

Rule No. 31

Emergency Demand Response Program

Rider: Scheduled Dispatch Program

**AVAILABILITY FOR CUSTOMER BATTERY STORAGE-OPERATORS**

Emergency Demand Response Program participation is available to new and existing Eligible Customer Battery Storage-Operators on Maui Island who own and operate a battery storage system charged from an Eligible Customer-Generator's owned or leased Generating Facility under the Company's Net Energy Metering ("NEM"), Customer Self-Supply, Customer Grid-Supply, Customer Grid-Supply Plus, Smart Export, or Standard Interconnection Agreement programs as described in Rule Nos. 18, 22, 23, 24, 25, and Rule 14H Appendix II, respectively ("Battery Storage Facility"). Emergency Demand Response Program participation is not available to Lanai or Molokai customers.

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A. AVAILABILITY

Scheduled Dispatch Program (“SDP” or “Battery Bonus Program”) participation is available to new and existing Eligible Customer Battery Storage-Operators on Maui Island who own and operate a battery storage system charged from an Eligible Customer-Generator’s owned or leased Generating Facility under the Company’s Net Energy Metering, Customer Self-Supply, Customer Grid-Supply, Customer Grid-Supply Plus, Smart Export, or Standard Interconnection Agreement programs as described in Rule Nos. 18, 22, 23, 24, 25, and Rule 14H Appendix II, respectively (“Battery Storage Facility”) where:

1. Eligible Customer Battery Storage-Operators execute the Scheduled Dispatch Program Agreement, provided as Appendix A of this Rule (“SDP Agreement”), memorializing their participation in the Battery Bonus Program and specifying the Committed Capacity (defined below) of their Battery Storage Facility,
2. Eligible Customer Battery Storage-Operators may add additional post inverter alternating current generation capacity<sup>1</sup> in coordination with their battery installation by submitting an amendment to the interconnection agreement governing the underlying Generating Facility (“SDP Amendment”); provided, however, that for additional post inverter alternating current generation capacity in excess of 5 kVA, such Generation Facility addition must be limited to no more than twice the capacity of the Battery Storage Facility.
3. If the Eligible Customer Battery Storage-Operator is not a party to the interconnection agreement governing the underlying Generating Facility (e.g., as the “Customer-Generator” or the “Owner/Operator”), the SDP Amendment shall make the Eligible Customer Battery Storage-Operator an additional party to such interconnection agreement with respect to the Battery Storage Facility and any generation capacity added to the underlying Generating Facility subject to the limitations of this Rule, and
4. Participation in the Battery Bonus Program does not inhibit Eligible Customer Battery Storage-Operators from fulfilling performance commitments of other grid services and demand response options, if dual participation is feasible.

SDP participation is not available to Lanai or Molokai customers.

B. ENROLLMENT

1. SDP will begin enrollment on July 1, 2022 and enrollment will be available until total enrolled SDP capacity reaches 15 megawatts (“MW”) or until June 30, 2024, whichever comes first, unless otherwise ordered by the Commission.

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<sup>1</sup> As referenced herein, “post inverter alternating current generation capacity” refers to the power measured at the alternating current output terminals of the inverter.

