

**United States Small Business Administration
Office of Hearings and Appeals**

SIZE APPEAL OF:

Hui O Aina, LLC

Appellant,

RE: RC Energy Group, LLC

Petition for Reconsideration of:

SBA No. SIZ-5245

Appealed From

Size Determination Nos. 5-2011-038, -039,
-040, and -042

SBA No. SIZ-5262 (PFR)

SBA No. SIZ-5245

Decided: July 29, 2011

APPEARANCES

Ron R. Hutchinson, Esq., Doyle & Bachman LLP, Arlington, Virginia, For
Hui O Aina, LLC

Kenneth Dodds, Esq., Office of General Counsel, for the U. S. Small Business
Administration

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RC Energy Group, LLC

DECISION¹

1. Introduction

This matter is on Petition for Reconsideration (PFR) of the decision in *Size Appeal of Hui O Aina, LLC*, SBA No. SIZ-5245 (2011) (*Hui O Aina I*).

That appeal arose from a Small Business Administration (SBA) size determination issued

¹ This Decision originally was issued under a Protective Order. I ordered each party to request redactions if it desired any information redacted from the published Decision. OHA received one timely request for redactions and considered it in redacting the Decision. OHA now publishes a redacted version of the Decision for public release.

to RC Energy Group, LLC (RC Energy) in conjunction with a procurement for solar-generated power. In the size determination, SBA's Office of Government Contracting, Area V (Area Office) found RC Energy to be a small business for purposes of the procurement. On April 12, 2011, Hui O Aina, LLC (HOA), which previously had protested RC Energy's size, filed an appeal of the size determination with the SBA Office of Hearings and Appeals (OHA). On April 15, 2011, OHA issued a Protective Order in this case, which remains in effect for this Petition for Reconsideration. On June 15, 2011, OHA granted the appeal and reversed the size determination. *Hui O Aina I.*

On July 5, 2011, SBA filed a PFR. Also on July 5th, RC Energy filed a PFR.

OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. SBA and RC Energy filed their PFRs within twenty days of service of *Hui O Aina I.*, so the PFRs are timely. 13 C.F.R. § 134.227(c).

II. Background

A. Solicitation and Protest

The background in this decision is stated in *Hui O Aina I.* Briefly, on March 31, 2010, the U.S. Department of the Navy, Naval Facilities Engineering Command issued Solicitation No. N62742-10-R-1190 for the acquisition of solar-generated power at military installations in Hawaii. The Contracting Officer (CO) set aside the procurement for small businesses and designated North American Industry Classification System (NAICS) code 221119, Other Electric Power Generation. RC Energy self-certified as a small business on July 22, 2010, when the firm submitted its initial proposal.

On March 1, 2011, offerors were notified that RC Energy was one of several apparent successful offerors. On March 3, 2011, HOA filed a size protest alleging that RC Energy was other than small because it does not meet the requirements of 13 C.F.R. § 121.201 fn 1 ("Footnote 1").

B. RC Energy's Response

In response to the protest, RC Energy submitted to the Area Office a sworn statement that its primary NAICS code is 221119, its "primary business is the generation of electricity from solar photovoltaic energy systems," and its total electrical output is below 4 million megawatt hours.

RC Energy acknowledged that it is affiliated with two other concerns — Rockwell Financial Group and Rockwell Real Estate — through common ownership. Neither affiliate is engaged in the generation of electricity. According to information submitted by RC Energy, Rockwell Financial Group's "primary business is to purchase and resell equipment leases." Rockwell Real Estate is a real estate holding company which owns two office condominiums. RC Energy also submitted a letter to the Area Office contending that, over the past two years,

approximately 65% of the combined “net revenues” of the three affiliates was generated by RC Energy.

C. Size Determination

On March 28, 2011, the Area Office issued its size determination finding RC Energy to be a small business. The Area Office found that RC Energy itself is primarily engaged in the generation, transmission, and distribution of electricity, and that RC Energy's primary business, including its affiliates, is transmission and sale of electric energy to its clients based on its main purpose of generation and distribution of electrical energy for sale. The Area Office found that RC Energy's electrical output, combined with that of its two affiliates (which produced no energy at all), was well within the limit of 4 million megawatt hours.

