

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 2018-0165  
 )  
Instituting a Proceeding )  
To Investigate Integrated )  
Grid Planning. )  
\_\_\_\_\_ )

ORDER NO. 38481

APPROVING THE REVISED COMPETITIVE BIDDING FRAMEWORK

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APPROVING THE REVISED COMPETITIVE BIDDING FRAMEWORK

By this Order, the Public Utilities Commission ("Commission") approves the revised competitive bidding framework ("Revised Framework")<sup>1</sup> filed by HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED (collectively "Hawaiian Electric") for use in the first round of integrated grid planning ("IGP").<sup>2</sup>

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<sup>1</sup>The final version of the Revised Framework is attached as an appendix to this Order.

<sup>2</sup>The Parties to this proceeding are Hawaiian Electric, the DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, and the Intervenors: (1) LIFE OF THE LAND ("LOL"); (2) ENERGY ISLAND; (3) COUNTY OF HAWAII ("County"); (4) HAWAII PV COALITION ("Coalition"); (5) HAWAII SOLAR ENERGY ASSOCIATION ("HSEA"); (6) PROGRESSION HAWAII OFFSHORE WIND, LLC ("Progression"); (7) ULUPONO INITIATIVE, LLC ("Ulupono"); and (8) BLUE PLANET FOUNDATION ("Blue Planet").

I.

BACKGROUND

On July 12, 2018, the Commission opened this docket to investigate the integrated grid planning ("IGP") process.<sup>3</sup> On February 12, 2021, Hawaiian Electric filed the Updated Framework.<sup>4</sup> Hawaiian Electric explains that while the original Competitive Bidding Framework<sup>5</sup> "has served a valued purpose the last 14 years, it no longer reflects the current and future reality of procurements, including the technologies that need to be procured and the speed at which such procurements need to occur in order to meet the State's ambitious renewable energy goals."<sup>6</sup> Hawaiian Electric believes that the Updated Framework is a "necessary modernization" that "reflects current procurement practices while having the flexibility to

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<sup>3</sup>See Order No. 35569, "Instituting a Proceeding to Investigate Integrated Grid Planning," filed on July 12, 2018 ("Order No. 35569").

<sup>4</sup>Letter From: G. Shimokawa To: Commission Re: "Docket No. 2018-0165 - Instituting a Proceeding to Investigate Integrated Grid Planning - Submission of an Updated Framework for Competitive Bidding; Exhibits 1-4; and Certificate of Service," filed on February 12, 2021 ("Updated Framework Filing"). Hereinafter, Exhibit 2 of the Updated Framework Filing shall be referenced as the "Updated Framework".

<sup>5</sup>See Docket No. 03-0372, Decision and Order No. 23121, "Exhibit A Framework for Competitive Bidding," filed on December 8, 2006 ("Original Framework").

<sup>6</sup>Updated Framework Filing at 1.

accommodate future procurement-related developments.”<sup>7</sup>

Hawaiian Electric explains how it developed the Updated Framework as part of the IGP process,<sup>8</sup> and summarizes the changes between the Original Framework and the Updated Framework.<sup>9</sup>

On April 21, 2021, the Commission issued Order No. 37740, establishing a procedural schedule to review the Updated Framework.<sup>10</sup>

Pursuant to Order No. 37740, on May 18, 2021, the Commission received comments on the Updated Framework from: the County of Hawaii;<sup>11</sup> LOL;<sup>12</sup> the Consumer Advocate;<sup>13</sup> Joint Comments from LOL, Progression, and Ulupono

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<sup>7</sup>Updated Framework Filing at 1.

<sup>8</sup>See Updated Framework Filing, Exhibit 1.

<sup>9</sup>See Updated Framework Filing, Exhibit 4.

<sup>10</sup>See Order No. 37740, “Establishing a Procedural Schedule to Review the Updated Competitive Bidding Framework,” filed on April 21, 2021 (“Order No. 37740”).

<sup>11</sup>See “County of Hawaii’s Comments on Hawaiian Electric Companies’ Updated Framework; and Certificate of Service,” filed on May 18, 2021 (“County Comments”).

<sup>12</sup>See “Life of the Land Comments on the Hawaiian Electric Companies Updated Competitive Bidding Framework; and Certificate of Service,” filed on May 18, 2021 (“LOL Comments”).

<sup>13</sup>See “Division of Consumer Advocacy’s Comments on the Updated Framework; and Certificate of Service,” filed on May 18, 2021 (“Consumer Advocate Comments”).

(together "Joint Parties");<sup>14</sup> and joinder to the Joint Comments from Blue Planet, HSEA and the Coalition ("Second Joint Parties").<sup>15</sup>

On May 27, 2021, Hawaiian Electric filed reply comments.<sup>16</sup> Hawaiian Electric also revised the Updated Framework in response to comments, and attached that revised version (i.e., the Revised Framework).<sup>17</sup> Hawaiian Electric also provided a summary table of its responses to party comments.<sup>18</sup>

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<sup>14</sup>See "Joint Comments on the Hawaiian Electric Companies Updated Competitive Bidding Framework; and Certificate of Service," filed on May 18, 2021 ("Joint Comments").

<sup>15</sup>See "The Joint Parties' Joinder to Ulupono Initiative LLC's Comments on the Hawaiian Electric Companies' Updated Competitive Bidding Framework; and Certificate of Service," filed on May 18, 2021 ("Joinder").

<sup>16</sup>See Letter From: R. Dayhuff Matsushima To: Commission Re: "Docket No. 2018-0165, Instituting a Proceeding to Investigate Integrated Grid Planning, Hawaiian Electric Companies' Response to Parties' Comments Regarding Updated Competitive Bidding Framework," filed on May 27, 2021 ("Hawaiian Electric Response").

<sup>17</sup>See Hawaiian Electric Response, Attachment. The final version of the Revised Framework, attached as an appendix to this Order, accepts Hawaiian Electric's proposed redlines, removes all comments, and adopts the title "Integrated Grid Planning Framework for Competitive Bidding." It also makes formatting changes, corrects internal references, removes references to specific dockets in Section II.A.2.e. to reduce confusion and the possibility of inadvertent omissions, provides a definition for the EPRM, and replaces references to the MPIR with the EPRM. These changes are reflected in the attached redlined version of the appendix.

<sup>18</sup>See Hawaiian Electric Response, Summary Table ("Summary Table").

II.

POSITIONS OF THE PARTIES

A.

County of Hawaii

The County believes the Commission should approve the Updated Framework, and makes the following suggestions. First, the County supports one competitive bidding "track for managing long-term and short-term planning needs[,]" but believes that "the process should accommodate stage-gates for evaluating advancing technologies which prove themselves operationally effective for the short-term (operational reserves and energy) and are capable of scaling up for long term planning too."<sup>19</sup> The County explains that long-term planning should "factor in successes from advancing technology realized from either Hawaii's own short-term planning projects or other jurisdictions successes with new [distributed energy resources ("DER")] technologies."<sup>20</sup>

Second, the County "strongly supports greater transparency and information sharing around interconnection costs for project scoping."<sup>21</sup> Finally, the County suggests that the Updated Framework should be aligned with Commission's

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<sup>19</sup>See County Comments at 2-3 (citation omitted).

<sup>20</sup>See County Comments at 3.

<sup>21</sup>See County Comments at 3.

performance-based regulation ("PBR") process, saying that "it would be optimal to include scorecard metrics into the Commissions' review process for the IGP framework that ascertain the effectiveness of the competitive bidding process."<sup>22</sup>

B.

LOL

LOL proposes a number of changes to the Updated Framework. First, LOL suggests adding a new provision to Section II.A.3. regarding waivers that states: "A contract must be submitted within 5 years of the approval of a waiver, if not, then the waiver becomes null and void. When the contract is submitted, the waiver becomes part of the contract proceeding, and if the Commission rejects the contract, the waiver is null and void."<sup>23</sup> Second, LOL suggests a caveat for the statement in Section II.C.I. that says utilities and stakeholders "must work cooperatively to identify and adhere to appropriate timelines which may from time to time need to be expedited" to make clear that stakeholders are not endorsing automatic approvals or giving up any due process rights.<sup>24</sup> Third, LOL argues that "[i]f the

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<sup>22</sup>See County Comments at 3-4.

<sup>23</sup>See LOL Comments at 1.

<sup>24</sup>See LOL Comments at 1.

utility is proposing a self-build with access to utility sites and an [Request for Proposal ("RFP")] without access to utility sites, the utility has an edge."<sup>25</sup> LOL proposes that the utility should clearly identify descriptions of nearby sites that third parties can build on in the RFP, and that "[a]ny remaining utility advantage should be offset by non-price evaluation criteria."<sup>26</sup> LOL proposes that the non-price threshold criteria covered by Section IV.E.9. should include additional criteria such as "the number, size, and location of other energy facilities in the same general geographic area, and the alternative uses of the property."<sup>27</sup> LOL proposes adding the following transparency-related language to Section IV.H.: "[a]fter the winning bids are identified in the bidding process, the Commission may disclose the size, location, cost, and technology of non-winning bids with non-competitor IGP and RFP parties/participants."<sup>28</sup>

Finally, LOL suggests that RFPs issued pursuant to the Updated Framework should "identify the process to be followed if

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<sup>25</sup>See LOL Comments at 1.

<sup>26</sup>See LOL Comments at 1-2.

<sup>27</sup>See LOL Comments at 2.

<sup>28</sup>See LOL Comments at 2.



the operation of the third-party facility causes substantial harm to non-parties or the public.”<sup>29</sup>

C.

Consumer Advocate

The Consumer Advocate recommends that the Commission adopt the Updated Framework with certain proposed revisions, related to PBR, the waiver procedure, and transparency. First, the Consumer Advocate suggests that paragraphs C. and D. of Section VII of the Updated Framework should be revised to remove the focus on capital costs and be consistent with approved PBR objectives, such as including programs and other services in Contingency Plans,<sup>30</sup> in addition to capital projects.<sup>31</sup> Second, the Consumer Advocate suggests that, given ongoing litigation, the Commission may need to further consider waiver procedures set forth in Section II.A of the Updated Framework.<sup>32</sup> Third, the Consumer Advocate recommends that the Framework provide greater transparency surrounding reports provided by the

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<sup>29</sup>See LOL Comments at 2.

<sup>30</sup>Unless otherwise defined, all capitalized terms used in this Order shall have the meaning defined in the Original Framework, the Updated Framework, or the Revised Framework.

<sup>31</sup>See Consumer Advocate Comments at 2.

<sup>32</sup>See Consumer Advocate Comments at 2-3.

Independent Observer.<sup>33</sup> Ultimately, the Consumer Advocate recommends that the Commission approve the Updated Framework for use in IGP, and more broadly as a replacement for the Original Framework.<sup>34</sup>

D.

Joint Parties

The Joint Parties recommend that the Commission approve the Updated Framework, with modifications, and especially to the extent that the Commission adopts the IGP process as a replacement of the IRP Framework.<sup>35</sup> The Joint Parties believe the Updated Framework should set parameters for a competitive procurement process that are efficient streamlined, timely, transparent, fair and equitable, and credible, and should clearly embody those characteristics to all concerned.<sup>36</sup> Although the Joint Parties ultimately support adopting the Updated Framework, both in IGP and beyond, they recommend that the Commission adopt four revisions.

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<sup>33</sup>See Consumer Advocate Comments at 3.

<sup>34</sup>See Consumer Advocate Comments at 3.

<sup>35</sup>See Joint Comments at 2-3.

<sup>36</sup>See Joint Comments at 2-3.

First, the Joint Parties recommend that the Commission remove the utility self-build option from the Updated Framework, because "allowing a self-build option for Hawaiian Electric creates, at least, the impression among potential bidders to RFPs that there is not a level playing field[.]"<sup>37</sup> The Joint Parties also believe that dispute resolution procedures in the RFP documents, the Original Framework, and the Updated Framework "do not appear to provide an effective means of addressing any potential or actual or perceived predisposition in favor of a self-build proposal."<sup>38</sup> The Joint Parties acknowledge that eliminating the self-build option entirely would be drastic, and instead recommend that Hawaiian Electric seek Commission approval if it plans to issue an RFP for a System Resource and desires to submit a self-build proposal, and only submit a self-build proposal after the Commission has granted approval.<sup>39</sup>

Second, recognizing the benefits and improvements that stakeholder participation has brought to IGP, the Joint Parties suggest that stakeholders could similarly help the Commission determine whether to grant a waiver.<sup>40</sup>

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<sup>37</sup>Joint Comments at 5.

<sup>38</sup>Joint Comments at 5-6.

<sup>39</sup>See Joint Comments at 6.

<sup>40</sup>See Joint Comments at 6-7.

Third, while not directly related to the Updated Framework, the Joint Parties believe that the Commission should reexamine the RFP process and include "key stakeholder participation in the design process[,]" which "could significantly improve the Commission's, the Consumer Advocate's and the stakeholders' review time of draft RFPs, while also providing the market with greater confidence in the overall procurement process."<sup>41</sup>

Fourth, the Joint Parties believe that proposed additional language in Section IV.B.1.f is unclear.<sup>42</sup> Specifically, the Joint Parties are unsure "whether the language is intended to convey (i) that the Commission has discretion to determine whether a Commission approval process is required for a contract or selected self-build project, or (ii) that the Commission may require a self-build project."<sup>43</sup> In either case, the Joint Parties do not support this language and recommend it be removed.<sup>44</sup>

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<sup>41</sup>See Joint Comments at 7-8.

<sup>42</sup>See Joint Comments at 8.

<sup>43</sup>Joint Comments at 8.

<sup>44</sup>See Joint Comments at 8.

E.

Joinder

The Second Joint Parties expresses specific support for the changes to the Updated Framework recommended in the Joint Comments.<sup>45</sup> The Second Joint Parties also believe “the planning and procurement process for DERs should not be restricted to centralized RFPs, but must also include broad-based, customer-centric tariff-based programs and advanced rate designs (i.e., the ‘programs’ and ‘pricing’ prongs of the ‘three P’s’).”<sup>46</sup> Finally, the Second Joint Parties recommend that Hawaiian Electric significantly improve its coordination between the IGP process the development of program and pricing solutions in the DER Docket, i.e., Docket No. 2019-0323.<sup>47</sup>

F.

Hawaiian Electric Response

According to Hawaiian Electric, the Updated Framework is the product of extensive stakeholder input and collaborative work done in an IGP working group, the Competitive Procurement

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<sup>45</sup>See Joinder at 1.

<sup>46</sup>See Joinder at 1-2.

<sup>47</sup>See Joinder at 2.

