

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
)
 Instituting a Proceeding to)
 Investigate Competitive Bidding)
 for New Generating Capacity in)
 Hawaii.)
 _____)

DOCKET NO. 03-0372

ORDER NO. 23974

Filed Jan. 17, 2008

At 2 o'clock P .M.

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER PROTECTION
PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

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

Gleaner P. Luinanao

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Docket No. 03-0372

Order No. 23974

ORDER

By this Order,¹ the commission: (1) denies the written request filed by the HECO Companies on December 31, 2007, to further update their list of non-fossil fuel purchase offers that are exempt from the competitive bidding process, to include the three non-fossil fuel purchase offers referenced in their written request; and (2) denies the written request jointly filed by HECO and HELCO (collectively, the "HECO/HELCO Companies") on December 31, 2007, for an extension of time to conclude their negotiations of a power purchase agreement with a Big Island non-fossil fuel developer.

¹The Parties are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED (collectively, the "HECO Companies"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), 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 § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

I.

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 ("CB Framework" or "Framework").²

Part II.A.3.e of the CB Framework states:

This Framework does not apply to: (i) the three utility projects currently being developed: Hawaiian Electric Company, Inc.'s Campbell Industrial Park CT-1, Hawaii Electric Light Company, Inc.'s Keahole ST-7, and Maui Electric Company, Ltd.'s Maalaea M-18; (ii) offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; and (iii) offers to sell firm energy and/or capacity by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted, or that resulted from negotiations with respect to offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; provided that negotiations with respect to such firm energy and/or capacity offers are concluded no later than December 31, 2007.

CB Framework, Part II.A.3.e (emphasis added).

Footnote 10 of Decision and Order No. 23121 states:

The offers from non-fossil fuel producers that are exempt from competitive bidding under Part II.A.3.e of the Framework are limited to those set forth in: (1) KIUC's Oral Argument Hearing Exhibit A, dated June 19, 2006; and

²Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006, attached.

(2) the HECO [Companies'] list submitted to the commission and the Consumer Advocate under confidential protective order on June 27, 2006, as updated by the HECO [Companies] on September 11, 2006. See HECO's Comments, at 11; and confidential Exhibit A attached thereto.

Decision and Order No. 23121, at 7 n.10 (emphasis added).

On December 3, 2007, the commission closed this docket.³ On December 31, 2007, written requests were filed by the HECO Companies and the HECO/HELCO Companies, respectively, with confidential attachments, that included requests to extend the December 31, 2007 deadline date set forth in Part II.A.3.e(iii) of the CB Framework.

II.

Discussion

A.

Request No. 1

By letter dated December 31, 2007, the HECO Companies request the commission's approval to further update their list of non-fossil fuel producers that are exempt from the CB Framework, by adding three non-fossil fuel power purchase offers that were received by the HECO Companies in October 2006, prior to the adoption of the CB Framework on December 8, 2006, but were not included in the lists previously submitted to the commission under confidential seal on June 27, 2006 and September 11, 2006.

³Order No. 23865, filed on December 3, 2007.

The three offers consist of two as-available energy proposals, and a firm capacity biomass proposal. Accordingly, "since one of the proposals is for a firm capacity biomass plant, the HECO Companies further request that [they] be allowed to continue negotiations with this developer beyond the December 31, 2007 deadline to December 31, 2008."⁴

With respect to the other parties' positions on this matter, the HECO Companies represent:

. . . . The Consumer Advocate informed HECO that it does not object to the three subject projects being exempted from the Framework. However, the Consumer Advocate objects to the extension of time request for the firm capacity biomass developer. The Consumer Advocate believes that sufficient time (i.e., approximately one year from the adoption of the Competitive Bidding Framework in December 2006 to December 31, 2007) was provided to the developer to enable negotiations to be completed by December 31, 2007. In addition, the Consumer Advocate has concerns regarding the extended additional time requested to conclude negotiations. In an attempt to address the Consumer Advocate's concerns, the HECO Companies have provided details regarding the negotiations that have taken place and the negotiation steps remaining to be completed with the biomass developer. HREA does not object to the three subject projects being exempted from the Framework and does not object to the request for a time extension for the negotiations with the firm capacity biomass developer. KIUC has no position on the HECO Companies' requests.