D. Appeal Petition and Supplement

On April 12, 2011, HOA filed its appeal. HOA disputed the Area Office's conclusion that RC Energy itself is primarily engaged in the generation and sale of electric power. On April 22, 2011, after reviewing the record in the case under a protective order, HOA filed a supplementary appeal petition. HOA further contended that the Area Office's finding that “approximately 65% of the revenue for all three affiliates was generated by RC Energy” is incorrect.

E. Hui O Aina I

In *Hui O Aina I*, OHA found that under the NAICS code assigned to this procurement, “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.” Footnote 1.² The plain language of Footnote 1 requires that, in addition to remaining below the specified energy limit, a firm may qualify as a small business only if it is primarily engaged in the generation and sale of electricity — in other words, only if the firm is genuinely a utility company.³

The phrasing of Footnote 1 further indicates that the requirement to be “primarily engaged” in the generation and sale of electricity applies not only to the challenged firm, but also to any affiliates. Accordingly, in order to qualify as a small business under Footnote 1, both the firm and each of its affiliates must be primarily engaged in the generation and sale of electricity.

² Footnote 1 applies only to six NAICS codes within the “Utilities” sector: 221111, 221112, 221113, 221119, 221121, and 221122.

³ The NAICS code at issue here, 221119, falls within the “Utilities” sector. In the *NAICS MANUAL*, such industries are comprised of “establishments primarily engaged in the provision of the following utility services: electric power, natural gas, steam supply, water supply, and sewage removal.” EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM-UNITED STATES (2007), at 163.

The unit of measurement utilized in Footnote 1— megawatt hours of electricity — further confirms that the firm and its affiliates must all be primarily engaged in the production and sale of electricity. OHA concluded that permitting the challenged firm or its affiliates to operate primarily in other industries, without any common standard of measurement, creates an absurd result, because the actual size of some affiliated firms cannot be considered, even though those firms may be large businesses in their respective industries.

OHA thus concluded that the better interpretation of Footnote 1 is that, in order to qualify as a small business, a firm and each of its affiliates must be engaged in the generation and sale of electric power. OHA held this interpretation is consistent with the plain language of the regulation which requires that only utility companies may be small businesses under this standard. Furthermore, the drafters of the regulation apparently envisioned that the firm and its affiliates would all be utility companies; as a result, it was unnecessary to describe how size would be assessed if some of the affiliated firms were operating in different industries with different standards of measurement, or how a group of firms could be “primarily engaged” in the generation and sale of electricity if some of the firms were not operating as electric utilities.

OHA then found that based on the information submitted by RC Energy, it was clear that RC Energy's affiliates are not primarily engaged in the generation and sale of electricity. RC Energy thus failed the regulatory test and was found other than small.

F. SBA's PFR

SBA asserts that the phrase “including its affiliates” in Footnote 1 is synonymous with the phrase “combined with its affiliates” in 13 C.F.R. § 121.107. SBA routinely determines the primary industry of a concern combined with its affiliates in connection with the loan program. *See* 13 C.F.R. § 121.301(a)(2).

When determining the primary industry of a concern and its affiliates, SBA considers a number of factors, including the distribution of receipts, employees, and cost of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. 13 C.F.R. § 121.107. Once SBA determines a concern's primary industry, SBA then applies the size standard for the applicable NAICS code, using the one factor enumerated in the tables at 13 C.F.R. § 121.201: annual receipts, employees, or megawatts. If the concern's annual receipts, number of employees, or megawatts are within the applicable size standard, it is small.

SBA asserts that had it not placed some limitation on affiliates, large businesses could use the megawatt size standard to qualify as a small business, as long as the subsidiary producing electric power did not exceed the megawatt size standard. That is the reason for the phrase “including its affiliates” in Footnote 1. A small business in the electric power generating industry, affiliated with a large firm which did not generate electric power, would not be, “including its affiliates”, primarily engaged in the generation of electric power.

SBA asserts, however, that had it intended to require that each affiliate of the challenged

concern be primarily engaged in electric energy generation, transmission, or distribution, it would have explicitly stated that in the regulation. SBA did not intend to prohibit a concern from qualifying as small in the electric utilities industry if it had affiliates in another industry, regardless of the size or status of that affiliate, because such a prohibition would serve no public purpose.

