

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MAUI ELECTRIC COMPANY, LIMITED)
For Approval of Power Purchase)
Contract with Kaheawa Wind Power,)
LLC., and Determination that the)
MECO-Owned Interconnection)
Facilities be Constructed above the)
Surface of the Ground, Pursuant to)
HRS § 269-27.6(a).)
_____)

DOCKET NO. 04-0365

DECISION AND ORDER NO. 21701

Filed March 18, 2005
At 3 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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Docket No. 04-0365
Decision and Order No. 21701

DECISION AND ORDER

By this Decision and Order, the commission (1) approves the Power Purchase Contract for As-Available Energy ("PPC"), dated December 3, 2004, by and between MAUI ELECTRIC COMPANY, LIMITED ("MECO") and Kaheawa Wind Power, LLC ("KWP") and (2) other matters related to the PPC as further described herein.

I.

Introduction

MECO requests the commission's approval of: (1) the PPC entered into with KWP; (2) other matters related to the PPC; and (3) the placement of two (2) new 69 kilovolt ("kV") transmission line drops associated with MECO-owned interconnection facilities above the surface of the ground, in accordance with Hawaii Revised Statutes ("HRS") § 269-27.6(a).¹

¹ MECO's Application, Exhibits 1-10 and Certificate of Service, filed on December 16, 2004 ("Application").

MECO makes its request pursuant to Hawaii Administrative Rules ("HAR") § 6-60-6(2)² and HRS § 269-27.6(a).

MECO served copies of the Application upon: (1) the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") (together with MECO, the "Parties"); (2) KWP; and (3) Makani Nui Associates, LLC ("Makani Nui").³

By Order No. 21530, filed on January 7, 2005, the commission ordered the Parties to formulate the issues, procedures and schedule with respect to the instant proceeding, to be set forth in a stipulated prehearing order. The Parties filed a stipulated procedural order on January 24, 2005. On January 27, 2005, the commission issued Stipulated Procedural Order No. 21560 ("Stipulated Procedural Order").⁴

The Consumer Advocate submitted information requests ("IRs") to MECO on January 19, 2005, to which MECO responded on January 28, 2005.

Pursuant to the Stipulated Procedural Order, on February 24, 2005, the Consumer Advocate filed its statement of position ("Statement of Position") in which it stated that, while

²HAR § 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.

³Makani Nui is a co-owner, with UPC Wind Partners, LLC ("UPC"), of KWP's parent, UPC Hawaii Wind Partners, LLC. Application at 2.

⁴Also on January 27, 2005, the commission issued Protective Order No. 21559, to govern the treatment of confidential information in this docket.

it did not object to the broader objective of producing more wind energy on the island of Maui, it had concerns about the impact that the PPC would have on consumers in the future.⁵ On March 3, 2005, MECO filed a reply to the Consumer Advocate's Statement of Position ("MECO's Reply") addressing the Consumer Advocate's concerns.

II.

Background

A.

MECO and KWP

MECO is a corporation duly organized under the laws of the Territory of Hawaii on or about April 28, 1921, existing presently under and by virtue of the laws of the State of Hawaii ("State" or "Hawaii"). MECO is an operating public utility engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui.

KWP is a Delaware limited liability company registered to do business in Hawaii. It was formed for the primary purpose of developing the KWP wind site. KWP is owned one hundred per cent (100%) by UPC Hawaii Wind Partners, LLC, which is owned fifty-one per cent (51%) by UPC and forty-nine per cent (49%) by Makani Nui. UPC is a wind energy development company and subsidiary of one of Europe's largest and most successful wind farm developers.⁶

⁵Statement of Position at 26.

⁶Application at 4.

B.

Description of KWP's Wind Facility

KWP's wind farm ("Wind Farm") will be located at Kaheawa Pastures, Ukumehame, Maui. It will be located on State conservation land. KWP represents that it has obtained a Conservation District Use Permit to use the site from the State Board of Land and Natural Resources ("DLNR").⁷ KWP further represents that it is in the final stages of negotiating a lease with the DLNR for the land on which the Wind Farm will be located.⁸

KWP intends to operate its small power production facility as a non-fossil fuel producer, pursuant to HRS § 269-27.2. KWP must designate its facility as a Qualifying Facility,⁹ no later than the Initial In-Service Date.¹⁰ If KWP either (1) fails to notify MECO of its Qualifying Facility status by the Initial In-Service Date or (2) KWP fails to become a Qualifying Facility, then MECO has the right to terminate the PPC.

