

JANUARY 24, 2019

AFFILIATE TRANSACTION  
REQUIREMENTS

HAWAII PUBLIC UTILITIES COMMISSION

EXHIBIT B

**EXHIBIT A**  
**Table Of Contents**

<b>I.</b>	<b>Purpose</b> .....	3
	<b>A. Acquisition</b> .....	3
	<b>B. Arm’s Length Transaction</b> .....	3
	<b>C. Affiliate</b> .....	3
	<b>D. Affiliate-Related Entity</b> .....	3
	<b>E. Confidential Information</b> .....	3
	<b>F. Corporate Support Services</b> .....	3
	<b>G. Electricity-Related Services</b> .....	3
	<b>H. Proprietary Customer Information</b> .....	4
	<b>I. Resource Procurement</b> .....	4
	<b>J. Similarly Situated</b> .....	4
	<b>K. Transaction</b> .....	4
	<b>L. Utility</b> .....	4
<b>III.</b>	<b>Application</b> .....	4
<b>IV.</b>	<b>Regulatory Oversight</b> .....	6
	<b>A. Internal Codes of Conduct</b> .....	6
	<b>B. Ensuring Compliance for New Affiliates and Affiliate-Related Entities</b> .....	6
	<b>C. Compliance Plans</b> .....	6
	<b>D. Compliance Audits</b> .....	6
	<b>E. Relief</b> .....	7
	<b>F. Complaints Procedures</b> .....	7
	<b>G. Enforcement of Requirements</b> .....	7
	<b>H. Witness Availability</b> .....	8
	<b>I. Officer Certification</b> .....	8
	<b>J. No Immunity From Antitrust Enforcement</b> .....	9
<b>V.</b>	<b>Competition and Fair-Play</b> .....	9
	<b>A. Non-Preferential Treatment</b> .....	9

<b>B.</b>	<b>Affiliate Transactions</b> .....	9
1.	<b>Sale of Products and Services</b> .....	9
2.	<b>Resource Procurement</b> .....	10
3.	<b>Procurement of Goods and Services from Affiliates and Affiliate-Related Entities</b> .....	10
4.	<b>Transfer of Assets</b> .....	10
5.	<b>Discounts, Rebates, Waivers, and Special Conditions</b> .....	10
6.	<b>Tying Arrangements Prohibited</b> .....	11
7.	<b>Business Development, Political and Promotional Activities</b> .....	11
8.	<b>Requests for Specific Affiliate or Affiliate-Related Entity Information</b> .....	13
9.	<b>Requests for General Information about Products or Services Offered by Affiliates, Affiliate-Related Entities, and their Competitors</b> .....	13
10.	<b>Other Joint Ventures</b> .....	13
11.	<b>Transaction Records</b> .....	13
12.	<b>Cost Allocation Manual</b> .....	14
<b>C.</b>	<b>Special Provisions for Wholesale and Retail Energy Service Transactions</b> ..	14
1.	<b>Provisions Applying to Affiliates and Affiliate-Related Entities Engaged in Wholesale Power Transactions with Utility</b> .....	14
2.	<b>Provisions Applying to Utility Interactions with Affiliates and Affiliate-Related Entities Engaged in Retail Energy Services</b> .....	16
<b>D.</b>	<b>Information Handling</b> .....	19
1.	<b>Transfer of Confidential Information Prohibited</b> .....	19
2.	<b>Non-Confidential Information</b> .....	19
3.	<b>Record-Keeping</b> .....	19
<b>E.</b>	<b>Separation</b> .....	20
1.	<b>Entity Independence</b> .....	20
2.	<b>Sharing of Employees</b> .....	20
3.	<b>Employee Transfers or Temporary Assigns</b> .....	20
4.	<b>Sharing Office Space</b> .....	21
5.	<b>Sharing of Facilities and Resources</b> .....	22
6.	<b>Separate Books and Records</b> .....	22
7.	<b>Limited Financial Intermingling and Credit Support by a Utility</b> .....	22

- I. Purpose.** The purpose of these Affiliate Transaction Requirements (“Requirements”) is to establish safeguards to avoid potential market-power abuses and cross-subsidization between regulated and unregulated activities and to govern any and all interactions between: the Hawaiian Electric Companies; the Hawaiian Electric Companies’ affiliates and affiliate-related entities; and entities with which the Hawaiian Electric Companies or their affiliates are contemplating acquisition or investment.
- II. Definitions.** The following words and terms when used in these Requirements shall have the following meaning unless clearly stated otherwise:
- A. Acquisition** -- A transaction in which an entity that was previously independent of a utility is acquired by the utility, the utility’s parent holding company, or other utility affiliate, and becomes an affiliate as a result of the transaction.
  - B. Arm’s Length Transaction** -- The standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to a utility’s affiliates or affiliate-related entities, a transaction is at arm’s length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction.
  - C. Affiliate** -- Any person or entity that possesses an “affiliated interest” in a utility as defined by section 269-19.5, Hawaii Revised Statutes (“HRS”), including a utility’s parent holding company, except as otherwise provided by HRS section 269-19.5(h).
  - D. Affiliate-Related Entity** -- A third-party that provides electricity-related services in a regulated utility’s service territory that has a material financial, operational, or ownership interest with an unregulated affiliate of the utility and of whom the utility has reasonable knowledge.
  - E. Confidential Information** -- Any information not intended for public disclosure and considered to be confidential or proprietary by persons privy to such information.
  - F. Corporate Support Services** -- Services shared by a utility, its parent holding company, or a separate affiliate created to perform support services of joint corporate oversight, governance, support systems, and personnel.<sup>1</sup>
  - G. Electricity-Related Services** -- Any product or service related to the generation, transmission, distribution, delivery, exchange, energy management (including energy efficiency and demand response), control, aggregation, or storage of electricity.

