

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate the Implementation)
Of Intragovernmental Wheeling)
Of Electricity.)
_____)

DOCKET NO. 2007-0176

ORDER NO. 23677

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

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Karen Higashi
Chief Clerk of the Commission

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

Karen Higashi

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ORDER

By this Order, the commission grants intervenor status to the DEPARTMENT OF THE NAVY on behalf of the UNITED STATES DEPARTMENT OF DEFENSE ("DoD"), the DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM ("DBEDT"), the COUNTY OF KAUAI ("Kauai County"), the COUNTY OF HAWAII ("Hawaii County"), the CITY AND COUNTY OF HONOLULU ("City"), the COUNTY OF MAUI ("Maui County"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), LIFE OF THE LAND ("LOL"), CASTLE AND COOKE RESORTS, LLC ("Castle"), and LANAI SUSTAINABILITY RESEARCH, LLC ("LSR"); and grants participant status to REALGREEN POWER L.L.C. ("RealGreen"), SUN EDISON LLC ("Sun Edison"), and PUNA GEOTHERMAL VENTURE ("PGV").

The commission also grants KAUAI ISLAND UTILITY COOPERATIVE's ("KIUC") request to extend the deadline to file a stipulated prehearing order in this proceeding, from August 13, 2007, to September 27, 2007. On its own motion, the commission

further extends the deadline to file a stipulated prehearing order in this docket from September 27, 2007 to October 26, 2007.

I.

Background

By Order No. 23530, filed on June 29, 2007, the commission initiated this proceeding to examine the feasibility of implementing intra-governmental wheeling of electricity in the State of Hawaii. As described in Order No. 23530, intra-governmental wheeling had been raised in another commission proceeding, Docket No. 03-0371, pertaining to the potential benefits and impacts of distributed generation on Hawaii's electric distribution systems and market ("Distributed Generation Docket"). While that docket was pending, the 2004 Legislature, by Senate Concurrent Resolution No. 180 ("S.C.R. No. 180"), requested that the commission explore ways to implement intra-governmental wheeling to facilitate government wheeling of electricity. Although various issues related to intra-governmental wheeling were discussed by the parties during the course of the Distributed Generation Docket, the commission was unable to fully address all of the issues relevant to it. Subsequently, by letter to the commission dated December 21, 2006, DBEDT requested information from the commission on ways for State agencies to facilitate the purchase of renewable energy. The State Legislature also recently enacted Act 177, Session Laws Hawaii 2007, which authorizes the commission "to consider the need for increased renewable energy use in

exercising its authority and duties." As a result of these circumstances, the commission initiated this proceeding to investigate the feasibility of intra-governmental wheeling in Hawaii.

In Order No. 23530, the commission identified the following preliminary issues for consideration in this docket:

1. Identifying what impact, if any, intra-governmental wheeling will have on Hawaii's electric industry;
2. Addressing interconnection matters;
3. Identifying the costs to utilities of implementing intra-governmental wheeling;
4. Identifying any rate design and cost allocation issues associated with intra-governmental wheeling;
5. Considering the financial cost and impact of intra-governmental wheeling on non-wheeling customers of a utility, i.e., an uncompensated use of the utility system;
6. Identifying any power back-up issues; and
7. Addressing how rates for intra-governmental wheeling would be set.

As all of the regulated electric utilities in the State would likely be impacted by the outcome of this investigation, the commission named HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"),¹ KIUC, and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer

¹HECO, HELCO and MECO are collectively referred to as the "HECO Companies."

Advocate") as parties to this docket.² The commission also anticipated that some of the entities that were involved in the Distributed Generation Docket may want to intervene in this docket, so the commission served them with copies of Order No. 23530 and allowed those entities and any other interested individual, entity, agency, community or business organization to file a motion to intervene or participate without intervention in accordance with the requirements of HAR Chapter 6-61, Subchapter 4 within twenty days of the date of Order No. 23530.

Motions to intervene and/or participate were filed by HREA on July 6, 2007; RealGreen on July 10, 2007; DOD, Kauai County and LOL on July 17, 2007; Sun Edison, PGV, the City, and Hawaii County on July 18, 2007; DBEDT, Maui County, and Castle and LSR on July 19, 2007.

On July 26, 2007, KIUC filed a Response of No Opposition to Motions to Intervene or Participate ("KIUC Response") indicating that it does not oppose any of the motions to intervene or participate "so long as their participation is solely limited to the issues affecting the electric industry in Hawaii with the implementation of intra-governmental wheeling."³ Moreover, KIUC asserts that those entities granted participant status without intervention by the commission should be allowed

²The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an ex officio party to any proceeding before the commission. See HRS § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

³KIUC Response at 3 (internal quotes omitted).

to participate only to the degree ordered by the commission, including, without limitation, authorization to (1) submit statements of position or written testimonies, provided that the parties are permitted to conduct discovery on the participants' statements, testimonies and/or other documents submitted in this proceeding, (2) participate in evidentiary (panel) hearings, if any, provided that parties are permitted to cross-examine and rebut the participants' witnesses, and (3) receive notice and opportunity to participate in settlement discussions, if any, provided that the assent of the participants is not required for any settlement reached by all or any of the parties.

