

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval of Amendments No. 5 )  
and No. 6 to the Power Purchase )  
Agreement Between Hawaiian Electric )  
Company, Inc. and Kalaeloa Partners, )  
L.P. )

DOCKET NO. 04-0320

ORDER NO. 21572

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2005 JAN 31 A 8:13  
DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

Filed Jan. 28, 2005  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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For Approval of Amendments No. 5 )  
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L.P. )  
\_\_\_\_\_ )

Docket No. 04-0320

Order No. **21572**

ORDER

The commission approves, with modification, the Proposed Stipulated Procedural Order ("Proposed Order") jointly submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (collectively, the "Parties"), on January 18, 2005.

HECO purchases capacity and energy supplied by KALAELOA PARTNERS, L.P.'s low sulfur residual oil fired combined cycle cogeneration facility located at Kalaeloa, Ewa District, Oahu, pursuant to a Power Purchase Agreement ("PPA"), as amended (the "Amended PPA").<sup>1</sup> HECO seeks the commission's approval of various matters related to Amendments No. 5 and No. 6 (both dated

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<sup>1</sup>The Amended PPA presently consists of the commission-approved initial PPA and four (4) amendments thereto.

October 12, 2004) of the Amended PPA.<sup>2</sup> HECO makes its request pursuant to Hawaii Administrative Rules ("HAR") § 6-60-6(2).<sup>3</sup>

On January 18, 2005, the Parties jointly submitted their Proposed Order, in compliance with Order No. 21468, filed on November 17, 2004. Pages 2 - 3 of the Proposed Order states in part:

If there are substantial disagreements following the filing of the [Statements of Position] SOPs, and the parties cannot resolve the differences by stipulation and the parties do not waive the right to a hearing, the parties shall propose a hearing schedule (including the filing of simultaneous post-hearing briefs) for Commission approval.

HECO filed its Application pursuant to HAR § 6-60-6(2). A hearing on HECO's Application is not required by law. Rather, a hearing, if any, is subject to the commission's discretion. Accordingly, the commission approves the Proposed Order, attached hereto as Exhibit 1, as modified by removing the "and the parties do not waive the right to a hearing" language from pages 2 - 3 of the Proposed Order.

THE COMMISSION ORDERS that the Parties' Proposed Stipulated Procedural Order, submitted on January 18, 2005 and

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<sup>2</sup>HECO's Application, Verification, Exhibits A, B, and C, and Certificate of Service, filed on November 5, 2004 (collectively, the "Application").

<sup>3</sup>HAR § 6-60-6(2) provides:

No changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission.

attached hereto as Exhibit 1, is approved as modified. Pages 2 - 3 of the Procedural Order is modified to read as follows:

If there are substantial disagreements following the filing of the [Statements of Position] SOPs, and the parties cannot resolve the differences by stipulation, the parties shall propose a hearing schedule (including the filing of simultaneous post-hearing briefs) for Commission approval.

In all other respects, unless ordered otherwise by the commission, this Stipulated Procedural Order, as modified, remains unchanged.

DONE at Honolulu, Hawaii JAN 28 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By Wayne H. Kimura  
Wayne H. Kimura, Commissioner

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Michael Azama  
Michael Azama  
Commission Counsel

04-0320.cs

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
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HAWAIIAN ELECTRIC COMPANY, INC. ) Docket No. 04-0320  
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For approval of Amendment Nos. 5 and 6 to )  
Power Purchase Agreement between Hawaiian )  
Electric Company, Inc. and Kalaeloa Partners, )  
L.P. )  
\_\_\_\_\_ )

STIPULATED PROCEDURAL ORDER NO. \_\_\_\_\_

Filed \_\_\_\_\_, 2005

At \_\_\_\_\_ o'clock \_\_\_\_\_ .M.

\_\_\_\_\_  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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L.P.	)	
_____	)	

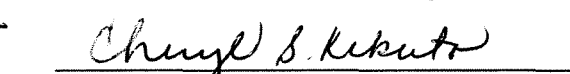
STIPULATED PROCEDURAL ORDER

Applicant Hawaiian Electric Company, Inc. ("HECO") and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate") hereby stipulate that the attached Stipulated Procedural Order is mutually acceptable to each respective party.

DATED: Honolulu, Hawaii, January 18, 2005.



WILLIAM A. BONNET  
Vice President, Government  
and Community Affairs  
Hawaiian Electric Company, Inc.



for JOHN E. COLE  
Executive Director  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs

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L.P.	)	
_____	)	

STIPULATED PROCEDURAL ORDER

On November 5, 2004, Hawaiian Electric Company, Inc. ("HECO") filed an application requesting Commission approval of two amendments to the existing Power Purchase Agreement between HECO and Kalaeloa Partners, L.P. ("Kalaeloa"): (1) Confirmation Agreement Concerning Section 5.2B(2) of Power Purchase Agreement and Amendment No. 5 to Power Purchase Agreement dated October 12, 2004, and (2) Agreement for Increment Two Capacity and Amendment No. 6 to Power Purchase Agreement Between Hawaiian Electric Company, Inc. and Kalaeloa Partners, L.P. dated October 12, 2004. HECO served copies of the application on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate" or "CA").

By Order No. 21468, filed November 17, 2004, the Commission directed HECO and the Consumer Advocate to submit a stipulated procedural schedule for the

Commission's consideration and approval by January 18, 2005 (sixty days from the date of Order No. 21468).<sup>1</sup>

HECO and the Consumer Advocate have reached agreement on procedural matters and submit this Stipulated Procedural Order to the Commission, which is acceptable to the parties.

