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

ORDER NO. 20860

Filed March 23, 2004

At 11:00 o'clock A.M.

Karen Higashi

Chief Clerk of the Commission

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 Order No. 20860

ORDER

I.

Introduction

On December 18, 2003, HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") filed an application requesting commission approval to, among other things, commit approximately $55,424,000 for Item Y48500, East Oahu Transmission Project ("proposed project"), in accordance with paragraph 2.3.g.2 of the commission's General Order No. 7, Standards of Electric Utility Service in the State of Hawaii.

HECO served copies of the application on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"), an *ex officio* party to this docket, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

Life of the Land ("LOL") requests that the commission permit it to intervene and become a party to this docket

("LOL's Motion to Intervene").[1] LOL's Motion to Intervene is made pursuant to HAR §§ 6-61-41, 6-61-55, and 6-61-57. HECO filed a Memorandum in Response to LOL's Motion to Intervene on January 13, 2004, stating that it does not oppose LOL's intervention in this docket, provided that LOL is not permitted to expand the scope of the proceeding or delay the proceeding, and LOL is required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (HAR, Title 6, Chapter 61)("commission's Rules of Practice and Procedure"). On January 29, 2004, the commission held a hearing on LOL's Motion to Intervene in response to LOL's request, pursuant to HAR § 6-61-41. On February 11, 2004, LOL filed a Reply to Public Hearing Questions, providing the commission with additional information requested during the hearing on LOL's Motion to Intervene.

Carol Fukunaga, Scott K. Saiki, and Ann Kobayashi (collectively referred to as the "Public Officials") also request to intervene and become a party to this docket ("Public Officials' Motion to Intervene"), pursuant to HAR §§ 6-61-41, 6-61-55, and 6-61-57.[2] On January 16, 2004, HECO filed a Memorandum in Response to the Public Officials' Motion to Intervene, stating that it does not oppose their intervention in this docket, provided that they do not expand the scope of the proceeding or delay the proceeding, and are required to comply with the commission's Rules of Practice and Procedure.

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[1]LOL's Motion to Intervene, filed January 6, 2004.

[2]Public Officials' Motion to Intervene, filed January 7, 2004.

II.

Discussion

HAR § 6-61-55, which governs intervention in our proceedings requires, among other things, the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. Furthermore, 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."

A.

LOL's Motion to Intervene

LOL, a non-profit Hawaii corporation, is a self-labeled "environmental and community action group" that was formed in 1970. LOL states that it has approximately 1,000 members who pay annual dues.

In its motion to intervene, LOL states, among other things, that it is "concerned about the impacts this project will have on our environment ...; culture ...; ... societ[y] ...; and State Energy Plan ..." LOL states that it represents environmental interests and its mission "is to preserve and protect the life of the land through sustainable land use and energy policies and to promote open government through research, education, advocacy, and when necessary, litigation." LOL asserts that it will assist in the development of a sound evidentiary record, as demonstrated by its work in HECO's previous contested case hearing before the Board of Land and

Natural Resources ("BLNR") for a Conservation District Use Permit to install a new 138,000 volt transmission line within existing easements in the Conservation District atop Waahila Ridge ("Waahila Ridge Contested Case"), and has an interest that is distinct from that of the Consumer Advocate. LOL contends that it will commit to participate in good faith in this docket and will neither unduly broaden the issues, nor delay this proceeding.

As stated above, LOL participated in the Waahila Ridge Contested Case. While the application filed before the BLNR involved a different means of solving the potential problem outlined by HECO in this docket, as well as a different kind of application, the commission nonetheless believes that LOL may have relevant information from its participation in the Waahila Ridge Contested Case that may prove helpful in this docket. Upon consideration of LOL's interest in, among other things, the environmental impact of the proposed project and its participation in the Waahila Ridge Contested Case, we find that the allegations raised by LOL in its Motion to Intervene are reasonably pertinent to the matters raised in this docket, and in reliance upon its assertion, that its participation will not broaden the issues or unduly delay the proceedings. Accordingly, we conclude that LOL's Motion to Intervene should be granted.

B.

Public Officials' Motion to Intervene

Carol Fukunaga is a member of the State Senate who was elected to represent the eleventh senatorial district.[3] Scott K. Saiki is a member of the State House of Representatives who was elected to represent the twenty-second representative district.[4] Ann Kobayashi is a member of the Honolulu City Council who was elected to represent District 5.[5]

In their Motion to Intervene, the Public Officials state that they 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." The Public Officials assert that in order for the commission to be fully apprised of the objections to the HECO proposal, they must be allowed to intervene. The Public Officials express a great interest in being able to cross-examine witnesses, present testimony, and submit arguments, opportunities that may not otherwise be afforded to them through mere attendance at a public hearing. The Public Officials assert that they will assist in the development of a record upon which the commission can rely,

[3]The eleventh senatorial district includes a portion of McCully, Tantalus, a portion of Makiki, Punchbowl, and a portion of Honolulu. Source: Hawaii State Legislature Home Page.

