

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval of a Biodiesel Supply )  
Contract with Imperium Services, )  
LLC, and to include Contract )  
Costs in HECO's Energy Cost )  
Adjustment Clause. )  
\_\_\_\_\_)

DOCKET NO. 2007-0346

ORDER NO. 24144

Filed April 10, 2008  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

RECEIVED  
2008 APR 14 A 3 24  
DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
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LLC, and to include Contract )  
Costs in HECO's Energy Cost )  
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Docket No. 2007-0346

Order No. 24144

ORDER

By this Order, the commission: (1) adopts with modifications the Stipulated Procedural Order submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO")<sup>1</sup> and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")<sup>2</sup> as Exhibit B to HECO and the Consumer Advocate's Motion for Approval of Stipulated Procedural Order ("HECO and the Consumer Advocate's Stipulation"),<sup>3</sup> filed on January 25, 2008; and (2) declines to adopt Life of the Land's

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<sup>1</sup>HECO is a Hawaii corporation and a public utility as defined by Hawaii Revised Statutes ("HRS") § 269-1. HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii.

<sup>2</sup>The Consumer Advocate is an ex officio party to any proceeding before the commission, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

<sup>3</sup>HECO and the Consumer Advocate jointly submitted their Motion for Approval of Stipulated Procedural Order; Exhibits A and B; Memorandum in Support of Motion and Certificate of Service on January 25, 2008.

("LOL") Proposed Stipulation re: Statement of Issues, Schedule of Filings, Protective Order, and Certificate of Service ("LOL's Proposed Stipulation").<sup>4</sup>

I.

Stipulated Procedural Order (as Modified)

On October 18, 2007, HECO filed an Application for commission approval of a Biodiesel Supply Contract between HECO and Imperium Services, LLC ("Imperium") dated August 13, 2007 ("Contract"). The Contract is for a biodiesel fuel supply for HECO's new combustion turbine generating unit at Campbell Industrial Park ("CIP") in Kapolei, Hawaii.<sup>5</sup> HECO also requests commission approval to include the costs for biodiesel fuel, transportation, storage and related taxes incurred pursuant to the Contract in HECO's Energy Cost Adjustment Clause ("ECAC") to the extent that the costs are not recovered in HECO's base rates.

On November 5, 2007, LOL timely filed a motion to intervene in this docket. By Order No. 23965, filed on January 10, 2008, the commission granted LOL's motion to intervene, with certain conditions. In addition, it ordered HECO, the Consumer Advocate, and LOL (collectively, "the Parties") to submit, within fifteen (15) days of the order, a stipulated procedural schedule, or if the Parties were unable to

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<sup>4</sup>The matter of a protective order will be addressed by the commission in a separate order.

<sup>5</sup>By Decision and Order No. 23457, filed on May 23, 2007, in Docket No. 05-0145, the commission approved HECO's request to commit funds for the purchase and installation of a new combustion turbine generating unit at CIP.

agree to a stipulated procedural schedule, then each party should submit its own proposed schedule for the commission's consideration. The Parties were directed that the filing should include the issues, procedures, and schedule to govern this docket. The commission also indicated that this docket would be "fast-tracked."

On January 22, 2008, LOL submitted its Proposed Stipulation. On January 25, 2008, HECO and the Consumer Advocate submitted their Stipulation. HECO and the Consumer Advocate proposed two versions of a stipulated procedural order, Exhibits A and B to their Stipulation. They state:

In Stipulated Procedural Order Exhibit A, [HECO] and the Consumer Advocate propose the use of written statements of position and oral argument to set forth the evidence and positions of the parties.

If, on the other hand, the Commission expands on the issues, [HECO] and the Consumer Advocate propose the use of Stipulated Procedural Order Exhibit B. In Stipulated Procedural Order Exhibit B, [HECO] and the Consumer Advocate propose the use of testimonies and oral argument to set forth the evidence and positions of the parties.

HECO and the Consumer Advocate's Stipulation, at 1-2.

