

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN ELECTRIC COMPANY, INC.)

DOCKET NO. 2007-0346

For Approval of a Biodiesel Supply)
Contract with Imperium Services,)
LLC, and to include Contract)
Costs in HECO's Energy Cost)
Adjustment Clause.)

ORDER NO. 24145

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

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF PUBLIC UTILITIES AND
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STATE OF HAWAII

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

Karen Higashi

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In the Matter of the Application of)
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_____)

Docket No. 2007-0346

Order No. 24145

ORDER

By this Order, the commission grants HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO")¹ Motion for Protective Order, filed on January 25, 2008 and adopts, as modified, HECO's proposed protective order.

I.

Background

On October 18, 2007, HECO 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 biodiesel fuel supply for HECO's new combustion turbine generating unit at Campbell

¹HECO 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.

Industrial Park ("CIP") in Kapolei, Hawaii.² 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, LIFE OF THE LAND ("LOL") timely filed a motion to intervene in this docket. By Order No. 23965, filed on January 10, 2008, the commission granted LOL's Motion to Intervene, with certain conditions.

On January 22, 2008, LOL submitted, among other things, a proposed protective order, in a filing entitled, "Proposed Stipulation re: Statement of Issues, Schedule of Filings, Protective Order, and Certificate of Service" ("LOL's Proposed Stipulation"), for the commission's review.³ On January 25, 2008, via letter, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")⁴ submitted a draft Protective Order for the commission's consideration ("Consumer Advocate's Proposed Protective Order"). On January 25, 2008, HECO filed a Motion for Protective Order; Memorandum in Support of Motion; Proposed Protective Order and

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

³This order only addresses the matter of a protective order. The other areas raised in LOL's filing are addressed in a separate order.

⁴The Consumer Advocate is an ex officio party to all dockets before the commission, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

Certificate of Service (collectively, "HECO's Motion for Protective Order"). On January 29, 2008, LOL timely submitted a Written Statement in Opposition to Hawaiian Electric Company's Motion for Approval of Proposed Stipulated Procedural Order and Motion for Protective Order; Affidavit [of] Henry Q Curtis and Certificate of Service ("LOL's Opposition").

A.

HECO's Position

HECO's Motion for Protective Order is filed pursuant to HAR §§ 6-61-41 and 6-61-50. Significantly, "HECO intends to provide only to the Consumer Advocate and the Commission certain confidential information regarding contract pricing and related pricing provisions that is not pertinent to LOL's [c]oncerns but which is necessary in order for the agencies to carry out their respective statutory duties and obligations (hereinafter collectively referred to as "Level Two Confidential Information")."⁵ HECO states:

During this proceeding, HECO anticipates providing confidential information to [LOL] and the [Consumer Advocate]. [HECO] desires to protect certain highly sensitive confidential information regarding contract pricing and related pricing provisions, e.g., [British Thermal Unit ("BTU")] content (identified in the proposed Protective Order as "Level Two Confidential Information") by providing such information solely to the Consumer Advocate and the [c]ommission for the following reasons:

⁵HECO's Memorandum in Support of Motion for Protective Order, Exhibit A, at 2.

1. The Level Two Confidential Information is protected from disclosure to certain parties under State law;
2. The information constitutes confidential commercial and financial information, which if disclosed to competitors, either deliberately or inadvertently, would likely result in substantial competitive harm; for example, disclosure would allow competitors to selectively under price, estimate profit margins, or determine market and supply weaknesses and preclude HECO from effectively negotiating terms and conditions of future biofuel contracts.
3. The Imperium Contract contains strict confidentiality provisions and requirements on HECO to preserve such confidentiality.
4. Through adoption of HECO's proposed Protective Order, LOL will have the opportunity to meaningfully participate in this docket and present evidence and argument on the issues which concern LOL and its members without compromising or delaying the biofuel contract and without harming HECO and [Imperium].

