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 Makila Hydro, LLC.	)	DOCKET NO. 05-0161

DECISION AND ORDER NO. 22460

Filed May 10, 2006

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

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DECISION AND ORDER

By this Decision and Order, the commission approves the Power Purchase Contract for As-Available Energy ("PPC"), dated May 10, 2005, by and between MAUI ELECTRIC COMPANY, LIMITED ("MECO") and Makila Hydro, LLC ("Makila") (collectively, the "Parties"). The commission also authorizes 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, as further described herein.

I.

Background

A.

Application

MECO is a corporation organized under the laws of the Territory of Hawaii, now existing under and by virtue of the laws of the State of Hawaii. It is an operating public utility engaged in the production, purchase, transmission, distribution and sale of electricity on the island of Maui.

On June 28, 2005, MECO filed an application requesting commission approval of the PPC, dated May 10, 2005, by and between MECO and Makila, a Hawaii limited liability company formed for the primary purpose of repowering the Makila hydro electric generating site ("Makila Facility").[1] As described in the Application, pursuant to the PPC, Makila intends to own, operate and maintain an existing five hundred (500) kilowatt ("kW") hydro electric plant (which includes a hydro electric generator, substation, Makila owned interconnection facilities and other related equipment).[2] Makila plans to operate the hydro electric facility as a small power production, non-fossil fuel producer of electric power, as defined by Hawaii Revised Statutes ("HRS") § 269-27.2.

In its Application, MECO also requests that the commission authorize MECO to include the purchased energy charges (and related revenue taxes) that MECO incurs under the PPC in MECO's ECAC for the term of the PPC, find that the purchased energy charges to be paid by MECO pursuant to the PPC are reasonable, and find that the purchase power arrangements under the PPC, pursuant to which MECO purchases energy from Makila, are

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[1]Makila was formed by the principals of Legacy Investors, LLC, of Wenatchee, Washington and Peter K. Martin of Kahului, Hawaii. The ownership of Makila is as follows: Legacy Investors, LLC, 34%; Peter K. Martin, Trustee of the Peter Klint Martin Revocable Trust, 35%; James C. Riley, 12.5%; James A. Bendon, MD, 10%; and Io Investments, LLC, 8.5%. See Exhibit 2 to the Application.

[2]Application at 2.

prudent and in the public interest. MECO makes its request pursuant to Hawaii Administrative Rules ("HAR") § 6-60-6(2).[3]

1.

Makila Facility

As detailed in the Application, pursuant to the PPC, Makila will repower, own, operate and maintain the Makila Facility, including refurbishing an existing approximately five hundred (500) kW hydroelectric generator, to produce electrical energy. The Makila Facility is the decommissioned Kauaula Hydroelectric Plant previously owned by Pioneer Mill Company. The hydro generator operated for more than fifty (50) years before being decommissioned after Pioneer Mill Company was shut down. The hydro generator is located on the slopes of Kauaula Ridge, above Launiupoko Beach Park, in Lahaina, Maui on privately owned land that was formerly part of the Amfac and Pioneer Mill Company properties.

The hydro generator is a three phase, synchronous generator with a rated power of five hundred (500) kW. Makila will utilize the existing hydro turbine and generator which produces electricity at 6600 volts. The hydroelectric generator is connected to an existing 7.2 kV, 500 MVA AC generator breaker and existing 7.2 kV, #4 distribution line and

[3]HAR § 6-60-6(2) provides that "[n]o 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."

interconnected to MECO's 12.47 kV distribution system via 12.47 kV/7.2 kV delta-to-delta, step-up tie transformer.[4]

Makila will be responsible for the operation and maintenance of the hydro generator, but MECO may review and comment on the protection at the Point of Interconnection. Makila will be responsible for acquiring all permits and licenses required for the operation of the hydro generator.[5]

2.

Operational Date of Hydro Generator

Pursuant to the PPC, the Term of the PPC commences upon the In-Service Date[6] and remains in effect for an initial term of

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[4]Application at 5.

[5]Id. at 6.

[6]The In-Service date is defined as the date that the Acceptance Test and Control System Acceptance Test is deemed by MECO to have been successfully completed. See Exhibit 1, Appendix F to the PPC.

