

February 5, 2021

Mike S. Wallerstein, Commission Counsel
Hawai'i Public Utilities Commission
465 S. King Street, #103
Honolulu, HI 96813

Re: Docket No. 2019-0333, For Approval of an Amended and Restated Power Purchase Agreement for Firm Capacity Renewable Dispatchable Generation with Puna Geothermal Venture

Aloha Counsel Wallerstein,

I have concerns regarding overlaps and omissions in the situation addressed by the letter dated January 27, 2021, from Puna Geothermal Venture (PGV) attorneys about your January 22, 2021, letter to Dr. Kawaoka, Acting Director of the Office of Environmental Quality Control (OEQC) of the Department of Health (DOH) and the applicability of HRS Chapter 343 (HEPA) to the proposed expansion of PGV's generating facility.

1. I am an appellant in Civil No. 3CCV-20-0000390, *Puna Pono Alliance v. State of Hawai'i* and Dr. Kawaoka, as Deputy Director of the DOH *Environmental Health Administration*, is an implied unnamed Appellee in the Environmental Court case appealing from an agency determination that no environmental review would be required for PGV's renewal of an air pollution permit.
2. Dr. Kawaoka is similarly associated in a presently ongoing Environmental Court case challenging the same determination by a declaratory judgment action (*see* Civil No. 3CCV-20-0000394, *Annamarie Kon v. State of Hawai'i*).
3. Two hearings are presently scheduled in the cited cases before Environmental Court Judge Henry T. Nakamoto:
 - (a) February 17, 2021, *Plaintiffs' Motion for Partial Summary Judgment* in the declaratory judgment action, and
 - (b) March 18, 2021, *Oral Argument* in the agency appeal.
4. An important document in the DOH agency appeal, also related to the declaratory judgment action, is a November 18, 2019, order from the DOH contested case Hearings Officer that stated, in relevant part (emphasis supplied):

Puna Pono Alliance's Demand for Environmental Review, which asks that an environmental review be accepted by the DOH before PGV is allowed to proceed with the renewal of NSP No. 0008-02-N, is therefore referred to the Director of Health, the DOH's *Environmental Health Administration* [*i.e.*, Dr. Kawaoka] and the Clean Air Branch for them to resolve, along with any joinders and de facto joinders therein.

5. Dr. Kawaoka's Environmental Health Administration was identified as part of the DOH group making the determination in response to PPA's demand for further environmental review that is the subject of the above-cited judicial actions.
6. Although PGV's proposed expansion of its generating facility is an important part of PUC proceedings, as illustrated by your letter to Dr. Kawaoka, and was cited by PPA and others as evidence in the DOH contested case, the proposed expansion was *not considered in the DOH determination* that further environmental review would not be required for PGV's air pollution permit renewal.
7. Dr. Kawaoka is apparently being asked to consider PGV's proposed expansion for the first time, while at the same time he is part of litigation challenging omission of PGV's proposed expansion from consideration in the DOH determination that environmental review was not required for PGV's air pollution permit renewal.

These complications regarding the PUC request to Dr. Kawaoka and PGV's response may perhaps put him on the spot as OEQC Director while also being head of the Environmental Health Administration: it is potentially confusing that facts not reviewed by DOH while making the determination that no further environmental review would be required for renewal of PGV's air pollution permit are an important consideration in PUC proceedings.

Maybe PGV and DOH are trying to postpone the day of reckoning regarding PGV's plans to expand its facility with new equipment designed for a steam-dominated resource and a higher level of production, excluding those plans from the ongoing contested case and keeping them out of the DOH determination on HEPA applicability to the renewed air pollution permit because the permit renewal application has not been amended to include them.

PGV has included its plans to expand its facility with new equipment in the PUC where those plans are actively being considered. The January 27, 2021, letter from PGV's attorneys reverberates with arguments from PGV's position in the ongoing DOH litigation. It is especially important how PGV's argument seems to fudge distinctions between a new EIS and the present situation. PGV's project was the subject of a 1987 EIS. No one is asking them to prepare a new EIS. Instead, applicable law and rules require consideration of whether a supplemental review is required – whether the 1987 EIS is still sufficient. Omitting the wholesale installation of new generating equipment designed to function in the steam dominated resource that resulted from the recent Kilauea eruption definitely diminishes the scope of that question. Therefore, those somewhat misleading arguments PGV has presented in the DOH cases need to be recognized for what they are, and what they are not. They are not sufficient for the PUC proceeding. They are in need of supplementation to address new facility PGV plans that will replace the old equipment designed for a brine dominated resource.

Sincerely,

Robert Petricci

Robert Petricci, President

Puna Pono Alliance

Copies sent by email (listed below) to:

- (a) parties in PUC No. 2019-0333
- (b) parties in DOH contested case
- (c) Dr. Kawaoka, OEQC
- (d) parties in Civil No. 3CCV-20-0000394
- (e) parties in Civil No. 3CCV-20-0000390

mike.s.wallerstein@hawaii.gov
keith.kawaoka@doh.hawaii.gov
richard@hamakuasprings.com
dnishina@dcca.hawaii.gov
consumeradvocate@dcca.hawaii.gov
dca@dcca.hawaii.gov
kevin.katsura@hawaiiandelectric.com
gsumida@carlsmith.com
amuller@carlsmith.com
sawonglaw@hawaii.rr.com
dvamamoto@vchawaii.com
wvamamoto@vchawaii.com
bdixon@vchawaii.com
Diane.K.Taira@hawaii.gov>
Bill.F.Cooper@hawaii.gov>
paul.alston@dentons.com>
Pam.Bunn@dentons.com>
courtney.vega@dentons.com>
tim.irons@dentons.com>
Steven.Jacobson@doh.hawaii.gov>
jdomski@aol.com
bilstoftc@yahoo.com>
travis12@me.com>
cheriechunli@gmail.com>
salinasckl@gmail.com>
katc31999@gmail.com>
lornd@yahoo.com>
alexislee@me.com>
savepuna@laughtermedicine.org>
arosanoff@gmail.com>
stevesparks@magnesiumeducation.com>
pantherdave@yahoo.com>
pahoatoday@gmail.com>
malamatree@gmail.com>
bigislandpaul@gmail.com

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