---

<sup>1</sup>However, consistent with Condition #5 of the Conditions of Merger, “[t]he Commission and Consumer Advocate shall have the right to review any intercompany charges and allocations of common expenses between the [u]tility [] and [an affiliate].” Docket No. 4337, Order No. 7256, filed September 29, 1982, Conditions of Merger at 2.

- H. Proprietary Customer Information** -- Any information compiled by a utility on a customer in the normal course of providing electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, including interconnection and station service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.
- I. Resource Procurement** -- The direct or indirect investment in and the production or acquisition of energy facilities, supplies, and other energy products or services necessary for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and/or Maui Electric Company, Limited, to meet their statutory obligation to serve their customers.
- J. Similarly Situated** -- The standard for determining whether a non-affiliate is entitled to the same information or benefit a utility offers, or grants upon request, to the utility's affiliate or affiliate-related entity for any product or service. For purposes of these Requirements, all non-affiliates serving or proposing to serve the same market as a utility's affiliate are similarly situated to the utility's affiliate or affiliate-related entity.
- K. Transaction** -- Any interaction between a utility and its affiliate, or affiliate-related entity, in which: (1) control or ownership; or (2) a service, good, asset, product, property, or right, is transferred or received by a utility, its affiliate, or affiliate-related entity. This includes the continuation of a transaction between a utility and a non-affiliate in which the non-affiliate subsequently becomes an affiliate or affiliate-related entity.
- L. Utility** -- Consistent with HRS § 269-1, any of the Hawaiian Electric Companies, or their successors, operating under a franchise or authorization of the Commission that provides distribution, transmission, generation, or other services to end-use customers within its service territory. The term "Utility" means the subsidiary or business unit through which a parent holding company conducts utility operations and not the parent holding company or its subsidiaries that are not engaged in the provision of regulated utility services.

### **III. Application**

- A.** These Requirements apply to the Hawaiian Electric Companies (including any successors), their Affiliates, their Affiliate-Related Entities, including a parent

holding company, and to any Utility, Affiliate, or Affiliate-Related Entity Transaction, including, but not limited to, interactions, acquisitions, or any activity involving an Affiliate or Affiliate-Related Entity and the provision of Electricity-Related Services, unless exempted below. These Requirements shall be applied prospectively from the date of their adoption by the Commission.

- B.** A Utility shall not circumvent the provisions or the intent of these Requirements.
- C.** A Utility, Affiliate, or Affiliate-Related Entity shall not knowingly:
  - 1.** Direct or cause a Utility to violate or circumvent these Requirements, including but not limited to the prohibitions against a Utility providing preferential treatment, unfair competitive advantages or Confidential Information to its: (a) Affiliates or (b) Affiliate-Related Entities, except as expressly exempted under these Requirements;
  - 2.** Aid or abet a Utility's violation of these Requirements; or
  - 3.** Act as a conduit to provide Confidential or Proprietary Customer Information to another Affiliate or Affiliate-Related Entity, except as expressly exempted under these Requirements.
- D.** In construing or interpreting these Requirements, the construction or interpretation which most favors the regulation and control over Utility Transactions and activities with Affiliates and Affiliate-Related Entities shall be applied, consistent with HRS § 269-19.5's purpose of "encourag[ing] companies providing essential utility and regulated transport service to Hawaii consumers to obtain their services, supplies, and equipment by relying, to the extent practicable, on competitive procurement practices; provided that when companies obtain their services, supplies, and equipment from affiliated interests, the contracts and agreements between the regulated entity and its affiliates must be shown by clear and convincing evidence to be in furtherance of the interests of the public."
- E.** Existing state and federal statutes (including HRS § 269-19.5), as well as rules, obligations, and standards established by the Federal Energy Regulatory Commission ("FERC") and the U.S. Securities and Exchange Commission ("SEC") shall continue to apply, and nothing in these Requirements is intended to attempt to affect or modify any of those existing statutes, rules, obligations, or standards.
- F.** Existing rules, obligations, or standards of conduct established by the Commission shall continue to apply, and nothing in these Requirements is intended to affect or modify any of those existing rules, obligations, or standards. In such cases where these Requirements conflict with existing Commission rules, obligations or standards established by the Commission, these Requirements shall supersede those prior rules, obligations and/or standards.

#### IV. Regulatory Oversight

- A. Internal Codes of Conduct.** Each Utility shall implement an internal code of conduct consistent with the spirit and intent of these Requirements. Such internal codes of conduct shall be submitted to the Commission within 60 days of adoption or subsequent modification of these Requirements for review and approval. Upon approval and annually thereafter, each Utility shall require all officers and senior management personnel to provide a notarized written acknowledgement that they have read and understand their Utility's code of conduct.
- B. Ensuring Compliance for New Affiliates and Affiliate-Related Entities.** A Utility and a new Affiliate or Affiliate-Related Entity are bound by the code of conduct immediately upon creation of the new Affiliate. The Utility shall ensure that any interaction with the new Affiliate or Affiliate-Related Entity is in compliance with the code of conduct and these Requirements.
- C. Compliance Plans.** Each Utility shall file with the Commission a compliance plan which shall include:
1. A full list of Utility Affiliates and Affiliate-Related Entities, along with a list of the contracts and agreements the Affiliates and Affiliate-Related Entities have with the Utility;
  2. The names and titles of the officers and senior management personnel of each Affiliate; and
  3. Descriptions of the policies, procedures and/or programs in place for all Affiliates which address compliance with these Requirements.
  4. The Utility shall file the compliance plan annually with the Commission by way of letter, and shall file a letter with the commission when there is a change to the compliance plan. Upon the termination or creation of an Affiliate or Affiliate-Related Entity, the Utility shall notify the Commission by letter within 30 days from the date that the Utility becomes aware of said termination or creation of an Affiliate or Affiliate-Related Entity. Any letter regarding the creation of an Affiliate or Affiliate-Related Entity shall include a list of the contracts and agreements the Affiliates and Affiliate-Related Entities have with the Utility.
- D. Compliance Audits.** Every three (3) years from the effective date of these Requirements, or sooner as may be determined in the Commission's discretion, the Utility shall have an audit prepared by independent auditors that examines the Utility's compliance with these Requirements. The Commission or its staff shall review the scope of work for the audit and shall approve the selection of the auditor by the Utility. For a Utility with no Affiliates, the Utility may submit an affidavit stating that the Utility has no Affiliates. The Utility shall file the results of each said audit with the Commission within thirty (30) days of the audit's completion.

