

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN ELECTRIC COMPANY, INC.)

DOCKET NO. 03-0417

For Approval to Commit Funds in)
Excess of \$500,000 for Item Y48500,)
East Oahu Transmission Project.)

ORDER NO. 22104

Filed Nov. 4, 2005
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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In the Matter of the Application of)	
HAWAIIAN ELECTRIC COMPANY, INC.)	Docket No. 03-0417
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Excess of \$500,000 for Item Y48500,)	Order No. 22104
East Oahu Transmission Project.)	
_____)	

ORDER

By this Order, the commission approves, in part, the Joint Motion for Approval of Stipulation ("Motion") filed by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), and approves HECO's request for extension of time to file its responses to rebuttal information requests.

I.

Background

HECO,¹ the Consumer Advocate,² LIFE OF THE LAND ("LOL"), CAROL FUKUNAGA, SCOTT K. SAIKI, and ANN KOBAYASHI³

¹On December 18, 2003, HECO filed an Application, Exhibits 1 - 11, Verification, and Certificate of Service ("Application") requesting commission approval to, among other things, commit approximately \$55,424,000 for Item Y48500, East Oahu Transmission Project, in accordance with paragraph 2.3.g.2 of the commission's General Order No. 7, *Standards of Electric Utility Service in the State of Hawaii* ("Proposed Project"). HECO's Supplemental Testimony adjusts the estimated cost to range from \$55,644,000 to \$60,910,000. See HECO ST-9, at 7.

²The Consumer Advocate is an *ex officio* party to this docket, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules § 6-61-62.

(Carol Fukunaga, Scott K. Saiki, and Ann Kobayashi collectively, the "Public Officials") are parties to the instant docket ("Parties"). PALOLO COMMUNITY COUNCIL, HOOLAULIMA O PALOLO, MALAMA O MANOA, and KAPAHULU NEIGHBORS are participants in this docket (collectively, the "Participants").⁴

By Order No. 21930, issued on July 20, 2005, the commission, among other things, approved the Parties and Participants' amended regulatory schedule for this proceeding. Pursuant to this regulatory schedule, HECO's responses to the Parties' rebuttal information requests were due on October 11, 2005. On October 11, 2005, HECO requested a one (1)-day extension, until October 12, 2005, to file of its rebuttal information responses.⁵

The evidentiary hearing for this docket was scheduled for November 7 - 9, 2005. However, LOL requested that: (1) the hearing start on November 4, 2005; (2) the third day of the hearing be postponed from November 9, 2005 until the week of November 14 - 18, 2005; or (3) some other mutually acceptable arrangement be made to avoid a continuation of the hearing on

³By Order No. 20860, filed on March 23, 2004, the commission granted the respective motions to intervene filed by LOL and the Public Officials.

⁴By Order No. 20861, filed on March 23, 2004, the commission granted Palolo Community Council, Hoolaulima O Palolo, Malama O Manoa, and Kapahulu Neighbors participant status in the instant docket. By Order No. 20861, the commission limited the participants' participation in this proceeding to receipt of all docket filings and submission of a statement of position.

⁵HECO indicates that it did not have time to contact the Parties and Participants before requesting this extension. See HECO's letter dated and filed on October 11, 2005.

November 9, 2005.⁶ On October 28, 2005, the Consumer Advocate and HECO filed a Joint Motion for Approval of Stipulation ("Motion"), Stipulation, and Certificate of Service, requesting approval of the Stipulation prior to or at the commencement of the evidentiary hearing. The Stipulation and HECO's extension request are the subjects of this Order.

II.

Discussion

A.

Stipulation

The Stipulation addresses the treatment of the planning and permitting costs and the related allowance for funds used during construction ("AFUDC") incurred by HECO prior to 2003 for the partial underground / partial overhead (using Waahila Ridge) 138 kilovolt line for which HECO requested a Conservation District Use Permit ("CDUA") from the Board of Land and Natural Resources ("BLNR") ("Pre-2003 Planning and Permitting Costs"). HECO and the Consumer Advocate note in their Stipulation that they are the only parties that have submitted written testimonies, exhibits, and responses to information requests addressing the inclusion of the Pre-2003 Planning and Permitting Costs.

