

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
HAWAIIAN ELECTRIC COMPANY, INC. )  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
 )  
For a Declaratory Order Regarding )  
the Exemption of Puna Geothermal )  
Venture Proposed Project From )  
the Framework for Competitive )  
Bidding, or in the Alternative, )  
Approval of Application for )  
Waiver from the Framework for )  
Competitive Bidding. )  
\_\_\_\_\_ )

DOCKET NO. 2008-0063

DECISION AND ORDER NO. 24230

Filed May 15, 2008  
At 12 o'clock P.M.

Karen Higost.  
Chief Clerk of the Commission

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

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Docket No. 2008-0063  
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DECISION AND ORDER

By this Decision and Order, the commission declares that Puna Geothermal Venture's ("PGV") proposal to modify its existing power purchase agreement ("PPA") with HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), as described in HELCO and HAWAIIAN ELECTRIC COMPANY INC.'s ("HECO") Petition,<sup>1</sup> is exempt from the Framework for Competitive Bidding ("Framework").<sup>2</sup>

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<sup>1</sup>Petition for Declaratory Order or Application for Waiver; Memorandum in Support of Petition for Declaratory Order or Application for Waiver; Exhibit A; Declaration of Sherri-Ann Loo; Declaration of Michael L. Kaleikini; and Certificate of Service, filed April 3, 2008, as amended on May 2, 2008 ("Petition").

<sup>2</sup>The Framework was adopted by the commission in Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372.

I.

Background

A.

Petition

On April 3, 2008, HECO and HELCO (collectively, "Petitioners") filed a Petition for Declaratory Order or Application for Waiver in which they request that the commission issue an order declaring that PGV's proposal to modify its existing PPA with HELCO ("Project") is exempt from the Framework under Part II.A.3.g(iv) of the Framework.<sup>3</sup> According to Petitioners, "PGV is proposing to modify its existing [PPA] with HELCO for 30 megawatts ('MW') to provide an additional 8 MW by expanding its existing facility."<sup>4</sup> Petitioners state that "PGV is proposing a firm capacity project even though PGV is not proposing capacity payments"<sup>5</sup> and that the "proposed modifications to and expansion of its existing facility would have operational

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<sup>3</sup>By letter dated and filed May 2, 2008, Petitioners requested that certain pages originally filed with the Petition for Declaratory Order or Application for Waiver and accompanying Memorandum in Support on April 3, 2008, be replaced with revised pages to reclassify certain information concerning the Project from confidential to non-confidential, correct a quoted passage from the Framework, and remove confidential labeling and page designations where they were no longer appropriate due to confidential information no longer being presented on the revised page.

<sup>4</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 2-3 (internal footnotes and text therein omitted).

<sup>5</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 3 n.5.

features intended to enhance the overall stability of HELCO's system."<sup>6</sup>

In the alternative, if the commission determines that the Project is not exempt from the Framework under Part II.A.3.g(iv), Petitioners request a waiver under Part II.A.3.d of the Framework.

B.

Consumer Advocate's Statement of Position

On May 13, 2008, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")<sup>7</sup> filed its Statement of Position in which it states that it does not object to approval of the Petition.

II.

Discussion

By Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372, the commission adopted the Framework. It mandates competitive bidding as the required mechanism for acquiring a future generation resource or block of generation resources, subject to certain exceptions.<sup>8</sup> In particular, the Framework "does not apply to qualified facilities

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<sup>6</sup>Petition for Declaratory Order or Application for Waiver, at 5.