Working Group ("CPWG").<sup>48</sup> Hawaiian Electric states that "[t]he CPWG's goal was to develop a fair, efficient, streamlined procurement process to facilitate the competitive solicitation of system resources in alignment with Hawaiian Electric's grid plans as identified through the IGP process[,] and that the modifications incorporated into the Updated Framework "took into consideration feedback offered by CPWG stakeholders through rigorous discussion and review during monthly meetings and drafts provided over the course of 2020."<sup>49</sup> Hawaiian Electric states that, in response to the stakeholder comments received in this docket, it re-examined the Updated Framework and provided clarifying redlines and comments in the Revised Framework, "that strengthen the language and intent of the document."<sup>50</sup>

Hawaiian Electric cautions "that certain comments that were made by the Parties may be overly prescriptive or better suited for further discussion in other dockets or forums."<sup>51</sup> Hawaiian Electric identifies four such areas. First, Hawaiian Electric states that the Joint Parties' concerns related to DER technologies and their relationship to

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<sup>48</sup>See Hawaiian Electric Response at 1.

<sup>49</sup>Hawaiian Electric Response at 1-2.

<sup>50</sup>Hawaiian Electric Response at 1-2.

<sup>51</sup>Hawaiian Electric Response at 2.

IGP and procurements, and the County's interest in separate short- and long-term procurement tracks both fall within the scope of the new Stakeholder Technical Working Group.<sup>52</sup>

Second, Hawaiian Electric states that matters related to interconnection are being addressed in Docket No. 2021-0024.<sup>53</sup>

Third, Hawaiian Electric believes the County's concern about "linking capital formation metrics that evaluate MW capacity and market value of non-utility generation compared to utility generation over time" is more appropriately considered in the Commission's PBR proceeding, in Docket 2018-0088.<sup>54</sup>

Fourth, Hawaiian Electric states that the Revised Framework "is intended to be a broad framework for procurement, rather than a prescriptive document. Details for specific procurements and power purchase agreements would be addressed in specific RFPs."<sup>55</sup> Finally, Hawaiian Electric states that the waiver criteria set forth in Section II.A.2 are unchanged between the Updated Framework and the Revised Framework.<sup>56</sup>

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<sup>52</sup>See Hawaiian Electric Response at 2.

<sup>53</sup>See Hawaiian Electric Response at 2.

<sup>54</sup>Hawaiian Electric Response at 3.

<sup>55</sup>Hawaiian Electric Response at 3.

<sup>56</sup>See Hawaiian Electric Response at 3.

### III.

#### DISCUSSION

The Commission appreciates the time and effort Hawaiian Electric and IGP stakeholders have devoted to the CPWG since March of 2019.<sup>57</sup> The CPWG's main goal was to develop a fair, efficient, and streamlined procurement process to use in IGP.<sup>58</sup> The result of this work is the Revised Framework. Although commenters recommend both general and specific modifications, all recommend that the Commission approve the Updated Framework.<sup>59</sup> Although the Revised Framework may not satisfy all of the Parties' and stakeholders' concerns, the Commission believes that it provides a solid foundation for the first round of IGP. Moreover, any outstanding concerns with the Revised Framework can either be addressed in the resulting IGP RFPs or in a subsequent IGP iteration.

Therefore, the Commission approves Hawaiian Electric's request to use the Revised Framework for the first round of IGP. The Commission does so with the understanding that specific

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<sup>57</sup>See <https://www.hawaiianelectric.com/clean-energy-hawaii/integrated-grid-planning/stakeholder-engagement/working-groups/competitive-procurement-documents>.

<sup>58</sup>See Hawaiian Electric Response at 1-2.

<sup>59</sup>The Commission notes that the commenters did not have an opportunity to comment on the changes Hawaiian Electric made in the Revised Framework, in response to comments on the Updated Framework.



IGP RFP language is yet to be written, and will be subject to Commission review. The Commission encourages all stakeholders to assist Hawaiian Electric as it develops its IGP RFPs to ensure that their concerns are addressed. The Commission also understands that experience with IGP may require further changes to the Revised Framework, and will consider proposals for changes after the IGP RFPs are submitted and as a part of the next round of IGP.

Additionally, the Commission notes that numerous revisions were incorporated into the proposed procurement process for the Stage 3 RFPs for Hawaii Island, Oahu, and Maui.<sup>60</sup> These revisions include: (1) instating an Independent Engineer to oversee technical aspects of the Stage 3 RFPs;<sup>61</sup> (2) requiring a minimum community benefits package as part of an overall community engagement and outreach plan;<sup>62</sup> (3) modifications to the order of the bidding and interconnection process resulting in a rearrangement of touchpoints with the Commission related to

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<sup>60</sup>See "Hawaiian Electric Companies' Third Draft of Stage 3 Request for Proposals for Hawaii Island," filed on May 31, 2022 in Docket No. 2017-0352 ("Third Draft Stage 3 RFP for Hawaii Island"); see also "Hawaiian Electric Companies' Draft Stage 3 Oahu and Maui RFPs and Model Contracts," filed on May 2, 2022 in Docket No. 2017-0352 ("Stage 3 RFPs for Hawaii Island, Oahu, and Maui").

<sup>61</sup>See Third Draft Stage 3 RFP for Hawaii Island, Exhibit 1, at 2.

<sup>62</sup>See Third Draft Stage 3 RFP for Hawaii Island, Exhibit 1, at 2-3.

project approval;<sup>63</sup> and (4) introducing a performance incentive mechanism ("PIM") based on Hawaiian Electric's performance in timely completion of interconnection studies.<sup>64</sup> Flexibility is important in making these process improvements. Accordingly, the Commission will not require these revisions to be included in the Competitive Bidding Framework prior to its adoption for this round of IGP. The Commission will monitor the impacts of these modifications and determine whether the Framework requires further updates to codify any of these elements.

Finally, in response to the Joint Parties who believe that the Revised Framework must be modified if it is intended to replace the IRP framework, the Commission believes that IGP may ultimately replace or obviate the IRP framework, but it is too soon to make that determination before the first IGP cycle is complete. Allowing one full IGP cycle will provide the time needed to more fully understand every facet of IGP, and to consider any additional proposed changes to the Framework.

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<sup>63</sup>See "Hawaiian Electric Companies' Development of Stage 3 Requests for Proposals for Hawaii Island," filed on October 15, 2021, in Docket No. 2017-0352, Exhibit 1, at 5-6.

<sup>64</sup>See Docket No. 2018-0088, Decision and Order No. 38429, filed on June 17, 2022, at 28-30.

IV.

ORDERS

THE COMMISSION ORDERS:

1. The Revised Framework is approved for use in the first round of IGP.

DONE at Honolulu, Hawaii JUNE 30, 2022.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By James P. Griffin, Chair      By Jennifer M. Potter, Commissioner  
James P. Griffin, Chair      Jennifer M. Potter, Commissioner

APPROVED AS TO FORM:

Mike S. Wallerstein  
Mike S. Wallerstein  
Commission Counsel

By Leodolof R. Asuncion, Jr., Commissioner  
Leodolof R. Asuncion, Jr., Commissioner

2018-0165:mt

**APPENDIX**  
**INTEGRATED GRID PLANNING**  
**FRAMEWORK FOR COMPETITIVE BIDDING**  
**Adopted on June 30, 2022**

**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**

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**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION**

**INTEGRATED GRID PLANNING  
FRAMEWORK FOR COMPETITIVE BIDDING  
June 30, 2022**

**I. DEFINITIONS**

As used in this Framework, unless the context clearly requires otherwise:

“Affiliate” means any person or entity that possesses an “affiliated interest” in a utility as defined by Section 269-19.5, Hawai‘i Revised Statutes (“HRS”), including a utility’s parent holding company but excluding a utility’s subsidiary or parent which is also a regulated utility.

“Agreement” means an agreement or contract for an electric utility to purchase a System Resource from a third party, pursuant to the terms of this Framework.

“CIP Approval Requirements” means the procedure set forth in the Commission’s General Order No. 7, Standards for Electricity Utility Service in the State of Hawaii, Paragraph 2.3(g), as modified by In re Kauai Island Util. Coop., Docket No. 03-0256, Decision and Order No. 21001, filed on May 27, 2004, and In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 03-0257, Decision and Order No. 21002, filed on May 27, 2004. “In general, [the] commission’s analysis of capital expenditure applications involves a review of whether the project and its costs are reasonable and consistent with the public interest, among other factors. If the commission approves the [electric] utility’s application, the commission in effect authorizes the utility to commit funds for the project, subject to the proviso that ‘no part of the project may be included in the utility’s rate base unless and until the project is in fact installed, and is used and useful for public utility purposes.’” Decision and Order No. 21001, at 12; and Decision and Order No. 21002, at 12.

“Code of Conduct” means a written code developed by the host electric utility and approved by the Commission to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its Affiliate seeks to advance its own System Resource proposal in response to an RFP. The “Code of Conduct” is more fully described in Part IV.H.9.c of the Framework.

“Commission” means the Public Utilities Commission of the State of Hawai‘i.

“Competitive bid” or “competitive bidding” means the mechanism established by this Framework for acquiring a future System Resource or a block of System Resources by an electric utility.

**“Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, State of Hawai‘i.**

**“Contingency Plan” means an electric utility’s plan to provide either temporary or permanent solutions to address a reliability or statutory need (including, for example, the need to comply with reliability standards as discussed in Hawai‘i Revised Statutes (“HRS”) §§ 269-0141 through 269-0144 and with the State of Hawai‘i’s Renewable Portfolio Standards law, as codified in HRS §§ 269-91 through 269-95) as may result from an actual or expected failure of an RFP process to produce a project selected in an RFP or a viable project proposal (including any project not completed or delayed). The utility’s Contingency Plan may be different from the utility’s bid. The term “utility’s bid,” as used herein, refers to a utility’s proposal advanced in response to a System Resource need that is addressed by its RFP.**

**“Electric utility” or “utility” means a provider of electric utility service that is regulated by and subject to the Commission’s jurisdiction pursuant to Chapter 269, Hawai‘i Revised Statutes.**

**“EPRM” means the Exceptional Project Recovery Mechanism adopted by the Commission in Docket No. 2018-0088.**

**“Framework” means the Integrated Grid Planning Framework for Competitive Bidding adopted by the Commission in Docket No. 2018-0165, on June 30, 2022.**

**“Grid Needs” means the specific grid services (including but not limited to capacity, energy and ancillary services) identified in the Grid Needs Assessment, including transmission and distribution system needs that may be addressed through a Non-Wires Alternative. Grid Needs that are subject to the Framework generally does not apply to utility equipment (i.e., transmission and distribution infrastructure, flexible AC transmission devices, materials, etc.) that are normally procured through the utility’s procurement process for goods and services.**

**“Grid Needs Assessment” means the process step in the IGP where the technical analyses are conducted to determine the generation, transmission, and distribution grid service(s) needs to meet state policy objectives, reliability standards, among other goals, and presented to the Commission for review and approval or acceptance.**

**“IGP” or “Integrated Grid Planning” means an electric utility’s planning process that aims to integrate the Grid Needs Assessment planning analyses with the sourcing of market-based solutions, which may include competitive bidding, to meet near and long-term customer needs.**

**“Independent Observer” means the neutral person or entity retained by the electric utility or Commission to monitor the utility’s competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.**

“Non-Wires Alternative” means an electricity grid project that uses non-traditional transmission and distribution (T&D) solutions, such as distributed generation (DG), energy storage, energy efficiency (EE), demand response (DR) and grid software and controls, to defer or avoid the need for conventional transmission and/or distribution infrastructure investments.

“Provider” means a System Resource provider that is not subject to the Commission’s regulation or jurisdiction as a public utility including, for example, developers and aggregators.

“PURPA” means the Federal Public Utility Regulatory Policies Act of 1978, as amended.

“QF” means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 Code of Federal Regulations §§ 292.201 - 292.211. See also 18 Code of Federal Regulations § 291.201(b)(1) (definition of “qualifying facility”).

“RFP” means a written request for proposal issued by the electric utility to solicit bids from interested third-parties, and where applicable from the utility or its Affiliate, to supply a future System Resource or a block of System Resources to the utility to meet the utility’s Grid Needs pursuant to the competitive bidding process.

“System Resources” are the specific resources that will be acquired to meet the Grid Needs.

## **II. CONTEXT FOR COMPETITIVE BIDDING**

### **A. USE OF COMPETITIVE BIDDING**

1. This Framework applies to electric utilities regulated by and subject to the Commission’s jurisdiction pursuant to Chapter 269, Hawai‘i Revised Statutes and any participants in any competitive bidding process that this Framework is applied to.
2. Competitive bidding, unless otherwise determined by the Commission, is established as the required mechanism for acquiring System Resources necessary to meet the Grid Needs. The following conditions and possible exceptions apply:
  - a. Competitive bidding will benefit Hawai‘i when it: (i) facilitates an electric utility’s acquisition of System Resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new System Resources that are overall lower in cost, better performing or installed sooner than the utility could otherwise achieve; (iii) does not negatively impact the reliability and resilience or unduly encumber the operation or maintenance of Hawai‘i’s unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed System Resources and



- allowing the utility to adjust to changes in circumstances; (v) is consistent with the IGP process; and (vi) is consistent with Hawai‘i’s renewable energy portfolio standards.
- b. Under certain circumstances, to be considered by the Commission in the context of an electric utility’s request for waiver under Part II.A.3, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed System Resources in a timely fashion; (ii) when the utility and its customers will benefit more if the System Resource is owned by the utility rather than by a third-party (for example, when system reliability or safety will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing System Resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IGP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.
  - c. Other circumstances that could qualify for a waiver include (but are not limited to): (i) the expansion or repowering of existing utility generating units or other System Resources; (ii) the acquisition of near-term System Resources for short-term needs; (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; (iv) the immediate acquisition of System Resources needed to respond to an emergency situation; or (v) the lack of a sufficient market to support a competitive procurement.
  - d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in the acquisition of a System Resource, leading to a lower cost to the utility’s general body of customers, increase the reliability of a utility’s system to the utility’s general body of customers, facilitate the transition to renewable generation, or is otherwise in the public interest.
  - e. This Framework does not apply to any procurements ongoing, any existing programs or tariffs, or any projects submitted for approval to the Commission before this Framework was adopted.
  - f. This Framework also does not apply to System Resources with respect to: (i) System Resources with a net output of 5 MW or less on the island of O‘ahu, 2.5 MW or less on the islands of Maui and Hawai‘i, and 250 kW or less on Moloka‘i and Lāna‘i; (ii) System Resources at substations and other sites installed by the

utility on a temporary basis to help address reserve margin shortfalls or to enhance resiliency during emergency operations; (iii) customer-sited, utility-owned System Resources that have been approved by the Commission; (iv) System Resources under 1 MW installed for “proof-of-concept” or demonstration purposes; (v) extensions of an Agreement for three years or less on substantially the same terms and conditions as the Agreements and/or on more favorable terms and conditions if it can be demonstrated that the extensions are in the public interest; (vi) modifications of an Agreement to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air permit modification if it can be demonstrated that the modifications are in the public interest; and (vii) renegotiations of Agreements in anticipation of their expiration, approved by the Commission.

