

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
For Approval to Include the Costs)
Of Its Schedule Q Purchased Power)
Contract with the County of Hawaii)
Department of Water Supply in its)
Energy Cost Adjustment Clause)

DOCKET NO. 2007-0220

DECISION AND ORDER NO. 24099

Filed March 20, 2008
At 1:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii

Karen Higashi

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Docket No. 2007-0220
Decision and Order No. 24099

DECISION AND ORDER

By this Decision and Order, the commission approves HAWAII ELECTRIC LIGHT COMPANY, INC.'s ("HELCO") request to include the costs of purchased energy under its Schedule Q purchased power contract with the County of Hawaii Department of Water Supply ("County") in its Energy Cost Adjustment Clause ("ECAC"), pursuant to Hawaii Administrative Rules ("HAR") § 6-60-6(2).

I.

Background

A.

Application

On August 3, 2007, HELCO filed an application for commission approval to include in its ECAC the costs of purchased energy under a Schedule Q purchased power contract with the

County ("Contract").¹ According to HELCO, under the terms of the Contract, which is dated May 9, 2007, HELCO agreed to purchase energy made available by the County from a 50 kilowatt ("kW") hydroelectric plant owned and operated by the County at Kaloko Tank 2, Hina Lani Street, Kailua-Kona, Hawaii at rates as will be determined by HELCO's Schedule Q. The Contract is for a minimum one year term, and will remain in effect on a year-to-year basis, subject to termination on ninety days' written notice.

B.

Consumer Advocate's Statement of Position

On December 12, 2007, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of the Contract or recovery of the purchased energy payments through HELCO's ECAC. According to the Consumer Advocate, the terms and conditions of the Contract are reasonable, as the Contract contains broad indemnification and insurance requirements to "protect HELCO, its customers, and the public from certain risks caused by property damage, injuries to persons, or other items arising out of or attributable to the location, construction, interconnection or parallel operation of the County's facility."² In addition, the Consumer Advocate

¹HELCO served copies of the application on 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).

²Consumer Advocate's Statement of Position at 4.

states that the Contract allows the County's energy deliveries to be curtailed, interrupted or reduced for operational and safety reasons. The Consumer Advocate, moreover, states that "the County received notification of its self certification as a qualifying facility" from the Federal Energy Regulatory Commission ("FERC") on December 5, 2007, and as such "HELCO is required to interconnect and purchase excess power from the County at reasonable rates pursuant to Federal rules established in [the Public Utilities Regulatory Policies Act of 1978, as amended]." ³

II.

Discussion

HAR § 6-60-6(2) states:

No changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission.

HAR § 6-60-6(2).

Here, the commission finds that HELCO's inclusion in its ECAC of the costs of purchased energy under its Contract with the County is appropriate. The County's hydroelectric plant is a qualifying facility under HAR Chapter 6-74. As a qualifying facility with a design capacity of 100 kW or less, a Schedule Q purchased power contract is available to the County. Accordingly, the commission approves the recovery of the

³Consumer Advocate's Statement of Position, at 2-3.

purchased energy payments made as a result of the Contract through HELCO's ECAC.⁴

'By letter dated January 28, 2008, the commission requested that the parties to this docket brief the issue of whether the Contract payment rates (which are based on Schedule Q) comply with Act 162, Session Laws of Hawaii 2006, which requires the commission to consider whether the linkage between the price of fossil fuels and the rate for nonfossil fuel generated electricity has been reduced or removed.

By letter dated and filed on March 7, 2008, HELCO responded to the commission's letter dated January 28, 2008, stating that "the provision added by Act 162 concerning establishing a methodology to remove or reduce any linkages between the price of fossil fuels and the rate for nonfossil fuel generated electricity only comes into play where the utility and the supplier fail to reach agreement on a rate for purchase." The commission, however, disagrees with this assertion by HELCO. Having participated in the legislative process associated with the passage of Act 162, it is the commission's interpretation that Act 162 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. To clarify further, it is the commission's interpretation that Act 162 requires a significant reduction or removal of the linkage between the price of fossil fuels and non-fossil fuel generated electricity, even in those cases where the purchase rate is agreed-upon by the public utility and the supplier of non-fossil fuel generated electricity.

Despite its position that Act 162 is only implicated if there is a disagreement on the rate for purchase, HELCO states that the HECO Companies (i.e., HELCO, Hawaiian Electric Company, Inc. and Maui Electric Company, Ltd.) "are willing to propose a new methodology to calculate Schedule Q payment rates which will result in fixed payment rates over the term of the Schedule Q contract," but that the "proposed new methodologies to compute Schedule Q payment rates should be examined in detail in a new Commission proceeding instead of this docket." The commission agrees with HELCO in this respect and will open a new docket to examine the methodology for calculating Schedule Q rates.

III.

Orders

THE COMMISSION ORDERS:

1. HELCO's request to include the costs of purchased energy under its Schedule Q purchased power contract with the County in its ECAC, pursuant to HAR § 6-60-6(2), is approved.
2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii MAR 20 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

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

2007-0220.cp

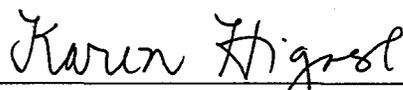
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24099 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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Karen Higashi

DATED: MAR 20 2008