

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
KAUAI ISLAND UTILITY COOPERATIVE)
)
For Approval to commit funds in)
Excess of \$500,000 for the purchase)
Of the Kauai Power Partners)
Facility and related matters)
_____)

DOCKET NO. 03-0223

ORDER NO. 20556

Filed October 6, 2003
At 10 o'clock A.M.

for Brooke K. Maggi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2003 OCT -6 P 3:52

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of))	
KAUAI ISLAND UTILITY COOPERATIVE))	Docket No. 03-0223
For Approval to commit funds in))	
Excess of \$500,000 for the purchase)))	Order No. 20556
Of the Kauai Power Partners))	
Facility and related matters))	
_____))	

ORDER

I.

On September 11, 2003, KAUAI ISLAND UTILITY COOPERATIVE ("KIUC") and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") (collectively referred to as "Parties") filed their Stipulated Procedural Order for the commission's consideration and approval, pursuant to Order No. 20402, filed on August 28, 2003.

Upon review, the commission will approve the Parties Stipulated Procedural Order, attached hereto as Exhibit 1, provided that the Stipulated Regulatory Schedule (designated by the parties as Exhibit A to their stipulated prehearing order) is modified by deleting the item 17 reference to "No later than Friday, November 28, 2003" as the date of the issuance of the decision and order in this docket. The commission will defer setting a deadline for the decision and order at this time.

The Stipulated Procedural Order states that KIUC agrees to waive the 90-day review period to act upon the application and

render a decision and order.¹ The Consumer Advocate further represents that it has no objection to KIUC's waiver of the 90-day review period. The commission will approve KIUC's waiver of the 90-day review period.

II.

THE COMMISSION ORDERS:

1. The parties' stipulated procedural order, filed on September 11, 2003 and attached hereto as Exhibit 1, is approved, subject to the modification that the item 17 reference to "No later than Friday, November 28, 2003" of their Stipulated Regulatory Schedule, is deleted.

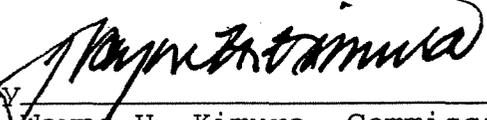
2. KIUC's waiver of the 90-day review period by which the commission must issue a decision and order is approved.

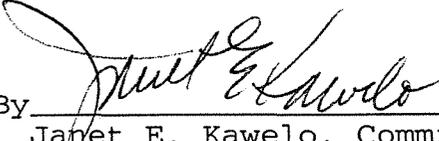
¹Pursuant to paragraph 2.3.g.2 of the commission's General Order No. 7, the 90-day review period expires on November 17, 2003.

DONE at Honolulu, Hawaii this 6th day of October,
2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kevin M. Katsura
Commission Counsel

03-0223.eh

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
) Docket No. 03-0223
KAUAI ISLAND UTILITY COOPERATIVE)
)
For approval to commit funds in excess of)
\$500,000 for the purchase of the Kauai)
Power Partners facility and related matters)

STIPULATED PROCEDURAL ORDER NO. _____

and

CERTIFICATE OF SERVICE

Filed _____

At _____ o'clock ____m.

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	Docket No. 03-0223
KAUAI ISLAND UTILITY COOPERATIVE)	
)	
For approval to commit funds in excess of)	
\$500,000 for the purchase of the Kauai)	
<u>Power Partners facility and related matters</u>)	

STIPULATED PROCEDURAL ORDER

KAUAI ISLAND UTILITY COOPERATIVE ("Applicant") and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (the "Consumer Advocate"), by and through their respective attorneys, do hereby stipulate to the following provisions of this Stipulated Procedural Order as mutually acceptable to each.

ACCORDINGLY, IT IS ORDERED that the following Statement of Issues, Schedule of Proceedings, and procedures shall be utilized in this docket:

I.

STATEMENT OF THE ISSUES

The issues in this docket are:

1. Whether the proposed commitment of funds for the purchase by Applicant of the "KPP Facility" (as that term is defined in the Application filed in this docket on August 18, 2003) should be approved pursuant to Section 2.3.g.2 of the Commission's General Order No. 7.
2. Whether the financing arrangements proposed to be obtained by Applicant for the purpose of acquiring the KPP Facility should be approved pursuant to Hawaii

Revised Statutes ("HRS") §269-17 and §269-19.

