

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

ORDER NO. 20834

Filed March 3, 2004  
At 2:30 o'clock P.M.

Karen Higert.  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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PUBLIC UTILITIES COMMISSION ) Docket No. 03-0372  
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ORDER

I.

Introduction

On October 21, 2003, the commission instituted an investigation to evaluate competitive bidding as a mechanism for acquiring or building new generating capacity in Hawaii.<sup>1</sup> Through this docket, the commission intends to explore competitive bidding issues affecting the electric industry in Hawaii. The issues include, but are not limited to:

- (1) evaluating the benefits and impacts of competitive bidding;
- (2) developing a fair competitive bidding system, if necessary, that:
  - (a) ensures that competitive benefits result from the system and ratepayers are not placed at undue risk;
  - (b) clearly specifies competitive bidding guidelines and requirements for prospective bidders, including the

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<sup>1</sup>See Order No. 20583 in Docket No. 03-0372.

evaluation system to be used, and the process for evaluation and selection;

- (c) encourages broad participation from a range of prospective bidders; and
- (3) developing the necessary revisions to the integrated resource planning process, if necessary.

The commission made Hawaiian Electric Company, Inc. ("HECO"), Maui Electric Company, Limited ("MECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Kauai Island Utility Cooperative ("KIUC"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") parties to this docket.<sup>2</sup>

On November 6, 2003, the Department of Business and Economic Development, and Tourism ("DBEDT") timely filed a motion to participate without intervention. On November 6, 2003, the County of Kauai, timely filed a motion to participate or intervene. On November 6, 2003, Hawaii Renewable Energy Alliance ("HREA") timely filed a motion to intervene. On November 7, 2003, Johnson Controls, Inc. and Pacific Machinery, Inc. (hereinafter referred to as the "Hawaii Energy Services Companies") timely filed their joint motion to intervene. On November 10, 2003, the County of Maui timely filed a motion to intervene. On November 10, 2003, Hess Microgen, LLC timely filed a motion to intervene. On November 10, 2003, The Gas Company, LLC ("TGC") timely filed a motion to intervene.

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<sup>2</sup>Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-62, the Consumer Advocate is an ex officio party in all commission proceedings.

II.

A.

Motion to Strike

On January 23, 2004, HECO, MECO, and HELCO (collectively referred to as "Companies") filed their joint response to the motions to intervene and/or participate indicating that it does not oppose any of the motions to intervene and/or participate. However, the Companies argue that Johnson Controls, Inc. and Pacific Machinery, Inc. should be treated on a joint basis, rather than on a "joint and several" basis. On January 30, 2004, Hawaii Energy Services Companies filed a motion to strike the Companies' joint response to the motions to intervene and/or participate. On February 10, 2004, the Companies filed a memorandum in response to Hawaii Energy Services Companies motion to strike the Companies' joint response to the motions to intervene and/or participate.

HAR § 6-61-41(c) provides, in relevant part, that "[a]n opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and the authorities relied upon not later than five days after being served" with the motion.

Hawaii Energy Service Companies argue that the Companies' joint response to the motions to intervene and/or participate was untimely because it was filed seventy-seven (77) days after their motion to intervene was filed. The Companies argue that Hawaii Energy Service Companies have not been prejudiced by the timing of the Companies response.

Upon review, we agree with Hawaii Energy Services Companies that the Companies' January 23, 2004 joint response to the motions to intervene and/or participate was untimely and not in accordance with HAR § 6-61-41(c).

Because we find the Companies' joint response to be untimely, the commission concludes that Hawaii Energy Services Companies' motion to strike the Companies' joint response to the motions to intervene and participate should be granted. Accordingly, we will not consider the Companies' joint response in our disposition of the motions to intervene and/or participate, discussed below.

B.

Motions to Intervene or Participate Without Intervention

In DBEDT's motion to participate without intervention, DBEDT alleges, among other things, that it has the broad authority to analyze comprehensive plans to provide for the full utilization and effective allocation of Hawaii's energy resources throughout the State of Hawaii. DBEDT also states its interest is directly related to promoting the public's energy needs through the analysis of energy resource programs. DBEDT further states that its interests are not adequately represented by the existing parties to the proceeding.

In the County of Kauai's motion to participate or intervene, the County of Kauai alleges, among other things, that it is responsible to provide for and to protect the public health, safety, and welfare of its residents and to protect and

advance the interests of the public. It further alleges that it is particularly concerned how the integrated resource planning process will be affected by the deployment of distributed generation projects on the island of Kauai. The County of Kauai asserts that it has a substantial interest as a large consumer of electricity and represents that its interests are not adequately represented by the existing parties to the proceeding.

In the HREA's motion to intervene, HREA alleges, among other things, that it is a private, non-profit corporation, composed of developers, manufacturers, distributors, scientists, engineers, and advocates in renewable energy. HREA further asserts that its members have a substantial financial interest in this docket because its members may wish to participate in a competitive bidding process for new generating capacity. HREA further states that its interests are not adequately represented by the existing parties to the proceeding.

