

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAII ELECTRIC LIGHT COMPANY, INC.,)
MAUI ELECTRIC COMPANY, LIMITED and)
)
KAUAI ISLAND UTILITY COOPERATIVE)
)
For Approval to Establish a Rule)
to Implement a Community-Based)
Renewable Energy Program and Tariff)
and Other Related Matters.)
_____)

DOCKET NO. 2015-0389

ORDER NO. 38217

APPROVING PHASE 2 RFPS FOR HAWAII ISLAND, MAUI, AND OAHU

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DOCKET NO. 2015-0389

ORDER NO. **38217**

APPROVING PHASE 2 RFPS FOR HAWAII ISLAND, MAUI, AND OAHU

By this Order, the Public Utilities Commission ("Commission") directs HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED (collectively "Hawaiian Electric" or "Companies") to finalize Community Based Renewable Energy ("CBRE") Tranche 1 and low and moderate income ("LMI") requests for proposals ("RFPS"), and Rule 29 tariffs and supporting documents for Hawaii Island, Maui, and Oahu, subject to the modifications set forth in

this Order, and file these finalized RFPs, Rule 29 tariffs, and supporting documents, by February 23, 2022.¹

I.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

On April 9, 2020, the Commission issued Order No. 37070, commencing Phase 2 of the CBRE program.²

On March 30, 2021, Hawaiian Electric filed its proposed CBRE RFPs and tariffs.³

On July 27, 2021, the Commission issued Order No. 37879, approving the March 30 CBRE filings, with modifications, and directing Hawaiian Electric to file revised RFPs and tariffs

¹The Parties and Participants to this proceeding are: (1) Hawaiian Electric; (2) KAUAI ISLAND UTILITY COOPERATIVE; (3) the DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party; (4) the Intervenor, the DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, and TOURISM; and the Participants, pursuant to Order No. 33751, at 100: (5) SUNPOWER CORPORATION; (6) HAWAII SOLAR ENERGY ASSOCIATION ("HSEA"); (7) ULUPONO INITIATIVE, LLC ("Ulupono"); (8) BLUE PLANET FOUNDATION ("Blue Planet"); (9) HAWAII PV COALITION ("HPVC"); and (10) THE ALLIANCE FOR SOLAR CHOICE ("TASC").

²See Order No. 37070, "Commencing Phase 2 of the Community Based Renewable Energy Program," filed on April 9, 2020 ("Order No. 37070").

³See "The Hawaiian Electric Companies' Community Based Renewable Energy Phase 2 Tariff and Appendices, and RFPs and Model Contracts for LMI Subscribers, Tranche 1, Molokai and Lanai, Books 1-6," filed on March 30, 2021 ("March 30 CBRE Filings").

by August 25, 2021.⁴ Order No. 37879 provided that those revised RFPs and tariffs would be automatically approved 15 days after their filing, unless the Commission ordered otherwise.⁵

On August 25, 2021, Hawaiian Electric filed its revised RFPs and tariffs.⁶

On September 3, 2021, the Commission suspended Order No. 37879's automatic approval provision to listen to community concerns relating to CBRE facility siting.⁷

On October 13, 2021, the Commission held a community meeting for Oahu.

On October 27, 2021, the Commission held a community meeting for Hawaii Island.

Maui residents initially requested a community meeting, and after multiple discussions with Commission staff, clarified their request for educational presentations by Hawaiian Electric on the CBRE program. After these presentations,

⁴See Order No. 37879, "Approving the March 30 CBRE Filings, with Modifications," filed on July 27, 2021 ("Order No. 37879"), at 69.

⁵See Order No. 37879 at 69.

⁶The Hawaiian Electric Companies' Community Based Renewable Energy Phase 2 Tariff and Appendices, and RFPs and Model Contracts for LMI subscribers, Tranche 1, and Lanai, Books 1-7," filed on August 25, 2021.

⁷See Order No. 37954, "Clarifying Order No. 37879," filed on September 3, 2021 ("Order No. 37954"), at 10-11.

the Commission received no further requests for a community meeting specific to the CBRE program.

On January 11, 2022, Hawaiian Electric filed its proposed actions to address community concerns voiced at the community meetings.⁸

II.

DISCUSSION

A.

Community Meetings

The Commission issued a notice of community meetings for Oahu⁹ and Hawaii Island¹⁰ to hear community suggestions on how to improve the Phase 2 CBRE procurements. The Commission held the Oahu community meeting via Webex on October 13, 2021, at 6:30 p.m. and the Hawaii Island community meeting via Webex on October 27, 2021, at 5:30 p.m.

