

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

THE STATE OF HAWAII)
DEPARTMENT OF BUSINESS,)
ECONOMIC DEVELOPMENT,)
AND TOURISM)

DOCKET NO. 2014-0135

For an Order Approving the Green)
Infrastructure Loan Program)

ORDER NO. 34368

TERMINATING THE SUSPENSION OF,
AND APPROVING, PROGRAM NOTIFICATION NO. 10

2017 JAN 30 A 9:17
PUBLIC UTILITIES
COMMISSION

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

THE STATE OF HAWAII)
DEPARTMENT OF BUSINESS,)
ECONOMIC DEVELOPMENT,)
AND TOURISM)

Docket No. 2014-0135

Order No. **34368**

For an Order Approving the Green)
Infrastructure Loan Program)
_____)

TERMINATING THE SUSPENSION OF,
AND APPROVING, PROGRAM NOTIFICATION NO. 10

By this Order, the commission: (1) terminates the suspension of Program Notification No. 10 filed by the Hawaii Green Infrastructure Authority ("HGIA") on November 28, 2016;¹ and (2) approves PN10, subject to a \$3,000,000 cap on deployments made under PN10.

I.

Background

On November 28, 2016, HGIA filed PN10 to expand the Eligible Participants allowed under the GEMS Commercial

¹"Program Notification No. 10 for the Green Infrastructure Loan Program; Attachment A; and Certificate of Service," filed on November 28, 2016 ("PN10").

Photovoltaic ("PV") Loan Product: Project Sponsor, to include consumer leases or power purchase agreements ("PPA"), which are pooled together in a single investment by a third party investor, referred to as "Securitized Consumer Leases or Power Purchase Agreements."² The underlying GEMS Commercial PV Loan Product: Project Sponsor, went into effect on September 20, 2016, as a part of PN9, filed by HGIA on August 26, 2016.³

A.

Consumer Advocate's Letter

On December 9, 2016, the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") filed a letter with the commission expressing the following concerns regarding PN10:

1. "[The] GEMS Program was not intended to be a vehicle for third-party lending."⁴

²See PN10 at 4.

³See "Program Notification No. 9 for the Green Infrastructure Loan Program; Attachment A & B; and Certificate of Service," filed on August 26, 2016 ("PN9"). The commission allowed PN9 to take effect after passage of the fifteen business-day term for review.

⁴Letter from Consumer Advocate, filed December 9, 2016 ("CA Letter"), at 7.

2. Greater scrutiny should be applied when deploying GEMS funds to third-party investors "to ensure that the benefits of GEMS financing will accrue to the consumer rather than being absorbed by the third-party."⁵

3. There is insufficient analysis that the proposed use of GEMS Program funds for third-party investment in consumer leases/PPAs is prudent and cost-effective and would significantly benefit consumers. Specifically, the Consumer Advocate contended that the comparative savings analysis provided by HGIA is insufficient, and that a comparison of customer bills with PV under a (1) GEMS financed lease/PPA, and (2) market-based lease/PPA, would isolate the benefits of the use of GEMS financing and would be more informative.⁶

B.

HGIA's Response Letter

On December 16, 2016, HGIA filed a letter with the commission and responded to the Consumer Advocate's concerns as follows:

⁵CA Letter at 4.

⁶See CA Letter at 5-7; and PN10 at 6-8 (comparing the costs for a 1,200 kWh/month customer utilizing (1) no PV, and (2) PV under a twenty-year, \$0.15 per kWh PV system lease/PPA).

1. Hawaii Revised Statutes § 196-62 provides that deployments of GEMS Program funds "may include loans made to private entities, whether corporations, partnerships, limited liability companies, or other persons, which entities may lease or provide green infrastructure equipment to electric utility customers, as well as direct loans to electric utility customers, on terms approved by the authority."⁷

2. Third-party investors who are willing to purchase, own, and maintain a PV system and sell the energy produced by the PV system to a rate payer via a long-term lease or PPA are critical to increasing access to clean renewable energy for rate payers that: (a) do not have sufficient tax liability to fully leverage the Energy Investment Tax Credits; (b) are not comfortable with owning and maintaining a PV system; and/or (c) are unwilling to obtain a loan to purchase a PV system.⁸ Moreover, all of the existing GEMS Program consumer protection mechanisms and requirements will apply individually to each lease financed under PN10, including bill savings requirements, installed cost maximums, system sizing maximums, minimum solar equipment standards, and solar installer requirements that are not required by other

⁷HRS § 196-62. See also Letter from HGIA, filed December 16, 2016 ("HGIA Letter"), at 1-2.

⁸HGIA Letter at 2.

lease/PPA providers.⁹ These consumer protection mechanisms, coupled with market drivers, are critical features to ensure that savings are passed through to the consumer.¹⁰

3. Requiring a guarantee that GEMS financed leases/PPAs are "better than market" would be nearly impossible given the constantly changing market for such arrangements, and the need to constantly research difficult-to-obtain proprietary financing terms and conditions of other leases/PPAs being offered.¹¹

C.

Suspension of PN10

On December 16, 2016, the commission issued Order No. 34219 suspending PN10, pending an informal conference to address the concerns raised by the Consumer Advocate.

