

Interconnection-Related Dispute Resolution Process (IDRP)

1 Background

The Hawaii Public Utilities Commission (PUC) hired the Independent Engineer (IE) to assist with interconnection matters in the Hawaiian Electric Companies' (Hawaiian Electric or the Companies) competitive bidding process including disputes that may arise between Hawaiian Electric and the independent power producers or affiliates who have proposed projects (Proposers) during the interconnection process. To initiate this work, the IE proposes the following framework, which will define an interconnection-related dispute, the different resolution levels through which mediation of disputes will be facilitated, and assignment of responsibilities to the appropriate parties, whether they be: the IE; the Companies; the Proposers; or the PUC.

An interconnection-related dispute, as considered within the context of the current competitive bidding process – the Stage 3 RFP process – is any issue that arises at any time between the Priority List selection phase and final system acceptance of the project, between the Companies and a developer related to the study considerations related to the interconnection of a proposed project [including both the system impact study (SIS) and/or facilities study (FS)], or in relation to the facility acceptance (commissioning) and control systems acceptance testing. Given the fact that the IE's role is specified in the Stage 3 RFP to advise on technical issues related to the current competitive bidding process, this dispute resolution framework will not include additional scope that may be the topic of a dispute between the Companies and developers, such as contractual issues related to power purchase agreements (PPAs), or interpretations of the regulatory framework (unless it specifically pertains to an interconnection requirement). Throughout this interconnection-related dispute resolution process, all Parties are expected to communicate and negotiate in good faith and in a timely manner, in order to remedy the issue and maintain progress towards interconnection of the proposed project.