As discussed further below, the commission is adding an additional issue; therefore, based on HECO and the Consumer Advocate's submission, Exhibit B should be utilized and Exhibit A is inapplicable. Also, Exhibit A required the use of written statements of position to set forth the evidence and positions of the Parties.<sup>6</sup> Exhibit B proposed the use of

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<sup>6</sup>HECO and the Consumer Advocate's Stipulation, at 1-2; Exhibit A.

testimonies to set forth the evidence and positions of the Parties.<sup>7</sup> The commission finds that the use of testimonies will assist in the review and analysis of this docket more than the use of written statements of position; therefore, Exhibit B is preferred by the commission.<sup>8</sup>

Upon review, the commission will adopt HECO and the Consumer Advocate's Stipulated Procedural Order, Exhibit B to HECO and the Consumer Advocate's Stipulation, with certain modifications described below.

A.

Statement of the Issues

On January 25, 2008, HECO and the Consumer Advocate submitted their Stipulation, which contained the following proposed issues:

1. Are the terms and conditions of HECO's Biodiesel Supply Contract with Imperium reasonable, prudent, and in the public interest?
2. Is it reasonable for HECO to include the costs for biodiesel fuel, transportation, storage, and related taxes incurred pursuant to the Imperium Contract in its [ECAC], to the extent that they are not recovered in HECO's base rates?

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<sup>7</sup>HECO and the Consumer Advocate's Stipulation, at 1-2; Exhibit B.

<sup>8</sup>On January 29, 2008, LOL submitted a Written Statement in Opposition to Hawaiian Electric Company's Motion for Approval of Proposed Stipulated Procedural Order and Motion for Protective Order; Affidavit [of] Henry Q Curtis and Certificate of Service.

3. Is it reasonable for HECO to use biodiesel blended with no more than 0.2% petroleum diesel (in addition to 100% biodiesel) in order to benefit from the Federal biofuel blender's credit?

HECO and the Consumer Advocate's Stipulation, at Exhibit B. The commission notes that the issues proposed by HECO and the Consumer Advocate are generally acceptable, with the exception of the phrase "in addition to 100% biodiesel" in issue number 3. Simply stated, 0.2% "in addition to" 100% equals 100.2%. Thus, for clarification, the commission will eliminate the phrase "in addition to 100% biodiesel."

On January 22, 2008, LOL filed its Proposed Stipulation, which contained the following issues:

1. Contract

- a. Was HECO's competitive bidding process which resulted in the selection of Imperium Services LLC reasonable?
- b. Can Imperium Services LLC supply adequate fuel necessary to reliably operate the [combustion turbine] unit when operational?
- c. Is it reasonable for [HECO] and [Imperium] to be able to amend the contract, and if so, under what conditions?

2. Markets

- a. Does a vibrant, multi-sourced national and international market supply exist in sustainable biofuels?
- b. Is the proposed price scheme reasonable?
- c. Should the price be adjusted periodically through the [ECAC] mechanism?

- d. Is it reasonable to include the costs for biodiesel fuel, transportation, storage and related taxes incurred pursuant to the Contract in HECO's [ECAC].

### 3. Sustainability

- a. Are the Natural Resources Defense Council ("NRDC") standards reasonable?
- b. Is the proposed chain of custody methodology reasonable to assure sustainable feedstock?
- c. How will the proposed feedstock affect greenhouse gas emissions?
- d. Do different feedstocks have significantly different costs and benefits?
- e. Is it reasonable to use palm oil?

### 4. Local Production

- a. Should local crops be preferred to imports, even if they cost more?
- b. What is a reasonable price premium, if any, for locally grown crops?
- c. Is it reasonable for Hawaiian Electric Company to promote the development of a local agricultural energy industry to supply Hawaii-grown feedstock when they have no expertise in agriculture and have demonstrated no in-house expertise in biofuels?

LOL's Proposed Stipulation, at 4-7. The commission finds that the issues proposed by LOL are subsumed within the broad issues listed in HECO and the Consumer Advocate's proposed issues. For example, LOL's proposed issues regarding the Contract, fuel source and supply are subsumed within HECO and the Consumer Advocate's first issue, pertaining to the reasonableness of the contract. Similarly, the commission notes that the issues regarding environmental sustainability are also subsumed within

the first issue as the Contract addresses this issue in its section 7.2.

Finally, the commission, *sua sponte*, adds an issue to address its concerns regarding items not specifically included within the Contract:

Is it reasonable, prudent and in the public interest for HECO to enter into the subject biofuel supply contract even though it does not expressly: (1) require meeting the Internal Revenue Service's requirements to qualify for any available tax credits, including, the renewable fuel mixture tax credit; and (2) require the satisfaction of biofuels sustainability principles contained in HECO and Natural Resources Defense Council's Roundtable on Sustainable Palm Oil Principles and Criteria?

