

NO. 28056

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

WAIMANA ENTERPRISES, INC., Complainant-Appellant,  
v.  
MAUI ELECTRIC COMPANY, LTD., Respondent-Appellee,  
and  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS,  
DIVISION OF CONSUMER ADVOCACY, Appellee

APPEAL FROM THE PUBLIC UTILITIES COMMISSION  
(DOCKET NO. 6954)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise, J., and  
Cir. Judge Pollack, in place of Recktenwald, C.J.,  
Watanabe and Nakamura, JJ., all recused)

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FILED

Claimant-Appellant Waimana Enterprises, Inc. (Waimana) appeals from the Decision and Order (D&O) of the Public Utilities Commission of the State of Hawai'i (the Commission) filed on June 23, 2006. The Commission dismissed as moot Waimana's complaint against Maui Electric Company, Ltd. (MECO).

On appeal, Waimana contends that the "Commission erred in dismissing the Complaint for mootness."<sup>1/</sup>

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as

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<sup>1/</sup> Claimant-Appellant Waimana Enterprises, Inc.'s arguments unrelated to its sole point on appeal are not addressed as the arguments do not comply with Hawai'i Rules of Appellate Procedure Rule 28(b)(4) and (7).

well as the relevant statutory and case law, we hold that the Commission's dismissal of Waimana's complaint as moot was not erroneous. In its D&O, the Commission found that Waimana's prayer for relief was limited to requesting the Commission to compel MECO to execute a March 19, 1991 version of a purchase power agreement that "involves Waimana's intention to generate electricity utilizing the Onsite Biomass Facility located on MECO's Palaau generating plant site and to sell as-available Energy generated from the Palaau Site as a Qualified Facility to MECO" in accordance with law. Therefore, as the Commission concluded in its D&O, Onsite Energy, Inc. and Onsite/Molokai Limited Partnership's sale of the biomass facility to another buyer and removal of the facility from Hawai'i made it impossible for the Commission to "grant Waimana the relief that it requested in its Complaint" and rendered the Complaint moot. See Diamond v. State of Hawai'i, Bd. of Land & Natural Res., 112 Hawai'i 161, 169-70, 145 P.3d 704, 712-13 (2006); In re Waikoloa Sanitary Sewer Co., 109 Hawai'i 263, 270, 125 P.3d 484, 491 (2005). The mootness exception did not apply in this case because (1) this case does not involve questions that affect the public interest and (2) the facts in this case are not capable of repetition, yet evading review. Diamond, 112 Hawai'i at 170, 145 P.3d at 713; see In re Thomas, 73 Haw. 223, 226, 832 P.2d 253, 255 (1992); City of Los Angeles v. Lyons, 461 U.S. 95, 109, 103 S. Ct. 1660, 1669 (1983); In re Waikoloa Sanitary Sewer, 109 Hawai'i at 270, 125 P.3d at 491.

Therefore,

The Decision and Order of the Public Utilities Commission of the State of Hawai'i filed on June 23, 2006 is affirmed.

DATED: Honolulu, Hawai'i, January 31, 2008.

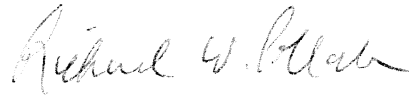
On the briefs:

Lane T. Ishida and  
Edsel M. Yamada  
for Complainant-Appellant.

  
Presiding Judge

Thomas W. Williams, Jr.  
Peter Y. Kikuta  
Damon L. Schmidt  
(Goodsill Anderson Quinn &  
& Stifel)  
for Respondent-Appellee.

  
Associate Judge



Acting Associate Judge