HECO's Memorandum in Support of Motion for Protective Order, at 2-3. HECO submits that "confidential contract pricing and related pricing provisions specific to the Imperium Contract are not germane to LOL's broad concerns about climate change, greenhouse gas impacts, energy policy, and environmental externalities. Conversely, prices specific to the Imperium Contract fall squarely within the Consumer Advocate's area of representation The [ECAC] is a provision of a rate schedule which provides for the increases or decreases or both in rates reflecting increases or decreases or both in costs incurred by an electric or gas utility for fuel and purchased energy due to changes in the unit cost of fuel and purchased energy. See

HAR § 6-60-6(1). It is to this aspect of the proceeding, adequately represented through the [Consumer Advocate], that pricing specific to the Imperium Contract is relevant."⁶ Moreover, HECO claims that its protective order is designed to conform to HRS chapter 486J regarding the Petroleum Industry Information Reporting Act, if Imperium is considered a fuel distributor.⁷ HECO is the "sole wholesale customer of Imperium, [therefore] the pricing information is extremely sensitive to competitive uses by others involved in the biofuels industry, shipping and manufacturing pricing, feedstock pricing, generation pricing and planning, renewable technology pricing, and fuel pricing (including fossil fuel pricing), just to name a few, to the disadvantage of HECO in its attempt to garner future favorable bids for biofuel contracts."⁸

HECO states that disclosure to LOL will cause "substantial harm" to the competitive position of Imperium and HECO.⁹ HECO believes that "significant advantage can be gained by anyone (for example, a consultant) participating in the

⁶HECO's Memorandum in Support of Motion for Protective Order, at 5.

⁷HECO's Memorandum in Support of Motion for Protective Order, at 6.

⁸HECO's Memorandum in Support of Motion for Protective Order, at 7.

⁹HECO's Memorandum in Support of Motion for Protective Order, at 7.

competitive market with access to the Imperium Contract's pricing and related pricing provisions."¹⁰

HECO maintains that the fuel pricing information constitutes confidential business information. It states:

Essentially, the Imperium Contract pricing provisions include confidential commercial and financial information, which if disclosed to competitors, either deliberately or inadvertently, would likely result in substantial competitive harm; for example, disclosure would allow competitors of Imperium to selectively under price, estimate profit margins, or determine market and supply weaknesses and preclude HECO from effectively negotiating terms and conditions of future biofuel contracts.

HECO's Memorandum in Support of Motion for Protective Order, at 8. The proposed protective order is limited to:

(1) trade secrets or other confidential research, development, commercial, financial, vendor or bid information, or nonpublic information, and/or (2) "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or (3) information that is related to the security of [HECO's] facilities, that if disclosed publicly, could increase risk to [HECO's] facilities, jeopardize its emergency and disaster preparedness plans, and/or (4) information that could adversely impact [HECO's] ability to respond to political terrorist[] threats, and/or (5) any information that HECO may in the future contend to be confidential, business sensitive, trade secrets and/or proprietary (hereinafter individually and collectively "Confidential Information" and/or "Level Two Confidential Information").

HECO's Memorandum in Support of Motion for Protective Order, Exhibit A, at 3. The Level Two Confidential Information

¹⁰HECO's Memorandum in Support of Motion for Protective Order, at 7.

designation is limited to "certain information regarding contract pricing and related pricing provisions."¹¹

HECO states that it has agreed, within the Imperium Contract, that it "will exercise at least the same standard of care in protecting the confidentiality of Imperium's Confidential Information as it does with its own Confidential Information of a similar nature . . . HECO is therefore acting in good faith under the contract terms to take at least reasonable care with the protections to be accorded Imperium under the Imperium Contract."¹²

B.

Consumer Advocate's Position

The Consumer Advocate submitted a letter stating that "[b]ecause the parties to Docket No. 2007-0346 (i.e., HECO, the Consumer Advocate, and Life of the Land) cannot agree upon the terms of a stipulated protective order, the Consumer Advocate is submitting the attached documents for consideration by the [c]ommission."¹³ Significantly, in contrast with HECO's proposed protective order, the Consumer Advocate's proposed protective order contains only one level of confidentiality. The Consumer Advocate states:

¹¹HECO's Memorandum in Support of Motion for Protective Order, Exhibit A, at 5.

¹²HECO's Memorandum in Support of Motion for Protective Order, at 12.

¹³Letter dated January 25, 2008, from the Consumer Advocate to the commission, at 1.

All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party or participant under the provisions of this protective order to the extent allowed by the [c]ommission.

Consumer Advocate's Proposed Protective Order, at 2. The Consumer Advocate's Proposed Protective Order is generally the "standard" protective order utilized in a majority of the commission's dockets, with only one level of confidentiality.