ACCORDINGLY, IT IS ORDERED that the following Schedule of Proceedings and procedures shall be utilized in this docket.

I.

SCHEDULE OF PROCEEDINGS

HECO Application for Approval of Amendments to Kalaeloa PPA	Nov. 5, 2004
CA Information Requests ("IRs") to HECO <sup>2</sup>	Jan. 28, 2005
HECO IR Responses to CA <sup>2</sup>	Feb. 23, 2005
Clarification Meeting	Mar. 1, 2005
CA Statement of Position ("SOP")	Mar. 30, 2005
HECO SOP, if necessary*	Apr. 15, 2005

- \* If the CA objects to approval of the application, or requests that approval be subject to conditions.

If there are substantial disagreements following the filing of the SOPs, and the parties cannot resolve the differences by stipulation and the parties do not waive the right

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<sup>1</sup> Sixty days from November 17, 2004 is Sunday, January 16, 2005. The next business day is Monday, January 17, 2005, Martin Luther King Jr. Day, a holiday observed by both the Commission and the CA.

to a hearing, the parties shall propose a hearing schedule (including the filing of simultaneous post-hearing briefs) for Commission approval.

If HECO determines that a Reply SOP is unnecessary, HECO and the CA will notify the Commission that the proceeding is ready for decision making.

The approval of Amendments No. 5 and No. 6 by the Commission is required by August 5, 2005, unless HECO and Kalaeloa agree to a later date.<sup>3</sup>

## II.

### MISCELLANEOUS MATTERS TO FACILITATE AND EXPEDITE THE ORDERLY CONDUCT OF THESE PROCEEDINGS

#### A. Requests for Information

To the extent practical, HECO and the Consumer Advocate will cooperate (1) by exchanging information requests and responses as they become available, and (2) by resolving questions regarding information requests and responses informally to attempt to work out problems with respect to understanding the scope or meaning of information requests, or with respect to the availability of information. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information.

In lieu of responses to information requests that would require the reproduction of

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<sup>2</sup> Whenever possible, the parties will provide copies of documents on diskette upon request.

voluminous documents or materials, the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or other readily usable electronic medium, the party responding to the information request may make the diskette or such electronic medium available to the other party and the Commission.

A party shall not be required, in a response to an information request, to provide data that are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part B, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide

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<sup>3</sup> See HECO's Application, pages 44-45; Amendment No. 5, Sections 11 and 13; and Amendment No. 6, Sections 13 and 15.

information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to a protective order governing this docket.

A party seeking production of documents notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

B. Matters of Public Record

In order to provide a means to reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that HECO has filed with the Commission, published decisions of this or other Commissions, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to electric utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule on whether the

identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

C. Copies of Filings and Information Requests.

1. Filings:

Commission	Original + 8 copies
HECO	2 copies
Consumer Advocate	2 copies

2. Information Requests and Responses:

Commission	Original + 8 copies
HECO	2 copies
Consumer Advocate	2 copies

3. All pleadings, and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to Chapter 61, subchapter 2, section 6-61-15 of the Commission's Rules of Practice and Procedure.

4. Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or via facsimile. In addition, if available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette or e-mail in a standard electronic format that is readily available by the parties. The parties agree to use Word

97, Word 2000, or Word 2003 as the standard programming format for filings in this case.

However, if workpapers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such workpapers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a filing, information request or information request response is delivered to a party via diskette or e-mail, unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or via facsimile as provided in Parts C.1 and C.2 above.

D. Communications

Chapter 61, subchapter 3, section 6-61-29 of the Commission's Rules of Practice and Procedure concerning ex parte communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel on matters of practice and procedure through their own counsel or designated official.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party. All motions, supporting memoranda, and the like shall also be served on opposing counsel.

E. General

These procedures are consistent with the orderly conduct of this docket.

Pursuant to Chapter 61, subchapter 3, section 6-61-37 of the Commission's Rules of Practice and Procedure, this Stipulated Procedural Order shall control the subsequent courses of the proceedings, unless modified at or prior to the hearings to prevent manifest injustice.

DONE at Honolulu, Hawaii, this \_\_\_\_ day of \_\_\_\_\_, 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By \_\_\_\_\_  
Carlito P. Caliboso, Chairman

By \_\_\_\_\_  
Wayne H. Kimura, Commissioner

By \_\_\_\_\_  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Azama  
Commission Counsel

CERTIFICATE OF SERVICE

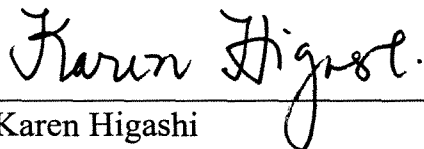
I hereby certify that I have this date served a copy of the foregoing Stipulated  
Procedural Order No. \_\_\_\_\_ upon the following parties and participant, by causing a  
copy hereof to be mailed, postage prepaid, and properly addressed to each such party or  
participant.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813

WILLIAM A. BONNET  
VICE PRESIDENT, GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

PATSY H. NANBU  
DIRECTOR, REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ  
AUDREY E.J. NG, ESQ  
GOODSILL ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813

  
\_\_\_\_\_  
Karen Higashi

DATED: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21572 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

WILLIAM A. BONNET  
VICE PRESIDENT, GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

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GOODSILL ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813

  
\_\_\_\_\_  
Karen Higashi

DATED: JAN 28 2005