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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Waiver of the Airport)
Dispatchable Standby Generation)
Project from the Competitive)
Bidding Framework, Approval of a)
Dispatchable Standby Generation)
Agreement with the State of Hawaii,)
Department of Transportation,)
Approval of the Dispatchable)
Standby Generation Project Cost)
Accounting, Approval to Include)
the Project Fuel Costs in Hawaiian)
Electric Company, Inc.'s Energy)
Cost Adjustment Clause, and)
Approval to Commit Funds in Excess)
of \$2,500,000.)

DOCKET NO. 2008-0329

ORDER DENYING LIFE OF THE LAND'S MOTION TO INTERVENE

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Docket No. 2008-0329

ORDER DENYING LIFE OF THE LAND'S MOTION TO INTERVENE

By this Order, the commission denies the motion to intervene filed by LIFE OF THE LAND ("LOL") on January 20, 2009.¹

I.

Background

HECO is the franchised provider of electric utility service on the island of Oahu.

The Airport Dispatchable Standby Generation ("DSG") Project ("Project") involves the: (1) construction of an

¹The Parties are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

emergency power facility ("EPF") by the State of Hawaii ("State"), Department of Transportation, Airports Division ("DOT Airports"), at the Honolulu International Airport ("HNL Airport"); and (2) operation and maintenance of the EPF pursuant to the provisions of the DSG Agreement between HECO and DOT Airports, dated September 24, 2008 (the "DSG Agreement"). The DSG Agreement "governs HECO's operation of the EPF generators at their continuous operation rating totaling 8 [megawatts ('MW')]. During short term emergency operation, the EPF will be capable of generating up to 10 MW total."²

HECO intends to utilize biodiesel as a fuel source,³ provided that biodiesel can be procured at a reasonable cost from a reliable source with fuel specifications as required by the Covered Air Source Permit and with the fuel purchase agreement approved by the commission. HECO's back-up plan is to utilize fossil fuel (diesel, or if unavailable, jet fuel) as a secondary fuel source. Consistent thereto, the EPF generators have the capability of burning biodiesel, diesel, and jet fuel.

By its Application filed on December 31, 2008, HECO requests commission action on various matters related to the DSG Project.⁴ Specifically, HECO requests that the commission:

²Application, at 2 n.2.

³See HRS § 269-91 (the definition of renewable energy includes biofuels).

⁴Application; Verification; Exhibits 1 to 5; and Certificate of Service, filed on December 31, 2008 (collectively, "Application").

1. Waive the DSG Project from the commission's Framework for Competitive Bidding, dated December 8, 2006 ("CB Framework"), pursuant to Parts II.A.3.b(i), b(iii), b(iv), c(iii), and d of the CB Framework;

2. Approve the DSG Agreement between HECO and DOT Airports, pursuant to HECO's Tariff Rule 4;

3. Approve the commitment of funds for the DSG Project, currently estimated at \$3.4 million (exclusive of customer contributions), pursuant to Section 2.3.g.2 of General Order No. 7, Standards for Electric Utility Service in the State of Hawaii, as modified by Decision and Order No. 21002, filed on May 27, 2004, in In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 03-0257 ("Docket No. 03-0257");⁵

4. Approve the inclusion of HECO's DSG fuel costs, ground transportation costs, and related taxes, in HECO's Energy Cost Adjustment Clause, to the extent that such costs are not recovered in HECO's base rates, pursuant to HAR § 6-60-6; and

5. Approve the proposed accounting and ratemaking treatments for the DSG Capital Expense Budget and Overhaul Cost Reimbursement.

⁵In Docket No. 03-0257, the commission increased the monetary threshold governing the filing of capital expenditure applications by HECO, from \$500,000 to \$2.5 million, exclusive of customer contributions, effective from July 1, 2004.

A.

Life of the Land's Motion to Intervene

On January 20, 2009, Life of the Land ("LOL") timely filed its Motion to Intervene.⁶ In its motion, LOL states:

1. LOL is a non-profit, Hawaii-based corporation, whose members live, work, and recreate in Hawaii. LOL "is concerned with many issues including those related to the environment, climate, justice, equity, and life cycle impacts."⁷

2. HECO plans to utilize biofuels as its primary fuel, with diesel and jet fuel as back-up fuel sources.

3. This docket involves the construction of a new generator that must be powered with liquid fuels, i.e., petroleum oil or vegetable oil. HECO has not identified any source for the palm oil, which has many negative impacts. Palm oil as a fuel to generate electricity, in turn, is an unresolved issue before the commission. This docket continues and expands on this unresolved issue.

