

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. 35560

APPROVING THE HAWAIIAN ELECTRIC COMPANIES'
COMMUNITY-BASED RENEWABLE ENERGY PROGRAM FILINGS

PUBLIC UTILITIES
COMMISSION

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I.

RELEVANT PROCEDURAL HISTORY

On December 22, 2017, the commission issued Decision and Order No. 35137 in the instant docket, in which it (1) issued and adopted a CBRE Framework, applicable to the HECO Companies; and (2) directed the HECO Companies to submit tariffs and related program filings consistent with the guidance provided in D&O 35137.²

On February 20, 2018, in response to D&O 35137, the HECO Companies filed their CBRE program tariffs, Subscriber Organization Disclosure Checklist ("Disclosure Checklist"), Standard Form Contract ("SFC"), and Program Cost Recovery requests for commission review and further action (collectively, "CBRE program tariff filings").³

On April 5, 2018, the commission issued Order No. 35395, in which it invited the Parties and Participants⁴

²Decision and Order No. 35137, filed December 22, 2017 ("D&O 35137").

³See Letter From: D. Brown To: Commission Re: Docket No. 2015-0389 - Community-Based Renewable Energy Program Tariffs, Related Programmatic Filings and Cost Recovery Request, filed February 20, 2018.

⁴The Parties and Participants to this proceeding are: (1) the HECO Companies; (2) Kauai Island Utility Cooperative; (3) the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised

to comment, by April 30, 2018, on the HECO Companies' CBRE program tariff filings.⁵

On April 30, 2018, pursuant to Order No. 35395, the HECO Companies, the Consumer Advocate, DBEDT, and the Joint Parties⁶ filed their comments on the HECO Companies' CBRE program tariff filings with the commission.⁷

On May 7, 2018, the HECO Companies filed their "Motion for Leave to File Supplemental Memorandum in Response to

Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a); the Intervenor, pursuant to Order No. 33751, filed June 8, 2016, at 100 ("Order No. 33751"): (4) Department of Business, Economic Development, and Tourism ("DBEDT"); and the Participants, pursuant to Order No. 33751 at 100: (5) Life of the Land ("LOL"); (6) Renewable Energy Action Coalition of Hawaii, Inc. ("REACH"); (7) SunPower Corporation ("SunPower"); (8) Hawaii Solar Energy Association ("HSEA"); (9) Energy Freedom Coalition of America, LLC ("EFCA"); (10) Ulupono Initiative, LLC ("Ulupono"); (11) Blue Planet Foundation ("Blue Planet"); (12) Hawaii PV Coalition ("HPVC"); and (13) The Alliance for Solar Choice ("TASC").

⁵Order No. 35395, filed April 5, 2018 ("Order No. 35395"), at 9.

⁶Blue Planet, HPVC, HSEA, LOL, REACH, TASC, and Ulupono filed their comments collectively as the "Joint Parties."

⁷See "Hawaiian Electric Companies' Response to Order No. 35395," filed April 30, 2018 ("HECO Companies' Initial Comments"); "Division of Consumer Advocacy's Comments on HECO Companies' Community-Based Renewable Energy Program Tariff," filed April 30, 2018 ("Consumer Advocate's Initial Comments"); "The Department of Business, Economic Development, and Tourism's Comments and Certificate of Service," filed April 30, 2018; "Joint Comments on the HECO Companies' Proposed Community-Based Renewable Energy Program Filings; Attachments 1 & 2; and Certificate of Service," filed April 30, 2018.

Joint Comments on the HECO Companies' Proposed CBRE Program Filings."⁸

On May 11, 2018, the commission issued Order No. 35445, in which it (1) granted the HECO Companies' motion for leave to file a supplemental memorandum; (2) rejected the HECO Companies' proposed CBRE SFC; (3) directed the HECO Companies to submit a new SFC consistent with the guidance provided in the Order, no later than June 1, 2018; and (4) directed the Parties and Participants to submit comments and feedback on the HECO Companies' new SFC, no later than June 15, 2018.⁹

On June 1, 2018, pursuant to Order No. 35445, the HECO Companies filed a new SFC for CBRE-Phase 1, a new Interconnection Agreement, a new Subscriber Agency Agreement and Consent Form ("Subscriber Form"), a revised CBRE Program Tariff,

⁸Hawaiian Electric Company, Inc., Hawaii Electric [Light] Company, Inc., and Maui Electric Company, Limited's Motion for Leave to File Supplemental Memorandum in Response to Joint Comments on the HECO Companies' Proposed Community-Based Renewable Energy Program Filings; Attachment 1; and Certificate of Service," filed May 7, 2018.