An Acceptance Test is a test conducted by Makila and witnessed, at MECO's option, by MECO within thirty (30) days after completion of all Interconnection Facilities, of the MECO-owned Interconnection Facilities and the interconnection portion of the Makila Facility to determine conformance with the PPC and Good Engineering and Operating Practices ("GEOP"). See Appendix F to the PPC for a discussion of GEOP. Successful completion of the Acceptance Test to MECO's satisfaction is a condition precedent for the In-Service Date and the performance of the Control System Acceptance Test.

A Control System Acceptance Test is a test performed on the centralized control system for the Makila Facility. It consists of a functional demonstration of the centralized control system through the successful completion of the test to MECO's satisfaction. To the extent reasonably and technically feasible, MECO will conduct the Control System Acceptance Test for the hydro generator within one (1) normal working day after the Acceptance Test, provided Makila has given MECO at least seven (7) days advance written notice that the hydro generator is ready

twenty (20) years from the In-Service Date, and continues in effect after the initial twenty (20) year term until terminated by either party.[7] Prior to the In-Service Date, Makila is required to designate its facility as a Qualifying Facility, as defined in the Public Utility Regulatory Policies Act of 1978, as amended, the rules of the Federal Energy Regulatory Commission ("FERC"), as codified in Part 292, Title 18 of the Code of Federal Regulations ("C.F.R."), and in the commission's Standards for Small Power Production and Cogeneration in the State of Hawaii, as codified in Chapter 74, Title 6, HAR.[8]

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to generate and deliver energy to MECO. The Parties will agree on a written protocol setting out the detailed procedure and criteria for passing the Control System Acceptance Test no later than thirty (30) days prior to conducting the Control System Acceptance Test. Within three (3) business days of successful completion of the Control System Acceptance Test, MECO will notify Makila in writing that the Control System Acceptance Test was successfully completed and that date upon which such test was successfully completed.

[7]See Application at 12.

[8]HAR § 6-74-1 defines Qualifying Facility as: ". . . a small power production facility which is a qualifying facility under § 6-74-4 and subpart 2 of the regulations for the FERC regarding qualifying cogeneration and small power production facilities, 18 C.F.R. Part 292."

HAR § 6-74-4 provides, in relevant part, that the general requirements for qualifying as a small power production facility are those that meet the:

(1) Maximum size criteria specified in § 6-74-5(a);
(2) Fuel use criteria specified in § 6-74-5(b); and
(3) Ownership criteria specified in § 6-74-7.

HAR § 6-74-4.

According to the Consumer Advocate, Makila received notice of its self-certification as a qualifying facility from the Federal Energy Regulatory Commission on May 6, 2005.

Makila is required to operate its hydro generator and offer energy to MECO within twenty four (24) months of the Non-appealable PUC Approval Order, whether or not Force Majeure, as defined in Appendix F of the PPC, interferes with the completion of the Makila Facility, its operation, or sale of energy from it.

MECO is not obligated to accept or pay for any energy delivered by Makila for the period following the Execution Date, as defined in the PPC, and prior to the latter of the In-Service Date or the Non-appealable PUC Approval Order date. Additionally, prior to the completion of the Interconnection Facilities, as defined in Appendix F of the PPC, MECO is not obligated to accept or pay for any energy delivered by Makila.

3.

Energy Pricing

The on-peak and off-peak rates for purchase of energy from Makila will be one hundred percent (100%) of MECO's on-peak and off-peak avoided energy cost payment rates in cents per kilowatt-hour, applicable at the time the energy is delivered.[9] The PPC does not provide for minimum purchase rates. The Total Energy Payments paid by MECO to Makila will be the sum of the On-Peak Energy Payment and the Off-Peak Energy Payment.[10]

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[9]Avoided energy cost payment rates are generally filed quarterly with the commission and calculated in accordance with methodology approved by the commission. See Application at 10.

[10]Id.

4.

Delivery of As-Available Energy

Makila will provide energy to MECO on an unscheduled basis as Makila determines energy to be available from its hydro generator.

a.

Allowed Capacity

The Allowed Capacity for the Makila Facility will be the lesser of (1) 500 kV, or (2) the net nameplate capacity of the hydro generator that has been installed, and has successfully completed the Control System Acceptance Test by the In-Service Date.

b.