4. Other than intervention, there are no other available means to protect LOL's interests. In recent regulatory proceedings, HECO and the Consumer Advocate have taken identical positions, which have the effect of minimizing options presented to the commission. Conversely, in most dockets that are or have recently been before the commission, LOL has taken positions that have been significantly different from the Consumer Advocate.

⁶Motion to Intervene and Certificate Service, filed on January 20, 2009 (collectively, "Motion to Intervene").

⁷Motion to Intervene, at 5.

For example, "[a] quick review of Dockets 05-0145 and 2007-0346 reveal deep rifts between the LOL and Consumer Advocate positions."⁸

5. LOL's participation herein will assist the commission in developing a sound evidentiary record. LOL offers a unique perspective and intends to present a proactive case, supported by expert witnesses and exhibits, thereby providing the commission with alternative scenarios.

6. LOL will neither unduly broaden the issues nor delay this proceeding.

7. LOL's interests differ from those of the general public. There is nothing in the existing record to indicate that any of the issues that are of concern to LOL have been analyzed or will be represented by any other party. Moreover, "[i]n this case, the Consumer Advocate has agreed to a unified position with the utility."⁹

B.

HECO's Opposition

On January 27, 2009, HECO filed its Memorandum in Opposition to LOL's Motion to Intervene.¹⁰ In opposing LOL's intervention, HECO contends:

⁸Motion to Intervene, at 8.

⁹Motion to Intervene, at 10.

¹⁰Memorandum in Opposition to LOL's Motion to Intervene; Declarations of Counsel, Marisa Chun, Dean K. Matsuura, and Scott Seu; and Certificate of Service, filed on January 27, 2009 (collectively, "Opposition").

1. LOL's intervention is likely to broaden the issues or delay the proceeding. The primary purpose of the EPF is to provide HNL Airport with emergency power in the event of a grid outage to enable the airport to continue operating during a blackout, i.e., in emergency operation mode. Moreover, HECO has the option of operating the EPF for the secondary purpose of generating power for its utility system needs, up to 1,500 hours per year, i.e., in parallel operation mode. By contrast, LOL's interests relate to broad-based social and environmental concerns, with a seemingly particular focus on issues relating to biofuel procurement. Such interests do not justify LOL's intervention as a party, as they are not reasonably pertinent to this proceeding.

2. In particular, LOL's interest in the source of the biofuels to be used in the EPF generators is not reasonably pertinent to the issues in this proceeding. In this regard, the commission has previously found that the use of palm oil as a source of fuel represents an issue that was outside the scope of a capital expenditure proceeding.¹¹ Consistent with the

¹¹HECO cites to the commission's approval of the utility's commitment of funds for the Campbell Industrial Park Generating Station and Transmission Additions Project and other related matters, including HECO's commitment to operate the new 100 megawatt combustion turbine exclusively with biofuels. In re Hawaiian Elec. Co., Inc., Docket No. 05-0145 ("Docket No. 05-0145"), Decision and Order No. 23457, filed on May 23, 2007. HECO specifically cites to the following findings made by the commission therein:

. . . . In sum, while very important, LOL's broad-based environmental concerns and proposals are simply too broad to be adequately addressed and resolved in this capital expenditure proceeding, given that it is undisputed that the

commission's findings in Docket No. 05-0145, the "consideration of palm oil as a source of biofuels would be more appropriately considered in the Clean Energy Scenario Planning docket that the parties to the [Hawaii Clean Energy Initiative ('HCEI')] Agreement have agreed to open in lieu of HECO's IRP-4. Accordingly, exploring LOL's interests in biofuels as part of this docket (which is primarily concerned with the provision of emergency power to Honolulu International Airport) could only unduly broaden the issues in this proceeding and delay the project, which has been moving ahead on schedule for commercial operation in the third quarter of 2010, with the DSG Agreement having been executed in the third quarter of 2008 and the Application being filed in the fourth quarter of 2008."¹²

Moreover, the fuel requirements for the EPF are relatively small in comparison to those of HECO's CT-1 generating unit ("CT-1") for Campbell Industrial Park; thus, in order to

Project is needed by July 2009, and that the climate change issues will be more appropriately addressed as a part of the long-range utility planning process in HECO's IRP-4.

As to HECO's commitment to use 100% biofuels, the commission finds that commitment to be reasonable and consistent with State policy to reduce Hawaii's dependence on imported fossil fuels and encourage sustainability through economic diversification, export expansion, and import substitution

Opposition, at 6-7 (quoting Docket No. 05-0145, Decision and Order No. 23457, at 44-45 (footnote and text therein omitted)).

