

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. )  
MAUI ELECTRIC COMPANY, LIMITED )  
For Approval of Waivers from the )  
Competitive Bidding Framework. )  

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DOCKET NO. 2008-0061

DECISION AND ORDER

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

PUBLIC UTILITIES  
COMMISSION

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FILED

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. )	Docket No. 2008-0061
MAUI ELECTRIC COMPANY, LIMITED )	
For Approval of Waivers from the )	
Competitive Bidding Framework. )	
_____ )	

DECISION AND ORDER

By this Decision and Order,<sup>1</sup> the commission approves, subject to certain conditions, the HECO Companies' requests for waivers from the competitive bidding process for the following three independent power producer projects: (1) Na Makani's 4.5 megawatt ("MW") wind energy/hydroelectric hybrid project, located in the Kahua Ranch area on the island of Hawaii (the "Na Makani Project"); (2) Waikoloa Wind Power LLC's ("Waikoloa Wind") 10.25 MW wind farm/battery energy storage project, located near the Waikoloa area on the island of Hawaii (the "Waikoloa Wind Project"); and (3) Bio Energy Systems of Hawaii, Inc.'s ("Bio Energy") 5.5 MW firm capacity biomass

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<sup>1</sup>The Parties are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, the "HECO Companies"), Intervenor NA MAKANI MOA'E KU ("Na Makani"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

project, located on the island of Maui (the "Bio Energy Project").

I.

Background

HECO is the franchised provider of electric utility service on the island of Oahu, HELCO is the franchised provider of electric utility service on the island of Hawaii, and MECO is the franchised provider of electric utility service for the County of Maui.

A.

Procedural Background

On December 8, 2006, the commission issued Decision and Order No. 23121, in which it adopted a Framework for Competitive Bidding as a mechanism for acquiring or building new energy generation in the State of Hawaii ("State").<sup>2</sup>

On April 3, 2008, the HECO Companies filed an Application requesting waivers from the CB Framework for the Na Makani, Waikoloa Wind, and Bio Energy Projects, pursuant to Parts II.A.3 and 4 of the CB Framework.<sup>3</sup>

On April 22, 2008, Na Makani filed a Motion to Intervene. No opposition to the Motion to Intervene was filed by the HECO Companies or the Consumer Advocate. On May 7, 2008,

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<sup>2</sup>Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006, attached (the "CB Framework").

<sup>3</sup>Application; Verification; Exhibits A - E; and Certificate of Service, filed on April 3, 2008, as supplemented on April 25, 2008 (collectively, "Application").

the commission granted Na Makani's Motion to Intervene, limited to the Na Makani Project. On July 10, 2008, the Parties filed their respective position statements, in accordance with the commission's directive.<sup>4</sup> On July 17, 2008, the Parties informed the commission that the proceeding is ready for decision-making by the commission.

B.

HECO Companies' Position

The HECO Companies' position is set forth in their Application and in their Statement of Position, filed on July 10, 2008.<sup>5</sup>

1.

Island of Hawaii Projects

For the Na Makani and Waikoloa Wind Projects, the HECO Companies seek waivers from the competitive bidding process pursuant to Parts II.A.3.b and d of the CB Framework.

For the Na Makani Project, the HECO Companies state that Na Makani has attempted to address the challenges HELCO's system experiences when additional intermittent wind generation is added to HELCO's system, including power fluctuation and ramp rate issues associated with

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<sup>4</sup>Order Approving the Parties' Proposed Procedural Order, as Modified, filed on June 18, 2008.

