

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Requests of )  
 )  
HAWAIIAN ELECTRIC COMPANY, INC., )  
HAWAII ELECTRIC LIGHT COMPANY, INC., )  
AND MAUI ELECTRIC COMPANY, LIMITED )  
 )  
To Institute a Proceeding Relating )  
To a Competitive Bidding Process )  
To Acquire Dispatchable and )  
Renewable Generation. )  
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DOCKET NO. 2017-0352

ORDER NO. 35224

PROVIDING GUIDANCE ON THE HAWAIIAN ELECTRIC COMPANIES' PROPOSED  
REQUESTS FOR PROPOSALS FOR DISPATCHABLE AND RENEWABLE GENERATION

PUBLIC UTILITIES  
COMMISSION

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PROVIDING GUIDANCE ON THE HAWAIIAN ELECTRIC COMPANIES' PROPOSED  
REQUESTS FOR PROPOSALS FOR DISPATCHABLE AND RENEWABLE GENERATION

The Public Utilities Commission ("commission"), by this Order, provides guidance prior to the filing of the Proposed Final Variable Request for Proposals ("RFPs") by the Hawaiian Electric Companies<sup>1</sup> ("the HECO Companies") in connection with the procurement process to acquire new, dispatchable and renewable energy resources for Oahu, Maui, and Hawaii Island.

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<sup>1</sup>The Parties to this docket are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LTD. ("MECO") (collectively, the "HECO Companies" or "Companies"); and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules § 6-61-62(a).



The commission expects the upcoming procurement process to streamline the number of variables and complexity of the project selection process, given the short timeframe to take advantage of declining federal tax credits.<sup>2</sup>

In addition, to help assist the Companies to conduct an efficient and effective procurement process, the commission is considering a number of performance based regulatory mechanism opportunities that may encourage the Companies to successfully execute the procurement process on an accelerated timeline. The commission intends to establish performance based incentive(s) by subsequent order.

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<sup>2</sup>The Production Tax Credit ("PTC") begins a credit step down for wind technologies commencing construction after 2016, declining annually to 80 percent, 60 percent, and 40 percent of the full value for facilities commencing construction in 2017, 2018, and 2019. Legislation passed in 2015 included a phase-down of the PTC such that it will not be available after 2019 unless it is further extended.

The Investment Tax Credit ("ITC") provides a 30 percent credit for qualified commercial, utility, and residential solar projects through 2019. The ITC for solar technologies declines in subsequent years: 26 percent in 2020; and 22 percent in 2021. Beyond 2021, a 10 percent credit is available for commercial and utility systems. Large wind energy systems are also eligible to claim the ITC in lieu of the PTC. The ITC for large wind is 30 percent in 2016, 24 percent in 2017, 18 percent in 2018, and 12 percent in 2019.

I.

Background

On July 14, 2017, the commission issued an order accepting the Companies' Power Supply Improvement Plans ("PSIPs"), which set forth the Companies' intention to competitively procure new grid-scale generation resources. Those plans included procurement of approximately 400 MW of new renewable resources across the HECO Companies' service territories by 2021.<sup>3</sup>

By letter dated June 6, 2016, HECO requested, and by letters dated January 6, 2017, HELCO and MECO requested, that the commission: (1) open a docket for the purpose of receiving filings, reviewing approval requests, and resolving disputes relating to the Companies' plans to acquire dispatchable firm generation and new renewable energy generation on the islands of Oahu, Hawaii, Maui, Molokai, and Lanai; and (2) appoint an Independent Observer, consistent with the applicable provisions of the Framework.

A.

Procedural History

On October 6, 2017, the commission opened the subject docket to receive filings, review approval requests, and resolve disputes, if necessary, related to the HECO Companies' plan to

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<sup>3</sup>See Docket No. 2014-0183.



acquire dispatchable firm generation and new renewable energy generation.<sup>4</sup> At the time, the commission stated that it expected that procurement of new dispatchable and renewable generation through this round of solicitations will generally adhere to the Framework for Competitive Bidding,<sup>5</sup> but the commission may exercise its discretion to expedite and/or amend certain parts of the Framework to accommodate time constraints that may apply to the potential commercial transactions under these solicitations.<sup>6</sup>

On October 13, 2017, the HECO Companies filed a letter request ("Letter Request") asking the commission to establish additional procedural steps, as set forth in the Letter Request, "in order to provide further clarity regarding the process leading up to the issuance of the final, approved RFPs."<sup>7</sup>

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<sup>4</sup>Order No. 34856, "Opening the Docket," filed on October 6, 2017 ("Order No. 34856"). The aforementioned HECO Companies' June 6, 2016 and January 6, 2017 letters requesting that the commission open the docket were included as attachments to Order No. 34856.

<sup>5</sup>See Docket No. 2003-0372, Instituting a Proceeding to Investigate Competitive Bidding for Generating Capacity in Hawaii, Decision and Order No. 23121, Exhibit A - Framework for Competitive Bidding ("Framework"), filed on December 8, 2006.

<sup>6</sup>Order No. 34856 at 1.

<sup>7</sup>Letter Request at 1.

On October 23, 2017, the HECO Companies filed their Draft RFPs with the commission.<sup>8</sup>

On October 27, 2017, the commission issued Order No. 34932 ("Order No. 34932"), "Declining to Amend the Initial Procedural Steps Set Forth In Order No. 34856," stating that the commission would not be "adopt[ing] the Companies' proposed amendments to the stakeholder comment filing deadline, or [amending] the designation of the commission as the recipient of those stakeholder comments, set forth in Order No. 34856."<sup>9</sup> The commission further stated that it would be

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<sup>8</sup>"Hawaiian Electric Companies' Draft Requests for Proposals, Books 1 and 2, Filed October 23, 2017; Exhibit 1, Draft Request for Proposals for Renewable Firm Capacity and Dispatchable Energy Resources on the island of Maui (including Appendices A-L); Exhibit 2, Draft Request for Proposals for Renewable Energy Project(s) on the island of O'ahu (including Appendices A-L); Exhibit 3, The Hawaiian Electric Companies' Proposed Process for Successful Execution of the Competitive Bidding Program; Exhibit 4, Timelines for Each Proposed Procurement; Exhibit 5, The Hawaiian Electric Companies' Code of Conduct and Code of Conduct Manual for the Competitive Bidding Program; Exhibit 6, The Hawaiian Electric Companies' Interconnection Requirements Study Process; and Exhibit 7, Suspension of Lanai and Molokai RFPs," filed on October 23, 2017. In Exhibit 7, the Companies explain their distinct reasons for requesting to suspend the variable renewable dispatchable generation RFPs for Lanai and Molokai.