⁸Letter From: R. Matsushima To: Commission Re: "Docket No. 2015-0389, Community Based Renewable Energy Program; Hawaiian Electric's Proposed Actions to Address Community Concerns from Community Meetings Held on October 13 and 27, 2021," filed on January 11, 2022 ("Proposed Actions").

⁹"Notice of Oahu Community Meeting," filed on October 7, 2021.

¹⁰"Notice of Hawaii Island Community Meeting," filed on October 15, 2021.

1.

Oahu

During the Oahu meeting, a community member noted the limited use of lands for projects and that "damaged lands" and state properties, building rooftops, schools, and parking lots should be considered first, over agricultural lands, for CBRE projects. Another community member stated that culturally recognized lands should be off limits. The Sierra Club suggested that an Energy Advisory Board could be created to address siting decisions and concerns.

2.

Maui

Community members on Maui asked for Hawaiian Electric to provide educational presentations to the Maui County Climate Action, Resilience, and Environment Committee ("CARES") and the Maui County Climate Action Advisory Committee ("CAAC"). Hawaiian Electric made such presentations, and answered questions, for the CAAC on November 10, 2021, and for CARES on November 17, 2021. Topics raised at these meetings included: (1) land use; (2) proactive community consultation; (3) using local labor; (4) serving LMI customers; (5) how customers can participate in CBRE; (6) community benefits; and (7) ratepayer impacts. Several committee members posed questions about the

County of Maui's ability to participate in the CBRE program for Phase 2, and particularly as an anchor tenant.

3.

Hawaii Island

During the Hawaii Island meeting, community members addressed: (1) ratepayer impacts; (2) battery storage; (3) material sourcing and decommissioning; (4) non-price criteria; (5) labor; (6) LMI access; and (7) community benefits. The Sierra Club stated upfront consultation with neighbors and the surrounding community is critical in avoiding litigation and other challenges surrounding CBRE Projects. The Sierra Club requested full information on the potential savings associated with CBRE and stated a general concern about potential competition between community groups and self-build proposals. The Sierra Club also expressed concerns on ethical sourcing of materials and the process to bond decommissioning plans, and suggested that: (1) RFPs could require an advanced disposal fee to go toward recycling and decommissioning solar panels; and (2) that compliance and cultural resource impacts should be included in the top six double-weighted non-price criteria.

Pacific Resource Partnership expressed the need for local hire provisions and the requirement of a living wage with health and welfare coverage for employees, partners,

and dependents. Pacific Resource Partnership also proposed requirements for apprenticeship programs and that contractors with a history of illegal or negligent practices should not be allowed to participate in CBRE.

B.

Hawaiian Electric Response

In response to the community meetings, Hawaiian Electric proposes to: (1) change the price and non-price criteria weighting to 51% and 49%, respectively; (2) add a new non-price criterion for land use and land cover; (3) provide priority to residential subscribers on a proximity-basis; (4) revise the non-price criteria for cultural resource impacts and require additional post-selection activities for cultural resource impacts and community outreach and engagement; (5) provide the Subscriber Organization community representative's contact information for all selected projects, including small projects; (6) revise the community outreach plan requirements; and (7) revise the non-price criteria for community outreach to encourage the use of local labor and payment of prevailing wage.¹¹

¹¹See Proposed Actions at 1-6.

C.

Analysis

The Commission appreciates the time and effort dedicated by community members, elected officials, and other entities to provide feedback on how to improve CBRE Phase 2. The Commission also appreciates Hawaiian Electric's response to community feedback by way of the Proposed Actions, which are largely responsive to community concerns. The Commission will address the Proposed Actions in turn, and then address remaining issues.

Price and non-price criteria. As the Commission has previously stated, the relative subjectivity of the non-price criteria scoring could undermine developer faith and transparency in the bid evaluation process, and potentially discourage competitive pricing.¹² The Commission is still not convinced that the non-price evaluation criteria are sufficiently transparent to justify weighting them so heavily. Therefore, the Commission declines to adopt Hawaiian Electric's proposal to modify the price and non-price criteria weighting, and instead leaves it at 60%/40%.¹³

New non-price criteria. Hawaiian Electric proposes to create a new non-price criterion that would give higher scoring to

¹²See Order No. 37879 at 58.

¹³See Order No. 37879 at 58.

projects that are proposed on land zoned commercial or industrial, or on land that has greater impervious cover, or reclaimed land.¹⁴ Hawaiian Electric also proposes various requirements outside of non-price criteria, including requiring proposers¹⁵ to provide a site map that indicates the current state of the land use and land cover of the project area and an estimate of the current percentage of impervious cover of the utilized area for the proposed project.¹⁶ Alternatively, Hawaiian Electric proposes to use a land cover map to indicate geographic areas that would get higher or lower scores, depending on the existing and allowed land uses.¹⁷

The Commission supports Hawaiian Electric's proposal to create a new non-price criterion that would give higher scoring to projects that are proposed on land zoned commercial or industrial, or on land that has greater impervious cover, or reclaimed land, because it is responsive to community concerns, and should encourage projects to be located on lands that are already in use. The Commission also approves requiring proposers to provide a site map that indicates the current state of the land use and land cover

¹⁴See Proposed Actions at 2.

