BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of	)	
	)	
PUBLIC UTILITIES COMMISSION	)	Docket No. 2007-0331
	)	
Instituting a Proceeding	)	
Related to a Competitive	)	
Bidding Process for Renewable	)	
Energy on Oahu.	)	
	)	

AMENDED PROTECTIVE ORDER NO. 23875

STIPULATION FOR AMENDED PROTECTIVE ORDER

EXHIBIT A

AND

CERTIFICATE OF SERVICE

RECEIVED
2009 MAY 26 A 9: 58
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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PUBLIC UTILITIES
COMMISSION

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Energy on Oahu.	)	
	)	

STIPULATION FOR AMENDED PROTECTIVE ORDER

WHEREAS, by Order No. 23699, filed October 9, 2007, in Docket No. 2007-0331, the Commission opened the docket pursuant to the Framework for Competitive Bidding dated December 8, 2006, to receive filings, review approval requests, and resolve disputes, if necessary, related to Hawaiian Electric Company, Inc.'s ("HECO") proposal to proceed with a competitive bidding process to acquire approximately 100 MW of non-firm renewable energy for the Island of Oahu;

WHEREAS, pursuant to Order No. 23699, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate") was made a party to this proceeding;

WHEREAS, HECO anticipates that during the course of this proceeding, information considered to be privileged, confidential, and/or proprietary by HECO or a bidder in the competitive bidding process may be requested or filed. Accordingly, the parties desire to establish a set of procedures and provisions pertaining to the use and

disclosure of information considered to be confidential and any information which a party may in the future contend to be confidential;

WHEREAS, HECO maintains that certain confidential information and other materials that may be filed with the Commission could constitute "critical infrastructure information" subject to protection from disclosure under the Homeland Security Act of 2002 and the rules and guidelines promulgated pursuant thereto;

WHEREAS, HECO maintains that certain system-related information should be considered confidential for security reasons, or that disclosure of certain confidential information could disadvantage HECO in the respective future negotiations with power suppliers, contractors, and/or vendors;

WHEREAS, HECO and the Consumer Advocate understand and recognize that if any information is requested that is considered confidential by a bidder in the competitive bidding process, additional agreements and protection may be needed before the release of such information, under additional confidential protection, can be accomplished;

WHEREAS, the parties understand that during the course of the hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard in camera;

WHEREAS, on December 6, 2007, the Commission issued Protective Order No. 23875 which governs the classification, acquisition, and use of confidential information produced by any party in this docket;

WHEREAS, HECO has been informed by Barry Sheingold of New Energy

Opportunities, Inc. (i.e., the Independent Observer) that he does not have any employees, and instead uses consultants to assist in the performance of his duties as an Independent Observer;

WHEREAS, paragraph 12.e is hereby modified to include consultants of New Energy Opportunities as a "qualified person";

NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issue a protective order covering the confidential information identified in the course of the proceeding, as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of confidential information produced by any party in this docket.

2. All parties 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 either all or specific portions of the confidential information of a party or participant under the provisions of this protective order to the extent allowed by the Commission.

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 Haw. Rev. Stat. §92F-3, the provisions of Haw. Rev. Stat. Ch. 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,

unless otherwise required by law.

CLASSIFICATION

4. Any party may designate as confidential any information it believes, in good faith, contains confidential information related to HECO's negotiations with independent power producers, trade secrets, confidential resource proposal information, confidential request for proposal process information, or other confidential research, development, commercial, financial, vendor, bid, or non-public information, "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or 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 adversely impact its ability to respond to potential terrorist threats. 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 the party claiming confidentiality, as provided in paragraph 13 below.

