

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
HAWAIIAN ELECTRIC COMPANY, INC. and)
CHEVRON PRODUCTS COMPANY)
)
Filing of Certain Confidential Material related to)
a Second Amendment to Low Sulfur Fuel Supply)
Contract between Hawaiian Electric Company, Inc.)
and Chevron Products Company)
_____)

STIPULATION FOR PROTECTIVE ORDER 2009-PO-27

EXHIBIT A

and

CERTIFICATE OF SERVICE

PUBLIC UTILITIES
COMMISSION

2009 DEC 23 P 12:48

FILED

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OF THE STATE OF HAWAII

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CHEVRON PRODUCTS COMPANY)
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Filing of Certain Confidential Material related to)
a Second Amendment to Low Sulfur Fuel Supply)
Contract between Hawaiian Electric Company, Inc.)
and Chevron Products Company)
_____)

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, Hawaiian Electric Company, Inc. (“Hawaiian Electric”), intends to file an application (the “Application”) for approval of a Second Amendment to Low Sulfur Fuel Oil Supply Contract by and between Chevron Products Company, a Division of Chevron U.S.A. Inc. (“Chevron”), and Hawaiian Electric (the “Second Amendment to Fuel Contract”);

WHEREAS, in Docket No. 97-0397, Hawaiian Electric filed the Low Sulfur Fuel Oil Supply Contract by and between Chevron Products Company, a Division of Chevron U.S.A. Inc. and Hawaiian Electric, dated November 14, 1997, and the Low Sulfur Fuel Supply Contract by and between BHP Petroleum Americas Refining, Inc. and Hawaiian Electric, dated November 14, 1997, under Protective Order No. 16096, filed November 21, 1997, because the pricing, volume and related provisions in the contracts are confidential and proprietary information, and disclosure of the confidential contract provisions could disadvantage Hawaiian Electric in its future negotiations for fuel oil contracts (which could result in higher fuel oil prices to be covered by Hawaiian Electric’s customers’ rates);

WHEREAS, in Docket No. 04-0128, HECO filed the First Amendment to Low Sulfur Fuel Oil Supply Contract by and between Chevron Products Company, a Division of Chevron U.S.A. Inc. and Hawaiian Electric, dated April 12, 2004, and the First Amendment to Low Sulfur Fuel Supply Contract by and between BHP Petroleum Americas Refining, Inc. and Hawaiian Electric, dated March 29, 2004, under Protective Order No. 21061, filed June 17, 2004, because the pricing, volume and related provisions in the contracts are confidential and proprietary information, and disclosure of the confidential contract provisions could disadvantage Hawaiian Electric in its future negotiations for fuel oil contracts (which could result in higher fuel oil prices to be covered by HECO's customers' rates);

WHEREAS, Hawaiian Electric contends that the pricing, volume and related provisions in the Second Amendment to Fuel Contract, and certain portions of the exhibits to be filed in support of the Application, are confidential and proprietary information because disclosure of the confidential contract amendment provisions and supporting information could disadvantage Hawaiian Electric in its future negotiations for fuel oil contracts;

WHEREAS, prior to submission of the Application, representatives of Hawaiian Electric and/or Chevron will discuss and produce to the Public Utilities Commission (the "Commission") and/or the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate") certain confidential information regarding the pricing, volume and related provisions in the Second Amendment to Fuel Contract (the "Pre-Application Discussions"), which constitute confidential and proprietary information because disclosure of such information could disadvantage both Hawaiian Electric and Chevron in future negotiations for fuel oil contracts;

WHEREAS, the Consumer Advocate, is an ex officio party to any proceeding before the Commission, pursuant to the Rules of Practice and Procedure before the Commission;

WHEREAS, Hawaiian Electric and Chevron are willing to disclose certain confidential information at the Pre-Application Discussions only to the Consumer Advocate, the Commission, and each other so long as the information is protected from further disclosure;

WHEREAS, in order to participate in the Pre-Application Discussions, the Consumer Advocate must have access to the information alleged to be confidential;

WHEREAS, Hawaiian Electric, the Consumer Advocate, and Chevron (collectively referred to herein as “Parties” and individually referred to as a “Party”) desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential, including but not limited to certain information disclosed during the Pre-Application Discussions;

WHEREAS, Hawaiian Electric, the Consumer Advocate and Chevron understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard *in camera*;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Commission, that the Commission issue a protective order covering the confidential information disclosed during Pre-Application Discussions, as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information disclosed by Hawaiian Electric or by Chevron during the Pre-Application Discussions.