Upon review, the commission adopts as reasonable the issues proposed in HECO and the Consumer Advocate's Stipulation, as modified, and with the addition of a fourth issue. Thus, the issues in this docket are as follows:

1. Are the terms and conditions of HECO's Biodiesel Supply Contract with Imperium reasonable, prudent, and in the public interest?
2. Is it reasonable for HECO to include the costs for biodiesel fuel, transportation, storage, and related taxes incurred pursuant to the Imperium Contract in its [ECAC], to the extent that they are not recovered in HECO's base rates?
3. Is it reasonable for HECO to use biodiesel blended with no more than 0.2% petroleum diesel in order to benefit from the Federal biofuel blender's credit?
4. Is it reasonable, prudent and in the public interest for HECO to enter into the subject biofuel supply contract even though it does not expressly (1) require meeting the Internal Revenue Service's requirements to qualify for any available tax credits, including, the renewable fuel mixture tax



credits; and (2) require the satisfaction of biofuels sustainability principles contained in HECO and Natural Resources Defense Council's Roundtable on Sustainable Palm Oil Principles and Criteria?

B.

Schedule of Proceeding

Pursuant to Order No. 23965, filed on January 10, 2008, HECO and the Consumer Advocate submitted a proposed Schedule of Proceedings and LOL submitted a proposed Schedule of Filings. HECO and the Consumer Advocate's proposed Schedule of Proceedings, Exhibit B, states:

	<b>Procedural Matter</b>	<b>Deadline</b>
1.	HECO Application	October 18, 2007
2.	Other Parties' Information Requests to HECO	February 14, 2008 or 18 days from the issuance of a protective order
3.	HECO's Responses to Information Requests	March 13, 2008 or four weeks from step 2.
4.	Written Testimonies, Exhibits and Workpapers of Other Parties	April 10, 2008 or four weeks from step 3.
5.	Information Requests to Other Parties	April 24, 2008 or two weeks from step 4.
6.	Other Parties' Responses to Information Requests	May 15, 2008 or three weeks from step 5.
7.	HECO's Written Rebuttal Testimonies, Exhibits, and Workpapers	June 5, 2008 or three weeks from step 6.
8.	Other Parties' Information Requests to HECO	June 19, 2008 or two weeks from step 7.
9.	HECO's Responses to Information Requests	July 10, 2008 or three weeks from step 8.

10.	Prehearing Conference	July 29, 2008, subject to the call of the Commission.
11.	Evidentiary Hearing Oral Argument	August 5-6, 2008, subject to the call of the Commission.
12.	Simultaneous Opening Briefs by Parties	3 weeks after availability of the Evidentiary Hearing transcript.
13.	Simultaneous Reply Briefs by Parties	2 weeks after the filing of Opening Briefs.

HECO and the Consumer Advocate's Stipulation, at Exhibit B, 2-4 (footnotes omitted).

LOL's proposed schedule is as follows:

**SCHEDULE OF FILINGS**

February 1, 2008	Protective Order Filed
February 1, 2008	HECO Transmits Unredacted Contract to Other Parties
February 15, 2008	HECO Testimony
February 29, 2008	Other Parties First Information Requests
March 14, 2008	HECO's Responses
March 28, 2008	Other Parties Second Information Requests
April 11, 2008	HECO's Responses
April 25, 2008	Other Parties Testimony
May 9, 2008	All Parties Information Requests
May 23, 2008	All Parties Responses
June 6, 2008	HECO's Rebuttal Testimony
June 20, 2008	Other Parties Information Requests

July 4, 2008	HECO's Responses
Week of July 18	Prehearing Conference
August	Evidentiary Hearing
September	Opening Briefs
September	Reply Briefs

LOL's Proposed Stipulation, at 8.

LOL's Schedule of Filings requires HECO to file Testimonies prior to the exchange of information requests. In contrast, under HECO and the Consumer Advocate's schedule, information requests are exchanged prior to HECO's Written Rebuttal Testimonies, Exhibits, and Workpapers, which is a more efficient method of discovery in this instance. Therefore, the commission declines to adopt LOL's proposed Schedule of Filings.

