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August 1, 2011

Hawai'i Public Utilities Commission
Kekuanao'a Building, First Floor
465 South King Street
Honolulu, Hawaii 96813

re: August 2, 2011 Public Hearing for AKP Biodiesel Supply Contract (Docket No. 2011-0005)

Aloha Commissioners,

In 2011 HELCO filed 2 renewable energy power purchase agreements with the Hawai'i Public Utilities Commission.

One was for geothermal energy at below the cost that the utility could generate its own electricity.

The other was for biodiesel at well above the cost that the utility could generate its own electricity and perhaps at the highest price any Hawai'i utility has ever paid for electricity.

HECO argues that O`ahu ratepayers benefit from adding renewables onto the grid, and therefore should subsidize the biodiesel operation.

The Biodiesel Application

On January 6, 2011 HECO, MECO & HELCO filed a Biofuel application was filed with the PUC requesting approval of the HELCO- Aina Koa Pono-Ka'u LLC (AKP) biodiesel supply contract and the establishment of a Biofuel Surcharge Provision that will pass through the differential between the cost of the biofuel and the cost of the petroleum fuel that the biofuel is replacing.

"AKP had access to agricultural lands on the Island of Hawaii, and AKP agreed to reduce the volume of its initial Island of Hawaii proposal to 16 million gallons which is a good fit for HELCO's Keahole generation." (HELCO Response to CA-IR-16, p.1)
"The analysis assumed that 200 GWh of renewable energy would be generated at HELCO's Keahole Power Plant using the 16 million gallons of biodiesel." (HELCO Response to CA-IR-7, p.1, dated April 27, 2011)

"Although the Biodiesel currently costs more than petroleum diesel, it is conceivable that oil prices may continue to rise during the term of this Biodiesel Supply Contract to a point that diesel from petroleum imported to Hawai'i reaches or exceeds the Biodiesel Price." (HELCO Application, p.4, dated January 6, 2011)

"The proposed surcharge is intended to be implemented as a cents per kWh rate that is the same for all customer classes of Hawaiian Electric and HELCO." (HECO Reply to CA-SIR-9, dated)

"The Companies confirm that the proposed biofuel surcharge is meant to apply to all rate classes of Hawaiian Electric and all rate classes of HELCO." (HECO Reply to CA-SIR-5.a.1)

"The cost anticipated to be reflected in the tariff is estimated to be the incremental cost of the biofuel over the equivalent cost of the petroleum fuel that the biofuel replaces." (HECO Reply to CA-SIR-5.2.b)

Life of the Land's Motion to Intervene

On January 10, 2011, Life of the Land filed a Motion to Intervene in this Docket. We compared the positions of the Consumer Advocate ("CA") and Life of the Land ("LOL"):

CA: "[U]sing biofuels is better for the environment ...dedicated biomass-to-electricity crops, biofuels produced from agricultural crops, its by-products, or waste products, would have an environmental benefit of being net zero in the

overall carbon balance."

LOL: "The statement is false in numerous ways. The assumption of net-zero is a Buzz word, void of rigorous life cycle analysis, empirical studies, and common sense. In addition, the CA lacks any in-house expertise to determine the validity of the statements."

We noted that in recent biofuel "dockets we have sponsored more than a dozen expert witnesses on various aspects of biofuels. The witnesses included

DR. WILLIAM WALLACE MOEKAHI STEINER (University of Hawaii. Manoa B.A. in Zoology (1969), Ph.D. Genetics (1974); Dean, University of Hawaii-Hilo, College of Agriculture, Forestry and Natural Resource Management, 2005-present.)

DR. DAVID REZACHEK (Rezachek & Associates; formerly with the Hawaii Sugar Planters Association)

DR. CHARLES PE'APE'A MAKAWALU BURROWS ('Ahahui Malama I Ka Lokahi; Hawaiians for the Conservation of Native Ecosystems)

Dr. TAD PATZEK (Chairman of the Department of Petroleum & Geosystems Engineering at The University of Texas at Austin)

ROBERT KING (Pacific Biodiesel)

KELLY KING (Sustainable Biodiesel Alliance)"

In a previous docket, our biofuel expertise led to the Commission rejection of the HECO-Imperium Palm Oil Biofuel Supply Contract.

Hawaii Renewable Energy Alliance (HREA) Motion to Intervene

HREA was concerned about HELCO's ability to cannibalize existing Renewable Energy Power Purchase Contracts. That is, the ability of HELCO to curtailing existing wind contracts in favor of utilizing biofuels.

"HREA supports the use of sustainable, locally-sources biodiesel fuels for the Keahole power plant, but is seriously concerned about: (i) potential negative impacts to existing and future renewable IPPs [Independent Power Producers] and DG [Distributed Generation]."

