

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 03-0372
)
Instituting a Proceeding to)
Investigate Competitive Bidding)
for New Generating Capacity in)
Hawaii.)
)

DECISION AND ORDER NO. 23503

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Filed June 22, 2007
At 8 o'clock A .M.

Karen Higash.
Chief Clerk of the Commission

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

Karen Higash.

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DECISION AND ORDER

By this Decision and Order, the commission approves the list of qualified candidates for the Independent Observer position, which was submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, the "HECO Companies") on May 9, 2007.¹

I.

Background

A.

Procedural Background

On December 8, 2006, the commission adopted its Framework for Competitive Bidding as a mechanism for acquiring or building new energy generation in the State of Hawaii

¹The Parties are the HECO Companies, KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), HAWAII RENEWABLE ENERGY ALLIANCE, and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

("CB Framework").² Specifically, the CB Framework outlines a comprehensive mechanism for the electric utilities to acquire a future generation resource or a block of generation resources under the competitive bidding process. As part of the implementation process governing competitive bidding, Decision and Order No. 23121 requires the HECO Companies to file for the commission's review and approval a list of qualified candidates for the Independent Observer position for future HECO Companies' competitive bidding processes.³

On May 9, 2007, the HECO Companies filed their list of four qualified candidates for the Independent Observer position, with supporting attachments ("Candidate List").⁴ On May 25, 2007, KIUC informed the commission by letter that it had no position or comments on the Candidate List. None of the other parties submitted any comments to the commission by the June 5, 2007 deadline date.⁵

²Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006, attached.

³CB Framework, Part III.C.6.

⁴HECO Companies' Transmittal Letter, dated May 9, 2007, with Attachments 1 - 4. The attachments include the resumes of the four candidates and descriptions of their respective firms.

⁵See Commission's letter, dated May 15, 2007.

II.

Discussion

Part III.C.6 of the CB Framework outlines the duties, obligations, qualifications, and selection of the Independent Observer. "An Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its [request for proposal ("RFP")], or when the Commission otherwise determines."⁶

In general, the Independent Observer's duties and obligations will consist of two specific areas, advising and monitoring.⁷ Moreover:

3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.
4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.

CB Framework, Part III.C.3 and C.4.

With respect to the qualifications and selection of the Independent Observer, Part III.C.5 and C.6 state in relevant part:

5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:

⁶CB Framework, Part III.C.1.

⁷See CB Framework, Part III.C.2.

- a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;
 - b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;
 - c. Have the necessary experience and familiarity with utility modeling capability, transmission system planning, operational characteristics, and other factors that affect project selection.
 - d. Have a working knowledge of common [power purchase agreement] PPA terms and conditions, and the PPA negotiations process;
 - e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and
 - f. Be able to demonstrate impartiality.
6. Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and shall also consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates . . .

CB Framework, Part III.C.5 and C.6.

The four candidates proposed by the HECO Companies for the Independent Observer position are: (1) Barry J. Sheingold, Esq., President of New Energy Opportunities, Inc. (Sudbury, Massachusetts); (2) Mr. Alan Kessler, Managing Director, Accion Group, Inc. (Concord, New Hampshire);

(3) Mr. Matthew I. Kahal, Economic Consultant, c/o Exeter Associates, Inc. (Columbia, Maryland); and (4) Mr. Carl Freedman, Principal, Haiku Design and Analysis (Haiku, Hawaii).

Mr. Sheingold cites to his "extensive commercial, analytical, legal and regulatory experience in power procurement, power marketing, power contracting, renewable energy, project finance, and power plant development."⁸ Specifically, Mr. Sheingold represents that he "has over 20 years of experience in the design and structuring of long-term contracts for the purchase and sale of electric power, the design of competitive procurements, evaluating bids, and oversight of competitive procurements."⁹ Mr. Sheingold's work experience in the energy field includes serving as an officer or counsel to an electric power marketing company, an electric utility, a power plant development company, and the Federal Energy Regulatory Commission. Presently, Mr. Sheingold is President of New Energy Opportunities, Inc., which is "devoted to achieving objectives of clients through the structuring and effectuation of electric power transactions."¹⁰

Mr. Sheingold explains that he has played a variety of important roles in the competitive procurement processes, including his: (1) current responsibility, on behalf of four Delaware state agencies, of overseeing a competitive procurement process for long-term power purchases for new generation to be

⁸HECO Companies' Transmittal Letter, Attachment 1, at 3.

⁹HECO Companies' Transmittal Letter, Attachment 1, at 1.

¹⁰HECO Companies' Transmittal Letter, Attachment 1, at 3.

built in Delaware; and (2) his former role as the principal consultant responsible for the conceptual and detailed design for the Massachusetts Technology Collaborative's competitive bidding program for the procurement of renewable energy certificates and options on renewable energy certificates, under long-term contracts.