The commission finds that the Schedule of Proceedings attached to HECO and the Consumer Advocate's Stipulation as Exhibit B is, as a whole, reasonable, with one exception. Item number 12, "Simultaneous Opening Briefs by Parties" is revised to "Simultaneous Proposed Findings of Fact and Conclusions of Law," which will be due three weeks after the filing of transcripts. Also, item number 13, "Simultaneous Reply Briefs by Parties" is changed to "Simultaneous Comments to Proposed Findings of Fact and Conclusions of Law," which will be due two weeks after the filing of the "Simultaneous Proposed Findings of Fact and Conclusions of Law." Also, the Prehearing Conference will be held during the week of September 29, 2008. The Evidentiary Hearing Oral Argument shall be held during the week of October 6, 2008.

Based upon the above, the commission concludes that the Schedule of Proceedings governing this docket is amended as follows:

	<b>Procedural Matter</b>	<b>Deadline</b>
1.	HECO Application	October 18, 2007
2.	Other Parties' Information Requests to HECO	[February 14, 2008 or] 18 days from the issuance of a protective order
3.	HECO's Responses to Information Requests	[March 13, 2008 or] four weeks from step 2.
4.	Written Testimonies, Exhibits and Workpapers of Other Parties	[April 10, 2008 or] four weeks from step 3.
5.	Information Requests to Other Parties	[April 24, 2008 or] two weeks from step 4.
6.	Other Parties' Responses to Information Requests	[May 15, 2008 or] three weeks from step 5.
7.	HECO's Written Rebuttal Testimonies, Exhibits, and Workpapers	[June 5, 2008 or] three weeks from step 6.
8.	Other Parties' Information Requests to HECO	[June 19, 2008 or] two weeks from step 7.
9.	HECO's Responses to Information Requests	[July 10, 2008 or] three weeks from step 8.
10.	Prehearing Conference	<b><u>Week of</u></b> [July 29, 2008] <b><u>September 29, 2008</u></b> , subject to the call of the <u>Commission</u> .
11.	Evidentiary Hearing Oral Argument	[August 5-6, 2008,] <b><u>Week of October 6, 2008</u></b> , subject to the call of the Commission.

12.	Simultaneous [Opening Briefs by Parties] <u>Proposed Findings of Facts/Conclusions of Law</u>	3 weeks after filing of the Evidentiary Hearing transcript.
13.	Simultaneous [Reply Briefs by Parties] <u>Comments to Proposed Findings of Facts/Conclusions of Law</u>	2 weeks after the filing of [Opening Briefs.] <u>Findings of Facts/Conclusions of Law.</u>

HECO and the Consumer Advocate's Stipulation, at Exhibit B, 2-4 (footnotes omitted). Thus, we conclude that the schedule of proceedings, as modified above, should be approved, adopted, and made part of this procedural order. Unless ordered otherwise, the Parties shall adhere to the schedule. Notwithstanding the above, the Parties shall have the right to amend the procedural schedule as may be agreed in writing, as necessary, subject to approval by the commission.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The proposed Stipulated Procedural Order, attached to HECO and the Consumer Advocate's Stipulation as Exhibit B, filed on January 25, 2008, and attached as Exhibit 1 herein, is adopted, as modified herein, to govern the proceedings in this docket.

A. The issues governing this docket are as follows:

1. Are the terms and conditions of HECO's Biodiesel Supply Contract with Imperium reasonable, prudent, and in the public interest?
2. Is it reasonable for HECO to include the costs for biodiesel fuel, transportation, storage, and related taxes incurred pursuant to the Imperium Contract in its [ECAC], to the extent that they are not recovered in HECO's base rates?
3. Is it reasonable for HECO to use biodiesel blended with no more than 0.2% petroleum diesel in order to benefit from the Federal biofuel blender's credit?
4. Is it reasonable, prudent and in the public interest for HECO to enter into the subject biofuel supply contract even though it does not expressly (1) require meeting the Internal Revenue Service's requirements to qualify for any available tax credits, including, the renewable fuel mixture tax credits; and (2) require the satisfaction of biofuels sustainability principles contained in HECO and Natural Resources Defense Council's Roundtable on Sustainable Palm Oil Principles and Criteria?