⁹Order No. 35445, "Directing the Development of a New Standard Form Contract to Govern the HECO Companies' Community-Based Renewable Energy ('CBRE') Program," filed May 11, 2018 ("Order No. 35445").

and a revised Disclosure Checklist for commission review and approval.¹⁰

On June 15, 2018, pursuant to Order No. 35445, the Consumer Advocate, DBEDT, and the Joint Parties¹¹ filed their comments on the HECO Companies' revised CBRE program tariff filings with the commission.¹²

On June 19, 2018, the HECO Companies filed their "Motion for Leave to File Supplemental Memorandum in Response to

¹⁰See Letter From: K. Katsura To: Commission Re: Docket No. 2015-0389 - Community-Based Renewable Energy Program Submission of New Standard Form Contract, Interconnection Agreement, Subscriber Agency Agreement and Consent Form, revised Tariffs, and revised Disclosure Checklist, filed June 1, 2018 ("HECO Companies' revised CBRE Tariffs and SFC").

¹¹Blue Planet, HPVC, HSEA, LOL, REACH, TASC, and Ulupono filed their comments collectively as the "Joint Parties."

¹²See "Division of Consumer Advocacy's Comments on Hawaiian Electric Companies' Community-Based Renewable Energy Program Submission of New Standard Form Contract, Interconnection Agreement, Subscriber Agency Agreement, and Consent Form, Revised Tariff, and Revised Disclosure Checklist," filed June 15, 2018 ("Consumer Advocate's Comments"); "The Department of Business, Economic Development, and Tourism's Comments to the Hawaii Public Utilities Commission Solicitation for Comments on HECO Companies' Community-Based Renewable Energy Program Tariff," filed June 15, 2018 ("DBEDT's Comments"); and "Joint Comments on the HECO Companies' Revised Community-Based Renewable Energy Program Filings; Attachment 1; and Certificate of Service," filed June 15, 2018 ("Joint Parties' Comments").

Joint Comments on the HECO Companies' Revised Community-Based Renewable Energy Program Filings."¹³

II.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM

On June 19, 2018, the HECO Companies filed their Motion for Leave to Supplement. The Companies bring their motion pursuant to HAR §§ 6-61-41 and 6-61-43. Pursuant to HAR § 6-61-43, the commission may, in its discretion, admit evidence "limited only by considerations of relevancy, materiality, and repetition by the rules of privilege recognized by law, and with a view of doing substantial justice." In its Motion for Leave to Supplement, the HECO Companies submit that their Supplemental Memorandum "is relevant, material, non-repetitive, and would aid in the development of a sound record for the [c]ommission's decision-making on the Companies' proposed [CBRE] Program filings."¹⁴

¹³Hawaiian Electric Company, Inc. Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited's Motion for Leave to File Supplemental Memorandum in Response to Joint Comments on the HECO Companies' Revised Community-Based Renewable Energy Program Filings ("Motion for Leave to Supplement"); Attachment 1 ("Supplemental Memorandum"); and Certificate of Service, filed June 19, 2018.

¹⁴Motion for Leave to Supplement at 3.

Upon reviewing the HECO Companies' Motion for Leave to Supplement, the commission finds that there is good cause to allow the Companies' Supplemental Memorandum into the record. The Supplemental Memorandum is not repetitive of the Companies' prior filings, but constitutes a relevant and material contribution to the record, in that the Supplemental Memorandum provides a pointed response to the Joint Parties' Comments. Given the importance of the issues to the success of the CBRE program, the commission is willing to consider the points made in the HECO Companies' Supplemental Memorandum and, thus, grants the Companies' Motion for Leave to Supplement. As such, the commission considered the arguments and information set forth in the Supplemental Memorandum in the course of developing its findings and conclusions in the instant Order.

III.

PARTIES' COMMENTS

As noted above, through Order No. 35445, the commission requested that the HECO Companies submit a revised SFC, no later than June 1, 2018. Parties were asked to submit their comments and feedback on the HECO Companies' revised SFC, no later than June 15, 2018. The Joint Parties, DBEDT, and the Consumer Advocate responded accordingly. On June 19, 2018, the HECO Companies submitted their Motion for Leave to

Supplement and Supplemental Memorandum to address some of the Joint Parties' comments.

The sections that follow provide a high-level summary of the Parties' comments.

A.

Joint Parties

In general, the Joint Parties find the revised SFC proposal agreeable. They state:

Based on the strong commitment to follow the Minnesota template as much as possible, numerous excessive and burdensome provisions have been omitted, and even provisions common to both Hawaii and Minnesota have been substantially streamlined and improved. The new SFC is also much more conducive to intelligible review by the [P]arties, the [c]ommission, and ultimately any prospective CBRE participants.¹⁵

With regards to the "End of Phase 1," the Joint Parties do not oppose the Companies' proposal to wait for one year, until the first anniversary of Phase 2, at which point any excess Phase 1 capacity will be "'extinguished or added into the Phase 2 capacity at the discretion of the Commission.'"¹⁶ The Joint Parties

¹⁵Joint Parties' Comments at 2, quoting HECO Companies' revised CBRE Tariffs and SFC at 5.

