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TO THE HOUSE COMMITTEE ON FINANCE

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

TUESDAY, MARCH 3, 2015
1:30 p.m.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE SYLVIA LUKE, CHAIR,
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 619, H.D. 2 - RELATING TO THE MERGER, ACQUISITION, AND
CONSOLIDATION OF ELECTRIC UTILITIES

DESCRIPTION:

This measure proposes to establish standards and criteria for the Public Utilities Commission ("PUC") and Division of Consumer Advocacy to apply when determining whether to approve a merger, acquisition, or consolidation of an electric utility.

POSITION:

The Division of Consumer Advocacy offers the following comments to this bill.

COMMENTS:

The Consumer Advocate appreciates the Legislature's concern over the pending NextEra/Hawaiian Electric merger application. Any bill that attempts to define "public interest" and "fit, willing, and able" to establish a standard of review by which the PUC is to analyze mergers and acquisitions should be broad enough to apply to all regulated utility mergers and should not be focused solely on one particular merger.

The Consumer Advocate is of the opinion that the PUC needs to have the flexibility and discretion in determining the appropriate level of analysis for each particular merger or acquisition that comes before it. Any legislation that attempts to modify the PUC's flexibility and discretion should be approached cautiously to avoid unintended consequences. By prescribing the specific factors that the PUC needs to consider in evaluating an electric utility merger and acquisition, may lead to an argument by a party to the docket that these are the only factors that can be considered. It is a principle of statutory interpretation that where matters are specifically included in legislation, anything that is not specified was meant to be excluded. Therefore, the Legislature should consider modifying the language to include the phrase "including, but not limited to" such that HRS § 269-19(b) would read in relevant part, "In their evaluation of the application, the commission and division of consumer advocacy shall consider, including but not limited to, the following factors:".

Furthermore, paragraphs (3) and (4) of the proposed section 269-19(b) do not apply to the Division of Consumer Advocacy. Therefore, the Consumer Advocate recommends including a paragraph prior to these paragraphs that states as follows: "In addition to (1) and (2) above, the Public Utilities Commission shall consider the following:"

Thank you for this opportunity to testify.

finance1-Kim

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 27, 2015 1:27 PM
To: FINTestimony
Cc: carl.campagna@kamakagreen.com
Subject: Submitted testimony for HB619 on Mar 3, 2015 13:30PM

HB619

Submitted on: 2/27/2015

Testimony for FIN on Mar 3, 2015 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Campagna	Environmental Caucus	Support	No

Comments: We are in full support of this measure. It is vital for the energy security of our islands that we have a utility that actively working on behalf of the rate-payer and general public. The public interest and comments should be highly weighted. We feel that this is an opportunity to modify or set in place the framework for the modification of the existing utility model in favor of the rate-payer; be it a non-profit or rate payer owned eventuality.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony before the House Committee on Finance

**By Alan M. Oshima
President and Chief Executive Officer
Hawaiian Electric Company**

March 3, 2015

**House Bill 619 HD2
Relating to the Merger, Acquisition and Consolidation of Electric Utilities**

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

My name is Alan Oshima and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company, in opposition of HB 619 HD2.

In the summer of 2014, Hawaiian Electric set in motion a companywide transformation effort that will change the way we do business and, even more important, deliver the value and results our customers want. Our goals are among the most ambitious in the nation, including increasing our renewable energy portfolio to 65 percent, tripling distributed solar, and lowering customer bills 20 percent by 2030. As you know, on December 3, 2014, Hawaiian Electric Industries announced that it will combine with NextEra Energy, the nation's leading clean energy company. NextEra Energy is committed to Hawaiian Electric's vision of increasing renewable energy, modernizing its grid, reducing Hawaii's dependence on imported oil, integrating more rooftop solar energy and, importantly, lowering customer bills.

On January 29, 2015, Hawaiian Electric and NextEra Energy filed a joint application with the Public Utilities Commission (PUC) requesting approval of the proposed merger. The filing describes the companies' commitments to Hawaiian Electric's communities, employees and customers for enhancing service reliability, continuing community and charitable support, continuing to locally manage Hawaiian Electric's utilities from their existing operating locations, delivering savings and value for customers, and strengthening and accelerating a cleaner energy future. Highlights of the application include a commitment to not file a request

with the PUC for a general base rate increase for at least four years post-transaction close and approximately \$60 million in quantified customer savings, both subject to approval of certain conditions.

We welcome a thorough review of the proposed merger and we look forward to the opportunity to share with the PUC and Consumer Advocate how, together, our companies will help Hawaii achieve its vision of a more affordable clean energy future. However, the PUC already has well-established authority to review this proposed merger and it should have reasonable discretion to decide how to conduct its review under the circumstances particular to a given application. HB 619 unduly constrains that discretion.

HRS § 269-19 gives the PUC broad authority to review mergers involving Hawaii utilities. In addition HRS § 269-7(a) gives the PUC the authority to examine, among other things, the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the utility's business relations with other persons, companies, or corporations, and all matters affecting the relations and transactions between the utility and the public or person or corporations. Thus, the PUC already has the authority to examine all transactions that affect or may affect the public served by the utility. Generally, as a result of its review, the PUC will make a determination whether (1) the acquiring utility is fit, willing, and able to perform the service currently offered by the utility to be acquired, and (2) the acquisition is reasonable and in the public interest.

The answers to these questions are necessarily dependent on the particular facts and circumstances of each proposed merger. The issues that should be evaluated with respect to these questions should not be prescribed for every case. Dictating a multitude of specific factors to be considered could result in inefficient management and progression of the docket, which is counter to public policy. Within the established broad parameters of issues to resolve (i.e., whether the merger would be in the public interest and whether the post-merger utility will be fit, willing and able to serve), the PUC should retain discretion to decide the most efficient and effective manner in which to manage the docket. This includes deciding the sub-issues to explore and deciding whether participation by interveners will meaningfully aid evaluation of issues in the docket.

We also share the legislature's view of the need to obtain public input on the proposed merger. The PUC has received public comment in similar transactions in the past, including the sale of Kauai Electric and Verizon. Indeed, PUC Chairman Randy Iwase has already stated that the Commission will hold public hearings on the proposed merger between Hawaiian Electric and NextEra Energy. The Commission should retain the discretion to determine how best to do so now and in the future, again, based on the particular circumstances involved.

In addition, the Hawaiian Electric companies and NextEra Energy are committed to holding other informational meetings on the islands of Oahu, Maui, Molokai, Lanai and Hawaii for the purpose of obtaining public input and sharing with customers on how this merger will benefit Hawaii. Our companies are already planning to host as many as thirteen informational meetings—Oahu (4), Hawaii (4), Maui (3), Molokai (1), and Lanai (1)—to take place next month, April 2015.

In light of the Commission's existing statutory authority to review and determine whether a proposed merger is reasonable and in the public interest, combined with our willingness to obtain public input through the PUC approval process as well as through our public informational meetings, we believe that this legislation is unnecessary.

For the reasons stated above, we respectfully oppose this legislation. Thank you for the opportunity to testify on this matter.



HOUSE COMMITTEE ON FINANCE

March 3, 2015, 1:30 P.M.
(*Testimony is 2 pages long*)

TESTIMONY IN SUPPORT OF HB 619, HD2 WITH PROPOSED AMENDMENTS

Aloha Chair Luke and Members of the Committee:

The Alliance for Solar Choice (TASC) supports HB 619 (HD1), relating to the merger process for electric utilities. TASC advocates for maintaining successful distributed solar energy policies and markets throughout the United States. TASC members collectively serve a majority of the solar customers in Hawaii.

This bill does not significantly change existing Public Utility Commission (“Commission”) authority or precedent, but rather it clarifies the Commission’s pre-existing authority regarding mergers, acquisitions or consolidations. Hawaiian Electric Company President and CEO Alan Oshima acknowledged this fact in recent testimony to the House Committee on Energy & Environmental Protection.

Passage of this measure clarifies the Commission has the statutory authority to ensure that a merger is in the public interest and impose conditions accordingly. Such clarity prevents unnecessary litigation. This measure defines the public interest standard based on clear Commission precedent, to wit, that the Commission should consider (1) affordability; (2) safety and reliability; (3) customer choice; (4) clean energy adoption; and (5) economic benefits to the state. These standards are not controversial, and the express grant of statutory authority ensures the Commission will not be challenged at a later date.

This bill also correctly sets a clear policy direction that the legislature supports public participation in critical merger discussions. This is simply smart policy. The public impacted should have the right to offer their input.

PROPOSED AMENDMENTS:

This Committee should consider two amendments. First, version HD2 restricts PUC authority to **only** mergers and consolidations. Previously, the statute encompassed a broader scope of review, including the need for PUC approval of a sale, assignment, or lease of a public utility. This helps ensure that, for example, the public utility isn’t sold to a bankrupt entity that lacks the financial capability to operate.

Accordingly, the lines 10-14 on page 2 should be restored:

Except as provided in subsection (b), no public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do.

Secondly, as the Energy & Environment Committee noted, this bill is merely a clarification of existing PUC standards. Accordingly, we propose noting that in the purpose of the Act.

Accordingly, page 2, lines 1-5 should be amended to say:

- (1) [~~Establish~~] Clarify standards to evaluate a proposed merger, acquisition, or consolidation of an electric utility; and
- (2) Afford a reasonable opportunity for public participation in the evaluation process.

Thank you for the opportunity to submit this testimony.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

Before the House Committee on Finance

Tuesday, March 3, 2015, 1:30 p.m., Room 308

HB 619 HD 2: Relating to the Merger, Acquisition, and Consolidation of Electric Utilities

Aloha Chair Luke, Vice-Chair Nishimoto, and members of the House Committee on Finance,

On behalf of the Hawaii Solar Energy Association (HSEA), I would like to testify in support for HB 619 HD 2, which 1) establishes standards to evaluate a proposed merger, acquisition, or consolidation; and 2) affords a reasonable opportunity for public participation in the evaluation process.

HSEA believes that HB 619 HD 2 will provide many key clarifications to ensure that the merger evaluation is conducted successfully. First, HB 619 HD 2 outlines relevant factors for the commission and the consumer advocate to consider regarding the public interest. These factors include the affordability of electric service, safety and reliability, access to onsite generation, achievement of our clean energy goals, and economic benefits to our state, including Hawaii employment and industry. As it currently stands, HRS § 269-19 does not define “public interest,” and HSEA believes that the evaluation of the impact on the public interest will be greatly benefited by more specific guidelines.