B. The Schedule of Proceedings governing this docket is as follows:

	Procedural Matter	Deadline
1.	HECO Application	October 18, 2007
2.	Other Parties' Information Requests to HECO	18 days from the issuance of a protective order

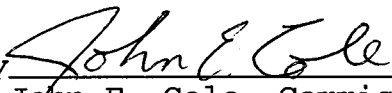
3.	HECO's Responses to Information Requests	four weeks from step 2.
4.	Written Testimonies, Exhibits and Workpapers of Other Parties	four weeks from step 3.
5.	Information Requests to Other Parties	two weeks from step 4.
6.	Other Parties' Responses to Information Requests	three weeks from step 5.
7.	HECO's Written Rebuttal Testimonies, Exhibits, and Workpapers	three weeks from step 6.
8.	Other Parties' Information Requests to HECO	two weeks from step 7.
9.	HECO's Responses to Information Requests	three weeks from step 8.
10.	Prehearing Conference	Week of September 29, 2008, subject to the call of the commission.
11.	Evidentiary Hearing Oral Argument	Week of October 6, 2008, subject to the call of the commission.
12.	Simultaneous Proposed Findings of Facts/Conclusions of Law	3 weeks after filing of the Evidentiary Hearing transcript.
13.	Simultaneous Comments to Proposed Findings of Facts/Conclusions of Law	2 weeks after the filing of Findings of Facts/Conclusions of Law.

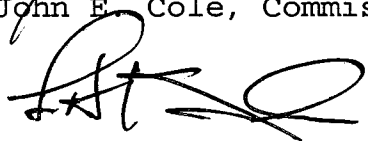
2. The commission declines to adopt LOL's Proposed Stipulation.

DONE at Honolulu, Hawaii APR 10 2008.

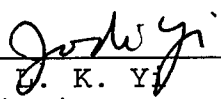
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Jodi L. K. Yi  
Commission Counsel

2007-0346.cp



**EXHIBIT B**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAIIAN ELECTRIC COMPANY, INC.	)	Docket No. 2007-0346
	)	
For Approval of Biodiesel Supply Contract	)	
with Imperium Services, LLC, and to Include	)	
Contract Costs in HECO's Energy Cost	)	
Adjustment Clause.	)	
_____	)	

STIPULATED PROCEDURAL ORDER NO. \_\_\_\_\_

Filed \_\_\_\_\_, 2008

At \_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Chief Clerk of the Commission

**EXHIBIT B**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAIIAN ELECTRIC COMPANY, INC.	)	Docket No. 2007-0346
	)	
For Approval of Biodiesel Supply Contract	)	
with Imperium Services, LLC, and to Include	)	
Contract Costs in HECO's Energy Cost	)	
Adjustment Clause.	)	
_____	)	

**STIPULATED PROCEDURAL ORDER**

On October 18, 2007, Hawaiian Electric Company, Inc. ("HECO") filed an application for approval of a Biodiesel Supply Contract between HECO and Imperium Services, LLC, dated August 13, 2007 ("Imperium Contract"). HECO served copies of the application on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate").

On November 5, 2007, Life of the Land ("LOL") filed a Motion to Intervene in this proceeding.<sup>1</sup> By Order No. 23965, filed January 10, 2008 ("Order 23965") the Commission granted LOL's Motion to Intervene and directed HECO, LOL, and the Consumer Advocate to submit a stipulated procedural schedule for the Commission's consideration and approval by January 25, 2008 (15 days from the date of Order No. 23965). The Commission ordered the parties to submit to the Commission a stipulated procedural schedule, incorporating their agreed-

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<sup>1</sup> HECO filed a Memorandum in Opposition to LOL's Motion to Intervene on November 13, 2007. On November 16, 2007, LOL filed a document titled Memorandum in Support of Motion to Intervene. On November 20, 2007, HECO submitted a letter to the Commission stating "the Commission should disregard LOL's Memorandum as the [c]ommission's [r]ules [footnote omitted] do not allow for replies and LOL failed to request leave to file a reply." On November 26, 2007, LOL filed a Request for Leave to File an Amended Pleading. On November 30, 2007, HECO submitted a Memorandum in Opposition to Life of the Land's Request for Leave to File an Amended Pleading. On December 3, 2007, HECO submitted an Amended Certificate of Service.

## **EXHIBIT B**

upon issues, procedures, and schedule with respect to this proceeding. Among other deadlines, the parties are to select a date for the evidentiary hearing.

HECO, LOL and the Consumer Advocate 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 Issues, Schedule of Proceedings, and procedures shall be utilized in this docket.