¹²Opposition, at 7 (footnote and text therein omitted).

benefit from economies of scale, HECO intends to procure fuel for the EPF from the biofuel supplier for CT-1.¹³

3. LOL's other holistic interests relate to general issues of social and environmental concern, issues that are not reasonably pertinent to the DSG Project, and could only serve to broaden the issues and delay the addition of necessary emergency power at HNL Airport. In its motion, LOL "does not specifically express an interest reasonably pertinent to the provision of emergency power at HNL Airport, or in the provision of additional quick-starting capacity for HECO."¹⁴

4. LOL has not demonstrated that the Consumer Advocate will not adequately represent LOL's interests. Contrary to LOL's contentions, HECO and the Consumer Advocate have never agreed to a unified position with respect to the DSG Project.

II.

Discussion

The standard for granting intervention is set forth in HAR § 6-61-55, which requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. HAR § 6-61-55 provides:

§6-61-55 Intervention. (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

¹³Declaration of Scott Seu, dated January 27, 2009.

¹⁴Opposition, at 8.

- (b) The motion shall make reference to:
- (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
 - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
 - (9) Whether the applicant's position is in support of or in opposition to the relief sought.

(c) The motion shall be filed and served by the applicant in accordance with sections 6-61-21 and 6-61-57.

(d) Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.

HAR § 6-61-55. Moreover, intervention "is not a matter of right but a matter resting within the sound discretion of the commission." In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Here, the commission is not convinced that LOL's allegations are reasonably pertinent to the issues presented in this proceeding. The commission concurs with HECO's assessment that LOL's primary focus for intervening in this proceeding

is the utility's use of biofuels as the primary fuel source for the DSG Project, with LOL specifically asserting the use of palm oil as HECO's contemplated fuel source. Biofuels, however, is defined and recognized as a renewable energy resource under the State's Renewable Portfolio Standards, codified at HRS chapter 269, part V. Furthermore, HECO's biofuel supply contract with Imperium Services, LLC, for the Campbell Industrial Park CT-1 unit is presently subject to the commission's adjudication in In re Hawaiian Elec. Co., Inc., Docket No. 2007-0346, where LOL continues to fully participate as an intervenor in that proceeding, including its participation in the October 2008 evidentiary hearing. In this regard, HECO represents that it intends to procure fuel for the Airport EPF from the biofuel supplier for the Campbell Industrial Park CT-1 unit. Under the circumstances, LOL's concerns with HECO's proposed use of biofuels as a fuel source for the generation of electricity are documented in the commission's records and well known to the commission.¹⁵

Moreover, LOL, in its motion, does not focus on HECO's pertinent requests, including: (1) whether there is an overall need for the DSG Project, specifically, the asserted need for emergency power generation at HNL Airport in the event of a power outage; (2) whether the DSG Project meets the criteria for waiver from the competitive bidding process; and (3) whether the proposed accounting and ratemaking treatments for the DSG Capital Expense Budget and Overhaul Cost Reimbursement are reasonable.

¹⁵See, e.g., Dockets No. 2007-0346 and No. 05-0145.

By contrast, the commission notes that LOL asserts broad social and holistic interests - characterized by LOL as "those related to the environment, climate, justice, equity, and life cycle impacts" - which will appear to unreasonably broaden the issues already presented in this proceeding.¹⁶ In connection thereto, the commission finds that, based on LOL's allegations, LOL has not convincingly shown, in this instance, that its participation herein will assist the commission in developing a sound record for the purpose of adjudicating HECO's specific requests.

Based on the foregoing reasons, the commission denies LOL's Motion to Intervene.

III.

Order

THE COMMISSION ORDERS:


LOL's Motion to Intervene, filed on January 20, 2009, is denied.

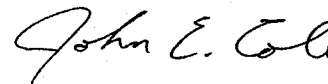
¹⁶Motion to Intervene, at 10. According to LOL, its holistic views include: "(a) Transparency/Sunshine; (b) Life Cycle Social Impacts; (c) Life Cycle Environmental Impacts; and (d) Life Cycle Financial Impacts." Id. at 6; see also id. at 6-7.

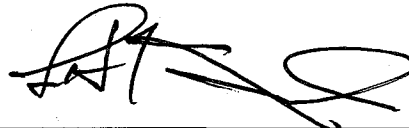
DONE at Honolulu, Hawaii

FEB 10 2009

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:



Michael Azama
Commission Counsel

2008-0329.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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