DOCKET NO. A87-610/TOM
GENTRY AND GENTRY-PACIFIC, LTD.
MOTION FOR MODIFICATION AND TIME EXTENSION

STAFF REPORT

ACTION MEETING
May 25, 2022

[Signature]
Daniel Orodenker, Executive Officer

Submitted: May 23, 2022
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1. EXPLANATION OF PROCEEDING BEFORE THE LAND USE COMMISSION

The proceeding before the Land Use Commission ("Commission") is to consider the Motion for Modification, Time Extension, and Release and Modification of Conditions filed by Kamehameha Schools ("KS"), on December 10, 2021.

KS requests that the Commission amend the 2014 Order\(^1\), as amended by that certain 2020 Order\(^2\) to:

(1) extend the time period for which Parcel A of the Petition Area can be used as a solar farm to no later than December 31, 2044, and no later than December 31, 2054 for Parcel B;

(2) release two conditions under the 2014 Order to reflect updated information; and,

(3) make other modifications to the 2014 involving changes to the solar farm development proposed by the current operator, Waiawa Solar Power, LLC ("WSP"), a wholly-owned indirect subsidiary of Clearway Energy Group LLC ("Clearway").

Hawai’i Administrative Rules ("HAR") §15-15-70(a) provides that “[a]ny party may make motions before, during, or after the close of a hearing.” In the 2014 Order the Commission recognized KS, the fee owner of the Petition Area, as the successor petitioner to original petitioner Tom Gentry and Gentry-Pacific, Ltd. ("Gentry"), with standing to seek and obtain an amendment to the Decision and Order.

Pursuant to HAR §15-15-94, a petitioner who desires to have a modification or deletion of a condition that was imposed by the Commission; or a modification of the Commission’s order shall file a motion in accordance with HAR §15-15-70, including proper service and affidavits or declarations if the motion requires the consideration of facts not appearing in the record.

For good cause shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order (HAR §15-15-94(b)). “Good cause” can mean “a substantial reason amounting in law to a legalexcuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission.

\(^1\) Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law, and Decision and Order Dated May 17, 1988 ("Order Granting Motion for Order Amending D&O") filed on November 26, 2014

\(^2\) Findings of Fact, Conclusions of Law, and Decision and Order Granting With Modification Motion for Modification And Time Extension, issued by the Commission on February 11, 2020 as to the Phase 2 solar farm.
The Commission has discretion based on the facts presented in the case to consider other factors, including (1) whether the need for the condition still exists; (2) whether an alternative method for ensuring compliance exists that protects the public trust; or (3) whether compliance with the condition would create an undue hardship.

Given the over 34-year history of this docket, staff has prepared a brief chronology of the significant events relating to the docket in the next section.

2. CURRENT STATUS

At the Commission’s April 14, 2022 hearing on the matter, the Commission had finished Petitioner’s presentation on their Motion with questions by parties and Commission, the County’s presentation on their position and questions by parties and Commission, and OPSD’s presentation on their position.

OPSD had asked for time to research and brief the Commission on certain issues raised by the Commission during questioning of the parties. These issues included questions regarding substantial commencement of the total project if just solar was started, timing of EIS, when first housing units would be built and ready to occupy, etc.

So, Commission should be prepared for OPSD to provide additional position statement followed by questioning by parties and Commission.

Petitioner filed on May 5, 2022, a Supplemental Memorandum in Support of Dec. 10, 2021 Motion and Exhibits 48-57. [See Petitioner’s Filings tab under Petitioner’s Filings 05/02/22] Land Use Commission | A87-610 Kamehameha Schools 2021 Motion to Amend (hawaii.gov)

We expect Petitioner to request the Commission to allow their latest filings into the record and provide a summary of what it contains. Then the other parties and Commissioners would have an opportunity to ask Petitioner questions on the new submittals. Petitioner would then be allowed to provide their rebuttal.

Afterwards the parties would have an opportunity to provide closing arguments: County, OPSD, and then Petitioner.

Commissioners should review the transcript of the last meeting and any other files on this docket on the Commission’s website.