- g. When a competitive bidding process will be used to acquire a future System Resource or a block of System Resources, the System Resources acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the System Resource, the characteristics of the System Resource required by the utility, and the control the utility needs to exercise over operation and maintenance of such System Resource in order to reasonably address system integration and safety concerns.

3. The procedure for seeking a waiver is as follows:

- a. For all proposed projects included in, or consistent with, identified Grid Needs developed through a Grid Needs Assessment that have not yet been filed with the Commission for approval or acceptance as of the effective date of this Framework, and are subject to the Framework pursuant to the terms set forth herein, any waiver request shall be submitted to the Commission for approval no later than the time the application for approval of such project is submitted to the Commission.
- b. An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as soon as practicable such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.
- c. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.
- d. Proposed projects included in, or consistent with, a Grid Needs

Assessment conducted prior to the effective date of this Framework, proposed projects procured under a previously approved or accepted mechanism, or projects being submitted under approved programs and/or tariffs, shall not be required to seek a waiver of this Framework and this Framework shall not apply to such projects.

4. Exemption - ownership structure of an electric utility. Upon a showing that an entity has an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new projects through competitive bidding, the Commission will exempt such entity from this Framework.

## **B. SCOPE OF COMPETITIVE BIDDING**

1. An electric utility's Grid Needs identified in a Grid Needs Assessment that is reviewed and approved or accepted by the Commission, shall inform the proposed scope of any RFP, or group of RFPs to be developed for the identified System Resources to be procured. This Framework defines which System Resource or block of System Resources are subject to competitive bidding.
2. Competitive bidding shall enable the comparison of a wide range of System Resource options that are capable individually or as a portfolio of meeting the specific requirements of the RFPs.
3. Each electric utility shall take steps to provide notice of its RFPs, and to encourage participation from a full range of prospective bidders. PURPA qualifying facilities, Providers, the host utility, and its Affiliates, and other utilities shall be eligible to participate in any RFP seeking System Resources.
4. Competitive bidding processes may vary, provided those processes are consistent with this Framework. An electric utility may establish a separate process (such as a "set side" (for example, a special program approved by the Commission, i.e. the Phase 2 Community Based Renewable Energy tariff program for projects under 250 kW), separate RFP process, or standard form RFP) to acquire System Resources where such mechanisms or processes are deemed more suitable to meet IGP objectives.
5. RFP processes shall be flexible and shall not include unreasonable restrictions on sizes and types of projects considered, taking into account the appropriate Grid Needs identified in a Grid Needs Assessment.

### **C. RELATIONSHIP TO INTEGRATED GRID PLANNING**

1. The Grid Needs Assessment, presented to stakeholders and the Commission for review and comment, shall identify Grid Needs. The identified Grid Needs applicable to each electric utility shall continue to be used to set the strategic direction of resource planning by the electric utilities. In order for competitive bidding to be effectively and efficiently integrated into a utility's IGP process, stakeholders must work cooperatively to identify and adhere to appropriate timelines, which may from time to time need to be expedited.
2. This Framework is intended to complement the IGP process.
3. A determination shall be made by the Commission as to whether a competitive bidding process shall be used to acquire a System Resource or a block of System Resources that are identified as Grid Needs in the Grid Needs Assessment. Actual competitive bidding for System Resources will normally occur after the Grid Needs are identified, reviewed and accepted or approved by the Commission.
4. Integration of competitive bidding into the IGP process. The general approach to integration has four parts, in sequence:
  - a. The electric utility conducts a Grid Needs Assessment, which will identify those Grid Needs for which the utility proposes and recommends to procure through competitive bidding or other mechanisms or processes, and those resources for which the utility seeks a waiver from competitive bidding.
  - b. The Commission accepts, approves, modifies, or rejects the Grid Needs Assessment and the Grid Needs recommended to be acquired through this Framework.
  - c. The electric utility conducts a competitive bidding process, for System Resources to meet all or a portion of the Grid Needs recommended for competitive bidding identified in the Grid Needs Assessment step of the IGP process; such competitive bidding process shall include the advance filing of a draft RFP with the Commission.
  - d. The electric utility selects a winner from the bidders. But see Part II.C.6, below, concerning the process when there are no bidders worth choosing.
5. An evaluation of bids in a competitive bidding process may reveal desirable projects that were not included in the Grid Needs identified through the Grid Needs Assessment. These projects may be selected if it can be demonstrated that the project is consistent with an approved or accepted

Grid Needs Assessment and that such action is expected to benefit the utility and/or its customers.

6. An evaluation of bids in a competitive bidding process may reveal that the acquisition of any of the requested System Resources in the bid will not assist the utility in fulfilling its obligations to its customers. In such a case, the utility may determine not to acquire such System Resources and shall notify the Commission accordingly.

#### **D. MITIGATION OF RISKS ASSOCIATED WITH COMPETITIVE BIDDING**

1. To carry out its competitive bidding obligations consistently with its resource sufficiency obligations, the electric utility must conduct, or consider conducting, two types of activities: self-build and contingency planning. The utility's self-build obligation is addressed in Parts VI.A, VI.C and VI.E, below. The electric utility's contingency planning activities are discussed in Part II.D.2 below.
2. In consideration of the isolated nature of the island utility systems, the utility may use a Contingency Plan option to address a near-term reliability or statutory need as results from an actual or expected failure of an RFP process to produce a viable project proposal, or of a project selected in an RFP. The electric utility shall use prudent electric utility practices to determine the nature, amount, and timing of the contingency planning activities and take into account (without limitation) the cost of contingency planning and the probability of third-party failure. The electric utility's Contingency Plan may differ from that proposed in the electric utility's self-build bid. For each project that is subject to competitive bidding, the electric utility shall submit a report on the cost of contingency planning upon the Commission's request.
3. The electric utility may require bidders (subject to the Commission's approval with other elements of a proposed RFP) to offer the utility the option to purchase the project under certain conditions or in the event of default by the seller (i.e., the bidder), subject to commercially reasonable payment terms.

### **III. ROLES IN COMPETITIVE BIDDING**

#### **A. ELECTRIC UTILITY**

1. The role of the host electric utility in the competitive bidding process shall include:
  - a. Designing the solicitation process, establishing evaluation criteria consistent with its overall IGP process, and specifying timelines;
  - b. Designing the RFP documents and proposed forms of Agreements and other contracts;
  - c. Implementing and managing the RFP process, including communications with bidders;
  - d. Evaluating the bids received;
  - e. Selecting the bids for negotiations based on established criteria;
  - f. Negotiating contracts with selected bidders;
  - g. Determining, where and when feasible, the interconnection facilities and transmission and distribution upgrades necessary to accommodate new System Resources;
  - h. Competing in the solicitation process with a self-build option at its discretion; if approved by the Commission; and
  - i. Providing the Independent Observer with all requested information related to the relevant procurement.
  
2. Access to Utility Sites. The utility shall consider, on a case-by-case basis before an RFP is issued, offering at its sole discretion one or several utility-owned or controlled sites to bidders in an applicable competitive bidding process. The utility shall consider such factors as:
  - a. The anticipated specific non-technical terms of potential proposals.
  - b. The feasibility of the installation. Examples of the factors that may need to be examined in order to evaluate the feasibility of the installation may include, but are not be limited to the following:
    - (i) Specific physical and technical parameters of anticipated non-utility installations, such as the technology that may be installed, space and land area requirements, topographic, slope and geotechnical constraints,

**fuel logistics, water requirements, number of site personnel, access requirements, waste and emissions from operations, noise profile, electrical interconnection requirements, and physical profile; and**

- (ii) **How the operation, maintenance, and construction of each installation will affect factors such as security at the site, land ownership issues, land use and permit considerations (e.g., compatibility of the proposed development with present and planned land uses), existing and new environmental permits and licenses, impact on operations and maintenance of existing and future facilities, impact to the surrounding community, change in zoning permit conditions, and safety of utility personnel.**
- c. **The utility's anticipated future use of the site. Examples of why it may be beneficial for the utility to maintain site control may include, but are not limited to the following: (i) to ensure that System Resources can be constructed to meet system reliability requirements; (ii) to retain flexibility for the utility to perform crucial contingency planning for a utility owned option to back-up any potential unfulfilled commitments, if any, of third-party developers of System Resources; and (iii) to retain the flexibility for the utility to acquire the unique efficiency gains from expansion of existing transmission and distribution facilities or combined-cycle conversions and repowering projects of existing utility simple-cycle combustion turbines and steam fired generating facilities, respectively.**
- d. **The effect on competitive forces of denying bidders the ability to use the site, taking into account whether the unavailability of adequate sites for non-utility bidders gives the electric utility a competitive advantage.**
- e. **Where the utility has chosen not to offer a site to a third-party, the electric utility shall present its reasons, specific to the project and sites at issue, in writing to the Independent Observer and the Commission.**
- f. **Where the utility is using a utility-owned (in fee simple) site in a self-build option, the utility shall offer that utility-owned site to bidders, unless it is demonstrated to the Independent Observer and the Commission that doing so would be unreasonable.**
3. **The utility shall submit to the Commission for review and approval (subject to modification if necessary), a Code of Conduct described in Part IV.H.9.c, below, with the draft RFP. The utility shall follow the**

Code of Conduct prior to the commencement of the RFP drafting even while such Code of Conduct is pending before the Commission for review and approval.

4. The utility shall ensure third party bidders be provided the same type of information to develop proposals as is provided to those developing self-build or Affiliate-bid proposals.

## **B. HAWAII PUBLIC UTILITIES COMMISSION**

1. The primary role of the Commission is to ensure that: (a) each competitive bidding process conducted pursuant to this Framework is fair in its design and implementation so that selection is based on the merits; (b) System Resources selected through competitive bidding processes are consistent with the Grid Needs identified in the Commission approved/accepted Grid Needs Assessment; (c) the electric utility's actions represent prudent practices; and (d) throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.
2. The Commission may review, and at its option, approve or modify, each proposed RFP before it is issued, including any proposed form of contracts and other documentation that will accompany the RFP. The Commission may determine in certain applications that it may pre-approve a form RFP in lieu of approving each individual RFP. If a form RFP is approved, any modifications to such form, other than insertion of the specific Grid Needs being procured, would require approval by the Commission.
3. The Commission shall be the final arbiter of disputes that arise among parties in relation to a utility's competitive bidding process, to the extent described in Part V, below.
4. The Commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to this Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.7 shall not apply. In reviewing such contracts, the Commission may establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.
5. If the utility identifies its self-build project for Grid Needs as superior to third party bid proposals, the utility shall seek Commission approval in keeping with established CIP Approval Requirements.
6. The Commission shall review any complaint that the electric utility is not complying with the Framework, pursuant to Part V.



7. **Timely Commission review, approval, consent, or other action described in this Framework is essential to the efficient and effective execution of this competitive bidding process. Accordingly, to expedite Commission action in this competitive bidding process, whenever Commission review, approval, consent, or action is required under this Framework, the Commission may do so in an informal expedited process. The Commission hereby authorizes its Chair, or his or her designee (which designee may be another Commissioner, a member of the Commission staff, Commission hearings officer, or a Commission hired consultant), in consultation with other Commissioners, Commission staff, and the Independent Observer, to take any such action on behalf of the Commission.**

### **C. INDEPENDENT OBSERVER**

1. **An Independent Observer is required whenever the utility or its Affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, or when the Commission otherwise determines. Unless otherwise determined by the Commission, an Independent Observer will monitor the competitive bidding process and will report on the progress and results to the Commission, sufficiently early so that the Commission is able to address any defects and allow competitive bidding to occur in time to meet the utility's Grid Needs. Any interaction between a utility and bidder, including a utility's self-build team or Affiliate during the course of a solicitation process, beginning with the preparation of the RFP, shall be closely monitored by the Independent Observer. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP and as may be required by the Commission.**
2. **Independent Observer obligations. The Independent Observer will have duties and obligations in two areas: Advisory and Monitoring.**
  - a. **Advisory. The Independent Observer shall:**
    - (i) **Certify to the Commission that at each of the following steps, the electric utility's judgments created no unearned advantage for any bidder, or, when applicable, the electric utility or any Affiliate:**
      - (1) **Pre-qualification criteria;**
      - (2) **RFP;**
      - (3) **Model Agreements to be attached to the RFP;**
      - (4) **Selection criteria;**
      - (5) **Evaluation of bids;**
      - (6) **Final decision to purchase System Resources or proceed with self-build option when applicable; and**
      - (7) **Negotiation of contracts.**

- (ii) Advise the electric utility on its decision-making during, and with respect to, each of the electric utility's actions listed in the preceding item;
- (iii) Review stakeholder comments submitted in response to draft RFP and model Agreements and advise the utility on the consideration of proposed changes that may improve the process or results of the RFP;
- (iv) Report immediately to the electric utility's executive in charge of ensuring compliance with this Framework, and the Commission, any deviations from the Framework or violations of any procurement rules;
- (v) After the electric utility's procurement selection is completed, provide the Commission with:
  - (1) An overall assessment of whether the goals of the RFP were achieved, such goals to include without limitation the attraction of a sufficient number of bidders and the elimination of actual or perceived utility favoritism for its own or an Affiliate's project; and
  - (2) Recommendations for improving future competitive bidding processes.
- (vi) Be available to the Commission as a witness if required to evaluate a complaint filed against an electric utility for non-compliance with this Framework, or if required in a future regulatory proceeding if questions of prudence arise.

