

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 MAUI ELECTRIC COMPANY, LIMITED)
)
 For Approval of Biodiesel Supply)
 Contract and to Include Biodiesel)
 Supply Contract Costs in MECO's)
 Energy Cost Adjustment Clause.)
 _____)

DOCKET NO. 2009-0168

ORDER DENYING LIFE OF THE LAND'S
MOTION FOR RECONSIDERATION, FILED ON SEPTEMBER 21, 2009

2009 OCT -5 A 9:03
PUBLIC UTILITIES
COMMISSION

FILED

Upon review, the commission finds LOL's arguments for full intervention, as a party, unpersuasive in this case involving a one-time purchase of biodiesel for testing and information-gathering purposes. Intervention in commission proceedings is not a right but "a matter resting within the sound discretion of the commission" as articulated by the Hawaii Supreme Court. In the commission's view, LOL fails to demonstrate that its property, financial, or other interests are adversely affected in this proceeding. Notably, LOL lacks a statutory or other mandatory right to intervene in this proceeding; particularly as this docket involves a one-time purchase of biofuel for the limited purpose of gathering information.

Moreover, LOL's assertion that the Consumer Advocate cannot represent its interests and that LOL's interests differ from that of the general public, is not convincing. LOL's argument that separate representation is necessary since consumer and environmental issues are distinct and that this divergence is sufficient to justify intervention is not persuasive. As noted by LOL, its interests do "overlap" with those of consumers and the general public, whose interests the Consumer Advocate is statutorily required to "represent, protect, and advance[.]" Contrary to LOL's assertions, the Consumer Advocate is not limited to solely advocating for consumer-type interests, as the Consumer Advocate is also statutorily required to "consider the long-term benefits of renewable resources in the consumer advocate's role as consumer advocate."

Based on the foregoing, the commission concludes that LOL's Motion to Intervene should be denied.²

Although the commission denied LOL's request to intervene, it granted LOL participant status with respect to the issue of the environmental sustainability of the use of palm oil-based biodiesel. In its Intervention Order, the commission specifically stated:

²See Intervention Order, at 11-12 (footnotes omitted).

Although intervention by LOL is inappropriate in this case, the commission finds that LOL could still contribute as a participant in this proceeding. Even though LOL's interests appear to be protected, represented, and advanced by the Consumer Advocate, **there is an opportunity in this proceeding for LOL to assist the commission in developing the record related to the environmental sustainability of the use of palm oil-based biodiesel.**

In its Application, MECO states that the Supply Contract requires that the biodiesel supplied to MECO comply with the requirements of the Environmental Policy for the Hawaiian Electric Company's Procurement of Biodiesel from Palm Oil and Locally Grown Feedstocks, dated August 2007. Thus, the environmental sustainability of palm oil-based biodiesel may be an issue in this proceeding. **Given LOL's environmental interests and its contribution in Docket No. 2007-0346, a prior biofuel proceeding, the commission finds that LOL's limited involvement in this proceeding as a participant could assist the commission in its review and understanding of this issue.**

Based on the foregoing, the commission concludes that LOL should be allowed to participate without intervention in this docket. However, **LOL's participation in this proceeding shall, unless otherwise ordered by the commission, be limited to the issue of the environmental sustainability of palm oil-based biodiesel.** With respect to this issue, LOL shall be allowed to participate fully in this proceeding including, among other things, submitting direct testimony, issuing and responding to IRs, filing briefs and pleadings, and during any evidentiary hearing, calling witnesses and cross-examining opposing witnesses.

LOL's participation in this proceeding, however, is conditional. The commission will preclude any effort by LOL to unreasonably broaden the pertinent issues or unduly delay the proceeding. The commission will reconsider LOL's participation in this docket if, at any time during the course of this proceeding, the commission determines that LOL is unreasonably broadening the pertinent issues or unduly delaying the proceeding.

³Id. at 13-14 (footnotes omitted) (emphases added).

On September 21, 2009, LOL timely filed its Motion for Reconsideration.

II.

Discussion

Under HAR § 6-61-137, a motion for reconsideration concerning any decision or order of the commission must be filed within ten days after the decision or order is served upon the party. The motion must also specifically state "the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**" HAR § 6-61-137 (emphasis added).

In its Motion for Reconsideration, LOL argues that it "believe[s] that the original decision is unreasonable and based on an erroneous understanding of the issues."⁴ LOL cites to the portion of the Intervention Order where the commission discussed the overlapping interests of LOL and the Consumer Advocate. LOL contends that although it shares overlapping issues with the Consumer Advocate, they also have "long-standing, extensive, well documented differences on most issues."⁵ LOL then goes on to cite numerous dockets in which the Consumer Advocate purportedly did not address environmental issues.⁶

In essence, LOL argues that although the Consumer Advocate is statutorily required to consider the long-term benefits of renewable resources in the consumer advocate's role

⁴See Motion for Reconsideration, at 2.

⁵Id. at 9.

⁶Id. at 4-8.

as consumer advocate under HRS § 269-54(c), the Consumer Advocate "has NEVER hired a consultant with any environmental degrees nor has the Consumer Advocate ever conducted detailed environmental analysis on any [of] the issues in any docket."⁷

Based upon review, however, the commission finds that LOL has not shown that the commission's decision in the Intervention Order was "unreasonable, unlawful, or erroneous." LOL's arguments regarding the Consumer Advocate's inability to represent its interests fail to recognize the critical outcome of the Intervention Order. By allowing LOL to participate in this proceeding on the issue of the environmental sustainability of the use of palm oil-based biodiesel, the commission is effectively allowing LOL to represent its own interests.

In the Intervention Order, the commission expressly stated that "LOL shall be allowed to participate fully in this proceeding including, among other things, submitting direct testimony, issuing and responding to IRs, filing briefs and pleadings, and during any evidentiary hearing, calling witnesses and cross-examining opposing witnesses."⁸ Therefore, LOL will be able to address its environmental concerns regarding the use of palm oil-based biodiesel.

In short, LOL, as a participant, will be able to address the same issues that it would have raised had it been granted intervention. While LOL may prefer full intervenor

⁷Id. at 3.

⁸See Intervention Order, at 4.

status, intervention "is not a matter of right but a matter resting within the sound discretion of the commission."⁹ Accordingly, the commission denies the Motion for Reconsideration.

III.

Order

THE COMMISSION ORDERS:

LOL's Motion for Reconsideration is denied.

DONE at Honolulu, Hawaii OCT - 5 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

Bonita Y.M. Chang
Bonita Y.M. Chang
Commission Counsel

2009-0168.cp

⁹See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

CERTIFICATE OF SERVICE

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

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

DEAN K. MATSUURA
MANAGER, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

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

Attorneys for MAUI ELECTRIC COMPANY, LIMITED

HENRY Q. CURTIS
KAT BRADY
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817