

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

UPC HAWAII HOLDINGS, LLC, and
KAHEAWA WIND POWER II, LLC,

Complainants,

vs.

MAUI ELECTRIC COMPANY, LIMITED, and
HAWAIIAN ELECTRIC COMPANY, INC.,

Respondents.

DOCKET NO. 2008-0021

ORDER NO. 24126

DIV. OF CONSUMER AGENCY
DEPT. OF HEALTH AND
CONSUMER AFFAIRS
STATE OF HAWAII

2008 APR -8 A 3:07

RECEIVED

Filed April 7, 2008
At 1 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

Karen Higashi

UPC HAWAII HOLDINGS, LLC, and
KAHEAWA WIND POWER II, LLC,

Complainants,

vs.

MAUI ELECTRIC COMPANY, LIMITED, and
HAWAIIAN ELECTRIC COMPANY, INC.,

Respondents.

Order No. 24126

By this Order, the commission approves, with modifications, the proposed Stipulated Procedural Order filed by the parties¹ on March 20, 2008, attached hereto as Exhibit A. In addition, the commission dismisses as moot the Motion for Expedited Consideration of Verified Complaint and Petition filed by Complainants on February 6, 2008 ("Motion to Expedite").

¹The parties to this docket are: UPC HAWAII HOLDINGS, LLC ("UPC Hawaii"), KAHEAWA WIND POWER II, LLC ("KWP II") (jointly, "Complainants"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"), HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, AND SHELL WINDENERGY INC. ("Shell") (collectively, "Parties").

I.

Discussion

1.

Stipulated Procedural Order (as Modified)

On March 20, 2008, pursuant to Order No. 24034, filed on February 11, 2008, and Order No. 24069, filed on March 4, 2008, the Parties filed the proposed Stipulated Procedural Order, attached hereto as Exhibit A.²

The Parties set forth the schedule for the proceedings in this docket in Section II of their proposed Stipulated Procedural Order. At the outset, the commission notes that Hawaii Administrative Rules ("HAR") § 6-74-15(f) requires the commission to issue a decision and order in this docket within 120 days of the filing of Complainants' Verified Complaint and Petition, filed on February 6, 2008 ("Complaint"), or by June 5, 2008. The Parties' agreed-upon schedule of proceedings in the proposed Stipulated Procedural Order includes scheduled matters that extend past the 120-day deadline of June 5, 2008. The commission construes the Parties' agreement to extend this proceeding beyond June 5, 2008 as a waiver of the 120-day deadline under HAR § 6-75-15(f). The commission approves the Parties' waiver of this deadline.

²The Parties were granted an extension of time, from March 14, 2008 to March 20, 2008, to file the proposed Stipulated Procedural Order. See Letter dated March 19, 2008, from the commission, to the Parties.

In addition, upon review of the Parties' proposed Schedule of Proceedings, the commission finds it appropriate to amend Section II, Schedule of Proceedings, of the proposed Stipulated Procedural Order by: (1) adding a deadline of April 14, 2008 for the Parties to file a Stipulated (or proposed) Protective Order for this docket; (2) adding a Prehearing Conference to be held on June 9, 2008; (3) revising the date of the evidentiary hearing to June 13, 2008; (4) revising the deadline for the submission of Simultaneous Opening Briefs to two weeks after transcripts of the evidentiary hearing are filed; and (5) revising the deadline for the submission of Simultaneous Reply Briefs to one week after the filing of Simultaneous Opening Briefs.

Therefore, Schedule II, Schedule of Proceedings, of the Parties' proposed Stipulated Procedural Order will be amended to read as follows:

UPC Hawaii/KWP II Filing of Complaint	February 6, 2008
Order No. 24034 issued	February 11, 2008
Shell Motion to Intervene	February 25, 2008
HECO/MECO Response to Complaint	March 3, 2008
UPC Hawaii/KWP II Memorandum in Opposition to Shell's Motion to Intervene	March 4, 2008
Order No. 24069 issued	March 4, 2008
Informal Status Conference	March 14, 2008
Stipulated Procedural Schedule submitted for Commission approval	March 20, 2008

Technical Discussions	April 7, 2008 to May 12, 2008
Submission of Stipulated (or proposed) Protective Order	April 14, 2008
Stipulation or Simultaneous Data Filing	May 19, 2008
Simultaneous Written Testimonies and Exhibits	June 6, 2008
Prehearing Conference	June 9, 2008
Evidentiary Hearing	June 13, 2008
Simultaneous Opening Briefs	Two weeks after the filing of hearing transcripts
Simultaneous Reply Briefs	One week after the filing of Simultaneous Opening Briefs
Commission Decision and Order	

Regarding the May 19, 2008 deadline, above, for filing a "Stipulation or Simultaneous Data Filing," the commission construes this deadline as the last day for the Parties to file a Joint Settlement Letter in this docket.