Hawaiian Electric Company's Motion in Opposition

On January 18, 2011 Hawaiian Electric Company filed a Motion In Opposition to Life of the Land's Motion To Intervene. HECO's objections to Life of the Land included:

"LOL and HREA fail to discuss the effects of how the purchase of biodiesel made from locally grown feedstocks will impact any of their interests" (p.8)

"LOL has not questioned the environmental sustainability of biodiesel in this docket." (p.10)

"LOL and HREA have not shown that their intervention will assist in the development of a sound record." (p.11)

Commission's Order

On February 3, 2011, the Commission filed an Order rejecting Life of the Land's and Hawaii Renewable Energy Alliance's Motions to Intervene in this docket.

"LOL advances: [] other renewable energy resources that can be used for electricity production other than biofuels [] The commission notes that the legislature has clearly endorsed the use of **cost-effective** biofuels as a renewable energy resource for the generation of electricity." [emphasis added]

In the Commission Order, the Commission repeated HECO's three assertions:

"LOL and HREA fail to discuss the effects of how the purchase of biodiesel made from locally grown feedstocks will impact any of their interests [] LOL has not questioned the environmental sustainability of biodiesel in this docket. [] LOL and HREA have not shown that their intervention will assist in the development of a sound record." (pp.7-8)

The Cost Differential is the Issue

On February 3, 2011 the Hawai`i Public Utilities Commission filed an Order:

"[A]t issue is the HECO Companies' request to spread the "cost differential" between the cost of petroleum diesel vs. the contracted cost of biodiesel amongst

the ratepayers of HECO, HELCO, and MECO [] The commission notes that the legislature has clearly endorsed the use of cost-effective biofuels as a renewable energy resource for the generation of electricity. [] the commission notes that the Consumer Advocate represents the interests of all consumers of electric utility service in its capacity as the ratepayers' advocate."

The Price Should be Transparent and Public

On March 31, 2011 the Hawai`i Public Utilities Commission filed an Order stating "the commission instructs the HECO Companies to file, in unredacted format, the information related to the pricing of the biodiesel and the asserted reasonableness of said pricing that was previously filed under confidential seal."

The Order added "On March 4, 2011, in In re Hawaiian Elec. Co.. Inc., Docket No. 2011-0015 ("Docket No. 2011-0015"), the commission, as a matter of public policy, instructed HECO to publicly disclose and file certain information it had previously filed under confidential seal related to the pricing of an as-available power purchase agreement ("PPA") with an independent supplier of photovoltaic energy.

In ordering the disclosure of such pricing information, the commission reasoned: "As the State moves toward a clean energy future, the cost of electricity should be more transparent and the utility's ratepayers should have access to information on the cost of the utility's purchased power. In addition, to encourage the movement towards the utilization of clean energy and achievement of the utility's Renewable Portfolio Standards, the commission finds that transparency in pricing may also expedite the negotiation of PPAs to procure renewable energy.

In the commission's view, if all factors are equal, there should be no reason why the utility should refrain from giving a developer the same price or similar price structure it gave to another developer.

Conversely, if there are differences in costs (for example, that one developer has significantly different equipment and facilities costs or land costs than another) or other justifiable business reasons to require a different price or price structure, the utility is still free to argue in its bilateral negotiations and in its subsequent application to the commission for approval that the price paid by the utility should be different between projects based on such varying costs or other justifiable business reasons.

Therefore, as a matter of public policy, the commission finds that the benefits that result from transparency outweigh the possible disadvantages that may result to the utility in negotiations."

The Price Shouldn't be Transparent and Public

On May 16, 2011 the Commission issued an Order which stated: "the commission denies the HECO Companies' motion, filed on April 12, 2011, which seeks to reconsider the commission's Order Instructing the HECO Companies to File, in Unredacted Format, Certain Pricing Information, filed on March 31, 2011. []

The commission finds and concludes that the HECO Companies have not met their burden of proving that the commission's Price Disclosure Order is unreasonable, unlawful, or erroneous, which is required under HAR § 6-61-137. Accordingly, the commission denies the HECO Companies' Motion for Reconsideration. []

In effect, the specific facts of this case appear to support retaining under confidential seal, at this time, the information related to the pricing of the biodiesel and the asserted reasonableness of said pricing. Such information, if disclosed by the HECO Companies at this time, may present **a distorted view** of an established price floor to the other potential long-term suppliers of biodiesel. []

In the commission's view, it is in the public interest to prevent this type of avoidable confusion or expectation in the emerging biofuels market by preserving under confidential seal, at this time, the information related to the pricing of the biodiesel and the asserted reasonableness of said pricing. []

