

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval of Application for)
Waivers from the Framework for)
Competitive Bidding.)
_____)

DOCKET NO. 2013-0156

DECISION AND ORDER NO. 31913

PUBLIC UTILITIES
COMMISSION

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DECISION AND ORDER

By this Decision and Order,¹ the commission approves, subject to certain conditions, HECO's request for waivers from the competitive bidding process for three (3) independent power producer solar projects located throughout the island of Oahu, totaling approximately 33 megawatts ("MW").

¹The Parties are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

I.

Background

HECO is a Hawaii based corporation and operating public utility as defined by HRS §269-1.² HECO is a wholly owned subsidiary of Hawaiian Electric Industries, Inc., and is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu.

A.

Procedural Background

On December 8, 2006, the commission issued Decision and Order No. 23121, in which it adopted a "Framework for Competitive Bidding" (the "CB Framework") as a mechanism for acquiring or building new energy generation in the State of Hawaii ("State").³

On June 18, 2013, HECO filed an Application requesting waivers from the CB Framework for four (4) solar projects and one (1) wind project, pursuant to Parts II.A.3.b(iii) and d. of the CB Framework and HAR, Title 6, Chapter 61.⁴

²HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891.

³See Docket No. 03-0372, Decision and Order No. 23121, filed on December 8, 2006, with the "Framework for Competitive Bidding," dated December 8, 2006, attached thereto.

⁴Application; Verification; Exhibits 1 - 9; and Certificate of Service, filed on June 18, 2013 (collectively, "Application").

On September 16, 2013, the Consumer Advocate filed its Statement of Position.⁵

On September 19, 2013, HECO informed the commission that the proceeding is ready for decision-making by the commission.

On November 4, 2013, HECO informed the commission that the wind project and one (1) solar project had voluntarily withdrawn from the Waiver Invitation process.⁶

B.

HECO's Position

In its Application, HECO originally sought approval for waivers from the CB Framework for five (5) projects (consisting of four (4) solar projects and one (1) wind project) totaling approximately 64 MW of clean renewable energy. The five (5) projects were selected as part of HECO's "Invitation for Low Cost Renewable Energy Projects on Oahu" through a "Request for Waiver from Competitive Bidding" issued on February 22, 2013, as amended on April 30, 2013 ("Waiver Invitation").⁷

⁵See Division of Consumer Advocacy's Statement of Position, filed on September 16, 2013 ("CA's SOP").

⁶See HECO Letter dated and filed on November 4, 2013.

⁷See Application, Exhibit 1, Invitation for Low Cost Renewable Energy Projects on Oahu Through Request for Waiver from Competitive Bidding.

Under the Waiver Invitation criteria, Oahu renewable energy project proposals must have a nameplate capacity greater than 5 MW and be priced below seventeen (17) cents per kilowatt-hour ("kWh"), levelized over a twenty (20) year term without the use of Hawaii state tax incentives.⁸ HECO received twenty-five (25) proposals, fifteen (15) of which did not meet the minimum Waiver Invitation criteria. From the remaining ten (10) proposals, HECO selected the five (5) with the lowest price per kWh without use of Hawaii state tax incentives. HECO asserts that the process used to select the projects was fair and reasonable based on the following facts:

(a) the project selection criteria were clearly set forth in the Waiver Invitation posted on [HECO's] website; (b) the projects were selected on the basis of the criteria set forth therein; (c) [HECO] did not unfairly favor any particular developer over another at any point during the process; and (d) [HECO] provided communication channels for clarification of [Waiver] Invitation requirements, as applicable.⁹

According to HECO, "approval of this Application would allow [HECO] to negotiate with developers for renewable energy at prices significantly lower than any previously negotiated

⁸See Application at 5-6. HECO also required the proposed projects to achieve commercial operation by December 31, 2015. HECO's Responses to Consumer Advocate's Information Requests, filed on August 23, 2013 ("Response to CA-IR"), Response to CA-IR-10 and Response to CA-IR-18.

⁹Id. at 9; see also Response to CA-IR-1.

renewable energy price with the Company, and 'fast track' projects to commercial operation to take advantage of available tax credits."¹⁰ Such low cost renewable energy will "help provide near-term rate relief for [HECO] customers."¹¹

The average levelized price of the three (3) solar projects is 16.142 cents per kWh, which is approximately 28.2% lower than HECO's June 2013 on-peak avoided cost of 22.491 cents per kWh.¹² HECO anticipates that the three (3) projects could reduce generation costs by approximately \$3,122,718 per year and \$62,454,367 over the anticipated twenty-year (20) contract term of the projects. HECO estimates that the total savings for the proposed projects will result in a \$0.29 per month reduction for a typical residential bill of 600 kWh.