In addition, HB 619 HD 2 directs the commission and the consumer advocate to consider our clean energy goals when evaluating whether the utility is fit, willing, and able to perform the utility service currently offered. Also, should the commission approve the application, HB 619 HD 2 gives the commission the means to impose specific terms and conditions as the commission may deem necessary to affirm our clean energy goals and other key interests. Although HRS § 269-7 already grants the commission broad authority to investigate the business matters of the public utility, HB 619 HD 2 provides the commission with an efficient, streamlined mechanism to shape the merger according to the confines of Hawaii’s public interest from the start. This clause gives “teeth” to HB 619 HD 2—and it gives Hawaii the power to appropriately craft the merger after the public interest and other factors have been sufficiently analyzed.

Finally, HB 619 HD 2 guarantees that the citizens of Hawaii will have multiple opportunities, through public forums, to engage in the merger process. The electrical utility service has a significant impact on every citizen of Hawaii, and every citizen should have the opportunity to advance questions relating to the merger process given the many concerns plaguing rate payers.

Never before has the commission had to undertake such an enormous challenge. Let’s ensure that they have the tools and guidelines necessary to make the best decision possible. HSEA respectfully requests that this committee pass HB 619 HD 2.

Mahalo and thank you for the opportunity to testify.

Leslie Cole-Brooks
Executive Director
Hawaii Solar Energy Association



**TESTIMONY OF ERIC S. GLEASON, NEXTERA ENERGY
HOUSE COMMITTEE ON FINANCE**

MARCH 3, 2015, 1:30 PM

**HOUSE BILL 619, H.D. 2 - RELATING TO THE MERGER, ACQUISITION AND
CONSOLIDATION OF ELECTRIC UTILITIES**

DESCRIPTION:

This measure proposes to establish standards and criteria for the Public Utilities Commission (PUC or Commission) and Division of Consumer Advocacy (Consumer Advocate) to apply when determining whether to approve a merger, acquisition, or consolidation of an electric utility.

POSITION:

NextEra Energy respectfully opposes H.B. 619, H.D.2 and offers the following comments.

COMMENTS:

NextEra Energy shares Hawaiian Electric's vision of increasing renewable energy, modernizing its grid, reducing Hawaii's dependence on imported oil, integrating more rooftop solar energy and, importantly, lowering customer bills. We are excited by the opportunity to strengthen and accelerate the Hawaiian Electric Companies' (Hawaiian Electric, Maui Electric and Hawaii Electric Light) clean energy transformation and believe customers will benefit substantially from the combined company.

If enacted by the Legislature, H.B. 619, H.D.2 may result in unintended consequences adverse to the public interest by unduly limiting and restricting the Commission and Consumer Advocate in how they can address changes of control. Many of the principles, standards or elements listed in this measure may become inapplicable and/or outdated over time due to, among other things, changes in technologies, policies, etc. The Commission and Consumer Advocate should have adequate flexibility to balance and

address these types of issues as they deem necessary at any given time (i.e., now and in the future) to ensure that the subject transaction is reasonable and in the public interest.

Hawaii law (HRS Chapter 269) already provides the PUC with full authority and discretion to determine whether any utility merger, acquisition or consolidation of any Hawaii utility is reasonable and in the public interest. We believe there is no need for a new law specific to solely electric utility mergers, acquisitions or consolidations.

RECOMMENDATION:

For the reasons indicated above, NextEra Energy respectfully requests that this measure be held, as we believe it is not needed.

While NextEra Energy opposes H.B. 619, H.D.2, we do understand the importance of giving the public the opportunity to engage with us about our proposed combination. Therefore, NextEra Energy is committed to jointly coordinate with the Hawaiian Electric Companies to hold informational meetings about the proposed combination on the islands of Oahu, Maui, Molokai, Lanai and Hawaii, and obtaining community input and feedback concerning the proposed combination.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 2:53 PM
To: FINTestimony
Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB619 on Mar 3, 2015 13:30PM*

HB619

Submitted on: 2/28/2015

Testimony for FIN on Mar 3, 2015 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Tuesday, March 3, 2015 — 1:30 p.m. — Room 308

Ulupono Initiative Supports HB 619 HD 2 with an Amendment, Relating to the Merger, Acquisition, and Consolidation of Electric Utilities

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

We are Murray Clay and Kyle Datta, respectively Managing Partner and General Partner of the Ulupono Initiative, a Hawai'i-based impact investment company that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase clean, renewable energy, and waste reduction. We believe that self-sufficiency is essential to our future prosperity, and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono supports HB 619 HD 2, which provides the Hawai'i Public Utilities Commission with guidance on the legislative intent regarding the criteria that should be considered when determining whether a proposed merger is in the public interest.

This bill correctly finds that the Hawai'i Public Utilities Commission should use two broad standards: whether the transaction is reasonable and in the public interest, and whether the successor electric utility is fit, willing, and able to perform the service currently provided by the electric utility. This two-part test is codified in HRS 269-7.5(c) and has been applied by the Hawai'i Public Utilities Commission to mergers, acquisitions, and consolidations of public utilities under HRS 269-19. *See, e.g., In re The Gas Company, LLC, et al.*, Docket No. 05-0242, Decision and Order No. 22449 (May 3, 2006); *In re Sprint Communications Company, L. P., Sprint Payphone Services, Inc., and ASE Telecom, Inc., et al.*, Docket No. 05-0045, Decision and Order No. 21715 (Apr. 4, 2005); *In re ITC—DeltaCom Communications, Inc., et al.*, Docket No. 02-0345, Decision and Order No. 19874 (Dec. 13, 2002); *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al.*, Docket No. 00-0354, Decision and Order No. 18220 (Nov. 30, 2000); *In re Time Warner Telecom of Hawaii, L. P., dba Oceanic Communications, et al.*, Docket No. 00-0047, Decision and Order No. 17662 (Apr. 10, 2000)).

Hawai'i's ratepayers deserve more than a broad standard regarding the reasonableness of proposed transactions and the fitness, willingness, and ability to serve. We strongly support the additional criteria that are contained in HB 619 HD 2, particularly:

- a) Achievement of clean energy goals and related public policy objectives articulated by the State and the commission [proposed HRS 269-19 (b)(1)(D) and (2)(B)],
- b) Access to onsite generation and other options for customers to manage their energy usage [proposed HRS 269-19 (b)(1)(C)],

Investing in a Sustainable Hawai'i

- c) Expand customer energy options, including energy efficiency and distributed energy resources [proposed HRS 269-19 (b)(2)(D)].

We are in agreement with Chair Iwase’s testimony that the broad statutory principles as articulated in proposed HRS 269-19, Section 2, subsections (b)(1) and (2), “can be helpful in providing policy guidance to the Commission as it evaluates application for merger and consolidation of major public utilities.”

The alignment of the merger conditions to the State energy policy is of paramount importance. To quote Attorney General Russell Suzuki, in the Department of Business and Economic Development’s Motion to Intervene in the merger docket:

“the Commission’s public interest inquiry must consider the Application in relation to Hawaii’s energy transformation. Specifically, the public interest must explicitly account for the near term investments and actions within a specific transformation period to achieve discrete and measureable policy goals and objectives. DBEDT believes it would be difficult, if not impossible, to reach a reasoned decision that does not explicitly consider the Application in the context of the State’s clean energy transformation”¹

We are concerned that absent this clarification of the law, that the utilities will seek a lower standard of public interest and fitness that considers only the standard financial and operational criteria. This is not a theoretical concern. In the Application filed in Hawai’i Public Utility Commission Docket 2015-0022, the Applicants² clearly state that “NextEra Energy will be unable to identify the specific plans and projects that NextEra Energy would implement as owner of the Hawaiian Electric Companies . . .” (Application at 42 n.57.) In their testimony to the Legislature, senior executives of NextEra Energy and Hawaiian Electric were similarly vague. As energy investment professionals, we believe that it strains credulity that a \$4.3 billion dollar merger would be approved by the acquiring company’s board absent clear plans for improvement of the target utilities’ assets and a strong business plan.

The other two criteria (i.e., access to onsite generation and expanded customer energy options) represent approaches to ensure that the electric utilities customers enjoy non-discriminatory access to the full suite of energy options available to them, including energy efficiency, distributed energy, and on-site generation. We believe this approach is the hallmark of 21st Century utility regulation. It is necessary because of the changes in technology that allow customers to have cost effective choices in supplying their energy needs while maintaining system reliability. The actions of the incumbent utility have been clearly hostile to the very principle of non-discriminatory customer choice.

We respectfully recommend that Section proposed HRS 269-19(B) (1) should also have the following additional criteria added:

- (F) Short-term and long-term economic benefits to the ratepayers of the utility; benefits

¹ Pg. 9 of DBEDT Motion to Intervene

² The Applicants in Docket 2015-0022 are Hawaiian Electric Company, Inc., Hawai’i Electric Light Company, Inc., Maui Electric Company, Limited; and NextEra Energy, Inc.



to ratepayers, including the equitable allocation of such benefits between shareholders and ratepayers; and

(G) Not adversely affect competition and mitigation measures necessary for adoption to avoid this result.

These clarifications are important to spell out that a proposed merger, acquisition, or consolidation should provide direct, tangible benefits to ratepayers (i.e., a “net benefits” standard) rather than simply protect against ratepayer harm (i.e., a “no harm” standard).

We directly rebut the testimony of Alan Oshima to the Legislature that providing legislative guidance on the criteria the Hawai‘i Public Utilities Commission should use in evaluating a merger, “could result in inefficient management and progression of the docket.” In fact, the criteria in HB 619 HD 2 and that proposed above will certainly be issues of interest to parties to Docket 2015-0022, and such proposed criteria should introduce no procedural inefficiencies to the docket. Indeed, UluPono believes that the criteria provide greater clarity on what elements should—and will—be considered in the docket, which enables an orderly review.

UluPono recognizes that legal questions could arise if this measure was *directly* applied to the instant case of the NextEra Energy-Hawaiian Electric Company merger docket that is currently in front of the Public Utilities Commission. We believe the courts will decide the legality of any retroactive application of the criteria, should that occur. We have faith and confidence that the current PUC commissioners will use the regulatory discretion already afforded to them by the existing laws to address any dockets that are currently before them under HRS 269-19 and HRS 269-7(a).