Curtailment of Energy Deliveries

Pursuant to the PPC, MECO has the right to temporarily curtail, interrupt or reduce deliveries of energy when necessary. MECO is not required to purchase energy during any period during which, due to operational circumstances, purchases from Makila will result in costs to MECO greater than those it would incur if it did not make those purchases, but instead generated an equivalent amount of energy itself.

MECO has the right to curtail the delivery of energy from Makila 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, interruption, or reduction is necessary because of a system emergency, forced outage, or operating conditions on its system; (3) if MECO is unable to accept deliveries of energy due to light loading conditions; or (4) if either the Makila Facility does not operate in compliance with GEOP, or if the acceptance of energy by MECO would require it to operate outside of GEOP.

Conditions when curtailment may be implemented by MECO include situations where, during light load conditions, MECO would have to cycle off-line any Base Load Unit (as defined in Exhibit 1, Appendix F), or remove one or more components of a combined cycle unit in order to purchase energy from Makila. In general, Makila Facility may be curtailed if (1) performance standards are not met, (2) situations and conditions exist on MECO's system that could affect the reliability of MECO's system, even if Makila is in compliance with the performance standards, or (3) the total as-available power production exceeds that which can be utilized by MECO, such as light load conditions. The PPC also contains provisions to address the curtailment of delivery to MECO where conditions exist that would (1) have a material adverse physical impact on MECO's electrical system, (2) present an immediate danger to personnel or equipment, or (3) have a material adverse physical impact on the Makila Facility.

When curtailment becomes necessary for reasons other than those directly attributable to the Makila Facility, 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.[11]

c.

Right to Disconnect Facility

Pursuant to Sections 6 and 7 of the PPC, Makila must separate from MECO's system whenever requested to do so by MECO's System Operator. Moreover, notwithstanding any other provisions of the PPC, MECO will have the right to curtail or disconnect, as determined in the sole discretion of MECO's System Operator, the Makila Facility from MECO's system, if at any time MECO reasonably determines that the Makila Facility may endanger MECO's personnel, and/or the continued operation of the Makila Facility may endanger the integrity of MECO's system or have an adverse effect on MECO's customers' electric service.[12] The Makila Facility will remain curtailed, or disconnected, until such time as MECO is satisfied that the conditions have been

[11]When MECO determines that curtailment becomes necessary for engineering and/or operating reasons that are directly attributable to the Makila Facility, reverse chronological curtailment order may not apply.

[12]Makila must provide a manually operated disconnect device, which is lockable in the open position and is readily accessible to MECO personnel at all times. See Application at 14.

corrected.[13] Moreover, MECO is not obligated to pay for any energy, except for such energy as is accepted by MECO from Makila during such period.

5.

Operating Procedures

The PPC specifies limits on (1) Makila's hydro generator's undervoltage rates, (2) Makila's hydro generator's underfrequency rates, and (3) voltage flicker and harmonic distortion caused by Makila's hydro generator.[14]

Makila is required to regulate the voltage at the Point of Interconnection to a voltage specified by MECO's System Operator. The power factor at which energy is to be delivered to MECO by Makila must be adjusted to maintain voltage at the specified level. Makila is also required to have the ability to deliver energy to MECO at power factors ranging from 95% leading (Makila receiving reactive power from MECO while delivering real power to MECO) at the hydro generator, to 95% lagging (Makila delivering reactive power to MECO while delivering real power to MECO) at the Point of Interconnection. MECO may disconnect all or part of the Makila Facility from MECO's system for any failure to operate in accordance with the power factor requirement.

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[13]MECO adds that if the control system interface is unavailable, resulting in the loss of control by MECO, the direct transfer trip scheme will open Makila's generator breaker and disconnect the Makila Facility. Application at 14.

[14]See Application at 14-16 for a discussion of these limits.

Makila is required to operate the hydro generator in accordance with GEOP. It must also maintain its facility equipment and operating logs, maintenance records, operating procedures and policies, which MECO has the right to review. MECO also has the right to inspect the hydro generator and Makila'a operation and maintenance of the hydro generator.

