

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 ACTION

4 A03-743 HAWAII ELECTRIC LIGHT)
COMPANY, INC.)

5)

6 _____)

7

8 TRANSCRIPT OF PROCEEDINGS

9

10 The above-entitled matter came on for a Public Hearing

11 at Kaua'i Grand Hyatt Resort, Kaua'i Ballroom Room

12 165, 1571 Poipu Road, Koloa, Hawai'i, commencing at

13 5:10 p.m. on September 22, 2011, pursuant to Notice.

14

15

16

17

18

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR

19 Certified Shorthand Reporter

20

21

22

23

24

25

COMMISSIONERS:
KYLE CHOCK
THOMAS CONTRADES
RONALD HELLER
NORMAND LEZY (Chairman)
CHAD McDONALD
ERNEST MATSUMURA

EXECUTIVE OFFICER: ORLANDO DAVIDSON
ACTING CHIEF CLERK: RILEY HAKODA
STAFF PLANNERS: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

For the Petitioner: ROBERT MARKS, ESQ.
NORMAN VERBANIC
Mgr. Production HELCO

For the State: BRYAN YEE, ESQ.
Deputy Attorney General

1 CHAIRMAN LEZY: Good afternoon. This a
2 meeting of the state of Hawai'i Land Use Commission.
3 Before we start the agendaed items I don't think I see
4 any representatives, but I'd, nonetheless, on behalf
5 of the Commission and the Commission staff like to
6 thank HCPO and the county of Kaua'i for hosting us in
7 a very well put together conference.

8 All right. Diving into the agenda which I'm
9 sure is going to take at least three or four hours to
10 complete, so we'll get to it. First item is the
11 adoption of minutes. Commissioners, any revisions?
12 Hearing none....

13 COMMISSIONER CONTRADES: Move to have
14 accept.

15 COMMISSIONER HELLER: Second.

16 CHAIRMAN LEZY: Thank you. All in favor
17 aye. All opposed? Thank you. Dan, would you please
18 provide us with the tentative meeting schedule.

19 MR. DAVIDSON: Sure. Thank you, Chair. Just
20 so I want to make sure it's clear. The next meeting
21 is a one-day meeting, October 7th Ho'opili motions in
22 the AM, site visit in the PM. Then the Ho'opili
23 hearing on the merits begins October 20, 21, and then
24 back to Maui for a variety of matters including Kula
25 Ridge on November 3, 4.

1 CHAIRMAN LEZY: Thank you. The next item on
2 the agenda is an action meeting on Docket No. A03-743
3 Hawaii Electric Company, Inc. to consider the Motion
4 for Modification of Condition No. 5 contained in the
5 Findings of Fact, Conclusions of Law, and Decision and
6 Order entered by the State Land Use Commission on
7 November 7th, 2005.

8 Will the parties please identify themselves.

9 MR. MARKS: Good afternoon, Mr. Chair,
10 Members of the Commission, I'm Robert Marks, attorney
11 for Hawaii Electric Company, and Norman Verbanic who
12 is the manager for production of HELCO is also with
13 me.

14 CHAIRMAN LEZY: Good afternoon.

15 MR. MARKS: The motion before you --

16 CHAIRMAN LEZY: I'm sorry. I just need to
17 have the folks, the remainder of the parties identify
18 themselves.

19 MR. DAVIDSON: "Billy Jean", could you
20 identify yourself.

21 (Laughter)

22 MS. LEITHEAD-TODD: Good afternoon,
23 Commissioners. Bobby Jean Leithead-Todd, the planning
24 director for County of Hawai'i.

25 CHAIRMAN LEZY: Mr. Marks, there's no need

1 for you folks to stand. We're only quasi-judicial.

2 Look at Mr. Yee, didn't even wear a tie.

3 (Laughter)

4 MR. MARKS: It's Kaua'i.

5 (Laughter).

6 MR. YEE: Good afternoon. Deputy Attorney
7 General Bryan Yee on behalf of the Office of Planning.

8 CHAIRMAN LEZY: Let me update the record.

9 On August 26, 2011 the Commission received the Motion
10 for Modification of Condition 5 contained in the
11 Findings of Fact, Conclusions of Law and Decision and
12 Order entered by the State Land Use Commission on
13 November 7th, 2005, and Petitioner's Exhibits A
14 through G.

15 On September 12, 2011 the Commission
16 received state of Hawai'i Office of Planning's
17 Statement of No Opposition to Petitioner's Motion for
18 Modification of Condition 5.

19 On September 13, 2011 the Commission
20 received County of Hawai'i's Planning Department's
21 Statement of No Objections to Petitioner's Motion for
22 Modification of Condition 5.

23 Mr. Marks, has our staff informed you of the
24 Commission's policy regarding the reimbursement of
25 hearing expenses?

1 MR. MARKS: Yes.

2 CHAIRMAN LEZY: Would you please state your
3 client's position with respect to this policy.

4 MR. MARKS: We're willing to pay the
5 expenses.

6 CHAIRMAN LEZY: Thank you. Let me briefly
7 describe our procedure for today in this docket. I
8 will first call for those individuals desiring to
9 provide public testimony to identify themselves. All
10 such individuals will be called in turn to our witness
11 box where they will be sworn in prior to their
12 testimony.

