

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

In the Matter of)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Distributed)
Generation in Hawaii.)
)
_____)

Docket No. 03-0371

PUBLIC UTILITIES
COMMISSION

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FILED

THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM'S
RESPONSE TO LIFE OF THE LAND'S MOTION TO COMPEL RESPONSES
TO INFORMATION REQUESTS
and
CERTIFICATE OF SERVICE

Filed _____, 2004

At _____ o'clock ____ .m.

Chief Clerk of the Commission

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Introduction

The Department of Business, Economic Development, and Tourism (DBEDT) hereby responds to the Motion to Compel Responses to Information Requests (IRs) filed with the Hawaii Public Utilities Commission (Commission) on June 21, 2004, by Life of the Land (LOL). DBEDT believes that the LOL Motion is without substance.

Moreover, DBEDT is a participant without intervention in this docket. As stated in its Motion to Participate Without Intervention, the Department saw its role as providing references, studies, documents and analyses, and/or present policy and/or expert witnesses to assist the Commission in its

determination regarding the manner in which distributed generation may change or improve Hawaii's electric utility systems.

The Department sought participation without intervention status in this docket so that it could share and facilitate acquisition of relevant, useful information. In the Stipulated Pre-hearing Order, the parties agreed that DBEDT would be allowed to present recommendations on any of the issues in the proceeding provided that any recommendation would be provided as the respective participant's Preliminary Statement of Position, followed by written testimonies. LOL's IRs and action in filing their motion appear to be seeking to treat DBEDT as an intervener.

Background

LOL's Motion to Compel Responses to Information Requests claims that:

DBEDT's Responses to Information Request (sic) violates (1) the Hawaii Public Utilities Commission Prehearing Order No. 20922, dated April 23, 2004, . . . ; and (2) the Hawaii Rules of Civil Procedure

Of the allegations made by LOL, only one is accurate. DBEDT put more than one IR per page in its filing of Responses which was not in accordance with Prehearing Order 20992.

The following is DBEDT's account of the IR issue. DBEDT received IRs on its Preliminary Statement of Position (PSOP) from the Consumer Advocate, Hawaii Renewable Energy Association, Hawaiian Electric Company, LOL, and The Gas Company. The IRs directed to DBEDT from these organizations and DBEDT's replies were included in its June 16 filing, THE DEPARTMENT OF BUSINESS,

ECONOMIC DEVELOPMENT, AND TOURISM'S CONSOLIDATED RESPONSE TO INFORMATION REQUESTS ON ITS PRELIMINARY STATEMENT OF POSITION and CERTIFICATE OF SERVICE.

DBEDT notes that all other parties' IRs referenced specific passages of DBEDT's PSOP, facilitating our response, while none of LOL's IRs referenced DBEDT's PSOP. Thus, in those instances where questions were vague, some of DBEDT's responses to LOL IRs were couched as questions seeking clarification, and were not argumentative as alleged by LOL's motion.

DBEDT did not refuse to answer any party's questions, and did its best to be as responsive as possible to all parties' requests for information, including Life of the Land (LOL). We note that none of the other parties has indicated a need to follow up on DBEDT's replies.

It is regrettable that there could be a perception that DBEDT was anything but responsive, especially given that our stated role is to facilitate relevant information development for all parties in accordance with their needs. It is also regrettable that LOL chose to file its motion without contacting DBEDT to ask for a dialogue or taking advantage of the scheduled June 23, 2004, Technical Session established in the Docket for that purpose. DBEDT would have been pleased to work with LOL to provide any relevant information in as responsive and forthcoming manner as possible, which has been and will continue to be our approach in this matter.

DBEDT provided replies to 12 Life of the Land IRs. LOL cited five in its motion, and asked via email for clarification during the June 23 meeting of three additional IRs not mentioned in the motion. Although we believe LOL's motion is without substance,

in the interest of cooperation, we are providing our responses to the IRs cited in LOL's motion below with some amplification.

Amplified Responses to IRs Cited in LOL's Motion

LOL-SOP-IR-20: (a) Does DBEDT support government-to-government wheeling? (b) If so, under what conditions?

Original DBEDT Reply to LOL-SOP-IR-20: a. How does LOL define government-to-government wheeling? b. What conditions does LOL envision?

Amplification. DBEDT answered with questions because LOL's IR was overly broad and vague. Regarding question a, DBEDT notes that there could be several definitions of government to government; e.g., federal to state, state to county, state to state, and other combinations thereof. In asking what conditions (b.), DBEDT sought to clarify whether conditions were envisioned as to technology type (e.g., renewable only or all DG), generating capacity, or other limitations. Thus DBEDT's intent in its original response was to seek clearer definition and fuller context from LOL.

LOL-SOP-IR-23: How does DBEDT believe that positive externalities associated with renewable energy DG (hedging against fossil fuel price volatility; hedging against fossil fuel price spikes; reduced environmental compliance risk; security risks) should be accounted for?

DBEDT Reply to LOL-SOP-IR-23: DBEDT is not clear regarding what context LOL envisions accounting for these externalities?

Amplification. LOL was again not clear as to context. There are many situations, some discussed in references cited by

DBEDT, such as *Small is Profitable*, in which accounting for externalities could occur.

