

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Competitive Bidding)
for New Generating Capacity in)
Hawaii.)
_____)

DOCKET NO. 03-0372

DECISION AND ORDER NO. 24088

Filed March 13, 2008

At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

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

Karen Higashi

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Investigate Competitive Bidding))
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Hawaii.)
_____)

DECISION AND ORDER

By this Decision and Order, the commission approves the request of HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, the "HECO Companies") to add Mr. Harold T. Judd of Accion Group, Inc. ("Accion"), to their list of qualified candidates for the Independent Observer position.¹

I.

Background

A.

Docket No. 03-0372

On December 8, 2006, the commission adopted its Framework for Competitive Bidding as a mechanism for acquiring or building new energy generation in the State of Hawaii

¹The Parties are the HECO Companies, KAUAI ISLAND UTILITY COOPERATIVE, HAWAII RENEWABLE ENERGY ALLIANCE, and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy.

("CB Framework").² Specifically, the CB Framework outlines a comprehensive mechanism for the electric utilities to acquire a future generation resource or a block of generation resources under the competitive bidding process. As part of the implementation process governing competitive bidding, Decision and Order No. 23121 requires the HECO Companies to file for the commission's review and approval a list of qualified candidates for the Independent Observer position for future HECO Companies' competitive bidding processes.³

On May 9, 2007, the HECO Companies filed their list of four qualified candidates for the Independent Observer position.⁴ On June 22, 2007, the commission approved the HECO Companies' list of qualified candidates for the Independent Observer position.⁵ The list of qualified candidates approved by the commission included Mr. Alan Kessler, Managing Director, of Accion.

B.

Docket No. 2007-0403

On December 6, 2007, the commission opened In re Public Util. Comm'n, Docket No. 2007-0403 ("Docket No. 2007-0403"),

²Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006, attached.

³CB Framework, Part III.C.6.

⁴HECO Companies' Transmittal Letter, dated May 9, 2007, with Attachments 1 - 4. The attachments include the resumes of the four candidates and descriptions of their respective firms.

⁵Decision and Order No. 23503, filed on June 22, 2007.

"to receive filings, review approval requests, and resolve disputes, if necessary, related to MECO's proposal to proceed with a competitive bidding process to acquire two separate increments of approximately 20 to 25 MW of firm generating capacity on the island of Maui in the 2011 and 2015 timeframes."⁶ By Order No. 23872, the commission also approved the contract between HECO and Accion to act as an Independent Observer for the competitive bidding process. In approving the contract, the commission noted:

Here, [the HECO Companies] have already submitted a list of Independent Observer candidates, which the commission approved in the Competitive Bidding Docket. Included in the approved list of Independent Observer candidates was Alan Kessler, Managing Director of Accion. The Independent Observer Contract, however, was signed by Harold Judd, Vice President of Accion. Mr. Judd, along with Mr. Kessler and other Accion employees are included in the list of those Accion "consultants" that may be working on the Independent Observer Contract. As the commission approved Mr. Kessler as an Independent Observer, it expects that Mr. Kessler will be performing the role of Independent Observer for this Competitive Bidding Process. This does not mean that other Accion employees may not perform work under the Independent Observer Contract; only that Mr. Kessler, at a minimum, should be responsible for overseeing the performance of the duties required by Accion under the contract.

While the commission is cognizant that there may be other Accion employees who are as qualified as Mr. Kessler to act as an Independent Observer for this Competitive Bidding Process, from Accion, only Mr. Kessler is a qualified Independent Observer under Decision and Order No. 23503. Accordingly, Mr. Kessler should be responsible for the contract. That said, the commission does not foreclose the possibility that the HECO Companies may request, at some point, to add Mr. Judd to the list of qualified Independent

⁶Docket No. 2007-0403, Order No. 23872, filed on December 6, 2007, Ordering Paragraph No. 1, at 12.

Observers; and for approval of Mr. Judd to act as Independent Observer for this Competitive Bidding Process. Like Mr. Kessler, Mr. Judd (or anyone else for whom the HECO Companies seek to include as a qualified Independent Observer on the list of Independent Observers) would need to provide the commission with sufficient evidence that he or she is qualified to act as an Independent Observer.