In situations where the audit has determined the Utility to not be in compliance with these Requirements, the Utility shall file a letter setting forth the corrective actions it will take to bring itself into compliance. When the corrective actions are complete, if those actions identify needed changes to the Utility's code of conduct or the compliance plan, the Utility shall file a new code of conduct, consistent with Section IV.A, or a new compliance plan, consistent with Section IV.C, above. The cost of such audits, and any corrective actions, shall not be recoverable from Utility customers.

- E. Relief.** Nothing in these Requirements shall preclude any form of civil relief, rights, or defenses that may be available under federal or state law, including, but not limited to, filing a complaint with the Commission.
- F. Complaints Procedures.** Complaints regarding compliance with these Requirements may be filed with the Commission pursuant to sections 16-601-66 and 16-601-67, Hawaii Administrative Rules, and must also be submitted to the applicable Utility. Utilities shall keep a log of complaints, showing the date the complaint was received, specific allegations, date and manner in which the complaint was resolved, and a description of any similar complaints and their resolution. This log shall be maintained for a period of five (5) years after the complaint is made, and shall be made available upon request.

  - 1. The Commission has the right to open an investigation of a complaint, pursuant to HRS § 269-7, to determine whether the Utility has violated these Requirements and may impose penalties provided under Section IV.G or any other appropriate remedies.
- G. Enforcement of Requirements.** Violations of these Requirements could result in Commission enforcement action including, but not limited to:

  - 1. Injunction or civil penalties of up \$25,000 per violation for each day failure to eliminate or remedy the violation continues, to be assessed by the Commission, pursuant to HRS § 269-28.
  - 2. Suspending, revoking or amending a certificate, registration, or other Commission authorization(s) or approval(s).
  - 3. An order requiring the parent holding company to divest itself of its ownership of the Utility corporation's common stock under terms and conditions which will take into consideration the best interests of the Utility's customers, employees and stockholders.
  - 4. Other administrative enforcement proceedings or penalties pursuant to HRS Chapter 269, including, but not limited to, HRS §§ 269-15, 269-19.5, and 269-28.



5. In assessing penalties, factors the Commission may consider include, but are not limited to, the following:
- i. Injury to competition, generally;
  - ii. Delay to the introduction of innovative products and services;
  - iii. Injuries proven by competitors, potential competitors, suppliers, vendors, or customers;
  - iv. The impact to customers, or the economic benefit gained by the Utility or its Affiliate or Affiliate-Related Entity that results from the violation;
  - v. The Utility's history of violations, including the Utility's actions to disclose and rectify a violation;
  - vi. The efforts of the Utility to comply with the Requirements and prevent violations;
  - vii. The size of the business of the Affiliate or Affiliate-Related Entity involved;
  - viii. The penalty's likelihood to deter future violations; and
  - ix. Such other factors deemed appropriate and material to the particular circumstances of the violation or series of violations.

**H. Witness Availability.** Employees and officers of a Utility or its Affiliates shall be made available to testify or to provide evidence to the Commission as necessary or required, without subpoena.<sup>2</sup>

**I. Officer Certification.** Unless otherwise ordered by the Commission, no later than January 31 of each year, the officers and senior management personnel of a Utility and its Affiliates shall certify to the Commission in writing under penalty of perjury that each has personally complied with these Requirements during the prior calendar year. The certification shall state:

I, [name] hold the office of [title] at [Utility or Affiliate], and occupied this position from [date] to [date]. I hereby certify that I have reviewed the Affiliate Transaction Requirements applicable to Utilities of the Hawaii Public Utilities Commission, and I am familiar with the provisions therein. I further certify that for the above period, I followed these Requirements and am not aware of any violations of them, other than the following: [list, or state "none"].

---

<sup>2</sup>This is consistent with Condition #2 of the Conditions of Merger, which also requires that "Hawaiian Electric Industries, Inc., when requested in writing or in open hearing, shall voluntarily have any employee, officer, director or agent of Industries appear before the Commission for the purpose of testifying before the Commission." Conditions of Merger at 2.

I swear/affirm these representations under penalty of perjury of the laws of the State of Hawaii.

\_\_\_\_\_ [Signature]  
Executed at \_\_\_\_\_ [County], on \_\_\_\_\_ [Date].

**J. No Immunity from Antitrust Enforcement.** Nothing in these Requirements shall confer immunity from state or federal antitrust laws. Sanctions imposed by the Commission for violations of these Requirements do not affect or preempt antitrust liability, but rather are in addition to any antitrust liability that may apply to the anti-competitive activity. Therefore, antitrust remedies also may be sought in federal or state court to cure anti-competitive activities.

**V. Competition and Fair-Play**

**A. Non-Preferential Treatment.** Unless otherwise authorized by the Commission, a Utility shall not:

1. Provide preferential treatment regarding, but not limited to, pricing, timing, terms and conditions, or customer relations in the Utility's provision of products and services to: (1) its Affiliates; (2) its Affiliate-Related Entities; or (3) customers of its Affiliates or Affiliate-Related Entities; or
2. Represent or imply that by virtue of a relationship with an Affiliate or Affiliate-Related Entity, the customers of its Affiliate or Affiliate-Related Entity shall receive preferential treatment over that provided to customers of other non-Affiliates.