¹⁶Joint Parties' Comments at 3.

state, however, that they would prefer capacity from any subsequent dropouts after the closure of Phase 1 be added to Phase 2.¹⁷

The Joint Parties "defer to the Commission to decide the most functional and efficient way to disclose essential consumer information," but believe the Disclosure Checklist approach can protect customers and meet the concerns pointed out by the Consumer Advocate.¹⁸

The Joint Parties support the omission of several consumer and subscriber protection provisions, consistent with the practice in Minnesota and elsewhere, and support the inclusion of a "late fee" provision, which allows developers the option of paying a late fee instead of being terminated from the queue, also aligned with an amendment to the Minnesota contract.¹⁹ Furthermore, the Joint Parties do not oppose the 24-month timeframe from the execution of the SFC to completion of projects' construction that the HECO Companies propose, as well as an even shorter timeframe of 18 months consistent with the timeframe utilized for Feed-in Tariff ("FIT") Tier 3 projects.²⁰

¹⁷Joint Parties' Comments at 3.

¹⁸Joint Parties' Comments at 4.

¹⁹Joint Parties' Comments at 4.

²⁰Joint Parties' Comments at 4.

The Joint Parties further recommend that the Independent Observer actively monitor the CBRE program queue to identify and report any serious abuses, when considering the possibility for "less serious or viable projects to occupy space in the queue."²¹

With regards to Company protection provisions, the Joint Parties agree with the HECO Companies on the following:

1. The Companies' "proposal to require a security only for interconnection costs during the development period,"²² given the elimination of the liquidated damages provisions; and
2. The adoption of the performance standards under Rule 14H.²³

The Joint Parties clarify, regarding Subscriber Organization provisions, that "they did not 'request[] removal of all milestones[,]'" "but rather recommended following the standard

²¹Joint Parties' Comments at 5.

²²Joint Parties' Comments at 5. The Joint Parties reason that a security should not be required for the operating period because "[d]uring the operating period, failure to perform results in not receiving compensation, which is sufficient incentive in this context." Id.

²³Joint Parties' Comments at 5. The Joint Parties note that several provisions in the "proposed interconnection agreement allow the modifications of the CBRE facility, which could broadly encompass modification of the CBRE's facility's performance standards," contrary to the HECO Companies' assertion that the new agreements would not allow any changes to performance standards. Id. at 6.

practice reflected in the Minnesota contract of requiring a final deadline, with an opportunity for extension" and support the HECO Companies' adoption of this approach.²⁴

While the Joint Parties did not object to the revised SFC provision requiring Subscriber Organizations to provide monthly invoices to the HECO Companies for all credits and payments for energy, they suggested the requirement "may be open for reassessment once the HECO Companies build their administrative software capabilities including the Online Portal, so that Subscriber Organizations are not duplicating a function that the HECO Companies have been equipped to handle."²⁵

They also recommend striking subpart (b) of the "Subscriber Organization and Generating Facility Information" because said language "may suggest that the utility has the sole discretion to require modifications at the Subscriber Organization's expense."²⁶

In addition, the Joint Parties make note of several technical fixes in their comments and list several examples from Appendix IV of the SFC:²⁷

²⁴Joint Parties' Comments at 6.

²⁵Joint Parties' Comments at 6.

²⁶Joint Parties' Comments at 7.

²⁷Joint Parties' Comments at 7-8.

1. Page 5, definition of "Substantial Progress:" the last 2 lines refer to "solar garden," which should be "CBRE Project."
2. Page 5, § 1. A: "Payment for the Subscribed Energy which is produced and delivered and for Subscribers' Compensable Curtailed Energy will be solely by a Bill Credit to Subscribers as detailed below." [i.e., specify "Subscribers'" to clarify and align with provisions that pay the Subscriber Organization for its "CCE share"].
3. Page 7, § 1.E(2), 4th line from the bottom: the referenced "Article 7 (Subscriber Organization Payments)" does not exist; it appears that the reference should be to "Section 3 (Metering Charges and Requirements)."²⁸

The Joint Parties also list areas for which they seek greater clarification. These include, primarily:

1. Commission clarification on the intent regarding "compensable curtailment." The CBRE Framework states: "In order to provide greater certainty to Subscribers and Subscriber Organizations, for Phase 1, any and all curtailment of CBRE facilities shall be compensable."²⁹
2. Whether Phase 1 solar PV systems can include storage. They recommend the following: "The Joint Parties submit that allowing solar-plus-storage facilities to participate in Phase 1 aligns with the current state of technology and the

²⁸Joint Parties' Comments at 8.

²⁹Joint Parties' Comments at 8-9.

market and can only enhance the contributions of CBRE facilities to the grid."³⁰

B.

DBEDT

DBEDT generally supports the new SFC, Interconnection Agreement, Subscriber Form, Revised Tariff, and Revised Disclosure Checklist.³¹

More specifically, DBEDT appreciates that the Companies' CBRE Interconnection Agreement leverages relevant elements of the Companies' CGS+ program.³² DBEDT also appreciates the elimination of several milestones and performance standards, as well as the revision of certain aspects of the revised SFC and supporting documentation.³³

With regards to financial compliance provisions, DBEDT states support for "the Companies' significantly revised financial compliance provisions, including elimination of all provisions related to leases which are not applicable in Phase 1 of CBRE and the revision of the review of the financials such that

³⁰Joint Parties' Comments at 10-11.

