

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
)
For Approval of a Request for)
Waiver From the Competitive Bidding)
Framework.)
_____)

DOCKET NO. 2008-0091

DECISION AND ORDER

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

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Docket No. 2008-0091

DECISION AND ORDER

By this Decision and Order, the commission grants HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") and HAWAII ELECTRIC LIGHT COMPANY, INC.'s ("HELCO") (collectively, "HECO Companies") request for a waiver from the Framework for Competitive Bidding ("Framework")¹ for Hamakua Biomass Energy, LLC's ("HBE") biomass energy project ("Project"), subject to certain conditions.

I.

Background

A.

Application

On May 16, 2008, the HECO Companies filed an Application requesting approval of a waiver from the Framework for HBE's biomass energy project located in Hamakua, Hawaii,

¹The Framework for Competitive Bidding was adopted by the commission in Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372.

pursuant to Part II.A.3.b and d of the Framework.² According to the HECO Companies, "granting the requested waiver is in the public interest in that it will allow discussions to continue which may not otherwise occur, as HELCO does not presently have a renewable energy [request for proposals ("RFP")] on-going or planned for the near future" and "a waiver will be in the public interest as it would allow discussions to continue on the provision of ancillary services that could assist the utility grid's operation."³ In addition, the HECO Companies state that the Project "could increase the reliable supply of electricity to HELCO's ratepayers" and "could assist significantly in implementation of the State's renewable portfolio standards law and greenhouse gas law."⁴

B.

Consumer Advocate's Position

By its Statement of Position filed on July 14, 2008, the Consumer Advocate⁵ states that it does not object to commission approval of a waiver from the Framework for

²Application; Exhibits A & B; and Certificate of Service, filed on May 16, 2008, as supplemented on July 10, 2008 (collectively, "Application").

³Application, at 3.

⁴Application, at Exhibit A.

⁵The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") is an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

HBE's Project.⁶ According to the Consumer Advocate, the waiver "is expected to enable the HECO Companies to continue dialogue and negotiations with the project's developer" and "if successful, may increase HELCO's ability to utilize more renewable energy to meet the utility's customers' energy needs, thereby reducing the utility's dependence on fossil fuel generation."⁷ And, "[i]f a power purchase agreement is reached as a result of the negotiations, the energy supplied by the proposed facility is expected to help HELCO comply with [the State's Renewable Portfolio Standards ("RPS") law] and State Energy Policy" and thus granting the waiver would be in the public interest.⁸ In addition "the Consumer Advocate contends that not granting the request[] for waiver to allow HELCO to continue dialogue and possibly negotiate the terms of a purchase power agreement with the developer of the proposed biomass facility on the island of Hawaii will impede or create a disincentive for the achievement of HELCO's IRP goals, RPS and the State's Energy Policy."⁹ The Consumer Advocate, however, "is mindful that sufficient time is needed to transition from the prior procurement process to the competitive bidding process"; "strongly supports the development of renewable energy projects consistent with the State's Energy Policy"; "also strongly

⁶Division of Consumer Advocacy's Statement of Position and Certificate of Service, filed on July 14, 2008 ("Consumer Advocate's Statement of Position").

⁷Consumer Advocate's Statement of Position, at 10.

⁸Consumer Advocate's Statement of Position, at 10.

⁹Consumer Advocate's Statement of Position, at 8.

supports the use of the competitive bidding process, primarily to find creative, cost effective solutions to meeting the utility's customers' energy needs"; and, as a result will "carefully review any future requests for waivers or exceptions from the [] Framework because the continued granting of waivers or exceptions will circumvent the process that has been established by the Commission for the acquisition of new generating resources."¹⁰

II.

Discussion

A.

Framework

By Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372 ("Competitive Bidding Docket"), the commission adopted the Framework to govern competitive bidding as a mechanism for acquiring new energy generation in Hawaii. Under the Framework, competitive bidding is the required mechanism for acquiring a future generation resource or a block of generation resources, subject to certain conditions and exceptions.¹¹

The HECO Companies argue that Part II.A.3.b and d of the Framework apply, and thus the commission should waive the Framework for the HBE Project. Part II.A.3.b and d state in relevant part:

¹⁰Consumer Advocate's Statement of Position, at 11.

¹¹Framework, Section II.A.3, at 3-4.

3. Competitive bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or a block of generation resources, whether or not such resource has been identified in a utility's IRP. The basis for such a finding shall be explained by the utility in its IRP, and the determination shall be made by the Commission in its review of the utility's IRP. See Part II.C, below. The following conditions and possible exceptions apply:

.....

- b. Under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver under Part II.A.4, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed generation in a timely fashion; (ii) when the utility and its customers will benefit more if the generation resource is owned by the utility rather than by a third-party (for example, when reliability will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IRP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.

.....

- d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the

waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

. . . .

Framework, Parts II.A.3.b and d (emphasis added).