The various RFPs will be referred to as the "Maui Variable RFP," "Oahu Variable RFP," and "Hawaii Variable RFP" (collectively, the "Variable RFPs"), and the "Maui Firm RFP," throughout this Order.

<sup>9</sup>Order No. 34932 at 6.



issuing orders to establish the timing of forthcoming procedural steps to govern the course of this proceeding.

On November 13, 2017, several stakeholders filed comments on the Companies' Draft RFPs.<sup>10</sup>

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<sup>10</sup>See Coeus Energy LLC's "Comments to Draft re RFP and Model PPA - Docket No. 2017-0352;" "Apollo Energy Corporation's Initial Comments on the Hawaiian Electric Companies' Draft Requests for Proposals Filed on October 23, 2017; and Certificate of Service;" "Progression Hawaii Offshore Wind, Inc.'s Comments on the Hawaiian Electric Company, Inc.'s Draft Request for Proposals for Variable Renewable Dispatchable Generation - Island of Oahu; Declaration of J. Christopher Swartley; Declaration of Counsel; and Certificate of Service;" AES Distributed Energy Inc.'s Comments; "Renewable Energy Action Coalition of Hawaii, Inc.'s Comments on Hawaiian Electric Companies' Draft Requests for Proposals; Innovative Power Projects LLC's "Comments Regarding HECO Companies' Draft Request for Proposals and Draft Power Purchase Agreements;" "Comments of the Energy Freedom Coalition of America, LLC Regarding the HECO Companies' Plan to Acquire Dispatchable Firm Generation and New Renewable Energy Generation; and Certificate of Service;" Longroad Development Company, LLC's "Comments Regarding HECO Companies' Draft Request for Proposals and Draft Power Purchase Agreements;" "Comments by Ulupono Initiative LLC, Blue Planet Foundation, Earthjustice and Life of the Land on the Hawaiian Electric Companies' Draft Requests for Proposals (referred to as the "Joint Commenters"); and Certificate of Service;" Energy Alliance's "Comments Regarding HECO Companies' Draft Request for Proposals and Draft Power Purchase Agreements;" Consumer Advocate's "Comments regarding the Hawaiian Electric Companies' Draft Requests for Proposals, Books 1 and 2;" and "Blue Planet Foundation's Additional Comments on the Hawaiian Electric Companies' Draft Requests for Proposals; and Certificate of Service," all filed on November 13, 2017. On November 15, 2017, Marisco, Ltd. filed comments regarding the Companies' Draft RFPs. A variety of public comments were also filed in the docket between November 13 and December 12, 2017.

On December 20, 2017, the HECO Companies filed their "Response to Stakeholder Comments," and attached exhibit, in the instant docket.

B.

Framework for Competitive Bidding

By Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372, the commission adopted the Framework to govern competitive bidding as a mechanism for acquiring new energy generation in Hawaii. Under the Framework, competitive bidding is the required mechanism for acquiring a future generation resource or a block of generation resources, subject to certain conditions and exceptions.<sup>11</sup> The process of acquiring a future generation resource through a competitive bidding process is described in the Framework.

As a general matter, the "primary role" of the commission in a competitive bidding process is to ensure that each competitive bidding process "is fair in its design and implementation so that selection is based on the merits;" that projects selected through a competitive bidding process are consistent with the utility's approved PSIPs; that the utility's actions represent

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<sup>11</sup>Framework, Part II.A.3, at 3-4.



prudent practices; and that throughout the process, the utility's interests are aligned with the public interest.<sup>12</sup>

To assist the commission, the Framework contemplates the use of an Independent Observer ("IO") in a variety of situations, as the commission deems beneficial and necessary.<sup>13</sup> The IO has numerous obligations under the Framework, which include monitoring all steps in the competitive bidding process, including the communications between the utility and bidders; certifying to the commission at various stages of the competitive bidding process that the utility's judgment creates no unearned advantage for the utility; advising the utility on its decision-making during the various stages of the competitive bidding process; and reporting to the commission on its monitoring results during each stage of the process.<sup>14</sup>

The Framework prescribes that the following steps should take place prior to distributing the Final RFPs:

1. The utility determines how to incorporate certain recommendations from interested parties in the draft RFPs;
2. The utility submits its final, proposed RFPs to the Commission for its review and approval

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<sup>12</sup>Framework, Part III.B.1, at 12. The original Framework language made reference to the utilities' "Approved [Integrated Resource Plan]," rather than to the PSIPs.

<sup>13</sup>Framework, Part III.C.1, at 13.

<sup>14</sup>Framework, Part III.C.2, at 13-15.

(and modification if necessary) according to the following procedure:

- (i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFPs and all attachments, simultaneously with the electric utility's proposed RFPs.
- (ii) The utility shall have the right to issue the RFPs if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFPs and the Independent Observer's comments and recommendations.

However, as the commission previously stated, while this round of procurements will generally adhere to the Framework, the commission may exercise its discretion to expedite and/or amend certain parts of the Framework to improve the efficiency of the process. As such, the subsequent procedural steps to govern the further course of this RFP process, through the filing of the HECO Companies' Final Variable RFPs, are set forth below.

C.

Summary of Stakeholder Comments

Interested stakeholders filed comments related to the RFPs and associated documents on November 13, 2017, pursuant to the deadline established by Order No. 34856. Additional comments from the public and other interested stakeholders were filed after the November 13, 2017 deadline. The commission appreciates the stakeholders' comments in the initial phase of this process.