[4]The twenty-second representative district includes a portion of Moiliili, a portion of McCully, and a portion of Kaimuki. *Id.*

[5]District 5 includes a portion of Kapahulu and Kaimuki; Palolo Valley, St. Louis Heights, Manoa, Moiliili, McCully, Kakaako, and a portion of Ala Moana and Makiki. Source: Honolulu City Council Home Page.

and state that they will not unduly broaden the issues or delay the proceeding.

The commission believes that the interests of the local residents of the area to be affected by the proposed project outlined in HECO's application may differ from those of the general public. Rather than allowing numerous community groups and residents affected by the proposed project, some of whom represent the same general area of affected residents, the commission finds it practical, beneficial, and more expedient to utilize those who are publicly charged with the formal representation of the affected areas to represent the affected residents in this docket similar to class action plaintiffs under Hawaii Rules of Civil Procedure Rule 23. We find that the Public Officials have a substantial interest that is reasonably pertinent to the matters raised in this docket, and in reliance upon their assertion, that their participation will not broaden the issues or unduly delay the proceedings. Accordingly, we conclude that the Public Officials' Motion to Intervene should be granted.

LOL and the Public Officials, as intervenors, are admonished 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 proceeding. The commission will reconsider any of the intervenors' participation in this proceeding if, at any time during this proceeding, the commission determines that any of the

intervenors' efforts unreasonably broaden the pertinent issues in this docket or unduly delay the proceeding.

The commission required HECO and the Consumer Advocate to file a prehearing order by February 20, 2004.[6] The commission later extended this filing deadline to March 18, 2004, by Order No. 20845, filed on March 10, 2004. On March 18, 2004, HECO and the Consumer Advocate requested an additional extension of time until April 15, 2004 to file a prehearing order. The commission believes that additional time is necessary to allow HECO and the Consumer Advocate to meet with the persons granted intervenor or participant status in this docket. Accordingly, the commission concludes that HECO, the Consumer Advocate, and the persons granted intervention and participation in this docket should be given thirty (30) days from the date of this order to meet and determine the issues, procedures, and schedule with respect to this proceeding, and file a stipulated prehearing order. Further, the commission concludes that Order No. 20771, filed on January 20, 2004, and that portion of Order No. 20845, filed on March 10, 2004, that extended the prehearing order deadline to March 18, 2004 should be vacated.

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[6]Order No. 20771, filed on January 20, 2004.

III.

Orders

THE COMMISSION ORDERS:

1. LOL's Motion to Intervene is granted.

2. The Public Officials' Motion to Intervene is granted.

3. HECO and the Consumer Advocate shall meet informally with LOL, the Public Officials, and persons granted participant status in this docket to determine the issues, procedures, and schedule with respect to this proceeding, to be set forth in a stipulated prehearing order. The stipulated prehearing order shall be submitted for commission approval within thirty (30) days from the date of this order. If the parties are unable to stipulate to such an order, each party shall submit its own proposed prehearing order for the commission's consideration within thirty (30) days from the date of this order. The commission's Order No. 20771, filed on January 20, 2004, which required that HECO and the Consumer Advocate file a stipulated prehearing order by February 20, 2004, and the portion of Order No. 20845, filed on March 10, 2004, that extended the prehearing order deadline to March 18, 2004 are vacated. In all other respects, Order No. 20845 remains unchanged.

DONE at Honolulu, Hawaii this 23rd day of March, 2004.

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:

_____
Catherine P. Awakuni
Commission Counsel

03-0417.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20860 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

WILLIAM A. BONNET
VICE PRESIDENT - GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

PATSY H. NANBU
DIRECTOR - REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817

SCOTT K. SAIKI
c/o State Capitol, Room 438
Honolulu, HI 96813

KAREN H. IWAMOTO, PRESIDENT
PALOLO COMMUITY COUNCIL
3443 Hardesty Street
Honolulu, HI 96816

DARLENE NAKAYAMA
HOOLAULIMA O PALOLO
2396 Palolo Avenue
Honolulu, HI 96816

COREY Y.S. PARK, ESQ.
PAMELA W. BUNN, ESQ.
PAUL JOHNSON PARK & NILES
1001 Bishop Street
Suite 1300, ASB Tower
Honolulu, HI 96813

DR. JEREMY LAM, PRESIDENT
MALAMA O MANOA
2230 Kamehameha Avenue
Honolulu, HI 96822

DAISY M. MURAI, SECRETARY
KAPAHULU NEIGHBORS
c/o 3039 Kaunaoa Street
Honolulu, HI 96815

Karen Higashi

Karen Higashi

DATED: March 23, 2004