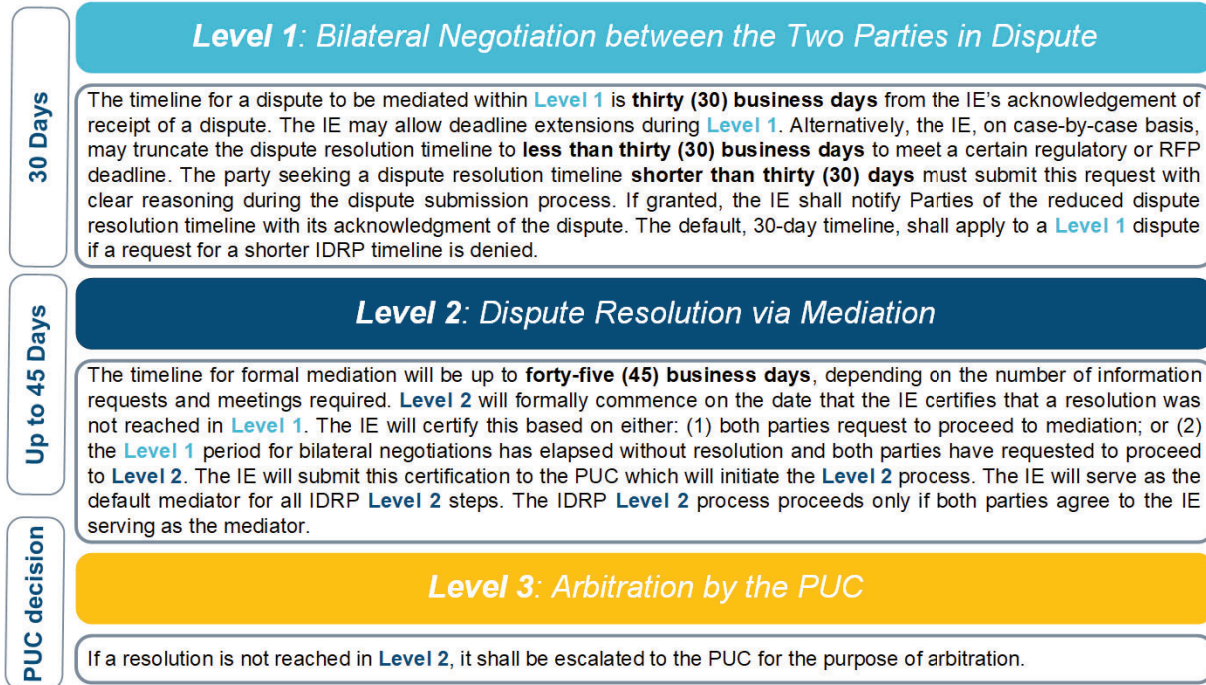
2 Dispute Resolution Framework Summary

The dispute resolution framework is organized into three sequential levels, as shown in Figure 1. The three levels include:

- IDRP Level 1 – Facilitation of Bilateral Negotiations between the Two Parties in Dispute
- IDRP Level 2 – Dispute Resolution via Mediation
- IDRP Level 3 – Escalation to the PUC in Accordance with the Framework for Competitive Bidding (Framework)

This document describes the detailed process including dispute resolution initiation process, timeline, roles, and responsibilities of each party, and clarifies the recording and reporting process for each step.

Interconnection-Related Dispute Resolution Process



Mediator Roles

The IE is committed to serve as a mediator between the Companies and Proposers for all disputes during IDR Levels 1 and 2 as part of this resolution process framework. Should a dispute fail to be mediated – and the proposed solution NOT be deemed satisfactory and accepted by both parties in dispute – the dispute will advance to Level 3 of the process and be escalated to the PUC. The PUC will resolve a Level 3 dispute by Order.

Withdrawing Disputes & New Disputes

This document describes the detailed process, including the dispute resolution initiation process, timeline, roles, and responsibilities of each party, and clarifies the recording and reporting process for each step. Should a party wish to withdraw a complaint at any point during the dispute resolution process, they must inform the IE of their reasoning on company letterhead via email correspondence; the IE will then have five (5) business days to inform the PUC of a withdrawal and will turn over all notes it collected during the process, up until the point of withdrawal. Should a separate, related or unrelated issue arise between both parties during the dispute resolution process, either party is required to file a new dispute, so it may be treated as a separate issue.

Confidentiality

Each party that has agreed to participate in the IDR shall execute a confidentiality agreement with the IE at the commencement of the IDR process. Throughout the IDR levels, parties may be required to submit confidential information to the IE and the Commission. This confidential information must be identified by the parties and submitted under seal. This information will not be made available to the public at any point throughout the process. If subsequent disputes arise related to the same issue as a previous dispute, the IE may reference the previous dispute as basis for proposing resolutions; however, confidential information provided by parties shall not be provided in these subsequent disputes.

3 Bilateral Negotiations between the Two Parties in Dispute (IDRP Level 1)

The timeline for a dispute to be mediated within Level 1 is thirty (30) business days from the IE's acknowledgement of receipt of a dispute (see Step 1.2). The IE may allow deadline extensions during Level 1. Alternatively, the IE, on case-by-case basis, may truncate the dispute resolution timeline to less than thirty (30) business days to meet a certain regulatory or RFP deadline. The party seeking a dispute resolution timeline shorter than thirty (30) days must submit this request with clear reasoning during the dispute submission process. If granted, the IE shall notify parties of the reduced dispute resolution timeline with its acknowledgment of the dispute. The default, 30-day timeline, shall apply to a Level 1 dispute if a request for a shorter IDRP timeline is denied.

To the extent that a dispute may interfere with a time-sensitive deadline as defined by an RFP milestone, parties must prioritize reaching a resolution in accordance with those deadlines. If a resolution cannot be reached by the deadline, parties must submit a signed agreement of acknowledgement of the deadline(s) that will be missed that the IE will share with the PUC.