The HECO Companies filed memoranda in response to the motions to intervene or participate of RealGreen on July 20, 2007, and Sun Edison, PGV, and Castle and LSR on July 27, 2007.

On August 3, 2007, a Request for Leave and Reply to [HECO's] Memorandum in Response to [Castle] and [LSR's] Motion to Intervene was filed by Castle and LSR. Also, on August 3, 2007, Sun Edison filed a Request for Leave to File Responsive Memorandum in Support of Participation of [Sun Edison].

On August 20, 2007, PGV filed a Motion for Enlargement of Time to File a Motion to Withdraw a Previously Filed Motion to Intervene and to File in Lieu Thereof a Motion to Participate of [PGV].

II.

Intervention

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;
 - (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.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."⁴

In addition, HAR § 6-61-56 sets forth the requirements for participation without intervention in commission proceedings. Similar to the requirements for intervention in HAR § 6-61-55, HAR § 6-61-56 provides in relevant part:

- (b) A person who has a limited interest in a proceeding may make an application to participate without intervention 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.
- (c) The motion shall provide:
 - (1) A clear and concise statement of the direct and substantial interest of the applicant;
 - (2) The applicant's position regarding the matter in controversy;
 - (3) The extent to which the participation will not broaden the issues or delay the proceeding;

⁴See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and
- (7) A statement of the relief desired.

HAR § 6-61-56(b) and (c). Moreover, regarding the extent to which a participant may be involved in a proceeding, HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

HAR § 6-61-56(a).

A.

Governmental Entities
(DoD, DBEDT, Kauai County, Hawaii County, City, Maui County)

Motions to intervene were filed by various federal, state and county entities: DOD, DBEDT, Kauai County, Hawaii County, City, and Maui County (collectively, "Governmental Entities"). They all assert a direct and substantial interest in this proceeding arising from their status as governmental entities, given their unique legal responsibilities and status as

large purchasers of electricity. Their interests, as alleged, are further described below.

1.

DoD

In its Motion to Intervene and Become a Party, DoD asserts that it "maintains numerous military installations within the [State] which activities obtain and use electric services from [the HECO Companies and KIUC]; it is one of the largest purchasers of electric services in the State and, as such, has a "crucial and strategic interest in securing electricity at the lowest but fair cost"; it is a party to other commission dockets; and it can assist in providing complete and accurate discovery and in developing a sound record.⁵

2.

DBEDT

DBEDT, by and through its Director in his capacity as the Energy Resources Coordinator for the State, filed a Motion to Intervene on July 19, 2007.⁶ DBEDT asserts that, pursuant to HRS § 196-4,⁷ the primary purpose for its intervention is to

⁵DOD's Motion to Intervene and Become a Party at 1-2.

⁶Pursuant to HRS § 196-3, "[t]he director of business, economic development, and tourism shall serve as energy resources coordinator."

⁷HRS § 196-4, in relevant part, sets forth the duties of the Energy Resources Coordinator, which includes: (1) conducting analysis of existing and proposed energy resource programs; (2) formulating and recommending specific proposals for conserving energy and fuel; (3) assisting public and private

"execute its statutory responsibility to formulate plans, including objectives, criteria to measure accomplishment of those objectives, and programs for the optimum development of energy resources in Hawaii."⁸ DBEDT seeks to intervene in this proceeding: (1) to carry out its statutory responsibilities emanating from HRS § 26-18(a), which states, in relevant part, DBEDT's responsibility to "undertake energy development and management"; (2) to follow through on its initial inquiries to the commission with regard to wheeling, which led to the initiation of the instant proceeding; and (3) as part of its role in the State's "Lead by Example"⁹ endeavor to implement progressive actions to reduce energy consumption and increase the use of renewable energy resources. DBEDT contends that given its position in the formation of the State's energy policy, "it has both unique and important information and arguments" to bring to the commission's efforts to explore the feasibility of intra-governmental wheeling in the State. In addition, DBEDT

agencies in implementing energy conservation and related measures; (4) coordinating the State's energy conservation program with, among other entities, the political subdivisions within the State; (5) developing programs to encourage private and public exploration and research of alternative energy resources beneficial to the State; (6) serving as consultant to public and private agencies on matters related to the acquisition, utilization and conservation of energy resources; and (7) reviewing proposed state actions which the Energy Resources Coordinator finds has a significant effect on energy consumption.

⁸DBEDT's Motion to Intervene at 1-2.

⁹According to DBEDT, "Lead by Example" was the basis for its letter to the commission, dated December 21, 2006, in which DBEDT requested information from the commission on ways to facilitate the purchase of renewable energy by State agencies.

states that there are no other means available whereby its interests may be protected; and its involvement in this proceeding will assist in the development of a sound record and will not unduly broaden or delay the proceedings.

