

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to Investigate)
Competitive Bidding for New Generating)
Capacity in Hawaii)
_____)

DOCKET NO. 03-0372

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COMMISSION

DIVISION OF CONSUMER ADVOCACY'S
REPLY BRIEF

AND

CERTIFICATE OF SERVICE

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REPLY BRIEF

I. BACKGROUND.

On or before June 6, 2006, the Division of Consumer Advocacy ("Consumer Advocate"), HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), MAUI ELECTRIC LIGHT COMPANY, INC. ("MECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), (HECO, MECO, and HELCO collectively may be referred to as the "HECO Companies"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC") (the aforementioned parties to be collectively referred to as "Stipulating Parties"), and the HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), filed their respective Opening Briefs and Responses to Commission's Post-Hearing Questions, issued by the Public Utilities Commission of the State of Hawaii ("Commission"), discussing each party's position also previously presented through Initial and Final Statements of Position and upon discussion and examination at the panel evidentiary hearing held December 12, 2005 to December 16, 2005.

The purpose of the Consumer Advocate's Reply Brief will be to reaffirm that the Stipulation Regarding Proposed Competitive Bidding Framework, entered into by the Stipulating Parties and filed on May 22, 2006, is in the public interest and adequately responds to the three issues identified by this Commission in this docket and to respectfully request that this Commission adopt the Stipulating Parties' Framework in its entirety and without modifications as proposed by HREA.

In the interest of brevity, issues discussed in the Consumer Advocate's Opening Brief and addressed in the Stipulating Parties' Framework, that are not being contested for purposes of the instant docket, will not be repeated in this Reply Brief. Instead, a brief discussion of the Consumer Advocate's concerns with HREA's Proposed Competitive Bidding Framework for Wholesale Generation (Plan B).

II. HREA'S APPROACH IS PROBLEMATIC.

HREA's Proposed Competitive Bidding Framework for Wholesale Generation (Plan B) is fundamentally different from the Stipulating Parties' Framework in several respects related to electric utility participation in competitive bidding, amending the Commission's IRP Framework, and the role of the independent observer.

A. UTILITY EXCLUSION FROM COMPETITIVE BIDDING NOT REASONABLE.

As provided in the Consumer Advocate's Opening Brief, the competitive bidding system should be designed to facilitate an electric utility's acquisition of supply-side resources in a manner that is cost-effective and systematic and seeking to provide service that is at a lower cost and/or better performing than the host utility could have

achieved on its own. HREA seeks to exclude the host utility as a means to preserve the integrity, fairness, and transparency of the process.

There are potential circumstances, however, wherein the utility's proposal may be the best response to an identified need for supply resources, due to limitations related to Hawaii's geographic constraints, environmental and cultural resources, and the host utility's relationship to their respective service territories. The Consumer Advocate is especially concerned that HREA does not adequately address a situation where the utility proposal may be the best response. Furthermore, HREA's proposal does not address a situation where a utility project is needed to address a system reliability concern that cannot be adequately addressed by a third-party developer.

Finally, HREA's proposal does not explain why allowing an affiliate of the utility to participate in the bidding process will address any of HREA's concerns with fairness, but the primary reason for HREA's contention is that the host utility should not be allowed to submit a bid. In this regard, HREA failed to explain why the provisions set forth in the Stipulated Framework are inadequate to address any fairness concerns should the utility be allowed to participate in the competitive bidding process. The Consumer Advocate is confident that the Stipulating Parties' Framework provides adequate provisions to ensure a fair system that will not place the system and ratepayers at risk or unduly burden Hawaii's electric utilities and public utility regulators.

B. IRP PROCESS DOES NOT NEED TO BE AMENDED.

HREA proposes to use the competitive bid process earlier in the IRP process to select projects for the utility's 5-year plan. The Consumer Advocate, however, pointed

out that the Stipulating Parties' Framework does allow for a competitive bidding process outside of the IRP process and there is no provision prohibiting utilities from using the competitive bidding process to acquire generation for the upcoming 5-year action plans in the IRP Plans that are currently under development. Furthermore, HREA's "market test" approach may not encourage realistic or a full-range of bids.

C. INDEPENDENT OBSERVER SUPPLEMENTS COMMISSION'S OVERSIGHT.

The Consumer Advocate remains confident that the primary role of the Commission will be to ensure that the Framework is fair in design and implementation. Requiring the Commission to retain an independent observer for all competitive bidding proposals would cause unnecessary delay in the process and potentially raise a perception of unfair bias or a possible claim of ex parte communication between the Commission and the independent observer.

The fact that the Commission will be the arbitrator of last resort to resolve any disputes provides the necessary control to promote a fair and equitable process to all bidders, including circumstances where a utility or its affiliates are involved in the bidding process.

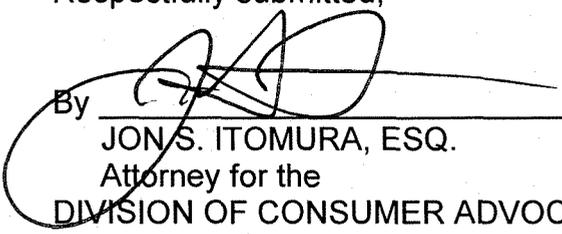
III. CONCLUSION.

The Consumer Advocate concludes that the Stipulating Parties' Framework establishes the necessary resource procurement process and principles designed to ensure fairness while providing ratepayers with service at the lowest reasonable cost.

Therefore, competitive bidding should be established by the Commission as the primary mechanism for the acquisition of new capacity and energy resources by Hawaii's electric utilities pursuant to the broad agreement provided by the Stipulating Parties' Framework.

DATED: Honolulu, Hawaii, June 13, 2006.

Respectfully submitted,

By 

JON S. ITOMURA, ESQ.

Attorney for the

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S REPLY BRIEF** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

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DATED: Honolulu, Hawaii, June 13, 2006.

A handwritten signature in cursive script, appearing to read "Jimba Jalucha", is written over a solid horizontal line.