The comments provided helpful consideration of the Draft RFPs, and the commission commends the stakeholder collaboration, the synthesis of viewpoints and perspectives, and cohesive commentary, which has assisted the commission with its review of the HECO Companies' RFPs and supporting materials.

The commission notes several common themes among the stakeholders' comments. Below, the commission summarizes the themes expressed throughout the comments, as they relate to (a) Self-Build and Affiliate Participation, (b) the Code of Conduct ("Code"), (c) the Companies' Evaluation Methodology, (d) the Draft RFP Design, (e) the Draft Model Renewable Dispatchable Generation ("RDG") PPA, and (f) the Role of the IOs.

1. Self-Build and Affiliate Participation

Several stakeholders proposed precluding the utility from participating in the RFP with a self-build option ("SBO"), while others recommended that both an SBO and affiliate participation be precluded. Overall, many stakeholders believe that allowing an SBO will affect the fairness of the procurement process going forward.

The Joint Commenters recognize that the Framework provides the HECO Companies with the opportunity to submit an SBO, and sets forth specific requirements to ensure that the HECO Companies take all reasonable steps to mitigate concerns over

an unfair or unearned competitive advantage.<sup>15</sup> The Joint Commenters believe that the utility should only be allowed to submit an SBO if no developer proposal is found to be viable.<sup>16</sup> However, the Joint Commenters find it reasonable to allow the HECO Companies to develop a Parallel Plan or Contingency Plan, as contemplated by the Framework.<sup>17</sup>

Similarly, Longroad Development Company ("Longroad") believes that an SBO is inappropriate. Longroad insists that anti-competitive behavior will ensue with a SBO because insider and "privileged information" is inherent in any self-build proposal. Longroad alleges that the utility has gained an unfair advantage to undercut other developer proposals in the past.<sup>18</sup> Longroad states that there is a healthy IPP community that can fulfill the HECO Companies' generation needs, and recommends that the HECO Companies focus its role on transmission and operations.<sup>19</sup>

Apollo Energy Corporation ("Apollo") believes that notwithstanding the safeguards provided for in the Framework, "[t]here is a preponderance of evidence that even in the case where

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<sup>15</sup>Joint Commenters Comments at 5-12.

<sup>16</sup>Joint Commenters Comments at 9.

<sup>17</sup>Joint Commenters Comments at 14.

<sup>18</sup>Longroad Comments at 2.

<sup>19</sup>Longroad Comments at 3.



self-build projects are undertaken by organizationally separate utility affiliates, there is no mechanism that can assure [against] transactional abuses."<sup>20</sup>

Furthermore, Coeus Energy ("Coeus") expresses their concerns with SBOs as opportunities for unfair advantage and anti-competitiveness, stating that "allowing a self-build may not be appropriate."<sup>21</sup> Coeus recognizes the safeguards the HECO Companies have put in place to allay concerns regarding an SBO, but maintain that "these structures, while well-intentioned, are inadequate to ensure a fair process and just as importantly, a process that participants and the public also view as fair."<sup>22</sup> Coeus further maintains that "[t]here is an inherent and underlying conflict in the Company's duty to ratepayers and its duty to shareholders to maximize returns."<sup>23</sup> Coeus suggests that if an SBO is permitted to participate, "it should be evaluated with the same degree of rigor and skepticism as is applied to bids from independent generators."<sup>24</sup>

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<sup>20</sup>Apollo Comments at 3.

<sup>21</sup>Coeus Comments at 1.

<sup>22</sup>Coeus Comments at 4.

<sup>23</sup>Coeus Comments at 2.

<sup>24</sup>Coeus Comments at 5.

2. Code of Conduct ("Code")

The Consumer Advocate, the Joint Commenters, and Coeus all emphasize that there is a general need to address the limitations of the Code in the RFP process, if the HECO Companies and its affiliates are permitted to participate in the bidding process.

The Consumer Advocate states that there is significant latitude for the Companies to deviate from the Code of Conduct Procedures Manual, since language within the Code, such as in the Manual itself, is "intended as a guideline," which does not instill confidence that policies and procedures designed to ensure fairness will be mandatorily followed.<sup>25</sup> The Consumer Advocate requests that the commission confirm whether the Code filed in 2007 is acceptable for the procurement process, or whether modifications are necessary at this time.<sup>26</sup>

The Consumer Advocate also states that the Code does not specify how changes to the Code will be communicated to other stakeholders, nor is there language specifying who has the authority to make changes to the Code, and requests that the commission clarify these points.

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<sup>25</sup>CA Comments at 14; see HECO Companies' Draft Requests for Proposals, Exhibit 5: Code of Conduct Procedures Manual for the Competitive Bidding Program, filed October 23, 2017, at 2.

<sup>26</sup>See CA Comments at 14.



The Joint Commenters express concerns that certain provisions within the Code allow for the use of "Shared Resources" and "Unassigned Company Resources" by the Companies' RFP and the Self-Build teams, all unbeknownst to the potential non-utility bidders, which creates the appearance, and raises the risk, that the RFP process is not on a "level playing field."<sup>27</sup>

Coeus states that one of the limitations of the Code is its ambiguity regarding which utility personnel are subject to it. Coeus believes that the Code should explicitly apply to the HECO Companies' Interconnection Services Division "to include restrictions on the ability of the Interconnection Services Division to act as a conduit for information between the Self-Build Team and the RFP Team," and that this Division should be "subject to anti-conduit rules."<sup>28</sup>

### 3. Evaluation Methodology

The majority of stakeholder comments expressed strong concerns with the HECO Companies' proposed Evaluation Methodology, and highlight the process and the selection criteria as important elements requiring modification. Most stakeholder comments state that they are concerned with a lack of transparency and clarity in

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<sup>27</sup>Joint Commenters Comments at 6.