3. Whether the regulatory condition set forth in both Decision and Order No. 16396 filed on June 29, 1998 and Decision and Order No. 18388 filed on February 23, 2001, both in Docket No. 97-0213, should be terminated or otherwise deemed satisfied following the purchase of the KPP Facility by Applicant.
4. Whether the order issued in Decision and Order No. 18659 filed on June 29, 2001 in Docket No. 97-0213 should no longer be applicable following the purchase of the KPP Facility by Applicant.
5. Whether any other relief as may be just and reasonable should be granted under the circumstances.

II.

SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached hereto as Exhibit "A." Notwithstanding the above, the parties may amend the Stipulated Regulatory Schedule as may be agreed in writing and approved by the Commission from time to time. However, the intent of the parties in agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources, as well as to accommodate Applicant's request that a Decision and Order be issued by the Commission regarding the Application ("Application") filed in this docket on August 18, 2003 by no later than November 30, 2003. See footnote "****" in Exhibit "A." Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change; provided, however, that the parties reserve their rights to request a change in the schedule and proceedings after Applicant's Rebuttal

Statement to the Consumer Advocate's Position Statement is filed. See footnote "***" in Exhibit "A."

The parties further acknowledge that under Section 2.3.g.2 of the Commission's General Order No. 7, the Commission's 90-day period to act upon the Application and render a Decision and Order expires on November 17, 2003. Pursuant to footnote 9 of the Application, Applicant agreed to extend the Commission's 90-day period until Applicant's requested November 30, 2003 date. Without modifying its request for approval by November 30, 2003, Applicant hereby agrees to waive this 90-day review period. The Consumer Advocate hereby states that it has no objection to Applicant's waiver of the 90-day review period.

III.

REQUESTS FOR INFORMATION

Information requests may be submitted by the Consumer Advocate to Applicant at any time within the period set forth in Exhibit "A" attached hereto, unless otherwise agreed to by Applicant. Information requests may be submitted by Applicant to the Consumer Advocate at the time(s) set forth in Exhibit "A" attached hereto, unless otherwise agreed to by the Consumer Advocate. After the scheduled date for submitting information requests has passed, no additional information requests shall be allowed except upon stipulation by the parties.

To the extent practical, responses will be submitted no later than the time periods set forth in Exhibit "A" attached hereto. If a party is unable to provide the information requested within that time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information. If the parties are unable to agree, the responding party may

seek approval for the late submission of responses from the Commission upon a showing of good cause. It is then within the Commission's discretion to allow such filings.

Notwithstanding the above, as provided in footnote "*" of Exhibit "A," Applicant agrees to endeavor to provide a response to the Consumer Advocate's information requests within five (5) business days from the date the particular request(s) were provided to Applicant; provided, however, that in the event Applicant is unable to provide a response within said 5-day period, Applicant agrees to inform the Consumer Advocate and provide said responses as soon as possible thereafter, but in no event later than ten (10) business days after the receipt of the particular information request unless otherwise agreed to by the Consumer Advocate.

In addition, because it is anticipated that the Consumer Advocate will be submitting numerous sets of information requests to Applicant within the time period set forth in Exhibit "A" and that Applicant will be providing responses to these requests on a piecemeal basis, Applicant and the Consumer Advocate will not file their respective information requests and responses with the Commission until the dates set forth in Exhibit "A." The purpose of this is to give sufficient time for all responses to be compiled and submitted as an entire set in order to avoid overburdening the Commission with various multiple filings and partial filings. Under this arrangement, on September 15, 2003, September 26, 2003, October 13, 2003 and October 27, 2003, the Consumer Advocate will file with the Commission all of the information requests it has provided to Applicant up to that time for which Applicant has provided a response. Within two (2) business days after the filing, Applicant will compile and file with the Commission all of its responses to those information requests.

Notwithstanding anything herein to the contrary, including Part V, infra, in lieu of responses to information requests that would require the reproduction of voluminous documents or materials (documents over 100 pages), the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or other readily usable electronic medium, the party responding to the information request may make the diskette or such electronic medium available to the other parties and the Commission. A party shall not be required, in a response to an information request, to provide data that is already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part IV, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but

not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to the protective order governing this docket.

A party seeking production of documents notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

The responses of each party to information requests shall adhere to a uniform system of numbering agreed upon by the parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-IR-1," and a response to this information request shall be referred to and designated as "Response to CA-IR-1."

Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference the attached responsive document, indicating the name of the respondent for each response.

IV.

MATTERS OF PUBLIC RECORD

In order to provide a means to reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that Applicant have filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for

inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document.

V.