Under Part II.A.3.b of the Framework, the HECO Companies argue that a waiver should be granted because competitive bidding will impede or create a disincentive for the achievement of IRP goals, renewable portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations because "[i]f installed, this project could assist significantly in implementation of the State's renewable portfolio standards law and greenhouse gas law."¹² The commission disagrees. If the HECO Companies were to proceed with competitive bidding, the successful bidder's project could also "assist significantly in implementation of the State's renewable portfolio standards law and greenhouse gas law." Accordingly, the commission does not view competitive bidding in and of itself as impeding or creating a disincentive for achievement of IRP goals, RPS or other government objectives and policies.

The HECO Companies also argue that a waiver for HBE's Project is in the public interest, pursuant to Part II.A.3.d of the Framework, as "it will allow discussions to continue which may not otherwise occur, as HELCO does not

¹²Application, at Exhibit A.

presently have a renewable energy RFP on-going or planned for the near future."¹³ The lack of a pending RFP, however, does not justify a waiver from competitive bidding. HELCO could go forward with a competitive bidding process for the generation resource, and that process could even yield a better option at a better price. HELCO's failure or refusal to initiate a competitive bidding process cannot be sufficient justification for a waiver.

HELCO also argues that a waiver is in the public interest because it may allow HELCO to acquire additional operational features, which could allow HELCO to further increase its percentage of renewable energy. Like the Consumer Advocate, the commission is supportive of the HECO Companies' acquisition of additional renewable energy on their grids. In the commission's view, such acquisition can provide energy security, reduce greenhouse gas emissions, and reduce our State's dependence on foreign oil. By requesting a waiver from competitive bidding for the HBE Project, the commission assumes that the HECO Companies believe that the additional renewable energy could be placed on HELCO's system more expeditiously by way of waiver than through competitive bidding.

The commission, however, is also cognizant of the value in requiring the HECO Companies to utilize competitive bidding to acquire new generation resources. With competitive bidding, the commission has some assurance, for example, that the price that

¹³Application, at 3.

the HECO Companies are paying is fair and in the best interest of the ratepayer.

Given these competing interests, the commission will grant the waiver for HBE's Project subject to two conditions. One, the waiver will apply for the Project only if a fully executed term sheet is filed with the commission within four months of the date of this Decision and Order.¹⁴ As noted above, the commission assumes that the HECO Companies are requesting a waiver for the Project because they believe that a waiver would be a more expeditious means of adding renewable generation to HELCO's grid than competitive bidding. Accordingly, to ensure that such a benefit is achieved, the commission will set a deadline for HELCO to reach agreement on all material terms with HBE, which shall include: (A) information on the scope of the project (i.e., technology, capacity, location); (B) manner in which the energy will be delivered (i.e., as-available, scheduled); (C) the term of the agreement, projected in-service date, and key milestones, including, but not limited to proof of concept and any phases of the project; (D) performance standards; and (E) pricing.

Two, the waiver will apply for the Project only if HELCO provides the commission with evidence in any application for approval of any power purchase agreement ("PPA") that the price paid by HELCO to HBE is fair and in the best interest of

¹⁴This approach is consistent with the commission's decision in the Competitive Bidding Docket to set a deadline of September 2, 2008, for HECO to reach agreement on term sheets for three HECO projects that are grandfathered from the competitive bidding process. See Decision and Order No. 24170, filed on April 30, 2008, in Docket No. 03-0372, at 5.

the ratepayer. As noted above, one of the clear benefits of competitive bidding is the assurance that the price paid by the utility is a fair one; the assumption being that bidders are required to compete against one another and will offer a fair, if not, their best price, in an attempt to ensure that they are the winning bidder. Without competitive bidding, the commission has no way of knowing whether the price negotiated by the utility is a fair one from the perspective of the ratepayer. Accordingly, if HELCO would like to proceed by waiver rather than competitive bidding it will be required to submit documentation in its application for approval of any PPA with HBE of the actual costs to HBE of the Project, which will allow the commission to determine HBE's profit, and ultimately whether the project is a "good deal" for the ratepayer. The commission understands that this does not presently occur and that the utility often negotiates without that information, which, in the commission's view, can result in the utility negotiating based on its own costs rather than the costs incurred by the provider. However, Act 162, Session Laws of Hawaii 2006 ("Act 162"), which amended HRS § 269-27.2(c), requires the significant reduction or removal of the linkage between the price of fossil fuels and the purchase rate for nonfossil fuel generated electricity for all new purchased power contracts and agreements.¹⁵ Act 162 was intended to ensure that ratepayers not pay the same price for nonfossil fuel generated electricity as it would for fossil fuel generated electricity; and to ensure that any cost savings

¹⁵Order No. 24157, filed on April 18, 2008, in Docket No. 2008-0069, at 6.

from nonfossil fuel generated electricity be passed on to the ratepayer. To ensure compliance with Act 162, the commission should know whether the amount paid by the utility is not only delinked from the price of fossil fuels, but is a fair one. Without competitive bidding, the commission cannot be assured that the price paid by HELCO is fair. Accordingly, the commission will require documentation from HBE to support the price paid by HELCO in any application for approval of a PPA.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' request for a waiver from the competitive bidding process for HBE's Project is approved, provided that a fully executed term sheet for the Project, as described above, is filed within four months of the date of this Decision and Order; and provided that documentation supporting the fairness of the price negotiated between HELCO and HBE is included in any application for approval of a PPA.

2. This docket is closed unless otherwise ordered by the commission.

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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