

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
HAWAII ELECTRIC LIGHT )  
COMPANY, INC. )  
 )  
Regarding Integrated Resource )  
Planning. )  
\_\_\_\_\_ )

DOCKET NO. 04-0046

ORDER NO. 23849

Filed Nov. 21, 2007  
At 2:30 o'clock P.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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ATTEST: A True Copy

*for* KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

*Barbara K. Kane*

OF THE STATE OF HAWAII

Regarding Integrated Resource) Planning. )

Order No. 23849

ORDER

(3) for LIFE OF THE LAND ("LOL"), Henry Q Curtis.<sup>1</sup>

November 26, 2007, 8:30 a.m., is limited to one day.

I.

## Background

commission required HELCO, the Consumer Advocate and LOL

'Norman Verbanic, Gary A. Hashiro, and Arthur Seki are employees of HELCO or Hawaiian Electric Company, Inc. Daniel Peaco is the Consumer Advocate's consultant, based in Boston, Massachusetts. Henry Q Curtis is LOL's Vice President for Consumer Issues.

(collectively, the "Parties") to file, by November 16, 2007, "their stipulation, including their agreed-upon list of witnesses that are scheduled to testify at the evidentiary hearing," which is scheduled to commence on November 26, 2007, 8:30 a.m., at the commission's hearing room.<sup>2</sup>

By letter dated November 16, 2007, HELCO submitted a "Stipulation Regarding Hearing and Commission Approval," signed by HELCO and the Consumer Advocate<sup>3</sup> in which they inform the commission that they do not request an evidentiary hearing, and that they waive cross-examination of their respective witnesses and of LOL's witness.

In addition, with respect to LOL, HELCO explains in relevant part:

This Stipulation is by and between [HELCO] and the Consumer Advocate only. [HELCO] and the Consumer Advocate included [LOL], the only other party in this proceeding, in settlement discussions and also attempted to speak with LOL regarding a stipulation, but were unable to ascertain LOL's position on either a stipulation or the need for an evidentiary hearing, including those witnesses that would need to appear at such hearing. Accordingly, LOL is not a party to the Stipulation and [HELCO] and the Consumer Advocate are not aware at this time of whether LOL desires an evidentiary hearing, or what witnesses LOL may call . . . .

. . . .

[HELCO] and the Consumer Advocate intend to continue [their] efforts to speak with LOL to determine if LOL may be willing to sign on to the

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<sup>2</sup>Order No. 23834, filed on November 15, 2007, Ordering ¶ No. 4, at 7.

<sup>3</sup>Stipulation Regarding Hearing and Commission Approval; Exhibit A; and Certificate of Service, filed on November 16, 2007 (collectively, "Stipulation").

Stipulation, or a separate stipulation, and also identify whether the parties may be able to identify additional witnesses which may not need to appear at any hearing. [HELCO] and the Consumer Advocate will apprise the Commission of these efforts as they are ongoing.

In the interim, [HELCO] and the Consumer Advocate respectfully request Commission notification as to whether an evidentiary hearing will be held, and if so, whether the witnesses for [HELCO] and the Consumer Advocate will be required to appear at that hearing. Given the upcoming Thanksgiving holiday, and the existing travel plans of the Consumer Advocate's witnesses, notification by Tuesday, November 20, 2007 is necessary in order to timely cancel the travel arrangements.

HELCO's letter, dated November 16, 2007, at 1-2.

Given HELCO and the Consumer Advocate's waiver of the evidentiary hearing and their apparent inability "to ascertain LOL's position on either a stipulation or the need for an evidentiary hearing, including those witnesses that would need to appear at such hearing," the commission, by letter dated November 19, 2007, instructed LOL to notify the commission in writing by November 20, 2007, 3:00 p.m., "as to whether LOL: (1) requests to proceed with the evidentiary hearing, and if so, the identity of the witnesses LOL seeks to cross-examine, and the relevance of these identified witnesses in relationship to LOL's pre-filed written testimony; or (2) waives the evidentiary hearing and cross-examination of any or all witnesses."<sup>4</sup>

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<sup>4</sup>Commission letter, dated November 19, 2007, at 3 (footnote, citation, and text therein omitted).

By reply letter dated and filed on November 20, 2007,<sup>5</sup>

LOL informed the commission in relevant part:

We agree that it is desirable to reduce the number of witnesses. We will reduce the cross-examination from twelve (12) to four (4) witnesses: Norman Verbanic, Gary A. Hashiro, Arthur Seki, and Daniel Peaco. We additionally waive any right to cross-examine other witnesses. Furthermore we will limit our questioning to issues associated with generation, fuel, planning and climate change. Thus the evidentiary hearing should take a morning, or possibly a day.

We note that HELCO, hearing our proposed 67% cut in witnesses that we will cross-examine, has suggested that we go even further. The [Consumer Advocate], through the PUC,<sup>6</sup> has suggested that we "cross-examine" a witness without seeing them.

