

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
MICROPLANET, INC.)
For the qualification of its)
electric voltage regulation)
technology as "renewable)
electrical energy" in accordance)
with Hawaii Revised Statutes [sic])
ch. 269, as amended.)
_____)

DOCKET NO. 2006-0446

ORDER NO. 23105

Filed Dec. 4, 2006
At 12 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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2006 DEC -5 A 8:49
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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 the Petition of)
MICROPLANET, INC.) Docket No. 2006-0446
For the qualification of its) Order No. 23105
electric voltage regulation)
technology as "renewable)
electrical energy" in accordance)
with Hawaii Revised Statutes [sic])
ch. 269, as amended.)
_____)

ORDER

By this Order, the commission (1) names HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"), and KAUAI ISLAND UTILITY COOPERATIVE ("KIUC") as parties to this docket;¹ (2) instructs MicroPlanet to serve copies of its Petition for Declaratory Ruling; Verification; and Memorandum ("Petition") on all of the other parties in this docket, and to file proof of service with the commission; (3) sets this matter for hearing at a date to be proposed by the parties and approved by the commission; and (4) directs the parties to submit a stipulated procedural order for the commission's review and approval within forty-five (45) days of the date of this Order. Alternatively, if the parties are unable to stipulate to such an

¹The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), is an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

order, each party shall submit a proposed procedural order for the commission's consideration by the same date.

I.

Background

On May 29, 2006, MICROPLANET, INC. ("MicroPlanet") filed a letter requesting an informal opinion as to whether MicroPlanet's electronic voltage regulation technology falls under the State of Hawaii's ("State") definition of "renewable energy" for tax and financial purposes.

On July 29, 2006, the commission provided an informal opinion that "based on the representations and information set forth in MicroPlanet's letter, . . . for purposes of Part V, Renewable Portfolio Standards, of [HRS] ch. 269, as amended, MicroPlanet's electronic voltage regulation technology (1) is not 'renewable energy' as defined under HRS § 269-91, but (2) may qualify as 'renewable electrical energy,' as defined in HRS § 269-91." The commission also advised MicroPlanet that the informal opinion was not binding on the commission, but that MicroPlanet could file a petition for a declaratory order pursuant to HAR ch. 6-61, subch. 16.

On November 17, 2006, MicroPlanet filed the instant Petition.²

²The Petition did not include a Certificate of Service.

II.

Discussion

A.

Joinder of Parties

Rule 19 of the Hawaii Rules of Civil Procedure ("HRCP") requires the joinder of parties, if feasible, in certain instances.³

Pursuant to [HCRP] Rule 19(a)(1), a party must be joined if feasible if relief cannot be afforded among those already parties. Rule 19(a)(2)(A), [HRCP,] provides that a person must be joined if feasible if the person has an interest in the subject matter of the action and disposition of the case in

³HAR ch. 6-61 is silent in setting forth the standard for determining persons to be joined as a party in a docket. As such, consistent with HAR § 6-61-1, we refer to the HRCP for guidance. HRCP Rule 19 provides as follows:

(a) Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable....

his or her absence may impair his or her ability to protect that interest or, under Rule 19(a)(2)(B), [HRCP,] leave any of the persons already parties subject to the risk of multiple or inconsistent obligations because of the interest.

International Sav. and Loan Ass'n v. Carbonel, 93 Hawai'i 464, 470, 5 P.3d 454, 460 (Haw. Ct. App. 2000).

The Petition seeks "a declaratory order regarding qualification of [MicroPlanet's] electronic voltage regulation technology as 'renewable electrical energy' in accordance with [HRS] ch. 269, as amended."⁴ Therefore, the issue to be resolved in this docket relates to and impacts the electric utilities operating in the State. The commission finds that the electric utilities operating in the State have interests relating to the subject docket, and their failure to participate in the docket may impair or impede their ability to protect those interests. Accordingly, we conclude that the electric utilities operating in the State - HECO, HELCO, MECO, and KIUC - should participate in this docket.

B.

Form and Contents of Petition

Section 6-61-161, HAR, provides in relevant part:

A petition for declaratory order must conform to the requirements of subchapter 2 and contain the following:

* * * *

(5) Proof of service on the affected public utility, motor

⁴Petition at 2.

carrier, or water carrier and
on the consumer advocate.

Although the failure to file proof of service with the commission is ordinarily a basis for dismissal of the petition under HAR § 6-61-163,⁵ the commission will allow MicroPlanet to conform its Petition to the requirements of HAR subch. 16, provided that the Petition will be deemed submitted upon the date of completion. Accordingly, pursuant to HAR § 6-61-161(5), MicroPlanet shall serve copies of its Petition on all of the other parties in this docket (i.e., the Consumer Advocate, HECO, HELCO, MECO, and KIUC), and shall file proof of service with the commission within fifteen (15) days of this Order.