**B. Affiliate Transactions.** Unless otherwise allowed in this subsection, Transactions between a Utility and its Affiliates or Affiliate-Related Entities shall be at Arm's Length,

1. **Sale of Products and Services.** A Utility shall not sell any product or service to an Affiliate or Affiliate-Related Entity for a face value of \$300,000 or more within any calendar year, except for Corporate Support Services expressly allowed by the Commission, without the approval of the Commission.<sup>3</sup> Any product or service offered for sale by the Utility shall

---

<sup>3</sup>Consistent with HRS § 269-19.5(c), "a verified copy of any contract or agreement with an affiliate having a face value of at least \$300,000, or a verified summary of any unwritten contract or agreement having a face value of at least \$300,000[.]" shall be submitted "within forty-five days of the effective date of the contract or agreement." Consistent with HRS § 269-19.5(g), in order to determine whether a transaction is less than \$300,000 for any calendar year, "multiple payments under any contract or agreement shall be added together for purposes of construing this provision;

be made available to non-Affiliates on the same terms and conditions as offered to Affiliates or Affiliate-Related Entities. Any product or service offered by a Utility to its Affiliates or Affiliate-Related Entities shall be made available contemporaneously, and in the same manner to all Similarly Situated non-Affiliates and in a non-discriminatory fashion. Furthermore, any product or service sold to an Affiliate or Affiliate-Related Entity shall be valued at cost or the prevailing market value, whichever is greater, unless otherwise determined by the Commission.

2. **Resource Procurement.** No Utility shall engage in Resource Procurement, as defined in these Requirements, from an Affiliate or Affiliate-Related Entity without prior approval from the Commission. Upon receipt by the Commission, a Utility's request to engage in Resource Procurement with an Affiliate or Affiliate-Related Entity will be considered approved after thirty days, unless suspended by the Commission or deemed otherwise by a Commission order issued within the aforementioned thirty-day timeframe.
3. **Procurement of Goods and Services from Affiliates and Affiliate-Related Entities.** The Utility shall procure goods and services from an Affiliate or Affiliate-Related Entity only at prices that are fair and reasonable to the Utility's customers and that reflect the market price of the good or service.<sup>4</sup>
4. **Transfer of Assets.** A Utility shall not transfer, in whole or in part, any property to an Affiliate or Affiliate-Related Entity, without having first secured from the Commission an order authorizing it to do so, as set forth in HRS § 269-19. Assets shall be priced at the greater of the prevailing market value or the Utility's cost, unless otherwise determined by the Commission.
5. **Discounts, Rebates, Waivers, and Special Conditions.** If a Utility offers any special benefits to its Affiliates or Affiliate-Related Entities in the manner of discounts, rebates, waivers or special conditions, it must make the same benefits contemporaneously available, on a non-discriminatory basis, to all Similarly Situated non-Affiliates. If a Utility provides such stated benefits to an Affiliate or Affiliate-Related Entity, the Utility shall, within 24 hours and for at least 30 days thereafter, post a conspicuous notice

---

and [] further, [] the provisions of this section shall apply to any contract or agreement structured specifically to avoid regulation hereunder.”

<sup>4</sup>As set forth in HRS § 269-19.5(d), “the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or agreements with the affiliated interest unless the public utility shall establish by clear and convincing evidence the reasonableness of the payment or compensation.”

to its website with the following information: the name of the Affiliate/Affiliate-Related Entity; the rate charged or special condition offered; the normal rate or condition; the time period for which the benefit applies; the quantities and delivery points involved in the Transaction; any conditions or requirements applicable to the benefit; and procedures by which a non-Affiliate may request the same or similar benefit. The Utility shall maintain records of such information described above for a minimum of three (3) years and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the Utility and the third party. A Utility shall not create any arrangement with its Affiliate or Affiliate-Related Entity that is so unique that no competitor could be Similarly Situated to benefit from the discount, rebate, fee waiver, or alternative conditions.

**6. Tying Arrangements Prohibited.** Unless otherwise allowed by the Commission through a rule, order, or tariff, a Utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the Utility, its Affiliate, or its Affiliate-Related Entity.

**7. Business Development, Political and Promotional Activities.**

**i. Business Development.** Unless allowed elsewhere in these Requirements, a Utility shall not:

- a. Procure leads on behalf of its Affiliates or Affiliate-Related Entities;
- b. Solicit business on behalf of any of its Affiliates or Affiliate-Related Entities;
- c. Acquire information on behalf of, or with the intent to provide to, its Affiliates or Affiliate-Related Entities;
- d. Share market analysis reports or other proprietary or non-public reports or information with its Affiliates or Affiliate-Related Entities;
- e. Request authorization from its customers to pass on information exclusively to its Affiliates or Affiliate-Related Entities;
- f. Refer or transfer a customer to an unregulated Affiliate or Affiliate-Related Entity;
- g. Give the appearance that: (1) the Utility is speaking or acting on behalf of any of its Affiliates or Affiliate-Related Entities; (2) an Affiliate or Affiliate-Related Entity speaks or acts on the Utility's behalf; or (3) customers will receive preferential

treatment as a consequence of conducting business with an Affiliate or Affiliate-Related Entity.