³¹DBEDT's Comments at 2.

³²DBEDT's Comments at 2.

³³DBEDT's Comments at 3.

it will only apply in the event the Companies believe there are financial compliance errors."³⁴ DBEDT also supports the removal of the 50 kW subscription cap.³⁵

DBEDT recommends the following edit to the Companies' approach to unused capacity allocation:

[i]f at the conclusion of Phase 1, there remains excess capacity and no Applicants in the queue desiring to use such capacity, the remaining unused capacity may be added to the available capacity in Phase 2 at the discretion of the Commission.³⁶

DBEDT also suggests altering the definition of "Subscriber" to say, "a retail customer of the Company who owns one or more Subscriptions within a single CBRE Project interconnected with the Company."³⁷

Lastly, DBEDT points out a possible incorrect reference to Article 7 and requests the reference be changed to "Section 3: Metering Charges and Requirements" in the appropriate place.³⁸

³⁴DBEDT's Comments at 4.

³⁵DBEDT's Comments at 4.

³⁶DBEDT's Comments at 5.

³⁷DBEDT's Comments at 5-6.

³⁸DBEDT's Comments at 6.

C.

Consumer Advocate

Despite acknowledging the Companies' substantial compliance with prior commission directives, the Consumer Advocate "continues to have concerns regarding the removal of provisions that reduce the accountability of developers and Subscriber Organizations to timely complete CBRE projects."³⁹ The Consumer Advocate contends that this "may affect the expected bills savings associated with project subscriptions, leading to customer confusion and complaints."⁴⁰

In an effort to balance stakeholder goals and to expedite program implementation, the Consumer Advocate proposes the following limited recommendations.

In "Appendix II - Disclosure Checklist," the Consumer Bill of Rights header should be moved to the top of the Disclosure Checklist (prior to "Future Costs and Benefits of the Subscription").⁴¹ The original language describing the disclosure (Exhibit 3, page 2) should be retained and should remain the first item on the Disclosure Checklist."⁴² The Consumer Advocate

³⁹Consumer Advocate's Comments at 5.

⁴⁰Consumer Advocate's Comments at 5.

⁴¹Consumer Advocate's Comments at 5.

⁴²Consumer Advocate's Comments at 5.

believes that the "line item describing the Customer Bill of Rights on page 6 of Exhibit 3" should be deleted because the Consumer Advocate does not believe that the disclosure description "is an appropriate representation to the extent that it implies that the CBRE Subscriber Bill of Rights is monitored and enforced by the Consumer Advocate."⁴³

The Consumer Advocate contends that the addition of the "Tax and Securities Implications" section is "ambiguous [in] what this disclosure is intended to achieve and what subscribers should expect."⁴⁴ The Consumer Advocate thus "recommends that this disclosure be replaced with [the] more specific description[:]"

Determination of whether SO's CBRE facility is or is not deemed a security under federal and state securities Laws. SO warrants that the CBRE facility, the purchase and sale (or lease) of the Subscriber's interest in the facility and the Subscriber Agreement are in compliance with all applicable federal and state securities Laws, and provides the associated tax and reporting requirements.⁴⁵

On the revised SFC, the Consumer Advocate "recommends that the [c]ommission consider extending Phase 2 to begin after two full years of Phase 1 or upon [c]ommission order,

⁴³Consumer Advocate's Comments at 6.

⁴⁴Consumer Advocate's Comments at 9

⁴⁵Consumer Advocate's Comments at 10.

after appropriate review of Phase 1 results."⁴⁶
The Consumer Advocate states "it is critical that sufficient time be allowed for both a substantial review of Phase 1 operations and results and putting in place any necessary safeguards or modifications [] to address consumer protections."⁴⁷

D.

HECO Companies' Supplemental Memorandum

As expressed in the Supplemental Memorandum, the HECO Companies "have serious concerns"⁴⁸ with, and "oppose the recommendations"⁴⁹ of, the Joint Parties regarding compensable curtailment, and the inclusion of energy storage into Phase 1 of the CBRE program. The HECO Companies argue that "compensable curtailment has already been reviewed and approved by the Commission in other dockets" and that changing the rules at this late point in the CBRE process "is not warranted."⁵⁰

⁴⁶Consumer Advocate's Comments at 14.

⁴⁷Consumer Advocate's Comments at 12.

⁴⁸Supplemental Memorandum at 2.

⁴⁹Supplemental Memorandum at 8.

⁵⁰Supplemental Memorandum at 5.

