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PUBLIC UTILITIES - HAWAI'I

Matter of Hawai‘i Electric Light Company, Inc.

Supreme Court of Hawai‘i - March 13, 2023 - P.3d - 2023 WL 2471890

After Supreme Court vacated Public Utilities Commission (PUC) decision approving electric utility’s proposed purchase of electricity from power company’s proposed biomass power plant, energy company appealed PUC’s decision on remand reconsidering its earlier grant of waiver to utility, and denying waiver from competitive bidding process for acquisition of new renewable energy generation sources, and it also appealed from PUC’s decision denying its motion for reconsideration.

The Supreme Court vacated and remanded. Following new contested case hearing, the PUC declined to approve amended power purchase agreement, and power company appealed.

The Supreme Court held that:

- PUC had duty to consider energy prices when considering electric utility’s proposed purchase of electricity from power company’s proposed biomass power plant;
- PUC was not restricted to comparing biomass power plant to fossil-fuel plants when considering potentially harmful climate change due to the release of harmful greenhouse gases; and
- PUC could apply carbon neutrality standard when evaluating proposed biomass power plant.

Public Utilities Commission (PUC) on remand, had duty to consider energy prices when considering electric utility’s proposed purchase of electricity from power company’s proposed biomass power plant; mandate on remand from Supreme Court expressly required consideration of whether the cost of energy under the Amended power purchase agreement was reasonable and whether the terms of the agreement were prudent and in the public interest, and PUC had a duty to act in the public interest.

Public Utilities Commission (PUC), when considering whether costs of proposed biomass power plant were reasonable as part of proposed power purchase agreement, was not restricted to comparing biomass power plant to fossil-fuel plants when considering potentially harmful climate change due to the release of harmful greenhouse gases.

Public Utilities Commission (PUC) findings, when declining to approve power purchase agreement for purchase of power from proposed biomass power plant project, did not indicate that PUC improperly tried to become its own “expert,” where PUC merely compiled data provided by power company’s expert into a table and calculated that project would reach cumulative carbon neutrality 12 years after it reached annual carbon neutrality, and two years after the statutory cutoff for full carbon neutrality.

Public Utilities Commission’s (PUC) critical evaluation of the evidence power company presented when seeking approval of power purchase agreement for electric utility to purchase energy from power company’s proposed biomass power plant did not equate to improper application of a higher evidentiary standard, even if power company and electric utility were the only ones to introduce expert evidence; PUC simply did not find power company persuasive.

Public Utilities Commission (PUC) could apply carbon neutrality standard when evaluating power purchase agreement for electric utility to purchase electricity from power company’s proposed biomass power plant; power company had pledged to be carbon negative, carbon neutrality went directly to the reasonability of its costs in light of its greenhouse gas emissions, and PUC was not convinced by power company’s argument that increased emissions would be offset by tree planting.

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