- ii. **Political Activities.** A Utility shall not engage in joint lobbying action with an Affiliate or Affiliate-Related Entity.
- iii. **Promotional Activities.** Unless permitted elsewhere in these Requirements, a Utility shall not:
  - a. Partake in joint marketing, advertising, or other promotional activities of products or services with an Affiliate or Affiliate-Related Entity. This includes, but is not limited to, joint sales calls or meetings; joint proposals, either as requests for or responses to requests for proposals (RFPs), or requests for quotations (RFQs); joint promotional communications or correspondence; joint presentations or participation in trade shows, conferences or other marketing events; and providing links between any of a Utility's websites and social media platforms, and any use of the websites and social media platforms of its Affiliates or Affiliate-Related Entities.
  - b. Allow its name or logo to be used by an Affiliate or Affiliate-Related Entity in any advertising or promotional activity, unless it is disclosed in plain legible or audible language, on the first page or at the first point where the Utility name or logo appears, that: (1) the Affiliate/Affiliate-Related Entity and the Utility are not the same company; (2) the Affiliate/Affiliate-Related Entity is not an entity regulated by the Commission; (3) "you do not have to buy [the Affiliate's/Affiliate-Related Entity's] products or service in order to continue to receive quality regulated service from the Utility;" and (4) that there will be no special treatment or benefit awarded by the Utility for purchase of the advertised or marketed product or service of the Affiliate/Affiliate-Related Entity.
  - c. Participate in meetings with an Affiliate or Affiliate-Related Entity to discuss technical or operational subjects regarding the Utility's provision of transmission or distribution services to a customer (except at a customer's unsolicited request, and only in the same manner and to the same extent the Utility participates in such meetings with un-Affiliated Electricity-Related Services suppliers and their customers). The Utility shall not listen to, view, or otherwise participate in a sales discussion between a

customer and an Affiliate, Affiliate-Related Entity, or an un-Affiliated Electricity-Related Services supplier.

- 8. Requests for Specific Affiliate or Affiliate-Related Entity Information.** If a customer or potential customer makes an unsolicited request to a Utility for information specifically about any of its Affiliates or Affiliate-Related Entities, the Utility may refer the customer or potential customer to the Affiliate or Affiliate-Related Entity for more information. The only information that a Utility may provide to the customer or potential customer is the Affiliate/Affiliate-Related Entity's contact information. The Utility shall not transfer the customer directly to the Affiliate/Affiliate-Related Entity's customer service office via telephone or provide any other electronic link whereby the customer could contact the Affiliate or Affiliate-Related Entity through the Utility. When providing the customer or potential customer information about the Affiliate or Affiliate-Related Entity, the Utility shall not promote its Affiliate/Affiliate-Related Entity's products or services, nor shall it offer the customer or potential customer an opinion regarding the service of the Affiliate, Affiliate-Related Entity, or any other service provider.
- 9. Requests for General Information about Products or Services Offered by Affiliates, Affiliate-Related Entities, and their Competitors.** If a customer or potential customer requests general information from a Utility about products or services provided by its Affiliate, Affiliate-Related Entity, or the Affiliate/Affiliate-Related Entity's competitors, the Utility shall not promote its Affiliate or the Affiliate-Related Entity, nor shall the Utility offer the customer or potential customer any opinion regarding the products or services of the Affiliate, Affiliate-Related Entity, or any other service provider. The Utility may not refer the customer or potential customer to the Affiliate or Affiliate-Related Entity except as provided for in these Requirements.
- 10. Other Joint Ventures.** A Utility shall request approval from the Commission for all other joint ventures with an Affiliate and/or an Affiliate-Related Entity not explicitly covered or mentioned in the preceding paragraphs or in these Requirements.
- 11. Transaction Records.** A Utility shall maintain a contemporaneous written record of all Transactions with each of its Affiliates and Affiliate-Related Entities, except those involving Corporate Support Services expressly approved by the Commission. Such records, which shall include the date of the Transaction, name of Affiliate/Affiliate-Related Entity, name of a Utility employee knowledgeable about the Transaction, and a description of the Transaction, shall be maintained by the Utility for five (5) years. These records shall be made available for inspection by the Commission, or for an

independent audit, including pursuant to Section IV.D or at the Commission's request, and at the Utility's expense.

- i. Regarding Corporate Support Services expressly authorized by the Commission, the Utility shall maintain a separate listing of all Corporate Support Services provided to and/or received from each Affiliate, identifying the method used to assign or apportion cost responsibility. The Utility and any participating Affiliate shall maintain documentation supporting the costs of any Corporate Support Services and the methods used and application of these methods to allocate, apportion, and/or share such costs.

12. **Cost Allocation Manual.** Within 180 days following the final decision and order adopting these Requirements, the Utility shall provide the Commission with a draft cost allocation manual ("CAM") governing charges by the Utility with its Affiliates, along with detailed Transaction policies, practices and guidelines designed to protect against cross-subsidization.

**C. Special Provisions for Wholesale and Retail Electricity-Related Service Transactions**

**1. Provisions Applying to Affiliates and Affiliate-Related Entities Engaged in Wholesale Power Transactions with a Utility**

- i. **Prior approval from Commission.** No Utility shall engage in a wholesale power transaction with an Affiliate or an Affiliate-Related Entity or provide any consents or approvals under an existing wholesale power transaction that would permit a non-Affiliate to become an Affiliate or Affiliate-Related Entity without prior approval from the Commission. Upon receipt by the Commission, a Utility's request to engage in a wholesale power transaction with an Affiliate or Affiliate-Related Entity will be considered approved after thirty days, unless suspended by the Commission or deemed otherwise by a Commission order issued within the aforementioned thirty-day timeframe.

- ii. **The Utility shall provide no undue preference towards power generated by an Affiliate or Affiliate-Related Entity.** In the case of an Independent Power Producer that is an Affiliate or Affiliate-Related Entity and provides power to the Utility, the Utility will dispatch power from all the Affiliate-owned (or Affiliate-Related Entity-owned) units providing such power in accordance with principles of economic dispatch and in accordance

with state laws, requirements, and regulations regarding the mix of generation resources, including in compliance with Hawaii's Renewable Portfolio Standard (see HRS § 269-92).