C.

LOL's Position

The terms of LOL's Proposed Stipulation are largely in accord with the Consumer Advocate's Proposed Protective Order. The only differences are relatively minor: (1) LOL does not employ the typical draft protective order format; (2) LOL addresses the confidentiality of "critical infrastructure information" protected by the Homeland Security Act of 2002;¹⁴ (3) LOL seeks to include "any confidential information voluntarily produced prior to the issuance of this protective order;"¹⁵ (4) LOL specifically designates as a qualified person, "LOL, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by LOL for this proceeding;"¹⁶ (5) LOL includes affiliates of the

¹⁴LOL's Proposed Stipulation, at 12.

¹⁵LOL's Proposed Stipulation, at 14.

¹⁶LOL's Proposed Stipulation, at 14.

producing party with regard to uses of confidential information;¹⁷

(6) unlike the Consumer Advocate, LOL does not include the following as qualified persons:

(e) Independent consultants employed by a party who are not employees of the party, or in-house subject matter experts and/or regulatory personnel, who are not engaged in developing, planning, marketing, or selling the party's products or services, or determining the costs of the party's products or services or designing prices of the party's products or services to be charged customers;

(f) Any other party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding, to the extent allowed by the Commission;

Consumer Advocate's Proposed Protective Order, paragraphs 12(e) and (f), at 6-7; and (7) in paragraph number 29, LOL does not include the sentence: "The files shall not be disclosed to any other person."¹⁸

LOL's position is that HECO's Motion for Protective Order "is essentially seeking [to] re-argue the [intervenor] status of [LOL], which has already been decided by the commission" and demote LOL to a "second-class party."¹⁹ LOL believes that "HECO does not mind if the Consumer Advocate or the [c]ommission hire consultants, advisors, and individuals who are involved in other fuel, feedstock, or generation pricing options,

¹⁷LOL's Proposed Stipulation, at 15.

¹⁸Consumer Advocate's Proposed Protective Order, at 12.

¹⁹LOL's Opposition, at 3.

but HECO objects if [LOL does]."²⁰ Furthermore, LOL views pricing as a core issue in this docket.²¹

II.

Discussion

HAR § 6-61-50 states:

Protective orders. A party or person may move for a protective order to protect the confidentiality of information that is protected from disclosure under chapter 92F, HRS, or by law. A motion for a protective order shall specifically identify the document or information to be protected. The movant shall bear the burden of establishing that the information should be protected. Stipulations for a protective order, subject to the commission's approval, may be accepted in lieu of motions for protective orders.

HAR § 6-61-50. HECO, the Consumer Advocate, and LOL cannot agree on the form of protective order, although they agree that a protective order is appropriate in this docket.

The commission has previously adopted protective orders with two-levels of confidentiality where appropriate. For example, in Order No. 21669, filed on March 1, 2005, in Docket No. 05-0002, the commission adopted a two-level confidentiality format wherein certain information would be classified as confidential to all other parties and access only permitted to the commission and Consumer Advocate.

In this case, the commission initially notes its disagreement with HECO's assertion that "disclosure to LOL will cause 'substantial harm' to the competitive position of Imperium

²⁰LOL's Opposition, at 4.

²¹LOL's Opposition, at 4.

and HECO." LOL and its consultants will be bound by the protective order and associated protective agreements, both of which will prohibit use of confidential information for any purpose outside of this proceeding as well as unauthorized disclosure of confidential information to persons or entities outside of the docket. Therefore, neither HECO nor Imperium would appear to suffer any undue harm caused by disclosure to LOL.

Nevertheless, given that: (1) the type of information that HECO apparently seeks to designate as "Level Two Confidential Information" appears to be irrelevant to the issues that LOL intends to present; (2) the Consumer Advocate is capable of analyzing the "Level Two Confidential Information" and raising any appropriate concerns; and (3) HECO and Imperium would suffer irreparable harm if such information is publicly disclosed, the commission finds that a two-level confidentiality format is appropriate in this docket.

