

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

Docket No. 03-0372

PUBLIC UTILITIES
COMMISSION

2006 JUN 13 P 12:55

FILED

**REPLY BRIEF OF
KAUAI ISLAND UTILITY COOPERATIVE**

AND

CERTIFICATE OF SERVICE

MORIHARA LAU & FONG LLP

KENT D. MORIHARA, ESQ.
MICHAEL H. LAU, ESQ.
Davies Pacific Center
841 Bishop Street
Suite 400
Honolulu, Hawaii 96813
Telephone: (808) 528-4200

Attorneys for KAUAI ISLAND UTILITY
COOPERATIVE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)	
)	
PUBLIC UTILITIES COMMISSION)	Docket No. 03-0372
)	
Instituting a Proceeding to Investigate)	
Competitive Bidding for New Generating)	
Capacity in Hawaii.)	

KIUC\COMPETITIVE BIDDING\FILINGS\REPLY BRIEF\REPLY BRIEF (FINAL)(6-13-06)

**REPLY BRIEF
OF
KAUAI ISLAND UTILITY COOPERATIVE**

KAUAI ISLAND UTILITY COOPERATIVE (“KIUC”), by and through its attorneys, Morihara Lau & Fong LLP, does hereby submit its Reply Brief in this docket pursuant to Order No. 22249, filed on January 27, 2006 (“Order No. 22249”), as amended.¹

Upon review of the Opening Briefs submitted by the Parties on June 6, 2006, KIUC believes there is no dispute that the Parties in this proceeding support the Hawaii Public Utilities Commission’s (“Commission”) establishment of a statewide competitive bidding process via the adoption of a framework setting forth the necessary requirements or guidelines for this process. The question, at this juncture, is in the type and extent of the requirements or guidelines that the Commission should adopt in this proceeding.

¹ As stated in Order No. 22249, the only parties in this docket are Hawaiian Electric Company, Inc. (“HECO”), Hawaii Electric Light Company, Inc. (“HELCO”), Maui Electric Company, Limited (“MECO”) (HECO, HELCO and MECO, collectively hereinafter referred to as “HECO Companies”), the Division of Consumer Advocacy (the “Consumer Advocate”), KIUC and Hawaii Renewable Energy Alliance (“HREA”) (collectively, referred to as “Parties”). See also, Order No. 22366, filed on March 31, 2006; Order No. 22452, filed on May 3, 2006; and Order No. 22459, filed on May 10, 2006.

Although HREA was not a signatory to the Stipulating Parties' Framework², KIUC believes that HREA's Opening Brief and Alternative Framework (aka, Plan B) at least confirms that, except for 9 differences described in detail on Pages 4 to 5 of HREA's Alternative Framework and reemphasized in its Opening Brief, HREA does not dispute any of the remaining requirements or guidelines set forth in the Stipulating Parties' Framework. In sum, these 9 differences between HREA and the Stipulating Parties appear to be focused primarily on requirements or guidelines relating to, among other things, ensuring that there is a level playing field on which all generation options could compete. These differences were also aptly summarized and explained further in the Consumer Advocate's Opening Brief.³ For example, contrary to the Stipulating Parties' position, HREA supports prohibiting an electric utility from submitting self-build project proposals in competition with third parties, and supports a requirement that an independent observer be hired by the Commission rather than the electric utility for all solicitations.⁴

KIUC understands the economic and competitive interests, from strictly the viewpoint of an independent power producer ("IPP"), that HREA is trying to promote in attempting to prohibit an electric utility from submitting a self-build project proposal and by supporting a requirement that an independent observer be hired by the Commission. However, even though KIUC does not anticipate submitting a self-build project proposal,

² On May 22, 2006, the HECO Companies, the Consumer Advocate and KIUC (collectively, "Stipulating Parties") submitted their Proposed Competitive Bidding Framework attached to the Stipulating Parties' Stipulation as Exhibit "A" ("Stipulating Parties' Framework"). That same day, HREA submitted its Proposed Competitive Bidding Framework for Wholesale Generation (Plan B) ("Alternative Framework").

³ Consumer Advocate's Opening Brief, Section III, Pages 15 to 25.

⁴ HREA's Framework, Page 4 and 6. See also, HREA's Opening Brief, Page 8.

KIUC cannot support HREA's position and/or its Alternative Framework because these viewpoints simply go beyond what is necessary to ensure fair competitive bidding processes. KIUC believes that the overriding objective of this proceeding is to ensure protection of the public interest relative to the issues of this docket. In light of this objective, KIUC believes that HREA's proposed requirements and guidelines are fundamentally too rigid and inflexible and therefore do not promote this objective. Moreover, some of the restrictions and requirements (e.g., requiring investor owned utilities to establish a utility-affiliate for the purpose of competing for the provision of wholesale power to the grid) suggested by HREA in its Opening Brief are inapplicable to cooperative utilities like KIUC and do not take into account, or provide sufficient flexibility for, KIUC's cooperative structure.

In order to resolve the differences between the Stipulating Parties and HREA, KIUC recommends that the factors advocated by HREA as being necessary to ensure competitive bidding of generation capacity should be given only limited consideration, if any, during the Commission's deliberations in this docket. Conversely, the paragraphs below contain two of the factors that KIUC believes should be afforded predominant consideration by the Commission during its deliberations in this proceeding.