The Companies contend this "could exacerbate the cost-shifting of CBRE costs to non-participating customers."⁵¹

On the potential for including storage with solar PV systems in Phase 1, the HECO Companies oppose the Joint Parties' recommendation, stating that introducing such a concept at this stage "adds complexity that runs counter to the [c]ommission's expressed desire to keep Phase 1 simple and expedient."⁵² The Companies further add that, as the new SFC and CBRE Interconnection Agreements do not incorporate the necessary technical requirements, "such a significant technical addition" of storage would only hinder the launch of the program.⁵³

The HECO Companies reiterate that CBRE projects will be compensated for excess energy curtailment of the facility.⁵⁴ As such, the Companies contend that the addition of storage alongside the existing compensation requirements, means that "the CBRE project and Subscribers would be receiving double payments/credits for such energy" produced, which first

⁵¹Supplemental Memorandum at 6.

⁵²Supplemental Memorandum at 7.

⁵³Supplemental Memorandum at 6.

⁵⁴Supplemental Memorandum at 6.

gets curtailed (and compensated), stored, and then later discharged (and credited).⁵⁵

Finally, regarding the Joint Parties' recommendation of a shorter time frame in the SFC to complete construction of CBRE projects, the HECO Companies stand in agreement, stating that they "also support an 18-month time frame."⁵⁶ This time frame, they agree, is "consistent with the required timeframe to complete FIT projects under the FIT Tariff."⁵⁷

IV.

DISCUSSION

A.

HECO's CBRE Tariff and Disclosure Checklist

As previously noted, on June 1, 2018, the HECO Companies filed their revised CBRE Tariff and Disclosure Checklist for commission review and approval. Upon careful review, and in light of the feedback and comments from the Parties, the commission finds that the revised tariff language and Disclosure Checklist are consistent with the commission's guidance in Order No. 35445. The commission observes that the Companies appear to

⁵⁵Supplemental Memorandum at 7.

⁵⁶Supplemental Memorandum at 7.

⁵⁷Supplemental Memorandum at 7.

have leveraged nationally recognized best practices, meaningfully collaborated with stakeholders, and developed materials consistent with the commission's CBRE Program Framework in the HECO Companies' revision of its CBRE tariff and Disclosure Checklist.⁵⁸ The commission further notes that the Joint Parties have acknowledged the Companies "for their dedicated work to comply with Order No. 35445 and hope and believe that this process can carry over to facilitate and inform not only the smoother implementation of the CBRE program going forward, but also future efforts to draft standard contracts in general."⁵⁹

As stated in Order No. 35395, the commission previously determined that HECO's proposed CBRE tariff and Disclosure Checklist was generally consistent with D&O 35137.⁶⁰ The changes made to HECO's revised CBRE tariff and Disclosure Checklist were necessary to incorporate subsequent structural changes associated with the HECO CBRE Program filing, because of alterations made to the SFC and the increased specificity added to the Disclosure Checklist.⁶¹ The commission notes that the changes to the

⁵⁸See generally HECO Companies' revised CBRE Tariffs and SFC.

⁵⁹Joint Parties' Comments at 2.

⁶⁰See Order No. 35395 at 5.

⁶¹See generally HECO Companies' revised CBRE Tariffs and SFC.

Companies' revised CBRE tariff and Disclosure Checklist did not significantly alter the meaning or effectiveness of the documents.

In addition, the commission notes that the HECO Companies have modified their proposal to terminate unused Phase 1 capacity when Phase 2 begins, and instead now propose to wait for one year until the first anniversary of Phase 2, at which point any excess Phase 1 capacity will be "extinguished or added into the Phase 2 capacity at the discretion of the Commission."⁶² The Joint Parties have stated that they do not oppose this change and "clarify that any excess capacity should be added (not extinguished) to Phase 2 to maximize the utilization of the allocated CBRE program capacity."⁶³

The commission notes that in the CBRE Framework, the commission indicated that "[i]f capacity is left unawarded by the end of Phase 1, the remaining capacity shall still be made available under Phase 1 terms and pricing until the capacity is fully awarded."⁶⁴ The commission appreciates the Companies' efforts to work collaboratively with the Joint Parties to resolve this issue and supports the Companies' proposal to wait for one year until the first anniversary of Phase 2 to assess unused

⁶²HECO Companies' revised CBRE Tariffs and SFC at 5, Exhibit 1, at 12.

⁶³Joint Parties' Comments at 3.

⁶⁴D&O 35137, Attachment A, at 7.

Phase 1 program capacity. The commission does not direct any changes to the Companies' revised proposal, at this time, but expresses a general preference that any unused program capacity from Phase 1 be added to Phase 2.

B.

HECO's SFC, Interconnection Agreement, and Subscriber Form

Upon reviewing the HECO Companies' revised CBRE SFC, Interconnection Agreement, and Subscriber Form, the commission finds the programmatic documents to be generally consistent with D&O 35137 and Order No. 35445. Per commission directives, the HECO Companies have leveraged market-tested SFCs, informed by stakeholder collaboration and input, in their revision of the CBRE SFC, Interconnection Agreement, and Subscriber Form. As noted in the previous section, the commission acknowledges the good faith effort put forth by the HECO Companies and other stakeholders to follow the guidance in Order No. 35445.