¹⁵As these terms are used in the Discussion Section, "proposers" refers to RFP bidders, and "developers" refers to those proposers that are ultimately selected pursuant to the RFP.

¹⁶See Proposed Actions at 2.

¹⁷See Proposed Actions at 2-3.

of the area to be utilized for the project and an estimate of the current percentage of impervious cover of the utilized area for the proposed project. The Commission directs Hawaiian Electric to develop a new non-price criterion accordingly, and add it to the second half (i.e., single weighted) of the non-price criteria. The Commission believes this approach is simpler than using a land cover map.

Priority for proximate residential subscribers.

Hawaiian Electric proposes to modify Rule 29 to require Subscriber Organizations to first offer 100% of the minimum residential subscriptions directly to residential customers located within the same zip code as the project or within a determined radius of the project for a limited amount of time (e.g., three months) before the Commercial Operations Date ("COD") of the project.¹⁸ Hawaiian Electric proposes to do this after community outreach for the project has begun, and before opening up the subscriptions to the entire island on which the project is sited.¹⁹ Subscriber Organizations could offer residential subscriptions prior to the COD and begin adding residential subscribers to a queue, but would not be able to subscribe residential customers outside of the designated zip code

¹⁸See Proposed Actions at 3.

¹⁹See Proposed Actions at 3.

or radius until after the designated timeframe.²⁰ In addition, Subscriber Organizations would be required to conduct marketing and outreach, such as mailers, advertisements, and community meetings with residents within the determined priority area for the project.²¹

Hawaiian Electric recommends extending the grace period for meeting the minimum requirements of Rule 29 by the designated timeframe (e.g., from six months to nine months), including unsubscribed energy, a minimum number of residential subscribers, a residential customer requirement, and an LMI customer requirement, if applicable.²² To ensure that developers do not unnecessarily delay subscribing customers with the extended grace period, Hawaiian Electric recommends that developers be required to make subscriptions effective by the COD for subscriptions committed to pre-COD and within 30 days for subscriptions committed to post-COD, excluding small projects and projects that are located on previously developed land, such as rooftops and parking lots.²³

²⁰See Proposed Actions at 3-4.

²¹See Proposed Actions at 4.

²²See Proposed Actions at 4.

²³See Proposed Actions at 4.

The Commission generally agrees with Hawaiian Electric's proposed approach to provide priority eligibility to residential customers in close proximity to a project, and that using a radius to determine eligibility would be administratively burdensome. To more precisely target customers who actually live near a project, rather than just live in the same zip code as a project, the Commission directs Hawaiian Electric to allow priority access to subscriptions for residents who live in the same census tract as a project, or any census tract that is adjacent to any census tract where the project is located.

The Commission also believes that Hawaiian Electric's proposal to limit these priority subscriptions to the first three months prior to the COD is reasonable, as is extending the grace period for meeting the minimum requirements of Rule 29 by the same amount of time. Hawaiian Electric must further clarify how the pre-application process for potential subscribers would work, including explaining if projects would be visible in the portal to all customers, or only those within the designated geographic area, and if Hawaiian Electric would queue or outright reject non-proximate subscribers.

Cultural resource impacts. Hawaiian Electric proposes to revise the non-price criterion for cultural resource impacts by

double-weighting it.²⁴ Hawaiian Electric also proposes RFP revisions "to require proposers to conduct and provide an Archaeological Literature Review of existing cultural documentation filed with the State Historic Preservation Division and Field Inspection Report for projects five (5) months after they are selected to the final award group."²⁵ Hawaiian Electric suggests updating the post-selection community outreach and engagement requirements to specifically require an update regarding a developer's cultural impact plan, any findings made at the community meetings that are already required prior to the execution of the power purchase agreement, and a new requirement for a community meeting devoted to a review of the findings and mitigation measures related to the cultural resources impacts of the project.²⁶

The Commission supports Hawaiian Electric's proposed new post-selection requirements, and believes that implementing them will encourage developers to heed community concerns and protect

²⁴See Proposed Actions at 4.

²⁵Proposed Actions at 4. This language could be read to require proposers to provide monthly reports for five months, or one report within five months. The Commission believes that Hawaiian Electric means to require a single report to be made within five months. Hawaiian Electric must clarify this language accordingly as part of its CBRE Phase 2 Tranche 1 RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu.