First, as stated in KIUC's Opening Brief, the requirements or guidelines adopted by the Commission should always "afford sufficient flexibility and safeguards to ensure that a cooperative utility like KIUC can meet its needs and obligations, particularly in regards to the safety and reliability of its unique system on the island of Kauai."⁵ This

⁵ KIUC's Opening Brief, Page 12.

factor is consistent with both the HECO Companies' and the Consumer Advocate's Opening Briefs. For example, the HECO Companies stated, in relevant part, that:

[I]t was important for the Stipulating Parties to recognize that the needs of isolated utility systems in Hawaii are significantly different from the utility systems on the mainland, which needs to be taken into account in the design and development of a competitive bidding process and the associated rules and guidelines.⁶

Similarly, the Consumer Advocate emphasized the following:

The competitive bidding system should not, however, negatively impact the reliability or unduly encumber the operation and/or maintenance of Hawaii's unique system. Rather, the competitive bidding system should promote the electric utility system reliability by facilitating the timely acquisition of needed generation resources and allowing the utility to adjust to changes in circumstances, facilitate the achievement of renewable portfolio standards, state energy policy, and other important IRP objectives.⁷

Without heavily considering this first factor, KIUC believes that both the ratepayers/customers and the utility itself will be placed at an undue risk in terms of safety and reliability risks relative to the utility's respective island system.

Second, as stated in the Consumer Advocate's Opening Brief, "the competitive bidding system should be fair and equitable to bidders, without being unduly burdensome on Hawaii's electric utilities and public utility regulators."⁸ KIUC concurs that, although the requirements or guidelines should provide certain safeguards to ensure a fair competitive bidding process (e.g., Commission review of RFPs, Commission approval of PPAs, etc.), these requirements or guidelines must also be pragmatic, realistic and not overbearing. Otherwise, the Commission's, the Consumer

⁶ HECO Companies' Opening Brief, Page 3.

⁷ Consumer Advocate's Opening Brief, Page 9.

⁸ Consumer Advocate's Opening Brief, Page 9.

Advocate's, and the utility's respective limited staff and other resources would be unduly burdened.

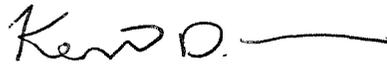
In order for a competitive bidding process to be successfully implemented in a timely and efficiently manner, the Commission's involvement in the process should be only at certain stages, as outlined in the Stipulating Parties' Framework. The Stipulating Parties' Framework, as written, among other things, 1) ensures that each electric utility is provided with the appropriate discretion to develop and implement the process based on the specific circumstances, goals and objectives involved, and 2) affords the Commission sufficient oversight to ensure that the process is timely, fair and efficient. KIUC also contends that existing statutes, rules, and the integrated resource planning process, in conjunction with the Stipulating Parties' Framework, provide the Commission with sufficient oversight to ensure that competitive bidding processes are implemented in accordance with public interest and the policies and objectives established by the Commission. As stated by the HECO Companies, one of the purposes of the Stipulating Parties' Framework is "to avoid time-consuming dispute resolutions over process that will make competitive bidding counter productive."⁹ To paraphrase: Adopting a rigid and inflexible competitive bidding framework, as advocated by HREA, will result in adverse consequences to ratepayers/customers throughout the State and result in a process that is too burdensome and protracted on all stakeholders.

For the reasons stated above and as set forth in its Opening Brief, KIUC respectfully requests that the Commission approves and adopts, in its entirety and

⁹ HECO Companies' Opening Brief, Page 4.

without modification, the Stipulating Parties' Framework attached to said Stipulation as Exhibit "A". KIUC believes that the Stipulating Parties' Framework establishes a fair and reasonable process to ensure that competitive bidding, when performed, is performed consistent with the public interest. The Stipulating Parties' Framework provides the electric utility with sufficient flexibility and allows the Commission sufficient oversight of the process. This is an effective combination that will ensure all ratepayers/customers and stakeholders, including the IPPs that are advocated by HREA, will not be adversely impacted by the process.

DATED: Honolulu, Hawaii, June 13, 2006.



KENT D. MORIHARA
MICHAEL H. LAU
Morihara Lau & Fong LLP

Attorneys for KAUAI ISLAND UTILITY
COOPERATIVE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were duly served on the following parties, by having said copies delivered as set forth below:

DIVISION OF CONSUMER ADVOCACY 335 Merchant Street Room 326 Honolulu, HI 96813	3 copies Hand Deliver
--	--------------------------

THOMAS W. WILLIAMS, JR. ESQ. PETER Y. KIKUTA, ESQ. Goodsill, Anderson, Quinn & Stifel Aii Place, Suite 1800 1099 Alakea Street Honolulu, HI 96813	1 copy U.S. Mail
--	---------------------

MR. WILLIAM A. BONNET Vice President Hawaiian Electric Company, Inc. Hawaii Electric Light Company, Inc. Maui Electric Company, Limited P. O. Box 2750 Honolulu, HI 96840-0001	1 copy U.S. Mail
--	---------------------

MR. DEAN MATSUURA Director, Regulatory Affairs Hawaiian Electric Company, Inc. P. O. Box 2750 Honolulu, HI 96840-0001	1 copy U.S. Mail
---	---------------------

WARREN S. BOLLMEIER II, PRESIDENT Hawaii Renewable Energy Alliance 46-040 Konane Place, #3816 Kaneohe, HI 96744	1 copy U.S. Mail
--	---------------------

DATED: Honolulu, Hawaii, June 13, 2006.



KENT D. MORIHARA
MICHAEL H. LAU

Attorneys for KAUAI ISLAND UTILITY
COOPERATIVE