COPIES OF FILINGS AND INFORMATION REQUESTS

1. Filings: Copies of all filings with the Commission shall be provided to the following parties, unless a protective order issued in connection with this docket states otherwise:

Public Utilities Commission
465 South King Street
First Floor
Honolulu, HI 96813
Original plus 9 copies

Laureen K. Wong, Esq.
Cheryl Kikuta
Division of Consumer Advocacy
250 South King Street
Room 825
Honolulu, HI 96813
E-Mail: [Laureen K Wong@dcca.state.hi.us](mailto:Laureen.K.Wong@dcca.state.hi.us) and
ckikuta@dcca.state.hi.us
Facsimile Number: (808) 586-2780
4 copies

Alton Miyamoto
Kauai Island Utility Cooperative
4463 Pahe'e Street
Lihue, Kauai, HI 96766-2032
E-Mail: amiyamot@kiuc.coop
Facsimile Number: (808) 246-8268
2 copies

Alan M. Oshima, Esq.
Kent D. Morihara, Esq.
Oshima Chun Fong & Chung LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813
E-Mail: amo@ocfc.com and
kdm@ocfc.com
Facsimile Number: (808) 531-8466
3 copies

2. Information Requests and Responses: Copies of all information requests and information request responses shall be provided to the following parties, unless a protective order issued in connection with this docket states otherwise:

Public Utilities Commission
465 South King Street
First Floor
Honolulu, HI 96813
Original plus 9 copies

Laureen K. K. Wong, Esq.
Cheryl Kikuta
Division of Consumer Advocacy
250 South King Street
Room 825
Honolulu, HI 96813
E-Mail: [Laureen K Wong@dcca.state.hi.us](mailto:Laureen_K_Wong@dcca.state.hi.us) and
ckikuta@dcca.state.hi.us
Facsimile Number: (808) 586-2780
4 copies

Alton Miyamoto
Kauai Island Utility Cooperative
4463 Pahe'e Street
Lihue, Kauai, HI 96766-2032
E-Mail: amiyamot@kiuc.coop
Facsimile Number: (808) 246-8268
2 copies

Alan M. Oshima, Esq.
Kent D. Morihara, Esq.
Oshima Chun Fong & Chung LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813
E-Mail: amo@ocfc.com and
kdm@ocfc.com
Facsimile Number: (808) 531-8466
3 copies

3. All pleadings, briefs and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to Chapter 61, Subchapter 2, Section 6-61-15 of the Commission's Rules of Practice and Procedure.

4. Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or via facsimile. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette or e-mail in a standard electronic format that is readily available by the parties. The parties agree to use Word 97 or Word 2000 as the standard programming format for filings in this case. However, if workpapers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such workpapers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000 as long as the applicable format is identified. In the event a copy of a filing, information request or information request response is delivered to a party via diskette or e-mail, unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or via facsimile as provided in Parts V.1 and V.2 above.

VI.

COMMUNICATIONS

Chapter 61, Subchapter 3, Section 6-61-29 of the Commission's Rules of Practice and Procedure concerning ex parte communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel through their own counsel or designated official only as to matters of process and procedure.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in

this proceeding shall be served on the opposing party.

All motions, supporting memoranda, briefs, and the like shall also be served on opposing counsel.

VII.

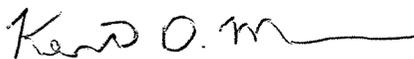
GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket.

Pursuant to Chapter 61, Subchapter 3, Section 6-61-37 of the Commission's Rules of Practice and Procedure, this Stipulated Procedural Order shall control the subsequent courses of the proceeding, unless modified at or prior to the hearings to prevent manifest injustice.

This Stipulated Procedural Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Procedural Order by facsimile for initial submission to the Commission to be followed by the filing of originals of said facsimile pages.

DATED: Honolulu, Hawaii, this 11th day of September, 2003.



ALAN M. OSHIMA
KENT D. MORIHARA

Attorneys for Applicant
KAUAI ISLAND UTILITY COOPERATIVE



Attorney for the
DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS

APPROVED AND SO ORDERED AT HONOLULU, HAWAII THIS _____ DAY
OF _____, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura, Commissioner

By _____
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Kevin M. Katsura
Commission Counsel

EXHIBIT "A"