Nonetheless, the Legislature should pass this bill, as written in its entirety and with the introduction of the “net benefits” and “no harm to competition” standards suggested above, to ensure that all current and future Hawai‘i Public Utilities Commissions understand the intent of the Legislature as it applies to any merger under their consideration.

As Hawai‘i’s energy issues become more complex and challenging, we appreciate this committee’s efforts to look at policies that support renewable energy production.

Thank you for this opportunity to testify.

Respectfully,

Murray Clay
Managing Partner

Kyle Datta
General Partner

LATE

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
FINANCE

March 3, 2015
1:30 p.m.

MEASURE: H.B. No. 619, H.D.2

TITLE: Relating to the Merger, Acquisition, and Consolidation of Electric Utilities

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

DESCRIPTION:

This measure proposes to amend Section 269-19, Hawaii Revised Statutes, to require the Public Utilities Commission (“Commission”) and the Division of Consumer Advocacy (“DCA”) to apply certain standards and criteria when evaluating merger applications brought forth by electric utilities. This measure would also require that a special public hearing and intervention process be used for such merger applications.

POSITION:

The Commission offers the following comments for the Committee’s consideration.

COMMENTS:

The Commission notes that on March 2, 2015 in Docket No. 2015-0022, *In the Matter of the Application of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., Maui Electric Company, Limited, and NextEra Energy, Inc., For Approval of the Proposed Change of Control and Related Matters*, the Commission released Order No. 32695, *Initiating Proceedings; Establishing Standards of Review, Initial Statement of Issues, and Initial Procedures; and Addressing Intervention Requests* (“Order” – **See attachment**). By this Order the Commission will subject the NextEra-HECO merger, to a thorough examination to address this initial list of issues:

- 1) Whether the proposed transaction is in the public interest.

- a. Whether approval of the proposed transaction would be in the best interests of the State's economy and the communities served by the HECO companies.
 - b. Whether the proposed transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.
 - c. Whether the proposed transaction will impact the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost.
 - d. Whether the proposed financing and corporate restructuring proposed in the application is reasonable.
 - e. Whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the Commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.
 - f. Whether adequate safeguards exist to protect the HECO Companies' ratepayers from any business and financial risks associated with the operations of NextEra and/or any of its affiliates.
 - g. Whether the proposed transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.
 - h. Whether the transfer, if approved, would potentially diminish competition in Hawaii's various energy markets and, if so, what regulatory safeguards are required to mitigate such adverse impacts.
- 2) Whether the applicants are fit, willing, and able to properly provide safe, adequate, and reliable electric service at the lowest reasonable cost in both the short and the long term.
- a. Whether the proposed transaction, if approved, will result in more affordable electric rates for the customers of the HECO Companies.

- b. Whether the proposed transaction, if approved, will result in an improvement in service and reliability for the customers of the HECO Companies.
 - c. Whether the proposed transaction, if approved, will improve the HECO Companies' management and performance.
 - d. Whether the proposed transaction, if approved, will improve the financial soundness of the HECO Companies.
- 3) Whether the proposed transaction, if approved, would diminish, in any way, the Commission's current regulatory authority over the HECO Companies, particularly in light of the fact that the ultimate corporate control of the HECO Companies will reside outside of the State.
 - 4) Whether the financial size of the HECO Companies relative to NextEra's other affiliates would result in a diminution of regulatory control by the Commission.
 - 5) Whether NextEra, Florida Power and Light, or any other affiliate has been subject to compliance or enforcement orders issued by any regulatory agency or court.
 - 6) Whether any conditions are necessary to ensure that the proposed transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary.

As stated in this Order, the Commission will be following contested case procedures pursuant to HRS Title 8, Public Proceedings and Records, Chapter 91, Administrative Procedure, Section 91-1(5).

Also as stated in this Order, the Commission intends to provide members of the public the opportunity to address the Commission regarding the proposed transaction at "public listening sessions" to be conducted on each of the islands served by the HECO Companies.

Also as stated in this Order, the Commission has granted the motions to intervene for each party that has moved to intervene.

The Commission raises a concern if the intent is for this measure is to be applied retroactively to dockets presently before the Commission. Such retroactive application may raise legal questions.

Therefore, this measure may not be necessary at this time.

Thank you for the opportunity to testify on this measure.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,) DOCKET NO. 2015-0022
HAWAII ELECTRIC LIGHT COMPANY,)
INC., MAUI ELECTRIC COMPANY,)
LIMITED, and NEXTERA ENERGY, INC.,)
)
For Approval of the Proposed Change of)
Control and Related Matters.)
)

ORDER NO. 32695

INITIATING PROCEEDINGS; ESTABLISHING STANDARDS OF REVIEW,
INITIAL STATEMENT OF ISSUES, AND INITIAL PROCEDURES;
AND ADDRESSING INTERVENTION REQUESTS

PUBLIC UTILITIES
COMMISSION

2015 MAR - 2 P 2: 25

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,) Docket No. 2015-0022
HAWAII ELECTRIC LIGHT COMPANY,)
INC., MAUI ELECTRIC COMPANY,) Order No. 32695
LIMITED, and NEXTERA ENERGY, INC.,)
)
For Approval of the Proposed Change of)
Control and Related Matters.)
_____)

INITIATING PROCEEDINGS;
ESTABLISHING STANDARDS OF REVIEW,
INITIAL STATEMENT OF ISSUES,
AND INITIAL PROCEDURES; AND
ADDRESSING INTERVENTION REQUESTS

By this Order, the commission is addressing a number of matters concerning the Application filed on January 29, 2015, by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively referred to as the "HECO Companies" or the "Hawaiian Electric Companies"), and NEXTERA ENERGY, INC. ("NextEra" or "NextEra Energy") (the HECO Companies and NextEra are jointly referred to as the "Applicants").¹ Among other things, the Applicants request that the commission approve a

¹The "Application, Exhibits 1 Through 8, Verifications And Certificate Of Service" are collectively referred to as the "Application."

proposed change of corporate control of the HECO Companies (the "Proposed Transaction"), as further discussed in this Order.

I.

The Current Regulatory Landscape

It would be difficult to understate the importance of this docket, not only to the ratepayers of the HECO Companies, but to the State of Hawaii's citizens and its economy. Even in the face of recent declines in oil prices, the HECO Companies' residential ratepayers face the highest per kilowatt hour rates in the country. On average in 2014, these rates ranged from 35.49¢ on Oahu, to 37.83¢ on Maui, to 41.91¢ on Hawaii, to 45.87¢ on Lanai, to 47.07¢ on Molokai. Likewise, the majority of Hawaii's businesses - both large and small - depend on a reliable source of energy at the lowest reasonable cost. Those businesses, in turn, not only furnish goods and services to the citizens of Hawaii, they employ those citizens to produce these goods and services.

As the commission has observed on many occasions, the HECO Companies face significant challenges, ranging from meeting the State's Renewable Portfolio Standards ("RPS") goals, to reliably integrating more renewable energy sources, to reducing reliance on fossil fuel fired generation, to maintaining reliability of the grid.

The commission has actively addressed the issues currently facing the HECO Companies, as well as the Companies' present and future capability to meet these goals, in a series of dockets. Notably, in April of 2014, the commission issued a "White Paper" entitled "Commission's Inclinations on the Future of Hawaii's Electric Utilities - Aligning the Utility Business Model with Customer Interests and Public Policy Goals."²

The commission made the following observations, among others:

The Commission is compelled to offer the following perspectives on the vision, business strategies and regulatory policy changes required to align the HECO Companies' business model with customers' interests and the state's public policy goals. The Commission is compelled because the HECO Companies failed to articulate a sustainable business model in the intervening time period since this directive was set forth by the Commission almost one year ago in Order No. 31288.

. . . .

Given this continuing void in developing a sustainable business model and strategic vision, the Commission is obligated to reiterate the regulatory oversight direction that was articulated last year:

²In the Matter of PUBLIC UTILITIES COMMISSION Regarding Integrated Resource Planning, Docket No. 2012-0036, "Decision and Order No. 32052," filed on April 28, 2014, Exhibit A, "Commission's Inclinations on the Future of Hawaii's Electric Utilities; Aligning the Utility Business Model with Customer Interests and Public Policy Goals" (the "White Paper").

"The extent of the HECO Companies' own volition to achieve high performance, provide excellent customer service and affordable rates will determine the appropriate amount of regulatory oversight required. Otherwise, the commission would be forced to employ arduous regulatory scrutiny and oversight of utility expenditures, operations and investments to attempt to achieve the desired performance levels and customer satisfaction. The commission prefers the former but unfortunately, at the present time, believes the lack of a strategic and sustainable business model would require more of the latter until there is evidence of an acceptable course correction."

The Commission has not observed an "acceptable course correction" and there is not sufficient evidence, at this time, of progress by the HECO Companies towards developing and implementing a sustainable business model. By contrast, the Commission does note that the state's other electric utility has clearly articulated a strategic vision and made substantial progress in achieving their goals over the same time period.

In the meantime, Hawaii's electricity customers continue to endure the highest electricity prices in the country, and the high cost of this essential service imposes substantial burdens on Hawaii's households and businesses. Unlike many jurisdictions where public policy goals to reduce harmful emissions from fossil-based electricity generation and increase use of renewable energy may conflict with economic goals to lower the cost of electricity, Hawaii has already entered a new paradigm where the best path to lower electricity costs includes an aggressive pursuit of new clean energy sources. By embracing cost-effective

clean energy opportunities that displace today's high-cost oil-fired generation, Hawaii's electric utilities can stabilize and lower customer bills while expanding choices for customers to manage their energy use.

The Commission views the objectives of lower, more stable electric bills and expanding customer energy options, while maintaining reliable energy service in a rapidly changing system operating environment, as essential principles that are the foundation for the future strategic business direction of the HECO Companies. By extension, these principles are also important criteria in the review and approval of future utility capital investment projects and programs.³

The commission provided guidance to the HECO Companies in three areas: (1) creating a twenty-first century generation system; (2) creating modern transmission and distribution grids; and (3) addressing the policy and regulatory reforms necessary to achieve Hawaii's clean energy future.⁴

The commission is addressing these goals in a number of ongoing dockets, including:

- Each HECO Company was required to file a Power Supply Improvement Plan ("PSIP") to address critical power supply resource issues, including serious deficiencies in planning and operational practices as renewable energy levels increase on each system, which have resulted in unnecessarily high electricity

³White Paper at 1-3 (footnotes omitted).