On December 22, 2016, the commission sent a letter to all docket parties setting the informal conference for January 4, 2017, at the commission's Hearing Room, from 9:00 a.m. to 11:00 a.m.

The informal conference was held at the above-stated location and time on January 4, 2017.

⁹HGIA Letter at 3.

¹⁰See HGIA Letter at 4.

¹¹See HGIA Letter at 3-4.

II.

Discussion

According to the Program Order, the commission uses the following criteria, in part, to review GEMS Program matters:

1. Whether the GEMS Program proposal is cost-effective;
2. Whether the GEMS Program proposal supports the goal of providing greater green infrastructure access for underserved customers;
3. Whether the GEMS Program proposal is likely to make positive contributions to the overall GEMS Program portfolio of loans and investments; and
4. Whether the GEMS Program proposal positively impacts the achievement of Hawaii's Renewable Portfolio Standards and Energy Efficiency Portfolio Standard requirements, including the support of stakeholder coordination in achieving the State's clean energy goals.¹²

A.

Cost-effectiveness

The determination of cost-effectiveness requires a comparative analysis of relative costs, outcomes, and alternative courses of action. Given the nascent stage of GEMS Program fund deployments, such an analysis is difficult. While the commission recognizes the urgent need to deploy funds to offset the ongoing

¹²See Decision and Order No. 32318, filed September 30, 2014 ("Program Order"), at 37.

costs of the GEMS Program, the commission also acknowledges the Consumer Advocate's concerns that the relative costs of financing provided under PN10 are not clear, and that there exists a risk that the benefits of GEMS financing may disproportionately accrue to the third-party investor at the expense of the consumer.

To address this concern, HGIA correctly points out that an investor must realize an adequate return on their investment or the investor will pursue an alternative investment, and the consumer who is not able or willing to purchase and own a PV system will lose out on the benefit.¹³ At the same time, the investor's potential return on investment is constrained by market forces and the GEMS Program consumer protection mechanisms, including a minimum bill savings requirement.¹⁴

After reviewing the entire record, the commission finds that market forces and the GEMS Program's consumer protections will help to mitigate the risks of GEMS Program fund benefits accruing to third-party investors at the expense of consumers.

¹³See HGIA Letter at 3.

¹⁴See HGIA Letter at 4.

B.

Green Infrastructure Access for Underserved Customers

The commission finds that GEMS Program fund deployments made under PN10 will increase access to green infrastructure for underserved customers. As illustrated by the Consumer Advocate, there are multiple private sector companies that appear willing to "offer '\$0 down,' 20-year solar lease arrangements" in the State.¹⁵ The existence of such a mature market for solar lease arrangements strongly suggests that any consumer seeking to lease a PV system under PN10 is aware of the other market offerings and, for some reason, is unable to access those offerings. As such, among other reasons, it appears that a consumer under PN10 may be a consumer that could not acquire other market-based financing, and would thus be "underserved."

C.

GEMS Program Portfolio

As noted above, the GEMS Program is in the beginning phase of deploying funds. Accordingly, at this time, any loan would positively contribute to the overall GEMS Program portfolio of loans and investments.

¹⁵CA Letter at 6 (listing leases offered by Sunrun, Sunetric, and SolarCity).

D.

Hawaii's Renewable Portfolio Standards

The commission finds that loans issued under PN10 will positively impact the achievement of Hawaii's Renewable Portfolio Standards by providing additional options to acquire and utilize renewable energy through PV systems.