We want to cross-examine 4 witnesses in person, as is our right under the rules of the PUC. LOL's witness will be available for cross-examination.

The testimony and cross-examination is crucial to [LOL's] understanding of the positions of the Consumer Advocate and [HELCO]. Cross-examination

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<sup>5</sup>LOL provided the Parties and the commission with a substantially similar version of this letter by email on November 19, 2007.

<sup>6</sup>The commission notes that the Consumer Advocate never "suggested" to the commission that LOL "'cross-examine' a witness without seeing them." Given LOL's failure to participate in a stipulation on witnesses (or provide separate notice to the commission of its position on witnesses) as required by Order No. 23834, and as a result of the Thanksgiving holiday, commission staff sent an email on the morning of November 20, 2007, to LOL (with a copy to HELCO and the Consumer Advocate) requesting further information as to "whether [LOL] is amenable to proceeding with cross examination of Daniel Peaco by telephone, and also whether [LOL] will be making any changes to its list of witnesses given Rod Aoki's email comments yesterday." Commission staff's email was not intended, nor did it request, that LOL "'cross-examine' a witness without seeing them"; it merely sought additional information to allow the commission to inform the Parties about the schedule for the evidentiary hearing in a timely manner given the Thanksgiving holiday.

is vital to determining the credibility of witnesses. It is in the public interest to do all we can to avert the worse impacts of the pending climate disaster.

. . . .

LOL's letter, filed November 20, 2007, at 1 (footnote and text therein added).

By letter dated and filed on November 20, 2007, from the Consumer Advocate to LOL, the Consumer Advocate "requests clarification on your wish to cross-examine Consumer Advocate witness Daniel Peaco at the November 26, 2007 Evidentiary Hearing." According to the Consumer Advocate:

. . . LOL indicates that LOL would like to cross examine witnesses who testified on the subjects of planning and generation. More specifically, LOL states that it would limit its cross-examination to issues regarding "generation, fuel, planning and climate change."

Upon re-examination of Mr. Peaco's written direct testimony filed on September 28, 2007, it appears that Mr. Peaco primarily focused his critique on the various components of [HELCO's] IRP-3 Plan. In his written direct testimony, Mr. Peaco made only passing reference, if such references are made at all, to general issues related to generation, fuel, planning, and climate change. To the extent that generation is mentioned in Mr. Peaco's written direct testimony, Mr. Peaco discussed HELCO's generation planning with respect to HELCO's decision to pursue the immediate installation of the ST-7 Generating Unit Project. To the extent that biofuels and climate change are discussed in Mr. Peaco's written direct testimony, Mr. Peaco merely suggests that such issues be examined more extensively in HELCO's formulation of HELCO's IRP-4.

At the present time, the Consumer Advocate notes that it appears that LOL's written direct testimony filed on September 28, 2007 is silent on LOL's critique of HELCO's IRP-3 Plan as raised by Mr. Peaco in his direct testimony. Furthermore, the Consumer Advocate notes that LOL's written direct testimony does not critique HELCO's IRP-3

Plan with respect to generation, fuel, planning, and climate change, except to suggest that climate change is a scientifically confirmed phenomenon that has serious implications for the world in the future.

Given the general nature of LOL's suggested line of inquiry (i.e., issues related to "generation, fuel, planning and climate change"), the Consumer Advocate requests clarification on what parts of Mr. Peaco's written direct testimony is in opposition to the position set forth in LOL's direct testimony and thus requires clarification as to the basis for the perceived difference of opinion . . . .

Consumer Advocate's letter, filed November 20, 2007, at 1-2.

## II.

### Discussion

In this proceeding, HELCO submitted the written testimonies of eleven witnesses, the Consumer Advocate submitted the written testimonies of two witnesses (both out-of-state consultants), and LOL submitted the written statement of one witness.

By its Stipulation, HELCO and the Consumer Advocate have waived the evidentiary hearing, including the cross-examination of their respective witnesses and of LOL's sole witness, Henry Q Curtis. LOL, however, seeks to cross-examine three of HELCO's witnesses (Norman Verbanic, Gary A. Hashiro, and Arthur Seki) and one of the Consumer Advocate's witnesses (Daniel Peaco), limited to "issues associated with generation, fuel, planning and climate change."<sup>7</sup> LOL "waive[s] any right to

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<sup>7</sup> LOL's letter, filed November 20, 2007, at 1.

cross-examine other witnesses."<sup>8</sup> In addition, LOL informed the commission that "the evidentiary hearing should take a morning, or possibly a day."<sup>9</sup>

Given LOL's representation that "the evidentiary hearing should take a morning, or possibly a day[,] the evidentiary hearing scheduled for Monday, November 26, 2007, 8:30 a.m., will be held as scheduled, but limited to one day. In accordance with HAR § 6-61-33,<sup>10</sup> for the evidentiary hearing, HELCO will be required to provide Norman Verbanic, Gary A. Hashiro, and Arthur Seki; the Consumer Advocate will be required to provide Daniel Peaco; and LOL will be required to provide Henry Q Curtis.