⁴White Paper at 3.

costs for customers. The PSIPs have been consolidated for review in Docket No. 2014-0183, and are currently under review by the commission and the parties.⁵

- Each HECO Company was required to file a Distributed Generation Interconnection Plan ("DGIP") to develop technical solutions and action plans to increase the capability of the HECO Companies' distribution systems to interconnect additional distributed energy resources ("DER"). The DGIPs are currently under review by the commission and the parties in Docket No. 2014-0192.
- The HECO Companies were required to file an Integrated Demand Response Portfolio Plan ("IDRPP"). Demand response ("DR") programs provide incentives to utility customers, usually in the form of payments or bill credits, to change how they would normally use electricity by "shifting" all or a portion of their usage to a different time period.

In Order No. 32054 in Docket No. 2007-0341, the Commission concluded that DR programs benefit both customers and electric utilities. The IDRPP filed by the HECO Companies is currently under review in Docket No. 2007-0341.

- The commission is also currently reviewing the HECO Companies' existing "decoupling mechanism" in Docket No. 2013-0141 to determine whether the mechanism is achieving its intended purposes. Among

⁵The Commission first ordered HELCO to prepare and submit a PSIP in conjunction with the commission's review of the Hu Honua Power Purchase Agreement in Docket No. 2012-0212 (Decision and Order No. 31758, filed December 20, 2013). Subsequently, on April 28, 2014, the commission ordered HECO and MECO to each file a similar PSIP in Docket Nos. 2011-0206 and Docket No. 2011-0092, respectively, addressing the unique circumstances of the island power systems serving Maui, Lanai, Molokai, and Oahu.

other things, the decoupling mechanism is designed to make a utility indifferent to increased integration of renewable energy and to reduce the frequency of rate cases.

Other dockets and issues currently facing the commission include an examination of whether inter-island power transmission via cable may be in the public interest, and whether the increased use of liquefied natural gas ("LNG") can assist in reducing rates and meeting clean energy goals. In addition, major rate cases are pending for both HECO (Docket No. 2013-0373) and MECO (Docket No. 2014-0318).

In short, the HECO Companies are in the midst of addressing a series of complex and challenging issues that will determine how they will develop and implement a sustainable and progressive business model that results in quantifiable benefits for ratepayers and the State's citizens and economy. While the Proposed Transaction will be addressed on its specific merits, the commission cannot ignore the current regulatory landscape in conducting its review. Thus, in this Order, the commission is establishing procedures to determine not only whether the benefits promised by the Applicants would be realized if the Application is approved, but whether the Applicants will adequately address those issues currently before the commission, as well as the State's renewable energy goals.

II.

Description Of The Companies And The Application

The Applicants request that the commission approve a fundamental change in the ownership and control of the HECO Companies. Hawaiian Electric Industries, Inc. ("HEI"), is a publicly-traded holding company incorporated in the State of Hawaii, whose principal subsidiaries are engaged in the electric utility and banking businesses. With respect to electric utilities, HEI directly owns HECO, and, through HECO, indirectly owns MECO and HELCO. The HECO Companies are engaged in the production, transmission, and distribution of electricity, and collectively serve the electric power needs of over 95 percent of Hawaii's 1.4 million residents and businesses located on the islands of Oahu, Maui, Lanai, Molokai, and Hawaii. With respect to banking, HEI owns American Savings Bank.

Through a series of transactions as described in the Application, HEI would "merge/combine" with Hawaiian Electric Holdings, Inc. ("HEH"). HEH would be the surviving corporation, and would become the parent company of the HECO Companies, with NextEra as the sole manager of HEH.⁶ American Savings Bank

⁶This series of transactions is graphically illustrated in Exhibit 2 to the Application.

would survive as a separate entity, that is, it would not be a subsidiary of HEH.

NextEra is a Florida corporation whose principal subsidiaries include (1) Florida Power & Light Company ("FPL") and (2) NextEra Energy Resources, LLC ("NextEra Energy Resources"). According to the Application, FPL serves approximately 4.7 million customers in the State of Florida and is one of the largest rate-regulated electric utilities in the United States, based on retail megawatt-hour sales.⁷ NextEra Energy Resources is described as an entity that brings "the capabilities of a renewable energy leader, including the resources to strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation."⁸ Further, the Application states that "[t]ogether, FPL and NextEra Energy Resources have completed 95 major capital projects totaling over \$24 billion since 2003, overall on time and under budget."⁹

Applicants contend that the proposed transfer of control is reasonable and in the public interest, and that, following the change in control, the HECO Companies will continue to be fit, willing, and able to provide electric

⁷Application at 19.

⁸Application at 5.

⁹Application at 5.

utility services.¹⁰ The Applicants further contend that approval of these transactions would result in a number of benefits, including, but not limited to, the following:

- An improvement in the financial status of the HECO Companies;
- Lower costs leading to customer savings;
- A strengthening and acceleration of the HECO Companies' clean energy plans and transformation; and
- An enhancement of the HECO Companies' ability to continue providing safe and reliable service to their customers.¹¹

The Applicants further commit to maintain charitable contributions, to retain local management, to forego involuntary reductions in the workforce for two years, and to establish a local, independent advisory board to be made up of six to twelve members who have substantial ties to the Hawaii community.¹² NextEra pledges that "it will not seek to recover through rates any acquisition premium, transaction, or transition costs arising from the Proposed Change of Control, and that it will maintain various protections designed to ensure that the

¹⁰Application at 2-3.

¹¹Application at 3. With respect to clean energy, the Applicants assert that because NextEra is a national leader in clean energy, NextEra can help the HECO Companies move quickly to an affordable, clean energy future. Id.

¹²Application at 10-11.

Hawaiian Electric Companies and their customers are not harmed by the activities and businesses of other NextEra Energy entities and subsidiaries.¹³

With respect to rates, the Applicants propose the following:

Subject to certain qualifications (as described in footnotes 42 and 45, and below), NextEra Energy commits that, for at least four years following the closing of the Proposed Change of Control (the "stay out period"), the Hawaiian Electric Companies: (i) will not submit any applications seeking a general base rate increase, and (ii) will forego (during the same period) recovery under the decoupling mechanism of any incremental adjustments to "Base Expenses" (the "O&M RAM Adjustment") (which, in cumulative total, will amount to an estimated \$60 million in customer savings).¹⁴

However, there are several significant caveats to this proposal, including: (1) rates could be increased during the moratorium on the basis of "compelling financial need" or the occurrence of an extraordinary expense, such as an expense caused by a tropical storm, an act of terrorism, etc., and (2) preservation of the following programs and mechanisms, as currently authorized, throughout the entire period of the moratorium: (i) the Revenue Balancing Account ("RBA") tariff

¹³Application at 13.

¹⁴Application at 34-35 (footnotes omitted).

provisions, (ii) the Rate Base Revenue Adjustment Mechanism ("RAM") - Return on Investment Adjustment tariff provisions, (iii) the Depreciation and Amortization RAM Expense provision, (iv) the Renewable Energy Infrastructure Program, including the Renewable Energy Infrastructure Program Surcharge, (v) the Integrated Resource Plan ("IRP")/Demand Side Management ("DSM") Cost Recovery tariff provisions, (vi) the Electric Cost Adjustment Charge ("ECAC") tariff provisions, (vii) the Purchase Power Adjustment Clause ("PPAC") tariff provisions, and (viii) the Pension and Other Pension Employee Benefits ("OPEB") tracker mechanism.¹⁵

The Applicants discuss a variety of other commitments and safeguards, and conclude:

In sum, Applicants assert that (a) the Proposed Change of Control is reasonable and in the public interest, and (b) the Hawaiian Electric Companies will be fit, willing, and able to provide and perform their respective utility services following the Proposed Change of Control. For the reasons discussed above, the Proposed Change of Control will not have any material adverse effects on the Hawaiian Electric Companies' operations or customers. The Proposed Change of Control will also provide various material benefits as discussed above. NextEra Energy will bring its wealth of experience, resources, and expertise to the Hawaiian Electric Companies, the companies' operations, and the companies' customers. Ultimately, the

¹⁵Application 35-36.

Proposed Change of Control will result in the Hawaiian Electric Companies being able to deliver more value to their customers and will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation.¹⁶

III.

Standards Of Review

There are a number of statutory provisions that guide the commission's review of this Application. To begin, the commission has extensive general powers with respect to utilities and their activities pursuant to Hawaii Revised Statutes ("HRS") §§ 269-6 and 269-7. HRS § 269-6(a) provides that the commission "shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter." HRS §§ 269-6(b), (c), and (d) establish additional specific powers of the commission.

HRS § 269-7(a) sets forth the commission's investigatory powers:

Investigative powers. (a) The public utilities commission and each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its

¹⁶Application at 46.

employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

In addition to these general provisions, the commission has specific authority over the Proposed Transaction pursuant to HRS § 269-19(a):

[N]o public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the Commission shall be void.

The commission has previously addressed the standard of review under HRS § 269-19 in reviewing KIUC's proposed buyout of Citizens Kauai Electric Division. In that case, the commission concluded:

HRS § 269-19 gives the commission broad discretionary authority to review Citizens' sale of KE's assets and the transfer of KE's franchise to KIUC. In addition, HRS § 269-7(a) gives the commission the power to examine, among other things, the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the utility's business relations with other persons, companies, or corporations, and all matters affecting the relations and transactions between the utility and the public or persons or corporations. Thus, the commission has authority to examine all transactions that affect or may affect the public served by the utility.

Since HRS § 269-19 does not contain specific criteria or standards for the commission to consider in the transfer or assignment of a franchise, the commission historically, in its review of applications for the sale of public utility assets and the transfers of certificates of public convenience and necessity (CPCN) and franchises, pursuant to HRS § 269-19, has utilized the same standards of review found at HRS § 269-7.5 for guidance, to wit, that the applicant is "fit, willing, and able properly to perform the service proposed." The use of these standards of review, therefore, does not require that the commission also undertake, among other things, an initial rate review, as set forth under HRS § 269-7.5.

Therefore, before the commission approves any acquisition of a public utility subject to the commission's jurisdiction under HRS § 269-19, we must find that (1) the acquiring utility is fit, willing, and able to perform the service currently offered by the utility to be acquired, and (2) the

acquisition is reasonable and in the public interest.¹⁷

HRS § 269-7.5 provides, in pertinent part:

Certificates of public convenience and necessity. (a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

. . . .