HECO states that the CB Framework recognizes that competitive bidding may not always be appropriate and waivers may be considered by the commission when more cost-effective generation resources, are more likely to be acquired through a different process.¹³ HECO asserts that it satisfies the waiver requirements as the proposed projects reflect energy

¹⁰Application at 1-2.

¹¹Id. at 2.

¹²See id. at 10 and Exhibits 4C - 4E.

¹³See id. at 13.

pricing that is significantly lower than previously negotiated renewable energy prices which would lead to a reduction in energy cost to HECO's customers.¹⁴

According to HECO, the selection process and resultant proposed pricing for the selected projects are reasonable since:

(a) the proposed energy pricing is below the range of [HECO's] filed avoided energy costs over the past three years and is lower than [HECO's] current avoided energy costs; (b) the pricing structure meets the requirement of HRS § 269-27.2(c) in that there is no linkage between the energy price and [HECO's] cost of fossil fuels; (c) the fixed price structure is simple and will contribute to stabilizing [HECO's] overall energy prices, and (d) the project will provide more renewable energy to the system and help contribute to [HECO's] Renewable Energy Portfolio goals.¹⁵

C.

Consumer Advocate's Position

By its Statement of Position filed on September 16, 2013, the Consumer Advocate informs the commission that "it does not object to HECO's request for a waiver from the [CB Framework] . . . for the purpose of allowing negotiation[s] for power purchase agreement[s] ("PPA") associated with the five projects."¹⁶

¹⁴See id. at 13.

¹⁵Id. at 14.

¹⁶CA's SOP at 1-2.

In reviewing the requirements set forth in the CB Framework, the Consumer Advocate notes:

The Competitive Bidding Framework was the culmination of a process that sought to establish processes through which a competitive process would be used to acquire or build new energy generation sources in Hawaii. Within that process, the [CB Framework] identified several possible conditions or circumstances in which competitive bidding may not be considered appropriate.¹⁷

Based on HECO's assertions, the Consumer Advocate concludes that HECO's waiver request is consistent with the pertinent provisions of the CB Framework "as the waivers for the proposed five projects are anticipated to be 'cost-effective' as compared to [HECO's] avoided cost and other recently approved renewable energy projects on Oahu and result in cost savings to ratepayers."¹⁸

During its review of the waiver projects, the Consumer Advocate also assessed whether the determination on the five (5) projects should be conducted prior to the commission's examination of HECO's Integrated Resource Plan ("IRP") currently under review in Docket No. 2012-0036. The Consumer Advocate notes that the CB Framework indicates that

¹⁷Id. at 8.

¹⁸Id. at 9-10.

the acquisition of new generating resources should be examined in relation to a utility's IRP that identifies "those resources for which the utility proposes to hold competitive bidding, and those resources for which the utility seeks a waiver from competitive bidding...."¹⁹

HECO's current IRP, which is currently before the commission, includes the five (5) proposed waiver projects. However, given the uncertainty of the timeframe in which the IRP process will conclude, the Consumer Advocate contends that delaying the review of the waiver projects until the completion of HECO's IRP would not be reasonable. "Delaying action on these projects defers possible PPA contracts, that further Hawaii's clean energy goals, and also provides an opportunity to [obtain a] real and meaningful decrease in customer bills and the 'market-price' for renewable energy."²⁰

The Consumer Advocate emphasizes, however, that "its recommendation in the instant proceeding is solely related to HECO's waiver request and should not be construed as support for the proposed five projects selected from the Waiver invitation."²¹ Although the Waiver Invitation process

¹⁹Id. at 10 (citing CB Framework, Part II.C.4.a.).

²⁰Id. at 12.

²¹Id.

has set forth many of the terms and conditions that will be included once the PPAs are negotiated (such as pricing), there are remaining issues that need to be addressed.²² Studies will need to be conducted to determine the impact of the projects on HECO's system which could affect the ultimate pricing of the purchased energy.²³

II.

Discussion and Findings

Parts II.A.3 and 4 of the CB Framework states in relevant part:

A. USE OF COMPETITIVE BIDDING

1. This Framework applies to electric utilities regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawaii Revised Statutes.
2. A determination shall be made by the Commission in a utility's IRP proceeding as to whether a competitive bidding process shall be used to acquire a future generation resource or a block of generation resources.
3. Competitive bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or a block of generation resources, whether or not such resource has been identified in a utility's IRP.

²²See id. at 12-13.

²³See id.

The basis for such a finding shall be explained by the utility in its IRP, and the determination shall be made by the Commission in its review of the utility's IRP. See Part II.C, below. The following conditions and possible exceptions apply:

- a. Competitive bidding will benefit Hawaii when it: (i) facilitates an electric utility's acquisition of supply-side resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new generating resources that are overall lower in cost or better performing than the utility could otherwise achieve; (iii) does not negatively impact the reliability or unduly encumber the operation or maintenance of Hawaii's unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed generation resources and allowing the utility to adjust to changes in circumstances; and (v) is consistent with IRP objectives.