Lastly, depending on the nature of Mr. Sheingold's assignment as an Independent Observer, New Energy Opportunities, Inc., may retain subcontractors on an as-needed basis, including an experienced power contracts attorney and an electrical engineer with considerable expertise and experience in interconnection and transmission issues.¹¹

Mr. Kessler represents that, in his present capacity as the founder and Managing Director of Accion Group, Inc., which consists of a consortium of experienced professional consultants, he serves as the lead independent evaluator of RFPs being conducted by Georgia Power Co. and PacificCorp. Moreover, he has previously participated in power supply RFPs conducted by the Arizona Public Service Co., Tucson Electric, Western Mass Electric, and Baltimore Gas & Electric. Overall, Accion Group, Inc. "has served as the Independent Evaluator or Monitor of recent RFPs conducted in Arizona, Georgia, Florida and Oregon," and has advised utilities and regulators on power supply management issues in five states.¹² In addition to his resume,

¹¹See HECO Companies' Transmittal Letter, Attachment 1, at 5 - 11.

¹²HECO Companies' Transmittal Letter, Attachment 2, at 1.

Mr. Kessler provides the resumes of four consultants that Accion Group, Inc. will also retain to provide the required professional services.

Mr. Kahal is an economist that specializes in energy economics, public utility regulation, and financial analysis. Mr. Kahal notes that much of his professional consulting work over the past twenty-five years has involved the planning, certification, and financing of new power plant projects, along with regulatory approvals of long-term purchase power contracts. Recently, Mr. Kahal has focused on the evaluation of power plant asset sales and purchases, the design of utility proposals for the procurement of power supplies, and environmental compliance. His recent and current clients in these areas include state commissions and regulatory agencies, and the United States Department of Energy and Environmental Protection Agency.

Of particular note, Mr. Kahal has recently served as a consultant for the Louisiana Public Service Commission and its staff on: (1) the development of competitive procurement for new power supplies; (2) the development of rules for qualifying facility capacity contracts and the setting of avoided cost rates; and (3) numerous RFPs conducted by Louisiana electric utilities, which "have led to the acquisition by these utilities of thousands of MWs of capacity contracts (both intermediate and long-term), power plant asset purchases and several major utility 'self-build' projects."¹³

¹³HECO Companies' Transmittal Letter, Attachment 3, at 3.

Mr. Freedman is a locally-based consultant with a primary focus on public utility regulatory affairs, integrated resource planning, and energy resource economic analysis. Mr. Freedman states that: (1) he has worked in various capacities in electric utility system planning and regulation for twenty-eight years; and (2) he is intimately familiar with the unique characteristics and challenges of Hawaii's electric utilities, based on his sixteen years of work on system planning and regulatory issues in Hawaii. Specifically, Mr. Freedman notes that: (1) in written testimony submitted to the commission in several dockets, he has performed and presented rigorous analyses on the operation of Hawaii's utility systems, including system simulations, capacity expansion, and production cost analyses; (2) he has designed and used several models in the context of system planning, integrated resource planning, differential revenue requirements analysis, determination of avoided costs, system efficiency, and operation costs, and in the evaluation of utility and power purchase resource projects; and (3) he has served as a consultant for an array of clients, including the Consumer Advocate, independent power producers, large customers, government agencies, public interest groups (such as the Hawaii Energy Policy Forum), and public utilities, including HECO and MECO.

While Mr. Freedman acknowledges that he has no prior experience participating directly in any formal competitive bidding process, he has a network of mainland colleagues to rely on for collaboration and consulting services if required by

specific circumstances, and is also open to working collaboratively with the other Independent Observer candidates.

Based on the information and representations set forth in the attachments submitted by the HECO Companies in support of the Candidate List, the commission finds that all four candidates appear to meet the broad requirements set forth in Part III.C.5, subsections a, c, d, e, and f, of the CB Framework.

With respect to Part III.C.5, subsection b, of the CB Framework, the commission recognizes that the pool of qualified candidates with unique knowledge and expertise of Hawaii's "small, non-interconnected island electric grids," may be lacking (with the exception of Mr. Freedman). Nonetheless, the commission finds that these same candidates (other than Mr. Freedman) have direct experience in the energy procurement process that will be vital in ensuring the integrity and honesty of the competitive bidding processes required under the commission's CB Framework.

In the commission's view, the HECO Companies' selection of any of these four candidates to serve as the Independent Observer for a generation resource that is subject to competitive bidding should promote confidence in the procurement process, thereby encouraging interested, prospective participants to submit bids. The commission, pursuant to Part III.C.6 of the CB Framework, approves the Candidate List.¹⁴

¹⁴Concomitantly, as noted in Part III.C.6 of the CB Framework, the HECO Companies "shall also consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process."

III.

Orders

THE COMMISSION ORDERS:

The Candidate List, filed on May 9, 2007, is approved.

DONE at Honolulu, Hawaii JUN 22 2007

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:

Michael Azama

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Commission Counsel

03-0372.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23503 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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DATED: JUN 22 2007