- iii. Products and services available on a non-discriminatory basis.** If a Utility makes a product or service, other than Corporate Support Services, available to an Affiliate or Affiliate-Related Entity involved in wholesale power transactions, the Utility shall make the same product or service available contemporaneously and in the same manner, to all Similarly Situated entities. In addition, the Utility shall apply its tariffs, prices, terms and conditions, and discounts for those products and services in the same manner to all Similarly Situated entities. The Utility shall process all requests for a product or service from Affiliates, Affiliate-Related Entities, and Similarly Situated non-Affiliated entities on a non-discriminatory basis. If a Utility's tariff or an agreement related to a wholesale power transaction allows for discretion in its application, the Utility shall apply that provision in the same manner to its Affiliates, Affiliate-Related Entities, and Similarly Situated non-Affiliates.
- iv. Waiver or amendment of contract terms and conditions.** If a Utility agrees to waive, amend, or suspend the terms and conditions for any wholesale power Transaction for the benefit of an Affiliate or Affiliate-Related Entity, it must make the same benefit contemporaneously available, on a non-discriminatory basis, to all Similarly Situated non-Affiliates. The Utility shall provide notice to all entities that have requested in writing to be notified of such events and shall post a conspicuous notice on its Internet site or public electronic bulletin board for at least thirty (30) consecutive days providing the following information: the name of the Affiliate or Affiliate-Related Entity involved in the Transaction; a description of the waiver, amendment, or suspension; any conditions or requirements applicable to the benefit provided; documentation of any cost differential underlying the benefit; and the procedures by which non-Affiliates may obtain the same benefit. The Utility shall maintain records of such information for a minimum of five (5) years and shall make such records available for third party review within seventy-two (72) business hours of a written request, or at a time mutually agreeable to the Utility and the third party.
- v. Data and information sharing.** A Utility shall make data and information regarding wholesale power transactions available to non-Affiliates in the same manner and under the same terms and conditions as provided to Affiliates and Affiliate-Related Entities.



- vi. **Interconnection services.** The Utility shall provide no undue preference in the provision of interconnection services to an Affiliate or Affiliate-Related Entity. The Utility shall provide interconnection services to non-Affiliates in the same manner and under the same terms and conditions as it provides to an Affiliate or Affiliate-Related Entity, including but not limited to, processing, fees, charges and costs, and completion time.
- vii. **Transaction records.** The Utility shall keep for a period of five (5) years, all records and documents relating to the purchase and dispatch of power to serve customer load.
- viii. **Audit of purchased power transactions.** Every three (3) years from the effective date of these Requirements, or sooner as may be determined at the Commission's discretion, an independent auditor shall review all records and documents relating to the Utility's dispatch of power to serve customer load. Unless otherwise ordered by the Commission, the audit of purchased power transactions may be incorporated into the Compliance Audit described in Section IV.D of these Requirements. The independent auditor shall be approved by the commission and shall issue a report on its findings that shall be filed at the Commission to ensure transparency. In its discretion, the Commission may hold a hearing or request comments from the public with respect to the audit findings. In the event of a violation of these Requirements, the Commission may take actions in accordance with Section IV.G above. The cost of any such audit shall be at the Utility's expense and not recoverable from customers.
- ix. **The Utility shall comply with the Competitive Bidding Framework when conducting competitive power solicitations.** The Utility shall abide by the Competitive Bidding Framework whenever it conducts a solicitation for competitive power generation, unless otherwise ordered by the Commission.

**2. Provisions Applying to Utility Interactions with Affiliates and Affiliate-Related Entities Engaged in Retail Electricity-Related Services**

- i. **The Utility shall provide no undue preference towards Affiliates or Affiliate-Related Entities involved in the provision of Electricity-Related Services to retail customers.** The Utility shall treat all providers of Similarly Situated retail Electricity-Related Services in accordance with applicable state laws, requirements, and regulations.

- ii. Products and services available on a non-discriminatory basis.** If a Utility makes a product or service, other than Corporate Support Services, available to an Affiliate or Affiliate-Related Entity involved in the provision of retail Electricity-Related Services, it shall make the same product or service available, contemporaneously and in the same manner, to all Similarly Situated entities, and it shall apply its tariffs, prices, terms, conditions, and discounts for those products and services in the same manner to all Similarly Situated entities. A Utility shall process all requests for a product or service from Affiliates, Affiliate-Related Entities, and Similarly Situated non-Affiliated entities on a non-discriminatory basis. If a Utility's tariff allows for discretion in its application, the Utility shall apply that provision in the same manner to its Affiliates, Affiliate-Related Entities, and Similarly Situated non-Affiliates, as well as to their respective customers. If a Utility's tariff allows no discretion in its application, the Utility shall strictly apply the tariff. A Utility shall not use customer-specific contracts to circumvent these Requirements, nor create a product or service arrangement with an Affiliate or an Affiliate-Related Entity that is so unique that no competitor could be Similarly Situated to utilize the product or service.
- iii. Discounts, rebates, fee waivers, or alternative tariff terms and conditions.** If a Utility offers to, or grants a request from, an Affiliate or Affiliate-Related Entity for a discount, rebate, fee waiver, or alternative tariff terms and conditions for any product or service, it must make the same benefit contemporaneously available, on a non-discriminatory basis, to all Similarly Situated non-Affiliates. The Utility shall send notice to competitive entities that request such notice and post a conspicuous notice on its Internet site or public electronic bulletin board for at least thirty (30) consecutive calendar days providing the following information: the name of the Affiliate or Affiliate-Related Entity involved in the Transaction; the rate charged; the normal rate or tariff condition; the period for which the benefit applies; the quantities and the delivery points involved in the Transaction (if any); any conditions or requirements applicable to the benefit; documentation of any cost differential underlying the benefit; and the procedures by which Similarly Situated non-Affiliates may obtain the same benefit. The Utility shall maintain records of such information for a minimum of five (5) years and shall make such records available for third party review within seventy-two (72) business hours of a written request, or at a time mutually agreeable to the Utility and the third party. A Utility shall not create any arrangement with its Affiliate or

Affiliate-Related Entity that is so unique that no competitor could be Similarly Situated to benefit from the discount, rebate, fee waiver, or alternative tariff terms and conditions.