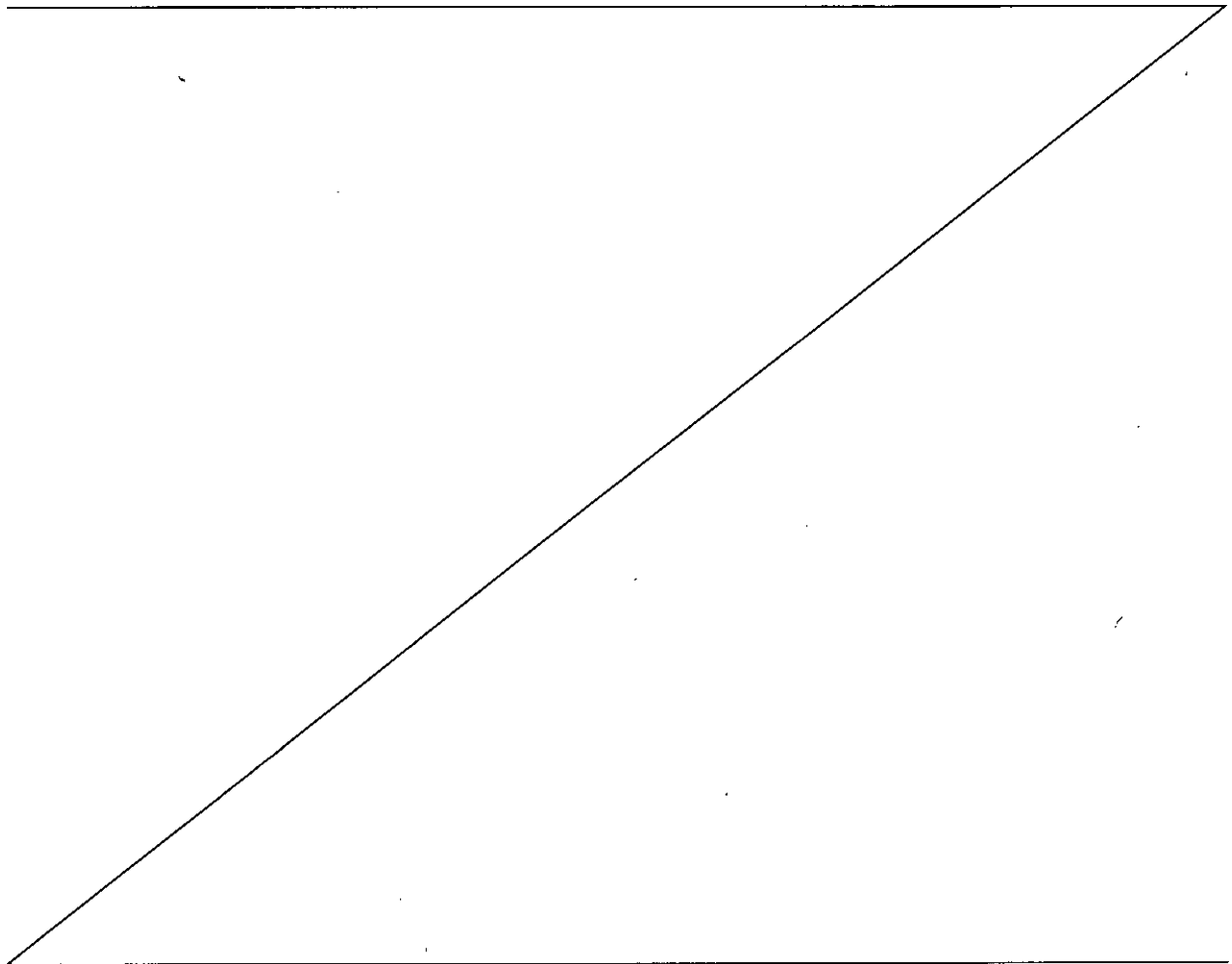
E.

Additional Considerations

The commission finds that the legislature expressly provided that GEMS Program funds may be used as proposed in PN10. Pursuant to HRS § 196-62, HGIA is authorized to loan GEMS Program funds to private third parties that, in turn, "may lease or provide green infrastructure equipment to electric utility customers, as well as direct loans to electric utility customers, on terms approved by [HGIA]." ¹⁶ It follows that a third-party that would utilize GEMS Program funds to lease green infrastructure equipment to electric utility customers would not do so unless that third-party were to realize some financial gain.

¹⁶HRS § 196-62.

As discussed above, the commission agrees with HGIA that, in the present matter, the consumer protection mechanisms required by the GEMS Program act as a safeguard to ensure that the benefits of the GEMS Program's funds reach the consumer in a meaningful way. As an additional safeguard, the commission finds that deployments made under PN10 should be capped at \$3,000,000. Should HGIA desire to exceed the \$3,000,000 cap, HGIA is directed to file a new Program Notification to include a justification for increasing the cap. This will allow additional review of the cost-effectiveness of GEMS Program fund deployments made under PN10.



III.

Orders

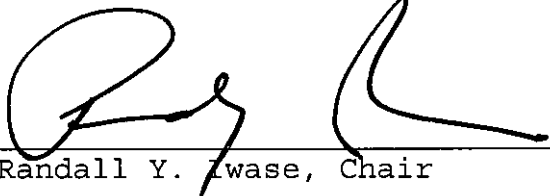
THE COMMISSION ORDERS:

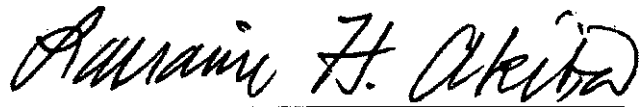
1. The suspension of PN10 pursuant to Order No. 34219
be and is hereby terminated.

2. PN10 is approved, subject to a cap of \$3,000,000 on
deployments made thereunder.

DONE at Honolulu, Hawaii JAN 30 2017.


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:


Shannon Mears
Commission Counsel

2014-0135.kmc

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

DOUGLAS S. CHIN
ATTORNEY GENERAL OF HAWAII
DEBORAH DAY EMERSON
GREGG J. KINKLEY
DEPUTY ATTORNEYS GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAII
425 Queen Street
Honolulu, HI 96813

DANIEL G. BROWN
MANAGER-REGULATORY NON-RATE PROCEEDINGS
HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LTD.
P.O. Box 2750
Honolulu, HI 96840-0001

RICK REED
EXECUTIVE DIRECTOR
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, HI 96837

Certificate of Service

Page 2

WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, HI 96744

HENRY Q. CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
P.O. Box 37158
Honolulu, HI 96837-0158

DOUGLAS A. CODIGA, ESQ.
SCHLACK ITO
A LIMITED LIABILITY LAW COMPANY
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, HI 96813

Counsel for Blue Planet Foundation