HECO Companies' Request No. 1, at 3.

⁴HECO Companies' letter, dated December 31, 2007, Update to List of Exempt Non-Fossil Fuel Producers, with confidential Attachment A (collectively, "Request No. 1"), at 1.

Request to Update List

At the time of the commission's adoption of the CB Framework on December 8, 2006, the HECO Companies' list of offers from non-fossil fuel producers that were potentially exempt from the CB Framework consisted of the initial list submitted by the HECO Companies to the commission on June 27, 2006, as updated on September 11, 2006 (collectively, the "Updated List"). Thus, the HECO Companies' Updated List, as specifically referenced in footnote 10 of Decision and Order No. 23121, did not include the three non-fossil fuel power purchase offers that were received by the HECO Companies in October 2006.

Now, by their Request No. 1, the HECO Companies seek "[t]o clarify the matter and to reconcile the text in the Framework with footnote 10 in D&O No. 23121," by further updating their Updated List to add three non-fossil fuel power purchase offers that were received by the HECO Companies in October 2006, prior to the adoption of the CB Framework on December 2006.⁵ In support of their request, the HECO Companies state that upon their "further recent review" of Decision and Order No. 23121:

Since these three non-fossil fuel power purchase offers were received in October 2006, they were not included in the updated list that the HECO Companies submitted on September 11, 2006

⁵HECO Companies' Request No. 1, at 2.

. . . . Thus, while the three projects meet the criteria stated in the Framework, they are not part of the list that was submitted by the HECO Companies to the Commission, and explicitly granted exemption by the Commission in D&O 23121.

HECO Companies' Request No. 1, at 2 (footnote and text therein omitted).

For the HECO Companies, footnote 10 of Decision and Order No. 23121 expressly limits the offers from non-fossil fuel producers that are exempt from the CB Framework to the HECO Companies' list submitted to the commission and the Consumer Advocate under confidential protective order on June 27, 2006, as updated by the HECO Companies on September 11, 2006, i.e., the Updated List. Now, however, the HECO Companies, more than one year after the issuance of Decision and Order No. 23121, seek to modify footnote 10 by further updating their Updated List to include the three non-fossil fuel purchase offers referenced in their Request No. 1.

The HECO Companies' request, if it is construed as a motion for enlargement of time, is untimely, and the HECO Companies do not offer or state any excusable neglect to justify the enlargement of time by which to consider their request, more than one year after the issuance of Decision and Order No. 23121.⁶ Moreover, even if the request is treated as a motion for reconsideration, it is also untimely, and the HECO Companies do not sufficiently state the basis for their belief that Decision and Order No. 23121 is "unreasonable,

⁶HAR § 6-61-23(a)(2).

unlawful, or erroneous."⁷ Accordingly, the commission denies the HECO Companies' request to further update their list of non-fossil fuel purchase offers that are exempt from the CB Framework, to include the three non-fossil fuel purchase offers referenced in their Request No. 1.

2.

Extension of Time for the Firm Capacity Biomass Proposal

The commission's denial of the HECO Companies' underlying request to further update their Updated List renders moot their corresponding request for a one-year extension of time, from December 31, 2007 to December 31, 2008, to allow the HECO Companies to continue their negotiations with a firm capacity biomass developer under Part II.A.3.e(iii) of the CB Framework.

B.

Request No. 2

By letter dated December 31, 2007, the HECO/HELCO Companies jointly request an extension of time "to conclude negotiations for a power purchase agreement with a Big Island non-fossil fuel developer."⁸

⁷HAR § 6-61-137.