2. If the Commission designates a person as a qualified person pursuant to paragraph 12.g. below, that person shall comply with the provisions of this protective order, including executing a Protective Agreement.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in Hawai'i Revised Statutes ("HRS") Section 92F-3, the provisions of HRS Chapter 92F (the "Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. Hawaiian Electric or Chevron (collectively referred to herein as "Entities" and individually referred to as an "Entity") may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, financial, vendor, or bid information. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the Entity claiming confidentiality, as provided in paragraph 13 below.

5. If an Entity designates information as confidential pursuant to paragraph 4 above or paragraph 6 below, it shall produce the confidential information in accordance with the

procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If an Entity seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing Entity from any misuse or unpermitted disclosure of the information. If the Commission or any Entity challenges the claim of confidentiality of the information, the Entity claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under a protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission, the Consumer Advocate, or any Entity, orally or in any other form, shall be protected as fully as confidential information provided in written form. An Entity shall notify the Commission, the Consumer Advocate, and the other Entity when information provided orally or in other than written form includes confidential information. At the time of such notification, the Entity shall, in the manner provided in paragraph 5 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing Entity from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined in paragraph 12 below) as constituting confidential information. Unless a different treatment is

warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that contain or reflect any of the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

8. Any Entity claiming confidentiality shall place upon the applicable material containing confidential information, the following legend:

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the Entity shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of the Entity asserting the claim of confidentiality, other persons shall, to the extent requested by that Entity, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any Entity may request that the Commission designate as confidential information any document or other information previously produced but not designated as confidential, provided that the Entity, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing Entity from any misuse or unpermitted disclosure of the information. In addition, the Entity claiming confidentiality shall substitute the previously-

produced but not designated as confidential material with the identical material under designation as required in paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13 below, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. "Qualified person," as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Commission in this proceeding;
- c. The Consumer Advocate, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for purposes of the Pre-Application Discussions;
- d. Hawaiian Electric, its officers and employees, its counsel (including employees directly employed by such counsel) and any consultants retained by Hawaiian Electric;
- e. Chevron, and its staff, counsel (including employees directly employed by such counsel), and any consultants retained by Chevron for the Pre-Application Discussions, to the extent allowed by the Commission;
- f. Any other person approved by the Entity asserting the claim of confidentiality; and
- g. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request in writing permission from the Entity claiming confidentiality. The written request shall identify the non-qualified person to whom

disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for the requested disclosure. If written permission is granted by the Entity claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff and counsel, and the Consumer Advocate and its staff and counsel, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the Entity claiming confidentiality and to the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with the Pre-Application Discussions and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court or (b) an order of the Commission or (c) the UIPA (in the case of any "agency" as defined in HRS §92F-3), including any ruling of the Office of Information Practices of the State of Hawai'i.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in connection with any proceeding pending before the Commission involving Hawaiian Electric, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities with respect to Hawaiian Electric. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing Entity, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultants and its counsel in any proceeding pending before the Commission involving Hawaiian Electric, or where the intended use of such information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities with respect to Hawaiian Electric. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing Entity, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if an Entity desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing, if any, at which such information is discussed shall be held *in camera*, or under other conditions set by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page(s), with any such information deleted, shall

be filed to be included in the public record, and each such page shall contain the following designation in the upper left hand corner:

