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PUBLIC UTILITIES
COMMISSION

2006 JUL 14 P 4: 06

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In The Matter Of the Application Of

HAWAII ELECTRIC LIGHT COMPANY, INC.

For Approval of Rate Increases and Revised Rate
Schedules and Rules.

DOCKET NO. 05-0315

**MEMORANDUM IN RESPONSE TO KEAHOLE DEFENSE
COALITION, INC.'S MOTION TO PARTICIPATE IN DOCKET**

AND

CERTIFICATE OF SERVICE

GOODSILL ANDERSON QUINN & STIFEL
A LIMITED LIABILITY LAW PARTNERSHIP LLP

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: (808) 547-5600
Facsimile: (808) 547-5880

Attorneys for
HAWAII ELECTRIC LIGHT COMPANY, INC.

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COALITION, INC.'S MOTION TO PARTICIPATE IN DOCKET**

This Memorandum is respectfully submitted by HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") in response to Keahole Defense Coalition, Inc.'s ("KDC") Motion to Participate in Docket, dated July 5, 2006 ("KDC's Motion").

As discussed and elaborated further below, in accordance with the terms of a mediated settlement agreement between HELCO and a number of other entities (including KDC) that terminated litigation concerning HELCO's efforts to expand its Keahole generating station, HELCO supports KDC's Motion to participate with respect to issues related to the expansion of HELCO's Keahole generating station (CT-4, CT-5 and ST-7).

DISCUSSION

A. Introduction

KDC's Motion is governed by 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") regarding participation without intervention. Participation without intervention to a proceeding before the Commission is not a matter of right but is a matter resting within the discretion of the Commission. H.A.R. §6-61-56(a) specifically

states that “[t]he commission may permit participation without intervention.” (Emphasis added.)

The Commission exercises its discretion by determining whether or not a movant should be admitted as a participant in a proceeding.

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 of Practice and Procedure as stated in H.A.R. §6-61-1.

B. Settlement Agreement

KDC’s Motion (page 2, ¶3) and the Verification and Affidavit of Keichi Ikeda (pages 2-3, ¶3) reference a settlement agreement between HELCO and a number of other entities (including KDC) that contained a number of terms and conditions, including a condition that HELCO support KDC’s position to participate in and to express KDC’s views as to Keahole generating station-related issues in this docket. As discussed in HELCO’s monthly CT-5/ST-7 status reports filed in Docket No. 7623, a Settlement Agreement (“Settlement Agreement”)¹ was executed by HELCO, KDC, Peggy Ratliff, Mahi Cooper, the Department of Hawaiian Home Lands, the Department of Health, the Board of Land and Natural Resources, and the Department of Land and Natural Resources, with the last of those parties signing the Settlement Agreement on November 6, 2003.²

¹ A copy of the Settlement Agreement was filed with the Commission in Docket No. 7623, in HELCO’s January 5, 2004 Keahole CT-5/ST-7 Monthly Status Report (Attachment 2, pages 15 to 49), as Exhibit C to Appellee HELCO’s Reply Memorandum to Appellee Waimana Enterprises, Inc.’s Memorandum in Opposition to Appellants Keahole Defense Coalition, Inc., Peggy J. Ratliff, Mahi Cooper and Department of Hawaiian Home Land’s Motion to Vacate filed November 5, 2003 in the Third Circuit Court of Hawaii.

² HELCO entered into the Settlement Agreement with all but one of the parties that had actively opposed the expansion of the Keahole generating station, and with several regulatory agencies. As stated in Section I of the Settlement Agreement, the purpose of the agreement was to terminate pending litigation and to avoid future litigation relating to regulatory, permitting and related issues concerning HELCO’s proposal to modernize and expand the Keahole generating station, and to permit HELCO to complete the plant expansion, subject to satisfaction of the terms and conditions of the Settlement Agreement.

