

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
LIFE OF THE LAND)
For the Commission to Open an)
Investigation on Different Business)
Models and Utility Structures)
Including B Corporations, Electric)
Cooperatives, Private Utilities,)
Municipal Utilities, and)
Share-Holder Owned Utilities,)
Grid-Only Utilities (Independent)
System Operators) and Micro-Grid)
Utilities)
_____)

DOCKET NO. 2015-0339

ORDER NO. 33285

DENYING PETITION AND CLOSING DOCKET

PUBLIC UTILITIES
COMMISSION

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FILED

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Grid-Only Utilities (Independent)
System Operators) and Micro-Grid)
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DENYING PETITION AND CLOSING DOCKET

By this Order, the commission denies LIFE OF THE LAND's ("LOL") September 24, 2015 "Petition for the Commission to Open an Investigation on Different Business Models and Utility Structures Including B Corporations, Electric Cooperatives, Private Utilities, Municipal Utilities, and Share-Holder Owned Utilities, Grid-Only Utilities (Independent System Operators) and Micro-Grid Utilities" ("Petition").¹

¹The parties to this proceeding are LOL and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). No person moved to intervene or participate in this docket.

I.

Background

In its two-page Petition, LOL sought to initiate rulemaking proceedings under Hawaii Administrative Rules ("HAR") § 6-61-146, based on its speculation that "new applications" for "alternative business models and utility structures" "may be submitted in the near future":

Life of the Land seeks to have to Commission [sic] opened a regulatory investigation that will examine issues that may lead to the establishment of rules, guidelines and/or policies dealing with business models and utility structures. It is important to begin the process of examining alternative business models and utility structures before specific new applications for alternatives are submitted for approval.

This issue is relevant in that applicants [sic] involving alternatives may be submitted in the near future. The focus of each application will be what is proposed in that application. But the Commission and the public needs to understand the relative value of the alternatives. What are the relative benefits and risks, the reliability impacts, the rate impacts, the resiliency, the flexibility, the adaptability and the regulatory impacts associated with different business models and utility structures including B Corporations, electric cooperatives, private utilities, municipal utilities, and share-holder owned utilities, grid-only utilities (independent system operators) and micro-grid utilities?²

²Petition at 1 (emphases added).

LOL did not offer a specific "draft or substance of the proposed rule or amendment" to be considered, but merely opined:

On December 3, 2014 HECO and NextEra proposed merging. Not directly connected to the Commission's ultimate decision in the proceedings, parties in the proceedings have floated several alternatives. Former merger party Paniolo Power suggested a private utility. The Consumer Advocate proposed a B Corporation. The Current party members have suggested cooperatives, municipal utilities and Hawaii Island Energy Cooperative proposed an electric cooperative. The County of Maui is investigating a Municipal Utility One future scenario involves a bicycle-like structure where a Transmission Company owns and operates the Transmission Spine or Framework and individual public, private and commercial entities own and operate micro-grids.³

In its October 14, 2015 Preliminary Statement of Position, the Consumer Advocate stated that the Petition should be denied as the "resulting proceeding will be unduly broad and may involve a misallocation of available resources towards [a] prolonged proceeding with an inconclusive ending."⁴ The Consumer Advocate argued that the Petition should also be denied since LOL "fails to provide the Commission with any proposed rule or amendment to any set of rules[,] or to "clearly state the

³Petition at 2.

⁴Consumer Advocate's October 14, 2015 Preliminary Statement of Position ("CA SOP") at 4.

'relief sought[,]'' in violation of HAR §§ 6-61-74, and 6-61-147(2).⁵

The Consumer Advocate further objected to LOL's "purely speculative" rulemaking request, in which the "record is devoid of sufficient data and information" and the "breadth and scope of the investigation has not been adequately determined":

The crux of LOL's two-page petition seeks to have the Commission open a docket to discuss and determine the merits of issues related to different utility business models and organizational structures. . . . This type of inquiry would require a regulatory process for the Commission's examination of voluminous detailed data and information, which has not been provided by LOL in its Petition and the public hearing process, pursuant to HAR Subchapter 15 Rulemaking Proceedings, would not provide an appropriate forum to adequately consider such voluminous data and information.