⁷KWP must obtain all authorizations, permits and licenses required for the construction and operation of the Wind Farm. Application at 7, Exhibit 1 at 11.

⁸Application at 6.

⁹As defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), the rules of the Federal Energy Regulatory Commission, as codified in Title 18 of the Code of Federal Regulations, § 292, and in the commission's Standards for Small Power Production and Cogeneration in the State of Hawaii, codified in Title 6, Chapter 74, HAR.

¹⁰Defined as the date, on or after the Acceptance Test is successfully completed, on which KWP's first new generator(s) has been installed and has successfully completed the Control System Acceptance Test. Appendix F to the PPC. See Appendix F to the PPC for definitions of "Acceptance Test" and "Control System Acceptance Test".

Pursuant to the PPC, KWP will design, construct, own, operate and maintain its Wind Farm, with a total facility capacity of thirty (30) megawatts ("MW"), for the production of electrical energy.¹¹ KWP will use twenty (20) 1.5 MW wind turbines manufactured by GE Wind Energy for the Wind Farm. Electricity is generated by the individual turbines at 575 volts, stepped up to 34.5 kV by an adjacent pad-mount transformer, gathered and transmitted to the Wind Farm Substation by underground cables, stepped up to 69 kV by the Wind Farm Substation, and interconnected to MECO's transmission system by a three breaker ring.¹²

Although KWP is responsible for the Wind Farm, it is required to provide MECO with an opportunity to review and comment on the design of the Wind Farm. In some instances, MECO will have the right to specify certain equipment, materials, or settings for the Wind Farm.¹³ According to KWP, operations and maintenance services will be provided by UPC Hawaii Wind O&M, LLC, an indirect subsidiary of UPC.

III.

MECO's Request

MECO states that the as-available energy PPC contains provisions regarding the term of the PPC, KWP's delivery of as-available energy from the Wind Farm and operating procedures for

¹¹Application at 6.

¹²Application at 7.

¹³ Id.

the Wind Farm. These provisions were negotiated at arms-length. MECO contends that the PPC terms and conditions are reasonable. MECO requests that the commission:

1. Approve the PPC;
2. Authorize MECO to include the purchased energy charges (and related revenue taxes) that MECO incurs under the PPC in MECO's Energy Cost Adjustment Clause ("ECAC") for the term of the PPC;
3. Find that the purchased energy charges to be paid by MECO pursuant to the PPC are reasonable;
4. Find that the purchased power arrangements under the PPC, pursuant to which MECO will purchase energy from KWP, are prudent and in the public interest; and
5. Determine that the two (2) subject 69 kV line drops, to interconnect MECO's system with the Wind Farm ("Interconnection Facilities"), be constructed above the surface of the ground, pursuant to HRS § 269-27.6(a).

IV.

The PPC

A.

Terms

KWP will provide energy to MECO on an unscheduled basis as KWP determines energy to be available from the Wind Farm. In general, the term of the PPC commences upon the In-Service Date (as defined in Appendix F to the PPC) and remains in effect for an initial term of twenty (20) years from such date, and continues in

effect after the twenty (20) year term until terminated by either MECO or KWP.

MECO and KWP are required to use reasonable efforts to obtain a Non-Appealable Approval Order from the commission (as defined in Appendix F to the PPC). MECO is not obligated to accept or pay for any energy delivered by KWP for the period following the Execution Date (as defined in Appendix F of the PPC) and prior to the later of the Initial In-Service Date or the Non-Appealable Order Date. KWP is required to operate the Wind Farm and offer energy to MECO within twenty-four (24) months of the Non-Appealable Approval Order from the commission. MECO may declare a default in the event that KWP fails to operate the Wind Farm within such period.

B.

Curtailment

Pursuant to the PPC, MECO has the right to temporarily curtail, interrupt or reduce deliveries of energy when necessary.¹⁴ MECO is not obligated to pay for any energy during a period of curtailment except for energy which MECO notifies KWP that it is able to take.

¹⁴MECO has the right to curtail the delivery of energy from KWP when necessary: (1) in order for MECO to construct, install, maintain, repair, replace, remove, investigate, test or inspect any of its equipment or any part of its system; (2) if MECO determines that such curtailment is necessary due to a system emergency, forced outage, or operating conditions on its system; (3) where MECO is unable to accept deliveries of energy due to light loading conditions; or (4) if KWP is not operating in compliance with Good Engineering and Operating Practices ("GEOP") (as defined in Appendix F to the PPC), or acceptance of energy by MECO would require MECO to operate outside of GEOP.