- **Step 1.1 – Process to submit a dispute:** Parties who challenge or contest any aspect of the interconnection process pertaining to proposed projects can submit a dispute in writing via email on company letterhead to the IE and Independent Observer (IO) and copying the Companies' appropriate RFP contact email address. The letter should clearly describe the dispute, include a chronology of events related to the dispute, and the ideal remedy, and if applicable, any alternative remedy sought. The letter should also include a justification for the complaint's eligibility to be considered under this framework; a dispute may be eligible when it entails an unresolved issue between both parties regarding whether an action by either party is compliant with the interconnection parameters established under Hawaiian Electric's Rule No. 14 and Rule No. 19 Tariffs, the RFP and contract documents, and the Stage 3 RFP framework.
- **Step 1.2 – IE Evaluation:** The IE shall acknowledge the receipt of a dispute. The IE will then evaluate the party's dispute to confirm whether it is compliant with the eligible dispute requirements laid out in this framework. These actions will be completed by the IE within five (5) business days. The thirty (30) day timeline of the IDRP Level 1 dispute resolution starts from the date of IE acknowledgement and confirmation of eligibility of the dispute.
If the submitted dispute does not fall within the IE's purview or does not contain enough merit to be considered in the dispute resolution process, the IE shall communicate to the petitioning party within the five (5) business days from the date of the dispute submission. If necessary, the IE may consult with the IO and PUC to discuss the submitted dispute within the purview of the Stage 3 RFP process.
- **Step 1.3 – Request Information:** Within five (5) business days of acknowledging the receipt of the dispute, the IE will transmit a request, via email, to both parties to request information from each, and to request that each propose their respective ideal resolution, and if applicable, any alternative remedy, for the dispute. Each party's proposed solution will include payment responsibilities for the various cost and schedule delays resulting from the dispute, if applicable, as well as a revised project schedule. Both parties shall respond to the information request within (10) business days.
- **Step 1.4 – Facilitate virtual meetings with two petitioning parties:** The IE may facilitate discussions between the two parties, both separate calls with each party and together with both participating in the meeting. The IE will share an agenda for such meeting with the parties in advance.
- **Step 1.5 – Dispute resolution confirmation or Escalation to Level 2:** The parties in dispute shall inform the IE, via email, if the raised dispute is resolved through the IDRP Level 1 process and shall provide the details of the agreed resolution. If a resolution fails to be achieved in Level 1 of the dispute resolution framework after thirty (30) business days, or a separately agreed upon timeline, the dispute will be elevated to IDRP Level 2.

Recording and Reporting: To clarify the record of responses, the IE will maintain a summary of communications between the two parties that are related to the dispute for the duration of the Level 1 timeline. The IE will share the summary of communication to the PUC within ten (10) business days of dispute resolution

confirmation or escalation to Level 2 via Step 1.5. The summary of communication will also be available to the petitioning parties and IO upon request.

IDRP Level 1

Bilateral Negotiations between the Two Parties in Dispute

5 Business Days

Step 1: Process to Submit a Dispute

Parties who challenge or contest any aspect of the interconnection process pertaining to proposed projects can submit a dispute in writing via email on company letterhead to the IE and IO and copying the Companies' appropriate RFP contact email address. The letter should clearly describe the dispute, include a chronology of events related to the dispute, and the ideal remedy, and if applicable, any alternative remedy sought.

Step 2: IE Evaluation

The IE shall acknowledge the receipt of a dispute. The IE will then evaluate the party's dispute to confirm whether it is compliant with the eligible dispute requirements laid out in this framework. These actions will be completed by the IE within **five (5) business days**. The **thirty (30) day** timeline of the **IDRP Level 1 dispute resolution** starts from the date of IE acknowledgement of the dispute and confirmation of eligibility of the dispute.

Step 3: Request Information

Within **five (5) business days** of acknowledging the receipt of the dispute, the IE will transmit a request, via email, to both parties to request information from each, and to request that each propose their respective ideal resolution, and if applicable, any alternative remedy, for the dispute. Each party's proposed solution will include payment responsibilities for the various cost and schedule delays resulting from the dispute, if applicable, as well as a revised project schedule. Both parties shall respond to the information request within **ten (10) business days**.

