



ALAN M. OSHIMA
President and
Chief Executive Officer

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PUBLIC UTILITIES
COMMISSION

October 16, 2017

The Honorable Chair of the
Hawai'i Public Utilities Commission
465 South King Street
Kekuanaoa Building, #103
Honolulu, Hawai'i 96813

Subject: Pacific Current Purchase of Hamakua Energy Partners' Power Plant

Dear Chairman Iwase:

Thank you for your October 2, 2017 letter regarding Pacific Current's¹ agreement to purchase the Hamakua Energy Partners' ("HEP") power plant ("Facility") on Hawai'i Island (the "Transaction"). In accordance with Hawaiian Electric Company, Inc.'s ("Hawaiian Electric") letter to you dated October 6, 2017, the Hawaiian Electric Companies² respectfully provide as Attachment 1 responses to the inquiries included in your letter.

As explained in Attachment 1, Hawai'i Electric Light may not unreasonably withhold its consent with respect to a proposed assignment of the HEP power purchase agreement ("PPA") to a third party. Upon evaluating the circumstances, Hawai'i Electric Light determined that the Transaction would satisfy the criteria in the PPA for a valid assignment and therefore consented. In doing so, Hawai'i Electric Light treated the Transaction between HEP and Pacific Current no differently than prior transfers of ownership of the HEP Facility to independent third parties.

The Transaction has not yet closed. However, upon closing (currently anticipated by the end of November 2017), the PPA will constitute an affiliated transaction and Hawai'i Electric Light will file the PPA with the Commission as such pursuant to Section 269-19.5 of the Hawai'i Revised Statutes. For reasons summarized here and in Attachment 1, the Companies respectfully submit that the Transaction is consistent with public interest.

The PPA is an existing and continuing agreement that was previously negotiated at arm's length between Hawai'i Electric Light and an independent party. The terms of the PPA have already been approved and found just, reasonable, and in the public interest by the Commission.³ The terms of the PPA will not change as a result of the Transaction. Nor will the transfer of

¹ Pacific Current is a newly-established subsidiary of Hawaiian Electric Industries, Inc. ("HEI").

² Hawaiian Electric and Hawai'i Electric Light Company, Inc. ("Hawai'i Electric Light") are collectively referred to herein as the "Hawaiian Electric Companies" or "Companies".

³ See Docket No. 98-0013, Decision and Order No. 17077 at 25, filed on July 14, 1999, as amended by Order No. 17089, filed on July 21, 1999.

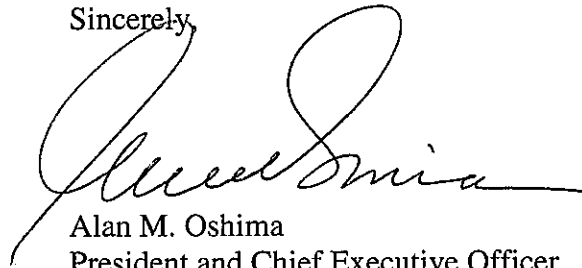
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ownership to Pacific Current affect Hawai'i Electric Light's dispatch of the HEP Facility. The Companies currently provide information publicly by which this dispatch may be monitored and evaluated before and after transfer. And, to further allay any potential concerns in this regard, as well as provide additional transparency on the use of the HEP Facility, Hawai'i Electric Light will provide quarterly (i.e., calendar quarter with a one-month lag) reporting data on the HEP Facility's use on the Companies' website.⁴ This quarterly data will be accompanied by a summary description of changes in resource availability, costs, or other considerations causing significant changes from prior use, should such occur.

Hawai'i Electric Light is committed to ensuring that new grid resources are procured fairly and in furtherance of the public interest and that affiliate transactions will not be unfair to third parties or its customers. As discussed in Attachment 1, there are numerous safeguards in place to ensure this and preserve effective regulatory oversight.

If you have any questions with regards to the contents of Attachment 1 or other aspects of the Transaction as it pertains to the Companies, please contact me, or Kevin Oda at 543-7432.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan M. Oshima", written in a cursive style.

Alan M. Oshima
President and Chief Executive Officer

Attachment
Cc: Consumer Advocate

⁴ The information will be included on the Companies' webpage for key power supply and generation performance metrics, available at <http://hestaging.ingeniuxondemand.com/about-us/key-performance-metrics/power-supply-and-generation>.

