

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval to Commit Funds in)
Excess of \$2,500,000 (excluding)
customer contributions) for the)
Purchase and Installation of the)
Capital Equipment, Item P0001577,)
For the Kahe 3 Biofuel Co-firing)
Demonstration Project, and for)
Approval of the Biofuel Supply)
Contract for the Kahe 3 Biofuel)
Co-firing Demonstration Project)
and to Include the Biofuel Supply)
Contract Costs in Hawaiian)
Electric's Energy Cost Adjustment.)
Clause.)

DOCKET NO. 2009-0155

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

PUBLIC UTILITIES
COMMISSION

2009 OCT -5 A 9:03

FILED

I.

Background

On July 13, 2009, HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") filed an application¹ for approval: (1) to commit an estimated \$5,200,000 for the purchase and installation of capital equipment, Item P0001577, for the Kahe 3 Biofuel Co-firing Demonstration Project ("Biofuel Project"); (2) of a biofuel supply contract ("Supply Contract") that will provide approximately 1,575,000 net U.S. gallons of biofuel for use in HECO's Biofuel Project; and (3) for inclusion of the Supply Contract and related costs in its Energy Cost Adjustment Clause, to the extent not recovered in HECO's base rates.

On July 29, 2009, LOL timely filed a Motion to Intervene ("Motion to Intervene") in this proceeding. On August 5, 2009, HECO filed a Memorandum in Opposition to LOL's Motion to Intervene ("Opposition to LOL's Motion to Intervene").²

On September 11, 2009, the commission issued its Order Denying Intervention and Granting Participation Status to Life of the Land ("Order Granting Participation") denying LOL's Motion to Intervene while allowing LOL to participate in this proceeding on

¹The parties to this proceeding are HECO and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party in all proceedings before the commission. See Hawaii Revised Statutes § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

²On August 7, 2009, LOL filed a Motion for Leave to Reply to HECO's Opposition to LOL's Motion to Intervene and attached its Reply to HECO's Opposition to LOL's Motion to Intervene. On August 14, 2009, HECO filed a Memorandum in Opposition to LOL's Motion for Leave to Reply to HECO's Opposition to LOL's Motion to Intervene. The Consumer Advocate did not file a response to LOL's Motion to Intervene.

the issue of the environmental sustainability of palm oil-based biofuel.

On September 21, 2009, LOL timely filed its Motion for Reconsideration of the Order Granting Participation under HAR § 6-61-137.

II.

Discussion

HAR § 6-61-137 states:

A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137.

In its Motion for Reconsideration, LOL requests that the commission "reverse its decision and allow Life of the Land full intervenor status."³ LOL contends that the commission's denial of its Motion to Intervene is unreasonable and is based on an erroneous understanding of the issues.

LOL states that while this docket involves a one-time purchase of biofuels,⁴ "this docket represents HECO's efforts to

³See Motion for Reconsideration at 2.

⁴In its Motion for Reconsideration, LOL erroneously quotes the Order Granting Participation. LOL contends that "the commission finds LOL's argument for full intervention, as a party, unpersuasive in this case involving a one-time purchase of biodiesel for testing and information-gathering purposes" and cites to page 11. See Motion for Reconsideration at 3 (emphasis added). However, the correct quote should have been that "the

secure a foothold for palm oil biofuel in this State.”⁵ According to LOL, this docket represents a “very dangerous precedence in allowing palm oil to gain traction as an allegedly viable alternative.”⁶

In addition, while acknowledging that the Consumer Advocate has the legal authority to evaluate environmental issues and provide testimony on such issues, LOL argues that 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 According to LOL, the Consumer Advocate and its witnesses have “summarized utility positions on environmental issues and suggested that utilities conduct more environmental research and analysis.”⁸

Moreover, LOL contends that the commission misinterpreted its statement that LOL’s “interests overlap with those of consumers and the general public, whose interests the Consumer Advocate is statutorily required to represent, protect

commission finds LOL’s arguments for full intervention, as a party, unpersuasive in this case involving a one-time purchase of biofuels for testing and information-gathering purposes.” See Order Granting Participation at 12 (emphasis added).

⁵See Motion for Reconsideration at 3.

⁶Id. (internal quotes omitted).

⁷Id. (emphasis in original).

⁸Id. at 4. In addition, LOL provides its analysis of the Consumer Advocate’s witnesses in various prior commission proceedings. See Motion for Reconsideration at 4-8.

and advance."⁹ LOL asserts that while there is an overlap of interests, "[t]his does not mean that when one party is present the other need not show up."¹⁰ LOL also states that:

Sure, Life of the land and the Consumer Advocate have overlapping issues: we both want what is right for Hawaii including lower prices and more renewables. But even the slightest review of filings in dockets or advocacy at the Legislature reveals that Life of the Land and the Consumer Advocate have long-standing, extensive, well documented differences on most issues.

Motion for Reconsideration at 9-10.

Here, as articulated by the Hawaii Supreme Court, intervention in commission proceedings "is not a matter of right but a matter resting within the sound discretion of the commission."¹¹ Upon review of LOL's motion, the commission finds that LOL has failed to meet its burden of establishing that the Order Granting Participation is unreasonable, unlawful, or erroneous under HAR § 6-61-137. LOL's arguments for reconsideration are not persuasive. For instance, the commission disagrees with LOL's contention that this docket represents a "very dangerous precedence in allowing palm oil to gain traction" as an "allegedly viable alternative."¹² In addition, the scope of LOL's participation in this proceeding, while limited to the environmental sustainability of palm oil-based biofuel, is broad. As set forth in the Order Granting Participation:

⁹Id. at 8-9.

¹⁰Id. at 9.

¹¹See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

¹²See Motion for Reconsideration at 3.

With respect to this issue [of environmental sustainability of palm oil-based biofuel], LOL shall be allowed to participate fully in this proceeding including, among other things, submitting direct testimony, issuing and responding to IRs ["information requests"], filing briefs and pleadings, and during any evidentiary hearing, calling witnesses and cross-examining opposing witnesses.

Order Granting Participation at 15. Thus, though limited, LOL was granted a full range of privileges to fully investigate and set forth its case regarding the environmental sustainability of palm oil-based biofuel.

Based on the foregoing, the commission concludes that LOL's Motion for Reconsideration should be denied.

III.

Order

THE COMMISSION ORDERS:


LOL's Motion for Reconsideration, filed on September 21, 2009, is denied.

DONE at Honolulu, Hawaii OCT - 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:


Ji Sook Kim
Commission Counsel

2009-0155.cp

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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