

Harry Kim
Mayor



Jane H. Testa
Director

Diane L. Ley
Deputy Director

County of Hawaii
DEPARTMENT OF RESEARCH AND DEVELOPMENT
ENERGY ADVISORY COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8366 • Fax (808) 935-1205
E-mail: chresdev@co.hawaii.hi.us

Energy Advisory Commission
Thursday, June 5, 2008
Maluhia Conference Room
891 Ululani Street
Hilo, Hawai'i

MINUTES

Commission Members:

Present: Steven Burns, Jacqui Hoover, Michael Kramer, and Riley Smith

Excused: Richard Ha

Others Present: Molly Lugo, Deputy Corporation Counsel; Karen Delimont, Legal Clerk to Molly Lugo; Kelci Paiva and Cheryl Shitabata, Summer Law Clerks, Office of the Corporation Counsel

R&D Staff: Jane Testa, Diane Ley, Arlene Takahashi, Marcia Yoshiyama, and Douglas Zang (effective July 16, 2008)

1. Call to Order

The meeting was called to order at 10:10 a.m. by Jane Testa, Director of Department of Research and Development.

2. Welcome, Introductions, Overview of Commission, Review of Agenda

a. Welcome

J. Testa thanked everyone for coming.

Richard Ha is not able to attend today's meeting due to funeral services for his mother-in-law.

J. Testa reported that the Mayor was in a meeting but would arrive shortly to proceed with swearing in of the Commission members. In the interim, the Commission could proceed with agenda items but not take formal action; hence, agenda items were taken out of order.

For purposes of clarity and consistency, the minutes reflected all subject discussions as outlined in the agenda.

b. Introductions

Self-introductions were made.

c. Overview of Commission

J. Testa stated that the goal of the Commission is to support the implementation of the Hawai'i County Energy Sustainability Plan, including the identification of priority initiatives, evaluation of required resources, establishment of benchmarks and timelines, and practical strategies toward action; referencing where appropriate, complementary studies, research, documents, plans, and initiatives.

d. Review of Agenda

J. Testa reviewed the agenda.

3. **Mayor's Address and Swearing In**

Self-introductions were made by Commission members.

Mayor stressed the importance of their role as Commission members. He also informed the Commission of his stance relating to certain issues. He is in favor of alternative energy, conserving energy; but not for the use of agricultural lands for the production of bio-fuel crops.

Mayor administered the Oath of Office to Steven Burns, Jacqui Hoover, Michael Kramer and Riley Smith.

4. **Selection of Chair – Chair Presides**

Motion: R. Smith made a motion that Richard Ha be the Chair and Michael Kramer the Vice-Chair for the Commission. The motion was seconded by J. Hoover and unanimously carried.

M. Lugo stated that Michael Kramer could be selected as the Interim Chair for today and selection of Chair may be done at the next meeting when all five members are present.

J. Testa asked for a vote for Michael Kramer to be the Interim Chair for this meeting and to preside over the remainder of the agenda. S. Burns, J. Hoover, and R. Smith responded in the affirmative.

5. **Statements from the Public**

At this point, Michael Kramer presided as the Interim Chair and polled the room for any member of the public who would like to address the Commission.

No one from the public was in attendance.

6. Review and Adoption of Rules of Practice and Procedure

M. Lugo suggested that Commission members individually review the draft Rules of Practice and Procedures; discussion and changes, and adoption of the Rules can be done at a future meeting with all five members present.

A question was raised by R. Smith as to the term of the Commission. J. Testa stated the Commission shall consist of five members and be appointed by the Mayor to serve co-terminus with the Mayor.

M. Lugo added that according to the Rules, this is an Advisory Commission appointed by the Mayor pursuant to Article IV, Section 4.4 of the Hawai'i County Charter. It would be up to the incoming Mayor to reappoint this Commission and reappoint members.

R. Smith asked who does the Commission advise – R&D or the Mayor? D. Ley responded that the Commission advises the Mayor and should the Commission have specific issues that need to be relayed to the Mayor, R&D would fulfill that task. A report of milestones and important issues on what is being accomplished will be sent to the Mayor. J. Testa added that Mayor will also be receiving minutes of the Commission's meetings.

