

Bond Case Briefs

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PUBLIC UTILITIES - HAWAII

Matter of Hawaiʻian Electric Company, Inc.

Supreme Court of Hawaiʻi - June 29, 2021 - P.3d - 2021 WL 2660470

Environmental organization sought review of Public Utilities Commission's (PUC) decision to not re-open its order approving power purchase agreement (PPA) in which electric utility agreed to purchase wind energy generated on proposed wind farm.

The Supreme Court held that:

- Court had jurisdiction to rule on jurisdictional issue;
- Organization's request to re-open via relief from judgment rule was not a collateral attack on order;
- Organization was a "person aggrieved" with standing to appeal;
- Relief from judgment rule was not available to re-open order to address impact of project on greenhouse gas emissions;
- Alleged lack of a timely incidental take license over Hawaiʻian hoary bat did not void PPA as a basis to re-open order; and
- Blog article from popular science magazine about decreased wind energy prices did not warrant re-opening of order.

Supreme Court possessed jurisdiction, at a minimum, to rule on jurisdictional issue raised in environmental organization's appeal of Public Utilities Commission's (PUC) decision to not re-open its unappealed order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status, where objector asked Court to consider whether rule governing motions for relief from judgment or order provided authority to re-open PUC's order due to substantially changed circumstances.

Environmental organization's request, made via the relief from judgment rule, to re-open Public Utilities Commission's (PUC) order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status was not an impermissible collateral attack on order, where motion was submitted in same proceeding that generated the order.

Environmental organization was a "person aggrieved" with standing to appeal Public Utilities Commission's (PUC) decision to not re-open PUC's unappealed order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status, where organization's motion for relief from the order was brought within the same proceeding.

Public Utilities Commission (PUC) properly declined to use the relief from judgment rule, which was asserted by environmental organization that had participant status, as a basis to re-open PUC's order approving power purchase agreement (PPA) between electric utility and wind energy generator in order to address impact of project on greenhouse gas (GHG) emissions, where absence

of a GHG emissions analysis was readily apparent in order when it was filed, organization could have timely moved for rehearing or reconsideration of order, and organization also could have timely appealed order.

Any failure of electric utility or wind energy generator to timely obtain an incidental take license (ITL) over Hawai'ian hoary bat did not void their power purchase agreement (PPA) and Public Utilities Commission's (PUC) order approving PPA within meaning of the relief from judgment rule, and therefore PUC was not required to re-open its order, via that rule, pursuant to request of environmental organization that had participant status in contested case proceeding; the "voiding" of PPA and PUC's order that organization sought to prove did not involve defects in jurisdiction or a due process violation.

Blog article from popular science magazine summarizing Department of Energy's (DOE) report that wind energy prices nationwide had fallen did not provide extraordinary circumstances necessary to re-open Public Utilities Commission's (PUC) order approving power purchase agreement (PPA) between electric utility and wind energy generator on the basis, under the relief from judgment rule, that it was no longer equitable for order approving higher wind energy prices to have prospective application, where Hawai'i was excluded from DOE's report due to unique issues facing wind development in state.