²⁶See Proposed Actions at 4-5.

cultural resources. The Commission is, however, concerned that doubling the weight of the non-price criterion for cultural resource impacts could increase overall project costs, which will ultimately be passed on to subscribers. Therefore, to balance important concerns about cultural impacts of CBRE projects, with the goal of keeping costs low, the Commission approves Hawaiian Electric's proposed new post-selection requirements but rejects Hawaiian Electric's proposal to double weight the non-price criterion for cultural resource impacts.

Community representative. Hawaiian Electric proposes to require the Subscriber Organization to identify its community representative's contact information, including name, phone number, and email, for each selected project, and post that information to the Companies' websites.²⁷ The Commission finds this to be responsive to community requests for more information regarding project developers, and approves this proposal. Additionally, the Commission encourages Hawaiian Electric to disseminate each Subscriber Organization community representative's contact information in other ways, including by sharing it with key contacts developed at various required community meetings.

²⁷See Proposed Actions at 5.

Community outreach plan. In response to community concerns about mitigating traffic, noise, and dust, Hawaiian Electric proposes to update the community outreach plan requirements identified in Appendix B, Section 2.8.1 of the RFPs to include a requirement for developers to communicate construction schedules and activities, the resulting impacts, and mitigation plans at least one month prior to the start of scheduled work.²⁸ Hawaiian Electric also suggests requiring proposers to provide monthly or bi-monthly project status updates (written, virtual, or in-person) throughout the construction and development of the project.²⁹ The Commission agrees that these new requirements will help keep communities informed about the projects as they are being developed, and could help prevent or mitigate problems. Therefore, the Commission directs Hawaiian Electric to revise these requirements in the RFPs accordingly, including monthly project status updates (either written, virtual or in-person, at Hawaiian Electric's discretion).

Local labor and prevailing wage. Hawaiian Electric proposes to revise its non-price criteria in the Community Outreach category so that proposers would be highly encouraged to commit that 80% of non-supervisory construction and operations workers'

²⁸See Proposed Actions at 5.

²⁹See Proposed Actions at 5.

hours associated with the construction or repowering of a project will be paid at the prevailing wage equivalent under HRS Chapter 104 during all periods of construction.³⁰ In addition, Hawaiian Electric's proposed modifications would encourage the Proposer to give preference to hiring qualified construction, operations, and maintenance workers who reside in the county where project is being constructed, and the State of Hawaii, in that order, before hiring non-resident labor.³¹

The Commission believes that because the price and non-price scoring will remain at 60% and 40%, respectively, Hawaiian Electric's proposal strikes an appropriate balance between supporting local labor and fair wages, while still encouraging competitive project prices. It is therefore approved.

Conclusion. The Commission sincerely appreciates the time that community members have taken to provide useful feedback on the CBRE program, and the solutions Hawaiian Electric has developed in response. Although the changes required in this Order do not address every issue raised in the community meetings, the Commission believes these changes will significantly improve CBRE Phase 2 while allowing it to proceed without further delay. The Commission encourages Hawaiian Electric and all interested

³⁰See Proposed Actions at 5-6.

³¹See Proposed Actions at 6.

stakeholders to monitor Tranche 1's implementation and be ready to propose improvements before Tranche 2 is launched.

Hawaiian Electric shall finalize its CBRE Phase 2 Tranche 1 RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu, consistent with the directives in this Order. Hawaiian Electric shall file its final CBRE RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu by February 23, 2022. Hawaiian Electric's final CBRE RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu shall be automatically approved 15 days after they are filed, unless the Commission orders otherwise.

III.

ORDERS

THE COMMISSION ORDERS:

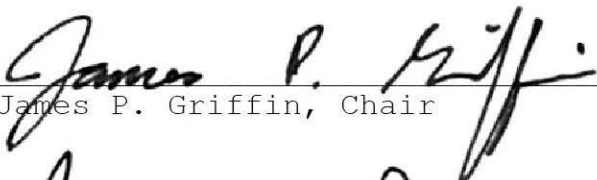
1. Hawaiian Electric shall finalize its CBRE Phase 2 Tranche 1 and LMI RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu, consistent with the directives in this Order. Hawaiian Electric shall file its final CBRE RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu by February 23, 2022.

2. Hawaiian Electric's final CBRE Phase 2 Tranche 1 and LMI RFPs and Rule 29 tariffs for Hawaii Island, Maui, and Oahu


shall be automatically approved 15 days after they are filed,
unless the Commission orders otherwise.

DONE at Honolulu, Hawaii FEBRUARY 8, 2022 .

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By  _____
James P. Griffin, Chair

By  _____
Jennifer M. Potter, Commissioner

By  _____
Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:


Mike S. Wallerstein
Commission Counsel

2015-0389.ljk

CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, 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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COMMISSION

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