Consistent with the Parties' and Participants' comments, however, the commission finds that there are minor edits and changes required for the SFC and Interconnection Agreement. To address these outstanding issues, the commission directs the HECO Companies make the following modifications.

First, the HECO Companies' revised SFC incorporates a 24-month time frame to complete CBRE projects. The Consumer Advocate and Joint Parties both note that this duration is inconsistent with the timeline utilized in the FIT program, which had an 18-month timeline.⁶⁵ The HECO Companies agree that an 18-month timeline is reasonable.⁶⁶ The commission concurs and orders that an 18-month time frame be reflected in the HECO Companies' subsequent CBRE program filings, addressed in Ordering Paragraph 2, below.

Second, the Joint Parties request clarification on the curtailment process to govern the CBRE program. The commission notes the lack of a clear definition for "excess energy conditions." The HECO Companies, in their Supplemental Memorandum, offer to formally define the term "excess energy conditions" in the SFC and/or in the Interconnection Agreement:⁶⁷

"Excess Energy Conditions" mean an operating condition on the Company's system that may occur when the Company has more energy available than is required to meet the load on the Company system at any point in time and the generating assets interconnected with the Company system are operating at or near their minimum levels, taking into consideration factors such as the need to maintain system reliability and stability under

⁶⁵Joint Parties' Comments at 4-5; Consumer Advocate's Comments at 11-12.

⁶⁶Supplemental Memorandum at 7.

⁶⁷Supplemental Memorandum at 4-5.

changing system conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for base loaded firm capacity or scheduled energy, and the normal minimum loading levels of such units. Excess Energy Conditions are more likely to occur during light loading conditions.⁶⁸

The commission's intent with regard to compensable curtailment in the CBRE context is not to compensate CBRE facilities outside of the HECO Companies' proposed definition of excess energy curtailment in their Supplemental Memo.⁶⁹ The commission notes that the discussion of curtailment in D&O 35137, which includes the statement that "for Phase 1, any and all curtailment of CBRE facilities shall be compensable," is consistent with a description of curtailment for excess energy conditions.⁷⁰ In line with this approach, compensation should not be provided for curtailments due to events such as system emergencies, forced outages, or conditions that "endanger any

⁶⁸Supplemental Memorandum at 5. As noted by the HECO Companies, the proposed definition of "excess energy conditions" appears consistent with the definitions used in Docket Nos. 2014-0354, 2017-0108, and most recently, 2018-0053. See Supplemental Memorandum at 5 n.6.

⁶⁹Supplemental Memorandum at 5.

⁷⁰D&O 35137, at 92, Attachment A, at 18-19.

person or property" or have "an adverse effect on the safety or power quality of other customers."⁷¹

Accordingly, the commission adopts the Companies' proposed language to define "Excess Energy Conditions" and directs the HECO Companies to include said language in the SFC and Interconnection Agreement, where applicable.

To the extent that the Joint Parties are seeking transparency regarding the rationale and justification behind curtailment events, the commission notes that the HECO Companies are required to file quarterly CBRE curtailment reports indicating the start and end times of any CBRE curtailment events, an estimate of the number of MW and MWh of curtailment, system conditions at the time of curtailment, and an explanation and justification for each curtailment event for the CBRE block, and that these reports will be monitored by the Independent Observer.⁷²

In addition, to provide greater clarity and certainty regarding curtailment for CBRE facilities and Subscriber Organizations, the commission further directs the HECO Companies to include language defining what constitutes a "Compensable Curtailment Event" as part of the SFC, similar to the

⁷¹HECO Companies' revised CBRE Tariffs and SFC, Exhibit 1, at 40.

⁷²D&O 35137 at 93.

way Compensable Curtailment Events have been defined in commission-approved purchase power agreements:

"Compensable Curtailment Event." Any Curtailment Event other than a Curtailment Event due to (a) an Emergency, (b) a Forced Outage, (c) the Facility not operating in compliance with Good Engineering and Operating Practices, (d) the Company's construction, installation, maintenance, repair, replacement, removal, investigation, testing or inspection of any of its equipment or any part of the Company System, including accommodating the installation and/or acceptance test of non-utility owned facilities to Company System, or Force Majeure⁷³

Third, the revised SFC requires some technical edits. The Joint Parties and DBEDT recommend, and, in many cases, the HECO Companies do not oppose, minor modifications to the revised SFC. The commission concurs with these suggested revisions and directs the Companies to address the following components in the SFC:⁷⁴

1. Page 5, definition of "Substantial Progress:" the words "solar garden" in the last sentence should be replaced with "CBRE Project."
2. Page 5, Section 1.A: The last sentence in the first paragraph should read "Payment for the Subscribed Energy which is produced and delivered and for Subscribers' Compensable

⁷³See, e.g., Docket No. 2014-0357, "Request for Approval of Amended and Restated Power Purchase Agreement," Exhibit E, at 10-11, filed January 31, 2017.