Finally, SBA asserts that its interpretation of the regulation is controlling unless plainly erroneous or inconsistent with the regulation.

G. RC Energy's PFR

RC Energy asserts that in *Hui O Aina I*, OHA has failed to use accepted canons of statutory construction. In general, courts are to presume that in promulgating a statute (or a regulation) a legislature (or an agency) says what it means and means what it says, citing *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1994). RC Energy asserts that OHA has read Footnote 1 as if it says, “A firm is small if the firm and its affiliates are each primarily engaged” in energy production and delivery. RC Energy argues that because that is not what the regulation actually states, it cannot be what SBA intended in drafting the regulation. Rather, in determining whether a concern is primarily engaged in a specific line of business, SBA must include the affiliated entities in the calculation, whatever metric is required or appropriate.

RC Energy further argues that *Hui O Aina I* overlooks the reasons why small businesses have affiliated entities. Concerns which operate in several jurisdictions may form separate affiliates in each jurisdiction to adapt to local tax structures. Concerns subject to varying regulatory regimes for different aspects of their business will form separate affiliates to comply with disparate regulations. It would be highly unusual for a concern to create affiliates operating in the same business as the original concern.

RC Energy, for example, has two affiliates. Rockwell Financial Group, which finances equipment leasing, is a separate affiliate because it is subject to the special regulatory requirements unique to lending. Rockwell Real Estate merely owns and manages the offices where the other two firms operate. *Hui O Aina I* does not take into account how modern business operates.

RC Energy also argues that *Hui O Aina I* turns the Small Business Act on its head. Rather than foster free enterprise, RC Energy asserts the decision closes the door to small concerns with affiliates in unrelated businesses, while it opens the door to large, vertically integrated corporations that do not have separate affiliates. RC Energy argues that the decision erects barriers to small business, by denying concerns the opportunity of strategic structuring of their enterprises.

Finally, RC Energy argues that *Hui O Aina I* erred in finding that megawatt hours should be the metric to use for determining the industry in which a concern is primarily engaged. RC Energy argues in determining a concern's primary engagement, other metrics could be used to more fully reflect SBA's policy objectives.

H. HOA's Response

HOA agrees with the Petitioners that *Hui O Aina I* is incorrect in its application of Footnote 1. HOA argues that this renders meaningless 13 C.F.R. § 121.107. HOA refers to the statement in *Hui O Aina I* that if it were possible for firms to qualify as small businesses under Footnote 1 even though some affiliates were not primarily engaged in the generation and sale of electricity, some mechanism would be needed to determine which industry best characterized the group as a whole. HOA argues that 13 C.F.R. § 121.107 is that mechanism. The factors enumerated there may be used to determine whether a firm and its affiliates are primarily engaged in the generation and sale of electricity. Once that inquiry is concluded, then the megawatt measurement in Footnote 1 can be applied.

Nevertheless, HOA argues that RC Energy does not meet the test of Footnote 1. RC Energy is primarily engaged in providing financial services. RC Energy's affiliate, Rockwell Financial Group, accounts for 94% of the receipts of all three entities, and its primary business is equipment leasing. HOA asserts that an exclusion for the “pass-through cost of equipment” for RC Energy is not supported by the regulation.⁴

III. Discussion

A. Standard of Review

SBA's regulations provide that OHA may grant a PFR upon a “clear showing of an error of fact or law material to the decision.” *Id.* This is a rigorous standard. A PFR must be based upon manifest error of law or mistake of fact and is not intended to give an additional opportunity for an unsuccessful party to argue its case before OHA. *Size Appeal of Envtl. Prot. Certification Co., Inc.*, SBA No. SIZ-4935 (2008) (citing 13 C.F.R. § 134.227(c); *Bishop v. United States*, 26 Cl. Ct. 281, 286 (1992)).