### **I. STATEMENT OF THE ISSUES**

The issues in this docket are:

1. Are the terms and conditions of HECO's Biodiesel Supply Contract with Imperium reasonable, prudent, and in the public interest?
2. Is it reasonable for HECO to include the costs for biodiesel fuel, transportation, storage, and related taxes incurred pursuant to the Imperium Contract in its Energy Cost Adjustment Clause, to the extent that they are not recovered in HECO's base rates?
3. Is it reasonable for HECO to use biodiesel blended with no more than 0.2% petroleum diesel (in addition to 100% biodiesel) in order to benefit from the Federal biofuel blender's credit?

### **II. SCHEDULE OF PROCEEDINGS**

1. HECO Application<sup>2</sup>

October 18, 2007

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<sup>2</sup> The HECO Application included narrative exhibits that were intended to support the Application in lieu of direct testimony. This narrative presentation has been used by HECO in other fuel contract proceedings, e.g., *In the Matter of the Application of Hawaiian Electric Company, Inc. for Approval of Low Sulfur Fuel Oil Contract Amendments with Chevron Products Company and Tesoro Hawaii Corporation and to Include Contract Amendments Costs in HECO's Energy Cost Adjustment Clause*, Decision and Order No. 21522, Docket No. 04-0128 (filed Dec. 30, 2004).

## EXHIBIT B

- |   |  |
|---|--|
| 2. Other Parties' Information Requests to HECO <sup>3</sup>                   | February 14, 2008 or 18 days from the issuance of a protective order. <sup>4</sup> |
| 3. HECO's Responses to Information Requests <sup>3</sup>                      | March 13, 2008 or four weeks from step 2.  |
| 4. Written Testimonies, Exhibits and Workpapers of Other Parties <sup>3</sup> | April 10, 2008 or four weeks from step 3.  |
| 5. Information Requests to Other Parties <sup>3</sup>                         | April 24, 2008 or two weeks from step 4.   |
| 6. Other Parties' Responses to Information Requests <sup>3</sup>              | May 15, 2008 or three weeks from step 5.   |
| 7. HECO's Written Rebuttal Testimonies, Exhibits, and Workpapers <sup>3</sup> | June 5, 2008 or three weeks from step 6.   |
| 8. Other Parties' Information Requests to HECO <sup>3</sup>                   | June 19, 2008 or two weeks from step 7.  |
| 9. HECO's Responses to Information Requests <sup>3</sup>                      | July 10, 2008 or three weeks from step 8.  |
| 10. Prehearing Conference   | Week of July 29, 2008, subject to the call of the Commission. <sup>5</sup>         |
| 11. Evidentiary Hearing Oral Argument   | August 5-6, 2008, subject to the call of the Commission. <sup>4</sup>              |
| 12. Simultaneous Opening Briefs by Parties                                    | 3 weeks after availability of the  |

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<sup>3</sup> Other Parties are the Consumer Advocate and LOL. Whenever possible, parties will provide a copy of documents on diskette upon request.

HECO will provide the confidential information within 5 days of the issuance of the protective order, assuming that the Parties have filed the executed Protective Agreements (Exhibit A) within this time period (i.e., 5 days from the issuance of the protective order).

<sup>5</sup> Depending on the date of the issuance of a protective order, the timing of the remaining steps may need to be altered to accommodate the procedural schedules in other pending dockets before the Commission. As a result, the Parties will provide the Commission with the revised procedural schedule, if necessary, within 2 weeks of the issuance of the protective order setting forth the specific dates for each procedural step.

## **EXHIBIT B**

Evidentiary Hearing  
transcript.

### 13. Simultaneous Reply Briefs by Parties

2 weeks after the  
filing of Opening  
Briefs.

The Imperium Contract is required to obtain a biodiesel fuel supply for HECO's new combustion turbine generating unit ("CIP1") at Campbell Estate Industrial Park, Kapolei, Oahu, Hawaii. The purchase and installation of CIP1 was approved in Docket No. 05-0145 by Decision and Order No. 23457 (filed May 23, 2007) wherein the Commission found that the use of biofuels in CIP1 would be reasonable and consistent with State policy to reduce Hawaii's dependence on imported fossil fuels, support the State's goal of encouraging development of local agriculture, and help diversify the State's economy.