⁷⁴Language additions or replacements are underscored.

Curtailed Energy will be solely by a Bill Credit to Subscribers as detailed below."

3. Page 7, Section 1.E(2): Reference to "Article 7 (Subscriber Organization Payments)" should be stricken and replaced with reference to "Section 3 (Metering Charges and Requirements)."

Fourth, regarding the revised Interconnection Agreement, the commission directs the HECO Companies to modify the language in Section 15. The Joint Parties recommend that the language in Section 15 be modified to remove any implication that the "utility has the sole discretion to require modifications at the Subscriber Organization's expense."⁷⁵ The HECO Companies are not opposed to the Joint Parties' recommendation and language.⁷⁶ Therefore, the language in Section 15 of the CBRE Interconnection Agreement⁷⁷ should read as follows:

Subscriber Organization and Generating Facility Information. By signing this Agreement, the Subscriber Organization expressly agrees and authorizes the Company to request and obtain from Subscriber Organization and its contractors, vendors, subcontractors, installers, suppliers or agents (collectively "Subscriber Organization Agents"), at no cost to Company, information related to the Generating Facility, including but not limited to Watts, Vars, Watt Hours, current and voltage, status of the Generating Facility, inverter settings, any and all recorded event or alarm logs recorded,

⁷⁵Joint Parties' Comments at 7.

⁷⁶Supplemental Memorandum at 8.

⁷⁷HECO Companies' revised CBRE Tariffs and SFC, Exhibit 1, at 41.

(collectively "Generating Facility Data") that Company reasonably determines are needed to ensure the safe and reliable operation of the Generating Facility or the Company's system. Subscriber Organization expressly agrees and irrevocably authorizes Subscriber Organization Agents to disclose such Subscriber Organization Data to Company upon request by Company.

C.

Other Issues

The Joint Parties also request clarification regarding the definition of "Solar PV only technologies," specifically, whether Phase 1 solar PV systems can also include storage.⁷⁸ To this end, the Joint Parties state that battery energy storage systems ("BESS") are "becoming a standard component in DER systems" and that a BESS component could provide mutual benefits by improving the quality and reliability of power output.⁷⁹

The HECO Companies state that they "do not dispute the benefits of BESS[,]" but that incorporating such systems would run counter to the Phase 1 goal of simplicity, and would require amendments or revisions to the proposed revised SFC and CBRE Interconnection Agreement as the current versions do not incorporate any technical requirements or terms associated with

⁷⁸Joint Parties' Comments at 10.

⁷⁹Joint Parties' Comments at 10.

the interconnection or charging/discharging of electricity and/or ancillary services from associated storage systems.⁸⁰ The HECO Companies note that the CBRE Program requires the Companies to purchase all available energy from the CBRE facilities, with Compensable Curtailment, so that the incentives for participants to install storage are unclear.⁸¹ The HECO Companies further point out that if participants are allowed to receive payment for both Compensable Curtailment (as currently allowed), as well as stored energy (e.g., energy curtailed during the day but discharged at night), that this would amount to double-counting and would excessively compensate participants at the expense of non-participants.⁸²

As the commission articulated in D&O 35137:

The first stage of the CBRE Program is to establish foundational capabilities and gain experiential learning. To that end, the program must be simple, and the capacity must be enough to attract developers and meet anticipated demand. To bring simplicity and expedite capacity release, Phase 1 capacity will be allocated on a first-come, first-served basis and be limited to solar PV only technologies.⁸³

⁸⁰Supplemental Memorandum at 6-7.

⁸¹Supplemental Memorandum at 6-7.

⁸²Supplemental Memo at 6-7.

⁸³D&O 35137 at 64.

To that end, the commission reiterates the objectives and intentions behind the phased approach: to provide a streamlined path for the expeditious roll-out of Phase 1 of the CBRE program. The commission certainly recognizes that the incorporation of BESS within the CBRE program is expected, given the compensation structure planned for Phase 2, which will likely require systems to integrate storage in order to avail themselves of On Peak pricing between the hours of 5:00 PM and 10:00 PM. The commission also acknowledges that BESS have the potential to provide numerous grid benefits and has stressed the importance and value of pairing energy storage with new renewable energy projects. That said, accommodating the pairing of BESS with solar PV for CBRE facilities in Phase 1 would appear to require further amendments to the revised SFC and CBRE Interconnection Agreement, and subsequent vetting by the Parties.

In sum, notwithstanding the real and significant benefits of incorporating BESS with solar PV projects, given the high penetration of renewable energy resources on many circuits in the HECO Companies' service territories, the commission must balance such benefits against the complication and delay that adding energy storage technologies at this time will impose on the rollout of Phase 1 of the CBRE program. Under the circumstances, the commission finds and concludes that the highest priority

remains the expeditious establishment of foundational CBRE program capabilities and to gain immediate experiential learning.