B. Footnote One

OHA has already held the meaning of “primarily engaged” in the context of Footnote 1 is that a concern's main purpose as a business entity, or first occupation, must be to generate, transmit, and/or distribute electrical energy for sale. *Size Appeal of Tikigaq Engineering Services, LLC*, SBA No. SIZ-4842, at 11 (2007) (*Tikigaq*). The heart of this PFR is the issue of what the phrase “including its affiliates” means in the context of Footnote 1. In promulgating the regulation, SBA failed to provide guidance in the preambles to the proposed or final rules. Nevertheless, I must examine the regulation to determine what it means. The regulation clearly requires that SBA determine whether the challenged concern has as its primary business the generation, transmission, and distribution of electric energy, and that in making this determination, the concern's affiliates must be included. Otherwise, a size standard calculated in megawatts could permit a concern affiliated with a large business not in the utility industry, to be

⁴ On July 21, 2011, RC Energy attempted to file a Reply to HOA's Response. However, this was after the close of the record, and a reply to response is not permitted unless the Judge directs otherwise. 13 C.F.R. § 134.309(d). Consequently, I did not consider RC Energy's Reply.

found to be small. This requirement ensures that only those businesses which have as their primary industry electricity generation, transmission, and distribution, can qualify under the four million megawatt size standard.

In *Hui O Aina I*, OHA concluded that Footnote 1 required that each affiliate of the challenged concern must have as its primary business the generation of electricity. Part of the reason is that, under this interpretation, each concern may be measured using the same megawatt hours metric. However, in determining size, it is not the size of each individual affiliate that ultimately matters, but the size of all the affiliated concerns taken as a whole. 13 C.F.R. § 121.103(a)(6). It is not necessary in determining size that each affiliated concern have operations in the metric which measures the challenged concern's size. For those size standards expressed in annual receipts, some of a concern's affiliates may have no annual receipts; for those expressed in employees, some of a concern's affiliates may have no employees. These concerns will still be aggregated with the challenged concern in each case to determine its size. That an affiliated concern of a challenged concern in the electrical generation, transmission or distribution industry does not produce megawatts, does not mean that the overall size of the concerns cannot be measured, any more than it would in the case of concerns lacking receipts or employees.

When a term or word is not defined, OHA may look to standard dictionary definitions or other pertinent regulations. *Tikigaq*, at 11. According to Webster's, to "include" means "to take in, enfold, or comprise as a discrete or subordinate part or item of a larger aggregate." Webster's 3d Int'l Dictionary at 1143. The use of the phrase "including its affiliates" in Footnote 1 would thus not seem to require that each and every affiliate be primarily engaged in electrical generation, transmission or distribution. The phrase would require SBA examining a concern "including its affiliates" to look at the challenged concern and its affiliates as an aggregate, to determine whether these concerns were, *in the aggregate*, primarily engaged in the generation, transmission or distribution of electricity. Conversely, the phrase does not, in its ordinary usage, mean that each and every concern included be primarily engaged in the electrical utility industry. Otherwise, Footnote 1 would read, "including each (or every) affiliate."

This interpretation is supported by a consideration of general business practice. SBA does not write its regulations in a vacuum. In establishing the size standards, SBA considers economic characteristics comprising the structure of an industry, technological changes, competition from other industries, growth trends, historical activity within an industry, and other factors. 13 C.F.R. § 121.102(a). In other words, SBA considers the actual economic state of the industries for which it prepares size standards, and the actual business practices of these concerns.

In this context it must be noted that a firm's affiliates are frequently not in the same line of business. Businesses form affiliates to meet with different tax and regulatory requirements, or to perform different functions. Businesses will often have a separate affiliate owning the land and buildings in which the business operates. SBA recognizes this in its lending regulations, which provide for lending to such concerns. 13 C.F.R. § 120.111. In this context, SBA's recognition of business realities must be taken into account when discerning the meaning of the regulation. The fact that a business concern's affiliates are very frequently not in the same line of business would have been well known to the drafters of SBA's size regulations. It would thus have been unusual for the drafters to require all affiliates to be in the same line of business.

Given common business practice very many firms with any affiliates would be unable to meet this standard. At the very least the regulation should not be held to require a standard so at odds with business practice in the absence of explicit regulatory language. As noted above, that explicit language is not present here.

Accordingly, I conclude that *Hui O Aina I* erred in reading Footnote 1 to say that “[A] firm is small if, including its affiliates, it is primarily engaged” to mean that each (or every) affiliate of the firm must be engaged in the generation, transmission, and/or distribution of electric power. Rather, Footnote 1 means that the firm and its affiliates must, taken in the aggregate, have as their primary business the generation, transmission, and/or distribution of electric power.