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2. Enrollment in SDP is a ten-year commitment comprised of an initial phase ending for all participants on December 31, 2024 and a final phase commencing on January 1, 2025 and continuing for the remainder of the Eligible Customer Battery Storage-Operator's ten-year commitment. During the final phase of their ten-year commitment, each Eligible Customer Battery Storage-Operator will have the option to (a) continue operating their Battery Storage Facility under the SDP pursuant to this Rule or (b) transition to an alternative dispatch program upon meeting the applicable eligibility requirements for such alternative program.
3. The Eligible Customer Battery Storage-Operator's ten-year commitment under this Rule begins on the Battery Storage Facility's operational date, which is the first day (of the seven consecutive days) the Eligible Customer Battery Storage-Operator provides operational performance data of the Battery Storage Facility in connection with, and meeting the requirements of, the verification process outlined in section B.4 below.
4. To complete the enrollment process of executing the SDP Agreement, the Eligible Customer Battery Storage-Operator shall provide:
  - a. A complete validation package as required by Rule 14H,
  - b. A completed SDP Amendment and SDP Agreement, signed by the Eligible Customer Battery Storage-Operator (with the Company's countersignature of the SDP Amendment and SDP Agreement to be provided no later than 5 business days after all the requirements of this section B.4 are met),
  - c. Operational proof of start time and discharge of 2-hour duration of the Battery Storage Facility,
  - d. Federal tax form W-9 ("Form W-9"), and
  - e. Seven (7) consecutive days of operational performance data in five (5) minute intervals, if possible, or fifteen (15) minute intervals as necessary for the Company to verify the Battery Storage Facility discharges the Committed Capacity for the Dispatch Period in compliance with this Rule. Operational performance data may be commenced during the testing phase prior to validation acceptance. The Company shall be required to complete such verification within 10 business days of the receipt of such performance data from Eligible Customer Battery Storage-Operator.
  - f. If no reasonable requests for additional data or concerns are expressed regarding the Committed Capacity or operation of the Battery Storage Facility as specified in section C of this Rule are communicated (in written or digital form) to the Eligible Customer Battery Storage-Operator by the Company within the 10 business day verification period described in section B.4.f, the Eligible Customer Battery Storage-Operator will be deemed verified as operating in compliance with this Rule.

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C. OPERATION

1. The Eligible Customer Battery Storage-Operator shall specify in its SDP Agreement the capacity level (kW) at which they commit to maintain the discharge level from their Battery Storage Facility (“Committed Capacity”) for a duration of two consecutive hours each day (“Dispatch Period”). The Dispatch Period will be specified by the Company at the time of enrollment and may be revised by the Company upon written notice to the Eligible Customer Battery Storage-Operator; provided that the Eligible Customer Battery Storage-Operator shall have six months from the date of such written notice to implement such revision.

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2. Energy discharged during the Dispatch Period from the Battery Storage Facility may either serve onsite load or be exported to the grid. The Eligible Customer Battery Storage-Operator shall be required to manage their Battery Storage Facility to automatically prioritize battery charging during periods of substantial solar panel insolation in order to most reliably serve the two-hour battery discharge commitment as scheduled by the Company.
3. Notwithstanding any other provision specified in the underlying Generating Facility's governing program tariff or in the interconnection agreement to which the Eligible Customer Battery Storage-Operator is a party (or is made a party as provided under this Rule), as applicable, energy exported to the grid from the Battery Storage Facility for the Battery Bonus Program during the Dispatch Period is permitted and, if applicable, compensated in accordance with the underlying Generating Facility's governing program tariff.
  - a. For the first three (3) years of Battery Bonus Program participation, non-NEM customers will be compensated a fixed monthly export credit.
  - b. Fixed monthly export credit = (the sum of the Non-Fuel Energy Charges and all per-kWh charges, adjustments, and surcharges applicable to the customer's rate schedule using retail rates using, adjustments, and surcharges (\$/kWh) for the Effective Month – non-NEM DER tariff export rate (\$/kWh)) x Committed Capacity (kW) x 70% x 2 hours x 30 days. For this calculation the customer's rate schedule is the customer's rate schedule on the SDP Agreement execution date.
    - i. The Effective Month is defined as January of the applicable year for January, February, and March exports, April of the applicable year for April, May, and June exports, July of the applicable year for July, August, and September exports, and October of the applicable year for October, November, and December exports.
  - c. Fixed monthly export credits cannot be applied to the minimum charge and cannot be applied to any non-bypassable charges. Fixed monthly export credits will be tracked for a twelve billing month period from the time of the start of the Battery Bonus Plus contract to the twelfth bill following the start of the Battery Bonus Plus Contract and for each twelve billing month period thereafter. Fixed monthly export credits that are not applied to a customer's bill may be applied to the customer's subsequent bill within the same twelve billing month period described above. Coincident with the twelfth bill following the start of the Battery Bonus Plus contract and each twelve month period thereafter, any fixed monthly export credits that are not applied will be forfeited.
  - d. After the first year, Company reserves the right to adjust the 70% factor in the fixed monthly export credit equation upon delivery of supported documentation to justify a different rate.