C.

Matter Set for Hearing

Section 6-61-162(a), HAR, provides that:

Within forty-five days after the submission of a petition for declaratory ruling, the commission shall:

- (1) Deny the petition in writing, stating the reasons for that denial;
- (2) Issue a declaratory order on the matters contained in the petition; or
- (3) Set the matter for hearing, as provided in subchapter 3.

Therefore, although the Petition will not be deemed submitted until proof of service is filed, see discussion section II.C.,

⁵Section 6-61-163, HAR, provides that "[t]he commission may, without notice or hearing, dismiss a petition for declaratory ruling that fails to comply with the requirements of this subchapter."

supra, and the commission action under HAR § 6-61-162 is not yet triggered, the commission sets this matter for hearing at a date to be proposed by the parties and approved by the commission, pursuant to HAR § 6-61-162(a).

D.

Procedural Order

In order to facilitate the resolution of this docket, the commission hereby instructs the parties (i.e., MicroPlanet, the Consumer Advocate, HECO, HELCO, MECO, and KIUC) to meet informally to determine the issues, procedures, and schedule (including a proposed hearing date(s)) with respect to the instant docket, to be set forth in a stipulated procedural order.⁶ The stipulated procedural order shall be submitted for commission approval within forty-five (45) days from the date of this Order. If the parties are unable to stipulate to a procedural order, each party shall submit its own proposed procedural order for the commission's consideration within forty-five (45) days from the date of this Order.

⁶The commission will not approve a stipulated procedural order that allows the parties to modify the procedural order by agreement of the parties without commission approval.

III.

Orders

THE COMMISSION ORDERS:

1. HECO, HELCO, MECO, and KIUC are, sua sponte, named parties to this docket.

2. MicroPlanet shall serve copies of its Petition on all of the other parties in this docket (i.e., the Consumer Advocate, HECO, HELCO, MECO, and KIUC), and shall file proof of service with the commission within fifteen (15) days of this Order.⁷

3. This matter is set for hearing at a date to be proposed by the parties and approved by the commission, pursuant to HAR § 6-61-162(a).

4. The parties shall determine the issues, procedures, and schedule (including a proposed hearing date(s)) with respect to the instant docket, to be set forth in a stipulated procedural order. The stipulated procedural order shall be submitted for commission approval within forty-five (45) days from the date of this Order. If the parties are unable to stipulate to such an order, each party shall submit its own proposed procedural order for the commission's consideration within forty-five (45) days from the date of this Order.

⁷Failure to timely comply with this requirement may constitute cause to void this order pursuant to HAR § 6-61-163, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii DEC - 4 2006

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Nichole K. Shimamoto
Nichole K. Shimamoto
Commission Counsel

2006-0446.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23105 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

WILLIAM A. BONNET
VICE PRESIDENT - GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

DEAN MATSUJURA
DIRECTOR - REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

EDWARD REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LTD.
P.O. Box 398
Kahului, HI 96733-6898

WARREN LEE
PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
P.O. Box 1027
Hilo, HI 96721-1027

Certificate of Service

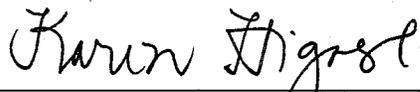
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RANDALL J. HEE, P.E.
ACTING PRESIDENT AND CEO
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4463 Pahe`e Street
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JOSEPH McCAWLEY
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe`e Street
Lihue, HI 96766-2032

JIM R. YATES
PRESIDENT
THE GAS COMPANY
P.O. Box 3000
Honolulu, HI 96802

STEVEN P. GOLDEN
DIRECTOR EXTERNAL AFFAIRS & PLANNING
THE GAS COMPANY
P.O. Box 3000
Honolulu, HI 96802



Karen Higashi

DATED: DEC - 4 2006

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_____)

Docket No. 2006-0446
Supplemental Certificate
of Service

SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of
Order No. 23105 upon the following party, by causing a copy
hereof to be mailed, postage prepaid, and properly addressed to
each such party.

MICROPLANET, INC.
ANDREW LARSON, CFO
100 South King Street, Suite 240
Seattle, WA 98104

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

2006 DEC 15 A 8:36

RECEIVED

Karen Higashi

Karen Higashi

DATED: DEC 14 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Supplemental Certificate of Service upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
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Certificate of Service

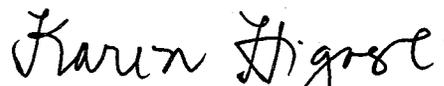
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DATED: DEC 14 2006