<sup>28</sup>Coeus Comments at 4.

the Evaluation Methodology. The Consumer Advocate is concerned that "certain evaluation criteria may favor . . . [a] self-build option and discourage bidders," and that the "evaluation methodology (particularly weightings of non-price criteria)" is not "fully described or transparent."<sup>29</sup> The Consumer Advocate further states that:

without improved information as to the evaluation criteria, the Consumer Advocate has concerns that include, but are not limited to increased difficulties in completing regulatory review, an unfair advantage for self-build options (since bidders will not know what criteria will be given greater value), and greater costs for consumers if the "best" proposals to best meet system needs are not being proposed and considered.<sup>30</sup>

The Energy Alliance recommends that the general criteria described in the Draft RFP should be replaced by a detailed, transparent point system, and that information be provided prior to bidding to allow bidders to develop the most cost-effective bids.<sup>31</sup>

The Joint Commenters take issue with the price to non-price criteria 60:40 split, without further breakdowns,

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<sup>29</sup>Consumer Advocate Comments at 7.

<sup>30</sup>Consumer Advocate Comments at 9.

<sup>31</sup>Energy Alliance Comments at 7.



to mean that the utility has complete discretion and subjectivity in evaluating proposals.<sup>32</sup>

Coeus recommends that the utility reveal the criterion weights used in the bid evaluation, that the non-price criteria be scored numerically, and that the scoring approach be set prior to accepting proposals.<sup>33</sup>

The Renewable Energy Action Coalition of Hawaii ("REACH") proposed two modifications to the "Detailed Evaluation" portion to, (1) "evaluate the economic benefits of renewable energy options contained in the Short-Listed Proposals," and (2) to "evaluate the energy security and resiliency benefits, and environmental preservation benefits of renewable energy options contained in the Short-Listed Proposals."<sup>34</sup>

#### 4. Draft RFP

Stakeholder concerns with the Draft RFP are related to specific language and provisions, which stakeholders consider to be anti-competitive, and in some cases, onerous. Some stakeholders proposed modifications to address those

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<sup>32</sup>Joint Commenters Comments at 8.

<sup>33</sup>Coeus Comments at 8.

<sup>34</sup>REACH Comments at 12.

concerns. Stakeholders also expressed concerns on the timeline outlined in the Draft RFPs.

Apollo believes that anti-competitive language related to selection of projects in the Draft RFP would in effect "discourage many developers from responding" to the RFPs.<sup>35</sup> It states that "the approach and requirements the HECO Companies have outlined in the Draft RFP will most surely discourage developers' participation in the nascent market for utility-scale renewables. The consequence is unwarranted and with potential significant costs to customers."<sup>36</sup> Apollo also takes issue with what it considers an "exemption mechanism" within the Framework, which allows the utility to "bilaterally negotiate[] deals with favored counterparties."<sup>37</sup> Apollo views this as "shrinking [the] marketplace for third-party developers and in some cases the postponement of the application of a bidding solicitation process."<sup>38</sup>

The Consumer Advocate acknowledges what it deems to be the benefits of the HECO Companies' technology-agnostic approach in the RFP. However, the Consumer Advocate believes that this may

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<sup>35</sup>Apollo Comments at 2 ("Selection of Projects").

<sup>36</sup>Apollo Comments at 2.

<sup>37</sup>Apollo Comments at 4.

<sup>38</sup>Apollo Comments at 4.



not necessarily be the most efficient approach and believes that a "reverse auction process should be considered" even while acknowledging that "in lieu of the current RFP proposals" it would "significantly lengthen the procurement timeline. . . ." <sup>39</sup>

The Consumer Advocate also notes that the proposed RFP is "more complex" than needed. Citing, for instance, that the utility "is allowing potential bidders to propose capacity as low as 2.64MW-net up to 40 MW," the Consumer Advocate states that "any proposal that has a capacity less than 40 MW 'will require other projects to be received and then evaluated as part of the portfolio of Proposals[.]'" <sup>40</sup> The Consumer Advocate contends that "[i]t is not clear that this approach will result in the quickest selection and approval process." <sup>41</sup>

Additionally, the Consumer Advocate "notes that the RFP continues to reflect language" that would result in a transference of risk to the utility's customers. <sup>42</sup>

Energy Alliance criticizes the current RFP for hampering the process with "long timelines, a lack of clarity regarding utility preferences and bid criteria, high interconnection cost

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<sup>39</sup>Consumer Advocate Comments at 5.

<sup>40</sup>Consumer Advocate Comments at 5.

<sup>41</sup>Consumer Advocate Comments at 5.

<sup>42</sup>Consumer Advocate Comments at 6.

uncertainty, and post-RFP regulatory risk."<sup>43</sup> It proposes that the HECO Companies make the RFP more transparent and efficient with "more targeted revisions."<sup>44</sup>

Other stakeholders that submitted comments outside of the November 13, 2017 comment deadline set by the commission, stated generally that the proposed timeline for achieving signed and approved PPAs is too slow, and should be shortened considerably to a more compressed timeline.

#### 5. Draft Model RDG PPA

Some stakeholders also raised concerns regarding the Draft Model RDG PPA ("RDG PPA"). The majority of stakeholder comments center on specific provisions and language contained in the RDG PPA that they are concerned will be unfair and burdensome.

The Consumer Advocate has concerns with provisions and language in the RDG PPA that effectively shift risk onto utility customers. Therefore, the Consumer Advocate requests that the commission "require some means of verifying that the risks that [are] being transferred to customers are associated with clear benefits of lower priced energy."<sup>45</sup> The Consumer Advocate also

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<sup>43</sup>Energy Alliance Comments at 2.

<sup>44</sup>Energy Alliance Comments at 2.

<sup>45</sup>Consumer Advocate Comments at 6.



proposes that the commission consider "the question of whether the risk of realizing tax credits should possibly be borne by the developer or, possibly be shared between the developer and the utility . . . ."46

The Consumer Advocate has concerns with "evergreen" terms in the RDG PPA, which allow for month-to-month extension of the same contractual terms and conditions, and proposes that "[a]ny such evergreen term should recognize some type of downward pricing adjustment to provide greater motivation for renegotiation."<47

The Energy Alliance acknowledges that conceptually the RDG PPA is workable. However, it states that, the current draft "includes overlapping, non-industry standard performance guarantees that would subject IPPs to penalties for normal performance, and thereby requires IPPs to submit unnecessarily high RFP bids."<48 The Energy Alliance proposes that such provisions be revised, and that the HECO Companies strike non-industry standards that cause financial burden to IPPs.<49

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<sup>46</sup>Consumer Advocate Comments at 6.