In their Stipulation, HECO and the Consumer Advocate agreed to the following provisions, among others:

⁶See LOL's letter dated and filed on October 11, 2005.
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1. "In this proceeding, a determination should be made as to whether HECO should be given approval to expend funds for the East Oahu Transmission Project, provided that no part of the East Oahu Transmission Project may be recovered from ratepayers unless and until the [c]ommission grants HECO recovery in a general rate increase proceeding."⁷

2. Any issue as to whether the Pre-2003 Planning and Permitting Costs and the related AFUDC should be included in the costs of the Proposed Project should be reserved to and may be raised in the next general rate increase proceeding (or other proceeding) in which HECO seeks approval to recover the East Oahu Transmission Project costs.⁸

3. If the commission approves the Stipulation in its entirety, HECO and the Consumer Advocate withdraw from the evidentiary record in this docket certain portions of their filed testimonies, exhibits, and responses to information requests relating to this issue, as provided in Exhibits A and B to the Stipulation.⁹

4. Notwithstanding the reservation of this issue to a rate increase proceeding, the Stipulation shall not prevent the Consumer Advocate or HECO from discussing or addressing the subject of including the Pre-2003 Planning and Permitting Costs prior to the hearing in the general rate increase proceeding in

⁷Stipulation, at 5.

⁸*Id.*

⁹*Id.* at 5 - 6.

which HECO seeks recovery of the East Oahu Transmission Project costs.¹⁰

5. The Stipulation applies solely to this proceeding, and is entered solely for the purposes of simplifying and expediting this proceeding.¹¹

6. If the commission does not issue an order adopting the Stipulation in its entirety, HECO or the Consumer Advocate may withdraw from the Stipulation.¹²

On October 31, 2005, LOL filed a response to the Motion, asserting that the Stipulation "contains two separate issues: (1) expunging part of the record; and (2) bifurcation of the docket."¹³ LOL argues that the Stipulation gives "no legal basis for expunging part of the [r]ecord" of this docket, and "no explanation for the last minute nature of the proposal."¹⁴ LOL also takes issue with HECO and the Consumer Advocate's failure to explain to LOL why "HECO and the [Consumer Advocate] fail[ed] to advise other parties prior to filing the

¹⁰Stipulation, at 6.

¹¹*Id.*

¹²*Id.*

¹³See [LOL's] Reply Motion re: Proposed Stipulation and Certificate of Service, filed on October 31, 2005 ("LOL's Response"), at 1. On November 1, 2005, the Public Officials, the sole remaining party to this docket, through Scott Saiki, advised Catherine Awakuni Commission Counsel that they do not intend to file a response to the Motion.

¹⁴*Id.* at 2.

[S]tipulation" about their intent to make such a request of the commission.¹⁵

The commission agrees that in this proceeding, which was initiated by an Application filed pursuant to paragraph 2.3.g.2 of the commission's General Order No. 7, *Standards of Electric Utility Service in the State of Hawaii* ("General Order No. 7"), the commission should determine whether to approve HECO's request to commit funds for the East Oahu Transmission Project. The commission acknowledges that approval for commitment of funds for capital expenditures generally does not involve the identification of the amounts that may be included in rate base in a general rate case once the project is completed, and that a utility's rates generally are not adjusted to reflect changes in its revenue requirements due to an increased rate base until there is a general rate case. The commission believes that a rate case proceeding is the most appropriate kind of proceeding for examination of costs for possible inclusion in rate base and for the adjustment in rates based upon changes in revenue requirements as a result of the increase of rate base. Therefore, the detailed examination of the Pre-2003 Planning and Permitting Costs and the identification of those costs for possible inclusion in rate base would more appropriately be completed in a rate increase proceeding, rather than in an application for approval to commit funds for a capital expenditure. The commission further acknowledges that HECO and the Consumer Advocate were the only Parties that addressed the

¹⁵LOL's Response, at '2.
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issue of the Pre-2003 Planning and Permitting Costs during the discovery phase of this proceeding.