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4. In the event that solar insolation is insufficient to allow the Battery Storage Facility to meet the SDP requirement of providing the Committed Capacity for the Dispatch Period, the Eligible Customer Battery Storage-Operator will still be deemed to be in compliance with such requirement, provided the Battery Storage Facility is paired with a Generating Facility with a ratio of at least 1 kW of generation for every 2 kWh of Committed Capacity, as identified in the SDP Agreement.
5. All participating systems shall have Volt-Watt activation for the term of the project and meet current Advanced Inverter setting requirements.
6. Eligible Customer Battery Storage-Operator shall use the default ramp rate of equipment for the Committed Capacity during the Dispatch Period. Deviations from the default ramp rate may be required in certain circumstances where the default ramp rate may pose adverse impacts to grid power quality. The Company will notify the Eligible Customer Battery Storage-Operator of any such deviation when the Dispatch Period is specified or revised as described in Section C.1.

D. COMPENSATION

1. Participation in the Battery Bonus Program shall be compensated by a one-time incentive payment (“Incentive Payment”) based on the Battery Storage Facility’s demonstrated Committed Capacity for the Dispatch Period in accordance with this Rule. The Incentive Payment shall be determined as of the SDP Amendment approval date pursuant to the table below:

Total SDP Committed Capacity MW	Incentive Payment Rate
First 15 MW	\$850/kW of Committed Capacity

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2. The Eligible Customer Battery Storage-Operator must demonstrate compliance as described section B.3 with this Rule prior to receiving the Incentive Payment.
3. The Incentive Payment will be paid in full within 30 days of the SDP Agreement execution date. Payments shall be made directly to the owner of the Battery Storage Facility as identified in the SDP Agreement.
4. If the Eligible Customer Battery Storage-Operator does not operationalize its conditionally approved Battery Storage Facility by December 31, 2024, the Company will void the conditional approval to install and therefore will not owe the Eligible Customer Battery Storage-Operator any Incentive Payment.
5. Eligible Customer Battery Storage-Operators, as an additional incentive reflected on their utility bill, will receive a monthly peak capacity incentive ( $\$5/\text{kW} \times \text{Committed Capacity}$ ) ("Monthly Peak Capacity Payment") for 10-year period from enrollment.

#### E. FAILURE TO PERFORM

If the Company identifies concerns or issues relating to the Battery Storage Facility's performance, including, without limitation, potential non-compliance with this Rule pertaining to the discharge of Committed Capacity for the Discharge Period, the Company may conduct a performance audit to monitor and document conditions.

1. The Company shall provide the Eligible Customer Battery Storage-Operator written or digital notice at least seven (7) days in advance of any performance audit.
2. Eligible Customer Battery Storage-Operators are required to provide five (5) minute interval data, if possible, or fifteen (15) minute interval data as necessary to verify operation of Battery Storage Facility as specified in section C of this Rule within 5 business days of request from Company.
3. If the Battery Storage Facility fails to perform in compliance with this Rule, the Company will provide to the Eligible Customer Battery Storage-Operator a written notice of Failure to Perform, which will include documentation explaining the non-compliance of operation. The Eligible Customer Battery Storage-Operator will have 30 days from the date of such notice of Failure to Perform to cure the non-compliance. If the Eligible Customer Battery Storage-Operator is unable to cure the non-compliance within 30 days, the Eligible Customer Battery Storage-Operator may by written request to the Company seek a reasonable extension on the period to cure.
4. If the non-compliance persists beyond the 30-day cure period, the Eligible Customer Battery Storage-Operator (recipient of the one-time Incentive Payment, Monthly Peak Capacity Payment and Monthly fixed export credit (as applicable)) will not receive the monthly payments and may be charged up to \$150 monthly until either the non-compliance is rectified or the Company has recovered the full prorated Incentive Payment amount.