- iv. **Data and information sharing.** A Utility shall make data and information regarding retail Electricity-Related Service Transactions available to non-Affiliates in the same manner and on the same terms and conditions as provided to the Utility's Affiliates and Affiliate-Related Entities.
- v. **Interconnection services and queue management.** The Utility shall provide no undue preference in the provision of interconnection services to an Affiliate or Affiliate-Related Entity, including utility management of the interconnection queue. The Utility shall provide interconnection services and queue management to customers served by non-Affiliates in the same manner and on the same conditions including, but not limited to fees, charges and costs, and processing and completion time, in which such services are provided to customers served by an Affiliate or Affiliate-Related Entity.
- vi. **Transaction records.** The Utility shall be required to keep for a period of five (5) years, all records and documents relating to Transactions with Affiliates and Affiliate-Related Entities involved in the provision of retail Electricity-Related Services.
- vii. **Audit of Transactions with Affiliates and Affiliate-Related Entities involved in the provision of retail Electricity-Related Services.** Every three (3) years from the effective date of these Requirements, or sooner as may be determined at the Commission's discretion, an independent auditor shall review all records and documents relating to the Utility's Transactions with its Affiliates and Affiliate-Related Entities involved in the provision of retail Electricity-Related Services. Unless otherwise ordered by the Commission, the audit of the Utility's Transactions with its Affiliates and Affiliate-Related Entities involved in the provision of retail Electricity-Related Services may be incorporated into the Compliance Audit described in Section IV.D of these Requirements. The independent auditor shall be approved by the Commission and shall be required to issue a report on its findings that shall be filed at the Commission to ensure transparency. In its discretion, the Commission may hold a hearing or request comments from the public with respect to the audit findings. In the event of a violation of these Requirements, the Commission may take actions in

accordance with Section IV.G above. The cost of any such audit shall be at the Utility's expense and not recoverable from customers.

#### **D. Information Handling**

- 1. Transfer of Confidential Information Prohibited.** Unless otherwise permitted in these Requirements, a Utility shall not provide Confidential Information or Proprietary Customer Information to an Affiliate or Affiliate-Related Entity.
  - i. Exception by written consent.** A Utility may release Proprietary Customer or Confidential Information relating to a contract, to an Affiliate or Affiliate-Related Entity provided the Utility obtains the express written consent of the customer or counter-party to the contract.
  - ii. Exception for law, regulation, or legal process.** A Utility may release Proprietary Information or Confidential Information without express customer or counter-party authorization: (i) to the Commission or the Consumer Advocate; (ii) in connection with a court or administrative proceeding involving the customer, contract counter-party, or the Utility; or (iii) where otherwise required by law, regulation, or legal practice. The Utility shall take all reasonable actions to protect the confidentiality of such information, including, but not limited to, providing such information under a confidentiality agreement or protective order. In situations involving (ii) or (iii), the Utility shall also promptly notify the affected customer or contract counter-party in writing that such information has been requested and/or released.
- 2. Non-Confidential Information.** A Utility may provide non-Confidential Information to its Affiliate or Affiliate-Related Entity only if it makes the same information available to Similarly Situated non-Affiliates, unless exempted as Corporate Support Services approved by the Commission or as otherwise permitted under these Requirements.
- 3. Record-Keeping.** A Utility shall maintain contemporaneous records documenting information shared with Affiliates and Affiliate-Related Entities, as well as all tariffed and non-tariffed Transactions with its Affiliates and Affiliate-Related Entities, including but not limited to, all waivers of tariff or contract provisions, all discounts, all asset transfers or sales, and all negotiations of any sort between the Utility and its Affiliates or Affiliate-Related Entities, whether or not they are consummated. A Utility shall maintain such records for a minimum of five (5) years, or

longer if the Commission or another government agency so requires. For consummated Transactions, the Utility shall make such final Transaction documents available for review by a third party within seventy-two (72) business hours of a written request, or at a time mutually agreeable to the Utility and the other party, subject to the requirements in this Section, and any other existing Utility policies regarding the handling of Confidential and Proprietary Customer Information.

#### **E. Separation**

1. **Entity Independence:** A Utility shall be a separate, independent entity from its Affiliates, including its parent holding company.
2. **Sharing of Employees.** Except as otherwise permitted in these Requirements, a Utility shall not share or jointly employ employees, including officers and directors, with Affiliates or Affiliate-Related Entities, unless exempted as part of a Corporate Support Service approved by the Commission or as otherwise permitted under these Requirements. A Utility seeking a waiver from the above provisions must file a request with the Commission seeking approval for a waiver. Such request must show that the Utility has implemented adequate safeguards precluding employees of an Affiliate/Affiliate-Related Entity from gaining access to information in a manner that would allow or provide means to transfer Confidential Information from a Utility to an Affiliate or Affiliate-Related Entity, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization.
3. **Employee Transfers or Temporary Assigns.** If a Utility employee is transferred, assigned, or otherwise employed by an Affiliate, the Affiliate shall make a one-time payment to the Utility in an amount equivalent to 25% of the employee's base annual compensation, unless the Utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a non-executive employee's position is eliminated as a result of electric industry restructuring, a Utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. All such fees to be paid to the Utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment, on an annual basis, or as otherwise necessary to ensure that the Utility's ratepayers receive the fees.
  - i. Utility employees shall not remove or otherwise provide or use Confidential or Proprietary Customer Information gained from the Utility, Affiliate, or Affiliate-Related Entity in a discriminatory or

exclusive fashion, to the benefit of the competitive Affiliate or Affiliate-Related Entity, or to the detriment of non-Affiliated Similarly Situated entities.