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and

¹⁷In the Matter of the Application of CITIZENS COMMUNICATIONS COMPANY, KAUAI ELECTRIC DIVISION and KAUAI ISLAND UTILITY CO-OP For Approval of the Sale of Certain Assets of Citizens Communications Company, Kauai Electric Division and Related Matters, Docket No. 2002-0060, Decision and Order No. 91658, filed September 17, 2002, at 14-15 (footnote omitted).

necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

Finally, the commission has authority over the Proposed Transaction pursuant to HRS § 269-17.5, which provides, in pertinent part:

(c) No more than twenty-five per cent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls, operates, or manages any plant or equipment, or any part thereof, as a public utility within the definition set forth in [HRS] section 269-1 shall be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission, or unless a transaction is exempt.

The commission has also previously addressed the standard of review under HRS § 269-17.5 in a case involving a proposed transfer of control over The Gas Company, LLC ("TGC"):

Paramount in both HRS §§ 269-17.5 and 269-19 are the concepts of ownership and control. While it is the holding company of TGC's parent that is being transferred (i.e., K-1 HGC), ultimately it is TGC's ownership and control that is being transferred, as proposed in the Application. This type of indirect transfer of control is contemplated under HRS §§ 269-17.5 and 269-19.¹⁸

These are the standards that the commission will apply in its review of the Proposed Transaction.

IV.

Initial Statement Of The Issues

Consistent with the above standards of review, the commission identifies the following as the initial list of issues to be addressed in this proceeding. As further discussed below, the commission is providing the Applicants and the other parties an opportunity to propose additional issues for consideration. Furthermore, the commission reserves the right to modify the following list as a result of the parties' proposals or on the commission's own motion.

The initial list of issues to be addressed in this docket is as follows:

¹⁸In the Matter of the Application Of The Gas Company, LLC, HGC Holdings, LLC, Kl Ventures Limited, And Macquarie Gas Holdings LLC For Approval Of The Transfer Of Upstream Membership Interests And Related Matters, Docket No. 2005-0242, Decision and Order No. 22449, filed May 3, 2006, at 22-23, n.26.

1. Whether the Proposed Transaction is in the public interest.
 - a. Whether approval of the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies.
 - b. Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.
 - c. Whether the proposed transaction will impact the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost.
 - d. Whether the proposed financing and corporate restructuring proposed in the Application is reasonable.
 - e. Whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.
 - f. Whether adequate safeguards exist to protect the HECO Companies' ratepayers from any business and financial risks associated with the operations of NextEra and/or any of its affiliates.
 - g. Whether the Proposed Transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.

4. Whether the financial size of the HECO Companies relative to NextEra's other affiliates would result in a diminution of regulatory control by the commission.
5. Whether NextEra, FPL, or any other affiliate has been subject to compliance or enforcement orders issued by any regulatory agency or court.
6. Whether any conditions are necessary to ensure that the Proposed Transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary.

V.

Initial Procedures

In the following sections of this Order, the commission describes the procedures that will govern this docket. Unless otherwise indicated, the term "Parties," as used in this order, means the Applicants, the Department Of Commerce And Consumer Affairs, Division Of Consumer Advocacy ("Consumer Advocate"),¹⁹ and those entities whose motions to intervene in these proceedings have been granted as set forth in Section VI of this Order.

¹⁹The Consumer Advocate is an ex officio party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

A.

Contested Case Procedures

As defined in HRS Title 8, Public Proceedings and Records, Chapter 91, Administrative Procedure, § 91-1(5), a "contested case" is "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." Contested cases are conducted pursuant to HRS § 91-9, which provides:

Contested cases; notice; hearing; records.

(a) Subject to section 91-8.5, in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application

a bill of particulars shall be furnished;

- (5) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.
- (c) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.
- (d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (e) For the purpose of agency decisions, the record shall include:
 - (1) All pleadings, motions, intermediate rulings;
 - (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
 - (3) Offers of proof and rulings thereon;
 - (4) Proposed findings and exceptions;
 - (5) Report of the officer who presided at the hearing;

- (6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.
- (f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.
- (g) No matters outside the record shall be considered by the agency in making its decision except as provided herein.

The commission will conduct formal contested case proceedings in this docket pursuant to these provisions and the commission's hearing procedures as set forth in Subchapter 3, Agency Hearing Procedures, of Title 6, Chapter 61, of the Rules of Practice and Procedure before the Public Utilities Commission.

In this regard, the commission is hereby directing the Parties to submit for the commission's review and approval a proposed stipulated procedural order setting forth the schedule and procedures to govern this proceeding within twenty (20) days of the date of this order.

In order to facilitate the formal hearing process, the Parties will be required to prefile prepared testimony pursuant to the requirements of HAR § 6-61-45. Thus, the proposed procedural order shall include, at a minimum, the prefiling of prepared testimony in the following sequence:

- (1) direct testimony by the Applicants in support of the

Application; (2) answering and direct testimony by the Intervenors; (3) answering and direct testimony by the Consumer Advocate; and (4) responsive testimony by the Applicants. The proposed procedural order shall also include reasonable opportunity for the filing of information requests by all Parties.

In addition, the procedural schedule shall provide for completion of the above steps on or before August 31, 2015. The commission will issue an order scheduling formal evidentiary hearings pursuant to the provisions discussed above and establishing the procedures to be followed at those hearings. At the conclusion of the hearings, the commission may establish a briefing schedule or order such further proceedings as are deemed necessary.

Finally, the proposed stipulated procedural order or procedural deadline dates shall, at a minimum, include the filing of an original and eight (8) hard copies of all documents filed with the commission, as well as one copy on disk.

B.

Public Listening Sessions

The commission is not legally required to hold public hearings with respect to the Proposed Transaction. However, based on the discussion in this Order, the commission

intends to provide members of the public the opportunity to address the commission concerning the Proposed Transaction at "public listening sessions." These sessions will be conducted on each of the islands served by the HECO Companies: Oahu, Maui, Lanai, Molokai, and Hawaii. The commission will provide adequate public notice prior to conducting each of these sessions.

C.

Proposed Modifications And Additions
To Statement Of Issues

The commission has set forth an initial list of issues to be considered in this docket in Section III above. As discussed therein, the Parties may propose additions and/or modifications to the list presented herein within twenty (20) days of the date of this Order. Following the commission's review of any such filings, the commission will establish a final list of issues to be addressed in this docket.

D.

Protective Order

The commission will shortly issue a Protective Order in this docket. However, the commission cautions the Parties (specifically including the Applicants) that it expects them to

make every effort to publicly disclose all information pertaining to the Proposed Transaction, and to limit the designation of material as confidential to the greatest extent possible.

VI.

Intervention

A.

Motions To Intervene

Twenty-eight motions to intervene were filed in this docket. Each of the movants is briefly described below.

1. AES Hawaii, Inc. ("AES"). AES owns and operates a cogeneration facility typically dispatched at a capacity of 180 MW, located in Honolulu, Hawaii, which uses coal as its primary energy source.²⁰ AES Hawaii is an independent power producer that sells capacity and associated electrical energy from the AES Facility to HECO under a Power Purchase Agreement dated March 25, 1988, as amended.²¹

AES states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

²⁰Motion To Intervene Of AES Hawaii, Inc., Affidavit Of Jeffrey Walsh, Declaration Of Dean T. Yamamoto, Exhibit "1," And Certificate Of Service," filed on February 18, 2015, at 2 ("AES Motion").

²¹AES Motion at 2.

Because potential changes to the HECO Companies resource planning are an explicit part of the justification the Applicants offer for the Merger and are implicitly raised by the conflicting public positions the HECO Companies and NextEra's affiliates have taken in the past, AES Hawaii's interests are implicated in this proceeding. If NextEra's cable plans, off-island renewable development plans, or other considerations cause NextEra to revive the possibility of limiting the AES Facility's dispatch, AES Hawaii, its employees, and ratepayers may suffer significant harm. Similarly, if NextEra's plans limit the need for on-Oahu energy storage, AES Hawaii's affiliates' interests in the delivery of storage solutions to HECO would be harmed.²²

2. The Alliance for Solar Choice ("TASC").

TASC states that its mission is to lead advocacy across the country for the rooftop solar industry.²³ TASC further states that its membership includes the "vast majority of the nation's rooftop solar market and include SolarCity, SunRun, and Solar Universe," and that "[t]hese companies and their partners collectively serve the majority of solar customers in Hawaii, are responsible for over 10,000 residential, school, government and commercial installations in the State, and collectively

²²AES Motion at 10.

²³"Motion To Intervene Of The Alliance For Solar Choice, Verification, And Certificate Of Service," filed February 18, 2015, at 3 ("TASC Motion").

employ hundreds of Hawaii residents."²⁴ TASC also notes that its membership "includes Demeter Power Group, which operates in FP&L's service territory."²⁵

TASC states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The success of TASC's member businesses, and the value of the investments their customers have made in onsite energy facilities, are dependent on the systems, rate structures, procedures and processes of the utility to which customers interconnect and through which they operate. It is essential to these interests that the disposition of this proceeding not only preserve and expand the market for the services and products that TASC's members provide, but also maintain the value of investments their customers have made. The details of NextEra's commitments to these customer-based aspects of the public interest, and the Commission's ability to attach conditions to any approval of the Application to ensure those commitments are met, are of vital interest for both TASC and the public.²⁶

3. Blue Planet Foundation ("Blue Planet").

Blue Planet states that it is a "Hawaii public interest organization... dedicated to promoting Hawaii's swift transition to a clean energy economy through the rapid adoption of

²⁴TASC Motion at 3.

²⁵TASC Motion at 3.

²⁶TASC Motion at 7-8 (footnote omitted).

renewable energy and increased energy efficiency."²⁷ Blue Planet states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The effect of the pending order in this proceeding may be to establish specific rulings or determinations concerning some or all of [Blue Planet's] purposes and subjects. For example, the pending order in this proceeding will concern control over utility operations, including the integration of clean energy. A change of control will also impact issues that are central to Blue Planet's mission, such as energy resource planning and the advancement of clean energy in Hawaii.²⁸

4. County of Hawaii ("COH"). COH states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

As an electric ratepayer, the COUNTY Municipal Government is Hawaii Electric Light Company, Inc.'s (HELCO's) largest single customer. The proposed Change of Control is purported to have a material impact on the cost of electricity purchased by the COUNTY. The cost of electricity to ensure and maintain COUNTY operations is a significant burden for its taxpayers and water ratepayers (some of whom live off-grid or may plan to in the future). These purchases are made by COUNTY in the conduct of its responsibilities for the public health, safety and welfare of its citizens. In this capacity, the COUNTY's

²⁷"Blue Planet Foundation's Motion To Intervene, Declaration Of Richard Wallsgrove, And Certificate Of Service," filed February 18, 2015, at 3 ("Blue Planet Motion").

