

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Distributed Generation)
in Hawaii.)
_____)

DOCKET NO. 03-0371

ORDER NO. 21112

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

2004 JUL 13 A 8:00

RECEIVED

Filed July 12, 2004
At 9 o'clock A .M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)	
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PUBLIC UTILITIES COMMISSION)	Docket No. 03-0371
)	
Instituting a Proceeding to)	Order No. 21112
Investigate Distributed Generation)	
In Hawaii.)	
_____)	

ORDER

I.

Introduction

On June 18, 2004, Life of the Land filed a Motion to Compel Responses to Information Requests ("Motion to Compel"),¹ which sought to compel the Department of Business, Economic Development and Tourism ("DBEDT") to provide responsive answers to Life of the Land's Information Requests which were filed on May 24, 2004 ("Information Requests"). Life of the Land requests the commission to: (1) compel DBEDT to provide responsive answers to the Information Requests and provide further responses to LOL-SOP-IR 20, 23, 24, 25, and 26; and (2) award Life of the Land \$100 in costs for filing this motion. On June 22, 2004, DBEDT filed a Response to Life of the Land's Motion to Compel.

¹Life of the Land did not request a hearing; accordingly, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-41(g), the commission shall decide this matter upon the pleadings, memoranda, and other documents filed.

In support of its Motion to Compel, Life of the Land argues the following: (1) DBEDT did not place each response on a separate page in violation of Prehearing Order No. 20922; (2) DBEDT's responses are unsigned; (3) DBEDT's responses failed to answer the Information Requests.

II.

Discussion

The Hawaii Rules of Civil Procedure as amended ("HRCP"), provides guidance in this matter as Rule 37(a)(2), specifies that a motion for an order compelling an answer "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action."²

Upon review, the commission finds that the Motion to Compel has no merit. The Motion to Compel did not include the certification required by HRCP 37(a)(2). Life of the Land has not convinced the commission that it has in good faith conferred or attempted to confer with DBEDT to secure the necessary information or motion without commission action. DBEDT has indicated in its response to Life of the Land's motion to compel that it "stands ready to discuss its replies in a dialogue with

²Pursuant to HAR § 6-61-1, the commission may refer to the HRCP for guidance whenever HAR Title 6, Chapter 61 is silent on a matter.

any party."³ Accordingly, the commission concludes that Life of the Land's Motion to Compel is premature and should be denied.⁴

III.

Orders

THE COMMISSION ORDERS:


Life of the Land's motion to compel DBEDT to provide responsive answers to Life of the Land's Information Requests and provide further responses to LOL-SOP-IR 20, 23, 24, 25, and 26 and any other relief stated in the Motion to Compel is denied.

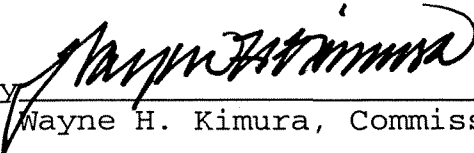
³Moreover, Life of the Land filed its motion to compel on June 18, 2004, just 5 days prior to a scheduled technical meeting on June 23, 2004, where the Parties and Participants could have easily clarified their responses to Information Requests.

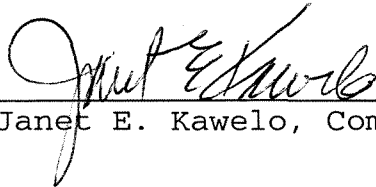
⁴Consistent with Rule 37, HRCF, the commission expects the Parties and Participants in this docket to attempt to work out their discovery differences among themselves first and seek the commission assistance as a last resort.

DONE at Honolulu, Hawaii this 12th day of July, 2004.


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

03-0371.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21112 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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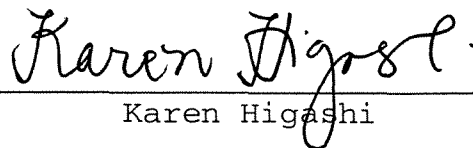
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DATED: July 12, 2004