<sup>5</sup>HECO Companies' Statement of Position; Exhibits A - D; and Certificate of Service, filed on July 10, 2008 (collectively, "HECO Companies' Statement of Position").

wind resources, by injecting hydroelectric generated power to counteract the inherent intermittency of wind resources. Na Makani proposes a wind energy/hydroelectric hybrid project that incorporates a fast-response hydroelectric generation system which, if deemed technically feasible, "represents an immediate opportunity for a scalable demonstration of the wind/pumped hydroelectric storage interaction at a site which has all the necessary attributes and is likely to face few regulatory and permitting challenges in its execution. The results of this project will be useful on all three systems [HECO, HELCO, and MECO] as pumped hydroelectric storage is being examined as a resource on all systems both by the utility and by outside planning efforts such as the Hawaii Clean Energy Initiative."<sup>6</sup> Thus, the HECO Companies contend that granting the requested waiver is consistent with the public interest, as it will allow HELCO and Na Makani to continue to discuss and explore the feasibility of the Na Makani Project, "which may not have otherwise occurred, as HELCO does not presently have a renewable energy RFP on-going or planned for the near future[.]"<sup>7</sup> The HECO Companies also note that continuing to explore the technical feasibility of the Na Makani Project is consistent with HELCO's Integrated Resource Plan for 2007 - 2026, i.e., HELCO's IRP-3.<sup>8</sup>

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<sup>6</sup>HECO Companies' Statement of Position, at 4.

<sup>7</sup>HECO Companies' Statement of Position, at 4.

<sup>8</sup>See In re Hawaii Elec. Light Co., Inc., Docket No. 04-0046 ("Docket No. 04-0046"), HELCO's IRP-3 (Section 12.5, evaluating integration into HELCO's grid and working to mitigate system

Similar to the Na Makani Project, the HECO Companies state that Waikoloa Wind has attempted to address the challenges HELCO's system experiences when additional intermittent wind generation is added to HELCO's system, including power fluctuation and ramp rate issues associated with wind resources, by the use of a battery energy storage system. Such action, the HECO Companies note, is consistent with HELCO's IRP-3.<sup>9</sup> The HECO Companies likewise contend that granting the requested waiver is in the public interest.

2.

Island of Maui Project

For the Bio Energy Project, the HECO Companies seek a waiver from the competitive bidding process pursuant to Parts II.A.3.b and d of the CB Framework.

In support of the requested waiver, the HECO Companies contend that "Bio Energy's proposed project should increase the reliable supply of electricity to the utility's general body of ratepayers, and is otherwise in the public interest. For example, Bio Energy's project: (1) has the potential to be available prior to 2011, which would help to address potential issues concerning the reliable supply of electricity on Maui;

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reliability impact of existing and future renewable energy resources, particularly wind; and Section 12.6, investigating ancillary services capabilities and the feasibility of pumped hydroelectric storage, and other energy storage alternatives).

<sup>9</sup>See Docket No. 04-0046, HELCO's IRP-3 (Sections 8.5.3 and 12.7, HELCO will continue working with renewable energy project developers to support the utility's Preferred Plan and Sustainability Strategy).

(2) could help to facilitate MECO's next firm capacity RFP for Maui; and (3) would serve the public interest by, among other things, helping to serve a quasi-government purpose of removing dead timber and invasive tree species from state lands."<sup>10</sup>

Expanding on the first and second reasons, the HECO Companies state that with respect to the inter-relationship between Bio Energy's Project and the overall objectives set forth in MECO's Integrated Resource Plan for 2007-2026, i.e., MECO's IRP-3:

Bio Energy's proposed project could help to facilitate the next firm capacity RFP for Maui. MECO's IRP-3 called for a firm capacity RFP for Maui that sought projects that could meet a 2011 in-service date. MECO IRP-3, Section 9.9.4. Due to the length of time required to propose, develop and place in service a firm capacity project, the 2011 in-service date could be problematic to entities responding to the next firm capacity RFP for Maui. Bio Energy's proposed project could defer the date that additional firm capacity is needed on Maui which would defer the in-service date proposed in MECO's next firm capacity RFP for Maui.