. . . .

It is premature to initiate a rulemaking proceeding at this time. At this juncture, the record is devoid of sufficient data and information. The Consumer Advocate is unable to adequately assess whether proposed rules related to any organizational structure or business model represent tangible substantial net benefits for the consumers. Therefore, the Consumer Advocate objects to the initiation of a Commission docket where the breadth and scope of the investigation has not been adequately determined and any effort to articulate a position on various utility ownership or operation models would be purely speculative.⁶

⁵CA SOP at 2-3.

⁶CA SOP at 2-3 (emphases added).

II.

Findings and Conclusions

Upon review of the record and the parties' submissions, the commission denies the Petition and finds and concludes:

1. "Any interested person may petition the commission to adopt, amend, or repeal any rule of the commission." HAR § 6-61-146(b). However, entitled, "Form and contents of petition[,]" HAR § 6-61-147 requires that "[p]etitions for rulemaking shall conform to the requirements of subchapter 2 and shall contain . . . [a] draft or substance of the proposed rule or amendment or a designation of the provisions proposed to be repealed or amended" and "[a] statement of the reasons in support of the proposed rule, amendment, or repeal."

2. In addition, HAR § 6-61-148(b) provides that "[a] petition that fails in any respect to comply with this subchapter or to disclose sufficient reasons to justify the rulemaking proceeding will be denied."

3. Here, the commission finds that LOL has "fail[ed] to provide the Commission with any proposed rule or amendment to any set of rules[,]"⁷ in contravention of the requirement that petitions for rulemaking "shall contain . . . [a] draft or substance of the proposed rule or amendment or a designation of

⁷CA SOP at 2.

the provisions proposed to be repealed or amended[.]” HAR § 6-61-147(2). Instead, LOL requests that “before specific new applications for alternatives are submitted for approval” the commission open “a regulatory investigation that will examine issues that may lead to the establishment of rules, guidelines and/or policies dealing with business models[,]” based on LOL’s speculation that “new applications” for “alternative business models and utility structures” “may be submitted in the near future.”⁸

4. On these facts, the commission concludes that LOL’s request to engage in rulemaking is “purely speculative”⁹ and therefore agrees with the Consumer Advocate that, if the Petition was granted, the “resulting proceeding will be unduly broad and may involve a misallocation of available resources towards [a] prolonged proceeding with an inconclusive ending.”¹⁰

⁸Petition at 1.

⁹CA SOP at 3.

¹⁰CA SOP at 4.

5. The commission observes that LOL is a frequent participant in commission dockets and should thus be familiar with the commission's rules of practice and procedure, including the requirements of HAR § 6-61-147.¹¹

6. For these reasons, the commission finds and concludes that the Petition should be denied insofar as it fails "to comply with [HAR § 6-61-147] or to disclose sufficient reasons to justify the rulemaking proceeding[.]" HAR § 6-61-148(b).

¹¹See Docket No. 2015-0022, "Life of the Land's Motion to Intervene, Affidavit of Henry Q Curtis, & Certificate of Service[.]" filed on Jan. 29, 2015, at 4 (stating that LOL has been an Intervenor or Participant in "over forty regulatory dockets").

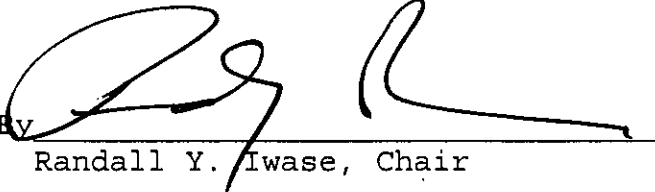
III.
Orders

THE COMMISSION ORDERS:

1. The Petition is denied.
2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii OCT 26 2015.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Michael E. Champley, Commissioner

By 
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:



David S. Taga
Commission Counsel

2015-0339.ljk

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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