

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.)
MAUI ELECTRIC COMPANY, LIMITED)

DOCKET NO. 2008-0061

For Approval of Waivers from the)
Competitive Bidding Framework.)

ORDER DENYING REQUESTS FOR EXTENSIONS OF TIME

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

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COMMISSION

2009 JAN -5 P 12:35

FILED

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HAWAII ELECTRIC LIGHT COMPANY, INC.)
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_____)

Docket No. 2008-0061

ORDER DENYING REQUESTS FOR EXTENSIONS OF TIME

By this Order,¹ the commission denies MECO's requests for extensions of time, filed on December 22, 2008, as clarified on December 23, 2008.

I.

Background

This proceeding involves the commission's approval, subject to certain conditions, of the HECO Companies' requests for waivers from the competitive bidding process for the following three independent power producer projects:

(1) Na Makani's wind energy/hydroelectric hybrid project;

¹The Parties are HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED (collectively, the "HECO Companies"), Intervenor NA MAKANI MOA'E KU ("Na Makani"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY, an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

(2) Waikoloa Wind Power LLC's wind farm/battery energy storage project; and (3) Bio Energy Systems of Hawaii, Inc.'s ("Bio Energy") firm capacity biomass project.

The deadline for the HECO Companies to: (1) file status reports on their negotiations with each of the independent power producers was December 22, 2008;² and (2) file fully executed term sheets for each of the three projects is January 12, 2009.³

On December 22, 2008, as supplemented on December 23, 2008, the HECO Companies jointly filed the respective status reports for the three independent power producer projects, in response to the Commission's directive. At the same time, MECO, by letter dated December 22, 2008, as clarified on December 23, 2008, makes the following two requests:⁴

²Specifically:

. . . a report that describes the status of negotiations and the HECO Companies' efforts in reaching: (1) material agreement through term sheets; and (2) final written agreement through power purchase agreements with the three independent power producers, for the period from September 8, 2008 (the date the Commission approved the HECO Companies' request for waivers from the competitive bidding process) until the date of your response. The requested report shall include, by chronological dates, a description of all meetings and negotiations with each independent power producer, and copies of all correspondence between the negotiating parties, and any other information or analysis exchanged between the parties. The report should also include schedules for each of the three projects that include timelines for the completion and execution of term sheets and power purchase agreements, and the planned installation and in-service dates for each project.

See Commission's letter, dated December 15, 2008, at 1.

³Decision and Order, filed on September 8, 2008.

1. "[A]n extension of time to provide the Commission with the schedule and other documentation requested by the Commission in its December 15, 2008 letter until the earlier to occur of: (1) 10 days after Bio Energy provides MECO with its revised, updated NUG proposal (including project schedule) as noted above, or (2) 45 days beyond the current January 12, 2009 deadline to submit a fully executed term sheet to the Commission."⁵
2. A forty-five day extension of time, from January 12, 2009 to February 26, 2009, to file the fully executed term sheet for the Bio Energy Project, or in the alternative, "to provide the Commission with an update on Bio Energy's status of addressing its financing issues and entering into a fully executed term sheet."⁶

II.

Discussion

HAR § 6-61-23(a)(1) states:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed or as extended by a previous order[.]

HAR § 6-61-23(a)(1).

⁴The deadline for the other parties to this proceeding, i.e., the Consumer Advocate and Na Makani, to file responses to MECO's requests expired on January 2, 2009.

⁵MECO's letter, dated December 23, 2008, at 2.

⁶MECO's letter, dated December 22, 2008, at 2.

MECO, in support of its timely requests for additional time, represents that the Bio Energy Project "has been unable to secure financing due primarily to credit tightening related to the financial crisis impacting the nation."⁷ As a result, MECO notes that "the [contracting] parties have not yet been able to commence productive discussions with each other on key material terms and conditions for a term sheet and will not be able to submit a fully executed term sheet by the January 12, 2009 deadline set forth in the Decision [and Order]."⁸ Nonetheless, "the [contracting] parties believe that if Bio Energy is provided additional time through an extension of the term sheet deadline in order to secure financing, they may be able to begin the negotiation process."⁹

In In re Hawaiian Elec. Co., Inc. and Hawaii Elec. Light Co., Inc., Docket No. 2008-0091 ("Docket No. 2008-0091"), the commission recently denied the HECO Companies' request for a forty-five day extension of time to file a fully executed term sheet for the Hamakua Biomass Energy, LLC ("HBE") biomass energy project (the "HBE Project"). Instead, the commission granted the HECO Companies a two-week extension of time, until December 23, 2008, to file a fully executed term sheet for the HBE Project, and noted that no further extensions would be

⁷MECO's letter, dated December 22, 2008, at 1.

⁸MECO's letter, dated December 22, 2008, at 1.

⁹MECO's letter, dated December 22, 2008, at 1.

granted by the commission.¹⁰ In reaching its decision, the commission reasoned:

. . . . As discussed in the Decision and Order, the Commission must balance the competing interests of the benefits of the Project against the benefits of competitive bidding. Indeed, this concern is heightened by information recently provided to the Commission that the HBE Project is in direct competition with another biomass energy project proposed by Hu Honua Biomass Energy LLC, as noted in Docket No. 2008-0143. In addition, as set forth in the Decision and Order, the purpose of a waiver is to allow for a more expeditious means of adding renewable generation to HELCO's grid than competitive bidding. This purpose would be frustrated by allowing the full [forty-five day] extension requested by the HECO Companies.

Docket No. 2008-0091, Commission's letter, dated December 9, 2008, at 1-2.

Consistent with its rationale in Docket No. 2008-0091, the commission finds that in balancing the benefits of a proposed project that is exempt from the competitive bidding process vs. the benefits associated with competitive bidding, the granting of the requested extensions of time herein appears inconsistent with the public interest. The underlying purpose of the waiver granted to MECO for the Bio Energy Project was to allow for a more expeditious means to add renewable generation to MECO's grid other than by the competitive bidding process. Here, however, the contracting parties have yet to commence productive discussions on reaching agreement on a term sheet, due to Bio Energy's inability to secure the requisite financing for

¹⁰Subsequently, by letter dated December 23, 2008, the HECO Companies request a status conference with the commission.

its proposed project. Under the circumstances, the commission denies MECO's requests for extensions of time.


III.

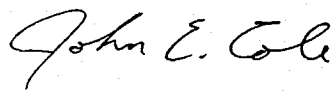
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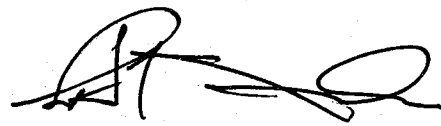
MECO's requests for extensions of time, filed on December 22, 2008, are denied.

DONE at Honolulu, Hawaii JAN - 5 2009.


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

2008-0061.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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