

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

2004 JAN 14 P 4: 18

FILED

MEMORANDUM IN RESPONSE TO
MĀLAMA O MĀNOA'S MOTION TO INTERVENE

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN RESPONSE TO
MĀLAMA O MĀNOA'S MOTION TO INTERVENE**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in response to the Motion to Intervene filed January 7, 2004 by Malama O Manoa ("Malama") ("Malama's Motion").

HECO does not oppose Malama's intervention in this docket, provided that Malama is not permitted to expand the scope of the proceeding or delay the proceeding, and Malama is 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").

DISCUSSION

A. Introduction

The cases cited by Malama (Malama's Motion at 4-5) do not grant Malama the status of a party to a Commission proceeding. Compare Hawaii Revised Statutes §269-51 (granting the Consumer Advocate the right to participate in Commission proceedings). Thus, Malama's 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.

B. HECO’s Position

HECO does not oppose Malama’s intervention in this docket, provided that Malama is not permitted to expand the scope of the proceeding or delay the proceeding, and Malama is required to comply with the Commission’s Rules of Practice and Procedure (e.g., rules regarding hearing and post-hearing procedures).

HECO’s position takes into account Malama’s representations that it will not seek to expand the scope of the proceeding or delay the proceeding - - Malama claimed that it “seeks to address the issues raised by HECO’s application, and its participation will not broaden the issues

that are relevant to it. Malama's participation will not delay the proceedings but will facilitate the consideration of the relevant issues." Malama's Motion at 7.

HECO notes that Malama's Motion refers to a recommended finding of the Hearing Officer in the Board of Land and Natural Resources ("BLNR") contested case proceeding initiated as a result of HECO's application for a Conservation District Use Permit ("CDUP") for a proposed partial underground/partial overhead (via Waahila Ridge) Kamoku-Pukele 138kV transmission line¹, and attaches, as Exhibit 1 to its motion, BLNR's Findings of Fact, Conclusions of Law, and Decision and Order dated June 28, 2002.

The Hearing Officer made proposed findings on the need for the project (and, in HECO's view, thereby exceeded his authority) despite his recognition at the prehearing conference for the CDUP contested case proceeding "that this [the BLNR] is not the Public Utilities Commission, and we are not going to turn this into [a] PUC proceeding or invade that jurisdiction of the Public Utilities Commission." (Transcript of August 29, 2001 Prehearing Conference, page 6.)

The Commission will make its own determination as to whether the proposed East Oahu Transmission Project will provide facilities that are reasonably required to meet HECO's probable future requirements for utility purposes (i.e., whether the project is needed) based on the extensive expert testimony and other evidence submitted in this proceeding.

In addition, this is not the point in the proceeding for HECO to respond to any allegations by Malama regarding the proposed project, and HECO's non-response to allegations in

¹ The CDUP was necessary because a portion of the overhead alignment on Waahila Ridge was within the State Conservation District.

Malama's Motion should not be misconstrued as agreement with or acceptance of the accuracy of such allegations.

DATED: Honolulu, Hawaii, January 14, 2004.

A handwritten signature in black ink, appearing to read "Peter Y. Kikuta", written in a cursive style.

THOMAS W. WILLIAMS, JR.
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 MĀLAMA O MĀNOA'S MOTION TO INTERVENE**, 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:

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DATED: Honolulu, Hawaii January 14, 2004.



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