- b. Under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver under Part II.A.4, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed generation in a timely fashion; (ii) when the utility and its customers will benefit more if the generation resource is owned by the utility rather than by a third-party (for example, when reliability will be

jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IRP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.

- c. Other circumstances that could qualify for a waiver include:
 - (i) the expansion or repowering of existing utility generating units;
 - (ii) the acquisition of near-term power supplies for short-term needs;
 - (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective;
 - and (iv) the acquisition of power supplies needed to respond to an emergency situation.

- d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

4. The procedure for seeking a waiver is as follows:

a. Applications for waivers, and transition to competitive bidding requirements for new generation projects.

(i) For proposed generation projects included in, or consistent with, IRPs approved by the Commission prior to the effective date of this Framework, the electric utility shall file an application for waiver with the Commission, as soon as practicable, consistent with Part II.A.4.a(iv), below.

(ii) For proposed generation projects included in, or consistent with, the IRP filed for Commission approval in In re Hawaiian Elec. Co., Inc., Docket 03-0253, the electric utility shall file any waiver request no later than sixty (60) days following a Commission order approving the IRP.

(iii) For all proposed generation projects included in, or consistent with, IRPs that have not yet been filed with the Commission for approval as of the effective date of this Framework, any waiver request shall accompany the filing of the proposed IRP for the Commission's approval.

(iv) An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as

soon as practicable such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.

b. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.

CB Framework, Parts II.A.3 and 4 (emphasis added).

As noted above, since the filing of the Application, two (2) projects have voluntarily withdrawn from the Waiver Invitation process; therefore, this decision and order addresses the remaining three (3) solar projects.

HECO asserts that the proposed projects satisfy the waiver requirements of the CB Framework as "they reflect energy pricing that is significantly lower than any previously negotiated renewable energy price with [HECO], and would cause an immediate reduction to the cost of energy to [HECO's] customers."²⁴ Furthermore, based on HECO's assertions, such savings appear to be "cost-effective" as the total average levelized energy price is approximately 28.2% lower than HECO's June 2013 on-peak avoided cost. HECO further supports this assertion by stating that "the proposed levelized price of the selected projects ...is

²⁴Application at 13.

approximately one-third less than the levelized price with tax credits, for other recently approved renewable energy projects on Oahu."²⁵

HECO states that utilizing the Waiver Invitation process rather than the CB Framework will be more efficient and is appropriate in the present proceeding for several reasons. The first relates directly to lowering customer rates and was laid out in both the Application as well as the Waiver Invitation, which states:

Hawaiian Electric understands that the complexity and significant timeline necessary to develop projects through the [Request for Proposals] may be deterring some renewable energy projects capable of much shorter development periods.... It is possible that by proceeding immediately some projects will be able to realize significant savings and offer lower energy rates as a result.... To take advantage of potential savings on behalf of its customers, Hawaiian Electric will consider requesting a waiver to proceed with one or more projects that can be completed and meet the [required] criteria....²⁶

HECO also states that these waiver projects, if approved "would help reduce the State's heavy dependence on fossil fuels"²⁷

²⁵Id. at 14. see also Docket Nos. 2011-0051 (PPA pricing of 21.8 cents per kWh); Docket No. 2009-0176 (PPA pricing of 22.9 cents per kWh); and Docket No. 2011-0224 (PPA pricing of 22.9 cents per kWh).

²⁶Id. at 5. see also Exhibit 1, at 1.

²⁷Id. at 7.

and would "provide more renewable energy to the system and help contribute to [HECO's] Renewable Energy Portfolio goals."²⁸ In addition, HECO States that "the Waiver Invitation is part of [HECO's] strategy to accelerate the addition of more renewable energy onto the Hawaiian electric system to reduce customer bills as soon as possible."²⁹

In terms of the reliability of its system, HECO explains that it will conduct project specific interconnection analysis on a case-by-case basis to determine the potential impact of each project individually or as a portfolio.³⁰

Under these circumstances, the commission finds that the HECO has met its burden of showing that the granting of the waivers should result in "more cost-effective or better performing generation resources [that] are more likely to be acquired more efficiently through different procurement processes" and "will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, . . . or is otherwise in the public interest."³¹ Accordingly, the commission approves the request for waivers from the competitive bidding process for the

²⁸Id. at 14.

²⁹Id.

³⁰See Response to CA-IR-19.b.

³¹CB Framework Part II.A.3.b.(iii)

three (3) solar projects, pursuant to Parts II.A.3.b.iii and d of the CB Framework, and subject to certain conditions.