MECO is also not required to purchase energy from KWP during any period in which purchases from KWP will result in costs greater than those which MECO would incur if it did not make those purchases, but instead itself generated an equivalent amount of energy.

In general, the Wind Farm may be curtailed if: (1) performance standards are not met; (2) situations exist on MECO's system that could affect the reliability of MECO's system; or (3) the total as-available power production exceeds that which MECO can utilize.¹⁵

C.

Energy Pricing

The pricing structure was determined through negotiations between KWP and MECO. Objectives in the negotiations included, but were not limited to, developing an economically viable long-term wind farm project, KWP's and MECO's desire to achieve more stable energy pricing, MECO's desire for renewable power and KWP's desire for a quick execution of the contract between MECO and KWP. Some factors considered in obtaining these objectives were KWP's and MECO's expectations for future oil prices over the long term, MECO's currently filed avoided energy cost rates, MECO's estimated

¹⁵In situations where MECO must curtail the delivery of energy to maintain the reliability and stability of its power grid for reasons other than those directly attributable to the Wind Farm, curtailments will be made, to the extent possible, in reverse chronological order of the chronological seniority dates determined by MECO for the facilities with as-available power purchase contracts on the MECO system, i.e., deliveries under contract with the most recent chronological seniority date being the first curtailed, and deliveries under the contract with the earliest seniority date being the last curtailed.

long-run avoided energy costs based on its current fuel oil forecast, historical fluctuations in filed avoided energy cost rates, and current fuel prices relevant to the current MECO fuel oil forecast.

MECO states that the negotiated price structure was deemed to be reasonable considering the current cost of fuel and MECO pricing projections. MECO and KWP recognize that the currently filed avoided energy cost rates are higher than MECO avoided energy cost calculations, due to current fuel oil prices being higher than the prices in the July 2002 MECO fuel price forecast used in its avoided energy cost calculations. Both MECO and KWP recognize that fuel prices may not remain at their current high level, but could remain higher than MECO's 2002 forecast. Therefore, MECO was willing to increase its energy pricing above that based on the July 2002 fuel forecast, and KWP was willing to decrease its energy pricing structure.

MECO states that the pricing structure attempts to separate the Wind Farm energy prices from the actual price of oil at the time the energy is delivered. This is an effort to reduce energy price volatility and to benefit MECO's customers in the form of pricing below MECO's avoided energy costs in the event that future oil prices remain high.

The total energy payments paid by MECO to KWP will be the sum of the On-Peak Energy Payment and the Off-Peak Energy Payment.¹⁶

¹⁶See Appendix D to the PPC.

MECO's pricing structure is comprised of fixed and variable energy pricing components. MECO's On-Peak Composite Energy Payment Rate will be seventy per cent (70%) of the applicable annual Fixed On-Peak Payment Rate¹⁷ plus thirty per cent (30%) of MECO's filed Avoided Energy Cost Data, On-Peak Rate, in effect at the time the energy is delivered to MECO by KWP.¹⁸

MECO's Off-Peak Energy Payment will be the off-peak energy purchased from the Wind Farm multiplied by the Off-Peak Composite Energy Payment Rate. The Off-Peak Composite Energy Payment Rate will be seventy per cent (70%) of the applicable annual Fixed Off-Peak Payment Rate, plus thirty per cent (30%) of MECO's filed Avoided Energy Cost Data, Off-Peak rate, in effect at the time the energy is delivered to MECO by KWP.

The fixed energy price on-peak schedule begins at 8.455 cents per kilowatt hour ("kWh") in 2006, escalating at 1.5 per cent per year to 10.571 cents per kWh by 2021. The off-peak payment rate begins at 7.457 cents per kWh in 2006, increasing by 1.5 per cent per year to 9.323 cents per kWh by 2021.

There is no escalation in the fixed price component after 2021.

MECO agreed to the fixed price component of seventy per cent (70%) of the negotiated composite pricing structure as a "floor" price for energy payments to address the potential mismatch between the Wind Farm's cost structure and the

¹⁷See Appendix D, Table D-1 of the PPC.

¹⁸MECO's Avoided Energy Cost Data is filed with the commission, pursuant to HAR § 6-74-17(b).

revenue stream for the Wind Farm due to the discrepancy between the as-available energy purchase price and MECO's filed avoided energy cost rates. This fixed price component provides some certainty to KWP in developing the Wind Farm.

V.

