

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)
)
Contested Case Hearing Re Conservation District)
Use Application (CDUA) HA-3568 For the)
Thirty Meter Telescope at the Mauna Kea Science)
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i)
TMK (3) 4-4-015:009)
)
)
)
_____) **Certificate of Service**

MINUTE ORDER NO. 63

**(Order Denying Temple of Lono Motion to Restore
Cross-Examination Rights (Doc. 410))**

The Temple of Lono filed its Temple of Lono Motion to Restore Cross-Examination Rights (Doc. 410) on November 7, 2016 (“Motion”). In addition to the Motion, the following submissions were considered:

| Doc. # | Filed | Party | Title |
|---------------|--------------|--------------|--|
| 415 | 16-Nov-16 | UHH | University of Hawai`i at Hilo’s Opposition to Temple of Lono’s Motion to Restore Cross-Examination Rights, Filed November 7, 2016 [Doc. 410] |
| 416 | 17-Nov-16 | TIO | TMT International Observatory, LLC's Joinder to University of Hawai`i at Hilo's Opposition to Temple of Lono’s Motion to Restore Cross-Examination Rights, Filed November 7, 2016 [Doc. 410] |

By this Motion, the Temple of Lono seeks to have a 30-minute cross-examination time limitation removed. On October 31, 2017, “the Hearing Officer announced that she was

imposing a thirty-minute limit on cross-examination subject to being extended for ‘good cause.’” Doc. 410 at page 1. The time limitation was effective on the next day of hearing, November 2, 2017. The Temple of Lono contends that (1) imposing the time limit is outside the legal authority of the Hearing Officer, (2) the time limit violates parties’ due process rights, and (3) “the time limit unduly burdens the due process rights of the parties.” Doc. 410 at pp. 3-6.

UHH contends that the Hearing Officer has authority under HAR §13-1-32 *Conduct of Hearing*, to impose time limits to avoid unnecessary and repetitive evidence:

HAR §13-1-32 (h) To avoid unnecessary or repetitive evidence, the presiding officer may limit the number of witnesses, **the extent of direct or cross examination** or the time for testimony upon a particular issue. (emphasis added)

UHH points out that:

The hearing began on October 20, 2016. After the start of the sixth day of the hearing---at which point only Messrs. White and Hasinger, had completed their testimony---the Hearing Officer noted that she had given the parties a lot of latitude in how they conducted their cross-examination, but the result was an unwieldy situation where the cross-examiners were arguing with the witnesses, attempting to testify, and asking repetitive questions. Due to the slow progress of the case and the number of anticipated witnesses that have yet to testify, the Hearing Officer imposed the 30-minute time limit to help the parties to focus and organize their cross-examinations.

Doc. 415 at page 4.

Citing *Korean Buddhist Dae Won Sa Temple of Hawaii v. Sullivan*, 87 Hawai`i 217, 243, 953 P.2d 1315, 1341 (1998), UHH asserts that satisfaction of due process requirements in a contested case hearing requires balancing several factors:

Determination of the specific procedures required to satisfy due process requires a balancing of several factors: (1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any of additional or alternative

procedural safeguards; and (3) the governmental interest, including the burden that the additional procedural safeguards would entail. *Korean Buddhist Dae Won Sa Temple of Hawaii* at 243, 953 P.2d at 1341 (internal citations omitted).

Document 415 at page 5.

Following analysis of the factors enunciated in *Korean Buddhist Dae Won Sa Temple of Hawaii*, UHH believes “a thirty minute time limit for cross-examination, subject to extension for good cause, clearly satisfies the requirements of due process.” Doc. 415 at page 5.

The right to cross-examination is afforded to all parties under HAR §13-1-32(g). Cross-examination of witnesses is not an unfettered right; the extent of cross examination can be limited to avoid unnecessary or repetitive evidence. HAR §13-1-32(h). It is incumbent on the Hearing Officer to conduct the hearing in an “orderly and just” way. HAR §13-1-32(c).

Without the 30-minute limit on cross-examination, the examination of witnesses for 6 hearing days was unwieldy and large portions of witness testimony was repetitive, irrelevant and immaterial. By imposing a reasonable time limit, with the possibility of extension whenever cross examination became more effective, focused, and relevant. The hearing was much more orderly and manageable.

The decision to impose the time limit was made after six days of testimony and consideration of many factors including the number of parties and scope of the issues. Thirty minutes of cross examination of each witness by each party, with allowances for more time if relevant and material evidence was being adduced by the testimony, was warranted.

Based upon the Motion, all related submissions from counsels and/or parties, all applicable law, the entire record having been considered by the Hearing Officer,

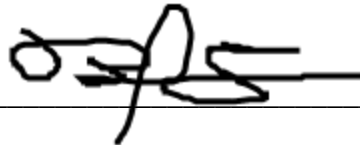
IT IS HEREBY ORDERED that the Motion is DENIED.

Motion to Reconsider. A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this order is filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, June 5, 2017.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568
for the Thirty Meter Telescope at the Mauna
Kea Science Reserve, Ka'ohē Mauka,
Hāmākua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title: **Minute Orders 60-67**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 5, 2017 and by regular mail on June 5, 2017:

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