2.

Motion to Expedite

On February 6, 2008, Complainants filed their Motion to Expedite, requesting that the commission consider the Complaint, filed concurrently with the Motion to Expedite, on an expedited basis. In support of their request, Complainants argue:

[T]he Commission's expedited consideration of UPC's Complaint will enable the Commission effectively to require full compliance with HAR 6-74-15(c) of the Commissions' Standards, to determine the legality of HECO's and MECO's "mini-completive [sic] bidding"

process under PURPA, the Commissions' Standards, and H.R.S. D269-27.2, [sic] and to determine whether the actions of HECO and MECO are in compliance with Hawaii law and the State's policy³ to promote its renewable energy resources.

The Motion to Expedite does not propose any expedited schedule or other accelerated process for the commission's review of this docket.

Upon review, the commission notes that HAR § 6-74-15(f) already requires the commission to consider the Complaint on an expedited basis, or within 120 days of the filing of the Complaint. Although the commission finds, above, that the Parties have waived this deadline, the Parties' agreed-upon schedule of proceedings, as modified herein, in the proposed Stipulated Procedural Order nevertheless contemplates an expedited review process for this docket. Accordingly, the commission finds that the Motion to Expedite is unnecessary under these circumstances, and should be dismissed as moot.

II.

Orders

THE COMMISSION ORDERS:

1. The Parties' proposed Stipulated Procedural Order, filed on March 20, 2008, and attached hereto as Exhibit A, is approved as modified herein to govern the proceedings in this docket.

³Memorandum in Support of Motion to Expedite at 6.

2. Section II, Schedule of Proceedings, of the Parties' proposed Stipulated Procedural Order is amended to read as follows:

UPC Hawaii/KWP II Filing of Complaint	February 6, 2008
Order No. 24034 issued	February 11, 2008
Shell Motion to Intervene	February 25, 2008
HECO/MECO Response to Complaint	March 3, 2008
UPC Hawaii/KWP II Memorandum in Opposition to Shell's Motion to Intervene	March 4, 2008
Order No. 24069 issued	March 4, 2008
Informal Status Conference	March 14, 2008
Stipulated Procedural Schedule submitted for Commission approval	March 20, 2008
Technical Discussions	April 7, 2008 to May 12, 2008
Submission of Stipulated (or proposed) Protective Order	April 14, 2008
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Simultaneous Written Testimonies and Exhibits	June 6, 2008
Prehearing Conference	June 9, 2008
Evidentiary Hearing	June 13, 2008
Simultaneous Opening Briefs	Two weeks after the filing of hearing transcripts
Simultaneous Reply Briefs	One week after the filing of Simultaneous Opening Briefs
Commission Decision and Order	

3. The Parties' waiver of the 120-day deadline under HAR § 6-75-15(f) for the commission to issue a decision and order in this proceeding, is approved.

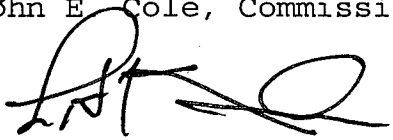
4. The Complainants' Motion to Expedite, filed on February 6, 2008, is dismissed as moot.

DONE at Honolulu, Hawaii APR - 7 2008.

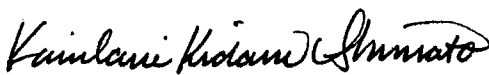
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Kaiulani Kidani Shinsato
Commission Counsel

2008-0021.sl

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2008 MAR 20 P 3:59

FILED

UPC HAWAII HOLDINGS, LLC, and
KAHEAWA WIND POWER II, LLC

Complainants,

MAUI ELECTRIC COMPANY, LIMITED, and
HAWAIIAN ELECTRIC COMPANY, INC.

Respondents.

Docket No. 2008-0021

STIPULATED PROCEDURAL ORDER NO. _____

Filed _____, 2008

At _____ o'clock ____ M.