An overview of the draft Rules of Practice and Procedure was presented by D. Ley.

a. The following corrections were noted:

- (1) Rule 1. Authority – Delete “the Hawai`i Revised Statutes.”
- (2) Rule 2. Goal – Correct spelling of “complimentary” to “complementary.”
- (3) Rule 4(d) Duties and Responsibilities – Correct spelling of “complimentary” to “complementary.”

b. Video Conferencing

A question regarding video conferencing was raised by R. Smith. If you lose the video connection but you are on the phone, can you still have a meeting?

M. Lugo responded that if both video and audio communication cannot be maintained, meeting shall be terminated. Both video and audio communication is a requirement of the Sunshine Law. However, the Sunshine Law does provide for certain qualifications as to when you can continue with audio communication. M. Lugo suggested including that in the Rules or referencing that particular section of the Sunshine Law.

J. Testa asked if there is a meeting and all of the members are present in one location and the public is not at any of the other locations and audio/visual goes down at one of the other locations, is there a problem?

M. Lugo replied that should not be a problem. She does not think it is a requirement to allow public testimony at more than just the physical location

where all of the Commission members are. M. Lugo will check further on this. However, should one of the commissioners want to participate in a video conferencing meeting from another location, then it would be open to the public.

c. Notice of Meeting

A question of how does the public see the notice of the meeting was raised by M. Kramer. Are they on-line? Where are the notices/agendas?

D. Ley stated that the notice/agenda is posted on the Mayor's and R&D's websites. A. Takahashi added that the notice/agenda is filed with the County Clerk's office and posted in the breezeway at the Aupuni Center. M. Lugo also added that it is not a requirement to place the notice/agenda in the newspapers. However, R&D should maintain a list of people wanting to receive the notice/agenda and send it via e-mail.

d. Standards of Conduct

M. Lugo will review this section further. There are certain requirements in the Board of Ethics regarding filing of financial disclosure statements. It does not apply to boards and commissions that are advisory only.

M. Kramer had a question for S. Burns pertaining to conflict of interest. Are you here as a person or a representative of a utility?

S. Burns made it clear that he is representing himself and not the utility. In fact, he has been asked by the utility if there is an appropriate time, especially if the public happens to be involved in any of the meetings, where he can give some sort of representation status such that it is not misinterpreted that he is here representing the utility. S. Burns asked is that a possibility to allow for that in the agenda? He would like to do it verbally, if possible. When he applied to be on the Commission, he did not apply as a representative of the utility. He did get clearance from the utility to do this and is not being paid while attending these meetings.

Diane commented that a welcome and introductions could be a standard part of the agenda or should the public be in attendance, the Chair could bring that item up on the agenda.

Being that there were no other comments or questions on the Rules, M. Kramer stated that action on the Rules will be deferred till R. Ha has a chance to review them.

Revised Rules will be provided for consideration at the next meeting.

7. Overview of Legal Context of the Commission/Sunshine Law

Prior to M. Lugo's power point presentation on the Sunshine Law, handouts of the presentation and a Guide to the Sunshine Law were distributed.

M. Lugo noted for those commissioners attending the Energy Forum on Friday,

June 6, that although it is related to the purpose of this Commission, the forum does not pertain to a particular item or commission business; therefore, it is not subject to the Sunshine Law.

On the other hand, there was an invitation to lunch today by The Kohala Center to discuss, with two of the speakers who are going to be at the forum tomorrow, ideas for implementing the Sustainability Plan and what the role of the commissioners will be. This is too closely related to commission business because in future meetings, commissioners will be defining their role as to what a commission can be and that is a matter of commission business and needs to be opened to the public process. The point of the Sunshine Law is to keep the process open to the public.

S. Burns posed a follow-up question. If two or more members but less than a quorum were acknowledged at a meeting to be given the authority to pursue a meeting like that, that actually would be allowed. Is that true?

M. Lugo responded that is true. Two members can be designated or more but less than a quorum (for this Commission, it would be two as three is a quorum) and those two members can go out to do their investigation and report back to the Commission. It would possibly involve three meetings if there is deliberation on the results of what is found during the investigation and that would be a third meeting.

S. Burns asked if that would have been a practical solution in this particular case or are there issues that would have presented some problems?

M. Lugo replied that in this particular case, the proposed lunch meeting would have had to be on the agenda that the Commission was going to designate two members to attend the meeting with The Kohala Center.

M. Kramer asked if the agenda can be revised the day of the meeting.

M. Lugo responded yes, by a two-thirds vote of all members of the Commission the agenda could have been revised to add that particular item.