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5. If the non-compliance continues for a duration of 12 months, the Company will automatically terminate the customer, and will seek a repayment of the Incentive Payment amount, prorated from the commencement of noncompliance date. If the Eligible Customer Battery Storage-Operator's repayment of such prorated amount is not promptly made in a single lump sum payment, the Eligible Customer Battery Storage-Operator's repayment of such prorated amount shall be made in 12 equal monthly installments to the Company.

F. TERMINATION

1. Notwithstanding their ten-year commitment under this Rule, the Eligible Customer Battery Storage-Operator may terminate, or a new account holder may assume, their SDP Agreement with written or digital notice provided 60 days prior to date of termination or assumption.
2. If termination occurs prior to the completion of the ten-year commitment, the Eligible Customer Battery Storage-Operator must remove the Battery Storage Facility, including associated solar panels, or transfer the same to an available DER Tariff through an amendment. Such Battery Storage Facility must remain non-operational until such time as it is removed or transferred to an alternative tariff.
3. If termination occurs prior to completion of the ten-year commitment, the Eligible Customer Battery Storage-Operator shall return a prorated portion of the Incentive Payment received. The prorated portion shall be based on the remaining portion of the ten-year commitment, calculated from the date of termination as a fraction of the Eligible Customer Battery Storage-Operator's ten-year commitment.
4. The Company will bill the prorated amount to the Eligible Customer Battery Storage-Operator. If the Eligible Customer Battery Storage-Operator's return of such prorated amount is not promptly made in a single lump sum payment, the Eligible Customer Battery Storage-Operator's return of such prorated amount shall be made in twelve equal monthly installments. The Company will not charge interest on a payment if final payment is made within one year of date of termination. Eligible Customer Battery Storage-Operators that are not direct customers must pay prorated amount in full. If the Eligible Customer Battery Storage-Operator decides to terminate their SDP Agreement during a non-compliance period, the non-compliance charges imposed pursuant to section E.5 and paid by the Eligible Customer Battery Storage-Operator will be applied towards the prorated Incentive Amount required to be returned by the Eligible Customer Battery Storage-Operator.

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G. METERING AND BILLING

1. The Company will supply, install, own, and maintain all necessary meters and associated equipment utilized for billing, energy purchase, and performance auditing. The meters will be tested and read in accordance with the rules of the Commission and the Company.
2. Energy exported to the grid from the Battery Storage Facility will be compensated at applicable Energy Credit Rates for the Eligible Customer Battery Storage-Operator, as specified in the underlying Generating Facility's governing program tariff.
3. All rates, terms, and conditions from the applicable rate schedule will apply, as modified by the applicable program tariff, if applicable.

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1. **Notice and Disclaimer Regarding Future Rate and Tariff Modifications.** This Agreement shall, at all times, be subject to modification by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction. Without limiting the foregoing, Customer Battery Storage-Operator expressly acknowledges the following:
  - The Emergency Demand Response Program and its associated Scheduled Dispatch Program are subject to modification by the Hawaii Public Utilities Commission (“Commission”).
  - **Your Agreement and the Battery Storage Facility shall be subject to any future modifications ordered by the Commission. Such modifications may positively or negatively impact any potential savings in your electricity bill that were calculated by you or presented to you to support your decision to buy or lease a Battery Storage Facility and may otherwise change the value of your Agreement and Battery Storage Facility. You agree to pay for any costs related to such Commission ordered modifications.**

**BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE ABOVE NOTICE AND DISCLAIMER. FURTHER, BY SIGNING BELOW, YOU CONFIRM YOUR UNDERSTANDING THAT ANY POTENTIAL SAVINGS IN YOUR ELECTRICITY BILL THAT WERE CALCULATED BY YOU OR PRESENTED TO YOU TO SUPPORT YOUR DECISION TO BUY OR LEASE A BATTERY STORAGE FACILITY MAY CHANGE.**

2. **Effectiveness of Agreement.** This Agreement shall not be effective until approved and executed by each Party, i.e., upon the Effective Date. Customer Battery Storage-Operator shall not operate the Battery Storage Facility prior to approval and execution of this Agreement by the Company, except to the extent allowed for by the Underlying Agreement or to the extent necessary to obtain governmental and utility approvals. Until this Agreement is effective, no Party shall have any legal obligations that extend beyond the Underlying Agreement, arising hereunder, express or implied, and any actions taken by a Party in reliance on the terms of this Agreement prior to the Effective Date shall be at that Party’s own risk.

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3. **Underlying Interconnection Agreement.** Customer Battery Storage-Operator's Battery Storage Facility enrollment and participation under the Scheduled Dispatch Program is contingent upon current enrollment of the underlying Generating Facility in the Company's Net Energy Metering, Customer Self-Supply, Customer Grid-Supply, Customer Grid-Supply Plus, Smart Export, or Standard Interconnection Agreement programs as described in Rule Nos. 18, 22, 23, 24, 25, and execution and non-default of the Underlying Agreement. This Agreement shall supplement the Underlying Agreement which, as may be amended, shall continue in full force and effect notwithstanding the Customer Battery Storage-Operator's participation in the Company's Schedule Dispatch Program pursuant to this Agreement.
4. **SDP Tariff.** Unless otherwise provided herein, the terms and conditions governing Customer Battery Storage-Operator's participation in the Battery Bonus Program shall be as set forth in Company's SDP Tariff.
5. **Enrollment and Operation.** Customer Battery Storage-Operator hereby agrees to commit to the following capacity (kW) of maintained discharge from the Battery Storage Facility ("Committed Capacity") on a preset schedule for a daily duration of two hours.

Customer Battery Storage-Operator's Committed Capacity: \_\_\_\_\_ kW

The daily two-hour period during which the Committed Capacity will be dispatched ("Dispatch Period") will be specified by the Company at the time of enrollment and may be revised by the Company with reasonable notice.

- a) Within 30 days of commencement of discharge of Committed Capacity, Customer Battery Storage-Operator must provide seven (7) consecutive days of operational performance data in five (5) minute intervals, if possible, or fifteen (15) minute intervals as necessary to verify the operation of the Battery Storage Facility in accordance with this Agreement. The Company shall complete such verification within 10 business days of the receipt of such performance data from Customer Battery Storage-Operator.
- b) If no reasonable requests for additional data or concerns are expressed regarding operation of the Battery Storage Facility as specified in this Agreement are communicated (in written or digital form) to the Customer Battery Storage-Operator by Company within 10 business day verification period, the Customer Battery Storage-Operator will be deemed verified as operating in compliance with this Agreement.
- c) Notwithstanding any other provision specified in the underlying program tariff in which the Customer Battery Storage-Operator participates or in the interconnection agreement to which the Customer Battery Storage-Operator is a party, as applicable, energy exported to the grid from the Battery Storage Facility during the Dispatch Period shall be permitted and, if applicable, compensated in accordance with the Customer Battery Storage-Operator's underlying program tariff.