MECO recognizes that it would be possible for Bio Energy's proposed project to be submitted in response to MECO's next firm capacity RFP for Maui. However, the scope of Bio Energy's proposed project is outside of the proposed scope of MECO's next firm capacity RFP for Maui, which seeks approximately 20 to 25 MW of firm generating capacity. See MECO IRP-3 §9.9.4.

Application, Exhibit C, Pulehu Power, at 2-3 and n.1 (emphasis added); see also HECO Companies' Statement of Position, at 9 and n.9.

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<sup>10</sup>HECO Companies' Statement of Position, at 7; see also Application, at 4.

Moreover, in expanding on the third rationale, the HECO Companies explain:

Bio Energy has already been granted a Special Use Permit by the State of Hawaii Department of Land and Natural Resources . . . . to utilize certain areas to clear woody vegetation from a road buffer for the purposes of establishing a fire break and furthermore to recover specified woody biomass for utilization in a biomass energy generating facility.

The activity granted to Bio Energy pursuant to the special use permit should create a buffer area free from the potential of future wildland fires and provide for public safety. In addition, Bio Energy is exploring forest tree removals that will help forest road maintenance, fuel hazard mitigation, hazard trees mitigation, forest tree growth enhancement, and improvement of public hunting areas. Bio Energy's project also has the support of the Maui Economic Development Board, Inc. See Exhibit E.

Application, Exhibit C, Section 1.b, Public Interest, at 4; see also Exhibit D, Bio Energy's Comments on Benefits of the Pulehu Power Project; HECO Companies' Statement of Position, at 10-11, and Exhibit C, Bio Energy's Comments on Benefits of the Pulehu Power Project.

C.

Consumer Advocate's Position

By its Statement of Position filed on July 10, 2008, the Consumer Advocate informs the commission that it concurs with the HECO Companies that "the specific waiver requests fall under the provisions of Section II.A.3.b. (in particular section iv.)



and Section II.A.3.d. of the CB Framework."<sup>11</sup> Accordingly, the Consumer Advocate does not object to the commission's approval of the requests for waivers from the CB Framework for the three renewable energy projects.

With respect to the Na Makani and Waikoloa Wind Projects, the Consumer Advocate states that: (1) the requested waivers are reasonable and consistent with Part II.A.3.b(iv) of the CB Framework; and (2) "not granting the requests for waivers to allow HELCO to continue dialogue and possibly negotiate the terms of a purchase power agreement with the developers of the two wind projects will impede or create a disincentive for the achievement of HELCO's IRP goals, [Renewable Portfolio Standards], and the State's Energy Policy."<sup>12</sup> In support of its position, the Consumer Advocate states:

1. HELCO's IRP-3: (A) identifies the need to investigate the feasibility of pumped storage hydro and other energy storage alternatives in order for HELCO to effectively integrate existing and future renewable energy resources, particularly wind, into its grid; and (B) sets forth the initiative to continue the development of potential renewable energy projects, taking into consideration the impact of the project on HELCO's system and the contribution that the generated energy will have in meeting renewable energy goals.

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<sup>11</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on July 10, 2008 (collectively, "Consumer Advocate's Statement of Position"), at 5.

<sup>12</sup>Consumer Advocate's Statement of Position, at 13.

"The Na Makani project is intended to address power fluctuation and ramp rate issues that HELCO presently experiences with the amount of wind resources that are connected to HELCO's electric grid by proposing to develop [a] hydro storage facility in conjunction with the wind facility. The Waikoloa Wind project is also intended to address the existing challenges of integrating the existing and future as-available renewable energy resources on HELCO's electric system in a cost-effective manner by installing a battery storage facility in conjunction with the proposed wind project."<sup>13</sup> Thus, "it appears that the [two] proposed projects are intended to be consistent with the objectives to be achieved with HELCO's IRP-3 Action Plan."<sup>14</sup>

2. Should the two wind energy projects succeed in addressing the current integration challenges faced by HELCO, the generated energy may contribute to the energy requirements set forth in HRS chapter 269, part V, governing the electric utilities' Renewable Portfolio Standards.