Makila's Interconnection Facilities must be accessible at all times to MECO personnel. Makila must also, at its own cost, furnish, install, operate and maintain breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices designated by MECO as suitable for parallel operation of the Makila Facility with MECO's system.[15]

6.

Financial Compliance

Pursuant to the PPC, Makila must provide information that MECO requests for the purposes of permitting MECO and its parent companies, Hawaiian Electric Industries, Inc. ("HEI") and Hawaiian Electric Company, Inc. ("HECO") to comply with certain financial reporting requirements. MECO states that a requirement promulgated recently by the Financial Accounting Standards Board ("FASB"), Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46R"), may require it, as the purchaser

[15]MECO also has the right, but not the obligation, to specify the type of electrical equipment, interconnection wiring, and the type of protective relaying equipment that affects the reliability and safety of operation of MECO's and Makila's interconnected system. See Application at 17.

of power under a power purchase agreement, to "consolidate" into its own, the financial statements of Makila, the seller.[16]

Section 17 of the PPC includes provisions (1) for MECO, or its independent auditor to obtain access to Makila documents and records to meet FASB reporting requirements, (2) for Makila to provide such information only for the purposes defined in Section 17, and (3) regarding the limitation of public disclosure, to the extent reasonably possible, in any filing that MECO, HECO or HEI would be required to make with regard to financial disclosure.[17]

7.

Other Contract Terms and Conditions

a.

Commission Approval

The Parties are required to use their reasonable efforts to obtain a Non-Appealable PUC Approval Order satisfactory to the Parties, as defined in Appendix F to the PPC. If a Non-Appealable PUC Approval Order is not obtained within

[16]Exhibit 7 to the Application defines "consolidation accounting" as the "financial statement reporting treatment whereby the financial statements (i.e., income statement, balance sheet, and statement of cash flows) of one entity are put together with the financial statements of another entity and reported as if it were a single entity." Exhibit 7 also contains a discussion of FIN 46R.

[17]A detailed discussion of accounting issues, including whether or not the PPC contains a lease is contained in Exhibit 7 to the Application.

twelve (12) months of the date of filing of this Application[18] either MECO or Makila may, by written notice, declare the PPC null and void.

MECO will have the right to terminate the PPC if the In-Service Date has not been achieved within twenty-four (24) months from the Non-Appealable PUC Approval Order, whether or not Force Majeure interferes with the completion of Makila's rehabilitation of the hydro generator, the generator's operation, or the sale of energy from it.

b.

Default and Termination

Specifics events of default, if not cured, or in the process of being cured by the defaulting party within specified periods, may result in termination of the PPC or other remedies available to the non-defaulting party. Provisions for such situations are included in Appendix E to the PPC.

c.

Insurance

Makila is required to acquire and maintain commercial general liability insurance coverage (which includes contractual liability coverage). MECO is required to be an additional insured under such coverage.

[18]This period of time may be extended by mutual agreement of the Parties.

d.

Indemnity

Provisions regarding Makila's indemnification of MECO, and MECO's indemnification of Makila are addressed in Section 11 of the PPC. In general, the indemnification provisions will protect MECO, its customers, and the public from certain risks rising indirectly out of or attributable to the location, construction, interconnection or parallel operation of the Makila Facility.

e.

Dispute Resolution

The procedures for resolving disputes under the PPC, including provisions for good faith negotiation and arbitration, are set forth in Section 21(n) of the PPC and Exhibit 1, Appendix G to the PPC.

If there is disagreement between the Parties regarding certain identified provisions in Appendix B of the PPC, then specified representatives of the Parties will meet to attempt a good faith settlement to the disagreement. Should the Parties be unable to settle the dispute after the expiration of the stated time period for settlement, then either of the Parties may pursue the dispute resolution procedures set forth in Appendix G of the PPC.

f.

Assignment

In general, the PPC is not assignable by either MECO or Makila without the approval of the other party. This approval cannot be unreasonably withheld, conditioned, or delayed. Makila may, however, without the consent of MECO, assign all or part of its rights, benefits, or obligations to a wholly-owned subsidiary or to an affiliated company under common control with Makila. In addition, Makila may, for purposes of arranging or rearranging debt and/or equity financing for the Makila Facility, assign all or part of its rights or benefits, but not its obligations, to any lender providing debt financing. Should Makila decide to assign all or part of the PPC, Makila must provide MECO with all information about the assignment and the assignee which MECO reasonably requests.

g.