- i. For the first three (3) years of Battery Bonus Program participation, non-NEM customers will be compensated a fixed monthly export credit.
    - ii. Fixed monthly export credit = (retail rate for the Effective Month (\$/kWh) – non-NEM DER tariff export rate (\$/kWh)) x Committed Capacity (kW) x 70% x 2 hours x 30 days.
      - a. The Effective Month is defined as January of the applicable year for January, February, and March exports, April of the applicable year for April, May, and June exports, July of the applicable year for July, August, and September exports, and October of the applicable year for October, November, and December exports.
    - iii. Fixed monthly export credit will be zeroed out at the end of the year.
  - d) Energy discharged during the Dispatch Period from the Battery Storage Facility may either serve onsite load or be exported to the grid. Customer Battery Storage-Operator enrolled in Scheduled Dispatch is required to manage their DER systems to automatically prioritize battery charging during periods of substantial solar panel insolation in order to most reliably serve the two-hour battery discharge commitment as scheduled by the Company.
  - e) Customer Battery Storage-Operator shall use the default ramp rate of equipment for the Committed Capacity during the Dispatch Period. Deviations from the default ramp rate may be required in certain circumstances where the default ramp rate may pose adverse impacts to grid power quality. The Company will notify the Customer Battery Storage-Operator of any such deviation when the Dispatch Period is specified or revised.
6. **Term and Termination.** This Agreement shall continue for ten (10) years from the commencement of the discharge of Committed Capacity for the Dispatch Period in accordance with this Agreement. Customer Battery Storage-Operator may terminate this Agreement at any time with sixty (60) days written notice. If termination occurs prior to completion of its ten-year commitment, Customer Battery Storage-Operator shall return a prorated portion of the compensation received pursuant to the SDR Tariff. The prorated portion of the compensation shall be based on the remaining portion of the ten-year commitment, calculated from the date of termination as a fraction of the Customer Battery Storage-Operator's ten-year commitment. Customer Battery Storage-Operator may either pay such owed amount in full or make other arrangements with the Company prior to termination. The Company will not charge interest on a payment if final payment is made within one year of date of termination. Company may terminate this Agreement at any time if Customer Battery-Storage Operator fails to comply with any term of this Agreement, the Underlying Agreement, or if the Customer Battery-Storage Operator fails to be an Eligible Customer Battery-Storage Operator.
7. **Failure to Perform.** If the Company identifies concerns or issues relating to the Battery Storage Facility's performance, including, without limitation, potential non-compliance with this Rule pertaining to the discharge of Committed Capacity for the Discharge Period, the Company may conduct a performance audit to monitor and document conditions.

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- a) The Company shall provide the Customer Battery Storage-Operator written or digital notice at least seven (7) days in advance of any performance audit.
- b) Customer Battery Storage-Operator shall be required to provide five (5) minute interval data, if possible, fifteen (15) minute intervals as necessary to verify operation of the Battery Storage Facility in accordance with this Agreement with five (5) business days of request from Company.

- c) If the Battery Storage Facility fails to perform in compliance with this Rule, the Company will provide to the Customer Battery Storage-Operator a written notice of Failure to Perform, which will include documentation explaining the non-compliance of operation.
  - d) Customer Battery Storage-Operator will have 30 days from the date of such notice of Failure to Perform to cure the non-compliance.
  - e) If the non-compliance persists beyond the 30-day cure period, Customer Battery Storage-Operator (recipient of the one-time Incentive Payment, Monthly Peak Capacity Payment and Monthly fixed export credit (as applicable)) will not receive the monthly payments and may be charged up to \$150 monthly until either the non-compliance is rectified or the Company has recovered the full prorated compensation paid to Customer Battery Storage-Operator pursuant to the SDR Tariff.
8. **Scope of Agreement.** The Parties understand and agree that this Agreement is contingent upon the Underlying Agreement and applies only to the operation of Customer Battery Storage-Operator's Battery Storage Facility as specified by the Scheduled Dispatch Program.
9. **Metering.** Within fifteen (15) days of execution of this Agreement, the Company will supply, own, and maintain all necessary meters and associated equipment utilized for billing and energy purchase. The meters will be tested and read in accordance with the rules of the Commission and the Company. The Customer Battery Storage-Operator at its expense, shall provide, install and maintain all conductors, service switches, fuses, meter sockets, meter instrument transformer housing and mountings, switchboard meter test buses, meter panels and similar devices required for service connection and meter installations on the Customer Battery Storage-Operator's premises in accordance with the Company's Rule 14H.
10. **Compensation.** The terms regarding compensation to the Customer Battery System-Operator for its participation in the Company's Scheduled Dispatch Program shall be as set forth in the SDR Tariff. If the battery system operator and owner of the battery facility are the same and has an account with Hawaiian Electric, that individual or entity must sign the Battery Bonus Program agreement.
11. **Data and Private Information.** Company access to personal data, including information for tax reporting purposes, data related to the Battery Storage Facility performance and usage, electrical utility account information, usage history, and meter data is required for enrollment under the Company's Scheduled Dispatch Program. All data access, use, and sharing is subject to the terms of Hawaiian Electric's Customer Information Privacy Policy (available at <https://www.hawaiianelectric.com/privacy-notice/customer-information-privacy-policy>) and applicable law.
- a) **By executing this Agreement, Customer Battery Storage-Operator approves and consents to provide data required for enrollment under Scheduled Dispatch Program.**
  - b) **Tax Identification Number ("TIN") must be provided to Company via secure transfer prior to the Company executing this Agreement.**