<sup>47</sup>Consumer Advocate Comments at 7.

<sup>48</sup>Energy Alliance Comments at 3.

<sup>49</sup>Energy Alliance Comments at 7.

The Joint Commenters do not agree with the HECO Companies' approach of penalizing developers that request exceptions and modifications to the RDG PPA. The Joint Commenters believe it is inherently unfair and unjustified for the Companies to penalize bidders that take exceptions to provisions, without advanced knowledge of the merit of the revisions being proposed.<sup>50</sup> Additionally, Joint Commenters raise questions on the lack of clarity on "non-negotiable" provisions within the RDG PPA.<sup>51</sup>

Coeus believes the RDG PPA should be adjusted and recommends the deletion of several sections which it deems will "[r]equire [e]xcessive [c]redit [a]ssurances."<sup>52</sup> Coeus identifies several additional provisions within the PPA, which it considers burdensome or unfair to the IPP, and that may make financing a project difficult or prohibitive. Coeus requests that the HECO Companies provide additional details related to the necessity of these provisions, and/or modify or delete prohibitive sections accordingly. Coeus also takes issue with the number non-negotiable provisions in the RDG PPA, which it considers "excessive."<sup>53</sup>

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<sup>50</sup>Joint Commenters Comments at 17.

<sup>51</sup>Joint Commenters Comments at 17-18.

<sup>52</sup>Coeus Comments at 17.

<sup>53</sup>Coeus Comments at 7.



Overall, some stakeholder comments found the RDG PPA to be a potentially limiting factor to an efficient procurement process. They express a strong desire for the HECO Companies to streamline the RDG PPA in a manner that will allow for projects to be financeable and enable an efficient negotiation process.

6. Role of the IO

The extent of IO authority is another common theme of discussion in the stakeholder comments. Many stakeholders believe that the IO's current level of responsibility is too limited, and that the IO should be given increased responsibilities in overseeing the procurement process.

The Joint Commenters recommend that instead of being "invited" to attend meetings between the RFP Team and the bidders, as provided for in Section C of the Code of Conduct, the commission should provide the IO with authority to attend all such meetings.<sup>54</sup> They further recommend that the IO be allowed to meet with developers who have submitted proposals at the developer's request, and also "require that the IO clearly be given copies of all written and email communications between and among" the utility's teams.<sup>55</sup>

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<sup>54</sup>Joint Commenters Comments at 14.

Coeus recommends a greater decision-making role for the IO by (1) making the IO more independent of the utility by not allowing it to perform tasks under the direction of the utility, (2) giving the IO more responsibility, such as providing interim reports on the RFP conduct, and (3) giving the IO more authority over the bid review and evaluation models used by the utility, such as the ability to perform its own evaluation models under alternative assumptions.<sup>56</sup>

C.

Summary of the HECO Companies' Response to Stakeholder Comments

The HECO Companies provided their Response to stakeholder comments on December 20, 2017. The Response focused on six general issues: (1) Self-Build Option, (2) Code of Conduct, (3) Evaluation Methodology, (4) RFP Scope and Schedule, (5) the Draft Model RDG PPA, and (6) a Reverse Auction.

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<sup>55</sup>See Joint Commenters Comments at 22. The utility's teams include RFP Team, Self-Build Team, Affiliate Team, Shared Resource persons, Unassigned Company Resource persons, and the Approver.

<sup>56</sup>Coeus Comments at 6.



1. Self-Build Option

In response to concerns regarding an SBO, the HECO Companies argue for inclusion of an SBO because it is permitted under the Framework, and it ensures that all options have the chance to be considered.<sup>57</sup> The HECO Companies further attempt to "assure all stakeholders that the Companies are committed to conducting a competitive bidding process in a fair and unbiased manner."<sup>58</sup> In addressing stakeholder concerns, the HECO Companies agree that all associated costs of an SBO should be factored into the evaluation of the SBO, and will add instructions for including and identifying such costs in the Final RFP.

2. Code of Conduct

In response to stakeholder concerns on the question of adherence to, and the limitations of, the Code of Conduct Procedures Manual, the HECO Companies state that they will clarify certain provisions therein to specifically prohibit the sharing of information among its various teams, and noted that the Code of Conduct does apply to the Interconnection Services Department. They propose classifying members of the Interconnection Services

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<sup>57</sup>Companies' Response at 12.

<sup>58</sup>Companies' Response at 11.

Department as "Shared Resources" for purposes of categorizing their responsibilities.<sup>59</sup>

### 3. Evaluation Methodology

Regarding the Evaluation Methodology, the Companies state that they are amenable to clarifying the proposed evaluation process and providing additional information to address stakeholder issues and concerns.<sup>60</sup> The Companies have set forth three general steps to address the lack of transparency and detail in the evaluation process:

- (1) The Companies addressed the concern regarding lack of weights in the non-price evaluation criteria by proposing to "assign equal weights to each of the non-price criteria[,] and commit to work with the IO on any modifications;<sup>61</sup>
- (2) The Companies provided additional information on the Initial Evaluation scoring methodology; and
- (3) The Companies propose to further develop an internal Evaluation Protocol procedure with input from the IO, to guide the evaluation process.

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<sup>59</sup>Companies' Response at 12.

<sup>60</sup>Companies' Response at 2.

<sup>61</sup>Companies' Response at 2.