3. Allowing HELCO to integrate more renewable energy into its system in order to meet its customers' energy needs is consistent with the State's Energy Policy set forth in HRS § 226-18, including the policy of "support[ing the] research and development as well as promote the use of renewable energy sources[.]"<sup>15</sup> Thus, the two wind energy projects should assist

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<sup>13</sup>Consumer Advocate's Statement of Position, at 9-10.

<sup>14</sup>Consumer Advocate's Statement of Position, at 10.

<sup>15</sup>HRS § 226-18(c)(1).

HELCO in complying with the State's Energy Policy by reducing the dependence on fossil fuel generation.

For the Bio Energy Project, the Consumer Advocate notes that the requested waiver appears consistent with Sections II.A.3.b(iv) and II.A.3.d of the CB Framework:

For the [Bio Energy] Project that is proposed for the island of Maui, the proposal is believed to increase the amount of reliable energy that is available on MECO's system since the biomass energy is viewed as being more dispatchable to meet MECO's customers' energy needs than as-available energy. Furthermore, the project is believed to be in the public interest because the project will result in the removal of dead and downed timber, which is potentially a fire hazard. In addition, the project is expected to remove invasive tree species from State lands. Finally, . . . the energy from the [Bio Energy] Project would help MECO to achieve its RPS and reduce the current reliance on fossil fuel generation to meet MECO's customers' energy needs consistent with the State's Energy Policy.

Consumer Advocate's Statement of Position, at 13-14; see also id., at 13 (increasing the reliable supply of electricity to the utility's general body of ratepayers, consistent with the public interest, in accordance with Part II.A.3.d of the CB Framework).

The Consumer Advocate concludes by noting its intent "to carefully review any future requests for waivers or exceptions from the CB Framework because the continued granting of waivers or exceptions will circumvent the [competitive bidding] process that has been established by the Commission for the acquisition of new generating resources."<sup>16</sup>

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<sup>16</sup>Consumer Advocate's Statement of Position, at 16.

D.

Na Makani's Position

Na Makani's reasons in support of the requested waiver are set forth in its Statement of Position filed on July 10, 2008.<sup>17</sup> Na Makani explains that it proposes to develop a fast response, integrated hydroelectric/wind project for the purpose of demonstrating the capabilities of new technology to mitigate HELCO's expressed concerns about the integration of more wind power on its system.

Na Makani notes that: (1) its proposed demonstration project is designed to reduce the ramp down/ramp up effects on HELCO's grid, and expand the capabilities of pumped storage hydro in the area of power quality, including frequency regulation, load following, and spinning reserve; and (2) such action is consistent with the stated goals set forth in HELCO's IRP-3. Thus, "[t]o require Na Makani, [which] has a current lease with Kahua Ranch and possess[es] the new technology for 'smoothing' wind variability and ramp rates, to enter a competitive bidding process would unnecessarily impede or create a disincentive for the achievement of IRP goals. Further, HELCO does not have a competitive bid program currently in process."<sup>18</sup> For these reasons, Na Makani contends that its project meets the criteria for waiver set forth in Part II.A.3.b(iv) of the CB Framework.

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<sup>17</sup>Na Makani's Statement of Position; and Certificate of Service, filed on July 10, 2008 (collectively, "Na Makani's Statement of Position").

<sup>18</sup>Na Makani's Statement of Position, at 7.

Na Makani also contends that its project will likely lead to a lower cost supply of electricity to the utility's ratepayers, consistent with Part II.A.3.d of the CB Framework. Na Makani reasons that wind energy, once installed, is not subject to price escalations due to the cost of fuel, and "[w]hen pumped storage hydro reduces the need for curtailment, the competitive bids from wind farms, which are known at the time of the bid to be not subject to curtailment, will be priced lower, because of the certainty of the cash flow stream and better financing terms."<sup>19</sup> Ultimately, under this scenario, lower energy rates for HELCO's ratepayers will result.

