

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval of Biodiesel Supply )  
Contract with Imperium Services, )  
LLC, and to include Contract )  
Costs in HECO's Energy Cost )  
Adjustment Clause. )  
\_\_\_\_\_)

DOCKET NO. 2007-0346

DECISION AND ORDER NO. 23965

Filed Jan. 10, 2008  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF LAND AND NATURAL RESOURCES  
OFFICE OF SUSTAINABLE DEVELOPMENT  
STATE OF HAWAII

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Commission, State of Hawaii.

Karen Higashi

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Docket No. 2007-0346

Order No. 23965

ORDER

By this Order, the commission grants Life of the Land's ("LOL") Motion to Intervene, filed on November 5, 2007 ("LOL's Motion"), subject to certain conditions as set forth herein.

I.

Background

On October 18, 2007, HAWAIIAN ELECTRIC COMPANY, INC. ("HECO")<sup>1</sup> filed an Application for commission approval of a Biodiesel Supply Contract between HECO and Imperium Services, LLC ("Imperium") dated August 13, 2007 ("Contract"). The Contract is for a biodiesel fuel supply for HECO's new combustion turbine generating unit at Campbell Industrial Park ("CIP") in Kapolei,

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<sup>1</sup>HECO is a Hawaii corporation and a public utility as defined by Hawaii Revised Statutes ("HRS") § 269-1. HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii.

Hawaii.<sup>2</sup> HECO also requests commission approval to include the costs for biodiesel fuel, transportation, storage and related taxes incurred pursuant to the Contract in HECO's Energy Cost Adjustment Clause ("ECAC") to the extent that the costs are not recovered in HECO's base rates.

On November 5, 2007, LOL timely filed a motion to intervene. In support of its motion, LOL states that it is "a 37-year old non-profit organization"<sup>3</sup> whose "members live, work and recreate in Hawaii. They are concerned about climate change, energy policy, and environmental externalities."<sup>4</sup>

LOL claims that it "is the only entity in the state (government, industry, community) to have presented Expert Witnesses on Biofuels before any state agency. [LOL] has sponsored Expert Witnesses on Climate Change."<sup>5</sup>

LOL maintains that "there are no other means available to protect [their] interests."<sup>6</sup> Moreover, "LOL's position has been significantly different from the Consumer Advocate. In particular, we believe that Climate Change is a serious and immediate global crisis, while the Consumer Advocate has stated on the record that if global warming is real, any mitigation

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<sup>2</sup>By Decision and Order No. 23457, filed on May 23, 2007, in Docket No. 05-0145 ("CIP docket"), the commission approved HECO's request to commit funds for the purchase and installation of a new combustion turbine generating unit at CIP.

<sup>3</sup>See LOL's Motion, filed on November 5, 2007, at 2.

<sup>4</sup>See LOL's Motion, filed on November 5, 2007, at 7.

<sup>5</sup>See LOL's Motion, filed on November 5, 2007, at 3.

<sup>6</sup>See LOL's Motion, filed on November 5, 2007, at 7.

needed is decades away from needing regulatory action."<sup>7</sup> LOL believes that the Consumer Advocate represents the interests of the general public, whereas LOL "is concerned with environmental, climatic and greenhouse gas impacts."<sup>8</sup>

LOL claims that "[w]e offer a unique perspective. We intend to present a proactive case, supported by expert witnesses and exhibits, which will provide to the [c]ommission alternate scenarios. . . . [LOL] will sponsor a dozen expert witnesses, including several doctors (Ph.D., M.D., J.D.)"<sup>9</sup>

Finally, LOL assures the commission that its "comments, testimonies, expert witnesses and exhibits will be provided so as to strengthen the defensibility of the [commission's] decision."<sup>10</sup>

On November 13, 2007, HECO submitted a Memorandum in Opposition to LOL's Motion to Intervene ("HECO's Memorandum in Opposition"). It opposes LOL's Motion on the grounds that LOL will seek to re-litigate the biofuel issue raised in Docket No. 05-0145; that greenhouse gas and climate change concerns are addressed by IRP-4 and other forums; that LOL has not demonstrated a cognizable right to participate; LOL's interests are the same as the general public and will be represented by the Consumer Advocate; LOL has other means to protect its interests; LOL's allegations are not reasonably pertinent and will unduly

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<sup>7</sup>See LOL's Motion, filed on November 5, 2007, at 8.

<sup>8</sup>See LOL's Motion, filed on November 5, 2007, at 9.

<sup>9</sup>See LOL's Motion, filed on November 5, 2007, at 8.

<sup>10</sup>See LOL's Motion, filed on November 5, 2007, at 9.

broaden the issues; and LOL has not shown that it will assist in the development of a sound record.<sup>11</sup>

## II.

### Discussion

#### A.

### 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.

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<sup>11</sup>On November 16, 2007, LOL filed a document titled Memorandum in Support of Motion to Intervene. On November 20, 2007, HECO submitted a letter to the commission stating, "the Commission should disregard LOL's Memorandum as the [c]ommission's [r]ules [footnote omitted] do not allow for replies and LOL failed to request leave to file a reply." See November 20, 2007 letter, at 1. On November 26, 2007, LOL filed Request for Leave to File an Amended Pleading. On November 30, 2007, HECO submitted a Memorandum in Opposition to Life of the Land's Request for Leave to File an Amended Pleading. On December 3, 2007, HECO submitted an Amended Certificate of Service.

