





I.

Background

A.

Application

On September 18, 2009, HECO filed a Petition for Declaratory Order or Application for Waiver in which it requests that the commission issue an order declaring that the City's proposed H-Power expansion project is exempt from the Framework under Part II.A.3.g(iv) of the Framework. According to HECO, the Project, which consists of a mass burn municipal solid waste ("MSW") fueled boiler, a turbine and certain ancillary equipment, "contemplates an increase in the amount of electric energy generated by the H-Power facility of up to 27 megawatts and sale of that electric energy and firm capacity to [HECO] under a modified [PPA] to be negotiated by [HECO] and the City, subject to the Commission's approval of the PPA."<sup>3</sup> HECO further states that "[t]he Project is expected to become operational by the end of 2011 and after commissioning will then be capable of providing energy and firm capacity to [HECO]."<sup>4</sup>

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

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<sup>3</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 2.

<sup>4</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 2.

B.

Consumer Advocate's Statement of Position

On November 18, 2009, the Consumer Advocate filed its Statement of Position in which it indicated "that it is in agreement with HECO that the Competitive Bidding Framework does not apply to the Company's acquisition of electric energy and firm capacity from the City's Proposed Project. More specifically, the City's Proposed H-Power Project and HECO's intention to acquire electric energy and firm capacity from the City's Proposed H-Power Project pursuant to a negotiated PPA modification satisfy the provision set forth in Competitive Bidding Framework Part II.A.3.g.(iv) that the Competitive Bidding Framework 'does not apply to qualified facilities and non-fossil fuel producers with respect to . . . power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility.'"<sup>5</sup>

In addition, the Consumer Advocate states that, while it "believes that the Commission will find that the proposed contract between HECO and the City falls outside of the scope of the competitive bidding framework, if the Commission disagrees with that assessment, the Consumer Advocate contends that there are certain facts and/or observations that could support a

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<sup>5</sup>Division of Consumer Advocacy's Statement of Position, filed on November 18, 2009, at 7.

Commission decision to waive the competitive bidding requirements as it relates to the proposed contract.”<sup>6</sup>

## 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>7</sup> In particular, the Framework “does not apply to qualified facilities and non-fossil fuel producers with respect to . . . power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility.”<sup>8</sup>

HECO states that the City is a non-fossil fuel producer as it “will utilize a municipal solid waste (‘MSW’) fuel source which has been expressly identified as a renewable energy resource by the Hawaii Legislature . . . . Therefore, the Project will not utilize fossil fuel to generate electricity and the Project qualifies as a non-fossil fuel producer of electricity.”<sup>9</sup> In addition, HECO asserts that the “Project contemplates: (1) an

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<sup>6</sup>Division of Consumer Advocacy’s Statement of Position, filed on November 18, 2009, at 8.

<sup>7</sup>Framework, Part II.A.3, at 3.

<sup>8</sup>Framework, Part II.A.3.g(iv), at 5-6.

<sup>9</sup>Memorandum in Support of Petition for Declaratory Order or Application for Waiver, at 3.

increase in the amount of electric energy generated by the H-Power facility of up to 27 megawatts, and, (2) sale of that electric energy and firm capacity to [HECO] under a modification to its existing PPA to be negotiated by [HECO] and the City."<sup>10</sup> Under Part II.A.3.g(iv) of the Framework, a PPA modification "to acquire additional firm capacity" would be exempt from the competitive bidding framework.

Based on the foregoing, HECO's acquisition of up to an additional 27 MW of firm capacity from the City, as described in the Petition, should be exempt from the Framework, under Part II.A.3.g(iv). The commission, however, is cognizant that the City and HECO are engaged in PPA negotiations.<sup>11</sup> Accordingly, the commission's decision is limited to the facts set forth in the Petition,<sup>12</sup> and any final determination would necessarily be based on the PPA ultimately submitted by HECO for commission approval.<sup>13</sup>

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

<sup>11</sup>Petition for Declaratory Order or Application for Waiver, at 5 ("The Project contemplates an increase in the amount of electric energy generated by the H-Power facility of up to 27 megawatts and sale of that electric energy and firm capacity to [HECO] under a modified [PPA] to be negotiated by [HECO] and the City, subject to the Commission's approval of the PPA.").

<sup>12</sup>See HAR § 6-61-166.

<sup>13</sup>Given that the Project, as described in the Petition, is exempt from the Framework, the commission need not decide HECO's alternate request for a waiver under Parts II.A.3.c. and II.A.3.d of the Framework.

III.

Orders

THE COMMISSION ORDERS:

1. The City's proposed H-Power expansion project, as described in the Petition, is exempt from the Framework, as described herein.

2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii DEC 15 2009.

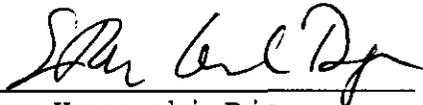
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

2009-0291.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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