

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Investigation of)
HAWAIIAN ELECTRIC COMPANY, INC.;)
HAWAII ELECTRIC LIGHT COMPANY, INC.;)
and MAUI ELECTRIC COMPANY, LIMITED)
Related to the Major Power Outages of)
October 15-16, 2006.)

DOCKET NO. 2006-0431

ORDER NO. 23097

Filed Dec. 1, 2006
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

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K. Higashi

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In the Matter of the Investigation of)
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Docket No. 2006-0431

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ORDER

By this Order, the commission denies Life of the Land's ("LOL") Motion to Intervene filed on November 8, 2006 ("Motion to Intervene") in the commission's investigation of HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"); HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"); and MAUI ELECTRIC COMPANY, LIMITED's ("MECO") (collectively, the "HECO Companies") involvement in the major power outages that occurred on the islands of Oahu, Hawaii, and Maui on October 15-16, 2006 ("Power Outages").

I.

Background

A.

The Investigation

HECO, HELCO, and MECO are Hawaii corporations and public utilities as defined by Hawaii Revised Statutes ("HRS") § 269-1 and, thus, are regulated by the commission under Chapter 269, HRS. The HECO Companies are engaged in the production, purchase, transmission, distribution, and sale of

electricity on the islands of Oahu, Hawaii, Maui, Molokai and Lanai.¹

By Order No. 22986, filed on October 27, 2006 ("Order No. 22986"), the commission initiated this investigation to examine the HECO Companies' conduct related to the Power Outages of October 15-16, 2006.² In Order No. 22986, the commission named HECO, HELCO, MECO, and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"),³ as parties to this proceeding.

B.

LOL's Motion to Intervene

On November 8, 2006, LOL filed a Motion to Intervene in this docket pursuant to HAR § 6-61-55. According to the Motion to Intervene, LOL is a non-profit Hawaii organization with members and supporters concerned about "energy policy, and the

¹HECO is a wholly owned subsidiary of Hawaiian Electric Industries, Inc., and was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HELCO and MECO are both wholly owned subsidiaries of HECO and were initially organized under the laws of the Republic of Hawaii on or about December 5, 1894, and under the laws of the Territory of Hawaii on or about April 28, 1921, respectively.

²This investigative docket was initiated pursuant to HRS §§ 269-7 and 269-15; and Hawaii Administrative Rules ("HAR") § 6-61-71.

³Pursuant to HRS § 269-51, the Consumer Advocate is statutorily mandated to represent, protect and advance the interests of all consumers of utility service and is an ex officio party in all proceedings before the commission. See also HAR § 6-61-62.

impact our energy choices have on land use, the environment, quality of life, aesthetics, and health."⁴

In its motion, LOL contends that it has a statutory right to participate in this proceeding under Article XI, Section 9 of the Constitution of the State of Hawaii ("State Constitution"). LOL states that its members and supporters "are affected by [s]ystem [r]eliability and [p]ower [o]utages" and that they are also "concerned about distributed generation, renewable energy, energy justice, environmental justice, externalities and climate change."⁵ It contends that this proceeding would likely interface with other commission proceedings that LOL is active in and that it needs to protect its interests since commission action in this proceeding would likely shape energy policy in the future. LOL asserts that there are no other means to protect its interests and that its interests differ from those of the general public and other parties to the proceeding since, among other things, the Consumer Advocate represents the interests of the general public and that of consumers while LOL is concerned and interested in environmental issues and impacts.

LOL represents that it is "very familiar" with the prior outage reports, the past outages, HECO's facilities and those of various independent power producers and has been involved in certain military review committees and boards. It contends that its involvement in the docket will provide the

⁴See Motion to Intervene at 4.

⁵Id.

commission with "a more complete picture of the environmental, social and economic costs/benefits associated with this project and the alternatives."⁶ Moreover it contends that its participation in the proceeding will not unduly broaden the issues or delay the proceedings. LOL states that it is not advocating any expansion of the issues but will provide input should any new issue arise and also contends that its involvement in the proceeding "will be provided so as to strengthen the defensibility" of the commission's decision.⁷

C.

HECO Companies' Opposition

On November 16, 2006, the HECO Companies timely filed their Memorandum in Opposition to LOL's Motion to Intervene ("HECO Companies' Opposition") in which they oppose LOL's Motion to Intervene on various grounds.⁸

First, the HECO Companies state that LOL has no statutory or other mandatory right to intervene or otherwise participate in this proceeding and that LOL failed to demonstrate a cognizable right to participate in the docket. Specifically, the HECO Companies claim that LOL's contention that it has a constitutionally protected right to be granted intervention is misleading and that the "right" referred to in Article XI, Section 9 of the State Constitution is a right to a "clean and

⁶Id. at 5.

⁷Id.

⁸The Consumer Advocate did not file a memorandum in response to LOL's Motion to Intervene.

healthful environment," which is a right shared by all citizens,⁹ and that the provision does not provide LOL a specific right to intervene in commission proceedings. Rather, the HECO Companies refer to the Hawaii Supreme Court's holding that intervention in a commission proceeding is not a right, but is a matter resting within the sound discretion of the commission. They assert that "[d]espite its interest in the environment, an interest which the Consumer Advocate and the . . . [HECO] Companies also share, LOL has no cognizable right, constitutional or otherwise, to be granted intervention" in this proceeding.¹⁰

Second, the HECO Companies contend that any general interest that LOL may have with respect to the commission's investigation in this docket is similar to that of the general public, and thus can be adequately represented by the Consumer Advocate. The HECO Companies argue that LOL failed to demonstrate how its environmental impacts are unique and will not be represented by the Consumer Advocate and, specifically, how its interests are different from those represented by the Consumer Advocate. Among other things, they contend that the Consumer Advocate is required by statute to consider renewable resources, and thus is obliged to represent LOL's environmental interests. The HECO Companies assert that the "idea that the Consumer Advocate can only look after consumers'

⁹See HECO Companies' Opposition at 3.

