

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

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

DOCKET NO. 03-0417

PUBLIC UTILITIES
COMMISSION

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FILED

**MEMORANDUM IN RESPONSE TO
MOTION TO INTERVENE OF KAPAHULU NEIGHBORS**

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN RESPONSE TO
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This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in response to the Motion to Intervene ("Motion") dated January 7, 2004 by Kapahulu Neighbors ("Movant").

HECO will not oppose Movant's request to intervene as a party in this proceeding, provided that Movant is not permitted to expand the scope of the proceeding or delay the proceeding and Movant is required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (Hawaii Administrative Rules ("H.A.R."), Title 6, Chapter 61) ("Commission's Rules of Practice and Procedure").

It is difficult for HECO to respond to the Motion, however, because the Motion does not address, at least in any organized fashion, the nine specific points that must be referenced in a motion to intervene pursuant to Hawaii Administrative Rules ("H.A.R.") §6-61-55(b).¹

HECO notes that Movant does not have to be made a party to this proceeding in order to

pursue the actions requested in its motion. The Motion appears to request three actions, including (1) that a presentation on the project be made to the Kapahulu community, (2) that a public hearing be held by the Commission, and (3) that an Environmental Impact Statement (“EIS”) be required. As a practical matter, HECO notes that (1) presentations were made at Kaimuki High School on July 7, 2003, and at a McCully/Moilili Neighborhood Board meeting on November 6, 2003 (at which it was indicated, in response to a request at the meeting, that a presentation to the Kapahulu community would be made²), and that further informational meetings will be held as part of HECO’s voluntary Environmental Assessment (“EA”) process, (2) HECO’s application indicated that the Commission can hold a public hearing, and Movant need not be made a party for its request for a public hearing to be noted or acted upon by the Commission, and (3) the Commission, as the accepting agency for the EA, will determine after the EA is submitted whether an EIS is required, and Movant may pursue a request for an EIS through the EA process without being made a party to this proceeding.

Alternatively, the Commission may allow Movant to participate, without intervening, in the proceeding through the Consumer Advocate or another party³, or to participate and represent itself in this proceeding, without intervening, with respect to matters of interest to Movant as designated by the Commission.

I. DISCUSSION

A. Introduction

The Motion does not refer to any statutory or other right to participate in this docket.

¹ In similar situations in the past where the content of a motion to intervene did not comply with the Commission’s Rules of Practice and Procedure regarding intervention, the Commission permitted an organization to file an amended motion to intervene which complied with the Commission’s rules.

² The date and place for the presentation have not yet been set.

Accordingly, 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. 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.

B. Intervention As A Party

Based on the information in its Motion, and the information on file with the Department of Commerce and Consumer Affairs, Movant is a domestic nonprofit corporation incorporated in Hawaii on December 1, 1999. Daisy M. Murai is listed as its agent. It appears that the Motion is made on behalf of Movant, rather than on behalf of Daisy M. Murai individually, but that is not clear from the text of the Motion.

HECO is concerned that the participation of numerous parties representing the same

³ Such as elected officials that moved to intervene (i.e., Carol Fukunaga, Scott K. Saiki, and Ann Kobayashi),

interests in a proceeding (particularly where some of the parties are participating on a pro se basis) could delay the proceeding (through repetitious questioning of witnesses, etc.), without contributing to the development of the record. The question of who will represent the organization (if Movant is allowed to be a party or a participant) also needs to be established, so that it is clear that it is the organization, speaking through its authorized representative, that is a party, and not the individuals who may claim to be members of Kapahulu Neighbors.

As stated above, HECO will not oppose Movant's request to intervene as a party in this proceeding, provided that Movant is not permitted to expand the scope of the proceeding or delay the proceeding and Movant is required to comply with the Commission's Rules of Practice and Procedure.

However, HECO notes that it is difficult for HECO to respond to the Motion, because the Motion does not address, at least in any organized fashion, the nine specific points that must be referenced in a motion to intervene pursuant to H.A.R. §6-61-55(b). In similar circumstances in the past, the Commission permitted an organization to file an amended motion to intervene which complied with the Commission's rules regarding intervention.

For example, in Docket No. 6523 (a proceeding involving the approval of transmission lines on the Big Island), Puna Community Council ("Puna CC"), which was an umbrella organization for twenty-three member organizations that were comprised of people who own or reside in the residential areas that would be affected by the proposed project, filed an application to intervene on a pro se basis. By Order No. 10358, issued October 3, 1989 ("Order No. 10358"), the Commission found that Puna CC's application to intervene did not comply with the Commission's rules of practice and procedure regarding intervention in that the application to

presuming they are permitted to intervene as a party, which HECO has not and will not oppose.

intervene did not provide the information regarding the reasons for movant's request to intervene as required by the Commission's rules. The Commission allowed Puna CC to file an amended application to intervene. Order No. 10358 at 2. Puna CC filed an amended application to intervene which was granted by Order No. 10380 (issued November 2, 1989).

C. Limited Participation Without Intervention

The Commission in the past has denied intervenor status, but granted participation status pursuant to H.A.R. §6-61-56, and allowed the limited participation of persons seeking intervention on specific issues, through other entities or through their own representation, when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

In Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) ("Order No. 10399"), the Commission denied the amended application to intervene of Puna CC in a Hawaii Electric Light Company, Inc. ("HELCO") rate case, but granted Puna CC participation status, subject to the conditions that (1) Puna CC's participation would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "[Puna CC] shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399, pages 5-6. (Puna CC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. Puna CC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna rate payers because most of them were in the lower income brackets and tend to use less power. Puna CC also

argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.)

In Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) (“D&O 11668”), the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively “Legal Aid”), in a Maui Electric Company, Limited (“MECO”) rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. D&O 11668, page 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party.) The Consumer Advocate supported Legal Aid’s involvement in the proceeding.

The Commission denied Legal Aid’s Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid’s interest. However, the Commission was impressed by Legal Aid’s statement of expertise, knowledge and experience, and thus granted Legal Aid participation status limited to the issue of the specific impact of MECO’s proposed rate structure and rate design on ratepayers in the lower income brackets.

Based on the Motion, Movant’s stated interest in this proceeding relates to the impact of the proposed project on the Kapahulu area.

II. CONCLUSION

Based on the foregoing, HECO will not oppose Movant’s request to intervene as a party in this proceeding, provided that Movant is not permitted to expand the scope of the proceeding or delay the proceeding and Movant is required to comply with the Commission’s Rules of Practice and Procedure. Alternatively, the Commission may allow Movant to participate,

without intervening, in the proceeding through the Consumer Advocate or another party, or to participate and represent itself in this proceeding, without intervening, with respect to matters of interest to Movant as designated by the Commission.

DATED: Honolulu, Hawaii, January 14, 2004.



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PETER Y. KIKUTA

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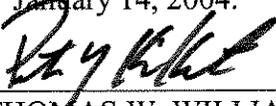
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN RESPONSE TO MOTION TO INTERVENE OF KAPAHULU NEIGHBORS**, 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

Daisy M. Murai, Secretary
Kapehulu Neighbors
c/o 3039 Kaunaoa Street
Honolulu, Hawaii 96815

DATED: Honolulu, Hawaii January 14, 2004.



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