For any information designated by HECO to be Level Two Confidential Information, HECO must specifically identify and/or describe to the commission, the Consumer Advocate and LOL the information being so designated and provide information from which the commission and the parties can determine the appropriateness of HECO's designation. Therefore, paragraph 5 of HECO's proposed Protective Order is revised:

5. If HECO designates information as confidential pursuant to paragraph 4 above or paragraph 6 below, it shall produce the Confidential Information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide that Confidential

Information in writing to the Commission and the Consumer Advocate. Furthermore, HECO shall: (1) **describe the document containing the Confidential Information with reasonable specificity;** (2) identify, in reasonable detail, the information's source, character, and location, (3) state clearly the basis for the claim **that the document and/or information qualifies as Confidential Information,** and (4) describe the harm or prejudice to HECO from any misuse or unauthorized disclosure of the information. **HECO shall provide the information described above concerning the Confidential Information to the Commission, the Consumer Advocate and LOL.** HECO shall bear the burden of proof in supporting its claim of confidentiality. **If LOL determines that the Confidential Information is relevant and necessary to support its position in this docket, LOL may request that the Commission determine whether the information should be disclosed to it under the terms of this protective order.** Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

HECO's proposed Protective Order, paragraph 5, at 5-6 (underlining in original) (underline and bold material added).

The commission notes that HECO's proposed Protective Order modifies the commission's standard form protective order regarding the application of the Uniform Information Practices Act.²² HECO's proposed paragraph states:

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS Section 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents **except where, pursuant to HRS Section 92F-13: (1) the Confidential Information, if disclosed, would constitute a clearly unwarranted invasion of personal privacy; (2) the Confidential Information pertains to the prosecution or defense of any judicial or quasi-judicial action to which**

²²In the future, any modifications to the commission's standard form protective order must be specifically identified.

the State or any county is or may be a party, to the extent that such records would not be discoverable; (3) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; or (4) the Confidential Information, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure. In addition to other applicable exceptions to disclosure under the UIPA, (1) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; and (2) the Confidential Information is protected from disclosure by Section 6-61-50 of the Commission's Rules and applicable state or federal law. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

HECO's Memorandum in Support of Motion for Protective Order, Exhibit A, Paragraph 3, at 4 (emphasis added). HECO, however, does not state why such modification is appropriate or necessary. Accordingly, HECO has not satisfied its burden of demonstrating that the amendment is justified and therefore the commission rejects HECO's amendment. Paragraph 3 shall state:

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS Section 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

Based on the foregoing, the commission grants HECO's Motion for Protective Order with two-level confidentiality, and adopts its proposed Protective Order, as amended.

III.

Order

THE COMMISSION ORDERS:

1. HECO's Motion for Protective Order, filed on January 25, 2008, is granted. The proposed Protective Order, attached hereto as Exhibit 1, is adopted, as modified.

2. The proposed Protective Order is modified as follows:

a. Paragraph 5 is modified:

5. If HECO designates information as confidential pursuant to paragraph 4 above or paragraph 6 below, it shall produce the Confidential Information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide that Confidential Information in writing to the Commission and the Consumer Advocate. Furthermore, HECO shall: describe the document containing the Confidential Information with reasonable specificity; (2) identify, in reasonable detail, the information's source, character, and location, (3) state clearly the basis for the claim that the document and/or information qualifies as Confidential Information, and (4) describe the harm or prejudice to HECO from any misuse or unauthorized disclosure of the information. HECO shall provide the information described above concerning the Confidential Information to the Commission, the Consumer Advocate and LOL. HECO shall bear the burden of proof in supporting its claim of confidentiality. If LOL determines that the Confidential Information is relevant and necessary to support its position in this docket, LOL may request that the Commission determine whether the information should be disclosed to it under the terms of this protective order. Any challenge to the confidentiality of any information shall


be made in accordance with paragraph 24
below.

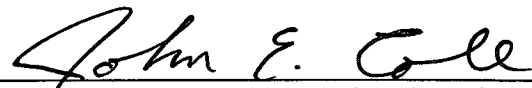
b. Paragraph 3 is modified:

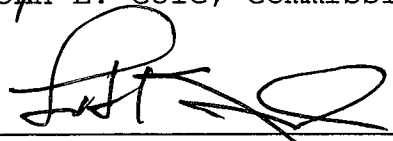
3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS Section 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

DONE at Honolulu, Hawaii APR 10 2008.