3.

Kauai County

Kauai County filed a Motion to Intervene or Participate on July 17, 2007. According to Kauai County, Section 7-3.6 of the Kauai County Code (Ordinance No. 461) requires it to develop "[p]rograms . . . which will make [Kauai County] more self-sufficient in producing energy and less dependent on imported energy sources."¹⁰ To this end, Kauai County has been exploring opportunities in renewable energy, both as a potential generator and a potential customer. In addition, Kauai County notes that HRS § 46-19 allows the counties to: (1) participate in the development of alternative energy resources with an end user or public utility pursuant to a plan for the direct utilization of the energy sources, or (2) should a joint venture partner not be available, proceed with the development of alternate energy sources for their own consumption or for the furtherance of a plan for direct utilization.¹¹

¹⁰[Kauai County's] Motion to Intervene or to Participate at 2.

¹¹HRS § 46-19 reads, in relevant part:

Each of the counties may participate in the development of alternative energy resources . . . in joint venture with an end user or public utility pursuant to a plan for the direct

According to Kauai County, it is in a unique position as the only county affected by the policies and rates of KIUC. It is also a major consumer of electricity on the island of Kauai.¹² Thus, as a significant consumer of electricity, Kauai County is interested in ways to lower its electricity costs, including the possibility of wheeling self-generated power to its facilities. According to Kauai County, none of the other named parties have the same interest in the public welfare and commerce on the island of Kauai.

4.

Hawaii County

In its Motion to Intervene and/or to Participate, Hawaii County asserts that the Hawaii County General Plan (February 2005, Ordinance No. 525) encourages Hawaii County to develop alternative energy resources and to diversify the energy supply.¹³ To effectuate this policy, Hawaii County is currently

utilization of the energy sources by an end user or public utility; provided that should a joint-venture partner not be available the counties may proceed with the development of alternate energy resources for their own consumption or for the furtherance of a plan for direct utilization by an end user or public utility.

HRS § 46-19.

¹²Kauai County states that it had electricity bills totaling more than \$7.3 million in 2006. [Kauai County's] Motion to Intervene or to Participate at 3.

¹³[Hawaii County's] Motion to Intervene and/or to Participate at 3.

exploring opportunities in renewable energy, including waste-to-energy, micro-hydroelectric power, and solar energy.

Hawaii County contends that none of the existing parties have the same interest in the welfare of the island of Hawaii; therefore no other party can represent its unique interest as a governmental entity. It further contends that it has "knowledge of the social, economic, and political conditions within [HELCO's] service area and has been an active participant in the HELCO [IRP-3] process the past two years."¹⁴ Hawaii County supports the concept of intra-governmental wheeling and "supports rates for wheeling that will benefit, and not burden the citizens of [Hawaii County]."¹⁵

5.

City and County of Honolulu

The City filed a Motion to Intervene or to Participate on July 18, 2007. According to the City, it will be directly affected by the outcome of this proceeding, as it may impact the City's interest in developing renewable energy systems, as authorized by HRS § 46-19. As such, the City contends that its interests in the pending proceeding lie in its efforts to make the City more self-sufficient by producing energy, and less dependent on imported energy sources. In an effort to carry out this goal, the City is exploring opportunities in renewable

¹⁴Id. at 5.

¹⁵[Hawaii County's] Motion to Intervene and/or Participate at 5.

energy, both as a potential generator of energy and as a potential customer.

6.

Maui County

In its Motion for Intervention, Maui County states that: (1) it has an interest in developing renewable energy systems pursuant to 46-19, HRS, (2) its ability to use self-generated power by means of wheeling will be affected by commission decisions in this proceeding, (3) the utilities have interests in this proceeding as producers and sellers of power to customers, whereas Maui County's interest is different in that it is responsible for the public welfare of its residents, and (4) it will not broaden or delay the proceedings.

Upon review of the intervention motions filed by the Governmental Entities, and given that there was no opposition to the motions, the commission finds that the Governmental Entities' interests in this proceeding are substantial and pertinent to the preliminary issues set forth in this proceeding, that their participation in this proceeding will assist the commission in the development of a sound record, and that their intervention will not broaden the issues presented. Accordingly, the commission grants the Governmental Entities' respective motions to intervene.¹⁶

¹⁶In their motions, several of the Governmental Entities requested participation status in the event that their motions to intervene were denied. As the commission is granting intervention to all of the Governmental Entities, it need not reach any of the alternative motions to participate.

Nonetheless, the Governmental Entities are cautioned that their involvement as intervenors in this docket will be limited to the issues raised in this docket. The commission will preclude any effort by the Governmental Entities to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider a party's participation in this docket if, at any time, during the course of this proceeding, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

B.

HREA and LOL

1.