III.

Further Guidance

In order to provide HECO with further guidance as it moves forward in developing individual PPAs for the waiver projects to submit for commission consideration, the commission makes the following comments:

1. HECO should consider the use of longer PPA terms (i.e., twenty-five (25) or thirty (30) year terms) that would allow for the amortization of fixed projects costs over a longer period if that would result in HECO obtaining lower energy pricing.

2. Given that Hawaii's electrical grids are seeing unparalleled levels of distributed generation penetration, as well as the possibility of multiple utility scale renewable energy projects interconnecting in certain areas, as part of any waiver PPA application submitted to the commission for consideration, HECO should perform system level dispatch and reliability modeling to determine the impact of the collective amount of renewable energy, including both planned and existing utility scale projects, as well as both existing and projected distributed generation on the Oahu grid.

3. The commission further encourages HECO to streamline and consolidate its grid interconnection and upgrade process which should result in binding cost estimates, which will allow developers to reevaluate project risk and likely result in overall lower final PPA pricing.

4. The commission encourages HECO to consider including curtailment mitigation provisions that are designed to mitigate existing curtailment risk and thus lower overall PPA pricing.

IV.

Conclusion

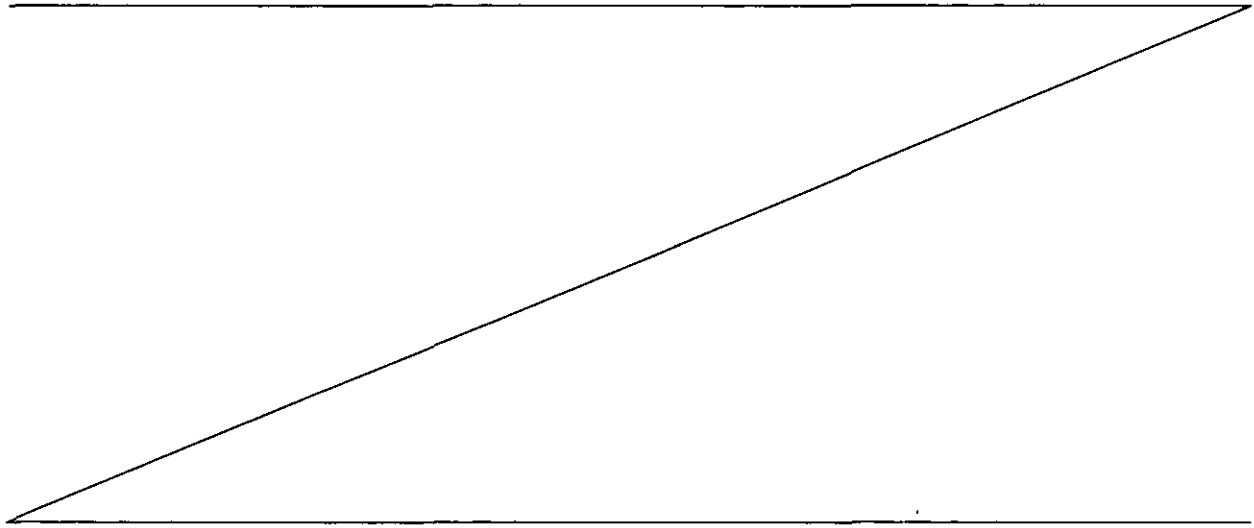
Nothing in this decision and order shall be construed to imply that the commission supports and/or will approve any and/or all of the proposed project PPAs that have been granted waivers from the competitive bidding process herein. Furthermore, the commission appreciates HECO's efforts to obtain more competitive pricing for renewable energy which will inure to the benefit of the utility's customers. The commission further encourages HECO to continue to seek out creative procurement options that utilize the existing CB Framework while also seeking to encourage more competition and lower overall energy prices.

VI.

Orders

THE COMMISSION ORDERS:

1. HECO's request for waivers from the competitive bidding process for the three (3) independent power producer projects that are the subject of this proceeding are approved, provided that: (A) A fully executed PPA for each of the projects, as described above, must be filed within four (4) months from the date of this Decision and Order; and (B) Documentation supporting the fairness of the price negotiated between HECO and the independent power producers, including all documentation relating to the "open book" access as required by HECO in their Waiver Invitation,³² must be included in any application for approval of a PPA.



³²See Application at 5. see also Exhibit 1, at 1.

2. Upon the filing of fully executed PPAs for each of the projects, as described above, this docket shall be considered closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii FEB 13 2014.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By *Hermina Morita*
Hermina Morita, Chair

By *Michael E. Champley*
Michael E. Champley, Commissioner

By *Lorraine H. Akiba*
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:

R.D. Hurley
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Commission Counsel

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