30 Business Days

Step 4: Facilitate Virtual Meetings with Two Petitioning Parties

The IE may facilitate discussions between the two parties, both separate calls with each party and together with both participating in the meeting. The IE will share an agenda for such meeting with the parties in advance.

Step 5: Dispute Resolution Confirmation **OR** Level 2 Escalation

The parties in dispute shall inform the IE, via email, if the raised dispute is resolved through the **IDRP Level 1** process and shall provide the details of the agreed resolution. If a resolution fails to be achieved in **Level 1** of the dispute resolution framework after **thirty (30) business days**

Recording and Reporting: To clarify the record of responses, the IE will maintain a summary of communications between the two parties that are related to the dispute for the duration of the Level 1 timeline. The IE will share the summary of communication to the PUC **within ten (10) business days** of dispute resolution confirmation or escalation to Level 2 via Step 1.5. The summary of communication will also be available to the petitioning parties and IO upon request.

4 Dispute Resolution via Mediation (IDRP Level 2)

The timeline for formal mediation will be up to forty-five (45) business days, depending on the number of information requests and meetings required. Level 2 will formally commence on the date that the IE certifies that a resolution was not reached in Level 1. The IE will certify this based on either: (1) both parties' request to proceed to mediation (Step 1.5); or (2) the Level 1 period for bilateral negotiations has elapsed without resolution and both parties have requested to proceed to Level 2. The IE will submit this certification to the PUC which will initiate the Level 2 process, detailed below.

The IE will serve as the default mediator for all IDRP Level 2 steps. The IDRP Level 2 process proceeds only if both parties agree to the IE serving as the mediator.

Dispute Resolution Process if alternative mediator to IE is selected

An alternative mediator can be selected in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. ("DPR") (or its successor) or, in its absence, the American Arbitration Association.

If the petitioning parties intend to use a mediator other than the IE, the mediator shall be selected within thirty (30) business days of the start of Level 2 dispute resolution process. Moreover, should a different party be selected in the Mediator role, the IE will still participate on all discussions as an observer for documentation purposes related to all discussions between each party and the alternative Mediator.

If both parties cannot agree on the selection of a mediator, then this IDRP process will be terminated and either party can initiate a dispute via the dispute resolution process outlined in the Competitive Bidding Framework or file a formal complaint with the PUC.

- **Step 2.1 – Communication from the Mediator:** If there are no objections to the IE serving as Mediator, the IE shall send communication to the parties in dispute for an initial meeting within five (5) business days of the start of the Level 2 dispute resolution process.
- **Step 2.2 – Initial Meeting:** The Initial Meeting¹ shall occur within ten (10) business days from the initial communication date from the Mediator. The initial meeting, facilitated by the Mediator, will include discussion of the formal mediation process including, but not limited to, the summary of the Level 1 dispute resolution process, discussion of roles and responsibilities of all parties, and timeline. All parameters of the formal mediation process will be agreed upon in advance by all parties, including the IE, Companies, and developers.
Note: The Mediator shall keep the summary of meeting notes, which it will share with the petitioning parties, the PUC, and IO within the five (5) business days of the initial meeting date.
- **Step 2.3 – Request for Information:** If deemed necessary, the Mediator shall submit multiple rounds of information requests to the involved parties. In addition, the Mediator may also request the PUC and IO to submit information requests.
- **Step 2.4 – Respond to the Request:** The parties receiving an information request from the Mediator, PUC, and IO shall respond within 10 business days of the receipt date.
- **Step 2.5 – Additional Meetings and Information Requests:** If deemed necessary, the Mediator shall request additional meetings and information with the petitioning parties. The Mediator, if deemed necessary, shall facilitate discussions, both separately with each party and together with both parties. In these meetings, the Mediator may propose solutions for the dispute in question and provide context for each party to consider in their deliberations. During Level 2 negotiations, the Mediator may not arbitrate or deliver an affirmative ruling on the dispute being resolved.
- **Step 2.6 – Information Review and Dispute Resolution Meeting:** Upon reviewing the information provided by both parties, the Mediator shall coordinate a meeting within thirty-five (35) business days of the Initial Meeting date with a proposed solution to the dispute and will provide context for each party to consider in their deliberations. The proposed solution will include payment responsibilities for the various cost and schedule delays resulting from the dispute, as well as a revised project schedule.
Note: The Mediator shall keep the summary of meeting notes, which it will share with the petitioning parties, the PUC, and IO, within the five (5) business days of the meeting date.