12. **Indemnification.**

- a) The Customer Battery Storage-Operator shall indemnify, defend and hold harmless the Company and its officers, directors, agents and employees, from and against all liabilities, damages, losses, fines, penalties, claims, demands, suits, costs and expenses (including reasonable attorney's fees and expenses) to or by third persons, including the Company's employees or subcontractors, for injury or death, or for injury to property, arising out of the actions or inactions of the Customer Battery Storage-Operator (or those of anyone under its control or on its behalf) with respect to its obligations under this Agreement, and/or arising out of the installation, operation and maintenance of the Battery Storage Facility, except to the extent that such injury, death or damage is attributable to the gross negligence or intentional act or omission of the Company or its officers, directors, agents or employees.

**Provided, however, where the Customer Battery Storage-Operator is an agency of the United States, the following Section shall be applicable in place of Paragraph 12(a):**

“The United States understands that it may be held liable for loss, damages expense and liability to third persons and injury to or death of persons or injury to property caused by the United States in its engineering design, construction ownership or operations of, or the making of replacements, additions betterment to, or by failure of, any of such party's works or facilities used in connection with this Agreement to the extent allowed by the Federal Tort Claims Act 28 U.S.C. § 2671 et seq. and the Agreement Disputes Act of 1978, 41 U.S.C. §§ 601-613.

Company shall be responsible for damages or injury caused by Company, Company's agents, officers, and employees in the course of their employment to the extent permitted by law.”



**Provided, however, where the Customer Battery Storage-Operator is an agency of the State of Hawaii (the “State”), the following Section shall be applicable in place of Paragraph 12(a):**

“The State shall be responsible for damages or injury caused by the State’s agents, officers, and employees in the course of their employment to the extent that the State’s liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damage and injury to the extent permitted by law. The State shall use reasonable good faith efforts to pursue any approvals from the Legislature and the Governor that may be required to obtain the funding necessary to enable the State to perform its obligations or cover its liabilities hereunder. The State shall not request Company to indemnify the State for, or hold the State harmless from, any claims for such damages or injury.

Company shall be responsible for damages or injury caused by Company, Company's agents, officers, and employees in the course of their employment to the extent that Company's liability for such damage or injury has been determined by a court or otherwise agreed to by Company, and Company shall pay for such damage and injury to the extent permitted by law. Company shall not request the State to indemnify Company for, or hold Company harmless from, any claims for such damages or injury.”

