BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of)	
PUBLIC UTILITIES COMMISSION))	DOCKET NO. 2013-0168
Opening a Proceeding to Review the Progress of Castle & Cooke)	
Properties, Inc.'s Proposed Lanai Wind Project.))	
	_)	

ORDER NO. 31451

- (1) DISMISSING WITHOUT PREJUDICE: (A) KAULANA KAHO'OHALAHALA AND MATTHEW MANO'S MOTION TO DISQUALIFY; AND
- (B) FRIENDS OF LANAI'S JOINDER IN THE MOTION TO DISQUALIFY;
 AND (2) ESTABLISHING A DEADLINE DATE TO FILE
 OR RE-FILE ANY MOTIONS TO DISQUALIFY

FILED

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PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

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PUBLIC UTILITIES COMMISSION)
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Wind Project.)

Docket No. 2013-0168

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- (B) FRIENDS OF LANAI'S JOINDER IN THE MOTION TO DISQUALIFY;
 AND (2) ESTABLISHING A DEADLINE DATE TO FILE
 OR RE-FILE ANY MOTIONS TO DISQUALIFY

By this Order, the commission dismisses without prejudice: (1) Kaulana Kaho'ohalahala and Matthew Mano's motion to disqualify, filed on August 23, 2013; and (2) Friends of Lanai's joinder thereto, filed on August 28, 2013. In addition, the commission establishes a deadline date

¹The Parties are: (1) HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED (collectively, the "HECO Companies"); (2) CASTLE AND COOKE PROPERTIES, INC.; (3) the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a); (4) LIFE OF THE LAND; (5) NEXTERA ENERGY HAWAII, LLC; (6) FRIENDS OF LANAI; (7) HAWAII INTERISLAND CABLE LLC; (8) RENEWABLE ENERGY ACTION COALITION OF HAWAII, INC.; and (9) KAULANA KAHO`OHALAHALA and MATTHEW MANO.

to file or re-file any motions to disqualify the Yamamoto Caliboso law firm from representing Castle & Cooke Properties, Inc. in the subject proceeding.

I.

Background

On August 23, 2013, Kaulana Kaho`ohalahala and Matthew Mano filed their motion seeking to disqualify the Yamamoto Caliboso law firm from representing Castle & Cooke Properties, Inc. in the subject proceeding. On August 28, 2013, Friends of Lanai joined in the motion to disqualify.

On September 3, 2013, Castle & Cooke Properties, Inc. filed a memorandum in opposition to the motion to disqualify, and on September 9, 2013, Castle & Cooke Properties, Inc. filed a motion for leave to reply to Friends of Lanai's joinder.

The Consumer Advocate affirmatively takes no position on both pending motions.

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Discussion

HAR § 6-61-2 states in part:

§6-61-2 <u>Definitions</u>. As used in this chapter, except as otherwise required by context:

. . .

"Movant" means a party that moves; a party that makes a motion before this commission; a party that applies for a ruling or an order from this commission.

. . . .

"Party" has the same meaning as in section 91-1(3), HRS. Whenever the word "party" is used in this chapter, it also includes a participant where the context requires.

HRS § 6-61-2.

HAR § 6-61-41, governing motions, states in part:

§6-61-41 Motions. (a) All motions, except when made during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds for the motion;
- (3) Set forth the relief or order sought; and
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law.
- (b) Every motion, except one entitled to be heard ex parte, shall indicate whether a hearing is requested on the motion. If a motion requires the consideration of facts not appearing of record, it shall be supported by an affidavit or affidavits. Motions shall be served in accordance with section 6-61-21.

- (c) An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion[.]
- (d) A party who does not oppose a motion or who intends to support a motion or whose desires a continuance shall notify the commission and the opposing attorneys within five days after being served[.]

HAR § 6-61-41.

Castle and Cooke Properties, Inc. advances two substantive arguments on why the motion to disqualify should be denied, followed by a procedural lack of standing argument.

Castle and Cooke Properties, Inc., likewise, asserts that Friends of Lanai lacks the requisite standing to file its joinder.