The commission notes that leave must be obtained prior to filing any reply briefing. Therefore, LOL's Memorandum in Support of its Motion to Intervene, filed on November 16, 2007, will not be considered by the commission. HECO's November 20, 2007 letter, LOL's Request for Leave to File an Amended Pleading, HECO's Memorandum in Opposition to Life of the Land's Request for Leave to File an Amended Pleading, and HECO's Amended Certificate of Service will be disregarded as moot.

(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."<sup>12</sup>

Here, while the commission acknowledges the legitimate concerns raised by HECO in opposing intervention, the commission will allow, in its discretion, LOL to intervene in this docket.

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<sup>12</sup>See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (Haw. 1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

In the commission's view, the issues in this docket are sufficiently distinct from those raised in the CIP Docket. As HECO witnesses acknowledged in the CIP Docket, the fuel contract would be subject to commission approval in a later docket and issues such as fuel source were not yet determined at the time of the CIP docket.

On December 12, 2006, Robert Isler, HECO's Project Manager assigned to CIP, testified:

A: . . . The bottom line is we don't know exactly who this fuel's coming from. We don't know exactly what - - you know, what the source of the - - the crops will be.

Ultimately, we'll go through the process of issuing the request for proposal. We'll get the proposals. Some of the questions that we'll ask is, "Well, what is your" - - "your feedstock?"

See Transcript, at 290:19-291:1. On December 11, 2006, during cross-examination by commission staff, Thomas C. Simmons, HECO's Vice President of Power Supply, testified:

Q [by Richard VanDrunen]: First off to clarify, is HECO asking [the commission] to approve the use of biofuels in the unit in this docket?

A: I do not believe that they were asking for specific approval to utilize biofuels in this docket. We're asking for a commission approval of this - - of this type of generating technology. And we are pursuing an air permit which will allow us to pursue the use of biofuels.

At some point in time, we will come to the [c]ommission - - our plan is to come to the [c]ommission with a contract that we have negotiated following a solicitation process to secure supplies of biofuels and request commission approval for cost recovery, for the fuel expenses to purchase the biofuels for utilization in the generating unit.

See Transcript, at 42:13-43:5.

Based on the above, the commission finds that LOL has an interest that is reasonably pertinent to the matters of this docket. Also, its members' interests are sufficiently different from the Consumer Advocate's; therefore, its position may not be advocated if it were denied intervention. Finally, LOL states that it will meaningfully participate, present a proactive case, supported by expert witnesses and exhibits, which will provide alternate scenarios. The commission concludes that LOL's participation in this proceeding may assist in the development of a sound record. Accordingly, LOL's Motion should be granted.

Although the commission is allowing LOL to intervene, intervention should not be perceived by LOL as an opportunity to re-litigate the use of biofuels in HECO's new combustion turbine generating unit. Accordingly, the commission will preclude any attempt by LOL to unreasonably broaden the issues, unduly delay the proceeding, or re-litigate the issues resolved in the CIP docket. The commission will reconsider and may revoke LOL's intervention status in this docket if, at any time during the course of this proceeding, the commission determines that LOL is unreasonably broadening the pertinent issues raised in this docket or unduly delaying the proceeding.

In addition, the commission will require LOL to meaningfully participate in the docket. As noted by the commission in Order No. 23942, filed on December 28, 2007, in Docket No. 04-0046, "LOL has an important role in the process, but its participation must be meaningful." Accordingly, the commission will reconsider LOL's intervention if it fails to



follow commission rules, contribute to the development of a sound record, or otherwise meaningfully participate in this proceeding.<sup>13</sup>

B.

Stipulated Procedural Schedule

The commission is aware of the need to expediently resolve the issues in this docket in preparation for the CIP project; it therefore intends to fast-track these proceedings. The commission instructs HECO, the Consumer Advocate,<sup>14</sup> and LOL, (collectively "the Parties") to submit a stipulated procedural schedule for the commission's review and consideration. Any stipulated procedural schedule shall be submitted within fifteen (15) days from the date of this Order. The schedule shall indicate all pertinent deadlines, including a date for an evidentiary hearing unless all Parties agree to waive said hearing.

If the Parties are unable to agree to a stipulated procedural schedule, each Party shall submit a proposed schedule for the commission's consideration by the same date.

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<sup>13</sup>Furthermore, LOL is cautioned to carefully consider its Service of Process procedures to ensure that it is notifying the proper person(s) in the future, particularly in situations where the response time is relatively short. In its Application, HECO lists Robert A. Alm, Daniel G. Brown, Craig I. Nakanishi, Esq. and Anthony Valdez, Esq. as its contact persons. However, in its motion to intervene, LOL served "Bill" Bonnet of HECO, Thomas W. Williams, Jr., Esq. and Peter Y. Kikuta, Esq.

<sup>14</sup>The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), is an ex officio party to this docket, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

III.

Orders

THE COMMISSION ORDERS:

1. Life of the Land's Motion to Intervene is granted.
2. Within fifteen (15) days from the date of this Order, the Parties shall submit to the commission a stipulated procedural schedule, incorporating their agreed-upon issues, procedures, and schedule with respect to this proceeding. Among other deadlines, the Parties are to select a date for the evidentiary hearing.
3. If the Parties are unable to stipulate to such a schedule, each Party shall submit a proposed procedural schedule for the commission's consideration by the same date.

DONE at Honolulu, Hawaii JAN 10 2008.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

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Commission Counsel

Leslie H. Kondo  
By Leslie H. Kondo  
Leslie H. Kondo, Commissioner

2007-0346.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23965 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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DATED: JAN 10 2008