While the commission is cognizant of the issues raised by the Consumer Advocate in its November 20, 2007 letter, absent a motion to strike or other related motion, the commission is not inclined to, sua sponte, limit LOL's cross-examination. That said, the commission remains concerned about the brevity of LOL's testimony, the foundation for the testimony, and the

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<sup>8</sup>LOL's letter, filed November 20, 2007, at 1.

<sup>9</sup>LOL's letter, filed November 20, 2007, at 1.

<sup>10</sup>HAR § 6-61-33 states:

§6-61-33 Cross examination. Each party has the right to conduct such cross-examination of the adverse party's witnesses as may be required for a full and true disclosure of the facts and has the right to submit rebuttal evidence.

HAR § 6-61-33; see also Prehearing Order No. 23485, filed on June 8, 2007, Section II,F, Witnesses, at 11-12 (witnesses submitting written testimony and exhibits shall be made available for cross-examination at the hearing).



failure to comply with the commission's rules regarding the form of testimony, and accordingly, LOL is cautioned that it must comply with all commission rules and orders in the future.<sup>11</sup>

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<sup>11</sup>HAR §§ 6-61-34, 6-61-43 and 6-61-45 state:

§6-61-34 Limiting number of witnesses. To avoid unnecessary or unduly repetitious evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

§6-61-43 Rules of evidence. Neither the commission nor a hearings officer is bound by the common law rules relating to the admission or rejection of evidence. The commission or hearings officer may exercise its own discretion in these matters, limited only by considerations of relevancy, materiality, and repetition by the rules of privilege recognized by law, and with a view to doing substantial justice.

§6-61-45 Prepared testimony. (a) With the approval of the presiding officer, a witness on direct examination may read into the record or summarize the witness' prepared testimony. Before any testimony is read or summarized, unless excused by the presiding officer, the witness shall deliver copies of any prepared testimony to the presiding officer, the chief clerk, and all attorneys or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems it in the interest of orderly procedure or if substantial savings in time will result, the prepared testimony may be received in evidence without reading, provided that copies of the prepared testimony are served upon all parties and the commission at least five days before the hearing, unless otherwise directed by the presiding officer.

(b) To promote an orderly hearing procedure, prepared testimony and exhibits that are filed with the commission in advance pursuant to a prehearing order shall be received in evidence without reading. Witnesses may summarize their prepared testimony during the hearing. Any amendments to the prepared direct and rebuttal testimony shall be served upon all parties and filed with the commission in accordance with the prehearing order or as the presiding officer directs. A party introducing totally new matters by revisions or supplements shall attach a sworn affidavit explaining why these matters were not submitted with the direct testimony. The commission may, if the explanation is unreasonable, reject the amended testimony. Notwithstanding that prepared testimony and exhibits are placed into evidence by this subsection, the parties to the proceeding

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The evidentiary hearing scheduled for Monday, November 26, 2007, 8:30 a.m., will be limited to one day.

2. For the evidentiary hearing, HELCO shall provide the following witnesses: Norman Verbanic, Gary A. Hashiro, and Arthur Seki; the Consumer Advocate shall provide Daniel Peaco; and LOL shall provide Henry Q Curtis.

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may, during the hearing, object on evidentiary grounds to the admissibility of all or part of the prepared testimony or exhibits and move to strike the same. Notwithstanding that an applicant's or respondent's testimony and exhibits are in evidence, a party will not be precluded from presenting any motion it deems appropriate after the close of the applicant's or respondent's case.

(c) Prepared testimony shall be legible and on paper not exceeding 8-1/2" x 11 inches. Testimony shall be:


- (1) Double spaced;
- (2) Printed on only one side of each page; and
- (3) Printed on pre-numbered lines.

HAR §§ 6-61-34, 6-61-43 and 6-61-45; see also Prehearing Order No. 23485, Section II.E, Form of Prepared Testimony, at 10-11.

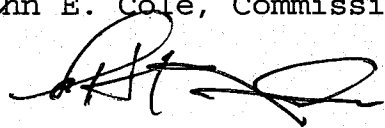
DONE at Honolulu, Hawaii

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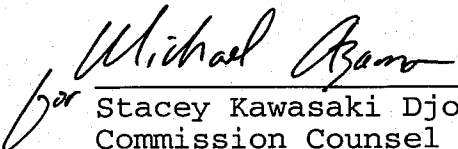
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

04-0046.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23849 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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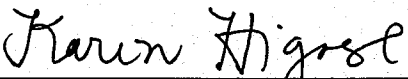
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Certificate of Service

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Karen Higashi

DATED: NOV 21 2007