#### 4. Draft RFP Scope/Schedule

In their Response, the Companies appear flexible to some degree regarding the concerns expressed by stakeholders on the scope and schedule of the RFP process. For instance, on the concerns of the timeline, the Companies (1) are willing to compress the submission period for bids from 60 to 45 days in order to further condense the timeline; and (2) are amenable to a shortened evaluation period to announce the final award group.<sup>62</sup> They are also willing to accept and evaluate both standalone generation projects and generation plus storage projects in the RFPs.<sup>63</sup> However, the Companies do not agree to raise limits on the number of projects procured in Phase One, as they believe that it will slow down the procurement process through to contracting.<sup>64</sup> The Companies also prefer to limit the number of procured projects to one per circuit.<sup>65</sup>

#### 5. Draft Model RDG PPA

The HECO Companies noted that while the RFPs will utilize new Model PPAs, they do not agree with stakeholders' comments that

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<sup>62</sup>Companies' Response at 9.

<sup>63</sup>Companies' Response at 11.

<sup>64</sup>Companies' Response at 8.

<sup>65</sup>Companies' Response at 10.

these PPAs include a number of non-industry standard provisions that add unnecessary cost or risk to developers.<sup>66</sup>

Additionally, the HECO Companies acknowledge that the proposed RDG PPA represents a change from typical PPAs, but state that this "is necessary in order to facilitate the achievement of the State's renewable energy goal."<sup>67</sup> The HECO Companies state that they remain open to making additional clarifications and improvements to the Model PPAs to address stakeholder concerns. For example, they made a correction to Section 3.8.3 (identification of non-negotiable provisions) of the Model Firm RFP, and agreed to modify the Development Period Security by removing the net zero minimum load capacity reference in Attachment B Section 3.1 of the Model Firm PPA.<sup>68</sup> The HECO Companies also agree to use the liquidated damages amounts agreed upon in the Hu Honua PPA, and will agree to modify the amounts of Development Period Security in Section 7.1 and remove the net zero minimum load capacity.<sup>69</sup>

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<sup>66</sup>Companies' Response at 15.

<sup>67</sup>Companies' Response at 14.

<sup>68</sup>Companies' Response at 15.

<sup>69</sup>Companies' Response at 16.



The HECO Companies further state that bidders may "provide a red-line version of the Model PPA with their suggested changes and revisions, if any as a component of their proposal."<sup>70</sup>

The HECO Companies, however, declined to accept certain stakeholder recommendations and/or amend certain provisions, as discussed below.

For instance, the HECO Companies declined to remove non-negotiable sections, reiterating that all non-negotiable sections are subject to commission approval.<sup>71</sup>

In the Companies' response to stakeholder concerns regarding the inclusion of interim milestones in addition to the Guaranteed Commercial Operations Date ("GCOD"), the Companies maintain this stipulation is necessary.<sup>72</sup> The Companies also argue for retention of provisions covering the assignment of the PPA to another entity,<sup>73</sup> and do not believe payment for Test Energy is a concept applicable to the new Model RDG PPA.<sup>74</sup>

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<sup>70</sup>Companies' Response at 14.

<sup>71</sup>Companies' Response at 15.

<sup>72</sup>Companies' Response at 16.

<sup>73</sup>Companies' Response at 15.

<sup>74</sup>Companies' Response at 17.

Additionally, the HECO Companies do not agree with allowing alternative uses for undispached energy.<sup>75</sup>

6. Reverse Auction

The HECO Companies expressed interest in the Consumer Advocate's proposed reverse auction process.<sup>76</sup> In their response, the HECO Companies state there is "value in conducting a trial of a reverse auction within one of its RFPs where variables can be fixed."<sup>77</sup> The Companies go further to outline their envisioned reverse auction process using their Waena site on Maui, which could be used as a trial.<sup>78</sup>

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<sup>75</sup>Companies' Response at 18.

<sup>76</sup>The Companies stated that a "reverse auction process should be considered, especially in situations where the Hawaiian Electric Companies have a readily available site...such a reverse auction process could be run in parallel with the currently proposed bidding process." Companies' Response at 5.

<sup>77</sup>Companies' Response at 5.

<sup>78</sup>Companies' Response at 6-8.



II.

Discussion

A.

Appointment of IOs

In Order No. 34856, the commission stated that it planned to appoint an IO to serve as the monitor of the competitive procurement process and report on the progress and results thereto to the commission.

The commission, thus, appoints NAVIGANT CONSULTING, INC. as the IO for the Maui Variable RFP and Maui Firm RFP, and BATES WHITE, LLC, as the IO for the Oahu and Hawaii Island Variable RFPs. The IOs will serve under contract directly with the commission, thus avoiding any potential concerns regarding IO independence. The IOs will monitor the competitive bidding process and report on the progress and results to the commission in the instant proceeding. The Companies are directed to work with the respective IOs in drafting their Final RFPs, consistent with the guidance set forth below.

At this time, the Companies should prioritize finalizing the Oahu, Maui, and Hawaii Island Variable RFPs. The Companies should be prepared to initiate the Maui Firm RFP subsequent to receiving further guidance from the commission and the IO, which is expected to occur in the first quarter of 2018.

In addition, the commission intends to institute appropriate competitive safeguards to ensure a level playing field for all participants in both the Variable and Firm procurement efforts, and intends to initiate a separate proceeding to more comprehensively consider necessary competitive safeguards and requirements for any potential affiliate transactions and relationships, including development of a robust and comprehensive Code of Conduct. This proceeding will help further address any issues surrounding self-build and affiliate bids. As such, the Companies are on notice that such safeguards and requirements will be applicable to the Variable and Firm RFPs.

B.

Guidance To The Companies Regarding The Variable RFPs

The commission provides the following guidance related to the Companies' Variable RFPs:

1) **Regarding the Self-Build Option and Affiliate Transactions:** The commission has a strong preference against self-build or affiliate bids for the first phase of the Variable RFPs, to allow the procurement process to move forward without any direct or perceived conflicts of interest. As such, the Companies should focus their attention and limited resources on successfully executing the procurement process while meeting the aggressive timeline envisioned in the RFPs.



Accordingly, the commission will work with the IOs to closely monitor the RFP process to ensure that actions are undertaken by the Companies to provide a level playing field and robust competition. Any self-serving actions by the Companies to delay, discourage, or impede competition will not be looked upon favorably. The commission may reconsider this preference against self-build or affiliate bids prior to the second phase of the Variable RFPs.