LOL-SOP-IR-24: (a) Does DBEDT use any probability analysis, confidence interval estimates, correlation analysis, regression modeling or other statistical analysis? (b) Does this include analysis of the need for standby charges, spinning reserves, transmission line redundancy, distribution line redundancy, and multiple simultaneous DG equipment failures? (c) Please explain any type of probability analysis DBEDT is aware of to evaluate the likelihood of multiple DG systems failing simultaneously; (d) Contingency planning calls for the utility to be able to have one generator down for service while a second one fails. Contingency planning calls for the utility to be able to have one transmission line to be down when another one fails. Should the utility have a higher standard for distributed generation, that is, the utility must plan for all generators to fail simultaneously? (e) Should utility upgrades occur where (1) the load is higher; (2) where there is a history of failures; or (3) where there is a higher probability of future failure?

DBEDT Reply to LOL-SOP-IR-24: DBEDT believes the utilities would be in a better position to respond to LOL's questions.

Amplification: LOL's question was again not specific or contextually clear. Due to the availability of modeling tools at the utilities and the fact DBEDT has not used such tools for DG, DBEDT stated its belief LOL should ask for this information from the utilities. DBEDT felt this proposed solution negated a need for further detail.

LOL-SOP-IR-25: Should comparisons of alternative technologies include the multiplier effect, job creation, economic growth,

fuel volatility(sic) and security: (b) For each of the following, please explain how DBEDT analyses, incorporates and/or utilizes it in evaluating alternative energy plans and/or DG analysis: (1) job creation; (2) economic growth; (3) the economic multiplier effect; (4) balance of trade issues; (5) export expansion; (6) import substitution; (7) foreign investment; (8) leakage?

DBEDT Reply to LOL-SOP-IR-25: a. In what context does LOL envision such comparisons? b. To which DBEDT analyses does LOL refer?

Amplification: Again, LOL did not make the context clear and did not reference any specific analysis. With additional clarity and specificity from LOL, DBEDT will do its best to respond.

LOL-SOP-IR-26: (a) Regarding DBEDT's DG study conducted by Global Energy Partners, please provide a copy of ALL DBEDT/GEP contracts, workpapers, correspondence, draft reports, analyses, and final reports and any other document(s) associated with this project.

Original DBEDT Reply to LOL-SOP-IR-26: DBEDT will complete its editing of Global Energy Partners' study and provide CD-ROM copies to the parties by the end of July 2004. Provision of the other materials requested would be excessively burdensome. Related files can be made accessible to Life of the Land for inspection.

Amplification: DBEDT said it would provide copies of the report by Global Energy Partners by the end of July 2004.

Responses to "Legal Issues" Raised by LOL

1. **LOL claim:** "The commission stated 'Each response shall be on a separate page.' (Exhibit 1, page 6 of PHO 20922). DBEDT's responses do not adhere to this requirement."

DBEDT comment: Our apologies to the Commission, this oversight was inadvertent. However, we believe our responses were readable and the approach used is economical. We invite the Commission's consideration of a procedure that could conserve additional resources. We used 1,248 sheets of paper to provide IR responses vice of the 3,237 sheets that would have been used. DBEDT acknowledges that there could be a functional rationale for the prescribed format with which we are unaware.

2. **LOL claim:** "The commission's Rules of Practice and Procedure (Section 6-61-1, Hawaii Administrative Rules) states that 'Whenever this chapter is silent on a matter, the commission or hearings officer may refer to the Hawaii Rules of Civil Procedure for guidance.' Rule 26g(1) of the HRCPP requires that 'Every discovery request, [for discovery or] response, or objection [thereto] made by a party represented by an attorney shall be signed by at least one attorney of record' DBEDT's Responses are unsigned. (DBEDT did have a non-attorney sign their Certificate of Service)."

DBEDT's comment: DBEDT's responses were signed by Maurice H. Kaya, DBEDT's Chief Technology Officer as the DBEDT Director's Designee as agreed among the parties at the Pre-Hearing Stipulation Conference on March 31, 2004.

3. **LOL claim:** "Rule 26g(1) of the HRCPP further requires that "The signature of the attorney or party constitutes a

certification that to the best of the signers knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is: (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation"

DBEDT's Responses to several of LOL's Informational Requests failed in any reasonable way to answer Information Requests submitted by LOL. Instead, DBEDT used an argumentative approach, countered questions with questions. DBEDT made no attempt to answer some questions, refused to answer others, and announced that they were in the process of editing a document, which they will not make available to us at this time. In general, DBEDT did not give any reasons for refusing to answer our questions, as required by Rule 26b(2). DBEDT is in clear violation of Rule 26g(1), HRCF."

DBEDT comment: DBEDT's Replies were in compliance with all rules cited above. As discussed above, when DBEDT asked a question in response to a LOL query, it was seeking additional information to help develop a response, not making an argument. DBEDT answered all questions as responsively and consistently with the Department's participation without intervention role as possible. LOL's allegations are without substance.

Relief Sought

We urge the Commission to find LOL's complaint without substance. DBEDT stands ready to discuss its replies in a dialogue with any party.

Hearing

DBEDT is not requesting a hearing on this issue

DATED: June 22, 2004, in Honolulu, Hawaii



Maurice H. Kaya, P.E.
Chief Technology Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Department of Business, Economic Development, and Tourism Consolidated Response to Information Requests on Its Preliminary Statement of Position upon the following parties, by causing a copy hereof to be emailed to each such party. Paper copies shall be distributed at the Technical Meeting on June 23, 2004.

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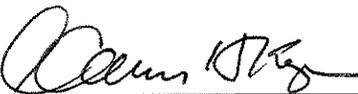
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Dated: June 22, 2004

By 
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