**b. Monitoring. The Independent Observer shall:**

- (i) Monitor all steps in a competitive bidding process, beginning upon Commission's approval or acceptance of the Grid Needs Assessment;
- (ii) Monitor communications (and communications protocols) with bidders;
- (iii) Monitor adherence to Codes of Conduct;
- (iv) Monitor contract negotiations with bidders;

- (v) Monitor all interactions between the electric utility and any bidder during all events affecting a solicitation process; and
  - (vi) Report to the Commission on monitoring results during each stage of the competitive process sufficiently early so that the Commission can correct defects or eliminate uncertainties without endangering project milestones.
- 3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.
- 4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.
- 5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:
  - a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;
  - b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;
  - c. Have the necessary experience and familiarity with utility modeling capability, transmission and/or distribution system planning, operational characteristics, and other factors that affect project selection;
  - d. Have a working knowledge of common operational, technical and contract terms applicable to System Resources as well as appropriate contract negotiation processes applicable to System Resource procurement;
  - e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and
  - f. Demonstrate impartiality.
- 6. Selection and contracting. As ordered or directed by the Commission, the electric utility or the Commission shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by prospective participants in the competitive

bidding process); (b) comply with further orders or direction from the Commission as to the final list of qualified candidates; and (c) select an Independent Observer from among the final list of qualified candidates. The contract with the Independent Observer shall be acceptable to the electric utility and the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. In the event the electric utility contracts with the Independent Observer, and accrues carrying costs on the deferred costs at the utility's allowance for funds used during construction ("AFUDC") rate, applied monthly on the deferred costs (including AFUDC), the utility shall recover prudently incurred Independent Observer costs and related carrying costs upon Commission approval through a Commission approved regulatory process or mechanism.

7. As part of the RFP design process, the utility shall develop procedures to be included in the RFP by which any participant in the competitive bidding process may present to the Commission, for review and resolution, positions that differ from those of the Independent Observer (i.e., in the event the Independent Observer makes any representations to the Commission upon which the participant does not agree).

#### **IV. THE REQUEST FOR PROPOSALS PROCESS**

##### **A. GENERAL**

1. Competitive bidding shall be structured and implemented in a way that facilitates an electric utility's acquisition of System Resources identified in a utility's Grid Needs Assessment. Direct costs and benefits incurred or received by the utility and its customers shall be taken into account in the bid evaluation and selection process.
2. Competitive bidding shall be structured and implemented in a flexible and efficient manner that promotes electric utility system reliability by facilitating the timely acquisition of needed System Resources and allowing the utility to adjust to changes in circumstances.
  - a. The implementation of competitive bidding cannot be allowed to negatively impact reliability of the electric utility system.
  - b. The System Resources acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the

System Resources, the characteristics of the System Resources required by the utility, and the control the utility needs to exercise over operation and maintenance in order to minimize system integration concerns.

3. The competitive bidding process shall ensure that proposals and bidders are judged on the merits, without being unduly burdensome to the electric utilities or the Commission.
  - a. The competitive bidding process shall include an RFP and supporting documentation by which the utility sets forth the requirements to be fulfilled by bidders and describes the process by which it will: (i) conduct its solicitation; (ii) obtain consistent and accurate information on which to evaluate bids; (iii) implement a consistent and equitable evaluation process; and (iv) systematically document its determinations. The RFP shall also describe the role of the Independent Observer and bidders' opportunities for challenges and for dispute resolution.
  - b. When a utility advances its own project proposal (i.e., in competition with those offered by bidders) or accepts a bid from an Affiliate, the utility shall take all reasonable steps, including any steps required by the Commission, to mitigate concerns over an unfair or unearned competitive advantage that may exist or reasonably be perceived by other bidders or stakeholders.
4. If a Provider or Affiliate proposal is selected as a result of the RFP process, one or more contracts are the expected result. Proposed forms of Agreements and other contracts that may result from the RFP process shall be included with each RFP. The RFP shall specify whether any opportunity exists to propose or negotiate changes to the proposed form of Agreement or contract.

## **B. DESIGN OF THE COMPETITIVE BIDDING SOLICITATION PROCESS**

1. The competitive bidding solicitation process shall include the following:
  - a. Design of the RFP and supporting documents;
  - b. Issuance of the draft and final RFP;
  - c. Development and submission of proposals by bidders;
  - d. A "multi-stage evaluation process" to reduce bids down to a short list and/or "award group" as appropriate for a particular RFP (i.e., a process that may include, without limitation: (i) receipt of

- the proposals; (ii) completeness check; (iii) threshold or minimum requirements evaluation; (iv) initial evaluation including price screen/non-price assessment; (v) selection of a short list; (vi) detailed evaluation or portfolio development; and (vii) selection of final award group for contract negotiation);
- e. Contract negotiations (when a third-party bid is selected); and
  - f. Commission approval of any resulting contract or selected self-build project if required by the Commission.
2. The RFP shall identify any unique system requirements and provide information regarding the requirements of the utility, important resource attributes, desired options and criteria used for the evaluation. For example, if the utility values dispatchability or operating flexibility, the RFP shall: (a) request that a bidder offer such an option; and (b) explain how the utility will evaluate the impacts of dispatchability or operational flexibility in the bid evaluation process.
  3. The RFP (including the response package, proposed forms of Agreements and other contracts) shall describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, the general bid evaluation and selection criteria, the risk factors important to the utility, and, to the extent practicable, the schedule for all steps in the bidding process.
  4. The utility may charge bidders a reasonable fee, to be reviewed by the Independent Observer, for participating in the RFP process.
  5. Other Content of RFP. The RFP shall also contain:
    - a. The circumstances under which an electric utility and/or its Affiliates may participate;
    - b. An explanation of the procedures by which any person may present to the Commission positions that differ from those of the Independent Observer; and
    - c. A statement that if disputes arise under this Framework, the dispute resolution process established in this Framework will control.
  6. The process leading to the distribution of the RFP shall include the following steps (each step to be monitored and reported on by the Independent Observer), unless the Commission modifies this process for a particular competitive bid:

- a. The utility designs a draft RFP, then files its draft RFP and supporting documentation with the Commission;
  - b. The Commission holds a status conference, where the utility presents the details of the RFP and interested parties (which may include potential bidders) are provided the opportunity to ask questions regarding the draft RFP;
  - c. Interested parties submit comments on the draft RFP to the utility and the Commission;
  - d. The utility determines, with advice from the Independent Observer, whether and how to incorporate recommendations from interested parties in the draft RFP;
  - e. The utility submits its final, proposed RFP to the Commission for its review and approval (and modification if necessary) according to the following procedure:
    - (i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP.
    - (ii) The utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer's comments and recommendations.
7. A pre-qualification requirement is a requirement that a bidder must satisfy to be eligible to bid. A pre-qualification process may be incorporated in the design of some bidding processes, depending on the specific circumstances of the utility and its resource needs. Any pre-qualification requirements shall apply equally to independent bidders, the electric utility's self-build bid, and the bid of any utility's Affiliate.
8. As part of the RFP design process, the utility shall develop and specify the type and form of threshold criteria that will apply to all bidders, including the utility's self-build proposals. Examples of potential threshold criteria include requirements that bidders have site control, maintain a specified credit rating, and demonstrate that their proposed technologies are mature.

9. The RFP design process shall address credit requirements and security provisions, which apply to: (a) the qualification of bidders; and (b) bid evaluation processes.
10. The utility shall have the discretion to modify the RFP or solicit additional bids from bidders after reviewing the initial bids, provided that such discretion is clearly identified in the RFP and any modification is reviewed by the Independent Observer and submitted to the Commission along with the Independent Observer's comments. The electric utility may issue the modified RFP thirty (30) days after the Commission has received these materials, unless the Commission directs otherwise.
11. All involved parties shall plan, collaborate, and endeavor to issue the final RFP within ninety (90) days from the date the electric utility submits the draft RFP to the Commission.

### **C. FORMS OF CONTRACTS**

1. The RFP shall include proposed forms of Agreements and other contracts, with commercially reasonable terms and conditions that properly allocate risks among the contracting parties in light of circumstances. The terms and conditions of the contracts shall be specified to the extent practical, so that bidders are aware of, among other things, performance requirements, pricing options, key provisions that affect risk allocation (including those identified in sub-paragraph 2 below), and provisions that may be subject to negotiation. Where contract provisions are not finalized or provided in advance of RFP issuance (e.g., because certain contract provisions must reflect features of the winning bidder's proposal such as technology or location), the RFP shall so indicate.
2. The provisions of a proposed contract shall address matters such as the following (unless inapplicable): (a) reasonable credit assurance and security requirements appropriate to an island system that reasonably compensates the utility and its customers if the project sponsor fails to perform; (b) contract buyout and project acquisition provisions; (c) in-service date delay and acceleration provisions; and (d) liquidated damage provisions that reflect risks to the utility and its customers.
3. The RFP shall specify which terms in the proposed forms of contract, if any, are not subject to negotiation or alternative proposals, subject to approval of the RFP by the Commission. Bidders may submit alternative language as part of their bids, provided that any such variation is not inconsistent with any identified Grid Needs.



#### **D. ISSUANCE OF THE RFP AND DEVELOPMENT OF PROPOSALS**

1. Each electric utility shall take steps to provide notice of its RFPs to, and encourage participation from, the full community of prospective bidders.
2. Bidders may be required to submit a “notice of intent to bid” to the electric utility.
3. The electric utility shall develop and implement a formal process to respond to bidders’ questions.
4. The electric utility may conduct a bidders’ conference.
5. The electric utility shall provide bidders with access to information through a website where it can post documents and information.
6. The process shall require all third-party bids to be submitted by the deadline specified in the RFP, except that the utility’s self-build bid shall be submitted one day in advance.
7. Bids may be deemed non-conforming if they do not meet the RFP requirements or provide all of the material information requested in an RFP. At the utility’s discretion, in consultation with the Independent Observer, the utility may elect to: (i) consider a non-conforming bid as eligible in the RFP provided it is not inconsistent with any identified Grid Needs; (ii) give proposals that are non-conforming additional time to remedy their non-conformity; or (iii) decline to consider any bid that is non-conforming.

#### **E. BID EVALUATION / SELECTION CRITERIA**

1. The utility, monitored by the Independent Observer, shall compare bids received.
2. The evaluation criteria and the respective weight or consideration given to each such criterion in the bid evaluation process may vary from one RFP to another.
3. The bid evaluation process shall include consideration of differences between bidders with respect to proposed contract provisions, and differences in anticipated compliance with such provisions, including but not limited to provisions intended to ensure:
  - a. System Resource and electric system reliability;
  - b. Appropriate risk allocations;

- c. Counter-party creditworthiness; and
  - d. Bidder qualification.
4. Proposals shall be evaluated based on a consistent and reasonable set of economic and fuel price assumptions, to be specified in the RFP.
  5. Both price and non-price evaluation criteria, shall be described in the RFP, and shall be considered in evaluating proposals.
  6. In evaluating competing proposals, all relevant incremental costs to the electric utility and its customers shall be considered. These may include transmission costs, distribution costs and system impacts, and the reasonably foreseeable balance sheet and related financial impacts of competing proposals.
  7. The impact of service(s) from System Resources that a utility already has on its system, in terms of reliability and dispatchability, and the impacts that increasing the amount of service(s) from new System Resources may have, in terms of reliability and dispatchability, shall be taken into account in the bid evaluation. The RFP shall specify the methodology for considering this effect. Such methodology shall not cause double-counting with the financial effects discussed in sub-paragraph 6, above, and sub-paragraph 8, below.
  8. The impact of System Resource costs on the utility's balance sheets, and the potential for resulting utility credit downgrades (and higher borrowing costs), may be accounted for in the bid evaluation. Where the utility has to restructure its balance sheet and increase the percentage of more costly equity financing in order to offset the impacts of purchasing service(s) from a third party owned System Resource on its balance sheet, this rebalancing cost shall also be taken into account in evaluating the total cost of a proposal for a new System Resource if third party owned, and it may be a requirement that bidders provide all information necessary to complete these evaluations. The RFP shall describe the methodology for considering financial effects.
  9. The type and form of non-price threshold criteria shall be identified in the RFP. Such threshold criteria may include, among other criteria, the following:
    - a. Project development feasibility criteria (e.g., siting status, ability to finance, environmental permitting status, commercial operation date certainty, engineering design, fuel supply status, bidder experience, participant acquisition strategy, conformance with utility information assurance and security policies and reliability of the technology);

- b. Project operational viability criteria (e.g., operation and maintenance plan, financial strength, environmental compliance, and environmental impact);
  - c. Operating profile criteria (e.g., dispatching and scheduling, coordination of maintenance, operating profile such as ramp rates, and quick start capability); and
  - d. Flexibility criteria (e.g., in-service date flexibility, expansion capability, contract term, contract buy-out options, fuel flexibility, and stability of the price proposal).
10. The weights for each non-price criterion shall be fully specified by the utility in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

#### **F. EVALUATION OF THE BIDS**

1. The evaluation and selection process shall be identified in the RFP, and may vary based on the scope of the RFP. In some RFP processes, a multi-stage evaluation process may be appropriate.
2. The electric utility shall document the evaluation and selection process for each RFP process for review by the Commission in approving the outcome of the process (i.e., in approving an Agreement or a utility self-build proposal).
3. A detailed system evaluation process, which uses models and methodologies that are consistent with those used in the utility's Grid Needs Assessment, may be used to evaluate bids. In anticipation of such evaluation processes, the RFP shall specify the data required of bidders.

#### **G. CONTRACT NEGOTIATIONS**

1. There may be opportunities to negotiate price and non-price terms to enhance the value of the contract for the bidder, the utility, and its customers. Negotiations shall be monitored and reported upon by the Independent Observer.

2. The electric utility may use competitive negotiations among short-listed bidders.

#### **H. FAIRNESS PROVISIONS AND TRANSPARENCY**

1. The competitive bidding process shall judge all bidders on the merits only.
2. During the bidding process, the electric utility shall treat all bidders, including any utility Affiliate, the same in terms of access to information, time of receipt of information, and response to questions.
3. A “closed bidding process” is generally anticipated, rather than an “open bidding process.” Under one type of closed bidding process, bidders are informed through the RFP of: (a) the process that will be used to evaluate and select proposals; (b) the general bid evaluation and selection criteria; and (c) the proposed forms of Agreements and other contracts. However, bidders shall not have access to the utility’s bid evaluation models, the detailed criteria used to evaluate bids, or information contained in proposals submitted by other bidders.
4. If the electric utility chooses to use a closed process:
  - a. The utility shall provide the Independent Observer, if an Independent Observer is required, with all the necessary information to allow the Independent Observer to understand the model and to enable the Independent Observer to observe the entire analysis in order to ensure a fair process; and
  - b. After the utility has selected a bidder, the utility shall meet with the losing bidder or bidders to provide a general assessment of the losing bidder’s specific proposal if requested by the losing bidder within seven (7) days of the selection.
5. The host electric utility shall be allowed to consider its own self-bid proposals in response to Grid Needs identified in its RFP.
6. Procedures shall be developed by the utility prior to the initiation of the bidding process to define the roles of the members of its various project teams, to outline communications processes with bidders, and to address confidentiality of the information provided by bidders. Such procedures shall be submitted in advance to the Independent Observer and the Commission for comment.
7. If the IGP process indicates that a competitive bidding process will be used to acquire a System Resource or a block of System Resources to meet all or a portion of the Grid Needs, then the utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process

guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.