²⁸Blue Planet Motion at 5-6.

interests in the quality, reliability, and cost of electricity service extend far deeper and involve much more dimensions than those of "average" consumers.²⁹

COH also states that it is "a responsible and active leader in several venues serving the public interest in promoting sound energy policy."³⁰ Finally, COH states that it has "perhaps the largest single interest of all in the Island electric utility and in its holding company that will be controlling, designing, financing, developing, operating and maintaining many aspects of the Island's future power generation and transmission & distribution equipment and services."³¹

5. County Of Maui ("COM"). COM states that it has a variety of interests in this proceeding including (1) economic development interests; (2) financial interests; (3) customer-generator or prosumer interests; and (4) energy security interests.³² Thus, COM concludes that its intervention should be granted because it "will support the Commission's evaluations as to whether the proposed Change of Control will

²⁹"County Of Hawaii's Motion To Intervene And Certificate Of Service," filed February 18, 2015, at 4 ("COH Motion").

³⁰COH Motion at 4.

³¹COH Motion at 7.

³²"County Of Maui's Motion To Intervene, Affidavit Of Calvin K. Kobayashi, Certificate Of Service," filed February 17, 2015, at 4-14 ("COM Motion").

adversely affect local energy markets and whether the proposed Change of Control will create substantial cost savings."³³

6. The Department of Business, Economic Development, and Tourism ("DBEDT"). DBEDT's mandate is set forth in HRS § 26-18(a) which states, in pertinent part:

The Department shall undertake statewide business and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawaii's ocean resources, and encourage the development and promotion of industry and international commerce through programs established by law.³⁴

Pursuant to HRS §§ 196-3 and 196-4, DBEDT's Director serves as the "energy resources coordinator" and is charged with serving "as consultant to the governor, public agencies, and private industry on energy-related matters."³⁵

The Legislature delegated broad authority to the Department in energy-related matters, and the Department's interests are directly related to this proceeding, where the Commission will undertake a public interest inquiry to determine the fitness, willingness, and ability of an entity seeking the right and responsibility to provide essential electric service to Hawaii. Since the objective of this docket is to review the proposed change of control

³³COM Motion at 2-3.

³⁴"The Department Of Business, Economic Development, And Tourism's Motion To Intervene And Certificate Of Service," filed February 18, 2015, at 2 ("DBEDT Motion").

³⁵DBEDT Motion at 2.

of the HEI Companies, any order issued by the Commission in this docket will directly affect the Department's statutory obligations.³⁶

7. Friends Of Lanai ("FOL"). FOL is a "not-for-profit organization that represents the interests of numerous Lanai property owners, residents, taxpayers, MECO ratepayers and individuals from all islands in Hawaii," that has (1) opposed "big wind" industrial development and (2) advocated that each island in Hawaii should be energy independent and energy self-sustaining.³⁷

FOL states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

Today, Lanai residents are burdened with the highest electricity rates in the state, and future plans for MECO's operations, such as the impact of the proposed Change of Control on rates; commitment to the use of liquefied natural gas ("LNG"); commitment (or lack thereof) to increasing solar photo-voltaic (PV) rooftop systems; and commitments to improve Lanai's aging electric infrastructure -- all are of significant concern to Lanai's residents and FOL.³⁸

³⁶DBEDT Motion at 4.

³⁷"Motion To Intervene, Declaration Of Robin Kaye And Certificate Of Service," filed on February 17, 2015, at 3 ("FOL Motion").

³⁸FOL Motion at 8.

8. The Gas Company, LLC, dba Hawaii Gas ("Hawaii Gas"). Hawaii Gas is a public utility providing gas service throughout the major islands of Hawaii. Hawaii Gas engages in both regulated and non-regulated gas utility operations, serving approximately 68,700 customers throughout the State of Hawaii;" its "regulated gas operations consist of the purchase, production, transmission, and distribution through underground gas pipelines, and sale for residential, commercial, and industrial uses" of synthetic natural gas, liquid petroleum gas, and liquefied natural gas.³⁹

Hawaii Gas states that it has the following interests:

(1) "an interest in the continued success of the State's 100-year old gas distribution franchise and related businesses, and to leverage existing gas infrastructure so as not to burden ratepayers with potentially duplicative infrastructure;" and (2) "an interest in continuing to participate in the development of state-wide LNG delivery infrastructure to facilitate Hawaii's clean energy future and serve all Industries."⁴⁰

³⁹"Motion To Intervene, Affidavit Of Nathan C. Nelson, Declaration Of Dean T. Yamamoto, Exhibits "1" - "2", And Certificate Of Service," filed February 18, 2015, at 2 ("Hawaii Gas Motion").

⁴⁰Hawaii Gas Motion at 6.

9. Hawaii Island Energy Cooperative ("HIEC").

HIEC states that it is a "non-profit cooperative association formed under chapter 42IC, Hawaii Revised Statutes, for the following purposes: (a) to provide to its members, on a cooperative basis, reliable, cost effective electric energy and other energy solutions in an environmentally responsible and community-supported manner consistent with sound business practices..."⁴¹ As such, "HIEC is exploring the potential merits of a cooperative ownership structure for electric utility service on the island."⁴²

According to HIEC's Motion, it desires to "assist the Commission in developing a record that includes consideration of the cooperative model for electric utility service on Hawaii island" and, through its participation, to present the goals and potential benefits of this cooperative form of utility ownership.⁴³ HIEC states that its interests may be impacted by the outcome of this docket because "[t]he Commission's determination in this application, whether approval or disapproval, will necessarily affect HIEC as a potential

⁴¹"Hawaii Island Energy Cooperative's Motion To Intervene, Declaration Of Brian T. Hirai, Exhibit "A", Certificate Of Service," filed February 11, 2015, at 1-2 ("HIEC Motion").

⁴²HIEC Motion at 2.

⁴³HIEC Motion at 2.

member-owned, not for profit electric utility serving the island of Hawaii."⁴⁴

10. The Hawaii PV Coalition ("HPVC"). HPVC states that it is a professional trade association whose goals "are to promote the development of sound and fair energy policies that enhance Hawaii's energy security and promote environmental and economic sustainability in the state's energy sector."⁴⁵ HPVC further states that its member companies "have specific expertise and experience that will inform and benefit the proceeding, and also have direct and substantial financial and property interests that make them disproportionately exposed to its results."

HPVC states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

HPVC member companies design, build, develop, and operate distributed photovoltaic solar and energy efficiency products and systems in Hawaii and also sell equipment to entities that do so. These efforts include work in all of the service territories relevant to this proceeding. Because the docket concerns the complete transfer of ownership of the Companies to a different entity that will likely seek to make dramatic changes to the development, distribution and management of

⁴⁴HIEC Motion at 3.

⁴⁵"Hawaii PV Coalition's Motion To Intervene, Affidavit Of Mark Duda And Certificate Of Service," filed February 18, 2015, at 2 ("HPVC Motion").

solar and other renewable energy resources in Hawaii, the outcome of the proceeding will have direct financial impacts on the interests of HPVC members and their customers.⁴⁶

11. Hawaii Renewable Energy Alliance ("HREA").

HREA states that it is a "Hawaii-based, private, nonprofit corporation, exempt from federal income tax under Section 501 (c) (6) of the Internal Revenue Code of 1986," and that its member organizations and individuals "include companies, consultants or agents involved in and/or considering manufacturing, marketing, selling, installing and maintaining wind and solar systems in residential applications."⁴⁷

HREA states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

This proceeding raises important issues about the future of the HECO Companies, the resolution of which may dramatically affect [HREA's] above-described interests. If the Merger were to financially or organizationally weaken the HECO Companies in a way that makes them unfit, unwilling, or unable to work with [HREA] and its members on the implementation of renewable energy solutions in Hawaii, [HREA's] interests would be severely impaired. Similarly, [HREA's] interests will be negatively affected if the Merger results in utility resource plans that de-emphasize

⁴⁶HPVC Motion at 4.

⁴⁷"Motion To Intervene Of Hawaii Renewable Energy Alliance, Affidavit Of Warren S. Bollmeier II, And Certificate Of Service," filed February 18, 2015, at 2, 4 ("HREA Motion").

renewable energy, or results in industrial structures which threaten the competitiveness of Hawaii's independent and distributed renewable energy sectors.⁴⁸

12. Hawaii Solar Energy Association ("HSEA").

HSEA states that it is a non-profit professional trade association with an organizational purpose "to promote the utilization and commercialization of renewable energy resources, including solar water heating and solar electricity in the State of Hawaii, to advance consumer education and understanding of solar energy technologies, and to develop sound trade and technical practices among its member companies."⁴⁹ HSEA states that it currently has 90 member companies, "most of which are Hawaii based, owned, and operated, making it the primary organizational representative of the interest of Hawaii's indigenous solar industry."⁵⁰

HSEA states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The pending order's impact on HSEA's member companies' property, financial and economic interests will be direct as they go to the heart of Hawaii's solar industry's business model, a model that is centered on delivering distributed grid-tied,

⁴⁸HREA Motion at 4-5.

⁴⁹"Motion To Intervene Of The Hawaii Solar Energy Association, Affidavit Of Leslie Cole-Brooks And Certificate Of Service," filed February 17, 2015, at 2 ("HSEA Motion").

⁵⁰HSEA Motion at 2.

solar power generating systems that reduce operating costs for Hawaii's homes and businesses.... The pending order to approve the sale of the HECO Companies to Florida-based NextEra and other related matters stands to have a direct, substantial, and immediate impact on the financial and economic interests of HSEA's member companies as the proposed sale stands to completely transform our current relationship with the utility in charge regarding access to interconnection, implementation of policies on distributed generation and advanced DER functionality, and the overall culture and perception of locally generated energy and its place in the new company's business model.⁵¹

13. Hawaii Water Service Company, Inc. ("HWSC").

HWSC is a public utility that provides potable water service in Ka'anapali, Maui, and wastewater collection and treatment service in Pukalani, Maui.⁵² HWSC also owns the stock of Waikoloa Water Co., Inc., dba West Hawaii Water Company, Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Company, Waikoloa Resort Utilities, Inc., dba West Hawaii Utility Company, and Kona Water Service Company, Inc., all of which are public utilities supply water, wastewater, and/or irrigations service(s).⁵³

⁵¹HSEA Motion at 4.