## II.

### Discussion

Parts II.A.3 and 4 of the CB Framework states in relevant part:

#### **A. USE OF COMPETITIVE BIDDING**

1. This Framework applies to electric utilities regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawaii Revised Statutes.
2. A determination shall be made by the Commission in a utility's IRP proceeding as to whether a competitive bidding process shall be used to acquire a future generation resource or a block of generation resources.
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

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<sup>19</sup>Na Makani's Statement of Position, at 8.

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:

- a. Competitive bidding will benefit Hawaii when it: (i) facilitates an electric utility's acquisition of supply-side resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new generating resources that are overall lower in cost or better performing than the utility could otherwise achieve; (iii) does not negatively impact the reliability or unduly encumber the operation or maintenance of Hawaii's unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed generation resources and allowing the utility to adjust to changes in circumstances; and (v) is consistent with IRP objectives.
- 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.

c. Other circumstances that could qualify for a waiver include: (i) the expansion or repowering of existing utility generating units; (ii) the acquisition of near-term power supplies for short-term needs; (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; and (iv) the acquisition of power supplies needed to respond to an emergency situation.

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.

. . . . .

4. The procedure for seeking a waiver is as follows:

a. Applications for waivers, and transition to competitive bidding requirements for new generation projects.

(i) For proposed generation projects included in, or consistent with, IRPs approved by the Commission prior to the effective date of this Framework, the electric

utility shall file an application for waiver with the Commission, as soon as practicable, consistent with Part II.A.4.a(iv), below.

(ii) For proposed generation projects included in, or consistent with, the IRP filed for Commission approval in In re Hawaiian Elec. Co., Inc., Docket 03-0253, the electric utility shall file any waiver request no later than sixty (60) days following a Commission order approving the IRP.

(iii) For all proposed generation projects included in, or consistent with, IRPs that have not yet been filed with the Commission for approval as of the effective date of this Framework, any waiver request shall accompany the filing of the proposed IRP for the Commission's approval.

(iv) An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as soon as practicable such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.

b. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.

CB Framework, Parts II.A.3 and 4 (emphasis added).



A.

Island of Hawaii Projects

The HELCO Companies explain:

. . . due to the level of intermittent wind generation on the Big Island, HELCO faces many challenges with integrating additional as-available renewable energy development while maintaining reliable and cost-effective electrical energy generation and delivery to its customers. Without additional operational features (e.g., battery energy storage, hydroelectric system), highly variable non-dispatchable generation such as wind increases the mismatch between generation and load which causes operational difficulties to a utility's system.

Application, Exhibit A, at 1 and 3; see also Exhibit B, Impact of Wind Energy on Small, Isolated Island Grids; and HECO Companies' Statement of Position, at 3.

The Na Makani Project includes a hybrid wind energy/hydroelectric generation system that is designed to address power fluctuation and ramp rate issues associated with wind resources, by injecting hydroelectric generated power to counteract the inherent intermittency of wind resources. Similarly, the Waikoloa Project includes a battery energy storage system that is designed to address these same issues associated with intermittent wind resources. HELCO's efforts in supporting the development of reliable and cost-effective renewable energy resources on the island of Hawaii, including exploring the technical feasibility of hydroelectric generation and battery energy storage under the two proposed wind energy projects, will likely be impeded in the event that the requested waivers are not granted herein. Such a disincentive appears inconsistent with the stated goals of promoting the development

of cost-effective renewable energy resources, as set forth in HELCO's IRP-3; HRS chapter 269, part V, the Renewable Portfolio Standards law; and HRS § 226-18, the State's overall Energy Policy, including supporting the research and development of renewable energy resources.