- ii. Movement of an employee, including a person employed by the Utility or an Affiliate or Affiliate-Related Entity, may be accomplished through either: (a) the employee's termination of employment with one company and acceptance of employment with the other; or (b) a transfer to another company, as long as the transfer of an employee from the Utility to an Affiliate/Affiliate-Related Entity results in the Utility bearing no ongoing costs associated with that employee. However, employees who have had actual access to contract information or other information that is Confidential, Proprietary Customer, or otherwise non-public, shall not disclose any Confidential Information to an Affiliate/Affiliate-Related Entity, and for a period of one year, cannot appear in negotiations or otherwise interact directly with the former employer or work on the same matter that the employee worked on while with the former employer.
  - iii. This section shall not apply to employee transfers or temporary assigns made pursuant to Corporate Support Services approved by the Commission.
  - iv. This section shall not apply to the temporary assignment of an employee to an Affiliate, Affiliate-Related Entity, or non-Affiliated Utility to assist in restoring power in the event of a major service interruption or to assist in resolving emergency situations affecting system reliability. This exception is limited to the use and sharing of information as is necessary to resolve the major service interruption or emergency situation. Within thirty (30) days of invoking this exception to the Requirements, the Utility shall report this information to the Commission and shall conspicuously post the information on its website for thirty (30) consecutive calendar days.
4. **Sharing Office Space.** A Utility's office space shall be physically separate from that of its Affiliates and Affiliate-Related Entities, where physical separation is accomplished by having office space in separate buildings, or if within the same building, by a method such as having offices on separate floors or with separate security-access controls, unless otherwise approved by the Commission, unless exempted as part of a Corporate Support Service approved by the Commission, or as otherwise permitted under these Requirements.

5. **Sharing of Facilities and Resources.** Except as otherwise allowed under these Requirements, a Utility shall not share facilities, office equipment, services, information systems or other resources with its Affiliates or Affiliate-Related Entities, nor shall a Utility access the computer or information systems of its Affiliates or Affiliate-Related Entities, or allow its Affiliates or Affiliate-Related Entities to access its computer or information systems, except to the extent required to perform Corporate Support Services expressly authorized by the Commission, unless the Utility can demonstrate that such sharing will not compromise the public interest, does not allow for the transfer of Confidential, Proprietary Customer, or other non-public Information, does not create opportunities for cross-subsidization or preferential treatment, and is approved by the Commission. In addition, any allocations of common expenses for these services are still subject to examination pursuant to Conditions #1 and #5 of the Conditions of Merger.
6. **Separate Books and Records.** A Utility and its Affiliates shall keep separate books and records, and the Commission may review records relating to a Transaction between a Utility and its Affiliates.<sup>5</sup>
  - i. The Utility shall record all Transactions with its Affiliates and Affiliate-Related Entities in accordance with the Uniform System of Accounts, or state and federal guidelines, as appropriate, whether they involve direct or indirect expenses.
  - ii. The books of the Utility and its Affiliates shall be made available for inspection by the Commission and shall be maintained with adequate record to allow for independent audit of all Transactions, at the Utility's expense, at any time so requested by the Commission.
  - iii. The Utility shall prepare financial statements that are not consolidated with those of its Affiliates.
7. **Limited Financial Intermingling and Credit Support by a Utility.** A Utility shall not subsidize the operations of an Affiliate or Affiliate-Related Entity with revenues generated from regulated products or services. Unless otherwise expressly approved by the Commission, a Utility may share investment, credit, or financing arrangements with an Affiliate or Affiliate-Related Entity only if it complies with the following:

---

<sup>5</sup>As discussed above, this is consistent with the commission's investigative authority pursuant to HRS § 269-7, as well as Condition #3 of the Conditions of Merger.

- i.** The Utility shall implement adequate safeguards precluding employees of an Affiliate or Affiliate-Related Entity from gaining access to information related to investment, credit, or financing arrangements in a manner that would allow or provide a means to transfer Confidential Information from a Utility to an Affiliate or Affiliate-Related Entity, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create opportunities for cross-subsidization of Affiliates or Affiliate-Related Entities;
- ii.** The Utility shall not allow an Affiliate or Affiliate-Related Entity to obtain credit under any arrangement that would include a specific pledge of any assets in the rate base of the Utility or a pledge of cash reasonably necessary for Utility operations;
- iii.** The Utility shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise for an Affiliate or Affiliate-Related Entity;
- iv.** The Utility shall maintain its own credit ratings from at least two of the three major credit agencies for outstanding long-term debt, which may be provided on a consolidated basis as appropriate;
- v.** The Utility shall not engage in any money pools, cross-collateralization or cross-financial guarantees between itself and its Affiliates or Affiliate-Related Entities.



CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail,  
postage prepaid, and properly addressed to the following parties:

DEAN NISHINA  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P.O. Box 541  
Honolulu, HI 96809

KEVIN M. KATSURA  
MANAGER, REGULATORY NON-RATE PROCEEDINGS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P.O. BOX 2750  
Honolulu, HI 96840-0001

WILLIAM M. MILKS  
1565 Kaminaka Drive  
Honolulu, HI 96816

SANDRA-ANN Y.H. WONG  
1050 Bishop Street, #514  
Honolulu, HI 96813

Counsel for APOLLO ENERGY CORPORATION

CARLITO P. CALIBOSO  
WIL K. YAMAMOTO  
DAVID A. MORRIS  
YAMAMOTO CALIBOSO, LLLC  
1100 Alakea Street, Suite 3100  
Honolulu, HI 96813

Counsel for HAWAII CLEAN POWER ALLIANCE