⁵²"Hawaii Water Service Company, Inc.'s Motion To Intervene, Verification, And Certificate Of Service," filed February 17, 2015, at 1 ("HWSC Motion").

⁵³HWSC Motion at 1-2.

HWSC states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The HWSC Group's customers are being harmed by high power costs and the inability of the HWSC Group to help reduce these costs through renewable energy projects. Thus, the HWSC Group is ultimately concerned about how the planned transaction will affect their ability to generate and sell power to MEC and HELCO and to participate in [demand response] programs, and thereby reduce the amounts they charge their customers for water and wastewater service.⁵⁴

14. Hina Power Corp ("HINA"). HINA states that it is a Hawaii for-profit corporation "engaged in the development, installation, integration, construction, marketing, sale and distribution of clean energy generation systems and energy storage systems in the state of Hawaii, on islands served by the Hawaiian Electric Companies."⁵⁵

HINA states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The Commission's approval of the Proposed Change of Control, based on the Hawaiian Electric Companies' and NextEra Energy's representations as set forth above, will have a direct effect on Applicant's property, financial and economic interest because such approval will affect whether or not such clean energy generation systems and

⁵⁴HWSC Motion at 6-7.

⁵⁵"Motion For Intervention Of HINA Power Corp, Inc., And Certificate Of Service," filed February 18, 2015, at 4 ("HINA Motion").

energy storage systems may be interconnected with the Hawaiian Electric Companies' electric systems, and, therefore, whether or not such clean energy generation and storage systems are developed, installed and utilized to the economic benefit or economic detriment of Applicant.⁵⁶

15. Honolulu Board Of Water Supply ("HBWS").

HBWS states that it was created by 1929 legislature, and is a semi-autonomous agency of the City and County of Honolulu.⁵⁷

HBWS manages Oahu's municipal water resources and distribution system.⁵⁸

HBWS states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The Commission's determination in this application, whether approval or disapproval, will necessarily affect BWS as the ability to respond to the needs of the water system infrastructure and its affordability to consumers is directly impacted by the rates imposed by HECO. There is a symbiotic relationship between BWS and HECO as each is one of the other's largest customers and any changes to ownership, operations, and cost structure

⁵⁶HINA Motion at 5.

⁵⁷"Honolulu Board Of Water Supply's Motion To Intervene, Declaration Of Ernest Y.W. Lau, And Certificate Of Service," filed February 19, 2015, at 1 ("HBWS Motion"). The commission observes that HBWS' Motion was filed one day out of time. However, given the importance of these proceedings and the nature of HBWS, the commission, on its own motion, accepts the HBWS Motion for filing under the specific facts present here. The commission cautions that HBWS must strictly comply with the commission's time limitations in all future filings.

⁵⁸HBWS Motion at 1.

has a direct impact BWS' ability to provide water for residential, agricultural, government, military and visitor-related activities.⁵⁹

16. International Brotherhood Of Electrical Workers Local Union 1260 ("IBEW"). IBEW states that it is "the labor union and legal bargaining representative for over 3,000 bargaining unit (union) employees employed by companies doing business in the State of Hawaii and the Territory of Guam."⁶⁰ Further, IBEW states that it "collectively bargains with the Hawaiian Electric Companies and represents over 1,300 bargaining unit employees employed by the Hawaiian Electric Companies in Hawaii."⁶¹

IBEW states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The working conditions, wages and benefits of all current and future Hawaiian Electric Company employees, including IBEW Local 1260 bargaining unit members, will be subject to new management, policies, work rules, hiring practices and more, if there is a change of control as a result of the Commission's decision in this docket. More specifically, and of even greater concern to IBEW Local 1260, is the adverse impact to

⁵⁹HBWS Motion at 3.

⁶⁰"International Brotherhood Of Electrical Workers Local Union 1260's Motion To Intervene, Declaration Of Brian F. Ahakuelo, Declaration Of Amy E. Ejercito And Certificate Of Service," filed February 18, 2015, at 2 ("IBEW Motion").

⁶¹IBEW Motion at 2 (footnote omitted).

any and all employees, particularly bargaining unit employees, who may be subject to involuntary workforce reductions "two years after the change in control" as suggested by NextEra Energy.

IBEW Local 1260 is the only party that can represent its bargaining unit members' interests in continued and future employment and retention in the event of a change in control. IBEW Local 1260 goal is to also insure that both the Hawaiian Electric Companies and NextEra Energy maintain and increase employment of its local union workforce as it transitions Hawaii to a clean energy future. IBEW Local 1260 notes that it welcomes the opportunity for new and different clean energy jobs and continue to partner with the Hawaiian Electric Companies to insure a high quality, well trained, highly skilled and cost effective local union labor workforce.⁶²

17. Ka Lei Maile Ali`i Hawaiian Civic Club ("KLMA").

KLMA states that it is "a Native Hawaiian hui promoting the true history of Hawaii and protecting traditional and customary practices for subsistence, cultural, and religious purposes."⁶³

KLMA states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

(1) KLMA is "entitled to participate to safeguard their rights to a clean and healthful environment on their islands" pursuant to Haw. State Constitution, Article XI § 9; (2) KLMA is

⁶²IBEW Motion at 5-6 (reference omitted).

⁶³"Ka Lei Maile Ali`i Hawaiian Civic Club's Motion To Intervene, Affidavit Of Henry Q Curtis & Certificate Of Service," filed on February 17, 2015, at 2 ("KLMA Motion").

"working to increase awareness of political sovereignty and to build economic resiliency and self reliance;" and (3) "KLMA believes that any undersea high voltage transmission cable deployed in Hawaii should not be located within the Hawaiian Islands Humpback Whale National Marine Sanctuary, nor locate within the South Molokai Fringing Reef."⁶⁴

18. Kauai Island Utility Cooperative ("KIUC").

KIUC does not identify itself other than to state that it is a public utility subject to the commission's jurisdiction.⁶⁵ However, the commission takes judicial notice of the fact that KIUC is a not-for-profit generation, transmission, and distribution cooperative owned and controlled by the members it serves, and that KIUC currently has more than 32,000 electric accounts throughout the island of Kauai.

KIUC states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

KIUC desires to participate in the instant proceeding because of the possibility that conditions imposed by the Commission in connection with the pending application may have significant effects on all

⁶⁴KLMA Motion at 2, 5.

⁶⁵"Kauai Island Utility Cooperative's Motion To Intervene, Declaration Of Brian T. Hirai, Exhibit "A", Certificate Of Service," filed February 11, 2015, at 1 ("KIUC Motion"). In future motions to intervene, KIUC should provide a more complete description of its structure and the services it provides.

Hawaii electric utilities. As applicants in this proceeding, three of the four electric utilities currently operating in the State of Hawaii are likely to be directly affected by any order of the Commission in this proceeding. The remaining electric utility, KIUC, is not an applicant in this proceeding, but nevertheless may be affected by the Commission's orders, such as the imposition of conditions relating to electric utilities operating in the State that directly or indirectly, as a practical matter, apply to KIUC.⁶⁶

19. Life Of The Land ("LOL"). LOL states that it is a non-profit Hawaii-based organization whose members live, work, and recreate in Hawaii.⁶⁷ LOL states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

Thus, from multiple perspectives (trade, peak oil, sustainability, and climate) Life of the Land understands that a switch from fossil fuel to low climate impact, environmentally-sound, culturally and community friendly indigenous renewable energy resources is essential. Life of the Land believes that people are part of the environment and issues like justice and equality are important. Life of the Land works with community groups throughout the state to increase community understanding. The current docket could fundamentally alter policy by making key choices about the

⁶⁶KIUC Motion at 2.

⁶⁷"Life Of The Land's Motion To Intervene, Affidavit Of Henry Q Curtis & Certificate Of Service," filed January 29, 2015, at 5 ("LOL Motion").

path the State will go down from this point forward.⁶⁸

20. Office Of Planning, State Of Hawaii ("Planning Office"). The Planning Office states that it has a broad statutory mandate.⁶⁹ First, HRS § 22SM-2(b) provides that the Planning Office "shall gather, analyze, and provide information to the governor to assist in the overall analysis and formulation of state policies and strategies to provide central direction and cohesion in the allocation of resources and effectuation of state activities and programs and effectively address current or emerging issues and opportunities." Second, HRS § 226-53 provides, among other things, that the Planning Office shall "[c]onduct strategic planning by identifying and analyzing significant issues, problems, and opportunities confronting the State, and formulating strategies and alternative courses of action in response to identified problems and opportunities." Third, HRS § 226-18 provides that the Planning Office shall engage in "[p]lanning for the State's facility systems with regard to energy."

⁶⁸LOL Motion at 5.

⁶⁹"The Office Of Planning, State Of Hawaii's Motion To Intervene And Certificate Of Service," filed on February 18, 2015, at 2-5 ("Planning Office Motion").

The Planning Office states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The State of Hawaii is the second largest consumer of electricity in Hawaii. The implementation of any change in corporate control will impact the development and addition of new renewable resources to the utility grid, reducing Hawaii's dependence on imported fossil fuels and providing price stability and energy security, and ultimately Hawaii's energy costs in the long term, which may have a significant impact on the state government's energy costs.

In addition, the proposed change of control also contains explicit proposals relating to employment levels, customer savings, improved value delivered to customers, and community contributions, all of which are related to the Office's statutory charge.⁷⁰

21. Paniolo Power Company, LLC ("Paniolo").

Paniolo is a wholly-owned subsidiary of Parker Ranch, Inc., and was established in April of 2014 to promote and pursue community-level, regional-scale and island-wide clean energy solutions to address high energy costs and seek reasonably priced clean energy for the Waimea and Kohala communities.⁷¹

⁷⁰Planning Office Motion at 5-6.

⁷¹"Motion To Intervene, Affidavit Of Jose S. Dizon, Declaration Of Dean T. Yamamoto, Exhibits "1" And "2", And Certificate Of Service," filed February 18, 2015, at 3 ("Paniolo Motion").