¹⁰Id. at 5.

non-environmental interests, while only LOL can look after their environmental interests, is simply incorrect."¹¹

Third, the HECO Companies state that LOL's participation in other commission proceedings demonstrates that it has ample means, aside from participation in this proceeding, to protect its interests. According to the HECO Companies, LOL's participation and familiarity with other commission proceedings is not a factor in permitting intervention under the commission's rules. They assert that an examination of the dockets that LOL has or is participating in "reveals that there is hardly anything more that participation in a power outage investigation could add to protecting LOL's positions on renewable energy and the environment."¹² Moreover, the HECO Companies submit that this proceeding is significantly different from the other dockets in which LOL has participated.

Fourth, the HECO Companies contend that LOL's allegations are not reasonably pertinent to and will unduly broaden the issues already presented. They assert that LOL's allegations regarding the environment and renewable energy are "ill-suited" in assisting the commission on the preliminary issues it identified in Order No. 22986 and state that LOL's participation in the docket would distract the commission from the efficient and focused resolution that is required for this proceeding. The HECO Companies maintain that if this investigation results in any particular projects, such projects

¹¹Id. at 6.

¹²Id. at 8.

would undergo appropriate environmental reviews and other approvals as necessary by law prior to implementation (in a separate docket).

Finally, the HECO Companies claim that LOL failed to demonstrate how its participation in this proceeding would assist in the development of a sound record. They comment that LOL's Motion to Intervene only provides a generalized statement of its past experiences on energy matters and does not cite to a general or specific expertise in power outages or the effects of earthquakes on utility infrastructure.

II.

Discussion

Intervention in commission proceedings "is not a matter of right but a matter resting within the sound discretion of the commission."¹³ HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;

¹³See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

- (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
- (3) The effect of the pending order as to the applicant's interest;
- (4) The other means available whereby the applicant's interest may be protected;
- (5) The extent to which the applicant's interest will not be represented by existing parties;
- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

. . . .

- (d) Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.

HAR § 6-61-55 (a), (b) and (d).

Here, intervention by LOL would be inappropriate. The preliminary issues identified by the commission for disposition in this docket are:

1. Aside from the earthquake, are there any underlying causes that contributed or may have contributed to the Power Outages?
2. Were the activities and performances of the HECO Companies prior to and during the Power Outages reasonable and in the public interest?

Specifically, were the power restoration processes and communication regarding the outages reasonable and timely under the circumstances?

3. Could the island-wide Power Outages on Oahu and Maui have been avoided? What are the necessary steps to minimize and improve the response to such occurrences in the future?
4. What penalties, if any, should be imposed on the HECO Companies?

Given these issues, it does not appear that LOL has an interest in this power outage investigation that is distinct from the general public. As such, LOL's interests are adequately represented by the Consumer Advocate. For instance, LOL contends that its members and supporters are "affected by [s]ystem [r]eliability and [p]ower [o]utages."¹⁴ However, system reliability and power outages affect the public in general and LOL's members and supporters are not uniquely affected.

LOL's assertion that the Consumer Advocate cannot represent its interests and that LOL's interests differ from that of the general public since the Consumer Advocate protects the consumers' interests while LOL represents environmental interests is not convincing. LOL's specific contention that separate representation is warranted since consumer and environmental issues are distinct is not fully credible with regard to this matter. Unlike other commission proceedings in which LOL was granted intervention, this proceeding does not involve a specific project, program, or manner of generation that could directly impact the environment. Rather, this is an investigation of the

¹⁴See Motion to Intervene at 4.

conduct of the HECO Companies' related to the Power Outages. As noted above, system reliability and power outages (which are the basic issues of this proceeding) affect the general public. Thus, the commission finds that LOL's interests in this docket can be adequately represented by the Consumer Advocate.

Furthermore, should this investigation lead to a specific project or program, such "project" can be made part of a separate proceeding and would inevitably undergo all required reviews and approvals, including environmental reviews, as necessary, and, when an application for commission approval is filed, LOL will then have the opportunity to move to intervene in that commission proceeding.

In addition, LOL's involvement in various commission proceedings, including Docket Nos. 03-0371 (Distributed Generation), 03-0417 (East Oahu Transmission Project), 05-0069 (Energy Efficiency), and 05-0145 (Campbell Industrial Park Generating Station), to name a few, indicates that there are sufficient other means for LOL to protect its interests. Moreover, while LOL asserts that it is not advocating expanding the issues, at this time, its interests in environmental issues and impacts and various energy related concerns could unreasonably broaden the issues already presented, which could also delay the proceedings in this docket. As noted by the HECO Companies, it is imperative that this investigation proceed expeditiously in case of another earthquake event. In addition, the general public's questions, concerns and claims related to the Power Outages should be answered in a timely fashion.

Based on the above, the commission concludes that LOL's Motion to Intervene should be denied.

III.

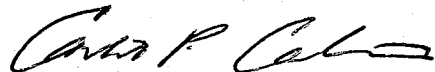
Order


THE COMMISSION ORDERS:

1. LOL's Motion to Intervene, filed on November 8, 2006, is denied.

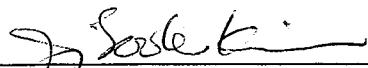
DONE at Honolulu, Hawaii DEC - 1 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2006-0431.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23097 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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Certificate of Service

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DATED: DEC - 1 2006