Interconnection Facilities

Under the terms of the PPC, an Interconnection Requirements Study ("IRS") was required to be performed at KWP's expense. The purpose of the IRS was to identify potential transmission constraints and evaluate whether any potential transmission capacity limits, voltage regulation limits, and sub-minute flicker problems might occur when the Wind Farm is connected to MECO's system. The IRS determined what interconnection facilities need to be added or modified to accommodate the Wind Farm. The estimated cost for the interconnection is \$452,000.¹⁹

KWP will construct, operate and maintain the KWP-owned Interconnection Facilities listed in Appendix B of the PPC.²⁰ KWP

¹⁹See Appendix C to the PPC.

²⁰These include: (1) a 69 kV overhead bus that runs from the Wind Farm Substation to the Point of Interconnection (as defined in Appendix F to the PPC); (2) approximately fifteen (15) feet of 69 kV Tie Line (as defined in Appendix B, section 1.b(2)2 of the PPC), from the Point of Interconnection to the KWP Tie Autotransformer (described in Appendix B, section 1.b(2)3 of the PPC); (3) a 69/34.5 kV Wind Farm Substation; (4) four 34.5 kV conductors interconnecting five (5) 1.5 megawatt wind turbine generators to the 34.5 kV bus; (5) a Wind Farm management and Supervisory Control and Data Acquisition system; (6) twenty (20) sets of pad mount transformers; (7) a disturbance monitor in the Wind Farm Substation to monitor sub-cycle voltages, current, harmonics and disturbances events; (8) protective relaying equipment; and (9) a communications system from the Wind Farm

will also design and construct certain MECO-owned Interconnection Facilities²¹ and transfer title to such KWP designed and constructed facilities to MECO. KWP is required to pay MECO for the cost to construct the MECO-owned Interconnection Facilities.²² The point of interconnection between the Wind Farm and MECO's system is at the 69 kV bus immediately adjacent to, and on MECO's 69 kV Switching Station side of KWP's motor operated disconnect switch.²³ A single-line diagram that identifies the point of interconnection is attached as Exhibit 5 to the Application.

VI.

Overhead Utility Lines HRS § 269-27.6(a)

HRS § 269-27.6(a) provides:

Construction of high-voltage electric transmission lines; overhead or underground construction.

(a) Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new forty-six kilovolt or greater, high-voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities commission shall consider:

Substation to MECO's 69 kV Switching Station. See Appendix B to the PPC.

²¹As described in Appendix C, section 1.(c)(1) to the PPC, a three 69 kV circuit breaker switching station.

²²Application at 18.

²³See Appendix B, section 1.b(2)1 to the PPC.

- (1) Whether a benefit exists that outweighs the costs of placing the electric transmission system underground;
- (2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected, or built underground, and the governmental agency establishing the policy commits funds for the additional costs of the undergrounding;
- (3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding;
- (4) The recommendation of the division of consumer advocacy of the department of commerce and consumer affairs, which shall be based on an evaluation of the factors set forth under this subsection; and
- (5) Any other relevant factors.

MECO asserts that the requirements of HRS § 269-27.6 are satisfied by the instant project. It contends that any benefits from undergrounding the two (2) new 69 kV transmission line drops do not outweigh the additional costs.²⁴ In addition, as there are currently existing overhead lines in the area, the two (2) proposed 69 kV transmission line drops will not significantly alter the visual impact.

To the best of MECO's knowledge, there is no governmental policy requiring the undergrounding of the 69 kV transmission line drops, nor is there any governmental agency or other party willing to pay for the cost of undergrounding the lines.

²⁴MECO estimates it would cost approximately two to three times more to underground the lines than to place them overhead. Application at 41.

VII.

Consumer Advocate

A.

The PPC

The Consumer Advocate notes at the outset that: (1) the addition of wind energy on the island of Maui is desirable; (2) the terms and conditions of the PPC comply with the State's current rules; and (3) the construction of the associated interconnection facilities above the surface of the ground satisfies the requirements of HRS § 269-27.6(a). Accordingly, the Consumer Advocate does not object to commission approval of the Application.