C. RC Energy

The next issue to consider, then, is whether RC Energy and its affiliates, taken in the aggregate, are primarily engaged in the generation, transmission and distribution of electric power. I first must make the determination on how to measure in what business the firms are primarily engaged.

SBA argues that the appropriate measure is 13 C.F.R. § 121.107. This section lists the factors SBA uses when determining the primary industry of a concern or a concern combined with its affiliates. The Area Office simply used § 121.107 to determine in what business RC Energy was primarily engaged without explaining why. In its PFR, SBA fails to point to any provision which mandates or even permits the use of § 121.107 to implement the standard in Footnote 1. SBA cannot do so, because there is nothing in Footnote 1, the regulatory preamble, or elsewhere in the regulation to support this contention. SBA makes the bare assertion that this is so, supported only by another bare assertion that “combined with” and “including” are synonyms. I thus reaffirm the holding in *Tikigaq* that § 121.107 does not provide a usable definition for applying the standard in Footnote 1. *Tikigaq*, at 11.

I must then conclude what standard to apply to make the determination required in Footnote 1. Fundamentally, the purpose of any business is to generate receipts. A standard common to any business is that it will generate receipts in some amounts. Further, the amount of receipts generated in any given field of business generally will correspond to the amount of business activity in that field.

Accordingly, I find that the use of the receipts figures in items 2, 12 and 13d in a challenged concern's SBA Form 355 should be used to determine whether that concern is primarily engaged in the generation, transmission, and distribution of electric energy. Specifically, a challenged concern must be able to establish that the majority of the annual receipts of the concern and all its affiliates, taken together as an aggregate, are derived from the generation, transmission, and distribution of electric energy.⁵

⁵ The challenged concern bears the burden of establishing that it is small. 13 C.F.R. § 121.1009(c).

On its Form 355, RC Energy listed its receipts as \$[xxxxxxx] from the generation of electricity, and \$[xxxxxxx] from other business in its last completed fiscal year prior to submission of its offer. Rockwell Financial Group's receipts were \$[xxxxxxx], and Rockwell Real Estate's were \$[xxxxxxx]. Neither affiliate derived any of its receipts from the generation of electricity. Aggregate receipts for the three affiliated concerns were \$[xxxxxxx], of which \$[xxxxxxx], or 5.11%, was from the generation of electricity.

The Area Office did not discuss these figures, but simply made the conclusory statement that RC Energy accounted for 65% of the receipts of all three. The Area Office did not explain how it reached this percentage.

However, this is consistent with the argument made by RC Energy in response to the protest. RC Energy's letter maintained that most of Rockwell Financial Group's receipts could be attributed to the "pass-through cost of equipment." RC Energy argued that, because Rockwell Financial Group is primarily engaged in purchasing and reselling equipment leases, the costs of the underlying equipment should be excluded from Rockwell Financial Group's receipts. RC Energy conceded, however, that such exclusions would be inconsistent with "current tax treatment, [which] counts the purchase of the equipment in top line revenues." Letter dated March 15, 2011 from Evan Christenson, RC Energy, at 1. According to RC Energy, the effect of excluding "pass-through costs of equipment" is quite substantial. RC Energy maintained that, once pass-through equipment costs were excluded, Rockwell Financial Group's "net revenues" were only \$[xxxxxxx].⁶

The Area Office simply accepted RC Energy's net receipts calculations. RC Energy merely asserted that there should be exclusions from Rockwell's receipts. SBA's regulations allow only certain specifically enumerated exclusions when calculating a concern's receipts.⁷ 13 C.F.R. § 121.104(a).⁸ These exclusions are for capital gains, taxes collected and remitted to a taxing authority, interaffiliate transactions, and funds collected for another party. *Id.* The

⁶ RC Energy's letter did not provide any supporting documentation to substantiate its "net revenue" calculations.

⁷ SBA measures a concern's size by using receipts, defined as total income plus cost of goods sold on the concern's Federal tax returns. 13 C.F.R. § 121.104(a). Ideally, the Area Office should have obtained the tax returns for RC Energy and its affiliates, and made a calculation of the firms' receipts. However, because it is so clear here that RC Energy and its affiliates derive such a small portion of their receipts from the generation, transmission and/or distribution of electric energy, the figures from RC Energy's Form 355 are sufficient to make the calculation.