Sale of Energy to Third Parties

Makila may consume energy produced at the Makila Facility for its own use, but may not sell energy from the hydro generator to any third party, which includes subsidiaries or affiliates of Makila.

h.

Environmental Credits

Environmental Credits[19] are the property of MECO, to the extent not prohibited by law; provided that such Environmental Credits shall accrue to the benefit of MECO's ratepayers in that the value must be credited "above the line." Makila must use all reasonable efforts to ensure that such Environmental Credits are vested in MECO.

i.

Patents

Makila agrees that it will not use any process, program, design, device, or material which infringes on any United States patent in fulfilling its responsibilities under the PPC. Makila also agrees to indemnify, defend and hold harmless MECO from and against all losses, damages, claims, fees and costs, including reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against MECO for patent infringement arising out of Makila's performance under the PPC, including, but not limited to, patent infringement due to the use of technical features of Makila Facility to meet the performance standards set forth in the PPC.

[19]Environmental Credits are defined in Exhibit 1, Appendix F to the Application as "[a]ny environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any governmental or international agency to [MECO] or [Makila] based in whole or in part on the fact that [Makila's] [f]acility is a non-fossil fuel facility." Such credits include, but are not limited to, emissions credits, including credits triggered because such facility does not produce carbon dioxide when generating electric energy, or any renewable energy credit, but does not mean tax credits.

j.

Other

Makila must obtain MECO's prior written consent to a final single-line diagram, relay list, relay settings, and trip scheme of the Makila Facility, and attach it to the PPC at least sixty (60) days prior to the In-Service Date. Makila may not make material change or additions to the Makila Facility as reflected in the final single-line diagrams, relay lists, relay settings, and trip schemes, without first obtaining MECO's prior written consent. Furthermore, Makila must furnish, install, operate and maintain the Makila Facility, including all items designated by MECO as suitable for parallel operation of Makila Facility with MECO's system.

8.

Interconnection Facilities

Pursuant to the PPC, MECO will design, construct, own, operate and maintain all MECO Interconnection Facilities required to interconnect MECO's system with the Makila Facility, at 12,470 volts, up to the Point of Interconnection. MECO-owned revenue meters will mark the Point of Interconnection. MECO will own, operate and maintain all equipment from the MECO-owned revenue meters. Makila will own, operate and maintain all Makila Interconnection Facilities to the MECO-owned revenue meter and the 12 kilovolt Tie Line from Pole "B" #E1-184 to Makila's Hydro Substation.

The Point of Interconnection is identified in the final single-line diagram,[20] a final copy of which was provided by Makila to MECO, and is attached as Exhibit 4 to the Application.

Under the terms of the PPC, an Interconnection Requirements Study ("IRS") was required to be performed at Makila's expense. The purpose of the IRS was to determine the system-related interconnection requirements for the Makila Facility to be connected to MECO. In general, the IRS determined: (1) that the proposed Makila Facility will not cause any line overloads or exceed voltage limits of plus or minus 5% on the MECO system; (2) that the high Makila Facility generator terminal voltage does not cause voltage violations on the MECO system, and therefore, that the decision to mitigate the high voltage situation can be decided by Makila; (3) the under-frequency and under-voltage settings typically chosen for the Makila Facility should be compatible with the operation of the MECO system; (4) that Makila Facility's design and electrical equipment were compatible with MECO engineering standards; (5) the interconnection facilities that must be added or modified to accommodate the Makila Facility; and (6) the estimated costs of the interconnection requirements for the Makila Facility.[21]

Makila will construct, operate and maintain the Makila-owned Interconnection Facilities, as described in Appendix B of the PPC. Makila will obtain all easements,

[20]The Point of Interconnection is shown in Exhibit B of the PPC.

[21]Excerpts of the IRS are attached as Exhibit 6 to the Application.

rights-of-way, licenses and leases on the site of the Makila Facility and any other affected property, which are required to construct, maintain and operate the MECO-owned Interconnection Facilities. In addition, Makila is required to pay MECO for the cost to construct such MECO-owned Interconnection Facilities.

