

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. )

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DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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FILED

OF THE STATE OF HAWAII

HAWAIIAN ELECTRIC COMPANY, INC. )  
HAWAII ELECTRIC LIGHT COMPANY, INC.)

For Approval of a Request for )  
Waiver From the Competitive Bidding )  
Framework. )

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")<sup>1</sup> for Hu Honua Bioenergy, LLC's ("Hu Honua") biomass energy project ("Project"), subject to certain conditions.

I.

## Background

A.

## Application

On July 16, 2008, the HECO Companies filed an Application in this docket, requesting commission approval of a waiver from the Framework for Hu Honua's biomass energy project located in Pepeekeo, Hawaii, pursuant to Part II.A.3.b and d of

<sup>1</sup>The 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.

the Framework.<sup>2</sup> 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."<sup>3</sup> Specifically, the HECO Companies state that "granting of the waiver, along with the waiver for the proposed Hamakua Biomass Energy, LLC project [in Docket No. 2008-0091], would allow HELCO to compare the viability, sustainability, operational features, interconnection requirements, and the costs of the two proposed projects."<sup>4</sup> According to the HECO Companies, 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."<sup>5</sup>

B.

Docket No. 2008-0091 (HBE Project)

Between the filing of the Application and the Consumer

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<sup>2</sup>Application; Exhibits A & B; and Certificate of Service, filed on July 16, 2008 (collectively, "Application").

<sup>3</sup>Application, at 3.

<sup>4</sup>Application, at 3-4.

<sup>5</sup>Application, at Exhibit A.

Advocate's<sup>6</sup> statement of position in this docket, the commission approved the HECO Companies' request for a waiver from the competitive bidding process for Hamakua Biomass Energy, LLC's ("HBE") biomass energy project by Decision and Order, filed on August 8, 2008, in Docket No. 2008-0091 ("HBE Order"). Commission approval was conditioned on HELCO filing a fully executed term sheet for the project within four months of the date of the decision and order; and on HELCO and HBE providing documentation supporting the fairness of the price negotiated between HELCO and HBE in any application for approval of a power purchase agreement ("PPA").<sup>7</sup>

C.

Consumer Advocate's Position

On October 28, 2008, the Consumer Advocate filed its Statement of Position in this docket, objecting to commission approval of a waiver from the Framework for Hu Honua's Project.<sup>8</sup> According to the Consumer Advocate, given the similarities between the HBE and Hu Honua projects, the fact that HELCO can only accept firm energy from one of the two projects, and

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<sup>6</sup>The 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 § 269-51 and Hawaii Administrative Rules § 6-61-62(a).

<sup>7</sup>HBE Order, at 10.

<sup>8</sup>Division of Consumer Advocacy's Statement of Position and Certificate of Service, filed on October 28, 2008 ("Consumer Advocate's SOP").

the benefits of competitive bidding, the commission should deny a waiver from the Framework for the Project.

In addition, according to the Consumer Advocate, there are concerns over the Project's viability and the financial difficulties of Hu Honua's majority owner, Municipal Mortgage & Equity LLC. In response to public opposition to the Project, the Consumer Advocate states that "to grant the waiver, without public input as to the appropriateness of refurbishing the plant, and commencing operations, does not appear to be in the public interest."<sup>9</sup>

If the commission is not inclined to deny the waiver request, the Consumer Advocate recommends that the commission impose the same conditions on Hu Honua as were imposed on HBE in the HBE Order.

## 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

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<sup>9</sup>CA SOP, at 11.

resource or a block of generation resources, subject to certain conditions and exceptions.<sup>10</sup>

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 Hu Honua Project. Part II.A.3.b and d state in relevant part:

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

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<sup>10</sup>Framework, Section II.A.3, at 3-4.

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).

The HECO Companies argue that a waiver for Hu Honua'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 presently have a renewable energy RFP on-going or planned for the near future."<sup>11</sup> As noted in the HBE Order, the lack of a pending RFP does not justify a waiver from competitive bidding, as HELCO could go forward with a competitive bidding process for the generation resource, and that process could yield a better option at a better price.

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<sup>11</sup>Application, at 3.

Nonetheless, consistent with the HBE Order, the commission agrees that a waiver for the Hu Honua Project is in the public interest because it "could provide an opportunity to increase the amount of renewable energy on HELCO's system, without increasing the amount of as-available, intermittent renewable energy resources on HELCO's system."<sup>12</sup>

With respect to the Consumer Advocate's concerns, the commission agrees that competitive bidding would have been preferable to waiver for the HBE and Hu Honua projects, given that HBE and Hu Honua are in direct competition to provide the same or similar generation resource. In this instance, however, given that the commission has already approved a waiver for HBE; in fairness to Hu Honua, it is appropriate to also grant a waiver to Hu Honua.

In the commission's view, by approving a waiver, the commission is not approving the Hu Honua Project per se. The commission takes very seriously the substantive concerns raised by the Consumer Advocate and neighboring property owners over the Project. However, if HELCO were to enter into a PPA with Hu Honua, HELCO would be required to submit that PPA to the commission for review and approval; at which time the commission could address the concerns raised by the Consumer Advocate and neighboring property owners over the Project.

Accordingly, the commission will grant a waiver for the Hu Honua Project, but will condition that approval on the same two conditions that it imposed on HBE:

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<sup>12</sup>See Application, at Exhibit A.



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 [Hu Honua], 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 [Hu Honua] 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 [Hu Honua] of the Project, which will allow the commission to determine [Hu Honua'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 [Hu Honua] to support the price paid by HELCO in any application for approval of a PPA.

HBE Order, at 8-10 (footnotes and text therein omitted).

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The HECO Companies' request for a waiver from the competitive bidding process for Hu Honua'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 Hu Honua is included in any application for approval of a PPA.

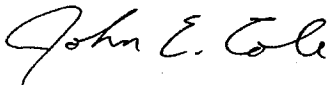
2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii

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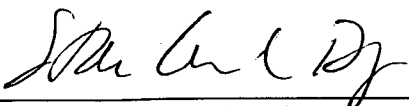
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
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Commission Counsel

2008-0143.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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