HREA

HREA filed a Motion to Intervene on July 6, 2007. HREA is a Hawaii-based, private, non-profit corporation "composed of developers, manufacturers, distributors, scientists, engineers, and advocates in renewable energy."¹⁷ According to HREA, it was an intervenor in prior commission dockets such as the commission's dockets on Distributed Generation (Docket No. 03-0371), Competitive Bidding for New Generation (Docket No. 03-0372), and Demand Side Management (Docket No. 05-0069), and is currently an intervenor in the commission's dockets on Net Metering (Docket No. 2006-0084), Pay As You Save® (Docket No. 2006-0425), Renewable Portfolio

¹⁷Motion to Intervene of [HREA] at 2.

Standards (Docket No. 2007-0008), and HECO IRP-4 (Docket No. 2007-0084). HREA represents that it has a "substantial and continuing interest in . . . renewables in the electric utility sector" and in that regard, "its interests extend directly to the encouragement of renewable electricity via the implementation of intragovernmental wheeling."¹⁸ HREA notes the commission's invitation, in Order No. 23530, to interested parties to intervene or participate in this proceeding. Moreover, HREA asserts that the Consumer Advocate cannot adequately represent its interests or the interests of its members.

2.

LOL

LOL filed a Motion to Intervene on July 17, 2007. According to LOL, it is a non-profit organization based in Hawaii that is a "utility watch-dog group . . . involved with monitoring and intervening on all aspects of Hawaii energy policy."¹⁹ LOL is actively involved in renewable energy related issues and opposes reliance on fossil fuels. It has been a party in other commission energy dockets, including Renewable Portfolio Standards (Docket No. 2007-0008), Demand-Side Management (Docket No. 05-0069), and Distributed Generation (Docket No. 03-0371). LOL contends that as the existing parties "are the fossil fuel based utilities and the

¹⁸Id. at 3.

¹⁹LOL's Motion to Intervene at 2.

Consumer Advocate . . . protects consumers (sic) interests,"²⁰ there is no other party who could adequately represent LOL's interests. LOL states that it will not unduly broaden the issues, nor delay this proceeding.

Upon review of their respective motions to intervene, the commission finds that HREA and LOL's allegations are pertinent to the issues that will be examined in this proceeding and, that granting HREA and LOL intervenor status should not broaden the issues or delay the proceeding. Accordingly, the commission grants HREA and LOL's motions to intervene.

Like the Governmental Entities, both HREA and LOL are cautioned that their involvement as intervenors in this docket will be limited to the issues raised in this docket. The commission will preclude any effort by HREA or LOL to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider either party's participation in this docket if, at any time, during the course of this proceeding, the commission determines that HREA or LOL is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

C.

Renewable Energy Providers
(RealGreen, Sun Edison, PGV, Castle, LSR)

Various renewable energy providers, RealGreen, Sun Edison, PGV, Castle, and LSR (collectively, "Renewable Energy Providers") also filed motions to intervene or participate in

²⁰Id.

this docket. RealGreen and Sun Edison filed motions to participate without intervention. PGV filed a motion to intervene, but subsequently filed a motion to withdraw its intervention motion in favor of a participation motion. Castle and LSR filed a joint motion to intervene.

In response, the HECO Companies filed separate, but similar memoranda addressing the Renewable Energy Providers' motions. Where intervention was requested, the HECO Companies argued that intervenor status is inappropriate. They further asserted that if participation status is granted to the Renewable Energy Providers, their participation be limited to certain issues and to varying degrees.

As further described below, the commission grants participation status to RealGreen, Sun Edison, and PGV, subject to the circumstances and conditions described below, and intervenor status to Castle and LSR.

1.

RealGreen

RealGreen filed a Motion to Participate Without Intervention on July 10, 2007. In support of its motion, RealGreen states that it "intends to generate firm electric power on Maui utilizing biomass, wastewater reclamation technology and fuel cells by mid 2008, with the intent to be an independent power provider"; it "can provide valuable insight due to [its] unique experiences and focus"; and that "none of those named by the Commission as parties to this investigation can adequately

represent the interests of [RealGreen] due to divergent interests and roles."²¹ RealGreen requests approval from the commission to: (1) offer an opening statement; (2) provide testimony and evidence and to receive any filings; and (3) offer a post-hearing brief.

On July 20, 2007, the HECO Companies filed a Memorandum in Response to [RealGreen's] Motion to Participate Without Intervention in which they assert that if the commission is inclined to grant participation status to RealGreen, the commission limit RealGreen's participation to preliminary issues 1, 2, and 6, as set forth in Order No. 23530. According to the HECO Companies, it is unclear whether RealGreen has any experience with the preliminary issues, as RealGreen did not describe, for example, its "expertise, knowledge or experience on the cost to utilities and/or non-wheeling utility customers of implementing intra-governmental wheeling, or rate design or cost allocation issues."²²

With respect to the extent of RealGreen's participation, the HECO Companies state that they do not oppose RealGreen's requests to offer an opening statement, provide testimony and evidence and receive filings, and to offer a post-hearing brief, provided that the HECO Companies are permitted to conduct discovery on any written testimony and evidence filed by RealGreen and conduct cross-examination of

²¹Motion to Participate Without Intervention of RealGreen at 1.