**Confidential Information Deleted Pursuant To
Protective Order, Filed On. _____.**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER, FILED ON _____, AND
CONTAINS DOCUMENTS WITH CONFIDENTIAL
INFORMATION. IT IS NOT TO BE OPENED OR THE
CONTENTS OF THIS ENVELOPE DISPLAYED OR
REVEALED EXCEPT TO QUALIFIED PERSONS
AUTHORIZED TO INSPECT THE ENCLOSED
DOCUMENTS.**

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: **“Copying Prohibited.”**

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that an Entity or person has obtained under this protective order, that Entity or person, prior to disclosure, shall promptly notify the Entity claiming confidentiality of the request, subpoena or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested Entities, by written stipulation, waive the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, the Entity claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The Entity claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. Pending a disposition of the motion, the information in question shall continue to be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The Entities retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. The Entities retain the right to question, challenge, and object to the admissibility or submission of confidential information on the ground of relevancy or materiality.

26. Notwithstanding anything to the contrary, nothing in this protective order creates any obligation to disclose or exchange any confidential information.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may, upon good cause, modify this protective order on the motion of any Entity, or on its own motion, upon reasonable notice to the Entities and an opportunity for hearing, or the Commission may modify this protective order upon receipt and approval of a written stipulation by the Entities.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of the Pre-Application Discussions, persons in possession of confidential information shall, at the option of the Entity producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the Entity producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing Entity, indicating the name of the person destroying the confidential information, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representative of record for an Entity shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on the Pre-Application Discussions. The files shall not be disclosed to any other person.

30. Confidential information produced in the Pre-Application Discussions shall remain in the possession of the Commission, the Consumer Advocate and counsel for the

Consumer Advocate for the duration provided by applicable statutes, rules and administrative directives.


SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission and as provided by law.

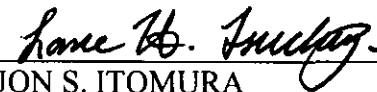
FACSIMILE/COUNTERPARTS/SIGNATURE

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


DATED: Honolulu, Hawai'i, December 14, 2009



CLIFFORD K. HIGA
JOSEPH A. STEWART
Kobayashi, Sugita & Goda
Attorneys for Hawaiian Electric Company, Inc.




JON S. ITOMURA
LANE H. TSUCHIYAMA
Attorneys for the
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs



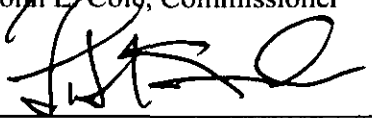
DEAN T. YAMAMOTO
JODI SHIN YAMAMOTO
DUKE T. OISHI
Yamamoto & Settle
Attorneys for Chevron Products Company,
A Division of Chevron U.S.A. Inc.

APPROVED AND SO ORDERED THIS DEC 23 2009
at Honolulu, Hawai'i.

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:

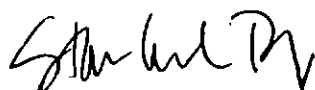

Stacey Kawasaki Djou
Commission Counsel

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of the Protective Order issued by the Hawai'i Public Utilities Commission on the ____ day of _____, 2009 (the "Protective Order").

2. I am employed, retained or assisting _____ the Pre-Application Discussions discussed therein and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely on behalf of _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person, entity, government agency or anyone else.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information, to the party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____, 2009.

Signature

Address

() _____
Telephone Number

BEFORE THE PUBLIC UTILITIES COMMISSION
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CHEVRON PRODUCTS COMPANY)
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a Second Amendment to Low Sulfur Fuel Supply)
Contract between Hawaiian Electric Company, Inc.)
and Chevron Products Company)
_____)

CERTIFICATE OF SERVICE

The foregoing Stipulated Protective Order was served on the date of filing as indicated below by mailing a copy by United States mail, postage prepaid, to the following:

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant Street, Room 326
Honolulu, Hawai'i 96813

DEAN K. MATSUURA
MANAGER, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
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