S. Burns asked if it would have to be specifically called out in terms of the intent of this meeting versus something more generalized such as where it says, "Determine the Agenda, Date, Time and Place for the Next Meeting," which is an item that is on the agenda.

M. Lugo did not think it was really designating two members to attend the meeting when it falls under that particular agenda item, but the Commission does not always have to be totally specific about every single item. It just has to give notice to the public of what it is going to be doing so the public can determine if they want to come to testify on an item. It has to be specific enough that fair notice is given as to what the Commission will be discussing.

R. Smith commented that the South Kona Community Development Plan Steering Committee has 11 members, and several of them regularly attend the Waimea Community Association meetings. Deputy Corporation Counsel Amy Self advised it was o.k. to attend the meetings but not to ask questions nor disclose how a vote may be taken on anything, but numerous members of the committee can attend public forums and listen to what is said. Therefore, R. Smith thought that the

commissioners could all attend the lunch but not ask questions, or all attend and one person would ask the questions.

M. Lugo responded that it depends on what the subject matter of the presentation is because if it was pertaining to an item of commission business, the Sunshine Law could be circumvented by going as a commission but only having one person ask questions when all other members of the commission are present. But if it is more of a general topic area, then as long as commissioners are not speaking amongst themselves discussing and deliberating, then it is o.k. to attend events like the forum tomorrow. For the lunch that was proposed today, it was not realistic for it not to be more of an informal conversational discussion.

J. Hoover added that the issue she had with relation to the Sunshine Law was that The Kohala Center was very specific that the discussion was going to be for implementation and that the speakers had already been coached. There is no control over the two speakers that they would recognize the rules. J. Hoover felt that the decision that was made was the appropriate decision.

S. Burns asked if it would have been acceptable for one commissioner to have gone.

M. Lugo responded the Commission could have designated a member, but it would have had to be on the agenda.

A question regarding written testimony was raised by M. Kramer. Can someone submit written testimony in advance? If so, how do they do that? Where does it go?

M. Lugo responded that it can be submitted to R&D by e-mail. D. Ley added that copies will be distributed at the meeting. A statement regarding submittal of written testimony will be included on future agendas.

On the issue regarding reasonable speaking time allowed for oral testimony from the public, M. Lugo will check and include it in the Rules of Practice and Procedure.

Regarding amending the agenda, M. Lugo explained once it is filed, the agenda can be amended with a two-thirds vote of all of the members of the Commission and no item can be added if it is of reasonably major importance and will affect a significant number of people.

M. Kramer asked who defines reasonably major importance? M. Lugo responded it would be the Commission's decision.

M. Lugo suggested the Commission visit the Office of Information Practice's (OIP) website (www.hawaii.gov/oip) as it is a useful resource with links to their Opinion Letters, OpenLine (newsletter with updates in the law), etc. There is always an Attorney of the Day (586-1400) at OIP to answer any question regarding the Sunshine Law or M. Lugo can be contacted at 961-8251.

D. Ley mentioned that a copy of one of the OIP's recent OpenLine newsletter was provided in the commissioner's binders under tab labeled "Miscellaneous."

J. Testa raised a question regarding the definition of "Secretary" under Rule 3(m) of the Rules of Practice and Procedure. "Secretary" shall mean the Secretary of the

Hawai'i County Energy Advisory Commission. Would the Commission like to clarify that to mean that would be another officer of the Commission or give it the foregone conclusion that the staff would play that secretarial role?

J. Hoover suggested the following wording: Secretary shall mean the support staff assigned to recording of minutes.

8. Overview and Discussion of Hawai'i County Energy Sustainability Plan

A power point presentation highlighting the Hawai'i County Energy Sustainability Plan was provided. The Commission members identified initial areas of concern or interest with respect to the Plan and the Commission's efforts.

J. Hoover suggested looking at regulatory barriers in the different levels and also the cross-pollination between the different levels; where there is agreement and where there is conflict.

M. Kramer asked if the Plan has been formally adopted or is it just recommendations that are in the process of being worked on. What is the official status of the Plan?

D. Ley responded that the Plan was worked on by R&D staff and the contractor, The Kohala Center. The Plan was submitted to the Mayor, he gave his nod of approval; and it was presented to the Council, which accepted it as an administrative document.

S. Burns raised issues with respect to implementation and the status of the prior Energy Commission's recommendations that might lend guidance and help to prioritize activities. What are the minimum implementation timeframes and the steps to recommend that the County could introduce within its organizational practices?