Notwithstanding its non-objection of the Application, the Consumer Advocate has concerns about how the PPC will impact consumers. The Consumer Advocate is also concerned about the precedent the instant PPC will have on future power purchase contracts and its impact on consumers. In particular, the Consumer Advocate is concerned that this type of contract may be problematic in the future due to:

1. Its interaction with the integrated resource planning framework and the commission's on-going Act 95 (non-docketed) and competitive bidding (Docket No. 03-0372) proceedings, which may impact the procurement of lower cost energy produced by renewable resources in the State.²⁵

2. MECO's use of short-run avoided costs, tied to unpredictable oil prices and high utility heat rates, as the basis

²⁵ See Statement of Position at 12-15.

for pricing long-term contracts for renewable resources, which would leave consumers open to fluctuating prices.²⁶

3. Its burden on consumers with energy prices that substantially exceed the actual costs of power production.²⁷

The Consumer Advocate recommends that the commission clearly state, in an approval of the PPC, that such approval does not set a precedent for future contracts involving renewable power supplies.

B.

Overhead Utility Lines
HRS § 269-27.6(a)

The Consumer Advocate does not object to the placement of the two (2) new 69 kV transmission line drops in overhead facilities. It cannot justify underground facilities for the proposed transmission line drops in the absence of a benefit that outweighs the additional cost of undergrounding. Further, a decision requiring underground placement of the lines without justification may set an unwanted precedent for future applications.

The Consumer Advocate also takes note of a study undertaken by the Honolulu Chapter of the American Institute of Architects which concluded that the cost to convert all existing overhead facilities on Oahu would cost approximately \$12.7 billion.

²⁶See Statement of Position at 15-18.

²⁷See Statement of Position at 18-19.

To mitigate the effects of this cost, the study suggests that the costs for such undergrounding may have to be spread out over a sixty (60)-year period. The Consumer Advocate concludes that the matter of undergrounding utility lines must be carefully examined to ensure that the cost implications do not negatively impact the price of electricity.

VIII.

MECO's Reply

While acknowledging the Consumer Advocate's non-objection of the Application, the purpose of MECO's Reply is "to address a number of general concerns that the [Consumer Advocate] claims should be addressed for future power purchase agreements".²⁸ MECO is concerned with the practicality of some of the Consumer Advocate's solutions to the concerns raised in its Statement of Position and urges the commission not to consider those solutions.²⁹

In response to the Consumer Advocate's concerns, MECO notes:

1. The commission recognizes that wind and other renewable resources do not need to be explicitly included in an Integrated Resource Planning ("IRP") Plan for utilities to purchase power from renewable resource facilities. The IRP Plan does not include independent power producer ("IPP") projects unless there is

²⁸MECO's Reply at 2.

²⁹MECO's Reply at 4.

a signed PPC for the project. It is contemplated, however, that IPP firm capacity projects may defer utility generation additions, and that IPP as-available energy projects may be added to the utility's system even though there is no explicit reference to these projects in the plan.³⁰

2. The Consumer Advocate's suggested alternative to the pricing issue, using a "proxy" incremental renewable resource or competitive bid procedure, ignores a utility's inability to require such a pricing mechanism as a result of the current regulatory framework. A utility cannot unilaterally impose a pricing mechanism without having an IPP agree to the mechanism. In addition, a utility is generally required to offer to purchase energy and capacity from a Qualifying Facility at avoided cost.

3. The Consumer Advocate's proposals for alternative mechanisms to compute avoided costs, e.g., determining avoided costs by using the proxy method, are more appropriately addressed in Docket No. 7310.

4. MECO agrees that a large amount of wind capacity compared to system load can lead to operational issues on a utility system. For this reason, MECO included performance standards in its PPC with KWP, which address these operational concerns.

5. A decision and order will be based upon, among other things, the regulatory framework in existence at the time of the decision and order. Should the regulatory framework change, then the Consumer Advocate may argue that because of changed conditions, a particular decision and order should not be followed. However,

³⁰MECO's Reply at 5.

it is unreasonable to argue that a decision and order should not set any precedent.

IX.

Discussion

A.

Consumer Advocate's Concerns

The Consumer Advocate does not object to the PPC, the related interconnection facilities, the allocation of the interconnection costs between MECO and KWP, or to the construction of the two (2) new overhead transmission line drops. Having said that, the Consumer Advocate asserts that the PPC, KWP's Wind Farm, and future renewable power purchase contracts must ultimately co-exist with the IRP Framework, Act 95, pending competitive bidding docket, and other policy matters affecting renewable energy in the State.

The commission is mindful of the PPC's impact on matters affecting the development of renewable energy resources. The commission also recognizes that policies regarding the development of renewable energy resources are being developed. As such, each purchase power contract, including the instant PPC, is negotiated and reviewed on a case-by-case basis.³¹

³¹See e.g., Decision and Order No. 21693, filed on March 10, 2005, in Docket No. 04-0346.

