always appreciate an opportunity to elevate our challenges and needs to a broader audience. Thank you for providing such an opportunity at a time when the needs of Hawaii's residents have never been greater. We appreciate all the heartfelt condolences spoken by Committee members, and as before, we continue to focus on supporting victims of the fires and those who have been impacted in numerous ways.

Our responses to your questions following the September 28th hearing are provided below. We also believe that the information provided herein is responsive to Representative Palmer's request for additional information at the September 28th hearing on the Commission's enforcement measures should utilities be found out of compliance with its regulations. If additional needs or questions arise, the Commission will be happy to continue to provide information to support the Committee's investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "LRAsuncion".

Leodoloff R. Asuncion, Jr., Chair

LRA:ljkk

1. If the Hawaii Public Utilities Commission (the Commission) finds that a utility is not complying with regulations or if a utility is not responding to ratepayer reports of maintenance problems, what measures can the Commission take to hold the utility accountable?

By both statute and regulation, the Commission has broad authority to investigate the utilities it regulates and require that said utilities take corrective actions, if necessary. For example, the Commission has the authority under Hawaii Revised Statutes (HRS) § 269-28 to impose civil monetary penalties and fines, following an investigation and hearing, on any utility found to be violating a Commission statute or order. The Commission also has mechanisms, such as incentives within a Performance-Based Regulation Framework, that it uses to trigger monetary penalties when an electric utility is not performing in key areas like service reliability.

Importantly, the Commission also has the authority to provide mandatory direction to a utility related to its operations or use of ratepayer funds after reviewing the relevant record, which is often more effective and results in more expeditious utility improvement than utilizing a contested case proceeding to impose fines. In general, the Commission's oversight of utilities is designed to provide high-level incentives for utilities to operate effectively and safely.

- a. For instance, if a ratepayer reports to the power company that vegetation growing under or on a powerline requires trimming, how does the Commission verify that that work was performed? And if that work is not performed, what enforcement action does the Commission take? How does the Commission exercise enforcement if they find that the power company is not conducting its due diligence to mitigate risks to the public?

If a ratepayer is unable to resolve a vegetation management concern directly with the utility, the Commission offers multiple avenues for ratepayers to submit questions or complaints directly to the Commission for the Commission to ensure appropriate resolution. The Commission's Consumer Affairs and Compliance Section provides informal complaint resolution and enforcement services, including conducting inquiries into the operations, practices, and services records of regulated entities. For example, the Commission can request photographic evidence of work or other documentation from Hawaiian Electric to help verify that vegetation work was performed.

Consumer complaints may be resolved informally via collaborative problem solving between the Commission and the utility, or may result in a formal complaint, which becomes a docketed proceeding and is resolved through a formal record-building process that may include an evidentiary hearing and result in appropriate corrective actions. As described above, such corrective actions can range from issuing mandatory direction to

a utility to assessing civil monetary penalties. The Commission's enforcement activities vary based on the situation. In the instant case, to the best of our knowledge, the Commission has not received or been asked to resolve any complaints about vegetation management on Maui in the last five years.

- b. What steps has the Commission taken to monitor or oversee vegetation management activities by Hawaiian Electric and its subsidiaries or affiliates (referred to here collectively as "Hawaiian Electric") in the past five years?

In the past five years, the Commission has taken multiple actions to monitor and oversee the utility's vegetation management practices. For example, the Commission has issued several inquiries into Hawaiian Electric's work and initiatives to mitigate service disruptions, including via vegetation management. The Commission also reviewed spending, budgets, and operational practices and goals for asset management and vegetation management in each of the utility's most recent rate cases.

As part of its oversight of Hawaiian Electric's vegetation management program, the Commission also relies on independent audits of utility programs and practices. In 2019, the Commission itself ordered a management audit of Hawaiian Electric to help inform the development of the Performance-Based Regulation ("PBR") Framework.¹ The audit provided insights into areas of improvement for Hawaiian Electric, including vegetation management. Hawaiian Electric's 2019 rate case also included an independent evaluation of the effectiveness of the utility's transmission and distribution systems and investments, focusing heavily on the effectiveness of the asset management programs, including vegetation management.

Similarly, a 2020 independent assessment of the utility's resilience activities evaluated vegetation management practices and provided recommendations for improvement that have informed the utility's ongoing activities and measures within the Climate Adaptation Transmission and Distribution Resilience Program application ("T&D Resilience Program"), which, as noted previously, is the subject of Commission Docket No. 2022-0135. The Commission continues to review the responses to Parties' inquiries as part of the T&D Resilience Program, which include data on vegetation-related issues like distribution line miles trimmed in recent years, future trimming targets, and updates on the utility's vegetation management practices and approaches.

2. How does the Commission verify whether a utility implements safety protocols or disaster preparedness upgrades described in its plans it submits to the Commission? What steps does it take to do so?

¹Please see Docket No. 2019-0085, "Management Audit of the Hawaiian Electric Company (HECO), Final Report," filed May 13, 2020.

The Commission imposes robust reporting requirements on the utilities it regulates, particularly related to core utility functions such as safety and reliability, as well as a utility's approved use of funds through customer rates. Hawaiian Electric provides regular reports to the Commission on issues such as public safety incidents, accidents, and outages. The Commission has the broad investigative authority to follow up on these reports, including issuing additional information requests, requiring additional filings or reports, or scheduling meetings or hearings to discuss issues directly with Hawaiian Electric's leadership and staff. For example, the Commission may require photographic evidence of work, data sets, workpapers, original documentation, or other information from Hawaiian Electric to help verify the implementation of planned protocols and upgrades.

The Commission also works with Parties to its proceedings to identify additional issues and information aligned with their areas of expertise and interest. The Consumer Advocate frequently suggests and tracks reporting metrics for projects that are approved for cost recovery from ratepayers. For example, the Consumer Advocate has recommended that, should the Commission approve Hawaiian Electric's T&D Resilience Program, the utility be required to report on spend rate, changes to the cost and scope of the Program, metrics and criteria related to resiliency and risks, and findings from community engagement efforts as they relate to resiliency.

3. Hawaiian Electric's response to the Committee's August 30, 2023, letter states that Hawaiian Electric began developing a Wildfire Mitigation Plan in 2019 and finalized the plan in January 2023. The Committee is aware of a document filed with the Commission on October 2, 2023. According to the *Wall Street Journal*, Hawaiian Electric shared a copy with the Commission on September 27, 2023. When did the Commission first receive this plan?

The Commission requested and received a copy of Hawaiian Electric's Wildfire Mitigation Plan on September 27th after becoming aware of the document through review of Hawaiian Electric's written response to the Subcommittee's questions. Aside from the document itself, the Commission has also received pieces of the underlying information contained in the Plan through various docket submissions over the past several years, including Hawaiian Electric's application for a T&D Resilience Program and other inquiries. In response to Commission inquiries, Hawaiian Electric formally filed the Wildfire Mitigation Plan in its entirety with the Commission on October 2nd in Docket No. 2022-0135.