Based on its specific findings and rationale, the commission, on its own motion, modifies its Price Disclosure Order by allowing the HECO Companies to retain under confidential seal, at this time, the information related to the pricing of the biodiesel and the asserted reasonableness of said pricing." [emphasis added]

Public Utilities Commission ("PUC") Notice of Public Hearings

"By their application, the Companies seek the Commission's approval among other things: [] to establish a Biofuel Surcharge Provision that will apply to the customers of HELCO and HECO. According to the Companies, the biodiesel that is produced from AKP's facility will initially supply HELCO's Keahole Power Plant.[]

The Companies maintain that, in effect, the achievement of the State's energy policy goals [] 'will benefit all customers, and not just those customers consuming the biodiesel.' For this reason, the Companies contend that 'it is reasonable to spread the cost differential among customers.' The Companies further maintain that 'it would be unfair for customers on Hawaii Island, where AKP will operate, to bear the full burden of this important step toward reducing Hawaii's imported oil consumption, a goal which will benefit everyone in the State.' []

According to the Companies, the application of the biofuel surcharge 'would apply to HELCO and HECO customers, and would add about 1/3 of a cent per kilowatt-hour.'"

Keahole Generation Station Subsidy

"The analysis assumed that 200 GWh of renewable energy would be generated at HELCO's Keahole Power Plant using the 16 million gallons of biodiesel." (HELCO Response to CA-IR-7, p.1, dated April 27, 2011)

The subsidy can be converted into a price per kWh generated. Keahole would generate 200 GWh/year at a subsidy of \$24.6M/year or \$0.08/kwh above the cost to generate the same amount of energy from petroleum products.

Price Analysis

HECO proposes that Aina Koa Pono sell biodiesel to HELCO and that a subsidy of \$0.003/kWh be imposed on HECO and HELCO ratepayers.

According to the last annual 10-K filing of Hawai`i Electric Industries (HEI) with the U.S. Securities and Exchange Commission (SEC), covering calendar year 2010 and submitted to the SEC on February 18, 2011: last year HECO sold 7.657 billion kWh while HELCO sold 1.194.2 billion kWh.

The the total price of the subsidy would be the HECO and HELCO kwh sold (7.657 plus 1.194.2) billion kWh multiplied by the subsidy of \$0.003/kwh resulting in a subsidy of \$26.553 million/year.

This can be converted into a subsidy/barrel of fuel.

HELCO will buy 16 million gallons of biodiesel at a subsidy of \$26.553 million or \$1.6595/gallon. Since a barrel of fuel is 42 gallons, the subsidy for a barrel of biofuel is (42 x \$1.6595) or \$69.7/barrel.

Another way of looking at the subsidy is per household. A typical family may consumer 600 kWh be month. The subsidy would be 600 multiplied by \$0.003/kWh equals \$1.80/month or \$20/year. Businesses would pay far more.

Geothermal versus AKP

In February, 2011 the wholesale cost of electricity (that is, the average cost for HELCO to generate electricity) was 16.75 cents/kwh (on-peak), 14.447 cents/kwh (off-peak), averaging 15.79 cents/kwh. This is the price HELCO pays for electricity from avoided cost contracts

HELCO signed 2 contracts for additional power in 2011, the Hawai`i Public Utilities Commission (PUC) is currently analyzing both of them.

If both PGV's additional 8 MW and AKP had been on-line in February 2011 then a comparison of prices would be:

PGV 8 MW (firm power, proven technology): 11.59 cents/kwh

HELCO Avoided Cost: 15.79 cents/kwh

AKP (non-commercially proven technology): 24 cents/kwh

The Alleged Reason for HECO Ratepayers to Subsidize HELCO Ratepayers

HECO alleges that the PPA is reasonable because O`ahu can't produce sufficient renewable energy to meet its requirement under the state Renewable Portfolio Standards ("RPS") provision. According to HECO, the three HEI utilities (HECO, MECO, and HELCO) together can meet the requirement. Since HELCO will exceed the RPS standard and thus together with HECO can meet the state standard, HECO ratepayers should pay HELCO ratepayers for that service.

This has two significant flaws.

First, HELCO can buy renewable energy at below avoided cost from PGV thus making it cheaper not more expensive to rely on renewable energy. HELCO plans to buy new baseload electricity from Puna Geothermal Ventures ("PGV") at under 12 cents/kwh (PUC Docket 2011-0040). This is below the average cost for HELCO to generate the electricity themselves (the "avoided cost"). Puna Geothermal Ventures proposed increasing their output from 30 to 38 MW. The price for the additional geothermal-based electricity would be sold to HELCO is 9 cents/kwh (on-peak), 6 cents/kwh (off-peak), with an average of 7.99 cents/kwh. The effective average price (including fixed payments for firm capacity et al) is 11.59 cents/kwh.

