

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 03-0371
)
Instituting a Proceeding to)
Investigate Distributed Generation)
in Hawaii.)
_____)

ORDER NO. 21112

Filed July 12, 2004
At 9 o'clock A .M.

Karon Higash
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) Docket No. 03-0371
)
Instituting a Proceeding to) Order No. 21112
Investigate Distributed Generation)
In Hawaii.)
_____)

ORDER

I.

Introduction

On June 18, 2004, Life of the Land filed a Motion to Compel Responses to Information Requests ("Motion to Compel"),¹ which sought to compel the Department of Business, Economic Development and Tourism ("DBEDT") to provide responsive answers to Life of the Land's Information Requests which were filed on May 24, 2004 ("Information Requests"). Life of the Land requests the commission to: (1) compel DBEDT to provide responsive answers to the Information Requests and provide further responses to LOL-SOP-IR 20, 23, 24, 25, and 26; and (2) award Life of the Land \$100 in costs for filing this motion. On June 22, 2004, DBEDT filed a Response to Life of the Land's Motion to Compel.

¹Life of the Land did not request a hearing; accordingly, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-41(g), the commission shall decide this matter upon the pleadings, memoranda, and other documents filed.

In support of its Motion to Compel, Life of the Land argues the following: (1) DBEDT did not place each response on a separate page in violation of Prehearing Order No. 20922; (2) DBEDT's responses are unsigned; (3) DBEDT's responses failed to answer the Information Requests.

II.

Discussion

The Hawaii Rules of Civil Procedure as amended ("HRCP"), provides guidance in this matter as Rule 37(a)(2), specifies that a motion for an order compelling an answer "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action."²

Upon review, the commission finds that the Motion to Compel has no merit. The Motion to Compel did not include the certification required by HRCP 37(a)(2). Life of the Land has not convinced the commission that it has in good faith conferred or attempted to confer with DBEDT to secure the necessary information or motion without commission action. DBEDT has indicated in its response to Life of the Land's motion to compel that it "stands ready to discuss its replies in a dialogue with

²Pursuant to HAR § 6-61-1, the commission may refer to the HRCP for guidance whenever HAR Title 6, Chapter 61 is silent on a matter.

any party."³ Accordingly, the commission concludes that Life of the Land's Motion to Compel is premature and should be denied.⁴

III.

Orders

THE COMMISSION ORDERS:

Life of the Land's motion to compel DBEDT to provide responsive answers to Life of the Land's Information Requests and provide further responses to LOL-SOP-IR 20, 23, 24, 25, and 26 and any other relief stated in the Motion to Compel is denied.

³Moreover, Life of the Land filed its motion to compel on June 18, 2004, just 5 days prior to a scheduled technical meeting on June 23, 2004, where the Parties and Participants could have easily clarified their responses to Information Requests.

⁴Consistent with Rule 37, HRCPC, the commission expects the Parties and Participants in this docket to attempt to work out their discovery differences among themselves first and seek the commission assistance as a last resort.

DONE at Honolulu, Hawaii this 12th day of July, 2004.

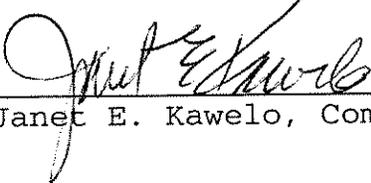
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 

Carlito P. Caliboso, Chairman

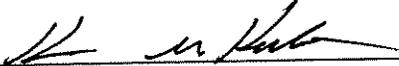
By 

Wayne H. Kimura, Commissioner

By 

Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:



Kevin M. Katsura
Commission Counsel

03-0371.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21112 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

WILLIAM A. BONNET
VICE PRESIDENT
GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

WARREN H. W. LEE
PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
P.O. Box 1027
Hilo, HI 96721-1027

EDWARD L. REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LIMITED
P.O. Box 398
Kahului, HI 96733-6898

ALTON MIYAMOTO
PRESIDENT & CEO
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, HI 96766

ALAN M. OSHIMA, ESQ.
KENT D. MORIHARA, ESQ.
OSHIMA CHUN FONG & CHUNG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Certificate of Service

Page 2

THOMAS W. WILLIAMS, JR. ESQ.
PETER Y. KIKUTA, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

DEBORAH DAY EMERSON, ESQ.
JOHN W. K. CHANG, ESQ.
DEPUTY ATTORNEYS GENERAL
STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, HI 96813

LANI D. H. NAKAZAWA, ESQ.
CHRISTIANE L. NAKEA, ESQ.
OFFICE OF THE COUNTY ATTORNEY
COUNTY OF KAUAI
4444 Rice Street, Suite 220
Lihue, HI 96766

WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, HI 96744

STEVEN P. GOLDEN
DIRECTOR, EXTERNAL AFFAIRS
THE GAS COMPANY
P. O. Box 3000
Honolulu, HI 96802-3000

GEORGE T. AOKI, ESQ.
THE GAS COMPANY
P. O. Box 3000
Honolulu, HI 96802-3000

Certificate of Service

Page 3

GORDON BULL
BRANCH MANAGER
JOHNSON CONTROLS, INC.
CONTROLS GROUP
677 Ala Moana Boulevard, Suite 820
Honolulu, HI 96813

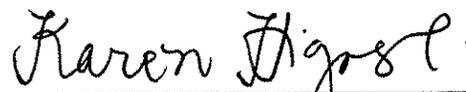
JIM REISCH
VICE PRESIDENT, GENERAL MANAGER - ENGINE DIVISION
PACIFIC MACHINERY, INC.
94-025 Farrington Highway
Waipahu, HI 96797

THOMAS C. GORAK, ESQ.
GORAK & BAY, L.L.C.
76-6326 Kaheiau Street
Kailua-Kona, HI 96740

BRIAN T. MOTO, ESQ.
CORPORATION COUNSEL
CINDY Y. YOUNG, ESQ.
DEPUTY CORPORATION COUNSEL
COUNTY OF MAUI
200 S. High Street
Wailuku, HI 96793

SANDRA-ANN Y.H. WONG, ESQ.
1050 Bishop Street, #514
Honolulu, HI 96813

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817



Karen Higashi

DATED: July 12, 2004