<sup>7</sup>The Consumer Advocate is an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

<sup>8</sup>Framework, Part II.A.3, at 3.

and non-fossil fuel producers with respect to . . . power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air permit modification."<sup>9</sup>

Petitioners state that PGV is a non-fossil fuel producer as "it does not burn fossil fuel to generate electricity; rather, it generates electricity using geothermal energy."<sup>10</sup> In addition, Petitioners assert that PGV's current proposal is to modify its existing PPA with HELCO so that PGV may provide an additional 8 MW of firm capacity.<sup>11</sup> Under Part II.A.3.g(iv) of the Framework, a PPA modification "to acquire additional firm capacity" would be exempt from competitive bidding.<sup>12</sup>

Likewise, a PPA modification to acquire firm capacity "from a facility that is modified without a major air permit modification" is also exempt from the requirement of competitive bidding under the Framework. Petitioners state that PGV's existing facility has a noncovered source air permit that was

<sup>9</sup>Framework, Part II.A.3.g(iv), at 5-6.

<sup>10</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 3.

<sup>11</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 3; see also id. at 3 n.5 ("PGV's NUG form indicates that PGV is proposing a firm capacity project even though PGV is not proposing capacity payments.").

<sup>12</sup>While the commission is concerned that some or all of the additional 8 MW of firm capacity will only serve to enable PGV to meet its existing 30 MW commitment, this issue is related to approval of the PPA and can be addressed in connection with the commission's review of the PPA.

issued by the State of Hawaii Department of Health ("DOH")<sup>13</sup> and that "the proposed modification to and expansion of PGV's existing facility can be completed (1) by modifying PGV's existing noncovered source air permit, and (2) without PGV applying for and receiving a covered source/prevention of significant deterioration air permit."<sup>14</sup> Petitioners assert that a modification of a noncovered source permit should not be considered a "major air permit modification" under the Framework.

Given the applicable law, the commission agrees with Petitioners' interpretation. The administrative rules governing noncovered source permits only refer to "modifications"<sup>15</sup>; and there is no criteria in the noncovered source regulations that could be used to characterize a noncovered source permit modification as a "major air permit modification." In contrast, the covered source permit regulations contain numerous criteria with which to categorize a permit modification as "major."<sup>16</sup> Accordingly, a modification of a noncovered source permit would not be a "major air permit modification."

Based on the foregoing, HELCO's acquisition of an additional 8 MW of firm capacity from PGV as described in the Petition, should be exempt from the Framework, under Part II.A.3.g(iv). The commission, however, is cognizant that

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<sup>13</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 3.

<sup>14</sup>Petition for Declaratory Order or Application for Waiver, at 5.

<sup>15</sup>See HAR § 11-60.1-76.

<sup>16</sup>See HAR § 11-60.1-81.

"PGV and HELCO are engaged in PPA negotiations."<sup>17</sup> Accordingly, the commission's decision is limited to the facts set forth in the Petition,<sup>18</sup> and any final determination would necessarily be based on the PPA ultimately submitted by HELCO for commission approval.<sup>19</sup>

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. PGV's proposal to modify its existing PPA with HELCO, as described in the Petition, is exempt from the Framework.
2. This docket is closed unless otherwise ordered by the commission.

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<sup>17</sup>Petition for Declaratory Order or Application for Waiver, at 4; see also Letter dated and filed May 2, 2008, from Petitioners to the commission, at 1 n.3 ("The Companies understand that PGV will be providing a revised proposal in the near future.").

<sup>18</sup>See HAR § 6-61-166.

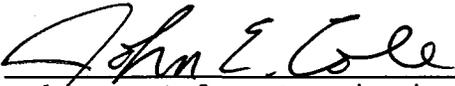
<sup>19</sup>Given that the Project, as described in the Petition, is exempt from the Framework, the commission need not decide Petitioners' alternate request for a waiver under Part II.A.3.d of the Framework.

DONE at Honolulu, Hawaii

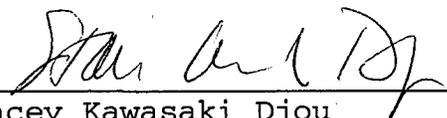
MAY 15 2008

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

By:   
Leslie H. Kondo, Commissioner

2008-0063.s1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24230 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: MAY 15 2008