2) **Regarding Specific RFP Requirements:** The commission agrees with some stakeholders that the proposed RFPs may contain overly-restrictive, potentially onerous, and/or unclear language. As the Companies have noted in their Response, they do not intend to modify any aspect of the RFPs after the Final RFPs have been issued, and thus the Companies shall work with the IOs to modify or remove such language from the Final Variable RFPs, including but not limited to the following sections

within the Draft Variable RFPs: Section 1.8.2,<sup>79</sup> Section 1.12.1,<sup>80</sup> Section 1.2.13,<sup>81</sup> Section 2.1,<sup>82</sup> Section 3.7,<sup>83</sup> Section 3.11,<sup>84</sup> Section 4.3,<sup>85</sup> and Section 4.5.2.<sup>86</sup>

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<sup>79</sup>See Draft Variable RFP at 7 - Section 1.8.2 - "[Bidders] may submit multiple proposals if a proposal fee is paid for each separate proposal. Proposals that contain variations or option for different project types, contract structures, technology or sites could constitute a separate proposal and require an additional proposal fee, as determined by the Company, in its sole discretion. Proposals in which all of the proposed Generation are not located on the same site shall be required to submit a separate proposal fee for each site."

<sup>80</sup>See Variable Draft RFP at 9 - Section 1.12.1; Modification or Cancellation of the Solicitation Process.

<sup>81</sup>See Variable Draft RFP at 7 - Section 1.2.13; Term of the PPA.

<sup>82</sup>See Variable Draft RFP at 10 - Section 2.1; Resource Needs and Requirements - Performance Standards.

<sup>83</sup>See Variable Draft RFP at 18 - Section 3.7; Proposed Compliance and Bases for Disqualification.

<sup>84</sup>See Variable Draft RFP at 21 - Section 3.11; Project Description.

<sup>85</sup>See Variable Draft RFP at 25 - Section 4.3; Threshold Requirements.

<sup>86</sup>See Variable Draft RFP at 30 - Section 4.5.2 - "Due to the complexity of evaluating different types of resource options and the Project operational attributes expected to be required by the Company, the Company is interested in maintaining flexibility in the Short List selection process. The Company will work with the Independent Observer to ensure the use of a fair evaluation and selection process and methodology which will be established prior to receipt of Proposals. The Company reserves the right to have a reasonable degree of flexibility in implementation of the evaluation and selection process, subject to consultation with and review by the Independent Observer."



The Companies should also provide additional clarity on how they intend to consider certain terms and concepts throughout the Draft Variable RFPs. For example, Section 1.2.5 (Guaranteed Commercial Operations Date) is further qualified by terms in Section 4.3 (Threshold Requirements). The Companies state in Section 4.3 that proposals that will require extensive system upgrades (e.g., that cannot be constructed in time to meet the targeted commercial operations date) will not be considered in this RFP. While it may be true that extensive system upgrades may delay projects, the Companies should provide more clarity on how proposals will be judged with respect to this specific Threshold Requirement.

3) **Regarding the Evaluation Methodology:** Within their Response, the Companies acknowledge that the transparency and predictability in the RFP process is important to ensure a successful procurement process.<sup>87</sup> In this regard, the Companies stated they are amenable to clarifying the proposed evaluation process. Therefore, the commission directs the Companies to work closely with the IOs to provide additional details in the Final RFPs related to the proposed Evaluation Methodology, to improve clarity and transparency to enable bidders to optimize their project design. The Companies shall also work with the IOs

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<sup>87</sup>Companies' Response at 2.

to amend language within the Draft RFPs that limit the potential for innovative project proposals to be submitted. In particular, the Companies should make modeling assumptions (load forecasts, system marginal energy costs, historical energy price curves, etc.) available to participating bidders.

Furthermore, the Companies should explain cost assumptions for the proxy storage unit,<sup>88</sup> and how the Companies intend to dispatch and charge the storage units. At a minimum, the Companies should provide this information to the IOs. Additionally, the commission is concerned about the potentially restrictive parameters within the Selection Criteria, including eligibility requirements, such as interconnection experience in Hawaii, and Threshold Requirements, including but not limited to, capital lease treatment as a Threshold Requirement. The Companies shall work with the IOs to further justify the potential risks associated with the removal of such Threshold Requirements, or revise the Final RFPs to avoid restricting developer participation.

Additionally, the commission agrees with many stakeholders that several areas within the selection criteria require additional clarity and transparency. For example, the Companies should provide additional detail regarding the

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<sup>88</sup>Draft Variable RFP at 12, Section 2.3.6.



Price and Non-Price Evaluation, including the weights of the Price and Non-Price criteria, and further describe how each project will be scored.

Furthermore, the Companies should work with the IOs to determine whether it is reasonable to limit both the number of overall projects selected for each island and the number of projects per circuit.

4) **Regarding the RFP Stages:** The commission believes the overall RFP timeline should be accelerated to enable finalized PPAs to be submitted to the commission for approval by the end of 2018. This accelerated timeline will allow the commission to review and approve PPAs in early 2019, providing the maximum amount of time for developers to safe harbor materials and receive available tax credits. However, the commission does not agree that compressing the time for developers to prepare their bids is appropriate.

5) **Regarding the PPAs:** The commission declines to pre-approve any form or version of a PPA prior to a filed PPA application, to avoid any potential restrictions on developer participation, and directs the Companies to allow bidders to propose modifications to either form of PPA<sup>89</sup> as part of their bids.

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<sup>89</sup>Either the Draft Model RDG PPA or the previously utilized Risk Adjusted Pricing ("RAP") PPA.

The commission further directs the Companies to work with the IOs to remove any overly restrictive and onerous language in the model RDG and RAP PPAs, including non-negotiable provisions and sections that are outdated or would unnecessarily belabor the PPA negotiation process.

C.