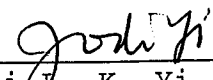
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2007-0346.sl

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAIIAN ELECTRIC COMPANY, INC.)	Docket No. 2007-0346
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For Approval of Biodiesel Supply Contract)	
with Imperium Services, LLC, and to Include)	
Contract Costs in HECO's Energy Cost)	
Adjustment Clause.)	
_____)	

[PROPOSED]

PROTECTIVE ORDER NO. _____

EXHIBIT A

and

CERTIFICATE OF SERVICE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAIIAN ELECTRIC COMPANY, INC.)	Docket No. 2007-0346
)	
For Approval of Biodiesel Supply Contract)	
with Imperium Services, LLC, and to Include)	
Contract Costs in HECO's Energy Cost)	
Adjustment Clause.)	
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PROTECTIVE ORDER

WHEREAS, on October 18, 2007, Hawaiian Electric Company, Inc. ("HECO" or "Applicant") filed an application (the "Application") requesting the approval of the Public Utilities Commission of the State of Hawaii ("Commission") of (1) a Biodiesel Supply Contract by and between HECO and Imperium Services, LLC, dated August 13, 2007 ("Imperium Contract"), (2) the inclusion of the costs for biodiesel fuel, transportation, storage and related taxes incurred pursuant to the Imperium Contract in HECO's Energy Cost Adjustment Clause, to the extent that they are not recovered in HECO's base rates, and (3) the use of a biodiesel blend (in addition to 100% biodiesel) in HECO's new combustion turbine generating unit at Campbell Estate Industrial Park, provided that the biodiesel blend will have no more than 0.2% petroleum diesel;

WHEREAS, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate") is, ex officio, a party to this proceeding pursuant to the Rules of Practice and Procedure before the Commission;

WHEREAS, on November 5, 2007 Life of the Land ("LOL") timely filed its Motion to Intervene in this proceeding and, by Decision and Order No. 23965 filed on January 10, 2008 ("D&O 23965"), the Commission granted LOL's Motion to Intervene;

WHEREAS, HECO, LOL and the Consumer Advocate shall be hereafter collectively referred to as "Parties" and individually referred to as a "Party";

WHEREAS, D&O 23965 recognizes LOL's concerns about climate change, greenhouse gas impacts, energy policy, and environmental externalities ("LOL's Concerns"), and specifies that: (1) 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, (2) the Commission will preclude any attempt by LOL to unreasonably broaden the issues, unduly delay the proceeding, or relitigate the issues resolved in the CIP Docket No. 05-0145, and (3) 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;

WHEREAS, HECO intends to provide only to the Consumer Advocate and the Commission certain confidential information regarding contract pricing and related pricing provisions that is not pertinent to LOL's Concerns but which is necessary in order for the agencies to carry out their respective statutory duties and obligations (hereinafter collectively referred to as "Level Two Confidential Information");

WHEREAS, the public or unauthorized disclosure of confidential (1) pricing, specifications, related provisions, and information in the Imperium Contract; (2) certain information in exhibits supporting the Application; and (3) information that may be provided during the course of this proceeding, would, among other cognizable harm to Applicant, disadvantage HECO in future negotiations for biofuel or other fuels contracts and potentially

discourage vendors from competitively bidding for HECO's commercial needs;

WHEREAS, the Commission desires to establish a set of procedures and provisions pertaining to the use and disclosure of information arising out of or related to the Application that HECO considers in good faith to contain or constitute (1) trade secrets or other confidential research, development, commercial, financial, vendor or bid information, or nonpublic information, and/or (2) "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or (3) information that is related to the security of Applicant's facilities, that if disclosed publicly, could increase risk to Applicant's facilities, jeopardize its emergency and disaster preparedness plans, and/or (4) information that could adversely impact Applicant's ability to respond to potential terrorists threats, and/or (5) any information that HECO may in the future contend to be confidential, business sensitive, trade secrets and/or proprietary (hereinafter individually and collectively "Confidential Information" and/or "Level Two Confidential Information").

NOW, THEREFORE IT IS HEREBY ORDERED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission ("Commission's Rules"), that this protective order will cover the Confidential Information and/or Level Two Confidential Information) identified in the course of the proceeding in connection with the Application, as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of Confidential Information produced or disclosed by HECO pursuant to, arising out of, or related to the Application.