- b) The Company shall indemnify, defend and hold harmless the Customer Battery Storage-Operator, and its officers, directors, agents and employees, from and against all liabilities, damages, losses, fines, penalties, claims, demands, suits, costs and expenses (including reasonable attorney’s fees and expenses) to or by third persons, including the Customer Battery Storage-Operator’s employees or subcontractors, for injury or death, or for injury to property, arising out of the actions or inactions of the Company (or those of anyone under its control or on its behalf) with respect to its obligations under this Agreement, except to the extent that such injury, death or damage is attributable to the gross negligence or intentional act or omission of the Customer Battery Storage-Operator or its officers, directors, agents or employees.
- c) Nothing in this Agreement shall create any duty to, any standard of care with reference to, or any liability to any person not a party to it.

13. **Limitation of Liability.** Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, express or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Customer Battery Storage-Operator, including without limitation the Battery Storage Facility and any structures, equipment, wires, appliances or devices appurtenant thereto.
14. **Force Majeure.** For purposes of this Agreement, “Force Majeure Event” means any event: (a) that is beyond the reasonable control of the affected Party; and (b) that the affected Party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: (a) acts of war, public disorder, insurrection or rebellion; floods, hurricanes, earthquakes, lighting, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will promptly notify the other Parties in writing and will keep the other Parties informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible.
15. **Additional Information.** By signing this Agreement, the Customer Battery Storage-Operator expressly agrees and authorizes Company to (1) request and obtain additional information from Customer Battery Storage-Operator relating to the Battery Storage Facility, and/or (2) make modifications to the Customer Battery Storage-Operator’s Battery Storage Facility, at no cost to the Company, where reasonably necessary, to serve the Customer Battery Storage-Operator under this Agreement or to ensure reliability, safety of operation, and power quality of the Company’s system.
16. **Notices.** Any notice required under this Agreement shall be in writing and mailed at any United States Post Office with postage prepaid and addressed to the Party, or personally delivered to the Party at the address identified on the last page of the Agreement. Changes in such designation may be made by notice similarly given. Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth day after the date of mailing, whichever is earlier.

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17. **Miscellaneous.**

- a) **Governing Law and Regulatory Authority.** This Agreement was executed in the State of Hawaii and must in all respects be interpreted, governed, and construed under the laws of the State of Hawaii. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.
- b) **Amendment, Modifications, or Waiver.** This Agreement may not be altered or modified by any of the Parties, except by an instrument in writing executed by each of them. None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. This Agreement contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.
- c) **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Parties. Such consent shall not be unreasonably withheld.
- d) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.
- e) **Relationship of Parties.** Nothing in this Agreement shall be deemed to constitute any Party hereto as partner, agent or representative of the other Parties or to create any fiduciary relationship between the Parties.
- f) **Limitations.** Nothing in this Agreement shall limit the Company's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to the Company's tariffs as filed with the Commission, or the Commission's Standards for Electric Utility Service in the State of Hawaii, which currently are included in the Commission's General Order Number 7, as either may be amended from time to time.

- g) **Execution of Agreement; Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. Signatures may be provided in original (“wet”) form or by other means intended to preserve the original graphic and pictorial appearance of the signature, such as a photocopy. A copy of a Party’s signature shall be considered an “original” signature for purposes of this Agreement.

Superseding Sheet No. 49.39-K  
Effective June 1, 2022

Revised Sheet No. 49.39-K  
Effective March 1, 2023

**IN WITNESS WHEREOF**, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the date first set forth above.

**CUSTOMER BATTERY STORAGE-OPERATOR**

By: \_\_\_\_\_  
Signature Date

Name (Print): \_\_\_\_\_

Company Name  
(if applicable): \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

**MAUI ELECTRIC COMPANY**

By: \_\_\_\_\_ To be completed by Company \_\_\_\_\_  
Signature Date

Name (Print): \_\_\_\_\_ To be completed by Company \_\_\_\_\_

Title (if applicable): \_\_\_\_\_ To be completed by Company \_\_\_\_\_

**MAILING ADDRESS**

Hawaiian Electric Company  
Customer Energy Resources Division  
P.O. Box 2750 (AL18-SE)  
Honolulu, HI 96840  
HAWAIIAN ELECTRIC COMPANY, INC.  
Order No.