In Order 23965 at 8, the Commission states that it "is aware of the need to expediently resolve the issues in this docket in preparation for the CIP project; it therefore intends to fast-track these proceedings." The parties recognize that the original term of the Imperium Contract commences on August 13, 2007, and expires on December 31, 2011. The commencement date for Imperium to provide biodiesel to HECO is January 1, 2009 (or earlier if mutually agreed to by the parties). HECO would appreciate a final decision from the Commission prior to November 1, 2008. However, the parties recognize that the Commission may be unable to complete its review of the Imperium Contract and issue its final decision by November 1, 2008. The parties request that the Commission issue an interim order prior to November 1, 2008 if a final decision cannot be issued.

## **EXHIBIT B**

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

#### **A. Requests for Information**

A party to this proceeding may submit information requests to another party within the time schedule specified in this Stipulated Procedural Order. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information. If the parties are unable to agree, the responding party may seek approval for the late submission from the Commission upon a showing of good cause. It is then within the Commission's discretion to approve or disapprove such late filings and take any additional action that may be appropriate, such as extending the date for the party to respond.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials (e.g., documents over 50 pages), the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or other readily usable electronic medium, the party responding to the information request shall make the diskette or such electronic medium available to the parties and the Commission. Subject to objections that may be raised and to the extent practicable, the electronic files for spreadsheet will contain all formulae intact, and will not be entirely converted to values prior to submission. A party shall not be required, in a response to an information request, to provide data that is/are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part D, infra. The responding party shall, in lieu of production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and

## EXHIBIT B

copy the document.<sup>6</sup> In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information to some or all representatives of the party pursuant to a protective order.

A party seeking production of documents notwithstanding a party's claim of confidentiality, may file a motion to compel production with the Commission.

The responses of each party to information requests shall adhere to a uniform system of numbering agreed upon by the parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-IR-1," and a response to this information request shall be referred to and designated as "Response to CA-IR-1."

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<sup>6</sup> As practical, each party will cooperate in making available documents that are already on file with the Commission or otherwise part of the public record and in reproducing (at reasonable charges), such public record documents as well as voluminous material referenced by such parties, designated by the requesting parties and/or making available one copy of the designated documents for loan for a reasonable period of time to be reproduced by the requesting party.

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Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference the attached responsive document.

### **B. Witnesses**

Witnesses shall submit written testimony and exhibits and be made available for cross-examination at the evidentiary hearing. Witnesses will not be permitted to read prefiled written testimony 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.

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 for both testimony and exhibits, as applicable.

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.

### **C. 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.



## **EXHIBIT B**

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.

### **D. Matters of Public Record**

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record 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.

### **E. Copies and Format of Testimony, Exhibits, Workpapers, Statements of Position, Information Requests, Responses to Information Requests, and Briefs**

1. Testimony, Exhibits, Workpapers, Statements of Position, Information Requests, Responses to Information Requests, and Briefs:

Commission

Original + 8 copies

## **EXHIBIT B**

HECO	2 copies
Consumer Advocate	2 copies
LOL	2 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, information requests and information request responses 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, information requests and information request responses to the other parties via diskette 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, information request or information request response is delivered to a party via diskette or e-mail, unless otherwise agreed to by such party, the same number of copies of such filing, information request or information request response must still be delivered to such party by hand delivery or United States mail (first class, postage prepaid) as provided in Part E.1 above.

## **EXHIBIT B**

### **F. Order of Examination at the Evidentiary Hearing**

Pursuant to Chapter 61, Subchapter 3, Section 6-61-31, of the Commission's Rules of Practice and Procedure, HECO's witnesses shall open with its direct case. The Consumer Advocate's direct case shall be presented after HECO's direct case, followed by LOL's direct case. HECO shall close with its rebuttal case.

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.

### **G. 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.

### **H. General**

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

**EXHIBIT B**

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, this \_\_\_\_\_ day of \_\_\_\_\_, 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:

By \_\_\_\_\_  
Jodi L. K. Yi  
Commission Counsel

**EXHIBIT B**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing Stipulated Procedural Order No. \_\_\_\_\_ together with this Certificate of Service, upon the following, by causing a copy hereof to be served by U.S. Mail, postage prepaid and properly addressed, to the following:

Catherine P. Awakuni  
Executive Director  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs  
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Life of the Land  
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737 Bishop Street, Suite 2400  
Honolulu, HI 96813

Attorneys for HECO

DATED: Honolulu, Hawaii, \_\_\_\_\_, 2008.

\_\_\_\_\_  
Karen Higashi

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24144 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
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\_\_\_\_\_  
Karen Higashi

DATED: APR 10 2008