Second, the Commission allowed Life of the Land into Docket 2011-0112 (Big Wind studies) to determine whether there are cost-effective O`ahu based renewable energy alternatives. In this docket, it would be improper and inconsistent to assume that there are no such alternatives. The need for HELCO to assist HECO in meeting HECO's RPS requirements has yet to be determined.

Docket "Suspended"

The docket was quasi-suspended for a couple of months because HECO was asking the Commission to approve inter-island payments which the Commission lacked the legal authority to do so. This allowed time for HECO to go to the Legislature and cannibalize a proposed electronic filing bill and morph it into a rate bill. This became Act 69. With the passage of the new law, the fundamental nature of this docket changed. On June 3, 2011 the Commission issued an Order:

"By this Order, the commission reinstates the HECO Companies' request to implement their proposed Biofuel Surcharge Provision, as a result of Act 69, 2011 Session Laws of Hawaii, which will take effect on July 1, 2011."

Contested Case

Life of the Land hereby requests a contested case proceeding in accordance with HRS §91 and HRS §269-16.

HRS §91-1 "Contested case' means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." "Agency hearing' refers only to such hearing held by an agency immediately prior to a judicial review of a contested case."

Case Notes: [] A hearing "required by law" includes those required by due process. 55 H. 478, 522 P.2d 1255. [] Public hearing conducted pursuant to public notice has been deemed a contested case. 65 H. 506, 654 P.2d 874. [] Public hearings held by department were "contested cases". 77 H. 64, 881 P.2d 1210.

The HECO-Aina Koa Pono ("AKP") Power Purchase Agreement is clearly and plainly covered by **HRS §269-16** since HECO seeks \$21M/year of O`ahu rate payer money to subsidize HELCO's purchase of biofuels from Aina Koa Pono. HRS §269-16 requires a public hearing for all new rate structures including new surcharges and new automatic rate adjustment clauses.

HRS §269-16 "Regulation of utility rates; ratemaking procedures. [(b) No rate [] other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established [] except after thirty days' notice to the commission as prescribed in section 269-12(b) []

A contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing [] at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase."

§269-12 Notices.(b) "Any notice provided pursuant to section 269-16(b) [] shall be given by filing the notice with the commission and keeping it open for public inspection.(c) Any public hearing held pursuant to section 269-16(b), shall be a noticed public hearing or hearings on the island or islands on which the utility provides utility services."

Standing

Life of the Land has standing to request a contested case proceeding since we will be adversely impacted by this proposed rate hike. This Motion is different than our previous Motion to Intervene because it is based on the new law and the changed nature of this docket.

Life of the Land was founded over 4 decades ago. We have been a party in over 2 dozen energy-based regulatory proceedings in the courts and before state and federal regulatory agencies. On September 22, 2000, the Life of the Land Board of

Directors reaffirmed continuing to intervene in energy dockets as a means of promoting sustainable policies. Henry Curtis, Vice-President for Consumer Affairs, is authorized by the Life of the Land Board of Directors to represent Life of the Land in all regulatory proceedings held by regulatory agencies.

Technology

"AKP contracted Herty Advanced Materials Development Center ("Herty"), to conduct independent due diligence for submittal to the potential financiers of their Project. [] Herty is able to prove technology at semi commercial scale, allowing industry to reduce the risk of capital decisions and increase their speed to market. [] For smaller resources that do not fall within the scope of the [Competitive Bidding] Framework, the Companies have the option of entering into bi-lateral PPA negotiations. The Companies will generally do so provided that the project technology is renewable and is commercially proven or if not, holds a strong potential for success."

"The price that AKP required for its first plant is affected by the level of return needed by project investors to entice them to provide funding. As AKP develops additional facilities the price will drop considerably as the engineering costs will have already been incurred and the risk to investors lowers."
(<http://www.ainakoapono.com/news-20110719-FAQ-KauFarm.html>)

Options

The Company's preliminary, pre-modeling comparison of the cost of 400 MW of Big Wind [] was conducted in recognition that only two renewable technology alternatives for Oahu - wind and solar - are anticipated to be commercially available on a large scale within a reasonably near term and with no fuel costs." (Economics of Wind, Exhibit 21, Request to Recover Deferred Costs for Big Wind Implementation Studies, Volume 5 of 5, dated May 9, 2011)

Mahalo,

Henry Curtis
Executive Director