B.

Authorities

In general, HRS § 269-27.2 and HAR chapter 6-74, subchapter 3, guide the commission's review of the rates agreed upon between MECO and KWP. HRS § 269-27.2(c), as recently amended by Act 95, provides, in relevant part:

1. The rate payable by the public utility to the producer for the non-fossil fuel generated electricity supplied to the public utility shall be as agreed upon between the public utility and the supplier and as approved by the commission; provided that in the event the public utility and supplier fail to reach an agreement for a rate, the rate shall be prescribed by the commission pursuant to the powers and procedures provided in HRS chapter 269.
2. In the exercise of its authority to determine the just and reasonable rate for the non-fossil fuel generated electricity supplied to the public utility by the producer, the commission shall establish that the rate for purchase of electricity by a public utility shall not be more than one hundred (100) per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy.

HAR § 6-74-22(a)³² of chapter 6-74, subchapter 3, provides that the rates for purchase shall:

1. Be just and reasonable to the electric consumer of the electric utility and in the public interest;
2. Not discriminate against qualifying cogeneration and small power production facilities; and

³²HAR § 6-74-22(a)(3) sets the one hundred per cent (100%) avoided cost threshold as a minimum floor. Act 95, Section 3, codified at HRS § 269-27.2(c), and which took effect on June 2, 2004, changed the one hundred (100) per cent avoided cost threshold to a maximum threshold. HAR § 6-74-22(a)(3), therefore, is now inconsistent with HRS § 269-27.2(c), where there is no agreement on a purchase rate, and the commission must thus prescribe, or establish, "the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer[.]" HRS § 269-27.2(c).

3. Be not less than one hundred (100) per cent of avoided cost for energy and capacity purchases to be determined as provided in HAR § 6-74-23 from qualifying facilities and not less than the minimum purchase rate.

Notwithstanding HAR § 6-74-22, nothing in HAR chapter 6-74, subchapter 3, prohibits an electric utility or any qualifying facility from agreeing to a rate for purchase, or terms or conditions relating to any purchase, which differ from the rates, terms, or conditions that would otherwise be required by subchapter 3.³³

C.

Findings and Conclusions

The commission makes the following findings and conclusions:

1. The energy charges to be paid by MECO pursuant to the PPC which are based on seventy per cent (70%) of a fixed price schedule and thirty per cent (30%) of MECO's filed short-run avoided costs, are reasonable and consistent with HRS § 269-27.2(c), and HAR §§ 6-74-15(b)(1) and 6-74-22, to the extent applicable.

2. The terms and conditions of the PPC, as a whole, are reasonable and consistent with the public interest and the State's overall energy policy. Thus, the purchase power provisions

³³Similarly, HRS § 269-27.2(c) states that "[t]he rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the . . . commission[.]"

contained in the PPC, pursuant to which MECO will purchase energy from KWP, are reasonable and in the public interest.

3. MECO is authorized to include the purchased energy costs and related revenue taxes it incurs under the PPC, in its ECAC, to the extent that such payments are not recovered in its base rates.

4. After considering the factors listed under HRS § 269-27.6, MECO's two (2) new 69 kV transmission line drops should be constructed above the surface of the ground, as part of its interconnection facilities.

X.

Orders

THE COMMISSION ORDERS:

1. The PPC between MECO and KWP, dated December 3, 2004, is approved.

2. The energy charges to be paid by MECO to KWP, pursuant to the PPC, are reasonable.

3. The purchased power arrangements under the PPC, pursuant to which MECO will purchase energy from KWP, are reasonable and in the public interest.


4. MECO may include, in its ECAC, the purchased energy costs and related revenue taxes that it incurs under the PPC, for the term of the PPC, to the extent such payments are not recovered in its base rates.

5. MECO's request to construct its two (2) new 69 kV transmission line drops above the surface of the ground, as

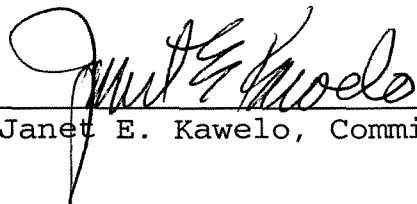
part of its interconnection facilities, is approved, pursuant to
HRS § 269-27.6.

DONE at Honolulu, Hawaii MAR 18 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:


Benedyne S. Stone
Commission Counsel

04-0365.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21701 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
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Karen Higashi

DATED: MAR 18 2005