13 After completion of the public testimony
14 portion of the proceedings Petitioner will make its
15 presentation. After the completion of the
16 Petitioner's presentation we will receive any comments
17 and/or Statement of Position from Hawai'i County and
18 the State Office of Planning. Thereafter the
19 Commission will conduct its deliberations. Are there
20 any questions on our procedures for today?

21 MR. MARKS: No questions.

22 CHAIRMAN LEZY: Did anybody sign up for --

23 MR. DAVIDSON: No signups.

24 COMMISSIONER HELLER: Mr. Chair, I need to
25 make a disclosure.

1 CHAIRMAN LEZY: Sure. Commissioner Heller.

2 COMMISSIONER HELLER: Thank you. Want to
3 make a disclosure that my firm does certain legal work
4 for Hawaii Electric Company. I don't believe that
5 will affect my consideration of this matter, but I
6 want to make the disclosure so that anybody who has an
7 objection can state it.

8 CHAIRMAN LEZY: Parties, any objections?

9 MR. YEE: No objection.

10 MS. LEITHEAD-TODD: No objection.

11 MR. MARKS: No objection.

12 CHAIRMAN LEZY: Commissioners, any concerns?
13 Hearing none, is there anybody in the audience who
14 would like to provide public testimony? Hearing none.
15 Mr. Marks, please proceed.

16 MR. MARKS: Thank you, Mr. Chair. This
17 motion seeks to modify a noise restriction that was
18 put into place when the Keahole Power Plant litigation
19 ended after more than ten years in the courts.

20 The change in the noise restriction is
21 within the health department's limits and affects only
22 the northern border, the adjacent landowners and the
23 Department of Hawaiian Home Lands. And they have
24 supplied their consent, one of the attachments to the
25 motion.

1 When Mr. Davidson called me to speak about
2 the motion he said, "So is this a no-brainer?"
3 Frankly, Commissioners, this is a no-brainer. It's a
4 modification that's within all standards. We
5 respectfully request that it be granted.

6 CHAIRMAN LEZY: Thank you. Commissioners,
7 any questions? Ms. Leithead-Todd, your position.

8 MS. LEITHEAD-TODD: County has no
9 opposition.

10 CHAIRMAN LEZY: Mr. Yee?

11 MR. YEE: Office of Planning has no
12 opposition. We thank the Petitioner for patiently
13 consulting with us in this process. To be clear on
14 the record, the Department of Hawaiian Home Lands
15 changed the use of their property. It was going to be
16 residential right next to them. It's no longer going
17 to do that. That's one of the reasons why the change
18 in the noise is not a concern to the state. And I
19 will confirm HELCO'll conform with the regulations.

20 CHAIRMAN LEZY: Thank you. Parties,
21 anything else? Commissioners, questions?

22 COMMISSIONER CHOCK: Move to approve.

23 COMMISSIONER MATSUMURA: Second.

24 CHAIRMAN LEZY: Any discussion? Hearing
25 none, Dan, please poll the Commission.

1 MR. DAVIDSON: Commissioner Chock?
2 COMMISSIONER CHOCK: Yes.
3 MR. DAVIDSON: Commissioner Matsumura?
4 COMMISSIONER MATSUMURA: Aye.
5 MR. DAVIDSON: Commissioner McDonald?
6 COMMISSIONER McDONALD: Yes.
7 MR. DAVIDSON: Commissioner Contrades?
8 COMMISSIONER CONTRADES: Yes.
9 MR. DAVIDSON: Commissioner Heller?
10 COMMISSIONER HELLER: Yes.
11 MR. DAVIDSON: Chair Lezy?
12 CHAIRMAN LEZY: Yes.
13 MR. DAVIDSON: Motion passes 6/0, Chair.
14 CHAIRMAN LEZY: Thank you. You're right.
15 That was a no-brainer.
16 (Laughter)
17 MR. DAVIDSON: I was right.
18 CHAIRMAN LEZY: Thank you very much. Thank
19 you.
20 MR. MARKS: Thank you.
21 CHAIRMAN LEZY: The next item on the agenda
22 is discussion: Concept of new effort to Amend the
23 Administrative Rules Chapter 15-15, HAR.
24 (Reporter instructed that Item V is off the record.
25 The on-the-record proceedings concluded at 5:23 p.m.)

1 C E R T I F I C A T E

2

3 I, HOLLY HACKETT, CSR, RPR, in and for the State
4 of Hawai'i, do hereby certify;

5 That I was acting as court reporter in the
6 foregoing LUC matter on the 22nd day of September
7 2011;

8 That the proceedings were taken down in
9 computerized machine shorthand by me and were
10 thereafter reduced to print by me;

11 That the foregoing represents, to the best
12 of my ability, a true and correct transcript of the
13 proceedings had in the foregoing matter.

14

15 DATED: This _____ day of _____ 2011

16

17

18

19

20 HOLLY M. HACKETT, HI CSR #130, RPR
21 Certified Shorthand Reporter

22

23

24

25