Incentive for Exceptional Performance in  
Procuring Low-Cost Renewable Energy Projects

In a subsequent order, the commission intends to establish performance incentive(s) for the HECO Companies that will reward exceptional performance in acquiring renewable energy projects through this round of competitive procurement. These incentives could include shared savings incentives or bonus payments for projects that beat certain price thresholds and achieve commercial operations on accelerated timeframes. The commission expects to establish the incentive mechanism(s) prior to finalizing the RFPs and encourages any stakeholders with innovative proposals to file comments with the commission on this topic by January 29, 2018.



III.

Procedural Schedule

The procedural schedule set forth below shall govern the next steps in this proceeding, unless further modifications are needed. For the second procedural step listed below, "Companies' Filing of Proposed Final Variable RFPs," the Companies are directed to work with the IOs as set forth above, to draft their Proposed Final Variable RFPs.

Procedural Step	Date
Stakeholders have the option to file comments/proposals on potential incentive mechanisms	By January 29, 2018
Companies' Filing of Proposed Final Variable RFPs	February 2, 2018
Commission determination regarding the Proposed Final Variable RFPs, accompanied by formal comments from the IOs provided to the commission on the Proposed Final Variable RFPs <sup>90</sup>	February 19, 2018, or earlier
Final Variable RFP Issuance	5 business days after commission approval of Final Variable RFPs

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<sup>90</sup>This deviates from the Framework slightly, in that the Framework, at Section IV.B.6.e.(i), directs the IOs to submit their comments and recommendations to the commission concerning the RFP and all attachments simultaneously with the electric utility's proposed RFP.

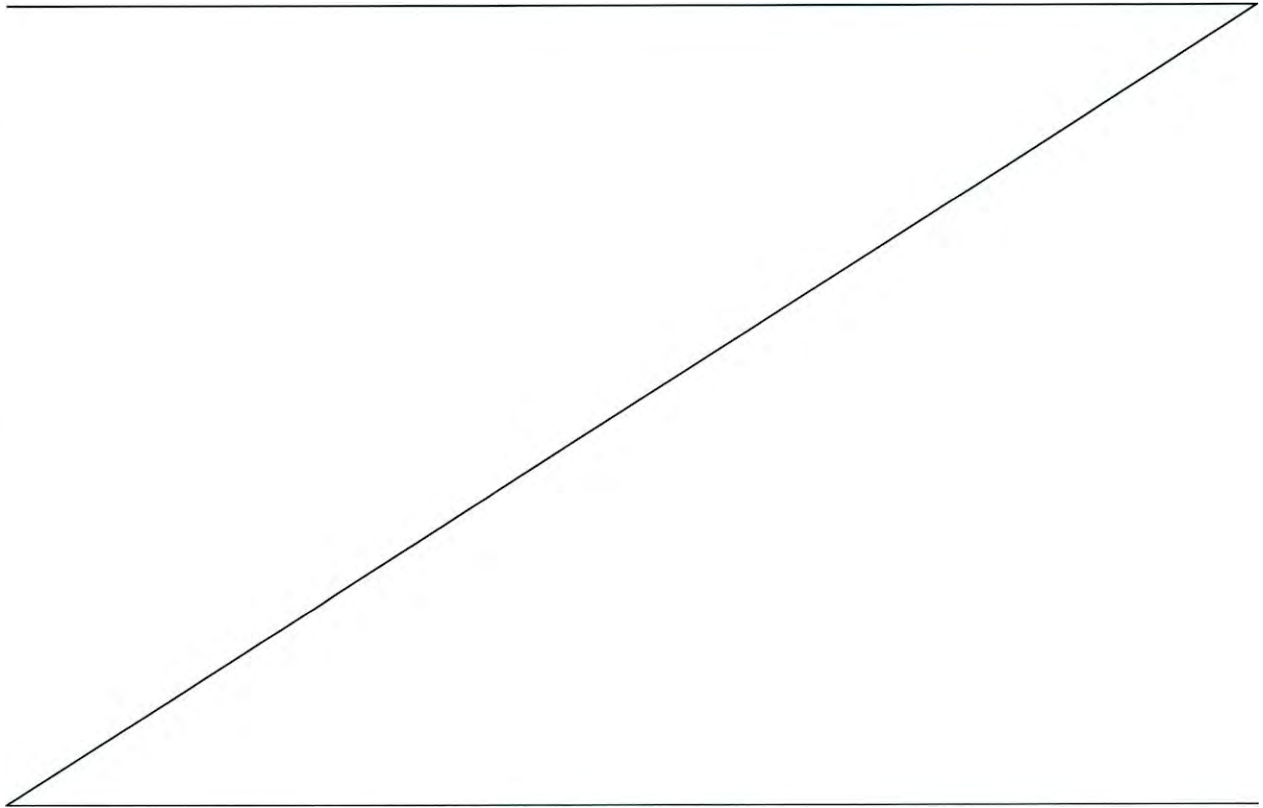
IV.

Orders

THE COMMISSION ORDERS:

1. The commission appoints NAVIGANT CONSULTING, INC. as the Independent Observer for the Maui Variable RFP and Maui Firm RFP, and BATES WHITE, LLC, as the Independent Observer for the Oahu and Hawaii Island Variable RFPs, to monitor the competitive bidding process and to report on the progress and results thereto to the commission.

2. The commission directs the Companies to work with the respective IOs to draft the Proposed Final Variable RFPs, in accordance with the guidance set forth in this Order.

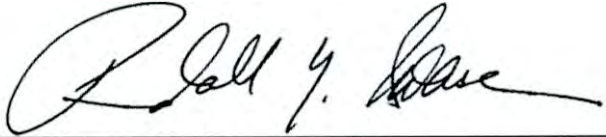




3. The procedural schedule in Section III of this Order shall govern the next steps in this proceeding, unless further modifications are ordered by the commission.

DONE at Honolulu, Hawaii JAN 12 2018.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Randall Y. Iwase, Chair

By   
Lorraine H. Akiba, Commissioner

By   
James P. Griffin, Commissioner

APPROVED AS TO FORM:

  
Caroline C. Ishida  
Commission Counsel

2017-0352.ljk

CERTIFICATE OF SERVICE

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

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