8. If proposed, utility self-build projects or other utility-owned projects, or projects owned by an Affiliate of the host utility, are to be compared against third party proposals obtained through an RFP process. The Independent Observer shall monitor the utility's conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process, to the extent prescribed by the Commission. Specific tasks to be performed by the Independent Observer, including those as may be prescribed by the Commission, shall be identified by the utility in its proposed RFP submitted to the Commission for approval. The Independent Observer will review and track the utility's execution of the RFP process to ascertain that no undue preference is given to an Affiliate, the Affiliate's bid, or to self-build or other utility-owned facilities. The Independent Observer's review shall include, to the extent the Commission or the Independent Observer deems necessary, each of the following steps, in addition to any steps the Commission or Independent Observer may add: (a) reviewing the draft RFP and the utility's evaluation of bids, monitoring communications (and communications protocols) with bidders; (b) monitoring adherence to codes of conduct, and monitoring contract negotiations with bidders; (c) assessing the utility's evaluation of Affiliate bids, and self-build or other utility-owned projects; and (d) assessing the utility's evaluation of an appropriate number of other bids. The utility shall provide the Independent Observer with all requested information. Such information may include, without limitation, the utility's evaluation of the unique risks and advantages associated with the utility self-build or other utility-owned projects, including the regulatory treatment of construction cost variances (both underages and overages) and costs related to equipment performance, contract terms offered to or required of bidders that affect the allocation of risks, and other risks and advantages of utility self-build or other utility-owned projects to consumers. The Independent Observer may validate the criteria used to evaluate Affiliate bids and self-build or other utility-owned facilities, and the evaluation of Affiliate bids and self-build or other utility-owned facilities. In order to accomplish these tasks, the utility, in conjunction with the Independent Observer, shall propose methods for making fair comparisons (considering both cost and risks) between the utility-owned or self-build facilities and third-party facilities.
9. Where the electric utility is responding to its own RFP, or is accepting bids submitted by its Affiliates, the utility will take additional steps to avoid self-dealing in both fact and perception.

- a. The following tasks shall be completed as a matter of course (i.e., regardless of whether the utility or its Affiliate is seeking to advance a proposal), including: (i) the utility shall develop all bid evaluation criteria, bid selection guidelines, and the quantitative evaluation models and other information necessary for evaluation of bids prior to issuance of the RFP; (ii) the utility shall establish a website for disseminating information to all bidders at the same time; and (iii) the utility shall develop and follow a Procedures Manual, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the solicitation process.
  
- b. The following tasks shall be completed whenever the utility is seeking to advance a System Resource proposal, including: (i) the utility shall submit its self-build bid one day in advance of the deadline specified in the RFP, and provide substantially the same information in its proposal as other bidders; (ii) the utility shall follow the Code of Conduct; and (iii) the utility shall implement appropriate confidentiality agreements prior to the issuance of the RFP to guide the roles and responsibilities of utility personnel.
  
- c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:
  - (i) Whenever staffing and resources permit, the electric utility shall establish internally a separate project team to undertake the evaluation, with no team member having any involvement with the utility self-build option;
  
  - (ii) During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;
  
  - (iii) Throughout the bidding process, the electric utility shall treat all bidders, including its self-build bid and any electric utility Affiliate, the same in terms of access to information, time of receipt of information, and response to questions.
  
- d. A company officer, identified to the Independent Observer and the Commission, shall have the written authority and obligation

to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees after each competitive process ends.

- e. Further steps may be considered, as appropriate, or ordered by the Commission.
10. Where the utility seeks to advance its proposed facilities in addition to, or instead of other developers' bids in its RFP, its proposal must satisfy all the criteria applicable to non-utility bidders, including but not limited to providing all material information required by the RFP, and being capable of implementation.
  11. Bids submitted by Affiliates shall be held to the same contractual and other standards as projects advanced by other bidders.

## **I. TRANSMISSION INTERCONNECTION AND UPGRADES**

1. A winning bidder has the right to interconnect its System Resource to the electric utility's transmission and distribution system, and to have that transmission and distribution upgraded as necessary to accommodate the output of its System Resource.
2. With respect to procedures and methodologies for:
  - a. Designing interconnections;
  - b. Allocating the cost of interconnections;
  - c. Scheduling and carrying out the physical implementation of interconnections;
  - d. Identifying the need for transmission and distribution upgrades;
  - e. Allocating the cost of transmission and distribution upgrades; and
  - f. Scheduling and carrying out the physical implementation of transmission and distribution upgrades; the electric utility shall treat all bidders, including its own bid and that of any Affiliate, in a comparable manner.
3. Upon the request of a prospective bidder, the electric utility shall provide general information about the possible interconnection and transmission and distribution upgrade costs associated with project locations under consideration by the bidder.

4. To ensure comparable treatment, the Independent Observer shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

## **V. DISPUTE RESOLUTION PROCESS**

The Commission will serve as an arbiter of last resort, after the utility, Independent Observer, and bidders have attempted to resolve any dispute or pending issue. The Commission will use an informal expedited process to resolve the dispute within thirty (30) days, as described in Part III.B.7. There shall be no right to hearing or appeal from this informal expedited dispute resolution process. The Commission encourages affected parties to seek to work cooperatively to resolve any dispute or pending issue, perhaps with the assistance of an Independent Observer, who may offer to mediate but who has no decision-making authority. The utility and Independent Observer shall conduct informational meetings with the Commission and Consumer Advocate to keep each apprised of issues that arise between or among the parties.

## **VI. PARTICIPATION BY THE HOST UTILITY**

- A. Where the electric utility is addressing a system reliability issue or statutory requirement, the utility shall develop one or more project proposals that are responsive to the System Resource need identified in the RFP.
- B. If the utility opts not to propose its own project, the utility shall request and obtain the Commission's approval. In making this request, the utility shall demonstrate why relying on the market to provide the needed resource is prudent.
- C. Where the RFP process has as its focus something other than a reliability-based need, the utility may choose (or decline) to advance its own project proposal.
- D. If the RFP process results in the selection of non-utility (or third-party) projects to meet a system reliability need or statutory requirement, the utility shall develop and periodically update a Contingency Plan to address the risk that the third-party projects may be delayed or not completed. In this situation, the electric utility shall separately submit, to the extent practical, a description of such activities and a schedule for carrying them out. Such description shall be updated as appropriate.
  1. The plans may include the identification of milestones for such projects, and possible steps to be taken if the milestones are not met.
  2. Pursuant to the plans, it may be appropriate for the utility to proceed to develop a utility-owned project or projects until such action can no



longer be justified as reasonable. The utility-owned project(s) may differ from the project(s) advanced by the utility in the RFP process, or the resource(s) identified in its Grid Needs Assessment.

3. The contracts developed for the RFP process to acquire third-party resources shall include commercially reasonable provisions that address delays or non-completion of third-party projects, such as provisions that identify milestones for the projects, seller (i.e., bidder) obligations, and utility remedies if the milestones are not met, and may include provisions to provide the utility with the option to purchase the project under certain circumstances or events of default by the seller (i.e., the bidder).
- E. A utility may submit more than one proposal or may supply options for a specific proposal as dictated by the RFP needs, such as submitting variations of a proposal and/or offering options in a proposal.

## **VII. RATEMAKING**

- A. The costs that an electric utility reasonably and prudently incurs in designing and administering its competitive bidding processes are recoverable through rates to the extent reasonable and prudent.
- B. The costs that an electric utility incurs in taking reasonable and prudent steps to implement Contingency Plans are recoverable through the utility's rates, to the extent reasonable and prudent, as part of the cost of providing reliable service to customers.
- C. The reasonable and prudent costs that are part of an electric utility's Contingency Plans shall be accounted for similar to costs for planning other capital projects (provided that such accounting treatment shall not be determinative of ratemaking treatment):
  1. Contingency Plans capital project costs would be accumulated as construction work in progress, and AFUDC would accrue on such costs. If the Contingency Plans capital project costs, as implemented, result in the addition of planned resources to the utility system, then the costs incurred and related AFUDC would be capitalized as part of the installed resources (i.e., recorded to plant-in-service) and added to rate base. The costs would be depreciated over the life of the resource addition. Subject to Commission approval, the contingency plans capital project, including operations and maintenance expenses, deferred costs, and taxes, shall be recovered through the EPRM, REIP surcharge or other recovery mechanism, or other Commission approved regulatory process or mechanism.

2. If implementation of the Contingency Plans capital project is terminated before the resources identified in such plans are placed into service, the costs incurred and related AFUDC included in construction work in progress would be transferred to a miscellaneous deferred debit account and the balance would be amortized to expense over five years (or a reasonable period determined by the Commission), beginning when rates that reflect such amortization expense are approved by the Commission in a regulatory process or mechanism. Carrying charges, based on the AFUDC rate, would apply monthly for the costs in the miscellaneous deferred debit account and included in the miscellaneous deferred debit account until the onset of amortization.
  3. Cost for Contingency Plans non-capital projects shall be deferred in a deferred debit account, and accrue carrying charges at the AFUDC rate; AFUDC applied monthly on the deferred costs (including AFUDC). The utility shall recover prudently incurred costs for Contingency Plans non-capital projects and related carrying costs upon Commission approval through a Commission approved regulatory process or mechanism.
- D. Utility-owned or self-build projects will be cost-based, consistent with traditional cost-of-service ratemaking, wherein prudently incurred capital costs including associated AFUDC and/or carrying costs are included in rate base; provided that the evaluation of the utility's bid must account for the possibility that the operational costs actually incurred, and recovered from customers, over the project's lifetime, will vary from the levels assumed in the utility's bid. The utility will not, however, be allowed to recover any capital costs that exceed the bid amount. Any utility-owned project selected pursuant to the RFP process will remain subject to prudence review in a subsequent proceeding with respect to the utility's obligation to prudently implement, construct or manage the project consistent with the objective of providing reliable service at the lowest reasonable cost. Subject to Commission approval, the utility-owned or self-build project costs, including operations and maintenance expenses, deferred costs, and taxes, shall recovered through the EPRM, REIP surcharge, or other Commission approved regulatory process or mechanism.

## **VIII. QUALIFYING FACILITIES**

- A. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to offer to purchase capacity and energy from a QF at avoided cost upon reasonable terms and conditions approved by the Commission.
- B. For any resource to which the competitive bidding requirement does apply, the utility shall apply to the commission to waive or modify the time periods described in Hawaii Administrative Rules § 6-74-IS(c) (1998) for the utility to negotiate with a QF pursuant to the applicable provisions of

Hawaii Administrative Rules § 6-74-1S(c) (1998), and upon approval of the Commission, the utility's obligation to negotiate with a QF shall be deferred pending completion of the competitive bidding process.

1. If a non-QF is the winning bidder:
  - a. A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.
  - b. If a non-QF winner does not supply all the capacity needed by the utility, or if a need develops between RFPs that will not be satisfied by an RFP due to a waiver or exemption, a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The Commission's determination of avoided cost will be bounded by the price level established by the winning non-QF.
2. Where the winning bidder is the utility's self-build option, a QF will not have a PURPA right to supply the resource provided by the utility's self-build option.
3. If a QF is the winning bidder, the QF has the right to sell to the electric utility at its bid price, unless the price is modified in the contract negotiations that are part of the bidding process.

**APPENDIX**  
**INTEGRATED GRID PLANNING**  
**FRAMEWORK FOR COMPETITIVE BIDDING**  
*Adopted on June 30, 2022*

**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**

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**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION**

**INTEGRATED GRID PLANNING  
FRAMEWORK FOR COMPETITIVE BIDDING  
June 30, 2022**

**I. DEFINITIONS**

As used in this Framework, unless the context clearly requires otherwise:

“Affiliate” means any person or entity that possesses an “affiliated interest” in a utility as defined by Section 269-19.5, Hawai‘i Revised Statutes (“HRS”), including a utility’s parent holding company but excluding a utility’s subsidiary or parent which is also a regulated utility.

“Agreement” means an agreement or contract for an electric utility to purchase a System Resource from a third party, pursuant to the terms of this Framework.

“CIP Approval Requirements” means the procedure set forth in the Commission’s General Order No. 7, Standards for Electricity Utility Service in the State of Hawaii, Paragraph 2.3(g), as modified by In re Kauai Island Util. Coop., Docket No. 03-0256, Decision and Order No. 21001, filed on May 27, 2004, and In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 03-0257, Decision and Order No. 21002, filed on May 27, 2004. “In general, [the] commission’s analysis of capital expenditure applications involves a review of whether the project and its costs are reasonable and consistent with the public interest, among other factors. If the commission approves the [electric] utility’s application, the commission in effect authorizes the utility to commit funds for the project, subject to the proviso that ‘no part of the project may be included in the utility’s rate base unless and until the project is in fact installed, and is used and useful for public utility purposes.’” Decision and Order No. 21001, at 12; and Decision and Order No. 21002, at 12.

“Code of Conduct” means a written code developed by the host electric utility and approved by the Commission to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its Affiliate seeks to advance its own System Resource proposal in response to an RFP. The “Code of Conduct” is more fully described in Part IV.H.9.c of the Framework.

“Commission” means the Public Utilities Commission of the State of Hawai‘i.

“Competitive bid” or “competitive bidding” means the mechanism established by this Framework for acquiring a future System Resource or a block of System Resources by an electric utility.

“Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, State of Hawai‘i.

“Contingency Plan” means an electric utility’s plan to provide either temporary or permanent solutions to address a reliability or statutory need (including, for example, the need to comply with reliability standards as discussed in Hawai‘i Revised Statutes (“HRS”) §§ 269-0141 through 269-0144 and with the State of Hawai‘i’s Renewable Portfolio Standards law, as codified in HRS §§ 269-91 through 269-95) as may result from an actual or expected failure of an RFP process to produce a project selected in an RFP or a viable project proposal (including any project not completed or delayed). The utility’s Contingency Plan may be different from the utility’s bid. The term “utility’s bid,” as used herein, refers to a utility’s proposal advanced in response to a System Resource need that is addressed by its RFP.

“Electric utility” or “utility” means a provider of electric utility service that is regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawai‘i Revised Statutes.

“EPRM” means the Exceptional Project Recovery Mechanism adopted by the Commission in Docket No. 2018-0088.

“Framework” means the Integrated Grid Planning Framework for Competitive Bidding adopted by the Commission in Docket No. 2018-0165, on June 30, 2022.