Docket No. 2007-0403, Order No. 23872, at 9-10 (footnote and citation therein omitted) (emphasis added).

C.

HECO Companies' Request

By letter dated February 26, 2008, the HECO Companies request the commission's approval to add Mr. Judd to their list of qualified candidates previously approved by the commission for the Independent Observer position. The HECO Companies' request is supported by an attachment that describes the qualifications of Accion and Mr. Judd. "Should the Commission approve this request, MECO will submit a separate request that Mr. Judd replace Mr. Kessler as the Independent Observer for the MECO Firm Capacity Competitive Bidding Process (Docket No. 2007-0403)."

II.

Discussion

Part III.C.6 of the CB Framework outlines the duties, obligations, qualifications, and selection of the Independent Observer. "An Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal

⁷HECO Companies' letter, dated February 26, 2008, at 1.

(i.e., in competition with those offered by bidders) in response to a need that is addressed by its [request for proposal ("RFP")], or when the Commission otherwise determines."⁸

In general, the Independent Observer's duties and obligations will consist of two specific areas, advising and monitoring.⁹ Moreover:

3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.
4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.

CB Framework, Part III.C.3 and C.4.

With respect to the qualifications and selection of the Independent Observer, Part III.C.5 and C.6 state in relevant part:

5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:
 - a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;
 - b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;

⁸CB Framework, Part III.C.1.

⁹See CB Framework, Part III.C.2.

- c. Have the necessary experience and familiarity with utility modeling capability, transmission system planning, operational characteristics, and other factors that affect project selection.
 - d. Have a working knowledge of common [power purchase agreement] PPA terms and conditions, and the PPA negotiations process;
 - e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and
 - f. Be able to demonstrate impartiality.
6. Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and shall also consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates

CB Framework, Part III.C.5 and C.6.

Mr. Judd, as a founder and Managing Director of Accion, has over thirty years of diverse experience and expertise with regulated industries and emerging energy markets. Mr. Judd's major clients include various state utility commissions, energy providers and cooperatives, and the United States Department of Energy. Accion "is a consortium of experienced consultants focused on providing advice to the utility industry[,]" that specializes in "planning and management, corporate restructuring, regulation and business strategy development and

implementation."¹⁰ Furthermore, as depicted on the chart set forth on page 2 of Attachment 1, Accion represents that it "has extensive experience serving as the Independent Evaluator for large-scale competitive procurements. These RFP[s] have ranged from accepting renewable resources as part of a portfolio, to conducting solicitations for nuclear generation."¹¹

Based on the information and representations set forth in the attachment submitted by the HECO Companies in support of Mr. Judd and Accion, the commission finds that Mr. Judd appears to meet the broad requirements set forth in Part III.C.5, subsections a, c, d, e, and f, of the CB Framework.

With respect to Part III.C.5, subsection b, of the CB Framework, the commission recognizes that the pool of qualified candidates with unique knowledge and expertise of Hawaii's "small, non-interconnected island electric grids," may be lacking. Nonetheless, the commission finds that Mr. Judd and Accion have direct experience in the energy procurement process that will be vital in ensuring the integrity and honesty of the competitive bidding processes required under the commission's CB Framework.

¹⁰HECO Companies' letter, dated February 26, 2008, Attachment 1, at 1.

¹¹HECO Companies' letter, dated February 26, 2008, Attachment 1, at 2. The chart specifically lists Accion's role as an independent evaluator or monitor for the states of Arizona, Florida, Georgia, Hawaii, and Oregon, and the Town of Lempster, New Hampshire.

The commission, pursuant to Part III.C.6 of the CB Framework, approves the HECO Companies' request to add Mr. Judd to their list of qualified candidates for the Independent Observer position.

III.

Order

THE COMMISSION ORDERS:

The HECO Companies' request, dated February 26, 2008, to add Mr. Harold T. Judd of Accion Group, Inc., to their list of qualified candidates for the Independent Observer position, is approved.

DONE at Honolulu, Hawaii MAR 13 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

03-0372.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24088 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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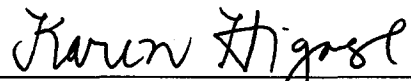
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Certificate of Service

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DATED: MAR 13 2008