Pacific Current Purchase of Hamakua Energy Partners
Response to Commission's Letter Regarding Furtherance of the Public Interest

I. Introduction

As announced by HEI on September 20, 2017, Pacific Current, a subsidiary of HEI, has agreed in principle with Hamakua Energy Partners, L.P., and Hamakua Land Partnership, L.L.P. (jointly, "HEP"), wholly owned by affiliates of ArcLight Capital Partners, a Boston-based private equity firm focused on energy infrastructure investments, to purchase HEP's 60-megawatt dual train combined cycle naphtha powered electric generation plant. Closing and actual transfer of the HEP Facility to Pacific Current is not expected until the end of November 2017.

Upon closing, Hawai'i Electric Light, the counterparty to the PPA for the purchase and sale of electric energy from the HEP Facility to Hawai'i Electric Light, will file the PPA (as defined below) with the Commission pursuant to Section 269-19.5 of the Hawai'i Revised Statutes ("HRS"), as the PPA, upon closing, will then become an affiliated contract between entities commonly owned by HEI.¹

II. Background

Hawai'i Electric Light currently purchases from HEP firm generation capacity and electrical energy generated by the HEP Facility pursuant to that certain Power Purchase Agreement dated October 22, 1997.² The Commission has already found the terms and conditions of the PPA reasonable and in the public interest.³ The HEP Facility has changed ownership a number of times during the term of the PPA. In 2004, Energy Investors Fund ("EIF") acquired the facility from Encogen and in June 2010, HEP purchased the facility from EIF and currently owns 100% of the HEP Facility under the two HEP entities referenced above.

The PPA has generally been administered over the years without any major disputes. The current manager and operator of the HEP Facility, Consolidated Asset Management Services (Texas) LLC ("CAMS"), has been in place since June 2010, and is proposed to continue operating the facility under Pacific Current's ownership. The current fuel contract for naphtha is in place through June 2018. The HEP Facility's operating and safety record is satisfactory. Overall, the facility is in excellent condition.

Under the terms of the PPA, Hawai'i Electric Light has two rights to consent to any assignment of the PPA by the seller. Under Section 17.1 of the PPA, the consent of Hawai'i Electric Light, not to be unreasonably withheld, is required for any assignment of the PPA

¹ See HRS § 269-19.5(c).

² The Power Purchase Agreement and associated Interconnection Agreement, also dated October 22, 1997, are hereinafter collectively referred to as the "PPA." The HEP Facility was constructed and has been generating electrical energy under the PPA since 2001. The original developer and operator of the facility was Encogen Hawaii, L.P. ("Encogen").

³ The PPA was filed as Exhibit A to the Application for Approval of Power Purchase Agreement and Interconnection Agreement with Encogen Hawaii, L.P., and for Declaratory Order on January 16, 1998, in Docket No. 98-0013. The Commission approved the PPA in Decision and Order ("D&O") No. 17077, filed on July 14, 1999, as amended by Order No. 17089 filed July 21, 1999, in Docket No. 98-0013.

(subject to certain financing and affiliate transactions not applicable here). Further, under Section 19.2 of the PPA, if Hawai‘i Electric Light has not exercised its right to first refusal under Section 19.1 of the PPA, the seller may sell the facility and assign the PPA to an assignee subject to the written approval of Hawai‘i Electric Light, not to be unreasonably withheld. Hawai‘i Electric Light is required to grant assignment of the PPA upon being reasonably satisfied that the proposed assignee has: (i) the qualifications or has contracted with an entity having the qualifications to operate the facility in the manner consistent with the requirements of the PPA; and (ii) provided Hawai‘i Electric Light with adequate assurances of the assignee’s creditworthiness and financial ability to perform the financial obligations of the PPA. Upon notice from HEI of its intent to purchase the HEP Facility, Hawai‘i Electric Light consented to the assignment to Pacific Current based on the continuing operation of the HEP Facility by its current operator, CAMS, and the financial strength and creditworthiness of HEI. Throughout the due diligence process completed by HEI, the Hawaiian Electric Companies provided no assistance to HEI and provided no confidential operating or proprietary information on the operations and dispatch of the HEP Facility. In other words, and as more fully detailed below, the Hawaiian Electric Companies have treated HEI no differently than any other independent third party that has purchased the HEP Facility.

III. Affiliate Transactions Generally

By way of background, there are a number of provisions, conditions, commitments and processes that provide oversight and protections with respect to affiliate transactions. These safeguards include: (1) statutes; (2) relevant provisions from the *Conditions for the Merger and Corporate Restructuring of Hawaiian Electric Company, Inc.* (“1982 Agreement”); and (3) reviews by the Commission of the reasonableness of the costs of services provided to the Companies by affiliates.

A. Statutory Safeguards

The Commission has general supervision over all public utilities (see HRS § 269-6), including broad powers to examine into the condition of each public utility and the manner in which it is operated (see HRS § 269-7).

More specifically with respect to Pacific Current, affiliated transactions are subject to HRS § 269-19.5. In general, HRS § 269-19.5 requires the filing of any contract or agreement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and any contract or agreement for the purchase, sale, lease, furnishing, or exchange of any real or personal property rights, including but not limited to real estate, improvements on land, equipment, leasehold interests, easements, rights-of-way, franchises, licenses, permits, trademarks, and copyrights, between a public utility and any affiliated interest, having a face value of at least \$300,000, within 45 days of the effective date of the contract. If the Commission, in its discretion, determines that an affiliated contract is unreasonable or otherwise contrary to the public interest, the utility must either revise the contract or risk disallowance of payments under the contract for ratemaking purposes.

In addition, in any proceeding involving the rates or practices of any public utility, the Commission may exclude from the accounts of the public utility any payment or compensation

to an affiliated interest for any services rendered or property or service furnished, under the affiliate contracts, unless the public utility establishes by clear and convincing evidence the reasonableness of the payment or compensation.

B. 1982 Agreement

Pursuant to Order No. 7070, issued on April 19, 1982, in Docket No. 4337, the Commission's approval granted in Docket No. 4337 (i.e., approval of the corporate restructuring plan that resulted in HEI owning all of the issued and outstanding common stock of Hawaiian Electric) was made subject to the terms of the 1982 Agreement, which include a number of conditions that safeguard the public interest with respect to transactions among HEI and its affiliates. For example:

- Condition 3 gives the Commission the right to investigate any matter, activity, or transaction between Hawaiian Electric and its subsidiaries.
- Condition 4, subpart 3 requires HEI to provide consolidating financial statements together with an explanation of the nature of intercompany transactions and the basis of any allocations made.
- Condition 5 gives the Commission and Consumer Advocate the right to review any intercompany charges and allocations of common expense between the Companies and affiliates. Any intercompany charges and allocations not deemed proper for ratemaking and quality of service purposes may be disregarded by the Commission in determining allowable expenses, revenues, rate base, and rate of return for the Companies.
- Condition 8 requires the Companies to obtain their own interim and long-term borrowings and that any cash advances made to the Companies by HEI shall bear an interest rate not higher than that currently being paid on the Companies' principal bank borrowings.
- Condition 9 prohibits the Companies from making loans to its parent or its subsidiaries without prior Commission approval.
- Condition 10 prohibits the Companies from paying cash dividends in the event the consolidated common stock equity of the Companies falls below 35% of the total capitalization of the Companies (excluding short-term borrowings).
- Condition 15 requires that the books and records of the Hawaiian Electric Companies shall always be maintained in the State of Hawai'i, with Condition 1 requiring that all such documents be provided to the Commission when requested in writing.

In accordance with Hawaiian Electric's April 28, 1995 letter to the Commission in Docket No. 7591, Hawaiian Electric files annual reports on its compliance with certain of the 1982 Agreement conditions.⁴

C. Regulatory Review of Affiliate Cost Allocations and Services

The reasonableness of the costs of services provided to utility companies by affiliated companies is examined by the Consumer Advocate and the Commission in rate cases. For example, in its decision and order in Hawaiian Electric's 1990 test year rate case, Docket No. 6531, the Commission found that:

It is not improper for a parent company to charge its utility subsidiary such portions of the costs reasonably incurred by the parent company that result in tangible benefits to the subsidiary and that are of the kind, if reasonably incurred by the utility itself, that are includable as expense for ratemaking purposes; provided that the methodology used to calculate the portion to be allocated to the subsidiary is reasonable.

The Commission, however, questioned the reasonableness of the allocation to Hawaiian Electric, and "the method used to allocate HEI's common costs," and stated that it would revisit the issue in Hawaiian Electric's next rate case.

In response to D&O No. 11317 (which was issued after the filing of Hawaiian Electric's "next rate case", Docket No. 6998), Arthur Andersen & Co. ("Arthur Andersen") was retained by Hawaiian Electric to review the HEI inter-company billing methodology and recommend improvements. Given the timing, the parties to Docket No. 6998 stipulated to the test year amount for HEI inter-company billings, and Hawaiian Electric and the Consumer Advocate agreed to work on the development of an improved methodology for inter-company billings and cost allocations (from HEI to Hawaiian Electric as well as from Hawaiian Electric to HEI). The Commission approved the stipulation.

The Arthur Andersen Report, entitled *Report on Review of Intercompany Billing Methodology*, dated October 1992, was submitted to the Commission under cover letter dated November 9, 1992, and was addressed in detail in the testimony of Paul M. Keglevic, HECO T-10 (which included a copy of the report as Exhibit HECO-1001) in Docket No. 7700. Effective January 1, 1993, HEI implemented a positive time reporting billing system as recommended by the Arthur Andersen Report, and HEI's intercompany billing methodology was revised to essentially incorporate all of the significant recommendations in the Arthur Andersen Report. The parties to Docket No. 7700 stipulated to Hawaiian Electric's rebuttal estimate for HEI inter-company billings based on the new methodology, and the Commission accepted the stipulated estimate in its final decision, which reviewed the significant changes in the cost allocation method.

⁴ See, e.g., Letter from Joseph P. Viola to Commission, *Status of Compliance with Conditions of Merger*, filed August 31, 2017.

IV. Measures Taken with Respect to the Transaction

As noted above, the Hawaiian Electric Companies emphasize and reassure the Commission that HEI has been treated no differently than any other independent third party that has purchased the HEP Facility in the past. The Companies have processes in place to identify and prevent any potential preferential treatment of affiliates with respect to: (1) unit commitments and/or dispatch; (2) solicitation, negotiation, procurement, interconnection and/or re-negotiation of new or existing generation resources; or (3) the development and/or implementation of new programs to invest in “non-wires alternatives” to generation and/or expand customer choice.

A. Ground Rules and Principles

The Hawaiian Electric Companies follow these guiding principles with respect to proposed and approved affiliate transactions:

1. The affiliate transaction provisions discussed in Section III, above, apply;
2. Confidential information must be protected;
3. Except as may be prescribed by the affiliate transaction rules, affiliates shall neither be advantaged nor disadvantaged with respect to a transaction;
4. Accurate records of affiliate transactions must be maintained and transactions are to be reported as required in a timely manner;
5. Assets and practices are separated between affiliates.

In addition, when it became evident that HEI or an affiliate would consider purchasing the HEP Facility and stepping into the shoes of the Seller under the HEP PPA, by letter to HEI dated July 7, 2017 (see Exhibit A to this response), the Hawaiian Electric Companies established ground rules to govern the interaction and cooperation between the Companies and HEI related to due diligence and the transfer of control over the HEP Facility. These ground rules include the following:

1. The Companies will communicate and cooperate with HEI on an arm’s-length basis, and will treat HEI the same as any other third party independent entity taking ownership of the HEP Facility and assuming the rights and obligations of the PPA between Hawai‘i Electric Light and HEP.
2. The Companies continue to be under non-disclosure and confidentiality obligations to HEP under both a Confidentiality Agreement with HEP executed in connection with the Asset Purchase Agreement between the parties and, with respect to Hawai‘i Electric Light, under the PPA. The Companies will honor these confidentiality obligations unless expressly waived by HEP.

3. Any expenditure of time and/or expenses by the Companies to respond to appropriate HEI requests and communications shall be subject to standard inter-company billing procedures.

The Hawaiian Electric Companies also established a single point of contact in the Hawaiian Electric Legal Department to effectively serve as a gatekeeper for all HEP-related requests and communications with HEI regarding this Transaction. HEI and the Companies are subject to a shared services agreement whereby assistance provided by the Companies to HEI is billed at standard inter-company billing. This single point of contact fielded requests for assistance from HEI and, if appropriate, i.e., not related to the HEP purchase, approved the request. Requests for assistance amounting to due diligence by HEI for the HEP purchase were rejected in the same manner as the Company would not disclose and/or assist in the due diligence efforts of any other independent third-party purchaser of the HEP Facility.

By letter to HEI dated October 5, 2017 (see Exhibit B to this response), the Hawaiian Electric Companies reaffirmed these ground rules. In addition, the Companies reiterated their desire to avoid any appearance of self-dealing or other preferential treatment of HEI as it completes the Transaction, and noted that the Companies are parties to a Confidentiality Agreement with HEP and, therefore, are unable to provide HEI certain confidential information the Companies have received from HEP without prior written permission from HEP allowing the Companies to do so. The Companies also noted that they will only provide operational and/or planning information regarding the HEP Facility that the Companies would ordinarily provide any other third-party purchaser of the facility.

The Hawaiian Electric Companies' Legal Department is in the process of finalizing an Affiliate Transactions Code of Conduct Compliance Policy ("Code of Conduct"), which will be transmitted to the Commission upon its implementation, currently anticipated in mid-November 2017. The Legal Department has been working with various process areas throughout the Companies to prepare the Code of Conduct, the purpose of which is to compile, update, supplement and centralize policies and practices to ensure appropriate conduct with respect to affiliate transactions. Among other things, the Code of Conduct will confirm and address standards and practices on topics such as protection of information resources, nondiscrimination, separation, advertising and marketing, recordkeeping and reporting, and use of employees. The Legal Department is in the process of coordinating and soliciting feedback and comments on the draft Code of Conduct. Upon completion of that process, the Code of Conduct will be presented to the Hawaiian Electric Companies' executives for final review and approval (anticipated in late-October or early-November).

B. Prohibition of Preferential Treatment

Hawai'i Electric Light has in place a well-established commercial dispatch process that ensures that the HEP Facility will not receive any preferential treatment in its dispatch by the Company over the remaining term of the HEP Facility's PPA. As a fully dispatchable generation unit that does not have any contractually-required minimum take requirements, the HEP Facility can and is utilized considering cost, operational and technical capabilities, and impacts on system security and reliability, which in turn, are determined by the contract terms and fuel costs. This use of HEP energy is not dependent upon the generating units' ownership. Because of the

documented impartial unit commitment and dispatch processes used by the Company for the commitment and dispatch of the available utility- and IPP- owned dispatchable generating resources, the Company does not anticipate the need to identify and/or prevent any future preferential treatment of the HEP Facility by the Company.

1. Economic Unit Commitment and Dispatch

Hawai'i Electric Light has provided the processes for impartial unit commitment and economic dispatch in regulatory filings, including its 2016 test year rate case. These processes remain valid and will continue to be followed notwithstanding the transfer of the HEP Facility's ownership to a HEI affiliate. Hawai'i Electric Light's economic dispatch of the HEP Facility is summarized below.

In general, resource utilization will continue to follow the processes and decision priorities as documented in various filings, such as Hawai'i Electric Light's 2014 Power Supply Improvement Plan ("PSIP"), the PSIP accepted in 2017, and in Hawai'i Electric Light's 2016 test year rate case. Hawai'i Electric Light's unit commitment and economic dispatch policies are based on safe and reliable operation of the system, minimizing operating costs, and complying with contractual and regulatory obligations. After acceptance of certain must-take generation, energy is dispatched to serve demand to minimize costs, with consideration of several constraints. The following are examples of present constraints upon economic dispatch that prevent the system from being operated solely for economics:

- Operational criteria for minimum system security (which were identified through study);
- Generator availability – generators may be out of service for planned or unplanned reasons;
- Transmission constraints, including transmission/distribution maintenance plans;
- Weather conditions or other risk conditions that may require adjustment of the generation mix to provide additional security margin;
- Permit restrictions/requirements for affecting operation of generation, such as limitations on the number of starts, and operation below certain output levels;
- Dispatchable generator operational constraints (startup time, minimum down time, etc);
- Non-dispatchable (must-take) generation – accepted regardless of cost, treated in economic dispatch as an offset to net-demand:
 - Distributed generation;
 - Contractual purchased power requirements for Puna Geothermal Venture;

- As-available wind and hydro – energy is purchased ahead of other resources regardless of cost to the extent feasible; and
- Forecast errors (especially wind and solar) – resulting in operating a different mix of generation than would have been operated with perfect knowledge of the future wind and solar forecast.

Beyond meeting these constraints, dispatchable resources are utilized to meet customer demand at lowest cost as follows:

- Relative costs of dispatchable generation, summarized as the cost curve (for unit commitment) and incremental cost curve (for AGC economic dispatch);
 - For dispatchable IPP generation (such as HEP), the cost curves are based on the purchased power terms, and depending on the contract may also be linked to a fuel-price (which is the case for HEP), plus variable operations and maintenance expense (“O&M”), and may include a net efficiency;
 - For utility-owned generation, the cost curves are based on heat rate curves, variable O&M, and fuel costs;
 - Fuel costs are updated monthly for monthly inventory pricing;
 - Heat-rate curves are revised as needed; the curves are verified through heat rate tests typically done twice a year (pre- and post-overhaul). Heat rate tests confirm the existing curve is correct or the curve is modified if necessary. Tests are always conducted following projects that would be expected to change net plant efficiency;
 - Variable O&M are revised as necessary, typically based on five-year averages;
 - If the IPP is dispatchable, the incremental cost curve is derived for the IPP similar to the utility-owned generation and if linked to fuel, a proxy heat-rate curve is developed based on the contract pricing curve;
- Transmission penalty factors (which reflect the impact on system losses at various generator locations);
- Forecast demand – how much energy customers are anticipated to use throughout the day; and
- Forecast wind and solar Production. Since wind and solar are treated as must-take energy, accepted regardless of cost, their output determines the demand that must be met by the dispatchable resources. The variability of the wind and solar also may require an adjustment in the online reserves and may be increased for intra-hour variability.

While the relative costs, available resources, and customer demand change over time, in accordance with these documented principles and processes, energy from the HEP Facility has been and will continue to be based on the need for energy to serve customers after must-take energy, and its relative cost, with consideration of transmission and operational constraints as described above. When a HEP generator is brought online and stabilized (*i.e.*, completes combined cycle blending), it is placed under automatic generation control, economic dispatch and regulation. In this mode of operation the output of the facility is determined by the optimization algorithm programmed in the automatic generation control application, a component of the Company's energy management system. This algorithm is designed to minimize the production cost amongst all the online dispatchable units based on their cost curves and penalty factors, supplemented by changes needed for frequency regulation services to correct frequency error. The programming inputs are listed above and agnostic to ownership.

In summary, if the HEP Facility is purchased by Pacific Current, its dispatch will not be affected by the change in ownership. For additional information on the unit commitment and economic dispatch process, and development of resource utilization plans, please refer to Hawai'i Electric Light's 2016 test year rate case, Docket No. 2015-0170, Application filed September 19, 2016: HELCO T-6 at 28-31; HELCO-612 (Generation Commitment Review); HELCO-613 (Daily Generation Dispatch Process); HELCO-614 (System Operations Policies and Procedures Overview); HELCO-615 (Overview of the Energy Management System); HELCO-WP-613B (Excess Generation Curtailment Procedure); and HELCO-WP-613C (Weather System Forecast).

To further allay any concern by the Commission or any other observer, as well as provide transparency on the use of the HEP Facility, Hawai'i Electric Light will provide quarterly (*i.e.*, calendar quarter with a one-month lag) reporting data on the HEP Facility's use on the Companies' website.⁵ This quarterly data will be accompanied by a summary description of changes in resource availability, costs, or other considerations causing significant changes from prior use, should such occur.

2. Procurement of New Grid Resources

The Hawaiian Electric Companies are committed to ensuring that new grid resources are procured fairly and in furtherance of the public interest. The Companies' *PSIP Update Report: December 2016*⁶ accepted by the Commission in July 2017⁷ describes the Companies' plan to pursue a transparent and competitive effort to procure cost-effective renewable resources and consideration of various options for a competitive procurement process in compliance with the Commission's Framework for Competitive Bidding. From time to time, Hawaiian Electric may receive unsolicited proposals for renewable energy projects outside of a competitive procurement

⁵ The information will be included on the Companies' webpage for key power supply and generation performance metrics, available at <http://hestaging.ingeniuxondemand.com/about-us/key-performance-metrics/power-supply-and-generation>.

⁶ See *Hawaiian Electric Companies' PSIPs Update Report*, filed December 23, 2016 in Docket No. 2014-0183.

⁷ See D&O No. 34696, filed July 14, 2017 in Docket No. 2014-0183.

cycle that provide clear benefits to customers. In such cases, Hawaiian Electric will review the merits of these proposals in accordance with established rules and practices.⁸

As also explained in the PSIP, the Companies will seek the most cost-effective resources that meet the necessary requirements for each island. These future RFPs will generally be designed to be technology agnostic, that is, to allow different renewable technologies to compete to provide the best value for all customers. While these efforts will be technology agnostic, it should be noted that the PSIP specifically calls for significant amounts of energy storage,⁹ distributed energy resources,¹⁰ community based renewable energy¹¹ and demand response.¹²

C. Protection of Information Resources

The Hawaiian Electric Companies are in the process of drafting an updated and consolidated Code of Conduct applicable to affiliate transactions. Part of that will include a set of provisions with respect to confidential information and information sharing between affiliates. The following are certain of those provisions that the Companies are adhering to with respect to the Transaction:

1. *Acquisition of Information*

The Hawaiian Electric Companies shall not acquire information on behalf of, or provide information to its affiliates, except as necessary to perform an applicable transaction.

2. *Customer Information*

The Hawaiian Electric Companies will abide by the Customer Information Privacy Policy with respect to transactions with affiliates.¹³

3. *Non-Customer Specific, Non-Public Information*

The Hawaiian Electric Companies will make non-customer specific non-public information, including but not limited to information about a utility's electricity purchases, sales, or operations or about the utility's electricity-related goods or services, available to the utility's affiliates only if such information will or would be made available to non-affiliate service providers on similar terms and conditions.

⁸ See PSIP at 7-17 to 7-28.

¹³ The Hawaiian Electric Companies' Customer Information Privacy Policy is available at <https://www.hawaiielectriclight.com/privacy-policy>.

4. *Proprietary Information*

The Hawaiian Electric Companies may exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for each such transaction, and it is necessary to exchange this information in the provision of the corporate support services permitted by this Policy. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use.

5. *Supplier Information*

The Hawaiian Electric Companies may provide non-public information and data that has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

V. The Commission's Inquiries

To assist the Commission's determination whether the Transaction is in furtherance of the interests of the public, the Hawaiian Electric Companies respond to the Commission's inquiries as follows:

- 1) Please discuss in detail all measures HELCO has instituted to identify and prevent potential preferential treatment of its affiliate's interests in the HEP power plant, in the following areas:
 - a) operational decisions about unit commitment and dispatch;
Response: See § IV.B.1; see generally §§ III, IV, above.
 - b) interconnection of new generation resources, including both utility-scale and distributed sources;
Response: See § IV.B.2; see generally §§ III, IV, above.
 - c) solicitation and procurement of new generation resources from non-affiliate IPPs;
Response: See § IV.B.2; see generally §§ III, IV, above.
 - d) negotiation of future power purchase agreements with non-affiliate IPPs;
Response: See § IV.B.2; see generally §§ III, IV, above.
 - e) re-negotiation of existing power purchase agreements with non-affiliate IPPs;

Response: See generally §§ III, IV, above.

- f) re-negotiation of the HEP power purchase agreement with an affiliate IPP;

Response: See generally §§ III, IV, above.

- g) development and implementation of new programs to invest in “non-wires alternatives” to generation, such as energy storage and distributed energy resources; and

Response: See § IV.B.2; see generally §§ III, IV, above.

- h) development and implementation of new programs to expand customer choice, such as community-based renewable energy (CBRE), demand response, and “smart export” options.

Response: See § IV.B.2; see generally §§ III, IV, above.

- 2) Please discuss in detail measures HELCO has instituted to prevent disclosure of confidential information to its affiliate and its affiliate’s owners.

Response: See § IV.C, above.

- 3) Please discuss in detail the code of conduct between representatives from HELCO and Pacific Current that ensures any contracts or agreements between these entities are in furtherance of the interests of the public.

Response: See § IV.A, above.

- 4) Please discuss in detail any additional measures HELCO has taken to ensure that the agreement between HELCO and Pacific Current is in furtherance of the interests of the public.

Response: Passim.

- 5) Is HELCO or another Hawaiian Electric regulated utility currently in discussions or negotiations with Pacific Current for any new contracts or agreements? If so, please describe the nature of the contract or agreement under discussion or negotiation and any measures to prevent conflicts of interest with potential competitive procurement of similar services, equipment, or supplies from non-affiliated entities.

Response: The Hawaiian Electric Companies are not in discussions or negotiations with Pacific Current for any new contracts or agreements. However, any future amendment of the PPA (if any), including any extension of its term after December 31, 2030, will be subject to the review and approval of the Commission.



SUSAN A. LI
Senior Vice President, General Counsel,
Chief Compliance & Administrative Officer
and Corporate Secretary

July 7, 2017

VIA EMAIL to kmurao@hei.com

Kurt K. Murao, Esq.
Vice President – Legal and Administration
Hawaiian Electric Industries, Inc.

RE: Potential HEI Purchase of Hamakua Energy Partners' Facility

Dear Kurt:

As you know, the Hawaii Public Utilities Commission (the "Commission") has rejected the joint application by Hawaiian Electric and Hawaii Electric Light (the "Companies") to purchase the Hamakua Energy Partners ("HEP") 60MW power plant facility (the "Facility"). As a result, the Companies are preparing to terminate the Asset Purchase Agreement between the Companies and HEP.

We understand that HEI has expressed interest in purchasing the Facility from HEP and has commenced initial negotiations and due diligence activities in furtherance of a potential transaction.

In this context, the Companies, as subsidiaries of HEI, wish to establish a number of initial "ground rules" for interaction and cooperation between the Companies and HEI during this period of negotiation and due diligence by HEI in order to avoid any appearance of self-dealing or other impropriety.

First, the Companies' will communicate and cooperate with HEI on an arm's-length basis, and will treat HEI the same as any other third party independent entity inquiring about the Facility, the requirements of the Power Purchase Agreement between Hawaii Electric Light and HEP (the "PPA") and Hawaii Electric Light's consent rights to a potential assignment of the PPA by HEP to a purchasing entity.

Second, please be aware that the Companies are under non-disclosure and confidentiality obligations to HEP under both a Confidentiality Agreement with HEP executed in connection with the Asset Purchase Agreement between the parties and, with respect to Hawaii Electric Light, under the PPA. The Companies will honor these confidentiality obligations unless expressly waived by HEP.

Third, any expenditure of time and/or expenses by the Companies to respond to HEI requests and communications shall be subject to standard inter-company billing procedures.

Finally, so as to maintain control over the parties' interaction and ensure consistent responses to HEI, the Companies wish to establish a single point of contact for and on behalf of the Companies. Kevin Oda, our in-house counsel responsible for the HEP transaction, shall be your contact for all purposes. In Kevin's absence, please contact Deputy General Counsel Erin Kippen.

Currently, we understand that HEI may be commencing its due diligence efforts to purchase the Facility. As mentioned above, Hawaiian Electric and Hawaii Electric Light are parties to a Confidentiality Agreement with HEP and therefore, we are unable to provide to HEI due diligence material we received from HEP unless we receive written permission from HEP to do so. In addition, to the extent HEP grants us permission to forward any HEP due diligence materials directly to HEI, the Companies would be unable to make any representation or warranty to HEI as to the accuracy or completeness of whatever documents we may be able to turn over to you.

Thank you for your cooperation and assistance in this matter. As circumstances evolve and/or new situations arise, the Companies may necessarily need to adjust these "ground rules." That being said, we look forward to working with you the best we can to appropriately accommodate your efforts.

Please let me know any questions and/or discussion with respect to any of the above.

Sincerely,



Susan A. Li
Hawaiian Electric Company, Inc.



SUSAN A. LI
Senior Vice President, General Counsel,
Chief Compliance & Administrative Officer
and Corporate Secretary

October 5, 2017

VIA EMAIL to kmurao@hei.com

Kurt K. Murao, Esq.
Vice President – Legal and Administration
Hawaiian Electric Industries, Inc.

RE: Completion of HEI Purchase of Hamakua Energy Partners' Facility

Dear Kurt:

As of September 19, 2017, we understand that HEI, through its subsidiary, Pacific Current, has executed an agreement for the purchase the Hamakua Energy Partners ("HEP") 60MW power plant facility (the "Facility").

In this context, Hawaiian Electric Company and Hawaii Electric Light (the "Companies"), as subsidiaries of HEI, wish to continue and reaffirm the "ground rules" for interaction and cooperation between the Companies and HEI as stated in my July 7, 2017 letter (the "July 7th Letter") to you. These "ground rules" will extend up to and including the closing of the transaction. As previously stated, the Companies wish to avoid any appearance of self-dealing or other preferential treatment of HEI as it completes this transaction.

As stated previously in the July 7th Letter:

1. The Companies' will communicate and cooperate with HEI on an arm's-length basis, and will treat HEI the same as any other third party independent entity taking ownership of the Facility and assuming the rights and obligations of the Power Purchase Agreement between Hawaii Electric Light and HEP (the "PPA").
2. The Companies continue to be under non-disclosure and confidentiality obligations to HEP under both a Confidentiality Agreement with HEP executed in connection with the Asset Purchase Agreement between the parties and, with respect to Hawaii Electric Light, under the PPA. The Companies will honor these confidentiality obligations unless expressly waived by HEP.
3. Any expenditure of time and/or expenses by the Companies to respond to appropriate HEI requests and communications shall be subject to standard inter-company billing procedures.
4. Finally, the Companies hereby notify you that Kevin Oda will continue to act as the single point of contact for and on behalf of the Companies. In Kevin's absence, please contact Deputy General Counsel Erin Kippen.

Kurt K. Murao, Esq.
October 5, 2017
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Currently, we understand that HEI is continuing its efforts to complete the transfer of operational, administrative and managerial oversight over the Facility in order to facilitate the transition of control over the Facility upon closing. As mentioned above, the Companies are parties to a Confidentiality Agreement with HEP and therefore, we are unable to provide to HEI certain confidential information we have received from HEP unless we receive written permission from HEP to do so. Additionally, we will only provide operational and/or planning information regarding the Facility that we would ordinarily provide any other third party purchaser of the Facility.

Thank you for your cooperation and assistance in this matter. As circumstances evolve and/or new situations arise, the Companies may necessarily need to adjust these "ground rules." That being said, we look forward to working with you the best we can to appropriately accommodate your efforts.

Please let me know any questions and/or discussion with respect to any of the above.

Sincerely,



Susan A. Li, Esq.
Senior Vice President and General Counsel
Hawaiian Electric Company, Inc.