“Grid Needs” means the specific grid services (including but not limited to capacity, energy and ancillary services) identified in the Grid Needs Assessment, including transmission and distribution system needs that may be addressed through a Non-Wires Alternative. Grid Needs that are subject to the Framework generally does not apply to utility equipment (i.e., transmission and distribution infrastructure, flexible AC transmission devices, materials, etc.) that are normally procured through the utility’s procurement process for goods and services.

“Grid Needs Assessment” means the process step in the IGP where the technical analyses are conducted to determine the generation, transmission, and distribution grid service(s) needs to meet state policy objectives, reliability standards, among other goals, and presented to the Commission for review and approval or acceptance.

“IGP” or “Integrated Grid Planning” means an electric utility’s planning process that aims to integrate the Grid Needs Assessment planning analyses with the sourcing of market-based solutions, which may include competitive bidding, to meet near and long-term customer needs.

“Independent Observer” means the neutral person or entity retained by the electric utility or Commission to monitor the utility’s competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.

“Non-Wires Alternative” means an electricity grid project that uses non-traditional transmission and distribution (T&D) solutions, such as distributed generation (DG), energy storage, energy efficiency (EE), demand response (DR) and grid software and controls, to defer or avoid the need for conventional transmission and/or distribution infrastructure investments.

“Provider” means a System Resource provider that is not subject to the Commission’s regulation or jurisdiction as a public utility including, for example, developers and aggregators.

“PURPA” means the Federal Public Utility Regulatory Policies Act of 1978, as amended.

“QF” means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 Code of Federal Regulations §§ 292.201 - 292.211. See also 18 Code of Federal Regulations § 291.201(b)(1) (definition of “qualifying facility”).

“RFP” means a written request for proposal issued by the electric utility to solicit bids from interested third-parties, and where applicable from the utility or its Affiliate, to supply a future System Resource or a block of System Resources to the utility to meet the utility’s Grid Needs pursuant to the competitive bidding process.

“System Resources” are the specific resources that will be acquired to meet the Grid Needs.

## **II. CONTEXT FOR COMPETITIVE BIDDING**

### **A. USE OF COMPETITIVE BIDDING**

1. This Framework applies to electric utilities regulated by and subject to the Commission’s jurisdiction pursuant to Chapter 269, Hawai‘i Revised Statutes and any participants in any competitive bidding process that this Framework is applied to.
2. Competitive bidding, unless otherwise determined by the Commission, is established as the required mechanism for acquiring System Resources necessary to meet the Grid Needs. The following conditions and possible exceptions apply:
  - a. Competitive bidding will benefit Hawai‘i when it: (i) facilitates an electric utility’s acquisition of System Resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new System Resources that are overall lower in cost, better performing or installed sooner than the utility could otherwise achieve; (iii) does not negatively impact the reliability and resilience or unduly encumber the operation or maintenance of Hawai‘i’s unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed System Resources and



allowing the utility to adjust to changes in circumstances; (v) is consistent with the IGP process; and (vi) is consistent with Hawai‘i’s renewable energy portfolio standards.

- b. Under certain circumstances, to be considered by the Commission in the context of an electric utility’s request for waiver under Part II.A.3, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed System Resources in a timely fashion; (ii) when the utility and its customers will benefit more if the System Resource is owned by the utility rather than by a third-party (for example, when system reliability or safety will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing System Resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IGP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.
  
- c. Other circumstances that could qualify for a waiver include (but are not limited to): (i) the expansion or repowering of existing utility generating units or other System Resources; (ii) the acquisition of near-term System Resources for short-term needs; (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; (iv) the immediate acquisition of System Resources needed to respond to an emergency situation; or (v) the lack of a sufficient market to support a competitive procurement.
  
- d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in the acquisition of a System Resource, leading to a lower cost to the utility’s general body of customers, increase the reliability of a utility’s system to the utility’s general body of customers, facilitate the transition to renewable generation, or is otherwise in the public interest.
  
- e. This Framework does not apply to any procurements ongoing, any existing programs or tariffs, or any projects submitted for approval to the Commission before this Framework was adopted, ~~such as the Kalaeloa Partners, L.P. 208 MW project (which is the subject of Docket 2011-0351), the Hu Honua Bioenergy, LLC 21.5 MW project (which is the subject of Docket No. 2017-0122), the Puna Geothermal Venture 46 MW project (which is the subject of Docket No. 2019-0333), the Paeahu Solar LLC 15 MW project (which is the subject of Docket No. 2018-0433) and projects selected~~

~~pursuant to the utility's RFPs for Variable Renewable Dispatchable Generation Paired with Energy Storage (Docket Nos. 2017-0352 and 2019-0178).~~

~~e.f.~~ This Framework also does not apply to System Resources with respect to: (i) System Resources with a net output of 5 MW or less on the island of O‘ahu, 2.5 MW or less on the islands of Maui and Hawai‘i, and 250 kW or less on Moloka‘i and Lāna‘i; (ii) System Resources at substations and other sites installed by the utility on a temporary basis to help address reserve margin shortfalls or to enhance resiliency during emergency operations; (iii) customer-sited, utility-owned System Resources that have been approved by the Commission; (iv) System Resources under 1 MW installed for “proof-of-concept” or demonstration purposes; (v) extensions of an Agreement for three years or less on substantially the same terms and conditions as the Agreements and/or on more favorable terms and conditions if it can be demonstrated that the extensions are in the public interest; (vi) modifications of an Agreement to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air permit modification if it can be demonstrated that the modifications are in the public interest; and (vii) renegotiations of Agreements in anticipation of their expiration, approved by the Commission.

~~f.g.~~ When a competitive bidding process will be used to acquire a future System Resource or a block of System Resources, the System Resources acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the System Resource, the characteristics of the System Resource required by the utility, and the control the utility needs to exercise over operation and maintenance of such System Resource in order to reasonably address system integration and safety concerns.

3. The procedure for seeking a waiver is as follows:
  - a. For all proposed projects included in, or consistent with, identified Grid Needs developed through a Grid Needs Assessment that have not yet been filed with the Commission for approval or acceptance as of the effective date of this Framework, and are subject to the Framework pursuant to the terms set forth herein, any waiver request shall be submitted to the Commission for approval no later than the time the application for approval of such project is submitted to the Commission.
  - b. An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as soon as practicable

such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.

- c. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.
  - d. Proposed projects included in, or consistent with, a Grid Needs Assessment conducted prior to the effective date of this Framework, proposed projects procured under a previously approved or accepted mechanism, or projects being submitted under approved programs and/or tariffs, shall not be required to seek a waiver of this Framework and this Framework shall not apply to such projects.
4. Exemption - ownership structure of an electric utility. Upon a showing that an entity has an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new projects through competitive bidding, the Commission will exempt such entity from this Framework.

## **B. SCOPE OF COMPETITIVE BIDDING**

- 1. An electric utility's Grid Needs identified in a Grid Needs Assessment that is reviewed and approved or accepted by the Commission, shall inform the proposed scope of any RFP, or group of RFPs to be developed for the identified System Resources to be procured. This Framework defines which System Resource or block of System Resources are subject to competitive bidding.
- 2. Competitive bidding shall enable the comparison of a wide range of System Resource options that are capable individually or as a portfolio of meeting the specific requirements of the RFPs.
- 3. Each electric utility shall take steps to provide notice of its RFPs, and to encourage participation from a full range of prospective bidders. PURPA qualifying facilities, Providers, the host utility, and its Affiliates, and other utilities shall be eligible to participate in any RFP seeking System Resources.
- 4. Competitive bidding processes may vary, provided those processes are consistent with this Framework. An electric utility may establish a separate process (such as a "set side" (for example, a special program approved by the Commission, i.e. the Phase 2 Community Based Renewable Energy tariff program for projects under 250 kW), separate RFP process, or standard form RFP) to acquire System Resources where such mechanisms or

processes are deemed more suitable to meet IGP objectives.

5. RFP processes shall be flexible and shall not include unreasonable restrictions on sizes and types of projects considered, taking into account the appropriate Grid Needs identified in a Grid Needs Assessment.

### **C. RELATIONSHIP TO INTEGRATED GRID PLANNING**

1. The Grid Needs Assessment, presented to stakeholders and the Commission for review and comment, shall identify Grid Needs. The identified Grid Needs applicable to each electric utility shall continue to be used to set the strategic direction of resource planning by the electric utilities. In order for competitive bidding to be effectively and efficiently integrated into a utility's IGP process, stakeholders must work cooperatively to identify and adhere to appropriate timelines, which may from time to time need to be expedited.
2. This Framework is intended to complement the IGP process.
3. A determination shall be made by the Commission as to whether a competitive bidding process shall be used to acquire a System Resource or a block of System Resources that are identified as Grid Needs in the Grid Needs Assessment. Actual competitive bidding for System Resources will normally occur after the Grid Needs are identified, reviewed and accepted or approved by the Commission.
4. Integration of competitive bidding into the IGP process. The general approach to integration has four parts, in sequence:
  - a. The electric utility conducts a Grid Needs Assessment, which will identify those Grid Needs for which the utility proposes and recommends to procure through competitive bidding or other mechanisms or processes, and those resources for which the utility seeks a waiver from competitive bidding.
  - b. The Commission accepts, approves, modifies, or rejects the Grid Needs Assessment and the Grid Needs recommended to be acquired through this Framework.
  - c. The electric utility conducts a competitive bidding process, for System Resources to meet all or a portion of the Grid Needs recommended for competitive bidding identified in the Grid Needs Assessment step of the IGP process; such competitive bidding process shall include the advance filing of a draft RFP with the Commission.

- d. The electric utility selects a winner from the bidders. But see Part II.C.6, below, concerning the process when there are no bidders worth choosing.
5. An evaluation of bids in a competitive bidding process may reveal desirable projects that were not included in the Grid Needs identified through the Grid Needs Assessment. These projects may be selected if it can be demonstrated that the project is consistent with an approved or accepted Grid Needs Assessment and that such action is expected to benefit the utility and/or its customers.
6. An evaluation of bids in a competitive bidding process may reveal that the acquisition of any of the requested System Resources in the bid will not assist the utility in fulfilling its obligations to its customers. In such a case, the utility may determine not to acquire such System Resources and shall notify the Commission accordingly.

#### **D. MITIGATION OF RISKS ASSOCIATED WITH COMPETITIVE BIDDING**

1. To carry out its competitive bidding obligations consistently with its resource sufficiency obligations, the electric utility must conduct, or consider conducting, two types of activities: self-build and contingency planning. The utility's self-build obligation is addressed in Parts VI.A-~~F~~, VI.C and VI.E, below. The electric utility's contingency planning activities are discussed in Part II.D.2 below.
2. In consideration of the isolated nature of the island utility systems, the utility may use a Contingency Plan option to address a near-term reliability or statutory need as results from an actual or expected failure of an RFP process to produce a viable project proposal, or of a project selected in an RFP. The electric utility shall use prudent electric utility practices to determine the nature, amount, and timing of the contingency planning activities and take into account (without limitation) the cost of contingency planning and the probability of third-party failure. The electric utility's Contingency Plan may differ from that proposed in the electric utility's self-build bid. For each project that is subject to competitive bidding, the electric utility shall submit a report on the cost of contingency planning upon the Commission's request.
3. The electric utility may require bidders (subject to the Commission's approval with other elements of a proposed RFP) to offer the utility the option to purchase the project under certain conditions or in the event of default by the seller (i.e., the bidder), subject to commercially reasonable payment terms.

### **III. ROLES IN COMPETITIVE BIDDING**

#### **A. ELECTRIC UTILITY**

1. The role of the host electric utility in the competitive bidding process shall include:
  - a. Designing the solicitation process, establishing evaluation criteria consistent with its overall IGP process, and specifying timelines;
  - b. Designing the RFP documents and proposed forms of Agreements and other contracts;
  - c. Implementing and managing the RFP process, including communications with bidders;
  - d. Evaluating the bids received;
  - e. Selecting the bids for negotiations based on established criteria;
  - f. Negotiating contracts with selected bidders;
  - g. Determining, where and when feasible, the interconnection facilities and transmission and distribution upgrades necessary to accommodate new System Resources;
  - h. Competing in the solicitation process with a self-build option at its discretion; if approved by the Commission; and
  - i. Providing the Independent Observer with all requested information related to the relevant procurement.
  
2. Access to Utility Sites. The utility shall consider, on a case-by-case basis before an RFP is issued, offering at its sole discretion one or several utility-owned or controlled sites to bidders in an applicable competitive bidding process. The utility shall consider such factors as:
  - a. The anticipated specific non-technical terms of potential proposals.
  - b. The feasibility of the installation. Examples of the factors that may need to be examined in order to evaluate the feasibility of the installation may include, but are not be limited to the following:
    - (i) Specific physical and technical parameters of anticipated non-utility installations, such as the technology that may be installed, space and land area requirements, topographic, slope and geotechnical constraints,



Code of Conduct prior to the commencement of the RFP drafting even while such Code of Conduct is pending before the Commission for review and approval.

4. The utility shall ensure third party bidders be provided the same type of information to develop proposals as is provided to those developing self-build or Affiliate-bid proposals.

## **B. HAWAII PUBLIC UTILITIES COMMISSION**

1. The primary role of the Commission is to ensure that: (a) each competitive bidding process conducted pursuant to this Framework is fair in its design and implementation so that selection is based on the merits; (b) System Resources selected through competitive bidding processes are consistent with the Grid Needs identified in the Commission approved/accepted Grid Needs Assessment; (c) the electric utility's actions represent prudent practices; and (d) throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.
2. The Commission may review, and at its option, approve or modify, each proposed RFP before it is issued, including any proposed form of contracts and other documentation that will accompany the RFP. The Commission may determine in certain applications that it may pre-approve a form RFP in lieu of approving each individual RFP. If a form RFP is approved, any modifications to such form, other than insertion of the specific Grid Needs being procured, would require approval by the Commission.
3. The Commission shall be the final arbiter of disputes that arise among parties in relation to a utility's competitive bidding process, to the extent described in Part V, below.
4. The Commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to this Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.7 shall not apply. In reviewing such contracts, the Commission may establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.
5. If the utility identifies its self-build project for Grid Needs as superior to third party bid proposals, the utility shall seek Commission approval in keeping with established CIP Approval Requirements.
6. The Commission shall review any complaint that the electric utility is not complying with the Framework, pursuant to Part V.



7. Timely Commission review, approval, consent, or other action described in this Framework is essential to the efficient and effective execution of this competitive bidding process. Accordingly, to expedite Commission action in this competitive bidding process, whenever Commission review, approval, consent, or action is required under this Framework, the Commission may do so in an informal expedited process. The Commission hereby authorizes its Chair, or his or her designee (which designee may be another Commissioner, a member of the Commission staff, Commission hearings officer, or a Commission hired consultant), in consultation with other Commissioners, Commission staff, and the Independent Observer, to take any such action on behalf of the Commission.

