

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
 HAWAIIAN ELECTRIC COMPANY, INC.)
)
 For a Declaratory Order Declaring)
 That Hawaiian Electric's Bifurcation)
 For Further Consideration of the)
 Two Non-Conforming Large Wind Farm)
 Proposals from the Conforming)
 Proposal That Were Submitted Through)
 A Competitive Bidding Process in)
 Docket No. 2007-0331 Was Proper)
 _____)

Docket No. 2009-0327

ORDER INSTRUCTING THE PARTIES
TO SUBMIT A STIPULATED PROCEDURAL ORDER

PUBLIC UTILITIES
COMMISSION

2009 DEC - 1 P 12: 22

FILED

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ORDER INSTRUCTING THE PARTIES
TO SUBMIT A STIPULATED PROCEDURAL ORDER

By this Order, the commission instructs HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), to submit a stipulated procedural order, as set forth herein, for the commission's review and consideration by December 14, 2009.¹

I.

Background

By its petition filed on November 16, 2009, HECO requests that the commission issue a declaratory order "declaring that [HECO's] bifurcation for further consideration of the two

¹At this time, the Parties are HECO and the Consumer Advocate, an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The deadline for any interested person to timely move to intervene or participate in this proceeding is December 7, 2009, pursuant to HAR § 6-61-57(3)(A).

non-conforming proposals from the conforming proposals that were submitted through a competitive bidding process in Docket No. 2007-0331, Competitive Bidding Proceeding for Renewable Energy on Oahu, was proper."²

In reviewing the Petition, the commission is concerned that HECO's request for declaratory relief is inappropriately narrow. As the commission understands it, Docket No. 2007-0331 was opened to "receive filings, review approval requests, and resolve disputes, if necessary, related to [HECO's] proposal to proceed with a competitive bidding process to acquire approximately 100 MW of non-firm renewable energy for the Island of Oahu" ("Oahu RFP").³ According to the Petition, HECO "received two non-conforming proposals for large wind farms (in the 350-400 MW range) on the islands of Lanai and Molokai, with the power to be transmitted via undersea cable to Oahu."⁴ HECO states that, "[i]n order to take advantage of the opportunity offered by the two large wind farm proposals ('Big Wind Projects'), and to address the challenges in integrating these types of projects into the Oahu grid, [HECO] determined that it should bifurcate its further consideration of the non-confirming bids from the conforming bids."⁵ "With respect to the Big Wind

²Petition for Declaratory Order; Memorandum in Support of Petition for Declaratory Order; Attachments 1-2; Verification; and Certificate of Service ("Petition").

³Order No. 23699, filed on October 9, 2007, in Docket No. 2007-0331.

⁴Petition, at 3-4.

⁵Petition, at 4.

[P]rojects, the two developers have each agreed to develop up to a 200 MW wind farm on each of the two islands. If a PPA cannot be reached upon acceptable terms and conditions with a developer, or if a developer cannot meet the key project milestones identified in a PPA, then one of the developers may end up developing most of the total project."⁶

In the commission's view, it would be inappropriate for the commission to resolve the limited issue of whether the bifurcation was proper (as requested by HECO) without addressing the larger issue of whether the Big Wind Projects comply with the Framework for Competitive Bidding, i.e., whether the Big Wind Projects were competitively bid. Included within that larger issue, are some of the following sub-issues: what was the scope of the Oahu RFP; was there sufficient notice to potential bidders of the ability to file non-conforming proposals; whether bifurcation of the non-conforming proposals was proper; whether selection of all non-conforming proposals was appropriate.⁷

Hawaii Administrative Rules § 6-61-160 states that "[t]he commission may, on its own motion or upon request and without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty."⁸ Here, the commission

⁶Petition, at 4-5.

⁷Although identified by the commission, HECO maintains the burden of demonstrating compliance with the Framework on all issues and sub-issues.

⁸In its Petition, HECO appears to rely on HAR § 6-61-59 as the basis for its Petition. See Petition, at 1 n.1. Section 6-61-59 states: "On the petition of an interested person, the commission may issue a declaratory order as to the applicability of any statute or any rule or order of the commission." HECO,

finds that, to "terminate a controversy or to remove uncertainty," the commission is required to resolve the larger issue (and sub-issues) identified above. Accordingly, the commission finds it appropriate to instruct the Parties to submit a stipulated procedural order for the commission's review and consideration by December 14, 2009.⁹ In doing so, the Parties' stipulated procedural order should address, not only the issue identified in HECO's Petition, i.e., whether bifurcation was proper, but the issues identified by the commission above. The Parties should also include as an issue whether a waiver from the Competitive Bidding Framework would be appropriate for the Big Wind Projects.

however, does not reference the "statute," "rule or order" that forms the basis of its Petition.

⁹HAR § 6-61-162 states:

6-61-162 Commission action. (a) Within forty-five days after the submission of a petition for declaratory ruling, the commission shall:

(1) Deny the petition in writing, stating the reasons for that denial;

(2) Issue a declaratory order on the matters contained in the petition; or

(3) Set the matter for hearing, as provided in subchapter 3.

(b) If the matter is set for hearing, the commission shall render its findings and decision, unless otherwise indicated at the time of the hearing, within thirty days after the close of the hearing or, if briefs are filed, thirty days after the last brief is filed.

II.

Order

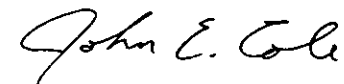
THE COMMISSION ORDERS:

The Parties shall submit a stipulated procedural order, incorporating their-agreed upon schedule and procedures with respect to this proceeding, for the commission's review and consideration by December 14, 2009, as set forth herein. If the Parties are unable to agree on a stipulated procedural order, each of the parties shall submit its own proposed procedural order by the same date.

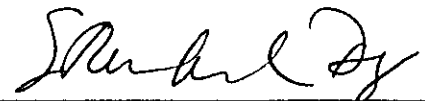
DONE at Honolulu, Hawaii DEC - 1 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

By: 
Leslie H. Kondo, Commissioner

2009-0327.cp

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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DIVISION OF CONSUMER ADVOCACY
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