Consequently, the commission clarifies that BESS will not be a feature of CBRE facilities in Phase 1, and reiterates that Phase 1 capacity will be limited to solar PV only technologies. The incorporation of BESS with CBRE facilities will be a high priority focus area for the commission in Phase 2 and the commission expects the Companies and Parties to collaborate and address any attendant technical and/or contractual issues well in advance of the commencement of Phase 2.

D.

Conclusion and Commission Ruling

For the reasons stated above, the commission finds and concludes that, subject to the revisions and modifications noted above, the HECO Companies' revised CBRE tariff, Disclosure Checklist, SFC and Interconnection Agreement, and Subscriber Form are consistent with D&O 35137 and Order No. 35445 such that the commission approves the same.

The HECO Companies are directed to submit their approved CBRE program filings, consistent with the directives included herein, no later than ten (10) days from the date of this Order, with an effective date as of the date of filing.

HECO COMPANIES' REQUEST FOR COST RECOVERY

Upon reviewing the HECO Companies' initial CBRE Program Cost Recovery Requests,⁸⁴ the commission observes that the Consumer Advocate has raised numerous concerns in its initial evaluation of the Companies' request.⁸⁵ The commission shares many of these concerns and has identified additional issues that require further information and analysis. Consequently, the commission directs the HECO Companies to re-submit their cost recovery request as a separate application for commission review. To help inform the Companies' subsequent filing, the commission highlights a few of its initial concerns below.

The Companies' Cost Recovery Filing provided information on cost recovery timing, cost estimates, cost recovery mechanisms, and accounting treatment, among other information. For purposes of providing preliminary guidance, the commission focuses its discussion on the Companies' cost estimation approach, as well as the overall approach to CBRE Program administration.

The estimated overall magnitude of administrative costs appears excessive and will likely require additional justification

⁸⁴"Tariffs, Related Programmatic Filings and Cost Recovery Request," Exhibit 3, "CBRE Program Cost Recovery Requests," filed February 20, 2018 ("Cost Recovery Filing").

⁸⁵Consumer Advocate's Initial Comments at 16.

and information from the Companies. One area of concern that requires additional justification, and likely modification, is the HECO Companies' approach to estimating customer care and billing expenses. An important input to this cost estimate is the assumed number of Subscribers within the CBRE Program. The commission observes that the Companies' initial Subscriber estimate assumes that individual Subscribers had a capacity cap of 50 kW, which has been determined to have been a misinterpretation.⁸⁶ Given that the HECO Companies assumed an average consumption that likely internalized this misinterpretation, omitting the 50 kW individual capacity may have a material impact on the Companies' cost estimate.

In addition, the commission is interested in how CBRE Program cost estimates compare to other similar programs in Hawaii. Comparing the actual costs incurred for prior programs to the CBRE Program cost could help support the HECO Companies' future cost recovery filing.

Another important assumption within the CBRE Program cost estimate is the assignment of additional billing and administrative functionalities directly to the CBRE Program.

⁸⁶HECO Companies Initial Comments at 11 (noting that "it appears that the [c]ommission did not intend to cap a maximum subscription capacity level per Subscriber per CBRE facility" Id.)

The commission directs the HECO Companies, in its subsequent application, to explain how the functionalities being added to administer the CBRE Program will be leveraged for current and future operational improvements, and why it is appropriate to consider each functionality a CBRE Program cost versus one attributable to another project or program.

VI.

ORDERS

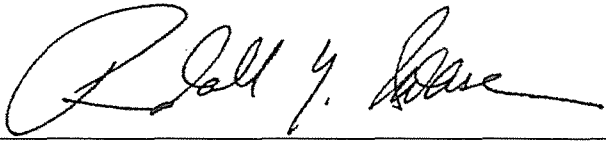
1. The commission grants the HECO Companies' Motion for Leave to Supplement, and has considered the arguments and information set forth in the Companies' Supplemental Memorandum in the course of developing its findings and conclusions in the instant Order.

2. The commission approves the HECO Companies' CBRE tariff and program filings, subject to the modifications and directives articulated in Section IV., above, and directs the Companies to file their revised CBRE tariff and program filings no later than ten (10) days from the date of this Order, with an effective date as of the date of filing.

3. The commission directs the HECO Companies to file for CBRE Program cost recovery in a separate docket, which should be informed by the concerns expressed in this Order.

DONE at Honolulu, Hawaii JUN 29 2018.

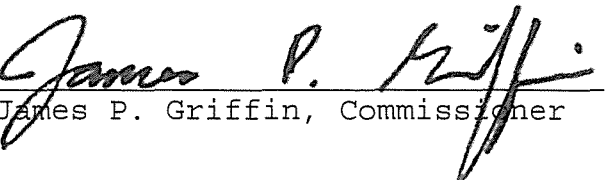
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 

Randall Y. Iwase, Chair

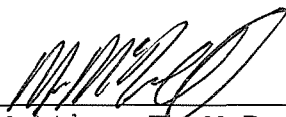
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By 

James P. Griffin, Commissioner

APPROVED AS TO FORM:


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2015-0389.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail,
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