¹ The Initial Meeting replicates the Dispute Resolution Process step detailed in Section 1.10.2 on Dispute Resolution from the Stage 3 RFPs.

- **Step 2.7 – Dispute Resolution Notice or Escalation to Level 3:** The parties in dispute shall inform the IE, via email, if the dispute has been resolved via the Level 2 process. Should mediation prove to be unsuccessful in Level 2, the Mediator will make a recommendation for arbitration and/or resolution by the PUC (Level 3). The IE shall also prepare and submit a brief report summarizing the dispute resolution process in Level 2 to the PUC within ten (10) business days of either the exhaustion of the Level 2 timeline, or after receiving notice by the parties that the dispute has been resolved. If a dispute will be escalated to Level 3, the IE will provide the report along with a recommendation to the PUC on how the dispute should be resolved (See Step 3.2). The summary of communication will be available to the parties and IO upon request.

Recording and Reporting: To clarify the record of responses, the IE will maintain a summary of communications between the two parties that are related to the dispute for the duration of the Level 2 timeline. The summary of communication will be available to the parties and IO upon request.

IDRP Level 2

Dispute Resolution via Mediation

The timeline for formal mediation will be up to **forty-five (45) business days**, depending on the number of information requests and meetings required. **Level 2** will formally commence on the date that the IE certifies that a resolution was not reached in **Level 1**. The IE will certify this based on either: (1) both parties request to proceed to mediation (Step 1.5); or (2) the Level 1 period for bilateral negotiations has elapsed without resolution and both parties have requested to proceed to **Level 2**. The IE will submit this certification to the PUC which will initiate the Level 2 process, detailed below.

Optional: Mediator Selection

An alternative mediator can be selected in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. ("DPR") (or its successor) or, in its absence, the American Arbitration Association. Otherwise, the IE will serve as Mediator.

Step 1: Communication From the Mediator

If there are no objections to the IE serving as Mediator, the IE shall send communication to the parties in dispute for an initial meeting within **five (5) business days** of the start of the **Level 2** dispute resolution process.

Step 2: Initial Meeting

The Initial Meeting shall occur within **ten (10) business days** from the initial communication date from the Mediator. The initial meeting, facilitated by the Mediator, will include discussion of the formal mediation process including, but not limited to, the summary of the **Level 1** dispute resolution process, discussion of roles and responsibilities of all parties, and timeline. All parameters of the formal mediation process will be agreed upon in advance by all parties, including the IE, Companies, and developers.

Step 3: Request Information

If deemed necessary, the Mediator shall submit multiple rounds of information requests to the involved parties. In addition, the Mediator may also request the PUC and IO to submit information requests.

Step 4: Respond to the Request

If deemed necessary, the Mediator shall submit multiple rounds of information requests to the involved parties. In addition, the Mediator may also request the PUC and IO to submit information requests.

Step 5: Additional Meetings and Information Requests

If deemed necessary, the Mediator shall request additional meetings and information with the petitioning parties. The Mediator, shall facilitate discussions, both separately with each party and together with both parties. In these meetings, the Mediator may propose solutions for the dispute in question and provide context for each party to consider in their deliberations.