2. Except as otherwise provided below, any person obtaining Confidential Information pursuant to, arising out of, or related to the Application or obtaining Confidential Information, directly or indirectly from someone under circumstances in which the ultimate source of the information was from the Application shall be subject to this protective order.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS Section 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents except where, pursuant to HRS Section 92F-13: (1) the Confidential Information, if disclosed, would constitute a clearly unwarranted invasion of personal privacy; (2) the Confidential Information pertains to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable; (3) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; or (4) the Confidential Information, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure. In addition to other applicable exceptions to disclosure under the UIPA, (1) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; and (2) the Confidential Information is protected from disclosure by Section 6-61-50 of the Commission's Rules and applicable state or federal law. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. HECO may designate as confidential any information it believes, in good faith, contains Confidential Information. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by HECO, as provided in paragraph 13 below. In addition, HECO may designate certain information regarding contract pricing and related pricing provisions as being confidential and not to be distributed to LOL by notifying the Commission and the Consumer Advocate in writing setting forth in particularity the information to be kept as confidential and not available to LOL ("Level Two Confidential Information"). With respect to such Level Two Confidential Information, (a) LOL shall be treated as a non-qualified person from whom such information shall be protected against disclosure in accordance with the terms of this protective order and (b) except as limited in subpart (a) above, in all other respects, the Level Two Confidential Information shall be treated in the same manner as all other Confidential Information. In addition to other designations in this protective order, when submitting any Level Two Confidential Information or any other Confidential Information that is not to be distributed to LOL, HECO shall place upon the applicable material the following legend:

**"CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
TO BE VIEWED ONLY BY THE
PUBLIC UTILITIES COMMISSION
OR THE CONSUMER ADVOCATE"**

5. If HECO designates information as confidential pursuant to paragraph 4 above or paragraph 6 below, it shall produce the Confidential Information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide that Confidential Information in writing to the Commission and the Consumer Advocate.

Furthermore, HECO shall: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe the harm or prejudice to HECO from any misuse or unauthorized disclosure of the information. If the Commission or any Party challenges the claim of confidentiality of the information, HECO shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under the terms of this protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential Information provided to the Commission or the parties, orally, visually, or in any other form, shall be protected as fully as Confidential Information provided in written form. HECO shall notify the Commission and the other Parties when information provided orally, visually, or in other than written form includes Confidential Information. At the time of such notification, HECO shall, in the manner provided in paragraph 5 above, specify the subject-matter of such Confidential Information, the basis for the claim of confidentiality, and the harm or prejudice to HECO from any misuse or unauthorized disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be Confidential Information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined in paragraph 12 below) as constituting Confidential Information. Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that contain or reflect any of the underlying Confidential Information, shall also be subject to the terms of this protective order.

DESIGNATION

8. HECO shall place upon the applicable material containing confidential information, the following legend:

“CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER”

Whenever only a portion of a document, transcript, or other material is deemed to contain Confidential Information, HECO shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as Confidential Information.

9. With respect to any Confidential Information that is not under the physical control of HECO, other persons shall, to the extent requested by HECO, cooperate to ensure that all copies of such Confidential Information bear the legend required in paragraph 8 above.

10. HECO may request that the Commission designate as Confidential Information any document or other information previously produced but not designated as confidential, provided that HECO, in the manner provided in paragraph 5 above, specify the subject-matter of such Confidential Information, the basis for the claim of confidentiality, and the harm or prejudice to HECO from any misuse or unauthorized disclosure of the information. In addition, HECO shall replace the previously-produced but not designated as confidential material with the identical material under designation as required in paragraph 8 above. The protections conferred herein shall apply to any Confidential Information voluntarily produced prior to the issuance of this protective order, provided that following the issuance of this protective order (1) HECO, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the harm to

HECO from any misuse or unpermitted disclosure of the information voluntarily produced prior to the issuance of this protective order contains the designation as required in paragraph 9 above.

DISCLOSURE

11. Except as provided in paragraph 13 below, Confidential Information shall not be made available or disclosed to any person who is not a “qualified person” as defined in paragraph 12 below.