²²Memorandum in Response to RealGreen's Motion to Participate Without Intervention at 3.

RealGreen on any oral testimony given at the hearing. In addition, while the HECO Companies recognize that opening statements are generally not part of commission evidentiary hearings, nevertheless, should opening statements be included in the procedural schedule, either in written or oral form at an evidentiary hearing, the HECO Companies do not oppose the request.

Upon review, the commission finds that RealGreen may be able to provide relevant information related to the issues presented in this docket. Accordingly, the commission grants RealGreen participation without intervention, as requested by Realgreen, in this proceeding under the conditions and limitations described below.

2.

Sun Edison

Sun Edison filed a Motion to Participate on July 18, 2007. In support of its motion, Sun Edison states that it "develops, installs, finances, and operates large, customer-sited solar photovoltaic systems throughout North America."²³ It claims to be among the largest of such installers and says it is currently planning, or constructing, three of the five largest photovoltaic systems in North America. According to Sun Edison, it provides solar energy services to governmental entities by "provid[ing] the governmental entity with the upfront capital and installation costs"; and once installed, "the governmental entity

²³Motion to Participate of [Sun Edison] at 2.

pays only for the solar energy produced for the life of the agreement."²⁴ Sun Edison asserts that it has a direct interest in selling and providing renewable power services to governmental entities and that it has substantial property and other interests in the outcome of this docket that cannot be represented by any other party. Moreover, Sun Edison claims direct experience in the "design, installation, and operation of renewable energy equipment" and "hands on experience with the operation and capabilities of such equipment."²⁵

Sun Edison requests that the commission grant it participation status to: (1) file comments and/or legal arguments at the conclusion of any proceedings in this docket, whether litigated or negotiated, as directed by the commission; (2) participate fully along with intervenors and other participants in any settlement negotiations conducted in this docket; and (3) participate, to the extent it is able to do so, as directed by the commission.

On July 27, 2007, the HECO Companies filed a Memorandum in Response to [Sun Edison's] Motion to Participate ("HECO Response to Sun Edison"). The HECO Companies propose that should the commission grant Sun Edison's Motion to Participate, the commission "limit the scope and extent of [Sun Edison's] participation."²⁶ Specifically, as with RealGreen, the HECO Companies propose that Sun Edison's participation be limited

²⁴Id. at 2.

²⁵Id. at 6 (internal quotes omitted).

²⁶HECO Response to Sun Edison at 1.

to preliminary issues 1, 2 and 6 as specified in Order No. 23530. The HECO Companies also propose that Sun Edison's participation be restricted such that: (1) any "comments and/or legal arguments" submitted by Sun Edison have the same due date as that given to the other parties in this docket, rather than "at the conclusion of any proceedings in this docket"²⁷; (2) the HECO Companies should be permitted to conduct discovery on any comments offered to the commission by Sun Edison; (3) the parties to this docket shall not be required to obtain Sun Edison's approval of any settlement reached by any or all of the parties; and (4) the extent of Sun Edison's participation should not extend beyond the procedural steps in which it has requested to be involved.

On August 3, 2007, Sun Edison filed a Responsive Memorandum in Support of Participation of Sun Edison LLC in which Sun Edison argues that its participation should not be limited to issues 1, 2 and 6 in Order No. 23530 ("Sun Edison's Responsive Memorandum").²⁸ According to Sun Edison, none of the other movants claim expertise with respect to issues 3, 4, 5, and 7; yet, the HECO Companies only seek to limit the Renewable Energy Providers' participation in such fashion. With respect to the

²⁷Motion to Participate of [Sun Edison] at 1.

²⁸On August 3, 2007, Sun Edison filed a Request for Leave to File Responsive Memorandum in Support of Participation of Sun Edison LLC. Attached to its request was its Responsive Memorandum in Support of Participation of Sun Edison LLC. While commission rules do not authorize the submission of replies to motions, the commission in this instance deems Sun Edison's reply to be desirable and, thus, considers it in making its determination.

HECO Companies request that any "comments and/or legal arguments" submitted by Sun Edison have the same due date as that given to the other parties in this docket, Sun Edison has no objection. According to Sun Edison, it was simply asking for the same right as other parties to file a closing argument "by whatever name that argument is called."²⁹

Upon review, the commission finds that as a provider of renewable energy, Sun Edison may offer insight into the preliminary issues identified by the commission. Accordingly, as requested by Sun Edison, the commission grants Sun Edison's Motion to Participate subject to the conditions and limitations described below.

3.