### C. INDEPENDENT OBSERVER

1. An Independent Observer is required whenever the utility or its Affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, or when the Commission otherwise determines. Unless otherwise determined by the Commission, an Independent Observer will monitor the competitive bidding process and will report on the progress and results to the Commission, sufficiently early so that the Commission is able to address any defects and allow competitive bidding to occur in time to meet the utility's Grid Needs. Any interaction between a utility and bidder, including a utility's self-build team or Affiliate during the course of a solicitation process, beginning with the preparation of the RFP, shall be closely monitored by the Independent Observer. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP and as may be required by the Commission.
2. Independent Observer obligations. The Independent Observer will have duties and obligations in two areas: Advisory and Monitoring.
  - a. Advisory. The Independent Observer shall:
    - (i) Certify to the Commission that at each of the following steps, the electric utility's judgments created no unearned advantage for any bidder, or, when applicable, the electric utility or any Affiliate:
      - (1) Pre-qualification criteria;
      - (2) RFP;
      - (3) Model Agreements to be attached to the RFP;
      - (4) Selection criteria;
      - (5) Evaluation of bids;
      - (6) Final decision to purchase System Resources or proceed with self-build option when applicable; and
      - (7) Negotiation of contracts.

- (ii) Advise the electric utility on its decision-making during, and with respect to, each of the electric utility's actions listed in the preceding item;
- (iii) Review stakeholder comments submitted in response to draft RFP and model Agreements and advise the utility on the consideration of proposed changes that may improve the process or results of the RFP;
- (iv) Report immediately to the electric utility's executive in charge of ensuring compliance with this Framework, and the Commission, any deviations from the Framework or violations of any procurement rules;
- (v) After the electric utility's procurement selection is completed, provide the Commission with:
  - (1) An overall assessment of whether the goals of the RFP were achieved, such goals to include without limitation the attraction of a sufficient number of bidders and the elimination of actual or perceived utility favoritism for its own or an Affiliate's project; and
  - (2) Recommendations for improving future competitive bidding processes.
- (vi) Be available to the Commission as a witness if required to evaluate a complaint filed against an electric utility for non-compliance with this Framework, or if required in a future regulatory proceeding if questions of prudence arise.

**b. Monitoring. The Independent Observer shall:**

- (i) Monitor all steps in a competitive bidding process, beginning upon Commission's approval or acceptance of the Grid Needs Assessment;
- (ii) Monitor communications (and communications protocols) with bidders;
- (iii) Monitor adherence to Codes of Conduct;
- (iv) Monitor contract negotiations with bidders;

- (v) Monitor all interactions between the electric utility and any bidder during all events affecting a solicitation process; and
  - (vi) Report to the Commission on monitoring results during each stage of the competitive process sufficiently early so that the Commission can correct defects or eliminate uncertainties without endangering project milestones.
- 3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.
- 4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.
- 5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:
  - a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;
  - b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;
  - c. Have the necessary experience and familiarity with utility modeling capability, transmission and/or distribution system planning, operational characteristics, and other factors that affect project selection;
  - d. Have a working knowledge of common operational, technical and contract terms applicable to System Resources as well as appropriate contract negotiation processes applicable to System Resource procurement;
  - e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and
  - f. Demonstrate impartiality.
- 6. Selection and contracting. As ordered or directed by the Commission, the electric utility or the Commission shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by prospective participants in the competitive

bidding process); (b) comply with further orders or direction from the Commission as to the final list of qualified candidates; and (c) select an Independent Observer from among the final list of qualified candidates. The contract with the Independent Observer shall be acceptable to the electric utility and the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. In the event the electric utility contracts with the Independent Observer, and accrues carrying costs on the deferred costs at the utility's allowance for funds used during construction ("AFUDC") rate, applied monthly on the deferred costs (including AFUDC), the utility shall recover prudently incurred Independent Observer costs and related carrying costs upon Commission approval through a Commission approved regulatory process or mechanism.

7. As part of the RFP design process, the utility shall develop procedures to be included in the RFP by which any participant in the competitive bidding process may present to the Commission, for review and resolution, positions that differ from those of the Independent Observer (i.e., in the event the Independent Observer makes any representations to the Commission upon which the participant does not agree).

#### **IV. THE REQUEST FOR PROPOSALS PROCESS**

##### **A. GENERAL**

1. Competitive bidding shall be structured and implemented in a way that facilitates an electric utility's acquisition of System Resources identified in a utility's Grid Needs Assessment. Direct costs and benefits incurred or received by the utility and its customers shall be taken into account in the bid evaluation and selection process.
2. Competitive bidding shall be structured and implemented in a flexible and efficient manner that promotes electric utility system reliability by facilitating the timely acquisition of needed System Resources and allowing the utility to adjust to changes in circumstances.
  - a. The implementation of competitive bidding cannot be allowed to negatively impact reliability of the electric utility system.
  - b. The System Resources acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the

System Resources, the characteristics of the System Resources required by the utility, and the control the utility needs to exercise over operation and maintenance in order to minimize system integration concerns.

3. The competitive bidding process shall ensure that proposals and bidders are judged on the merits, without being unduly burdensome to the electric utilities or the Commission.
  - a. The competitive bidding process shall include an RFP and supporting documentation by which the utility sets forth the requirements to be fulfilled by bidders and describes the process by which it will: (i) conduct its solicitation; (ii) obtain consistent and accurate information on which to evaluate bids; (iii) implement a consistent and equitable evaluation process; and (iv) systematically document its determinations. The RFP shall also describe the role of the Independent Observer and bidders' opportunities for challenges and for dispute resolution.
  - b. When a utility advances its own project proposal (i.e., in competition with those offered by bidders) or accepts a bid from an Affiliate, the utility shall take all reasonable steps, including any steps required by the Commission, to mitigate concerns over an unfair or unearned competitive advantage that may exist or reasonably be perceived by other bidders or stakeholders.
4. If a Provider or Affiliate proposal is selected as a result of the RFP process, one or more contracts are the expected result. Proposed forms of Agreements and other contracts that may result from the RFP process shall be included with each RFP. The RFP shall specify whether any opportunity exists to propose or negotiate changes to the proposed form of Agreement or contract.

## **B. DESIGN OF THE COMPETITIVE BIDDING SOLICITATION PROCESS**

1. The competitive bidding solicitation process shall include the following:
  - a. Design of the RFP and supporting documents;
  - b. Issuance of the draft and final RFP;
  - c. Development and submission of proposals by bidders;
  - d. A "multi-stage evaluation process" to reduce bids down to a short list and/or "award group" as appropriate for a particular RFP (i.e., a process that may include, without limitation: (i) receipt of

- the proposals; (ii) completeness check; (iii) threshold or minimum requirements evaluation; (iv) initial evaluation including price screen/non-price assessment; (v) selection of a short list; (vi) detailed evaluation or portfolio development; and (vii) selection of final award group for contract negotiation);
- e. Contract negotiations (when a third-party bid is selected); and
  - f. Commission approval of any resulting contract or selected self-build project if required by the Commission.
2. The RFP shall identify any unique system requirements and provide information regarding the requirements of the utility, important resource attributes, desired options and criteria used for the evaluation. For example, if the utility values dispatchability or operating flexibility, the RFP shall: (a) request that a bidder offer such an option; and (b) explain how the utility will evaluate the impacts of dispatchability or operational flexibility in the bid evaluation process.
  3. The RFP (including the response package, proposed forms of Agreements and other contracts) shall describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, the general bid evaluation and selection criteria, the risk factors important to the utility, and, to the extent practicable, the schedule for all steps in the bidding process.
  4. The utility may charge bidders a reasonable fee, to be reviewed by the Independent Observer, for participating in the RFP process.
  5. Other Content of RFP. The RFP shall also contain:
    - a. The circumstances under which an electric utility and/or its Affiliates may participate;
    - b. An explanation of the procedures by which any person may present to the Commission positions that differ from those of the Independent Observer; and
    - c. A statement that if disputes arise under this Framework, the dispute resolution process established in this Framework will control.
  6. The process leading to the distribution of the RFP shall include the following steps (each step to be monitored and reported on by the Independent Observer), unless the Commission modifies this process for a particular competitive bid:

- a. The utility designs a draft RFP, then files its draft RFP and supporting documentation with the Commission;
  - b. The Commission holds a status conference, where the utility presents the details of the RFP and interested parties (which may include potential bidders) are provided the opportunity to ask questions regarding the draft RFP;
  - c. Interested parties submit comments on the draft RFP to the utility and the Commission;
  - d. The utility determines, with advice from the Independent Observer, whether and how to incorporate recommendations from interested parties in the draft RFP;
  - e. The utility submits its final, proposed RFP to the Commission for its review and approval (and modification if necessary) according to the following procedure:
    - (i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP.
    - (ii) The utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer's comments and recommendations.
7. A pre-qualification requirement is a requirement that a bidder must satisfy to be eligible to bid. A pre-qualification process may be incorporated in the design of some bidding processes, depending on the specific circumstances of the utility and its resource needs. Any pre-qualification requirements shall apply equally to independent bidders, the electric utility's self-build bid, and the bid of any utility's Affiliate.
8. As part of the RFP design process, the utility shall develop and specify the type and form of threshold criteria that will apply to all bidders, including the utility's self-build proposals. Examples of potential threshold criteria include requirements that bidders have site control, maintain a specified credit rating, and demonstrate that their proposed technologies are mature.

9. The RFP design process shall address credit requirements and security provisions, which apply to: (a) the qualification of bidders; and (b) bid evaluation processes.
10. The utility shall have the discretion to modify the RFP or solicit additional bids from bidders after reviewing the initial bids, provided that such discretion is clearly identified in the RFP and any modification is reviewed by the Independent Observer and submitted to the Commission along with the Independent Observer's comments. The electric utility may issue the modified RFP thirty (30) days after the Commission has received these materials, unless the Commission directs otherwise.
11. All involved parties shall plan, collaborate, and endeavor to issue the final RFP within ninety (90) days from the date the electric utility submits the draft RFP to the Commission.

### **C. FORMS OF CONTRACTS**

1. The RFP shall include proposed forms of Agreements and other contracts, with commercially reasonable terms and conditions that properly allocate risks among the contracting parties in light of circumstances. The terms and conditions of the contracts shall be specified to the extent practical, so that bidders are aware of, among other things, performance requirements, pricing options, key provisions that affect risk allocation (including those identified in sub-paragraph 2 below), and provisions that may be subject to negotiation. Where contract provisions are not finalized or provided in advance of RFP issuance (e.g., because certain contract provisions must reflect features of the winning bidder's proposal such as technology or location), the RFP shall so indicate.
2. The provisions of a proposed contract shall address matters such as the following (unless inapplicable): (a) reasonable credit assurance and security requirements appropriate to an island system that reasonably compensates the utility and its customers if the project sponsor fails to perform; (b) contract buyout and project acquisition provisions; (c) in-service date delay and acceleration provisions; and (d) liquidated damage provisions that reflect risks to the utility and its customers.
3. The RFP shall specify which terms in the proposed forms of contract, if any, are not subject to negotiation or alternative proposals, subject to approval of the RFP by the Commission. Bidders may submit alternative language as part of their bids, provided that any such variation is not inconsistent with any identified Grid Needs.



#### **D. ISSUANCE OF THE RFP AND DEVELOPMENT OF PROPOSALS**

1. Each electric utility shall take steps to provide notice of its RFPs to, and encourage participation from, the full community of prospective bidders.
2. Bidders may be required to submit a “notice of intent to bid” to the electric utility.
3. The electric utility shall develop and implement a formal process to respond to bidders’ questions.
4. The electric utility may conduct a bidders’ conference.
5. The electric utility shall provide bidders with access to information through a website where it can post documents and information.
6. The process shall require all third-party bids to be submitted by the deadline specified in the RFP, except that the utility’s self-build bid shall be submitted one day in advance.
7. Bids may be deemed non-conforming if they do not meet the RFP requirements or provide all of the material information requested in an RFP. At the utility’s discretion, in consultation with the Independent Observer, the utility may elect to: (i) consider a non-conforming bid as eligible in the RFP provided it is not inconsistent with any identified Grid Needs; (ii) give proposals that are non-conforming additional time to remedy their non-conformity; or (iii) decline to consider any bid that is non-conforming.

#### **E. BID EVALUATION / SELECTION CRITERIA**

1. The utility, monitored by the Independent Observer, shall compare bids received.
2. The evaluation criteria and the respective weight or consideration given to each such criterion in the bid evaluation process may vary from one RFP to another.
3. The bid evaluation process shall include consideration of differences between bidders with respect to proposed contract provisions, and differences in anticipated compliance with such provisions, including but not limited to provisions intended to ensure:
  - a. System Resource and electric system reliability;
  - b. Appropriate risk allocations;

- c. Counter-party creditworthiness; and
  - d. Bidder qualification.
4. Proposals shall be evaluated based on a consistent and reasonable set of economic and fuel price assumptions, to be specified in the RFP.
  5. Both price and non-price evaluation criteria, shall be described in the RFP, and shall be considered in evaluating proposals.
  6. In evaluating competing proposals, all relevant incremental costs to the electric utility and its customers shall be considered. These may include transmission costs, distribution costs and system impacts, and the reasonably foreseeable balance sheet and related financial impacts of competing proposals.
  7. The impact of service(s) from System Resources that a utility already has on its system, in terms of reliability and dispatchability, and the impacts that increasing the amount of service(s) from new System Resources may have, in terms of reliability and dispatchability, shall be taken into account in the bid evaluation. The RFP shall specify the methodology for considering this effect. Such methodology shall not cause double-counting with the financial effects discussed in sub-paragraph 6, above, and sub-paragraph 8, below.
  8. The impact of System Resource costs on the utility's balance sheets, and the potential for resulting utility credit downgrades (and higher borrowing costs), may be accounted for in the bid evaluation. Where the utility has to restructure its balance sheet and increase the percentage of more costly equity financing in order to offset the impacts of purchasing service(s) from a third party owned System Resource on its balance sheet, this rebalancing cost shall also be taken into account in evaluating the total cost of a proposal for a new System Resource if third party owned, and it may be a requirement that bidders provide all information necessary to complete these evaluations. The RFP shall describe the methodology for considering financial effects.
  9. The type and form of non-price threshold criteria shall be identified in the RFP. Such threshold criteria may include, among other criteria, the following:
    - a. Project development feasibility criteria (e.g., siting status, ability to finance, environmental permitting status, commercial operation date certainty, engineering design, fuel supply status, bidder experience, participant acquisition strategy, conformance with utility information assurance and security policies and reliability of the technology);

- b. Project operational viability criteria (e.g., operation and maintenance plan, financial strength, environmental compliance, and environmental impact);
  - c. Operating profile criteria (e.g., dispatching and scheduling, coordination of maintenance, operating profile such as ramp rates, and quick start capability); and
  - d. Flexibility criteria (e.g., in-service date flexibility, expansion capability, contract term, contract buy-out options, fuel flexibility, and stability of the price proposal).
10. The weights for each non-price criterion shall be fully specified by the utility in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

#### **F. EVALUATION OF THE BIDS**

1. The evaluation and selection process shall be identified in the RFP, and may vary based on the scope of the RFP. In some RFP processes, a multi-stage evaluation process may be appropriate.
2. The electric utility shall document the evaluation and selection process for each RFP process for review by the Commission in approving the outcome of the process (i.e., in approving an Agreement or a utility self-build proposal).
3. A detailed system evaluation process, which uses models and methodologies that are consistent with those used in the utility's Grid Needs Assessment, may be used to evaluate bids. In anticipation of such evaluation processes, the RFP shall specify the data required of bidders.