12. Subject to the condition provided in paragraph 4 above, limiting the availability of Level Two Confidential Information, “qualified person” or “qualified persons,” as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the Confidential Information, including its counsel or representative of record (provided that such person shall be a Qualified Person by virtue of this subparagraph 12.a only with respect to the Confidential Information of which such person was the author, addressee or originator);
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission for this proceeding;
- c. The Consumer Advocate, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for this proceeding;
- d. HECO, its officers and employees, its counsel (including employees directly employed by such counsel), and any consultants retained by HECO for this proceeding;
- e. LOL and any other party or person granted intervention as a party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel); and any consultants retained by LOL or any other parties or participants for this proceeding, provided, however, that any such consultants are not engaged in (i) developing, planning, marketing, or selling a party’s or participant’s products or services, or (ii) designing prices to be charged for products or services of a party or participant, to the extent allowed by the Commission;
- e. Any other person approved by the party or participant asserting the claim of confidentiality; and

- f. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose Confidential Information to a non-qualified person, the qualified person must request in writing permission from HECO. The written request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for the requested disclosure. If written permission is granted by HECO, disclosure of the Confidential Information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below. In the event that Confidential Information is for any reason produced or disclosed to a non-qualified person without the permission HECO, HECO shall have the right to recall Confidential Information from all qualified persons or holders of such information and to take all steps deemed necessary by HECO to protect the Confidential Information from production or disclosure. Such qualified persons or holders shall retrieve all Confidential Information from all recipients and return the Confidential Information to HECO.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing Confidential Information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective order, complete a copy of the protective agreement attached as Exhibit A to this protective order, sign the completed copy of the protective agreement, and deliver the executed protective agreement to HECO and to the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any Confidential Information obtained under this protective order shall be used solely in connection with the Commission's evaluation of HECO's Application 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), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court or (b) an order of the Commission or (c) the UIPA (in the case of any "agency" as defined in Haw. Rev. Stat. §92F-3), including any ruling of the Office of Information Practices of the State of Hawaii.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in connection with the Commission's evaluation of HECO's Application 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). The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by HECO, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in connection with the Consumer Advocate's evaluation of HECO's Application 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). The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by HECO, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a Party desires to file written testimony, exhibits or pleadings which contain or reflect the Confidential Information,

only the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing, if any, at which such information is discussed shall be held in camera, or under other conditions set by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page(s), with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left hand corner:

**“Confidential Information Deleted Pursuant to
Protective Order No. _____.”**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential Information shall be retained in a locked cabinet dedicated to the storage of Confidential Information, or otherwise secured to ensure that access to and disclosure of the Confidential Information is limited to a qualified person.

20. Confidential Information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**“THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER NO. _____ AND CONTAINS
DOCUMENTS WITH CONFIDENTIAL INFORMATION.
IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS
ENVELOPE DISPLAYED OR REVEALED EXCEPT TO
QUALIFIED PERSONS AUTHORIZED TO INSPECT THE
ENCLOSED DOCUMENTS.”**

If the Confidential Information is not to be distributed to LOL as Level Two Confidential Information the sealed envelope or other appropriate sealed container shall have the following legend instead of the preceding legend:

**“PUBLIC UTILITIES COMMISSION OR CONSUMER
ADVOCATE USE ONLY. THIS ENVELOPE IS SEALED
PURSUANT TO PROTECTIVE ORDER NO. _____
AND CONTAINS DOCUMENTS WITH CONFIDENTIAL
INFORMATION. IT IS NOT TO BE OPENED OR THE
CONTENTS OF THIS ENVELOPE DISPLAYED OR
REVEALED EXCEPT TO THE PUBLIC UTILITIES
COMMISSION OR THE CONSUMER ADVOCATE”**

21. Confidential Information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, HECO shall have the following legend placed on each page of the document:

“Copying Prohibited.”

22. If a court or other administrative agency requests, subpoenas, or orders production of Confidential Information that a Party or person has obtained under this protective order from HECO, that Party or person shall immediately notify HECO of the request, subpoena or order, and not produce that information until HECO has had a reasonable opportunity to seek a court order or take such other action as it deems necessary to preclude production of its Confidential Information pursuant to the request, subpoena or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, waive the protection conferred by this protective order.