PGV

PGV filed a Motion to Intervene on July 18, 2007. PGV is a Hawaii general partnership involved in the development of power generation facilities using geothermal resources. It says that it is "engaged in harnessing the State's indigenous renewable geothermal energy resources to generate electric energy for ultimate use by the general public on the Island of Hawaii."³⁰ According to PGV, it is a major independent supplier of electric energy from renewable geothermal resources to HELCO for resale to the public along with being the owner and operator of Hawaii's only commercial geothermal power plant. PGV is concerned with

²⁹Sun Edison's Responsive Memorandum at 15.

³⁰PGV's Motion to Intervene at 2.

the continuing development of renewable energy resources in the State. Thus, PGV asserts a direct and substantial interest in the issues set forth for preliminary consideration in this proceeding.

On July 27, 2007, the HECO Companies filed a Memorandum in Response to [PGV's] Motion to Intervene ("HECO Response to PGV") in which they assert that PGV's motion to intervene should not be granted, but that instead PGV should be allowed participant status in this proceeding. The HECO Companies contend that PGV's Motion to Intervene should not be granted as the motion "contains conclusory statements that do not adequately state facts or reasons to support PGV's intervention" ³¹ The HECO Companies maintain that PGV does not have the requisite knowledge and experience to contribute meaningfully to this proceeding, and to avoid PGV broadening the issues or causing delay, its participation should be limited: (1) to issues 1, 2 and 6 set forth in Order No. 23530; and (2) to the extent that settlement discussions occur collectively among the parties to this docket, PGV should be given the opportunity to participate in the settlement discussions, however, the parties to this docket should not be required to obtain PGV's approval of any settlement reached by any or all of the parties.

On August 20, 2007, PGV filed a Motion for Enlargement of Time to File a Motion to Withdraw a Previously Filed Motion to Intervene and to File in Lieu Thereof a Motion to Participate and

³¹HECO Response to PGV at 2.

a Memorandum in Support thereof ("PGV's Motion for Enlargement of Time"), pursuant to HAR § 6-61-23(a)(2). According to PGV, it can best contribute to addressing the issues in this docket as a participant rather than intervenor.

HAR § 6-61-23(a)(2) states:

Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action on jurisdictional.

HAR § 6-61-23(a)(2). Thus, the commission may grant PGV's request only upon a showing of "excusable neglect." The excusable neglect standard is a strict standard requiring a showing that the failure to timely file with the commission was due to circumstances beyond PGV's control.³²

PGV states that "upon further consideration" of the issues identified in this proceeding, it has "just recently determined that it can best contribute to this proceeding as a participant rather than as an intervenor."³³ Consequently, PGV "now desires to withdraw its previously filed Motion to Intervene . . . and to be permitted to file in lieu thereof its Motion to Participate without intervention in this docket."³⁴

³²In re Public Utilities Commission, Docket No. 05-0195, Order No. 22040 (Sept. 21, 2005). See also Hall v. Hall, 95 Hawai'i 318, 320, 22 P.3d 965, 967 (2001); Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 350, 910 P.2d 116, 121 (1996) (noting that the excusable neglect standard was a "strict standard, requiring a showing that the failure to timely file a notice of appeal was due to circumstances beyond the appellant's control").

³³PGV's Motion for Enlargement of Time at 2.

³⁴Id.

The commission is not persuaded that PGV's reconsideration of the extent of its involvement in this proceeding amounts to "excusable neglect." From the time of the filing of its Motion to Intervene, nothing has changed except PGV's notion of its involvement in this proceeding. The commission finds that this simply does not amount to a finding of excusable neglect sufficient to grant PGV's motion. Accordingly, the commission concludes that PGV's Motion for Enlargement of Time should be denied.

Notwithstanding the commission's denial of PGV's Motion for Enlargement of Time, the commission finds that PGV should be granted participant rather than intervenor status in this docket. HAR § 6-61-1 provides that the commission shall liberally construe HAR Chapter 61 "to secure the just, speedy, and inexpensive determination of every proceeding." In such interest, the commission acknowledges PGV's desire to revise the scope of its role in this proceeding, and on its own motion, will grant PGV participant rather than intervenor status in this proceeding. The commission finds PGV's interest in this proceeding to be pertinent to the consideration of the preliminary issues in this docket. Accordingly, the commission concludes that PGV should be granted participation without intervention, subject to the conditions and limitations set forth below.

Castle and LSR

Castle and LSR filed a joint Motion to Intervene on July 19, 2007.³⁵ Castle owns and controls 98% of the land area on the island of Lanai along with substantial amounts of land on Oahu and Hawaii. Castle organized LSR in December 2006 to "sponsor research, development and testing of solar/photovoltaic energy and other natural resource technologies."³⁶ According to Castle and LSR, they are "developing various renewable power sources based on the natural resources" available in the State.³⁷ Also, Castle is currently looking into the feasibility of developing a wind project on Lanai, and with LSR, exploring the use of bio crops to generate renewable energy.

As "developers of renewable energy resources in Hawaii,"³⁸ Castle and LSR note that their interests are different from those of the existing parties, in that wheeling will require the use of the electric utilities' transmission lines to transmit energy produced by renewable energy developers such as Castle and LSR. As such, Castle and LSR assert that their interests will not be represented by the existing parties.