Chief Clerk of the Commission

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

UPC HAWAII HOLDINGS, LLC, and)	
KAHEAWA WIND POWER II, LLC)	
)	
Complainants,)	Docket No. 2008-0021
)	
MAUI ELECTRIC COMPANY, LIMITED, and)	
HAWAIIAN ELECTRIC COMPANY, INC.)	
)	
Respondents.)	
)	

STIPULATED PROCEDURAL ORDER

On February 6, 2008, UPC Hawaii Holdings, LLC ("UPC Hawaii") and Kaheawa Wind Power II, LLC ("KWP II") filed a Verified Complaint and Petition against Hawaiian Electric Company, Inc. ("HECO") and Maui Electric Company, Limited ("MECO") in Docket No. 2008-0021.

By Order No. 24034, filed February 11, 2008, the Commission ordered HECO and MECO to file an answer to UPC Hawaii and KWP II's formal complaint within 20 days after the date of service of Order No. 24034 (i.e., by March 3, 2008). Order No. 24034 also required the parties to file a Stipulated Procedural Schedule for the Commission's review and approval within 30 days of the date of Order No. 24034 (i.e., by March 12, 2008).

On February 25, 2008, Shell WindEnergy Inc. ("Shell") filed a Motion to Intervene in the subject proceeding.

On March 3, 2008, HECO and MECO filed their Response to Complaint and Answer.

On March 4, 2008, UPC Hawaii and KWP II submitted a Memorandum in Opposition to

Shell's Motion to Intervene.

By Order No. 24069, filed March 4, 2008, the Commission granted Shell's Motion to Intervene. The Commission named UPC Hawaii, KWP II, HECO, MECO, Shell and the Consumer Advocate (collectively the "Parties") as parties to the subject proceeding.

By letter dated March 10, 2008, the Commission informed the parties that an informal status conference would be held on March 14, 2008.

By letter dated March 13, 2008, HECO and MECO, on behalf of the Parties, requested an extension to March 18, 2008, to submit a stipulated procedural schedule.

On March 14, 2008, the Commission held an informal status conference with the Parties. At the informal status conference, the Parties agreed to extend the deadline to submit a Stipulated Procedural Order to the Commission to March 20, 2008. The Commission's March 19, 2008 letter to HECO and MECO, extended the deadline to submit a Stipulated Procedural Order to the Commission to March 20, 2008.

The Parties have reached agreement on procedural matters and submit this Stipulated Procedural Order to the Commission, which is acceptable to the Parties.

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

I. STATEMENT OF THE ISSUES

The issues in this case are those raised by the pleadings in this docket and the issues may be further delineated by the Parties following the technical discussions. Any proposed delineation of the issues will be filed by the Parties by May 19, 2008.

II. SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth as follows:

UPC Hawaii / KWP II Filing of Complaint	February 6, 2008
Order No. 24034 issued	February 11, 2008
Shell Motion to Intervene	February 25, 2008
HECO/MECO Response to Complaint	March 3, 2008
UPC Hawaii / KWP II Memorandum in Opposition to Shell's Motion to Intervene	March 4, 2008
Order No. 24069 issued	March 4, 2008
Informal Status Conference	March 14, 2008
Stipulated Procedural Schedule submitted for Commission approval	March 20, 2008
Technical Discussions	April 7, 2008 to May 12, 2008
Stipulation or Simultaneous Data Filing	May 19, 2008
Simultaneous Written Testimonies and Exhibits	June 6, 2008
Evidentiary Hearing	June 20, 2008
Simultaneous Opening Briefs	July 7, 2008
Simultaneous Reply Briefs	July 14, 2008
Commission Decision and Order	July 28, 2008

Notwithstanding anything to the contrary contained herein, the parties shall have the right to request an amendment to the Stipulated Regulatory Schedule as may be mutually agreed to by the affected parties in writing from time to time. Such mutual agreement to request an amendment to the Stipulated Regulatory Schedule shall be set forth in and by letter filed with the Commission and the affected parties may mutually agree to revise any scheduled matter set forth

therein except for the date of the Evidentiary Hearing, if any. Such letter shall constitute the requested amendment to this Stipulated Procedural Order upon filing with the Commission and shall be effective upon approval by the Commission unless otherwise ordered by the Commission.

The intent of the parties in agreeing to a procedural schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the procedural schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

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

A. Witnesses

Witnesses for the parties shall follow the following procedures:

Pre-filed written testimonies and exhibits for witnesses scheduled to appear at the evidentiary hearing shall be filed in accordance with the Schedule of Proceedings, subject to such changes to the procedural schedule as may be agreed upon by the parties and approved by the Commission. Witnesses submitting written testimony and exhibits shall be made available for cross-examination at the evidentiary hearing. Witnesses should file the work papers used in preparing the evidence they sponsor at the time they submit their testimony and exhibits and have such work papers available at the evidentiary hearing. Witnesses will not be permitted to read prefiled written testimony at the evidentiary hearings.