For example, revision of the Model Energy Code, what does it take based on a recommendation from the Energy Advisory Commission for the County to actually implement that? What is the status of the Model Energy Code revisions?

J. Testa responded that the Commission can ask for someone who is directly responsible for the Model Energy Code to come before the Commission.

D. Ley added that the Model Energy Code is part of the Hawai'i County Code, and Building Division has committed to updating it and State resources are available to assist.

M. Lugo stated that if the Commission's recommendation to make revisions to the Model Energy Code was adopted, then that would be a process of going before the Council, asking for a bill to amend the Code, and go through two readings. That is conceivably possible within the next seven months as far as timeframe.

M. Kramer commented that you rarely see that taking any less than four months from the time of embarking on the process.

S. Burns added they have been trying to pass the updated Model Energy Code for at least ten years.

D. Ley stated that the Administration publicly said that it is ready and if the County does not implement the revisions by 2010, then the State is going to do it for the County.

R. Smith suggested the Commission needs to focus its efforts because there is only six months of meetings left and there are some political realities. Need to set goals as to what does the Commission hope to achieve by November. Does the Commission want to have a report to present or to have things in the pipeline? Amendments to the Model Energy Code are going to require Council approval and adoption. Need to include a two-month period for Council action, implementation plans have to be in stone by August, which is three months from now. Need to have a discussion on what is hoped to be achieved and then it will make it clear where to prioritize the Commission's efforts.

J. Hoover acknowledged that one of the purposes of this Commission is to make recommendations for funding and other resources to the Administration. Therefore, it is important to understand the State's energy policy and initiatives as state and federal funding is going to go to those counties that are able to quickly respond.

A question was raised by S. Burns regarding scope as it pertains to the Plan. When he was in R&D, an Energy Emergency Preparedness Plan was developed in response to temporary issues. To what extent would this Plan integrate or attempt to address some of the worse case scenarios with respect to oil availability and pricing? To what extent is there authority or desire at the County level to look at broadening the scope such to include an assessment of some of the changes that are occurring and look at updating the 1992 Energy Emergency Preparedness Plan as it just seems relevant due to the urgent nature of addressing energy issues?

D. Ley mentioned that the County's Energy Emergency Plan is basically the same one.

J. Testa added that the Commission may want to bring that as part of the amendment to the Rules of Practice and Procedure in terms of the goal for the Energy Commission.

J. Hoover added that part of the goal of the Commission references complementary studies, research, etc., so there may not be a need to drill down specifically to specific studies as the less opportunity for the more comprehensive review.

It was suggested by J. Hoover to have a presentation on the Hawai'i Bio-Energy Master Plan as this initiative is going on concurrently to this effort and there is going to be interactions there.

D. Ley responded if the Commission wants to have someone from the Hawai'i Clean Energy Initiative to speak, that is an option.

M. Kramer stated that at the next meeting the various low hanging fruits should be identified in all these different sections of government whether it is inside the County or its own laws and policies or the other areas, as well.

S. Burns recommended that each of the members comes to the next meeting with an identified approach as to how the Commission should pursue activities over the next six or seven months.

R. Smith asked how often should the Commission meet?

J. Hoover suggested for organizational purposes, the Commission should try to meet in a two-week timeframe at least for the next meeting.

M. Kramer stated the Commission should at least set the next meeting and then, as a group, decide frequency from that point. Everyone was asked to look at their calendars for possible dates.

S. Burns asked in terms of general policy with respect to rotating meetings around the island so the public can attend more fairly. Is that generally an acknowledged practice?

D. Ley responded in the affirmative.

S. Burns added that meetings should be rotated between Kona, Waimea and Hilo.

R. Smith mentioned that the first organizational meeting should be in Hilo and rotate thereafter.

9. **Determine Agenda, Date, Time, Place for Next Meeting**

Agenda was set for the next meeting.

Suggested dates for next meeting: June 20 (first choice), June 16 (second choice) and June 23 (third choice).

Date: 10 a.m.

Place: Hilo (meeting site to be determined)

10. **Adjournment**

Motion: R. Smith moved to adjourn. The motion was seconded by J. Hoover and unanimously carried.

The meeting was adjourned at 12:35 p.m.

Respectfully submitted,

Marcia Yoshiyama
Administrative Services Assistant