

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of) PUC Docket 03-0371
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigating Distributed Generation)
in Hawaii)
_____)

LIFE OF THE LAND'S

MOTION TO COMPEL RESPONSES TO INFORMATION REQUESTS

&

CERTIFICATE OF SERVICE

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In the Matter of the Application of)	PUC Docket 03-0371
)	
PUBLIC UTILITIES COMMISSION)	LOL’s Motion to Compel
)	Responses to
Instituting a Proceeding to)	Information Requests
Investigating Distributed Generation)	
in Hawaii)	
_____)	

MOTION TO COMPEL RESPONSES TO INFORMATION REQUESTS

Introduction.

Life of the Land (“LOL”) hereby moves the Hawaii Public Utilities Commission (“commission”) to compel the Department of Business, Economic Development and Tourism (“DBEDT”) to provide responsive answers to LOL’s Information Requests.

Background.

DBEDT’s Responses to Information Request violates (1) the Hawaii Public Utilities Commission Prehearing Order No. 20922, dated April 23, 2004, Instituting a Proceeding to Investigating Distributed Generation in Hawaii (“PHO 20922”); and (2)

the Hawaii Rules of Civil Procedure (“HRCP”).¹

Factual Issues.

The following are DBEDT’s Responses to LOL Information Requests.

LOL-SOP-IR-20: (a) Does DBEDT support government-to-government wheeling?

DBEDT’s Response: How does LOL define government-to-government wheeling?

(b) if so, under what conditions?

DBEDT’s Response: What conditions does LOL envision?

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’s Response: DBEDT is not clear what context LOL envisions accounting for externalities.

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’s Response: DBEDT believes that the utilities would be in a better position to respond to LOL’s questions.

¹ Hawaii Rules of Civil Procedure (HRCP) (www.hawaii.gov/jud/hrcp.htm#Rule%2026). The Hawaii Supreme Court amended the HRCP amended on May 7, 2004, effective on July 1, 2004 (www.state.hi.us/jud/hrcp26to37am.htm). The excerpts below are from the amended version.

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

DBEDT's Response: In what context does LOL envision such comparisons?

(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's Response: To which DBEDT analysis does LOL refer?

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.

DBEDT's Response: 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.

Legal Issues.

(1) 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.

(2) 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 HRCP 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”² DBEDT’s Responses are unsigned. (DBEDT did have a non-attorney sign their Certificate of Service).

(3) Rule 26g(1) of the HRCP further requires that “The signature of the attorney or party constitutes a certification that to the best of the signer’s 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), HRCP.

² Amended HRCP which shows how the existing rules are being modified.

Relief Sought.

The commission should compel DBEDT to provide responsive answers to LOL's Information Requests. The answers to these Information Requests are highly relevant to the matters at issue in this docket. By refusing to answer these important Information requests, DBEDT has made it impossible for the commission, LOL and the other participants to assess the reasonableness of DBEDT's position. Therefore, the Commission should order DBEDT to provide further responses to LOL-SOP-IR 20, LOL-SOP-IR 23, LOL-SOP-IR 24, LOL-SOP-IR 25, and LOL-SOP-IR 26. Furthermore, in accordance with Rule 26g, LOL requests \$100 from DBEDT to cover LOL's cost in filing this motion.

Hearing.

LOL is not requesting a hearing on this issue.

DATED: June 18, 2004, in Honolulu, Hawaii

Henry Q Curtis
Executive Director

Certificate of Service

I hereby certify that I have this date served a copy of the foregoing Information Requests by Life of the Land, Docket Number 03-0371, upon the following parties. Life of the Land hand-delivered the Original plus 8 copies to the PUC; 3 copies to the Consumer Advocate. Life of the Land mailed 2 copies to Alan M. Oshima, Esq. (KIUC); and 1 copy to each of the following parties: Thomas W. Williams, Jr. Esq. (HECO); William Bonnett (HECO); Patsy H. Nanbu (HECO); Alton Miyamoto (KIUC); George T. Aoki, Esq. (TGC); Steven P. Golden (TGC); Gail S. Gilman (TGC); Brian Moto (Maui); Cindy Y. Young (Maui); Calvin K. Kobayashi (Maui); Warren S. Bollmeier II (HREA); John Crouch (HREA); Rick Reed (HREA); Sandra-Ann Y. H. Wong, Esq. (HESS); Christopher S. Colman (HESS); Michael de'Marci (HESS); Lani D. H. Nakazawa, Esq. (Kauai); Glenn Sato (Kauai); John W. K. Chang, Esq. (DAG); Maurice H. Kaya, P.E. (DBEDT); Steven Alber (DBEDT).

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Furthermore, one electronic copy (PDF Format) was sent to each email address listed below.

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DATED: June 18, 2004, in Honolulu, Hawaii

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