On July 27, 2007, the HECO Companies filed a Memorandum in Response to [Castle's] and [LSR's] Motion to Intervene in

³⁵LSR is a wholly owned subsidiary of Castle. See Motion to Intervene at 4. Through their counsel, Castle and LSR filed a joint Motion to Intervene.

³⁶Castle and LSR's Motion to Intervene at 4.

³⁷Id.

³⁸Id. at 1.

which they oppose Castle and LSR being granted intervention in this docket. The HECO Companies state, however, that if participation is granted, it should be limited to issues 1, 2, and 6.

On August 3, 2007, Castle and LSR filed a Request for Leave and Reply to [HECO's] Memorandum in Response to [Castle and LSR's] Motion to Intervene ("Reply") in which Castle and LSR argue that they should be granted full intervention status and that their participation should not be limited to issues 1, 2, and 6.³⁹

Upon review, the commission finds the interests of Castle and LSR in this proceeding to be sufficient for intervenor status, as requested by Castle and LSR. Unlike Castle and LSR, the other Renewable Energy Providers specifically requested participation without intervention status, which evidences a commitment by Castle and LSR to devote the requisite resources and attention to this matter. As developers of renewable energy sources, their interests and experience are different from that of the regulated utilities and the other parties, and they can assist the commission in considering the best methods for implementing intragovernmental wheeling. Accordingly, the commission finds that the Motion to Intervene of Castle and LSR should be granted.

As with the other intervenors, Castle and LSR are cautioned that their involvement as intervenors in this docket

³⁹As with Sun Edison, the commission deems Castle and LSR's reply to be desirable and, thus, considers it in making its determination on Castle and LSR's motion.

will be limited to the issues raised in this docket. The commission will preclude any effort by Castle or LSR to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider either party's involvement in this docket if, at any time, during the course of this proceeding, the commission determines that Castle or LSR is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

5.

Conditions

In their various responsive memoranda, the HECO Companies argue that the participation of RealGreen, Sun Edison, and PGV (the "Participants")⁴⁰ in this docket should be limited to issues 1, 2, and 6 of Order No. 23530. The commission, however, agrees with Sun Edison that limiting the Participants to those three issues would be unnecessarily restrictive and cumbersome. As such, the commission declines to limit the participation of the Participants to any of the preliminary issues set forth in Order No. 23530. However, any involvement of a Participant to issues beyond the scope of its interests and expertise will be considered in weighing the credibility of any such Participant.

In addition, some of the Participants requested that their participation in this docket be limited in various fashions as described in their motions. RealGreen, for example, requested that its participation be limited to an opening statement and

⁴⁰As discussed herein, Castle and LSR will be granted intervenor status.

post-hearing brief, and to providing testimony and evidence and receiving any filings. In contrast, Sun Edison seeks to file comments at the conclusion of any proceedings in this docket and to participate fully along with intervenors and any other participants in any settlement negotiations conducted in this docket.

For consistency and efficiency, the commission will allow the Participants to participate as follows:

Each Participant may, prior to any evidentiary hearing, submit a statement of position, provided that the Participant filing the statement of position shall be subject to discovery by any of the Parties⁴¹ in this docket and shall be required to respond accordingly to any discovery requests within the same time periods required for the Parties, or as otherwise authorized by the commission

Each Participant may, prior to an evidentiary hearing required by the commission (if any), submit pre-filed written testimonies, provided that the Parties are permitted to conduct discovery on the written testimonies prior to the evidentiary hearing. Participants' witnesses shall appear at the evidentiary hearing to present their testimony, and will be subject to cross-examination by the Parties. Participants may conduct re-direct examination of its own witnesses. The commission may allow the Parties to present rebuttal witnesses as necessary and appropriate.

⁴¹As used herein, "Parties" shall mean, collectively, the HECO Companies, KIUC, the Consumer Advocate, the Governmental Entities, HREA, LOL, and Castle and LSR.

Participants shall not be allowed to cross-examine any Parties' or Participants' witnesses at an evidentiary hearing, without the commission's prior approval. To the extent the Parties are permitted to present opening and closing statements at the evidentiary hearing, Participants may present the same.

Filings by the Participants shall have the same due date as the corresponding filing applicable to the Parties in this docket. The Participants may also submit post-hearing briefs, if any are permitted under this docket's procedural schedule to be established, which will not be subject to discovery, except to the extent the Parties' post-hearing briefs are subject to discovery.

With respect to settlement negotiations, the Participants shall have the opportunity to participate in settlement discussions, if any, provided that their assent is not required for any substantive settlement reached by all or any of the Parties. However, Participants' support or objections to any settlement may be considered by the commission in reviewing any settlement. Any stipulations regarding procedural matters that directly affect the Participants should involve the Participants.