In Hawaii Energy Services Companies' motion to intervene, Hawaii Energy Services Companies allege among other things, that they are non-regulated entities that provide generation equipment and services. As potential bidders to supply new generating capacity, Hawaii Energy Services Companies assert that the parameters set for competitive bidding in this docket will have a direct impact on the ability of non-regulated companies to engage in competitive bidding to provide new electricity generation within the service territories of the regulated utilities. Hawaii Energy Services Companies further

assert that their interests are not adequately represented by the existing parties to the proceeding.

In the County of Maui's motion to intervene, the County of Maui alleges, among other things, that it is responsible to provide for and to protect the public health, safety and welfare of its residents and to otherwise maintain, protect and advance the interests of the public. The County of Maui also represents that its interests are in the treatment of distributed generation in the utilities' IRP process and as a large consumer of electricity on the island of Maui and that their interests are not adequately represented by the existing parties to the proceeding.

In TGC's motion to intervene, TGC alleges, among other things, that it is a fuel supplier to certain forms of electric generation, including emergency backup generators and various engines used to generate electricity and heat. TGC asserts that it may, in the future and depending on the outcome of this proceeding, partner with parties submitting competitive bidding packages. TGC further states that its interests are not adequately represented by the existing parties to the proceeding.

HAR §§ 6-61-55 and 6-61-56, which govern intervention and participation without intervention, require, among other things, the movant to state the facts and interest thereto. In particular, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Furthermore, HAR § 6-61-56(c)(3) requires movant's

motion to participate without intervention to provide "[t]he extent to which the participation will not broaden the issues or delay the proceeding[.]"

To ensure a comprehensive examination of this matter, we invited all interested energy service providers and other business, environmental, cultural and community groups to participate in this docket as intervenors or participants so long as these persons or entities adhere to our administrative rules, specifically HAR Chapter 6-61 which governs intervention and participation in commission proceedings. See Order No. 20583.

Upon review, the commission finds that Movants who seek intervention complied with our administrative rules and their allegations are reasonably pertinent to the issues of this docket and do not unduly broaden them. We also find that Movants who seek only participation also complied with our administrative rules and their participation will not broaden the issues or delay the proceeding. The commission, therefore, concludes that Movants' motions to intervene or participate without intervention should be granted. In accordance with HAR § 6-61-56(a), the extent or degree to which the County of Kauai and DBEDT may participate in this proceeding will be determined in our prehearing order to be issued subsequent to this order.

Further, we must admonish all intervenors and participants that their participation in this docket will be limited to only the issues determined and/or authorized by the commission. The commission will preclude any efforts that will unreasonably broaden these issues, and unduly delay the

proceedings. The commission will reconsider any of the intervenors' or participants' participation in this proceeding if, at any time during this proceeding, the commission determines that any of the intervenors or participants efforts: (1) unreasonably broaden the pertinent issues in this docket; or (2) unduly delay the proceedings.

Finally, the commission will require the parties and participants to meet informally to formulate the issues, procedures, schedule, and the extent or degree of the County of Kauai's and DBEDT's participation for this proceeding. To provide some guidance, we suggest the schedule to consist, at a minimum, of the following:

1. Draft Position Statements
2. Information Requests, if any.
3. Responses to Information Requests
4. Final Position Statements
5. Prehearing Conference
6. Hearing (Presentations to the commission)

The commission will set the prehearing conference and hearing dates. The commission intends to hold the hearing in this docket no later than December 31, 2004, therefore, all deadlines including the submission of the Final Position Statements must be completed by November 30, 2004. The parties and participants may propose additional steps, as necessary, in their stipulated prehearing statement or proposed prehearing statement.

III.

Orders

THE COMMISSION ORDERS:

1. Hawaii Energy Services Companies' motion to strike the Companies' response to the motions to intervene or participate is granted.

2. HREA's, Hawaii Energy Services Companies', the County of Maui's, Hess Microgen's and TGC's motions to intervene are granted.

3. The County of Kauai's and DBEDT's motions to participate without intervention are granted.

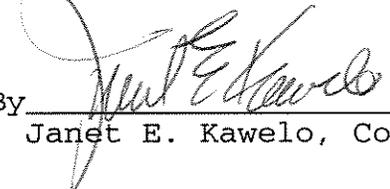
4. The parties and participants shall meet informally to formulate the issues, procedures, schedule and the extent or degree of the County of Kauai's and DBEDT's participation with respect to this docket, to be set forth in a stipulated prehearing order. The stipulated prehearing order shall be submitted for commission approval within 30 days from the date of this order. If unable to stipulate to such an order, each party shall submit its own proposed prehearing order for the commission's consideration within 30 days from the date of this order.

DONE at Honolulu, Hawaii this 3rd day of March, 2003.

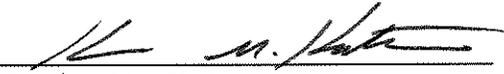
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kevin M. Katsura  
Commission Counsel

03-0372.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20834 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: March 3, 2004