

DIVISION OF CONSUMER ADVOCACY
Department of Commerce and
Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813
Telephone: (808) 586-2800

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAI'I ELECTRIC LIGHT COMPANY, INC.,)
MAUI ELECTRIC COMPANY, LIMITED, and)
NEXTERA ENERGY, INC.)
)
For Approval of the Proposed Change of)
Control and Related Matters.)

DOCKET NO. 2015-0022

DIVISION OF CONSUMER ADVOCACY'S
REQUEST TO TAKE TESTIMONY BY DEPOSITION UPON ORAL EXAMINATION

The Division of Consumer Advocacy ("Consumer Advocate"), pursuant to Hawaii Revised Statutes § 269-54 and Hawaii Administrative Rules ("HAR") §§ 6-61-1 and 6-61-38, informs the Commission that it has provided its Notice To Take Testimony By Deposition Upon Oral Examination and requests that the Hawaii Public Utilities Commission ("Commission") issue the following, if necessary: 1) an order to require the attendance of James L. Robo to provide testimony, and 2) an order to require the attendance of Constance H. Lau to provide testimony.

I. NOTICE TO TAKE DEPOSITION AND ORDER TO REQUIRE ATTENDANCE.

The Consumer Advocate hereby informs the Commission that it has provided written notice, pursuant to Hawaii Rules of Civil Procedure (“HRCP”) Rule 30(b)(1), to James L. Robo and Constance H. Lau indicating the Consumer Advocate’s intent to take testimony by deposition upon oral examination. The Consumer Advocate notes that the Commission’s rules do not provide specific procedures or guidance related to the taking of depositions, thus, the Consumer Advocate will refer to guidance from HRCP Rules 30(a) and 30(b)(1) pursuant to HAR § 6-61-1.¹

Further, if the Commission deems necessary, the Consumer Advocate seeks an order requiring that the following individuals be made available for oral deposition pursuant to Hawaii Rules of Civil Procedure Rule 30(a):

James L. Robo
Chairman, President, and Chief Executive Officer
NextEra Energy, Inc.
Corporate Headquarters
700 Universe Boulevard
Juno Beach, Florida 33408

Constance H. Lau
President, Chief Executive Officer
Hawaiian Electric Industries, Inc.
Corporate Headquarters
1001 Bishop Street, Suite 2900
Honolulu, Hawaii 96813

¹ HAR § 6-61-1 provides in part: Whenever this chapter is silent on a matter, the [C]ommission or hearings officer may refer to the Hawaii Rules of Civil Procedure for guidance.

The depositions shall be upon oral examination, shall be recorded by stenographer and video recording.² Depositions shall be subject to continuance or adjustment from time to time or place to place until completed.

II. SUBPOENA.

HAR § 6-61-38(a) specifically addresses the issuance of subpoenas to require the attendance of witnesses to testify. The Commission rules are silent on the requirements to take testimony of any person by deposition upon oral examination, therefore, should the Commission require the issuance of a subpoena, the Consumer Advocate request that subpoenas be issued to require the attendance of the James L. Robo and Constance H. Lau for deposition upon oral examination.

A. SUBPOENA FOR JAMES L. ROBO.

James L. Robo serves as the Chairman, President, and Chief Executive Officer of NextEra Energy, Inc. ("NextEra"). In his capacity as Chairman, President and Chief Executive Officer of NextEra, Mr. Robo made critical decisions that resulted in the acquisition of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (collectively, the "Hawaiian Electric Companies") by NextEra through the transaction set forth in the application filed on January 29, 2015 ("Application"). Without the choices and input made by Mr. Robo with respect to the acquisition of the Hawaiian Electric Companies by NextEra, it is impossible to fully assess the factors considered by NextEra to proceed with its acquisition of the Hawaiian Electric Companies.

² Depositions shall be taken at the Division of Consumer Advocacy unless time and place is otherwise agreed to by the parties.

Accordingly, Mr. Robo possesses knowledge and information that only he can know and possess concerning the circumstances, events, rationale, and reasoning that resulted in NextEra deciding to acquire the Hawaiian Electric Companies. Consequently, Mr. Robo, through his personal appearance and testimony, would provide information, evidence, and exchanges which are material and relevant to the issues and questions raised by the Commission in its review of the proposed acquisition and merger set forth in the Application.³

B. SUBPOENA FOR CONSTANCE H. LAU.

Constance H. Lau serves as the President and Chief Executive Officer of HEI. In her capacity as President and Chief Executive Officer of HEI, Ms. Lau made critical decisions that resulted in the merger agreement for acquisition of the Hawaiian Electric Companies by NextEra. Accordingly, Ms. Lau possesses knowledge and information that only she can know and possess concerning the circumstances, events, rationale, and reasoning that resulted in NextEra's decision to acquire the Hawaiian Electric Companies.

DATED: Honolulu, Hawaii, August 19, 2015.

Respectfully submitted,

By 

JON S. ITOMURA
Attorney

DIVISION OF CONSUMER ADVOCACY

³ See Order No. 32739, at 8-10 (filed on Apr. 1, 2015) (setting forth the issues to be considered by the Commission in reviewing the Hawaiian Electric Companies and NextEra's Application).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S REQUEST TO TAKE TESTIMONY BY DEPOSITION UPON ORAL EXAMINATION** was duly served upon the following parties by electronic service pursuant to HAR § 6-61-21(d).

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