On balance, the commission finds that the HECO Companies have met their burden of showing that competitive bidding for the two wind energy projects "will impede or create a disincentive for the achievement of IRP goals, renewable energy portfolio standards or other government objectives and policies[.]" Accordingly, the commission approves the requests for waivers from the competitive bidding process for the Na Makani Project and Waikoloa Wind Projects, respectively, pursuant to Part II.A.3.b(iv) of the CB Framework, and subject to the conditions noted in Section II.C, below.

## B.

### Island of Maui Project

The Bio Energy Project is a firm capacity biomass project that "involves the gasification of dead and downed timber, and wattle trees into a burnable gas in a downdraft gasifier. (Bio Energy's plans include removing the dead and downed timber and invasive tree species from state lands.) The gas would then be used as fuel for reciprocating engines driving generators."<sup>20</sup>

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<sup>20</sup>Application, Exhibit C, Pulehu Power, at 1; see also id. at 1-4; and the HECO Companies' Statement of Position, at 7.

While MECO readily acknowledges that the Bio Energy Project may effectively defer a firm capacity RFP for a Maui project that could meet the 2011 in-service date under MECO's IRP-3, the Bio Energy Project, as noted by the Consumer Advocate, is designed to increase the amount of renewable energy on MECO's system, while providing a reliable source of firm capacity to Maui ratepayers. Moreover, as represented by the HECO Companies, the Bio Energy Project will serve a quasi-governmental objective of removing dead and downed timber, and invasive tree species from State lands. In addition, similar to the two wind energy projects, the biomass project is intended to promote the development of cost-effective renewable energy resources, as set forth in MECO's IRP-3; HRS chapter 269, part V; and HRS § 226-18.

Under the circumstances, the commission finds that the HECO Companies have met their burden of showing that the granting of the waiver "will likely . . . increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest." Accordingly, the commission approves the request for a waiver from the competitive bidding process for the Bio Energy Project, pursuant to Part II.A.3.d of the CB Framework, and subject to the conditions noted in Section II.C, below.

C.

Conditions

In In re Hawaiian Elec, Co., Inc. and Hawaii Elec. Light Co., Inc., Docket No. 2008-0091 ("Docket No. 2008-0091"), the commission recently approved the waiver from the competitive process for Hamakua Biomass Energy, LLC's ("HBE") biomass energy project, subject to certain conditions.<sup>21</sup> In approving the waiver, the commission recognized "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 the HECO Companies are paying is fair and in the best interest of the ratepayer."<sup>22</sup> That said, the commission then approved the waiver, subject to the following two conditions:

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. 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

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<sup>21</sup>Docket No. 2008-0091, Decision and Order, filed on August 8, 2008.

<sup>22</sup>Docket No. 2008-0091, Decision and Order, filed on August 8, 2008, at 7-8.

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 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. 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 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.

Docket No. 2008-0091, Decision and Order, at 8-10 (footnotes, text, and citation therein omitted).

For the reasons identified by the commission in Docket No. 2008-0091, the approval of the waivers herein will be subject to the same conditions noted above.

### III.

#### Orders


##### THE COMMISSION ORDERS:

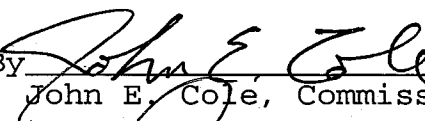
1. The HECO Companies' requests for waivers from the competitive bidding process for the three independent power producer projects that are the subject of this proceeding, i.e., the Na Makani, Waikoloa Wind, and Bio Energy Projects, are approved; provided that: (A) fully executed term sheets for each of the projects, as described in Section II.C, above, are filed within four months from the date of this Decision and Order; and (B) documentation supporting the fairness of the price negotiated between the HECO Companies and the independent power producers are included in any application for approval of a PPA.

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

DONE at Honolulu, Hawaii SEP - 8 2008.


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:

  
Michael Azama  
Commission Counsel

2008-0061.laa

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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