APPEAL TO THE COMMISSION

24. If any Party disagrees with the designation of information as confidential, HECO and the Party so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the Party contesting the confidentiality of

the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. HECO shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. The motion shall identify the contested information and the specific reasons the information should not be classified as confidential. Pending a disposition of the motion, the information in question shall continue to be treated as Confidential Information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The Parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. The Parties retain the right to question, challenge, and object to the admissibility or submission of Confidential Information on the ground of relevancy or materiality.

26. Notwithstanding anything to the contrary, nothing in this Protective Order creates any obligation to disclose or exchange any Confidential Information.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may, upon good cause, modify this protective order on the motion of any Party, or on its own motion, upon reasonable notice to the Parties and an opportunity for hearing, or the Commission may modify this Protective Order upon receipt and approval of a written stipulation by the Parties.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding or when the Commission determines the Confidential Information is no longer required for purposes of this proceeding, whichever is earlier, persons in

possession of Confidential Information shall, at the option of HECO, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any Confidential Information. If HECO requests destruction, the person destroying the information shall certify its destruction to HECO, indicating the name of the person destroying the Confidential Information, the method of destruction, when the Confidential Information was destroyed, and the identity of the specific materials, copies, notes, tapes, etc. containing Confidential Information that has been destroyed.

29. Counsel and the representative of record for a Party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating Confidential Information properly made available to such Counsel and the representative of record for a Party to the extent reasonably necessary to preserve files on this proceeding. Those files shall not be disclosed to any person, entity, government agency or anyone else who is not a qualified person.

30. Confidential Information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration provided by applicable statutory authority, rules and administrative directives.

SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission, and as provided by law.

DATED: Honolulu, Hawai'i, _____.

APPROVED AND SO ORDERED THIS _____, 2008,

at Honolulu, Hawaii.

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:

Jodi L. K. Yi
Commission Counsel

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____ issued by the Hawaii Public Utilities Commission in Docket No. 2007-0346 on the _____ day of _____, 2008 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. 2007-0346 and have requested review of the Confidential Information and/or Level Two Confidential Information covered by the Protective Order.

3. I understand the Confidential Information and/or Level Two Confidential Information covered by the Protective Order is to be used solely on behalf of _____, for purposes of Docket No. 2007-0346, and that unless otherwise permitted by the Protective Order, I am to make no other use of the Confidential Information and/or Level Two Confidential Information, nor am I to disclose the Confidential Information and/or Level Two Confidential Information to any other person, entity, government agency or anyone else.

4. I further understand that at the conclusion of my status as a qualified person as defined in the Protective Order, I shall account for each copy, extract, note and summary of, or other document containing any part of such Confidential Information and/or Level Two Confidential Information, to the Party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____, 2008.

Signature

Address

() _____
Telephone Number

Notary Public, State of Hawaii

My commission expires: _____

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
HAWAIIAN ELECTRIC COMPANY, INC.)	Docket No. 2007-0346
)	
For Approval of Biodiesel Supply Contract)	
with Imperium and to Include Contract Costs in)	
HECO's Energy Cost Adjustment Clause.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Protective Order
No. _____, upon the following party (parties) by hand delivery or by mail, postage
prepaid and properly addressed.

Division of Consumer Advocacy
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

HENRY Q CURTIS
Vice President for Consumer Issues
Life of the Land
76 North King Street, Suite 203
Honolulu, HI 96817

WILLIAM A. BONNET
Vice President
Government & Community Affairs
Hawaiian Electric Company, Inc.
P.O. Box 275
Honolulu, Hawaii 96840-0001

DEAN K. MATSUURA
Manager, Regulatory Affairs
Hawaiian Electric Company, Inc.
P.O. Box 275
Honolulu, Hawaii 96840-0001

CRAIG I. NAKANISHI
SHAH J. BENTO
Rush Moore LLP
737 Bishop Street, Suite 2400
Honolulu, Hawaii 96813

Attorneys for HECO

DATED: Honolulu, Hawaii, _____

Karen Higashi
Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24145 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

ROBERT A. ALM
SENIOR VICE PRESIDENT, PUBLIC AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

DANIEL G. BROWN
SENIOR REGULATORY ANALYST
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

CRAIG I. NAKANISHI, ESQ.
ANTHONY VALDEZ, ESQ.
RUSH MOORE, LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Attorneys for HECO

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817



Karen Higashi

DATED: APR 10 2008