Here, the commission dismisses without prejudice the motion to dismiss and joinder thereto. In support thereto, the commission specifically finds and concludes:

1. At the time Kaulana Kaho`ohalahala and Matthew Mano filed their motion to disqualify (August 23, 2013) and Friends of Lanai filed its joinder thereto (August 28, 2013), the movants were not granted intervenor status by the commission. Instead, on September 10, 2013, the commission granted six motions to intervene, including the respective

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motions filed by Kaulana Kaho`ohalahala/Matthew Mano and Friends of Lanai.²

- As а result of Kaulana Kaho`ohalahala. Friends of Lanai's and status Matthew Mano. as movants/non-intervenors at the time they filed their respective pleadings to disqualify the Yamamoto Caliboso law firm. the commission recognizes that uncertainty may have existed from the other movants/non-intervenors and the HECO Companies as to filing of written oppositions or replies, whether the pursuant to HAR \S 6-61-41(c) or (d), and/or separate motions to disqualify from any of the other movants/non-intervenors, pursuant to HAR § 6-61-41(a) and (b), were appropriate.
- 3. Castle & Cooke Properties, Inc., as part of its substantive arguments in opposition to the motion to disqualify, contends that the scope of the subject proceeding is limited to reviewing the progress of the Lanai Wind Project. However, the commission, in its Order No. 31445, recently clarified that:

The intent and scope of this investigative proceeding will include a determination as to whether Castle & Cooke Properties, Inc.'s Lanai Wind Project, as a combined resource proposal, is in the public interest and should be developed, given the change in circumstances and conditions that has occurred over the past

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²Order No. 31445, Granting Intervention to Life of the Land; Nextera Energy Hawaii, LLC; Friends of Lanai; Hawaii Interisland Cable LLC; Renewable Energy Action Coalition of Hawaii, Inc.; and Kaulana Kaho`ohalahala and Matthew Mano, filed on September 10, 2013 ("Order No. 31445").

five years from 2008 to 2013. The commission intends to develop a sound docket record herein as part of its comprehensive evaluation of potential as-available energy projects and grid infrastructure development options.

Order No. 31445, Ordering Paragraph No. 1, at 18.

4. Castle & Cooke Properties, Inc. accurately notes that Friends of Lanai's joinder appears to constitute a separate motion.

Given these specific circumstances, the commission dismisses without prejudice the motion to dismiss and joinder thereto. Such action will provide all of the Parties, including the recently named intervenors, with the opportunity to file (or re-file) pleadings on the disqualification subject-matter. In making this statement, the commission, nonetheless, emphasizes and reiterates:

The commission will: (A) preclude any effort by the intervenors to unreasonably · broaden the issues or undulydelay proceeding; and (B) require the intervenors to meaningfully participate in this proceeding. Here, the commission cautions the intervenors and other parties that the filing, as a matter of course, of motions for leave to respond to opposition, memorandums in may have cumulative effect of unduly delaying proceeding by prolonging the commission's overall review and consideration of the underlying motion or motions.

To reiterate, the commission will preclude any effort by any intervenor to unduly delay this investigative proceeding. Order No. 31445, at 14; see also id., Ordering Paragraph No. 4 (the commission will reconsider an intervenor's participation if, at any time during the course of this proceeding, the commission determines that the intervenor is unduly delaying the proceeding).

Finally, the commission establishes a deadline date to file or re-file any motions to disqualify the Yamamoto Caliboso law firm from representing Castle & Cooke Properties, Inc. in the subject proceeding.

III.

Orders

THE COMMISSION ORDERS:

- 1. Kaulana Kaho`ohalahala and Matthew Mano's motion to disqualify, filed on August 23, 2013, is dismissed without prejudice.
- 2. Friends of Lanai's joinder thereto, filed on August 28, 2013, is dismissed without prejudice.
- 3. Any motions to disqualify the Yamamoto Caliboso law firm from representing Castle & Cooke Properties, Inc. in the subject proceeding shall be filed by October 4, 2013.

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PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

By Wumino Moute

Hermina Morita, Chair

Michael E. Champley, Commissioner

Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:

Michael Azama

Commission Counsel

2013-0168.sr

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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<u>Certificate of Service</u> Page 2

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$\frac{\texttt{Certificate}}{\texttt{Page 3}} \ \underline{\texttt{of}} \ \underline{\texttt{Service}}$

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