Participants to this proceeding shall be entitled to receive copies of all correspondence, filings and briefs in this proceeding to the same extent the Parties are entitled to receive such documents, subject to the terms of any protective order governing the distribution and protection of any confidential documents.

As with the Governmental Entities, HREA, LOL, Castle and LSR, the Participants are cautioned that their participation in this docket will be limited to the issues raised in this docket. The commission will preclude any effort to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider their participation in this docket if, at any time, during the course of this proceeding, the commission determines that they are unreasonably broadening the pertinent issues raised in this docket or unduly delaying the proceeding.

III.

Procedural Schedule

By Order No. 23530, filed on June 29, 2007, in this proceeding, the commission, among other things, directed the existing parties to file a stipulated prehearing order within forty-five days of the date of Order No. 23530, i.e., by August 13, 2007.

On August 7, 2007, KIUC filed a request to extend the deadline for filing a stipulated prehearing order an additional 45 days from August 13, 2007, to September 27, 2007. In support of its request, KIUC asserts that "in light of the recently filed Motions to Intervene and/or Participate that are currently pending before the [c]ommission," it would be a more efficient use of time to extend the time frame for compliance with Order No. 23530 from August 13, 2007, to September 27, 2007. According to KIUC, an extension of time to file a stipulated prehearing order would allow additionally-named parties or

participants the opportunity to participate fully in the development of a schedule in this proceeding.

HAR § 6-61-23(a)(1) allows the commission to enlarge a period by which a required act must be completed upon a showing of good cause, provided that a written request is made before the expiration of the period originally prescribed. Upon review, the commission finds good cause to grant KIUC's request and extends the deadline to file a stipulated prehearing order from August 13, 2007, to September 27, 2007.⁴²

To allow the Parties and Participants sufficient time to develop a stipulated prehearing order, the commission will, on its own motion, further extend the deadline for the Parties and Participants to file a stipulated prehearing order from September 27, 2007, to October 26, 2007. If the Parties and Participants are unable to stipulate, each of them shall file proposed orders for the commission's review and consideration by October 26, 2007.

The extent of the involvement of the Participants, including the filings that the Participants will be making in this docket, shall be fully detailed in the proposed procedural schedule, subject to the conditions and parameters discussed herein.

⁴²On August 28, 2007, the commission issued Stipulated Protective Order No. 23616. The commission notes that, pursuant to paragraph 2 of the Stipulated Protective Order, any person that is granted intervention or participant status following the issuance of the Stipulated Protective Order will be bound by the terms of the Stipulated Protective Order.

IV.

Orders

THE COMMISSION ORDERS:

1. The Motions to Intervene and/or Participate of DoD, DBEDT, Kauai County, Hawaii County, the City, Maui County, HREA, LOL, Castle, LSR, RealGreen, Sun Edison, and PGV are granted as set forth below:

a. The motions to intervene of the Governmental Entities (DoD, DBEDT, Kauai County, Hawaii County, the City and Maui County) are granted.

b. The motions to intervene of HREA and LOL are granted.

c. The joint motion to intervene of Castle and LSR is granted.

d. The motions to participate of RealGreen and Sun Edison are granted, subject to the conditions set forth herein.

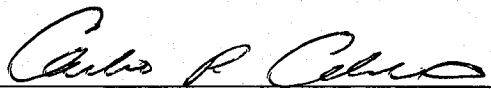
e. PGV's Motion for Enlargement of Time is denied. The commission, on its own motion, grants PGV participant status in this docket, subject to the conditions set forth herein.

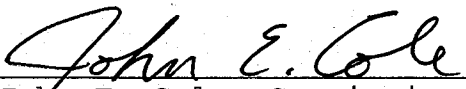
2. KIUC's request to extend the deadline to file a stipulated prehearing order in this proceeding, from August 13, 2007 to September 27, 2007, is granted. The commission, on its own motion, further extends the deadline for the Parties and Participants to file a stipulated prehearing order from September 27, 2007, to October 26, 2007.

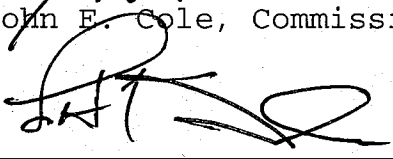
3. The Parties and Participants shall file a stipulated prehearing (or procedural) order to govern the matters of this investigation for the commission's review and approval by October 26, 2007. If the Parties and Participants are unable to stipulate, each of them shall file a proposed order for the commission's review and consideration by October 26, 2007.

DONE at Honolulu, Hawaii SEP 21 2007.

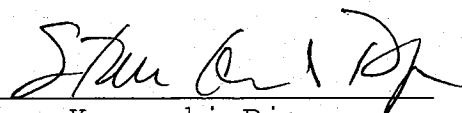
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2007-0176.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23677 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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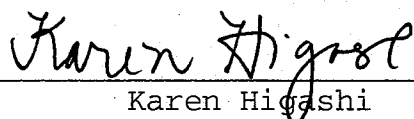
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