The commission finds that the withdrawal of the Pre-2003 Planning and Permitting Costs from its consideration in this proceeding is consistent with General Order No. 7, and aids in the simplification and expeditious completion of this proceeding. However, the commission does not agree that the withdrawal of this issue necessitates the withdrawal of portions of party filings from the record. Instead, the commission intends to retain intact as public record, the filings made by the Parties in this docket, but will neither accept additional evidence relating to this issue, nor decide the issue of Pre-2003 Planning and Permitting Costs in this proceeding. Thus, the commission accepts HECO and the Consumer Advocate's withdrawal of the issue relating to the Pre-2003 Planning and Permitting Costs, but rejects their proposal to withdraw from the evidentiary record portions of their testimonies, exhibits, and responses to information requests relating to this issue. Therefore, the commission approves the Stipulation, in part, and grants, in part, HECO and the Consumer Advocate's Motion.

B.

HECO's Request for Extension of Time

Hawaii Administrative Rules ("HAR") § 6-61-23(a)(1) provides the commission with the discretion, for good cause shown, to enlarge a period by which a required act must be

completed, if a written request is made before the expiration of the period originally prescribed.

HECO requests a one (1) day extension to file its rebuttal information request responses. According to HECO, it requests additional time because it was unable to complete its responses in time to meet the deadline, and chose to request additional time to complete its responses rather than submitting a partial filing on one (1) day and the remainder the following day.¹⁶ Based on the foregoing, the commission finds good cause in this instance to enlarge the deadline by which HECO was to file its rebuttal information request responses with the commission. Accordingly, the commission grants HECO's request for enlargement of time, from October 11, 2005 until October 12, 2005.

III.

Orders

THE COMMISSION ORDERS:

1. HECO and the Consumer Advocate's Motion for approval of the Stipulation is granted, in part.

2. The commission approves, in part, the Stipulation and the agreements contained therein. The commission accepts the withdrawal of the Pre-2003 Permitting and Planning Costs issue from this proceeding, but denies HECO and the Consumer Advocate's request to withdraw from the record certain portions of their filed testimonies, exhibits, and responses to information

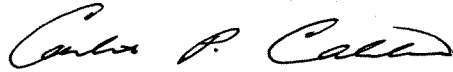
¹⁶Telephone conference between Catherine Awakuni, Commission Counsel, and Dean Matsuura, Director of Regulatory Affairs held on October 31, 2005.

requests relating to this issue. Specifically, the commission grants the Stipulation in its entirety with the exception of Paragraph 3 on Page 5 of the Stipulation, which is denied.

3. HECO's request for extension of time from October 11, 2005 until October 12, 2005 to file its rebuttal information request responses is granted.

DONE at Honolulu, Hawaii November 4, 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By _____ (Excused)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

03-0417.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22104 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

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

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817

SCOTT K. SAIKI
c/o State Capitol, Room 438
Honolulu, HI 96813

Certificate of Service

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KAREN H. IWAMOTO, PRESIDENT
PALOLO COMMUNITY COUNCIL
3443 Hardesty Street
Honolulu, HI 96816

DARLENE NAKAYAMA, PRESIDENT
HOOLAULIMA O PALOLO
2396 Palolo Avenue
Honolulu, HI 96816

COREY Y.S. PARK, ESQ.
PAMELA W. BUNN, ESQ.
PAUL JOHNSON PARK & NILES
1001 Bishop Street
Suite 1300, ASB Tower
Honolulu, HI 96813

DR. JEREMY LAM, PRESIDENT
MALAMA O MANOA
2230 Kamehameha Avenue
Honolulu, HI 96822

DAISY M. MURAI, SECRETARY
KAPAHULU NEIGHBORS
c/o 3039 Kaunaoa Street
Honolulu, HI 96815



Karen Higashi

DATED: November 4, 2005