Step 6: Information Review and Dispute Resolution Meeting

If deemed necessary, the Mediator shall request additional meetings with the petitioning parties. The Mediator, if deemed necessary, shall facilitate discussions, both separate calls with each party and together with both participating during the discussion. In these meetings, the mediator may propose solutions for the dispute in question and provide context for each party to consider in their deliberations.

Step 7: Dispute Resolution Notice



Level 3 Escalation

The parties in dispute shall inform the IE, via email, if the dispute has been resolved via the **Level 2** process. Should mediation prove to be unsuccessful in **Level 2**, the Mediator will make a recommendation for arbitration and/or resolution by the PUC (**Level 3**). The IE shall also prepare and submit a brief report summarizing the dispute resolution process in Level 2 to the PUC within **ten (10) business days** of either the exhaustion of the **Level 2** timeline, or after receiving notice by the parties that the dispute has been resolved.

Note: The Mediator shall keep the summary of meeting notes, which it will share with the petitioning parties, the PUC, and IO within the **five (5) business days** of the meeting date.

5 Business Days

10 Business Days

30 Business Days

10 Business Days

Arbitration by the PUC (IDRP Level 3)

- **Step 3.1 – Inform:** The IE has ten (10) business days to inform the PUC of the failure of both parties to reach a resolution in Level 2 (see Step 2.7).
- **Step 3.2 – Record Sharing & Recommendation:** The IE will turn over all documentation collected for the dispute, including all communication logs between parties, notes from all discussions, as well as any other applicable materials. The IE will also provide a recommended outcome, in writing, to the PUC based on engineering judgment and review of the record. The documentation and recommendation will be provided to the PUC within ten (10) business days.
The IE shall provide with its recommendation: (1) a full and clear description of the grievance or dispute between the parties in ordinary and concise language; (2) a complete accounting of the facts constituting the grounds of the dispute, the injury or grievance complained of, and the exact relief desired; and (3) with respect to any allegations of a violation of the RFP, specification of the particular RFP sections that are alleged to have been violated and the facts relied upon to establish the violation.
- **Step 3.3 – PUC Review:** The PUC Chair will designate a “Resolutions Officer” (which may be the Chair, another Commissioner, a member of the Commission staff, Commission hearings officer, or a Commission hired consultant) to serve as arbiter, who will review the documentation and recommendation, with aid from PUC Staff, as needed.
- **Step 3.4 – PUC Resolution:** Upon deliberation, the PUC Resolutions Officer will issue a resolution to the dispute by Decision & Order. The process of PUC arbitration will take no longer than thirty (30) days upon designation of a Resolutions Officer, and there shall be no further appeals process through the IDRP at the conclusion of Level 3.

Note: In compliance with the Competitive Bidding Framework, Section V, “the Commission will use an informal expedited process to resolve the dispute within thirty (30) days” and “[t]here shall be no right to hearing or appeal from this informal expedited dispute resolution process.”

IDRP Level 3

Arbitration by the PUC

10 Business Days

Step 1: Inform

The IE has **ten (10) business days** to inform the PUC of the failure of both parties to reach a resolution in **Level 2**.

10 Business Days

Step 2: Record Sharing & Recommendation

The IE will turn over all documentation collected for the dispute, including all communication logs between parties, notes from all discussions, as well as any other applicable materials. The IE will also provide a recommended outcome, in writing, to the PUC based on engineering judgment and review of the record. The documentation and recommendation will be provided to the PUC within **ten (10) business days**.

Step 3: PUC Review

The PUC Chair will designate a “Resolutions Officer” to serve as arbiter, who will review the documentation and recommendation, with aid from PUC Staff, as needed.

Step 4: PUC Resolution

Upon deliberation, the PUC Resolutions Officer will issue a resolution to the dispute by Decision & Order. The process of PUC arbitration will take no longer than **thirty (30) days** upon designation of a Resolutions Officer, and there shall be no further appeals process through the IDRP at the conclusion of **Level 3**.