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain confidential information in writing only to the Commission and the Consumer Advocate (provided the party producing the certain confidential information follows the notification procedures described in paragraph 4 above), and/or concurrently provide certain confidential information in writing to the Commission, the Consumer Advocate,

and the other parties. If a party seeks to designate information as confidential, it must: (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, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party to this docket challenges the claim of confidentiality of the information, the party claiming confidentiality 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 a 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 a party, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party shall notify the Commission, the Consumer Advocate, and the other parties when information provided orally or in other than written form includes confidential information. At the time of such notification, a party 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 cognizable harm to the producing party from any misuse or unpermitted disclosure of the information, and a party shall, if applicable, reserve distribution to another specified party and set forth in particularity the information to be kept confidential and not available to the other party.

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 by this protective order) as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

8. Any party claiming that information is confidential shall place upon all applicable material 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, the party 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 control of the party claiming confidentiality, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, 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 cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, the party claiming confidentiality

shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 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 in paragraph 4 above, regarding limiting the availability of designated confidential information, "qualified person," 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 (provided that such person shall be a Qualified Person by virtue of this subparagraph only with respect to the confidential information of which such person was the author, addressee or originator);

b. The Commission, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Commission for this proceeding;

c. The Consumer Advocate, its staff, its 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. New Energy Opportunities, Inc. (i.e., the Independent Observer), its officers and employees, and any consultants retained by New Energy Opportunities, Inc. for this proceeding;

f. Any party to this proceeding, its officers and employees, its designated representative of record, 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;

g. Any other person approved by the party asserting the claim of confidentiality; and

h. 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 permission from the party claiming confidentiality. The 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 disclosure. If permission is granted by the party claiming confidentiality, 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.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than

the Commission, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Commission for this proceeding, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (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.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff in any proceeding pending before the Commission involving the producing party or its affiliates or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. 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 the producing party, 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 any proceeding pending before the Commission involving the producing party or its affiliates, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. 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 the producing party, 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, the page(s) or portions of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, 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 Amended
Protective Order No. 23875.

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 AMENDED PROTECTIVE ORDER NO. 23875 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.**

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, it shall bear the following legend: "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, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of 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, terminate the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first

make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality 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. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NONWAIVER OF OBJECTIONS AND RIGHTS

25. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may 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 if modified by the parties in writing and approved by the Commission.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, 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 the

party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representatives 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 to the extent reasonably necessary to preserve files on this proceeding.

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 required by applicable statutes, rules, administrative directives or orders of the Commission.

SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

DATED: Honolulu, Hawaii May 1, 2009.

Thomas W. Williams, Jr. Esq.
Peter Y. Kikuta, Esq.
Attorneys for
Hawaiian Electric Company, Inc.

Jon S. Itomura, Esq.
Lane H. Tsuchiyama, Esq.
Attorneys for
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs

APPROVED AND SO ORDERED THIS MAY 2 2 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:

_____
Stacey Kawasaki Djou
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 Amended Protective Order No. 23875, issued by the Public Utilities Commission in Docket No. 2007-0331 on the _____ day of _____, 2009 ("Protective Order").

2. I am employed, retained or assisting _____in Docket No. 2007-0331, am a "Qualified Person" pursuant to Paragraph 12 of the Protective Order, and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ as provided for in paragraph 15 of the Protective Order (and paragraph 17 in the case of rendering assistance to the Consumer Advocate), and that I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person unless otherwise permitted by the Protective Order.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to _____, 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 _____.

_____
Signature

_____

_____

_____
Address

( ) _____
Telephone Number

CERTIFICATE OF SERVICE

The foregoing Amended Protective Order No. 23875 was served on the date of filing, by mail, prepaid and properly addressed to the following:

Division of Consumer Advocacy Department of Commerce and Consumer Affairs 335 Merchant Street, Room 326 Honolulu, HI 96813	2 copies
THOMAS W. WILLIAMS, JR. ESQ. PETER Y. KIKUTA, ESQ. Goodsill Anderson Quinn & Stifel Alii Place, Suite 1800 1099 Alakea Street Honolulu, HI 96813	1 copy
DEAN MATSUURA Manager, Regulatory Affairs Hawaiian Electric Company, Inc. P.O. Box 2750 Honolulu, HI 96840-0001	1 copy