

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

In The Matter Of the Application Of  
HAWAIIAN ELECTRIC COMPANY, INC.

DOCKET NO. 03-0417

for approval to commit funds in excess of  
\$500,000 for Item Y48500, East Oahu  
Transmission Project.

MEMORANDUM IN RESPONSE TO  
MOTION TO INTERVENE BY CAROL FUKUNAGA,  
SCOTT K. SAIKI AND ANN KOBAYASHI

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN RESPONSE TO  
MOTION TO INTERVENE BY CAROL FUKUNAGA,  
SCOTT K. SAIKI AND ANN KOBAYASHI**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. (“HECO”) in response to the Motion to Intervene (“Motion”) filed January 7, 2004 by Carol Fukunaga, Scott K. Saiki and Ann Kobayashi (collectively referred to as “Movants”).

HECO does not oppose Movants’ intervention in this docket, provided that Movants are not permitted to expand the scope of the proceeding or delay the proceeding, and Movants are required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (Hawaii Administrative Rules, Title 6, Chapter 61) (“Commission’s Rules of Practice and Procedure”). HECO requests that, if Movants are permitted to intervene in this proceeding, Movants be represented through a common representative.

**DISCUSSION**

**A. Introduction**

The Motion (page 4) states that Movants seek intervenor status “in the exercise of their due process rights.” Due process does not require that Movants be afforded the status of a party to this proceeding and there is not a statute that affords them the status of a party to this

proceeding. Compare Hawaii Revised Statutes §269-51 (granting the Consumer Advocate the right to participate in Commission proceedings). Thus, the Motion is governed by the Commission's Rules of Practice and Procedure regarding intervention.

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. Hawaii Administrative Rules ("H.A.R.") §6-61-55 (d) specifically states that: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993). In addition, the Commission needs to insure "the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's rules as stated in H.A.R. §6-61-1.

In the section of the Motion entitled "Nature Of Movants' Right To Participate", Movants state that they "are elected public officials who are residents and/or represent constituents in the affected districts and/or believe the issues raised in these proceedings require the participation and input by these communities through their elected officials. Movants are, as identified above, for most part the elected officials who represent the communities in this area and reside therein."

Motion at 3.

In Docket No. 7256 (in which the Commission approved HECO's Waiiau-CIP 138kV #1 & #2, Part 2, Transmission Lines project), the Commission did not allow a group of Legislators and Councilmembers to intervene in their capacities as Legislators and/or Councilmembers; but did allow them (after considering the factors identified in the Commission's Rules of Practice and Procedure regarding intervention and HECO's non-opposition to their motion) to intervene as individuals represented by the same counsel.<sup>1</sup>

This distinction is appropriate, as Legislators and Councilmembers not only represent the interests of their constituents in legislative or council matters, but also represent the interests of the State, or the City and County of Oahu, as a whole (which includes the public's interest in having dependable, reliable Statewide energy systems). It is also appropriate since the Legislature has identified the Commission as the agency to address the need for electric infrastructure and to determine whether a proposed project (after evaluating and balancing the trade-offs between benefits, costs and impacts) is a reasonable approach to meet such need. As stated on page 5 of the Motion, the "Commission is charged with its duties and responsibilities in H.R.S. Chapter 269."

Movants "believe that in order for the Commission to be fully apprised of the objections to the HECO proposal, they must be allowed to intervene. But for the actual participation of Movants the Commission may be denied the benefit of a contested case, and the benefits derived therefrom, e.g. cross-examination of witnesses, challenges to factual assumptions, etc." Motion at 3. HECO notes, however, that it is unlikely that HECO and the Consumer Advocate will be

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<sup>1</sup> See Re Hawaiian Electric Co., Docket No. 7256, Order No. 12233 (March 12, 1993).

the only parties, as there have been 8 motions to intervene (and HECO generally has not opposed the motions by organizations to become parties).<sup>2</sup>

**B. HECO's Position**

HECO does not oppose Movants' intervention in this docket, provided that Movants are not permitted to expand the scope of the proceeding or delay the proceeding, and Movants are required to comply with the Commission's Rules of Practice and Procedure (e.g., rules regarding format for pleadings and other documents, and hearing and post-hearing procedures). HECO's position takes into account Movants' representations that their "participation will [not]<sup>3</sup> broaden the issues and not delay the proceeding." Motion at 5. HECO requests that if Movants are permitted to intervene in this proceeding, Movants be represented through a common representative. Movants may intend that person to be Scott Saiki, who (in addition to being an elected State Representative) is an active licensed attorney and was designated as the person to which communications should be sent.

HECO notes that Movants state that they oppose HECO's application.<sup>4</sup> Motion at 6. HECO hopes that Movants' participation in this docket will provide HECO with a better understanding of Movants' concerns, and that Movants will reconsider their position in light of

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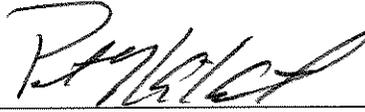
<sup>2</sup> HECO proposes that individuals seeking intervention participate through other parties with similar interests or through the Consumer Advocate.

<sup>3</sup> It appears that Movants intended to include the word "not" in the sentence based on the heading for that section of text, which reads "Movants' Participation Will Neither Unduly Broaden The Issues Nor Delay This Proceeding".

<sup>4</sup> Movants also "contend that they and others of East Oahu will carry an inequitable share of the 'local costs' to ensure a reliable energy source for the rest of the island." Motion at 5. However, the proposed project involves the installation of underground lines in East Oahu in order to address East Oahu reliability concerns.

the detailed and extensive expert testimony and other technical evidence that will be presented in this proceeding.

DATED: Honolulu, Hawaii, January 16, 2004.



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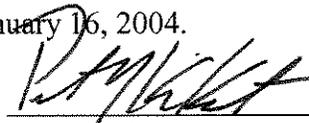
**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN RESPONSE TO MOTION TO INTERVENE BY CAROL FUKUNAGA, SCOTT K. SAIKI, AND ANN KOBAYASHI**, together with this Certificate of Service, by making personal delivery or by causing a copy hereof to be mailed, postage prepaid and properly addressed, to each such party:

Division of Consumer Advocacy (2)  
Department of Commerce and Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813

Scott K. Saiki  
c/o State Capitol, Room 438  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii January 16, 2004.



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