STIPULATED REGULATORY SCHEDULE

Docket No. 03-0223

	DATE	DURATION (business days)	PROCEDURAL STEPS
1.	Monday, August 18, 2003	---	Application Filed at PUC
2.	Thursday, August 28, 2003 to Wednesday, October 22, 2003	---	Informal Information Requests (IRs) from Consumer Advocate to Applicant (Submitted to Applicant Only)*
3.		5*	Applicant's Responses to Consumer Advocate's Informal Information Requests (Submitted to Consumer Advocate Only)*
4.	Monday, September 15, 2003		Filing of Consumer Advocate's IRs with Commission*
5.	Wednesday, September 17, 2003	2*	Filing of Applicant's Responses to Consumer Advocate's IRs with Commission*
6.	Friday, September 26, 2003		Filing of Consumer Advocate's IRs with Commission*
7.	Tuesday, September 30, 2003	2*	Filing of Applicant's Responses to Consumer Advocate's IRs with Commission*
8.	Wednesday, October 8, 2003	---	Technical Meeting Between Applicant and Consumer Advocate
9.	Monday, October 13, 2003		Filing of Consumer Advocate's IRs with Commission*
10.	Wednesday, October 15, 2003	2*	Filing of Applicant's Responses to Consumer Advocate's IRs with Commission*
11.	Monday, October 27, 2003	---	Consumer Advocate's Position Statement
12.	Monday, October 27, 2003		Filing of Consumer Advocate's IRs with Commission*
13.	Wednesday, October 29, 2003	2*	Filing of Applicant's Responses to

	DATE	DURATION (business days)	PROCEDURAL STEPS
			Consumer Advocate's IRs with Commission*
14.	Friday, October 31, 2003	---	Applicants' Submission of IRs to Consumer Advocate (if any)
15.	Friday, November 7, 2003	5	Consumer Advocate's Responses to Applicants' Submission of IRs (if any)
16.	Friday, November 14, 2003	---	Applicants' Rebuttal Statement to Consumer Advocate's Position Statement**
17.	No later than Friday, November 28, 2003	---	Decision and Order***

* Applicant and the Consumer Advocate have agreed that the Consumer Advocate shall have the right to informally provide Applicant with information requests at any time between the period of August 28, 2003 through October 22, 2003. Applicant agrees to endeavor to provide a response to the Consumer Advocate's information requests within five (5) business days from the date the particular request(s) were provided to Applicant; provided, however, that in the event Applicant is unable to provide a response within said 5-day period, Applicant has agreed to inform the Consumer Advocate and provide said responses as soon as possible thereafter, but in no event later than ten (10) business days after the receipt of the particular information request unless otherwise agreed to by the Consumer Advocate.

Because it is anticipated that the Consumer Advocate will be submitting numerous sets of information requests to Applicant within the above time period and that Applicant will be providing responses to these requests on a piecemeal basis, Applicant and the Consumer Advocate do not intend to file their respective information requests and responses with the Commission until the dates set forth in the schedule above. The purpose of this is to give sufficient time for all responses to be compiled and submitted as an entire set in order to avoid overburdening the Commission with various multiple filings and partial filings. Under this arrangement, on September 15, 2003, September 26, 2003, October 13, 2003 and October 27, 2003, the Consumer Advocate will file with the Commission all of the information requests it has provided to Applicant up to that time for which Applicant has provided a response. Within two (2) business days after the filing, Applicant will compile and file with the Commission all of its responses to those information requests.

** The parties reserve their right to propose revisions to the procedural steps and resulting procedural schedule at this point in the process. Such revisions may include, but not be limited to, a procedural schedule that requires the filing of additional information requests and responses, technical meetings, and additional filings in support of respective filed positions.

*** Pursuant to the Application, Applicant has requested that a Decision and Order be issued by the Commission by no later than November 30, 2003. However, because November 30, 2003 does not fall on a business day, Applicant and the Consumer Advocate hereby acknowledge that this request effectively requires the Commission to issue its Decision and Order by no later than Friday, November 28, 2003.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Stipulated
Procedural Order No. _____ upon the following parties by hand delivery
or by mail, postage prepaid and properly addressed.

LAUREEN K. K. WONG, ESQ.
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
250 S. King Street
Room 825
Honolulu, Hawai'i 96813

MR. ALTON MIYAMOTO, President and Chief Executive Officer
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, Kauai, HI 96766-2032

ALAN M. OSHIMA, ESQ.
KENT D. MORIHARA, ESQ.
OSHIMA CHUN FONG & CHUNG LLP
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Dated: _____, 2003

Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20556 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

ALAN M. OSHIMA, ESQ.
FRANCIS K. MUKAI, ESQ.
LINNELL T. NISHIOKA, ESQ.
KENT D. MORIHARA, ESQ.
Oshima Chun Fong & Chung LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

ALTON MIYAMOTO
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, HI 96766-2032





Karen Higashi

DATED: October 6, 2003