⁸HECO/HELCO Companies' letter, dated December 31, 2007, Request for Extension of Time to Conclude Negotiations, with Confidential Attachment A (collectively, "Request No. 2"), at 1. The new date to conclude the negotiations, as requested by the HECO/HELCO Companies, is filed under confidential seal. By letter dated January 7, 2008, received on January 9, 2008, Puna Geothermal Venture informs the commission that it "is the

The HECO/HELCO Companies represent that, with respect to the other parties' positions in this proceeding:

. . . . The Consumer Advocate informed HECO that it objects to the extension of time request for the subject developer. The Consumer Advocate believes that sufficient time (i.e., approximately one year from the adoption of the Competitive Bidding Framework in December 2006 to December 31, 2007) was provided to the developer to enable negotiations to be completed by December 31, 2007. In addition, the Consumer Advocate has concerns regarding the extended additional time requested to conclude the negotiations. In an attempt to address the Consumer Advocate's concerns, HELCO/HECO has provided details regarding the negotiations that have taken place and the negotiation steps remaining to be completed. HREA does not object to the request for a time extension. KIUC has no position on HECO's request.

HECO Companies' Request No. 2, at 1.

Upon review, the commission concurs with the Consumer Advocate's assessment, and finds that no good cause exists in this instance to grant the HECO/HELCO Companies' requested relief.⁹ Here, following the commission's issuance of Decision and Order No. 23121 on December 8, 2006, the HECO/HELCO Companies were well aware of the December 31, 2007 deadline date by which to complete their negotiations with the Big Island non-fossil fuel developer, in order to avail themselves of the specific exemption to the competitive bidding process under

developer referred to in the letter, and concurs with HELCO's and HECO's request." Puna Geothermal Venture's letter, dated January 7, 2008, at 1.

⁹HAR § 6-61-23(a)(1).

Part II.A.3.e(iii) of the CB Framework. Accordingly, the commission denies the HECO/HELCO Companies' request for an extension of time. This denial, however, is without prejudice to any other relief that may be available under the CB Framework.

III.

Orders

THE COMMISSION ORDERS:

1. This docket is re-opened on the commission's own motion for the limited purpose of addressing the two written requests, both filed on December 31, 2007.

2. The HECO Companies' request to further update their list of non-fossil fuel purchase offers that are exempt from the CB Framework, to include the three non-fossil fuel purchase offers referenced in their written request, dated December 31, 2007, is denied.

3. The HECO Companies' corresponding request, dated December 31, 2007, for a one-year extension of time, from December 31, 2007 to December 31, 2008, to allow the HECO Companies to continue their negotiations with a firm capacity biomass developer under Part II.A.3.e(iii) of the CB Framework, is rendered moot.

4. The HECO/HELCO Companies' request, dated December 31, 2007, for an extension of time to conclude their negotiations of a power purchase agreement with a Big Island non-fossil fuel developer, is denied.

5. By February 22, 2008, the HECO Companies shall submit to the commission, with copies served on the Consumer Advocate, an updated status report on the non-fossil fuel power purchase offers described in their Updated List.

DONE at Honolulu, Hawaii JAN 17 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

03-0372.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23974 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

KENT D. MORIHARA, ESQ.
RHONDA L. CHING, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for KIUC

RANDALL H. HEE, P.E.
PRESIDENT AND CHIEF EXECUTIVE OFFICER
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street, Suite 1
Lihue, HI 96766-2000

TIMOTHY BLUME
MICHAEL YAMANE
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street, Suite 1
Lihue, HI 96766-2000

THOMAS W. WILLIAMS, JR. ESQ.
PETER Y. KIKUTA, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

Counsel for HECO, HELCO, and MECO

Certificate of Service

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DEAN MATSUURA
DIRECTOR, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. BOX 2750
Honolulu, HI 96840-0001

WARREN S. BOLLMEIER II, PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, HI 96744



Karen Higashi

DATED: JAN 17 2008