Section II.C of the Settlement Agreement states:

C. PUC Rate Case. Following the approach used by the Legal Aid Society of Hawaii to raise a specific issue of interest to its clients in Maui Electric Company's rate case (Docket No. 7000), HELCO will support the Coalition's position to participate in and to express its views as to Station-related issues in HELCO's rate case docket(s). However, in the event that the Public Utilities Commission denies the Coalition's petition to participate, such denial shall not constitute a breach of this Agreement or be grounds for vacating or modifying this Agreement. HELCO warrants that it will refrain from taking any action that might influence the Public Utilities Commission to deny the Coalition's petition to participate.

HELCO will pay the reasonable costs and expenses associated with the Coalition's petition for special participation in the case docket(s), which amounts are included in the payment to be made pursuant to Part II.F and Appendix 1. In the Coalition's petition for special participation, it shall state that it has received funding from HELCO to pursue issues before the Public Utilities Commission, and HELCO may request that the Public Utilities Commission add any amounts paid by HELCO to the Coalition that are used for this purpose to HELCO's rate base for the Station.³

C. HELCO's Position

HELCO supports KDC's Motion to participate with respect to issues related to the expansion of HELCO's Keahole generating station (CT-4, CT-5 and ST-7). Such participation by KDC in this docket would follow the participant approach ultimately used by the Legal Aid Society of Hawaii in Maui Electric Company, Limited's ("MECO") rate case, Docket No. 7000,⁴

³ The amounts paid to KDC under the Settlement Agreement for this purpose were expensed in 2003, and HELCO has not included these amounts in the cost added to rate base for the Keahole generating station additions.

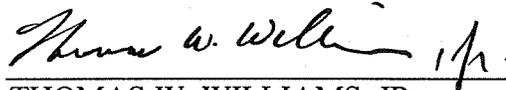
⁴ In *Re Maui Electric Co.*, Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) ("D&O 11668"), the Commission denied intervention, but allowed limited participation to seven low-income residents through their attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a MECO rate 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 at 3. In addition, Legal Aid informed the Commission that it could further the

to raise a specific issue of interest to its clients. (As previously discussed, this type of participation by KDC was contemplated by and specifically mentioned in the Settlement Agreement.) In addition, based on the terms and conditions of the Settlement Agreement, and KDC's Motion, KDC's interest in this docket is with respect to issues related to the expansion of HELCO's Keahole generating station.

HELCO notes that KDC represents in its Motion (page 3) that KDC will not "broaden the issues in this Docket". In addition, like any other intervenor or participant in a Commission proceeding, KDC's participation in this docket should not delay the proceeding, and KDC should comply with the Commission's Rules of Practice and Procedure.

HELCO also notes that KDC's Motion includes a number of contentions concerning the cost of the expansion of the Keahole generating station. This is not the point in the proceeding for HELCO to respond to such allegations, and HELCO's non-response to allegations in KDC's Motion should not be misconstrued as agreement or acceptance of such allegations.

DATED: Honolulu, Hawaii, July 14, 2006.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAII ELECTRIC LIGHT COMPANY, INC.

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.

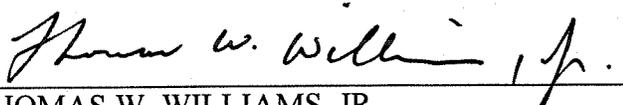
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN RESPONSE TO KEAHOLE DEFENSE COALITION, INC.'S MOTION TO PARTICIPATE IN DOCKET**, together with this Certificate of Service, by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Division Of Consumer Advocacy
Department of Commerce & Consumer Affairs
335 Merchant Street, Room 326
Honolulu, HI 96813

Keahole Defense Coalition, Inc.
c/o Keichi Ikeda
P.O. Box 5618
Kailua-Kona, Hawaii 96745

DATED: Honolulu, Hawaii, July 14, 2006.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAII ELECTRIC LIGHT COMPANY, INC.