#### **G. CONTRACT NEGOTIATIONS**

1. There may be opportunities to negotiate price and non-price terms to enhance the value of the contract for the bidder, the utility, and its customers. Negotiations shall be monitored and reported upon by the Independent Observer.

2. The electric utility may use competitive negotiations among short-listed bidders.

#### **H. FAIRNESS PROVISIONS AND TRANSPARENCY**

1. The competitive bidding process shall judge all bidders on the merits only.
2. During the bidding process, the electric utility shall treat all bidders, including any utility Affiliate, the same in terms of access to information, time of receipt of information, and response to questions.
3. A “closed bidding process” is generally anticipated, rather than an “open bidding process.” Under one type of closed bidding process, bidders are informed through the RFP of: (a) the process that will be used to evaluate and select proposals; (b) the general bid evaluation and selection criteria; and (c) the proposed forms of Agreements and other contracts. However, bidders shall not have access to the utility’s bid evaluation models, the detailed criteria used to evaluate bids, or information contained in proposals submitted by other bidders.
4. If the electric utility chooses to use a closed process:
  - a. The utility shall provide the Independent Observer, if an Independent Observer is required, with all the necessary information to allow the Independent Observer to understand the model and to enable the Independent Observer to observe the entire analysis in order to ensure a fair process; and
  - b. After the utility has selected a bidder, the utility shall meet with the losing bidder or bidders to provide a general assessment of the losing bidder’s specific proposal if requested by the losing bidder within seven (7) days of the selection.
5. The host electric utility shall be allowed to consider its own self-bid proposals in response to Grid Needs identified in its RFP.
6. Procedures shall be developed by the utility prior to the initiation of the bidding process to define the roles of the members of its various project teams, to outline communications processes with bidders, and to address confidentiality of the information provided by bidders. Such procedures shall be submitted in advance to the Independent Observer and the Commission for comment.
7. If the IGP process indicates that a competitive bidding process will be used to acquire a System Resource or a block of System Resources to meet all or a portion of the Grid Needs, then the utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process

guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.

8. If proposed, utility self-build projects or other utility-owned projects, or projects owned by an Affiliate of the host utility, are to be compared against third party proposals obtained through an RFP process. The Independent Observer shall monitor the utility's conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process, to the extent prescribed by the Commission. Specific tasks to be performed by the Independent Observer, including those as may be prescribed by the Commission, shall be identified by the utility in its proposed RFP submitted to the Commission for approval. The Independent Observer will review and track the utility's execution of the RFP process to ascertain that no undue preference is given to an Affiliate, the Affiliate's bid, or to self-build or other utility-owned facilities. The Independent Observer's review shall include, to the extent the Commission or the Independent Observer deems necessary, each of the following steps, in addition to any steps the Commission or Independent Observer may add: (a) reviewing the draft RFP and the utility's evaluation of bids, monitoring communications (and communications protocols) with bidders; (b) monitoring adherence to codes of conduct, and monitoring contract negotiations with bidders; (c) assessing the utility's evaluation of Affiliate bids, and self-build or other utility-owned projects; and (d) assessing the utility's evaluation of an appropriate number of other bids. The utility shall provide the Independent Observer with all requested information. Such information may include, without limitation, the utility's evaluation of the unique risks and advantages associated with the utility self-build or other utility-owned projects, including the regulatory treatment of construction cost variances (both underages and overages) and costs related to equipment performance, contract terms offered to or required of bidders that affect the allocation of risks, and other risks and advantages of utility self-build or other utility-owned projects to consumers. The Independent Observer may validate the criteria used to evaluate Affiliate bids and self-build or other utility-owned facilities, and the evaluation of Affiliate bids and self-build or other utility-owned facilities. In order to accomplish these tasks, the utility, in conjunction with the Independent Observer, shall propose methods for making fair comparisons (considering both cost and risks) between the utility-owned or self-build facilities and third-party facilities.
9. Where the electric utility is responding to its own RFP, or is accepting bids submitted by its Affiliates, the utility will take additional steps to avoid self-dealing in both fact and perception.

- a. **The following tasks shall be completed as a matter of course (i.e., regardless of whether the utility or its Affiliate is seeking to advance a proposal), including: (i) the utility shall develop all bid evaluation criteria, bid selection guidelines, and the quantitative evaluation models and other information necessary for evaluation of bids prior to issuance of the RFP; (ii) the utility shall establish a website for disseminating information to all bidders at the same time; and (iii) the utility shall develop and follow a Procedures Manual, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the solicitation process.**
  
- b. **The following tasks shall be completed whenever the utility is seeking to advance a System Resource proposal, including: (i) the utility shall submit its self-build bid one day in advance of the deadline specified in the RFP, and provide substantially the same information in its proposal as other bidders; (ii) the utility shall follow the Code of Conduct; and (iii) the utility shall implement appropriate confidentiality agreements prior to the issuance of the RFP to guide the roles and responsibilities of utility personnel.**
  
- c. **The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:**
  - (i) **Whenever staffing and resources permit, the electric utility shall establish internally a separate project team to undertake the evaluation, with no team member having any involvement with the utility self-build option;**
  
  - (ii) **During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;**
  
  - (iii) **Throughout the bidding process, the electric utility shall treat all bidders, including its self-build bid and any electric utility Affiliate, the same in terms of access to information, time of receipt of information, and response to questions.**
  
- d. **A company officer, identified to the Independent Observer and the Commission, shall have the written authority and obligation**

to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees after each competitive process ends.

- e. Further steps may be considered, as appropriate, or ordered by the Commission.
10. Where the utility seeks to advance its proposed facilities in addition to, or instead of other developers' bids in its RFP, its proposal must satisfy all the criteria applicable to non-utility bidders, including but not limited to providing all material information required by the RFP, and being capable of implementation.
  11. Bids submitted by Affiliates shall be held to the same contractual and other standards as projects advanced by other bidders.

## **I. TRANSMISSION INTERCONNECTION AND UPGRADES**

1. A winning bidder has the right to interconnect its System Resource to the electric utility's transmission and distribution system, and to have that transmission and distribution upgraded as necessary to accommodate the output of its System Resource.
2. With respect to procedures and methodologies for:
  - a. Designing interconnections;
  - b. Allocating the cost of interconnections;
  - c. Scheduling and carrying out the physical implementation of interconnections;
  - d. Identifying the need for transmission and distribution upgrades;
  - e. Allocating the cost of transmission and distribution upgrades; and
  - f. Scheduling and carrying out the physical implementation of transmission and distribution upgrades; the electric utility shall treat all bidders, including its own bid and that of any Affiliate, in a comparable manner.
3. Upon the request of a prospective bidder, the electric utility shall provide general information about the possible interconnection and transmission and distribution upgrade costs associated with project locations under consideration by the bidder.

4. To ensure comparable treatment, the Independent Observer shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

## **V. DISPUTE RESOLUTION PROCESS**

The Commission will serve as an arbiter of last resort, after the utility, Independent Observer, and bidders have attempted to resolve any dispute or pending issue. The Commission will use an informal expedited process to resolve the dispute within thirty (30) days, as described in Part III.B.7. There shall be no right to hearing or appeal from this informal expedited dispute resolution process. The Commission encourages affected parties to seek to work cooperatively to resolve any dispute or pending issue, perhaps with the assistance of an Independent Observer, who may offer to mediate but who has no decision-making authority. The utility and Independent Observer shall conduct informational meetings with the Commission and Consumer Advocate to keep each apprised of issues that arise between or among the parties.

## **VI. PARTICIPATION BY THE HOST UTILITY**

- A. Where the electric utility is addressing a system reliability issue or statutory requirement, the utility shall develop one or more project proposals that are responsive to the System Resource need identified in the RFP.
- B. If the utility opts not to propose its own project, the utility shall request and obtain the Commission's approval. In making this request, the utility shall demonstrate why relying on the market to provide the needed resource is prudent.
- C. Where the RFP process has as its focus something other than a reliability-based need, the utility may choose (or decline) to advance its own project proposal.
- D. If the RFP process results in the selection of non-utility (or third-party) projects to meet a system reliability need or statutory requirement, the utility shall develop and periodically update a Contingency Plan to address the risk that the third-party projects may be delayed or not completed. In this situation, the electric utility shall separately submit, to the extent practical, a description of such activities and a schedule for carrying them out. Such description shall be updated as appropriate.
  1. The plans may include the identification of milestones for such projects, and possible steps to be taken if the milestones are not met.
  2. Pursuant to the plans, it may be appropriate for the utility to proceed to develop a utility-owned project or projects until such action can no



longer be justified as reasonable. The utility-owned project(s) may differ from the project(s) advanced by the utility in the RFP process, or the resource(s) identified in its Grid Needs Assessment.

3. The contracts developed for the RFP process to acquire third-party resources shall include commercially reasonable provisions that address delays or non-completion of third-party projects, such as provisions that identify milestones for the projects, seller (i.e., bidder) obligations, and utility remedies if the milestones are not met, and may include provisions to provide the utility with the option to purchase the project under certain circumstances or events of default by the seller (i.e., the bidder).
- E. A utility may submit more than one proposal or may supply options for a specific proposal as dictated by the RFP needs, such as submitting variations of a proposal and/or offering options in a proposal.

## **VII. RATEMAKING**

- A. The costs that an electric utility reasonably and prudently incurs in designing and administering its competitive bidding processes are recoverable through rates to the extent reasonable and prudent.
- B. The costs that an electric utility incurs in taking reasonable and prudent steps to implement Contingency Plans are recoverable through the utility's rates, to the extent reasonable and prudent, as part of the cost of providing reliable service to customers.
- C. The reasonable and prudent costs that are part of an electric utility's Contingency Plans shall be accounted for similar to costs for planning other capital projects (provided that such accounting treatment shall not be determinative of ratemaking treatment):
  1. Contingency Plans capital project costs would be accumulated as construction work in progress, and AFUDC would accrue on such costs. If the Contingency Plans capital project costs, as implemented, result in the addition of planned resources to the utility system, then the costs incurred and related AFUDC would be capitalized as part of the installed resources (i.e., recorded to plant-in-service) and added to rate base. The costs would be depreciated over the life of the resource addition. Subject to Commission approval, the contingency plans capital project, including operations and maintenance expenses, deferred costs, and taxes, shall be recovered through the EPRM—~~meehanism~~, REIP surcharge or other recovery mechanism, or other Commission approved regulatory process or mechanism.

2. If implementation of the Contingency Plans capital project is terminated before the resources identified in such plans are placed into service, the costs incurred and related AFUDC included in construction work in progress would be transferred to a miscellaneous deferred debit account and the balance would be amortized to expense over five years (or a reasonable period determined by the Commission), beginning when rates that reflect such amortization expense are approved by the Commission in a regulatory process or mechanism. Carrying charges, based on the AFUDC rate, would apply monthly for the costs in the miscellaneous deferred debit account and included in the miscellaneous deferred debit account until the onset of amortization.
  3. Cost for Contingency Plans non-capital projects shall be deferred in a deferred debit account, and accrue carrying charges at the AFUDC rate; AFUDC applied monthly on the deferred costs (including AFUDC). The utility shall recover prudently incurred costs for Contingency Plans non-capital projects and related carrying costs upon Commission approval through a Commission approved regulatory process or mechanism.
- D. Utility-owned or self-build projects will be cost-based, consistent with traditional cost-of-service ratemaking, wherein prudently incurred capital costs including associated AFUDC and/or carrying costs are included in rate base; provided that the evaluation of the utility's bid must account for the possibility that the operational costs actually incurred, and recovered from customers, over the project's lifetime, will vary from the levels assumed in the utility's bid. The utility will not, however, be allowed to recover any capital costs that exceed the bid amount. Any utility-owned project selected pursuant to the RFP process will remain subject to prudence review in a subsequent proceeding with respect to the utility's obligation to prudently implement, construct or manage the project consistent with the objective of providing reliable service at the lowest reasonable cost. Subject to Commission approval, the utility-owned or self-build project costs, including operations and maintenance expenses, deferred costs, and taxes, shall recovered through the ~~MPIR-adjustment mechanism~~EPRM, REIP surcharge, or other Commission approved regulatory process or mechanism.

## **VIII. QUALIFYING FACILITIES**

- A. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to offer to purchase capacity and energy from a QF at avoided cost upon reasonable terms and conditions approved by the Commission.
- B. For any resource to which the competitive bidding requirement does apply, the utility shall apply to the commission to waive or modify the time periods described in Hawaii Administrative Rules § 6-74-IS(c) (1998) for the utility to

negotiate with a QF pursuant to the applicable provisions of Hawaii Administrative Rules § 6-74-1S(c) (1998), and upon approval of the Commission, the utility's obligation to negotiate with a QF shall be deferred pending completion of the competitive bidding process.

1. If a non-QF is the winning bidder:
  - a. A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.
  - b. If a non-QF winner does not supply all the capacity needed by the utility, or if a need develops between RFPs that will not be satisfied by an RFP due to a waiver or exemption, a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The Commission's determination of avoided cost will be bounded by the price level established by the winning non-QF.
2. Where the winning bidder is the utility's self-build option, a QF will not have a PURPA right to supply the resource provided by the utility's self-build option.
3. If a QF is the winning bidder, the QF has the right to sell to the electric utility at its bid price, unless the price is modified in the contract negotiations that are part of the bidding process.

CERTIFICATE OF SERVICE

The foregoing Order was served on the date it was uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's electronic Distribution List.

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