Makila is required to pay the Total Actual Interconnection Costs, as defined in Appendix F of the PPC. Appendix C, Section 2(a)(1) of the PPC provides a Total Estimated Interconnection Cost of $46,212.08 for MECO-owned Interconnection Facilities to be constructed by MECO. Because Makila has begun making payments to MECO,[22] the balance of the Total Estimated Interconnection Costs to be paid by Makila to MECO is currently $19,300.00.[23]

After termination of the PPC, Makila must, at its expense, remove from the site all MECO-owned Interconnection Facilities and Makila-owned Interconnection Facilities designated by MECO. MECO may elect, however, to remove all or part of such MECO-owned or Makila-owned Interconnection Facilities because of operational concerns over the removal of such Interconnection

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[22]Within thirty (30) days of the final accounting, which will take place within thirty (30) days of completion of construction of the MECO-owned Interconnection Facilities, Makila will remit to MECO the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, i.e., the final accounting of the Total Interconnection Costs. If the Total Actual Interconnection Cost is less than the payments received by MECO as the Total Estimated Interconnection Cost, MECO will repay the difference to Makila within thirty (30) days of the final accounting. See Appendix C, Section 2(c) of the PPC.

[23]See Application at 27.

Facilities, in which case Makila will reimburse MECO for its costs to remove such Interconnection Facilities. After termination of the PPC, Makila must restore the site to its condition prior to the construction of the MECO-owned Interconnection Facilities. Site restoration must be completed within ninety (90) days of termination of the PPC, or as otherwise agreed to in writing by the Parties.

9.

Integrated Resource Planning

The commission's Framework for Integrated Resource Planning ("IRP Framework"), Paragraph III.D.5, states, in relevant part that "[t]he integrated resource plan and program implementation schedule approved by the commission shall govern all utility expenditures for capital projects, purchased power, and demand-side management programs." MECO states that the PPC is consistent with its IRP Plan (2000-2020) filed on May 31, 2000, in Docket No. 99-0004 "taking into account current circumstances".[24]

B.

Consumer Advocate's Statement of Position

On August 12, 2005, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to commission approval of the proposed PPC. In making

[24]Application at 29.

this determination, the Consumer Advocate considered (1) whether the terms and conditions of the PPC are reasonable and (2) whether the proposed PPC is consistent with the State of Hawaii's ("State") renewable portfolio standard ("RPS") policy.

With respect to the reasonableness of the terms and conditions of the PPC, the Consumer Advocate states that the terms and conditions are reasonable and that it does not object to the commission's approval of such terms and conditions for the following reasons: (1) the PPC includes terms and conditions contained in other power purchase agreements previously approved by the commission[25]; (2) the PPC contains broad indemnification and insurance requirements which will serve to protect MECO, its customers and the public from certain risks due to property damage or injuries to persons due to the operation of Makila's facility; (3) the Parties are required to operate the Makila facility in accordance with GEOP in addition to complying with applicable laws, rules, orders and tariffs; (4) pursuant to the PPC, either Party is allowed to curtail or disconnect from the other Party for operational and safety reasons; (5) Makila's on-peak and off-peak energy prices will be 100% of MECO's on-peak and off-peak avoided energy cost payments filed with the commission, applicable at the time the energy is delivered; and (6) none of the provisions or terms appeared to be discriminatory. The Consumer Advocate also states that it does not object to the approval of MECO's request to include the

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[25] See, e.g., Decision and Order No. 21701, filed on March 18, 2005, in Docket No. 04-0365.

purchase energy charges (and related revenue taxes) that are incurred under the PPC in MECO's ECAC for the term of the PPC.

The Consumer Advocate points out that the proposed PPC is consistent with the State's RPS, as set forth in HRS §§ 269-91, et seq. Moreover, it notes that in the most recent RPS status report to the commission, filed on June 27, 2005, HECO, MECO and Hawaii Electric Light Company, Ltd., (together, "Companies") collectively reported that they were able to achieve 11.40% of renewable energy in 2004, exceeding the 8.0% goal established for 2005. The Consumer Advocate asserts that approving the instant PPC will increase the Companies' ability to meet the State's renewable energy goals, and acknowledges that, while the proposed PPC is not included in MECO's commission approved IRP, MECO's proposal to add additional renewable energy resources to its energy portfolio through the purchased energy by means of the PPC is consistent with the State's energy policy.