⁸ It has been argued that there are five factors SBA uses in determining whether to allow exclusions from a firm's receipts. However, these factors were in the preamble to a proposed rule, not a regulation. 57 Fed. Reg. 38,452 (proposed Aug. 25, 1992). The factors are used in rulemaking to determine whether a particular exclusion should be included in the regulation, not in making size determinations. SBA has reserved the discretion embodied in the five factors to the rulemaking process, and that discretion is not available to the Area Office or OHA, who are limited to the exclusions specifically enumerated in the regulation. *Size Appeal of Allstates Employer Services II, Inc.*, SBA No. SIZ-5190, at 7 (2011).

common characteristic of the items excluded is that amounts in question are usually collected for another party. Here, RC Energy seeks to exclude a substantial portion of the value of the equipment leases Rockwell purchases and resells, even though RC Energy concedes this is not consistent with the tax treatment of these leases. It is also not consistent with SBA's method of calculating a firm's annual receipts. The monies RC Energy seeks to exclude are not amounts collected by RC Energy for another party. I find no good reason for making the requested exclusion from receipts for Rockwell. Rather, it is consistent both with SBA policy on exclusions from receipts and the tax treatment of such leases to make no exclusions from Rockwell's receipts.

I therefore conclude that the Area Office erred in accepting RC Energy's exclusions from Rockwell's receipts. Calculating all the reported receipts from RC Energy and its aggregated affiliates I find that electrical generation accounted for at most 5.11% of their receipts. If RC Energy's receipts had exceeded 50% of the aggregated affiliates' receipts, a further examination would have been necessary to determine how much of these receipts were attributable to the generation, transmission, and distribution of electric energy. Only if, after excluding that portion of RC Energy's receipts attributable to activities other than electric energy, RC Energy's receipts still exceeded 50% of the aggregated affiliates' annual receipts, could RC Energy and its affiliates be found to be primarily engaged in the generation, transmission, and distribution of electric energy, and thus eligible for the 4 million megawatt size standard under Footnote 1.

Accordingly, because only a small percentage of the receipts of RC Energy and its affiliates are attributable to the generation, transmission, and/or distribution of electric energy, RC Energy is not an eligible small business under Footnote 1. The Area Office's Size Determination was based on clear error, and must be reversed.

I conclude that I must GRANT the PFRs of SBA and RC Energy. I VACATE *Hui O Aina I*. I hold that under Footnote 1, in order to be found small for NAICS codes 221111, 221112, 221113, 221119, 221121, and 221122, a concern must, including its affiliates, be primarily engaged in the generation, transmission, and/or distribution of electric energy. This means that the Area Office must look at the challenged concern and determine whether its main purpose as a business entity must be the generation, transmission, and/or distribution of electric energy, and that over 50% of its aggregated receipts for the preceding fiscal year are attributable to those activities. *Tikigaq*, at 11. The Area Office must then determine whether over 50% of the aggregated receipts for the preceding fiscal year of the challenged concern and its affiliates are attributable to the generation, transmission, and/or distribution of electric energy.

In other words, (1) the majority of the receipts of the challenged concern itself must be derived from the generation, transmission, and/or distribution of electric energy, and (2) the majority of the aggregated receipts of the challenged concern and its affiliates must be derived from the generation, transmission, and/or distribution of electric energy. If not, the concern is not eligible under Footnote 1, and other than small. If so, then the Area Office must apply the 4 million megawatt standard to determine whether the concern is small.

Here, although RC Energy derived more than half of its own receipts from the generation, transmission, and/or distribution of electric energy, when RC Energy's receipts are aggregated

with those of its affiliates, it is clear that only a minuscule portion of the aggregated receipts are derived from the generation, transmission, and/or distribution of electric energy. Therefore, the Area Office erred in finding RC Energy a small business under Footnote 1. The size appeal is granted, and the Size Determination is reversed.

IV. Conclusion

For the above reasons, I GRANT the PFRs, VACATE *Hui O Aina I*, GRANT the instant appeal and REVERSE the Area Office's Size Determination. RC Energy is not a small business under 13 C.F.R. § 121.201 fn 1.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge