December 9, 2020

The Honorable Chair and Members of the Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, HI 96813

Re: November 25, 2020 Commission Request for Feedback from Utilities and the Consumer Advocate on the Suspension of Termination or Disconnection of Regulated Utility Services Due to Non-Payment

Dear Commissioners and Staff:

Please find enclosed the joint response by New Cingular Wireless PCS, LLC and Cricket Wireless LLC (together “AT&T”) who are providers of wireless service in the State of Hawaii to the Hawaii Public Utilities Commission’s (“Commission”) above-referenced November 25, 2020 Request for Feedback.

AT&T stands fully prepared to meaningfully care for our customers facing a time of need or difficulty during the COVID-19 Pandemic. We are aware of the vast and devastating effects the pandemic has had on our communities, front line, and essential workers, employees, and neighbors. When the scope of the pandemic became apparent, as previously shared with the Commission1, AT&T provided customer benefits, support and financial donations targeted at providing the connectivity that our customers and community most needs and requires.

AT&T supports the comments submitted by CTIA in this proceeding, and in our responses below, responds to the data requests posed by the Commission and further shares the ways AT&T has supported our customers and our communities during the ongoing pandemic.

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1 See ATTACHMENT A, March 16, 2020 email from Cyndi Gallagher to the Hawaii PUC Commissioners.
Responses to Questions for Utilities

Question Set 1 - Lifting the Suspension of Disconnection for Non-Payment

a) Do you think the Commission should extend the disconnection suspension for all your customers beyond December 31, 2020? If so, when do you think the suspension should subsequently be lifted (e.g., by a specific date, at the end of Pandemic, etc.)?
   i. Alternatively, do you think the suspension should end for certain customer classes before others, and if so, which customer classes, and when?

b) If the suspension is not extended beyond December 31, 2020, would your Utility request authority to voluntarily suspend disconnections?

AT&T Wireless Answer:

1) Lifting the Suspension of Disconnection for Non-Payment

To support our customers, AT&T opted into the FCC’s Keep America Connected Pledge (“Pledge”) (https://www.fcc.gov/keep-americans-connected). AT&T believes the Pledge was successful because it was voluntary, of limited duration, and permitted carriers flexibility in offering relief to customers. In addition to our support of the Pledge, AT&T has, since its expiration, continued to adhere to the recommendations of this Commission and suspended disconnects for wireless services across Hawaii.

AT&T urges the Commission to invite each carrier to voluntarily make its own customer retention offers building on each carrier’s individualized current practices for a limited duration but subject to extension as warranted, in the spirit of the Pledge. Extending the disconnect suspension for ALL customers, regardless of their ability to pay their bills, is not supported by the record.

Should the suspension of disconnect be extended and modified to limit the moratorium for customers who have been economically impacted by the pandemic, such action may adversely impact those the order is intended to protect. A moratorium on disconnections of indefinite duration may unintentionally harm customers by adversely affecting their ability to stay connected in the long run.

Question Set 2 – Financial Impacts on Utilities

a) How many of your Utility customers (of each customer class) have past due balances for utility service, and what is the total cumulative past due balance for all customers? Please break out past due balances by timeframe (e.g.,
past due by less than 30 days, by greater than 30 days, by greater than 60
days, by greater than 90 days, etc.), if available.
b) How would an extension of the disconnection suspension for 1 month, 3
months, or 6 months, respectively, affect the financial condition of your
Utility?
c) What data and/or financial information does your Utility think would be
helpful to provide to the Commission on a going-forward basis to help the
Commission continue to make decisions around disconnection suspension
and related issues?

AT&T Wireless Answer:

Because AT&T Mobility considers information related to its customer counts, revenues
and financial results to be proprietary and confidential, AT&T Mobility is submitting the
response to 2(a) under seal, pursuant to Protective Order No. 37141 filed on May 15,
2020.²

The wireless telecommunications business in Hawaii is highly competitive. Information
concerning AT&T Mobility’s subscriber count and revenues is confidential because
significant information about its business operations can be extrapolated or derived, which
would be useful to any competitor in determining how to compete with AT&T Mobility.

Disclosure of this confidential information will likely cause competitive injury to AT&T
Mobility. With numerous wireless competitors operating in Hawaii, these competitors
could utilize the confidential and proprietary business information to help establish
business and marketing strategies to their advantage. The confidential information would
not ordinarily be disclosed to others outside AT&T Mobility. The confidential information
should be withheld from public disclosure as long as such information could provide a
basis for competitors to gain insight into AT&T Mobility’s business operations.

Because of the numerous variables that could impact future disconnect volumes, the potential future financial impact is not readily ascertainable. AT&T does not recommend additional reporting beyond that which is already required under the Hawaii Administrative Rules.

Question Set 3 – Protections for Customers (Including Those Experiencing Financial Hardship)

a) What mechanisms exist, or are you considering implementing, for customers to alert your Utility that they are experiencing financial hardship or otherwise need special customer protections related to their utility bill or service?

b) What types of payment plans is your Utility currently offering, or contemplating offering, to customers? Please include information regarding the proposed minimum and maximum lengths of these payment plans, including those that may be established specifically for vulnerable customers (e.g., customers experiencing financial hardship, low-income customers, customers with special medical needs, etc.).
c) What, if any, specific customer protections are your Utility offering or contemplating offering to vulnerable customers (e.g., customers experiencing financial hardship, low-income customers, customers with special medical needs, etc.)?

d) Are there other specific customer protections that you think should be extended or newly implemented?

AT&T Wireless Answer:

AT&T has long employed business-as-usual practices – that pre-date the COVID-19 pandemic and AT&T’s participation in the Pledge – to assist our customers. These include a flexible billing and collections process that works with customers facing economic difficulties. Our priority is to help keep customers connected.

Thus, customers have ready access to basic payment arrangement extensions and remedies available through our website\(^3\) and the MyAT&T mobile app, as well as through our customer service representatives at our call centers. In our call centers, AT&T representatives evaluate situations faced by our customers on a case-by-case basis and, when customers face extreme conditions, can seek management approval for additional latitude for to allow customers to extend their payment dates beyond defined guidelines. This process applies across our services with only slight variations in treatment paths depending on credit risk. AT&T uses these tools to keep customers informed of their options and to customize resolutions for each customer according to their particular needs, challenges, and preferences.

Question Set 4 - Customer Engagement

a) What communications regarding the disconnection suspension and other customer protections (including those provided by outside sources, such as COVID-19 relief funds) have you provided to your customers during the Pandemic?

b) When and how is your Utility planning to notify customers, if you have not already, that they are at risk for disconnection or termination of regulated utility services upon the lifting of the suspension?

c) How is your Utility communicating payment plans (or, planning to communicate payment plans) and other options to customers who are at risk

for disconnection? Are you currently conducting, or planning to conduct, this outreach prior to any lifting of the suspension?

AT&T Wireless Answer:

Since the beginning of the pandemic, AT&T has been engaged in providing customer benefits, support, and financial donations targeted at providing the connectivity that our customers and communities most need.

As noted above, on March 13, 2020, AT&T joined other providers in the Pledge, committing not to terminate the account of any wireless, home phone, or broadband residential or small business customer because of the inability to pay their bill due to disruptions caused by the pandemic for 90 days through June 30, 2020. AT&T also agreed to waive any late payment fees that any postpaid wireless, home phone, or broadband residential or small business customer may have incurred due to economic hardship related to the pandemic.

During the Pledge, AT&T made other commitments and efforts beyond those included in the Pledge to assist customers impacted by the pandemic:

- From March 13, 2020 to June 30, 2020, for residential and small business customers, AT&T Mobility waived domestic voice, data, and text overage fees to give people working from home and using more data the opportunity to take advantage of unlimited internet data without paying any overage fees, even if they exceeded any data caps applicable to their current plans.

- On March 27, 2020, AT&T Mobility launched a limited time phone plan for new and existing customers of AT&T Prepaid, a prepaid service sold by AT&T Mobility that comes with 2GB of data with unlimited talk and no activation fee. AT&T Prepaid is also adding 10GB of data to capped phone plans for a limited time. New and existing customers with AT&T Prepaid’s Unlimited Plus plan with Mobile Hotspots who activated the plan before April 26, 2020 received an additional 10GB of data at Mobile Hotspots per month for 60 days.

In addition to our ongoing efforts initiated during the Pledge and our pro-customer business-as-usual practices as described above, AT&T has continued to support our customers affected by COVID-19 in multiple ways since the expiration of the Pledge on June 30, 2020:

- We are supporting students, teachers and schools by providing resources for remote learning and teaching, including broadband and wireless offerings, a $10 million distance learning fund, a matching gift program supporting distance-learning projects in low-income communities, and more.
• We are offering a $15/month unlimited wireless data plan to more than 135,000 public and private K-12 schools, colleges, and universities for their students and teachers across the country that also includes a free hot spot. For every 24 student activations, schools can activate one line with the same unlimited wireless data plan at no cost for a teacher. Schools may sign up for this offer through December 29, 2020, and schools that add at least one eligible line as part of this offer before that date may activate additional lines for the same price through December 29, 2022 when the promotional pricing ends.
• Working with Connected Nation, a non-profit organization helping communities solve broadband and digital technology challenges, we are also making a $10 million contribution to close the homework gap for at-risk students disconnected from learning with internet connectivity and Wi-Fi hotspots. This and will expand the availability of tech-enabled tools and learning resources for students, teachers, schools and parents.
• We offer teachers, first responders, military and veterans an extra 25% savings on select wireless plans.

Specific to Hawaii, in addition to opting into Pledge through June 30, 2020, AT&T has honored the Commission’s cessation of suspensions/disconnections pursuant to Public Utilities Commission Order 37125, as subsequently extended. AT&T also maintains a website that includes a section on AT&T’s response to COVID-19 challenges (https://about.att.com/pages/COVID-19.html) and information offering online customer assistance during the COVID-19 pandemic (https://www.att.com/help/covid-19/). The website also includes information for AT&T customers in Hawaii https://about.att.com/pages/COVID-19.html#consumers (then click on “Consumers” hyperlink). Informing customers that they are at risk for disconnection of service or the availability of payment plans is a business as usual procedure.

Conclusion:

AT&T remains steadfast in our commitment to support our customers as we all continue to cope with the ongoing pandemic. In these uncertain times, AT&T continues to do our part now and well into the future. AT&T immediately acted and implemented policies to protect its customers and its employees from the pandemic’s harm, by initiating policy changes, service accommodations, and financial commitments as described above. AT&T remains dedicated to seeing our communities survive this crisis.
Thank you for inviting carrier input and for your consideration of our comments.

Sincerely,

Janice Ono

Enclosures

c: Consumer Advocate (dnishina@dcca.hawaii.gov; consumeradvocate@dcca.hawaii.gov)
   Carol Anderson, Esq. (w/o enclosures)
Dear Commissioners:

I would like to provide you with an update on what AT&T is doing for our customers, employees, stakeholders, and network during the growing Coronavirus (COVID-19) pandemic.

**For our customers and communities:**

**Keep Americans Connected Pledge:**
For the next 60 days:
- We will not terminate the service of any wireless, home phone or broadband residential or small business customer because of their inability to pay their bill due to disruptions caused by the coronavirus pandemic.
- We will waive any late payment fees that any wireless, home phone or broadband residential or small business customer may incur because of economic hardship related to the coronavirus pandemic.
- We will keep our public Wi-Fi hotspots open for any American who needs them.

These actions are consistent with FCC Chairman Pai’s “Keep Americans Connected Pledge” announced yesterday and concerns raised by members of Congress, which we share.

**Additional relief and support we have also announced include:**
- **Unlimited AT&T Home Internet** – All AT&T consumer home internet wireline customers, as well as Fixed Wireless Internet, can use unlimited internet data. Additionally, we’ll continue to offer internet access for qualifying limited income households at $10 a month through our Access from AT&T program.
- **Helping You Work and Learn Remotely** – Businesses, universities and schools can keep their teams and classrooms connected through conference calls and video conferencing with Cisco Webex Meetings with AT&T for 90-days, and seamlessly forward calls to both mobile and landline phones with AT&T IP Flexible Reach.
- **Distance Learning** – AT&T is underwriting expenses for a “one-stop” resource center to support eLearning Days from the State Educational Technology Directors Association (SETDA) available to all educators in schools to help them handle school closures and the increase in virtual learning due to COVID-19.

We offer multiple options to keep customers connected if they have concerns about getting out in the community or are unable to make it to a store. MyAT&T and att.com give customers easy access, and our AT&T Ready to Go option brings the retail experience to customers when and where they choose.

**Coordinating with public safety stakeholders:**
We have been coordinating for many weeks with public safety stakeholders to support the efforts addressing travelers returning to the United States who needed to be quarantined. Our efforts have included responding to needs expressed from our public safety partners, including providing COWs, readying FirstNet COWs and COLTs for quick deployment, optimizing existing coverage, and ensuring
fiber is live for transport if needed. We have provided support for our public safety partners at Miramar Air Base, Travis Air Force Base, Port of Oakland, Pacific Grove (Asimolar), and March Air Reserve Base. We understand how challenging and fluid this situation is and remain committed to partnering with local, state and federal officials.

**For our employees:**

**Work From Home Policy:**
Employees who are in jobs that can be done from home have been directed do so until further notice. For employees whose jobs cannot be done from home, including those who serve and interact with our customers, we are taking additional safeguards and implementing new procedures and policies to help protect the health and safety of our workforce. This includes:

- Paid time off for employees at higher risk or in quarantine
- Paid time off for parents during school and daycare closures

We are taking additional actions to keep our employees safe:

- We have restricted international business travel for employees
- We have placed limits on domestic travel
- We have discouraged meetings with vendors that would normally require travel We’ve cancelled employee attendance at all large internal and external conventions, forums, conferences, and events that require travel.

**Network Preparedness & COVID-19**

As a global company, we have extensive experience in planning for and responding to a wide variety of situations around the world. Our teams are closely monitoring developments in the COVID-19 outbreak and are taking the appropriate steps – consistent with CDC and WHO recommendations – to help maintain the ongoing health and safety of our employees and customers.

**As of this point:**

- Our network continues to perform well including in cities where the coronavirus has had the biggest impact.
- We continuously monitor our network performance for trends to manage our network.

For resources to help customers plan and mitigate unforeseen events, we have resources available at the [AT&T Business Continuity Website](https://www.att.com/businesscontinuity). We have set up a dedicated site to answer questions regarding COVID-19, and provide regular updates and general info: [https://about.att.com/pages/COVID-19.html](https://about.att.com/pages/COVID-19.html)

Please don’t hesitate to contact me; should you have any questions.

**Cyndi Gallagher**
Director-External Affairs

**AT&T External & Legislative Affairs**

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*Keep your eyes on the road, not on your phone.*
*Take the pledge...It Can Wait.*
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

---------- In the Matter of ----------

PUBLIC UTILITIES COMMISSION  (Non-Docketed)

Letter Request from the Consumer Advocate for Commission Suspension of Authority of Regulated Companies to Terminate or Disconnect Services Due to Non-Payment and/or Assess Unreasonable Charges or Fees During the COVID-19 Pandemic.

PROTECTIVE ORDER NO. 37141
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

--------- In the Matter of ---------

PUBLIC UTILITIES COMMISSION

(Non-Docketed)
Protective Order No. 37141

Letter Request from the Consumer Advocate for Commission Suspension of Authority of Regulated Companies to Terminate or Disconnect Services Due to Non-Payment and/or Assess Unreasonable Charges or Fees During the COVID-19 Pandemic.

PROTECTIVE ORDER

The Public Utilities Commission (“Commission”), on its own motion, issues this Protective Order to govern the classification, acquisition, and use of trade secrets, and other confidential information produced in this non-docketed matter and filed pursuant to the Commission’s Non-Docketed Order No. 37125, “Addressing the Consumer Advocate’s Request for Suspension of Termination or Disconnection of Regulated Utility Services Due to Non-Payment and/or Assessment of Other Charges During the COVID-19 Pandemic,” filed on May 4, 2020 (“Order No. 37125”).
I.

BACKGROUND

By letter request dated April 23, 2020, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") requested that the Commission temporarily suspend the authority of Commission-regulated electric, gas, telecommunications, water, and wastewater public utilities ("Utilities," or "Utility," individually), to terminate or disconnect service due to non-payment by customers, and to temporarily suspend the authority of these Commission-regulated utilities to assess any charges or fees that might be unreasonably assessed, for the duration of the ongoing COVID-19 pandemic.¹

On May 4, 2020, the Commission issued Order No. 37125, addressing the Consumer Advocate’s Letter Request and providing specific guidance to the Utilities during the pendency of the Governor’s Emergency Proclamation² and until otherwise ordered by


²As of the date of the issuance of Order No. 37125, on May 4, 2020, and as noted at n.2, Governor David Y. Ige ("Governor Ige"), had issued his Sixth Emergency Proclamation on April 25, 2020, which amended and restated all prior proclamations and executive Orders related to the COVID-19 emergency. On May 5, 2020, Governor Ige issued his Seventh Supplementary Proclamation, which amends and restates all prior proclamations and executive orders related to the COVID-19 emergency and the State’s ongoing response to the COVID-19 emergency situation,
the Commission. Order No. 37125 provides, in pertinent part to
the instant Protective Order, that:

2. The Commission authorizes each of these Utilities to establish regulatory assets to record costs resulting from the suspension of disconnections. In future proceedings, to the extent any of these utilities request recovery of these costs, the Commission will consider whether each Utility’s request for recovery of these regulatory assets is reasonable and necessary. The Commission will also consider in a future proceeding other issues, such as the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, any savings directly attributable to suspension of disconnects, and other related matters.

* * *

5. The Commission instructs any Utility that books regulatory assets consistent with the authorization provided in this Order to file a short (1-2) page report by May 20, 2020, regarding the Utility’s financial condition.[]

6. Until otherwise ordered by the Commission, the Commission instructs any Utility that books regulatory assets consistent with the authorization provided in this Order, to also file a quarterly report, beginning on July 30, 2020, detailing the amounts of the costs incurred and any savings

realized, which have been booked to the regulatory assets. . . . ³

* * *

In Ordering Paragraph No. 5 at n.9, the Commission notes its intention to issue a non-docket Protective Order to govern the Utilities’ filing of any confidential financial or business information included in a Utility’s Financial Condition Report and a Utility’s Quarterly Report filed pursuant to Order No. 37125, provided that:

. . . consistent with [Uniform Information Practices Act], all information for which a Utility claims confidentiality is supported by a description that: (1) identifies in reasonable detail the information’s source, character, and location; (2) states clearly the basis for the claim of confidentiality; and (3) describes, with particularity, the cognizable harm to the filing party from any misuse or unpermitted public disclosure of the information, which the Commission will review. ⁴

³Order No. 37125, at 5-6 (footnotes omitted). See Ordering Paragraph No. 5 for the filing requirements of the Utility’s financial condition report due by May 20, 2020 (“Financial Condition Report”), and Ordering Paragraph No. 6 for the filing requirements for the Utility’s quarterly reports due beginning on July 30, 2020 (“Quarterly Report”).

⁴Order No. 37125, at 6 n.9. See also, Commission Order No. 34521, “Addressing Hawaiian Electric Company, Inc.’s Motion for Clarification and/or Partial Reconsideration of Order No. 34367; Instructing Hawaiian Electric Company, Inc. to Supplement Its February 22, 2017, Confidential Filings; and Proposing Modifications to Order No. 34367,” filed on May 2, 2017 in Docket No. 2016-0328 (“Order No. 34521”), at 4 (footnote omitted). Order No. 34521 relates to, among other things, the timing and requirements for designating confidential
The Commission recognizes that the public disclosure of certain confidential financial or business information contained in a Utility’s Financial Condition Report and/or a Utility’s Quarterly Report, as well as other materials filed with the Commission, could be disadvantageous to the subject Utility by disclosing to the Utility’s respective competitors, information regarding the Utility’s operations.

Thus, the Commission issues this Protective Order, as set forth below, to govern the classification, acquisition, and use of trade secrets, and other confidential information produced in each Utility’s respective non-docketed Financial Condition Report and Quarterly Report and other reports and materials filed pursuant to Order No. 37125.

The Commission restates and instructs that for each redaction, the Utility must demonstrate that its confidential filings may be withheld from disclosure under the Uniform Information Practices Act ("UIPA"), and individually comply with Paragraph No. 5, below, and “(1) identify, in reasonable detail, the information’s source, character, and location; (2) state clearly the basis for the claim of confidentiality;
and (3) describe, with particularity, the cognizable harm to [it], from any misuse or unpermitted disclosure of the information.”

II.

TERMS

A.

General Provisions

1. This Protective Order governs the classification, acquisition, and use of trade secrets, and other confidential information which may be produced by the Utility in this non-docketed matter. The Utility and the Consumer Advocate shall follow these procedures as applicable.

2. The Utility and the Consumer Advocate shall be subject to this Protective Order and shall be entitled to all confidential information under the provisions of said Order to the extent allowed by the commission.

B.

Application Of
The Uniform Information Practices Act

3. To the extent that any of the documents covered by this Protective Order consist of “government records,” as defined

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5See Order No. 34521 at 4 (footnote omitted).
in Hawaii Revised Statutes ("HRS") § 92F-3, the provisions of HRS Chapter 92F, the Uniform Information Practices Act ("UIPA"), shall apply to the disclosure of information contained in such documents. In the event that any provision of this Protective Order conflicts with any provision of the UIPA, the UIPA shall control.

C. Designation Of Confidential Information

4. Any information that the Utility believes, in good faith, is confidential, including, but not limited to, trade secrets, research, development information, commercial information, customer usage, financial information, vendor information, bid information, cost support studies, service forecasts, or other information, may be designated as "confidential information" pursuant to the terms of this Protective Order. Such confidential information shall be protected against disclosure to a non-qualified person pursuant to the terms of this Protective Order, unless such information is declassified or permission to disclose the information to such non-qualified person is granted by the Utility, as provided in paragraph 15 below.
5. If the Utility seeks to designate information, whether written, oral, electronic, or in some other form, as confidential information, it shall notify the Commission and the Consumer Advocate that the information includes confidential information. The Utility must: (1) identify, in reasonable detail, the information’s source, character, and location; (2) state clearly the basis for the claim of confidentiality; and (3) describe, with particularity, the cognizable harm to the Utility from any misuse or unpermitted disclosure of the information.

6. If the Utility designates information as confidential information, it shall provide the confidential information in accordance with the procedures described in paragraphs 13 through 15, as applicable (Section II.D, Disclosure To Qualified And Non-Qualified Persons).

7. If the Consumer Advocate challenges the claim of confidentiality for all or any of the information, the Utility shall bear the burden of proof in supporting its claim that the information is confidential. The Commission shall determine whether the information shall continue to be designated as confidential pursuant to the terms of this Protective Order. Any challenge to a claim that certain information is confidential shall be made in accordance with paragraph 26 below. Any challenge
to a claim of confidentiality asserted by the commission will be made upon its own motion.

8. Confidential information provided to the Commission or the Consumer Advocate, orally, electronically, or in any form other than written form, shall be protected as fully as confidential information provided in written form.

9. All information claimed to be confidential information shall be subject to the terms of this Protective Order, and it shall be treated as confidential information by all qualified persons (as defined by this Protective Order). Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this Protective Order.

10. Information that has been designated as confidential information pursuant to the terms of this Protective Order shall conspicuously display on each page, or communicate as otherwise appropriate, the following legend:

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of the information is deemed to contain confidential information, the claim of confidentiality, to the extent reasonably practicable, shall be limited to only such
portion. However, if such limitation is not reasonably practicable, the information in total may be designated as confidential information.

11. With respect to any confidential information that is not under the control of the Utility, other persons shall, to the extent requested by the Utility, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 10 above.

12. The Utility may request that the Commission designate as confidential any information previously produced but not designated as confidential, provided that it, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm from any misuse or unpermitted disclosure of the information. In addition, the Utility shall substitute the previously produced but not designated as confidential material with the identical material under designation as required in Paragraph 10 above.

D. Disclosure To Qualified And Non-Qualified Persons

13. Except as provided in paragraph 15 below, confidential information shall not be made available or disclosed
to any person who is not a “qualified person” as defined in paragraph 14 below.

14. “Qualified person,” as used in this Protective Order, means any one of the following:

(a) The author, addressee, or originator of the confidential information, i.e., the Utility, and its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such consultants);

(b) The Commission, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such consultants);

(c) The Consumer Advocate, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has
15. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the Utility. The request shall: (a) identify the non-qualified person to whom disclosure is desired; (b) disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; (c) specify the exact information to be disclosed; and (d) state the reasons for disclosure. If permission is granted by the Utility, disclosure of the confidential information shall be limited strictly to confidential information covered by the permission granted and shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 16 below.\(^6\)

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\(^6\)The requirements set forth in paragraph 16 shall not apply to: (a) the Commission, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such
E. Procedure For Obtaining Access

16. Prior to disclosing confidential information to a qualified person (other than the persons identified in paragraphs 14(b) and 14(c) herein, i.e., the Commission and the Consumer Advocate), if any, the qualified person shall read a copy of this Protective Order, complete a copy of the “Protective Agreement” attached as Exhibit A to this Protective Order, and sign the completed copy of the Protective Agreement. A copy of the executed Protective Agreement shall be filed with the Commission and served on the Consumer Advocate and the Utility.

F. Use Of Confidential Information

17. Any confidential information obtained under this Protective Order shall be used solely in connection with this non-docketed matter and any related administrative and judicial proceedings (at which time the information shall continue to be consultants); or (b) the Consumer Advocate, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such consultants).
treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 18 and 19, and except as may be directed by: (a) an order of any court, agency, or other entity having jurisdiction; (b) an order of the Commission; or (c) the UIPA, including any ruling of the Office of Information Practices.

18. Notwithstanding paragraph 17 above, any confidential information obtained under this Protective Order may be used by the Commission, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such consultants), in any proceeding pending before the commission involving the Consumer Advocate or the Utility, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this Protective Order (or any other applicable Protective Order) is terminated by the Utility, or by further order of the Commission.
19. Any confidential information obtained under this Protective Order may be used by the Consumer Advocate, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such consultants), in any proceeding pending before the Commission involving the Utility, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this Protective Order (or any other applicable Protective Order) is terminated by the Utility, or by further order of the Commission.

20. Unless otherwise ordered by the Commission, with respect to any written testimony, exhibits, or pleadings that contain or reflect the confidential information, only that part of the written testimony, exhibits, or pleadings containing or reflecting such information shall be treated as confidential, and the part of a hearing, if any, at which such confidential information is discussed shall be held in camera or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such confidential information. A copy of any such
written testimony, exhibits, or pleadings, with any such confidential information deleted therefrom, shall be included in the public record, and shall contain the following designation in the upper left-hand corner of the page or conspicuously placed as otherwise appropriate:

Confidential Information
Deleted Pursuant To
Protective Order No. _________

G.

Retention Of Confidential Information

21. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

22. Confidential information that is provided to or filed with the Commission, its staff, its counsel, any outside counsel it has retained in this non-docketed matter (including any persons employed by such counsel), and any consultants it has retained in this non-docketed matter (including any persons employed by such consultants) shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which the following legend shall be conspicuously displayed:
23. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: “Copying Prohibited.”

24. If a court, administrative agency, or other entity having jurisdiction requests, subpoenas, or orders production of confidential information that has been obtained under this Protective Order, the Utility shall immediately be notified of the request, subpoena, or order. In addition, both the Commission and the Consumer Advocate shall be immediately notified of the request, subpoena, or order.

H.

Duration Of Confidentiality

25. The confidentiality of the information produced pursuant to this Protective Order shall be preserved until termination pursuant to an appropriate stipulation or by further order of the Commission.
I.

Appeal To The Commission

26. If the Consumer Advocate disagrees with the designation of information as confidential, the Utility shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the Consumer Advocate shall file a motion to compel disclosure or other appropriate motion with the Commission. The Utility shall bear the burden of proof in supporting its claim, and the Commission shall determine whether the information shall continue to be designated as confidential under this Protective Order. The Commission may, on its own motion, require the Utility to support its claim. Pending disposition of any such motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted by this Protective Order.

J.

Non-Waiver Of Objections And Rights

27. The Consumer Advocate and the Utility retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. Nothing in this Protective Order shall
prevent the Consumer Advocate or the Utility from objecting to requests for production of information or other discovery request.

28. The Consumer Advocate and the Utility have the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

K.

Modification Of The Protective Order

29. The Commission may modify this Protective Order on the motion of the Consumer Advocate or the Utility, or on its own motion, upon reasonable notice and an opportunity to respond to such motion. The Commission may also modify this Protective Order upon receipt and approval of a written stipulation filed by the Consumer Advocate and the Utility.

L.

Disposal Of Confidential Information

30. Except as provided in paragraphs 31 and 32 below, within ninety (90) days after the conclusion of this non-docketed matter, persons in possession of confidential information shall, at the option of the Utility, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing,
summarizing, excerpting, or otherwise embodying any confidential information. If the Utility requests destruction, the person destroying the information shall certify its destruction to the producing person, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

31. Counsel and representatives of record for the Consumer Advocate and the Utility shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files associated with this non-docketed matter. The files shall not be disclosed to any other person.
32. Confidential information produced in this non-docketed matter shall remain in the possession of the Commission and the Consumer Advocate for the period required by applicable statutes, rules, and administrative directives, or as designated by the Commission, whichever is longer.

M.

Sanctions

33. Any person violating this Protective Order shall be subject to such sanctions as are consistent with applicable law and other authority.
III.

ORDERS

THE COMMISSION ORDERS that the Terms set forth in Section II of this Protective Order shall govern the classification, acquisition, and use of trade secrets, and other confidential information produced in this non-docketed matter and filed pursuant to Order No. 37125.

DONE at Honolulu, Hawaii _____________________.

MAY 15, 2020

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By__________________________________________
James P. Griffin, Chair

By__________________________________________
Jennifer M. Potter, Commissioner

By__________________________________________
Leodolof R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:

Mark Kaetsu
Commission Counsel

Non-Docketed Protective Order.ijk
EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, ________________________, have been presented with a copy of Protective Order No. ________ issued by the Hawaii Public Utilities Commission on the ____ day of ____________, 2020 ("Protective Order").

2. I am employed, retained or assisting ________________________ and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist ________________________ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to ________________________, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party claiming confidentiality and I shall abide by the provisions in paragraph 30 of the Protective Order, unless otherwise permitted by paragraph 31 of the Protective Order.
5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at: ___________, ___________, this ___________, ___.
(City) (State) (Date)

__________________________________
Signature

__________________________________
__________________________________
Address

(___)___________________________
Telephone Number
CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing order was served on the date of filing by electronic mail addressed to the following parties:

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