II.

Discussion

In general, HRS § 269-27.2, as amended, and HAR chapter 6-74, subchapter 3, guide the commission's review of the rates agreed upon between MECO and Makila.[26] HRS § 269-27.2(c),

[26]HRS § 269-27.2(c) requires the commission to approve the rate payable by a public utility to the producer of nonfossil fuel generated electricity supplied to the public utility. Where the parties cannot agree on a purchase rate, the commission must establish, "the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer[.]" Id. HAR § 6-74-22(a) also provides that the rates for purchase shall be just and reasonable and not discriminate against other small power producers.

provides, in relevant part, that the rate paid for nonfossil fuel generated electricity shall be the rate agreed upon by the public utility and supplier and approved by the commission. In the instant case, the Parties have reached an agreement, and, thus, the commission need establish only that the agreed upon rates are reasonable.

The Parties have agreed to respective on-peak and off-peak energy rates for the delivery of energy for sale to MECO of one hundred per cent (100%) of MECO's on-peak and off-peak avoided energy cost payment rates filed with the commission applicable at the time the energy is delivered.[27] The commission finds the rates agreed upon by the Parties to be just and reasonable, and consistent with HRS § 269-27.2(c), as amended.[28]

With regard to the provisions of the PPC, the commission finds that they too, are reasonable and consistent with the public interest. The terms of the PPC were negotiated by the Parties at arms-length and contain indemnification and insurance provisions which will serve to protect MECO and its

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[27]See PPC, Appendix D.

[28]Currently pending before the legislature is a measure that would, among other matters, amend HRS § 269-27.2(c) to provide that the commission's determination of a just and reasonable rate shall be accomplished by removing, or significantly reducing, the linkage between the price of fossil fuel and the rate for the non fossil fuel generated electricity. See S.B. 3185, S.D. 2, H.D. 2, C.D. 1. The goal of the amendment is to enable utility customers to share in the benefits of fuel cost savings resulting from the use of non fossil fuel generated electricity. Accordingly, should the proposed legislation become law, the commission's determination of the reasonableness of proposed rates would also be guided by this new standard, in addition to the current standard set forth in HRS § 269-27.2(c), which provides that a just and reasonable rate for non fossil fuel generated electricity shall not be more than one hundred percent (100%) of the utility's avoided cost.

customers from certain risks associated with interconnecting with the Makila Facility. The PPC provides that Makila must operate the Makila Facility in accordance with GEOP, maintain facility equipment and records and provide MECO the opportunity to review such records, and assure that the Makila Facility is accessible at all times for inspection by MECO personnel. In addition, the PPC contains provisions for either MECO or Makila to curtail or disconnect from the other for operational or safety reasons. The commission also finds that the terms and conditions of the PPC will not affect MECO's ability to provide electric service to its customers and is not discriminatory to other small power producers.

Finally, MECO requests in its Application that the commission approve the inclusion of its purchased energy charges (and related revenue taxes) incurred under the PPC in MECO's ECAC for the term of the PPC. The Consumer Advocate does not object to this inclusion and the commission also finds this inclusion to be reasonable.

Accordingly, the commission makes the following findings and conclusions:

1. The energy charges to be paid by MECO pursuant to the PPC, i.e., on-peak and off-peak rates for purchase of energy that are one hundred per cent (100%) of MECO's on-peak and off-peak avoided energy cost payment rates, are reasonable and consistent with HRS § 269-27.2(c), 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 contained in the PPC, pursuant to which MECO will purchase energy from Makila, 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 MECO's base rates.

III.

Orders

THE COMMISSION ORDERS:

1. The PPC between MECO and Makila, dated May 10, 2005, is approved.

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

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

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

DONE at Honolulu, Hawaii MAY 10 2006.

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:

_____
Benedyne S. Stone
Commission Counsel

05-0161.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22460 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY 10 2006