In the presentation of the testimony, each witness may give a brief oral summary of the written testimony and exhibits and shall summarize the issues raised by such testimony. Each witness shall be subject to cross-examination on his/her testimony and exhibits.

The parties shall cooperate to accommodate the schedules of mainland witnesses and will inform the Commission in advance of any scheduling difficulties with respect to such witnesses. If a party has an objection to a timely request to schedule a mainland witness in advance of other witnesses, the party shall make a timely objection to the Commission. The parties will make their best effort to accommodate the schedules of mainland witnesses by coordinating their appearance at the evidentiary hearing.

B. Form of Prepared Testimony

All prepared testimony, including text and exhibits, shall be prepared in written form on 8-1/2" x 11" paper with line numbers and page numbers, and shall be served on the dates designated in the Schedule of Proceedings.

Each party shall be permitted to follow its own numbering system for written testimony and exhibits, provided that the numbering system utilized is consistent and is clearly understandable. Each party shall prepare a list of its exhibits by exhibit numbers and titles.

The parties shall be permitted to make revisions to exhibits after the designated dates appearing in the Schedule of Proceedings. Revisions shall bear appropriate revision dates. However, revisions or additions that do more than correct typographical errors, update facts, or give numerical comparisons of the positions taken by the parties, shall not be submitted except with the approval of the Commission.

Generally, exhibits should include appropriate footnotes, or narratives inserted in the related testimony, setting forth the sources of the information used and explaining the methods employed in making statistical compilations or estimates.

C. Matters of Public Record

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

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

D. Copies of Testimony, Exhibits and Data Filings

1. Testimony, Exhibits, Workpapers, Data Filings, Briefs:

Commission	Original + 8 copies
HECO	3 copies
Consumer Advocate	3 copies
UPC Hawaii / KWP II	3 copies
Shell	3 copies

2. All pleadings, briefs and other documents required to be filed with the Commission shall comply with the formatting requirements prescribed pursuant to Chapter 61, Subchapter 2, Section 6-61-16 of the Commission's Rules of Practice and Procedure and shall be

filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to Chapter 61, Subchapter 2, Section 6-61-15 of the Commission's Rules of Practice and Procedure.

3. Copies of all filings should be sent to the other parties by hand delivery or United States mail (first class, postage prepaid). In addition, if available, all parties shall provide copies of their filings to the other parties via diskette, CD or e-mail in a standard electronic format that is readily available by the parties. The parties agree to use Word 97, Word 2000 or Word 2003 as the standard programming format for filings in this case. However, if workpapers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a party shall not be required to convert such workpapers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a filing is delivered to a party via diskette, CD or e-mail, unless otherwise agreed to by such party, the same number of hard copies of such filing must still be delivered to such party by hand delivery or United States mail (first class, postage prepaid) as provided in Part E, above.

E. Order of Examination at the Evidentiary Hearing

The following shall apply:

Pursuant to Chapter 61, Subchapter 3, Section 6-61-31, of the Commission's Rules of Practice and Procedure, each party shall open its case in the following order of presentation, unless any party decides to present its case jointly with other parties:

1. UPC Hawaii / KWP II;
2. HECO / MECO;
3. Shell; and

4. Consumer Advocate.

Cross-examination, re-direct examination, recross-examination and any subsequent examination allowed by the Commission shall be conducted in the same order as the presentation of the respective direct cases.

Examination of any witness shall be limited to one attorney or representative for a party. The parties shall avoid duplicative or repetitious cross-examination. Friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Recross-examination shall be limited to the extent of material covered in redirect examination unless otherwise permitted by the Commission.

F. Communications

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

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

G. General

These procedures are consistent with the orderly conduct of this docket. This Stipulated Procedural Order shall control the subsequent courses of these proceedings, unless modified by the Parties in writing and approved by the Commission, or upon the Commission's own motion.

This Stipulated Procedural Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Procedural Order by facsimile for initial submission to the Commission to be followed by the filing of originals of said facsimile pages.

DONE at Honolulu, Hawaii, _____

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
John E. Cole, Commissioner

By _____
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

By _____
Kaiulani Kidani Shinsato
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Stipulated Procedural Order No. _____ upon the following parties, 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
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Karen Higashi

DATED: _____

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24126 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
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Page 2

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Karen Higashi

DATED: APR - 7 2008