Parker Ranch is one of the largest and oldest cattle ranches in the United States, and the Parker Ranch Foundation Trust is one of the largest private landowners in the State with over 130,000 acres under management.⁷² In 2013, Parker Ranch began a comprehensive analysis of its resources focusing on Parker Ranch's overarching goal of developing a compelling, competitive plan to transform the Island of Hawaii's energy landscape over the next 10 years (the Paniolo Power Plan).⁷³

Paniolo states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

Paniolo Power's interests are likely to be affected by three (3) related but distinguishable sets of issues which will be discussed and decided in this Docket: (1) issues related to the fitness, willingness, and ability of the post-Merger utilities; (2) issues related to the Applicants' resource planning; and (3) issues related to competition, industry structure, and regulatory frameworks.

. . . .

Paniolo Power believes that in order to successfully implement a transformative plan such as the Paniolo Power Plan (or even a plan such as HELCO's PSIP) progress must be made on these conflict of interest problems. Accordingly, Paniolo Power's ability to advance its objectives will be affected by

⁷²Paniolo Motion at 3.

⁷³Paniolo Motion at 3.

discussion and decisions regarding the effect of the Merger on competition and industry structure, and by any conditions or other regulatory frameworks implemented to address these effects.⁷⁴

22. Puna Pono Alliance ("Puna Pono"). Puna Pono is a nonprofit, unincorporated association which is "interested in issues of health, safety, economy and quality of life in lower Puna as it is affected by energy production and distribution, and particularly geothermal generating facilities, as well as in relation to alternative energy sources."⁷⁵

Puna Pono states that its interests may be impacted by the outcome of this docket for the following reasons among others:

[Puna Pono's] interest in the pending application arises primarily from experiences and concerns of [Puna Pono's] members regarding issues of health, safety, economy, regulatory oversight and quality of life in relation to geothermal generating facilities, as well as the comparison of such facilities to alternative energy sources in relation to those same issues.

. . . .

In sum, [Puna Pono] seeks to conserve and protect the natural beauty and natural resources of Puna and assure its citizens

⁷⁴Paniolo Motion at 8-9, 15.

⁷⁵"Puna Pono Alliance's Motion To Intervene, Memorandum In Support Of Motion, Declaration Of Thomas L. Travis, Exhibit A, Certificate Of Service," filed February 17, 2015, at 2 ("Puna Pono Motion").

the right to a clean and healthful environment. In the PUC's exercise of its duty to generally supervise public utilities, [Puna Pono's] presence in this proceeding will allow the organization to express well founded and insightful views in regard to the application and its potential impacts upon energy planning and regulatory goals.⁷⁶

23. Renewable Energy Action Coalition Of Hawaii, Inc.

("REACH"). REACH states that it is "a Hawaii not-for-profit trade association whose members include businesses engaged in the production, manufacture, development, installation, integration, construction, marketing, sale and/or distribution of distributed clean energy generation systems and distributed energy storage systems in the state of Hawaii, on islands served by the Hawaiian Electric Companies."⁷⁷ REACH further states that its "member businesses develop and install distributed clean energy generation systems and distributed energy storage systems that are interconnected with the distribution circuits and electric systems of the Hawaiian Electric Companies, and that supply electric energy to the electric systems of the Hawaiian Electric Companies."⁷⁸

⁷⁶Puna Pono Motion at 4, 6.

⁷⁷"Motion For Intervention Of Renewable Energy Action Coalition Of Hawaii, Inc. And Certificate Of Service," filed February 6, 2015, at 4 ("REACH Motion").

⁷⁸REACH Motion at 4.

REACH states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The Commission's approval of the Proposed Change of Control... will have a direct and substantial adverse effect on [REACH's] property, financial and economic interest because such approval will affect whether or not such distributed clean energy generation systems and distributed energy storage systems may be interconnected with the Hawaiian Electric Companies' distribution circuits and electric systems, and, therefore, whether or not such distributed clean energy generation and storage systems are developed, installed and utilized to the economic benefit or economic detriment of [REACH's] member businesses.⁷⁹

24. Sierra Club ("Sierra Club"). Sierra Club states that it is (1) a national non-profit organization with 60 chapters and over 615,000 members nationwide; and (2) a leading public interest organization and the largest public interest environmental and clean membership organization in Hawaii, with over 12,000 members and supporters across the state.⁸⁰

Sierra Club states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

⁷⁹REACH Motion at 6.

⁸⁰"Sierra Club's Motion To Intervene, Affidavit Of Scott Glenn, Exhibit A And Certificate Of Service," filed February 18, 2015, at 3 ("Sierra Club Motion").

Sierra Club and its members, again, are dedicated to promoting the public interest in clean energy transformation in Hawaii, including a decisive break from fossil fuel dependence and investments and toward energy efficiency, renewable energy, and new customer-focused clean energy utilities, services, and markets. The Companies' application emphasizes the public interest in clean energy transformation and claims the proposed acquisition will "strengthen and accelerate" and "facilitate and further" this goal. Sierra Club and its members have interests in investigating and evaluating the Companies' claims and ensuring the proposed acquisition is in fact consistent and compliant with the public interest in Hawaii and its clean energy needs and mandates.⁸¹

25. SunEdison, LLC ("SunEdison"). SunEdison states that it is "a global leader in transforming how energy is generated, distributed and owned, and is the world's largest renewable energy development company."⁸² "SunEdison and its affiliates manufactures (sic) solar technology and develop, finance, install and operate distributed solar power plants, delivering predictably priced electricity and services to their residential, commercial, governmental and utility customers. They also provide 24/7 asset management, monitoring and

⁸¹Sierra Club Motion at 8.

⁸²"Motion To Intervene By SunEdison, Inc., Affidavit Of Kelly O'Brien And Certificate Of Service," filed February 18, 2015, at 3 ("SunEdison Motion").

reporting services for hundreds of solar systems worldwide..."⁸³
In January 2015, SunEdison and TerraForm Power, Inc., completed their acquisition of First Wind, one of the Nation's leading developers, owner and operators of utility scale wind projects in the United States, including Hawaii."⁸⁴

SunEdison states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

SunEdison owns and/or operates 150 megawatts ("MW") of utility-scale wind projects in Hawaii: Kahuku Wind and Kawaihoa Wind on Oahu and Kaheawa I and II on Maui. SunEdison also has five utility-scale solar projects on Oahu with power purchase agreements ("PPAs") pending before the Commission: Mililani South PV Park, Lanikuhana Solar, Kawaihoa Solar, Waiawa PV and SUNE Waiawa Solar. SunEdison has other projects in various stage of development in Hawaii. There is no independent renewable energy company making a larger contribution to Hawaii's renewable energy goals than SunEdison, thus giving it a unique perspective on this Application - and a unique set of concerns and interests.

.

For the reasons set forth above, how the Commission reviews and evaluates the Proposed Change of Control and what conditions the Commission ultimately attaches to any approval of the merger and how the merger and its aftereffects will be

⁸³SunEdison Motion at 3.

⁸⁴SunEdison Motion at 3.

implemented will directly and indirectly impact upon SunEdison's existing and future operations, strategic plans and investments in its projects and operations in Hawaii. It will also directly impact SunEdison's own evaluation of what kinds of future projects and investments it can and should make to promote renewable energy in Hawaii.⁸⁵

26. SunPower Corporation ("SunPower"). SunPower states that it designs and manufactures high efficiency distributed energy resource projects, including solar photovoltaic and battery storage projects, and that it designs, finances, builds, and operates PV projects worldwide.⁸⁶ SunPower further states that on a worldwide basis, it has supplied or constructed more than two gigawatts of PV systems, and in Hawaii, it has installed and financed over 40 MW of residential and commercial systems.⁸⁷ SunPower also notes that it "designed, built, and maintains the La O'la 1.5 megawatt ("MW") solar farm on the island of Lanai and the 5.0 MW Kalaeloa solar farm on the island of Oahu."⁸⁸

⁸⁵SunEdison Motion at 3, 6.

⁸⁶"SunPower Corporation's Motion To Intervene, Verification, And Certificate Of Service," filed February 18, 2015, at 2 ("SunPower Motion").

⁸⁷SunPower Motion at 2.

⁸⁸SunPower Motion at 2-3.

SunPower states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The instant Docket may adversely affect [SunPower's] property and financial interest because any change in control of the HECO Companies may result in substantial changes in the rates and services provided by the HECO companies to its ratepayers and thereby directly impact those customers' financial and operational ability to engage in DER projects.

. . . .

Any decisions in this Docket that affect how, when, where, and how much renewable PV energy and DER services [SunPower] provides to the HECO Companies and their customers will have an economic impact on [SunPower].⁸⁹

27. Tawhiri Power LLC ("Tawhiri"). Tawhiri states that it is "a Qualifying Facility ('QF') that has a Power Purchase Agreement with Hawaii Electric Light (Restated and Amended Power Purchase Contract or "RAC") until 2027."⁹⁰ Tawhiri further states that it operates a wind farm in the Ka'u District of the County of Hawaii with a nameplate capacity

⁸⁹SunPower Motion at 5.

⁹⁰"Tawhiri Power LLC's, Motion To Intervene, Verifications, And Certificate Of Service," filed February 18, 2015, at 2 ("Tawhiri Motion").

of 20.5 MWS that has delivered, on average, 106,000 MWHs annually over the last 5 years.⁹¹

Tawhiri states that its interests may be impacted by the outcome of this docket for the following reasons, among others. First, Tawhiri states that it is "very concerned" that the Proposed Transaction, if approved, would expose the RAC and, therefore, Tawhiri's assets to substantial devaluation due to perceptions of uncertainties and unwarranted and superfluous disputes leading to potential litigation, and curtailment of the wind farm production.⁹²

Second, Tawhiri asserts that it may suffer a "direct and immediate" loss of revenues caused by attrition of energy deliveries to HELCO due to increasing curtailment of the Wind Farm production "because of poorly conceived and inherently inequitable investments in new energy resources."⁹³

28. Ulupono Initiative ("Ulupono"). Ulupono states that it is "a Hawai'i-focused social impact investment organization" whose mission is to "is to improve the quality of life for island residents in three areas: more renewable energy,

⁹¹Tawhiri Motion at 3.

⁹²Tawhiri Motion at 4.

⁹³Tawhiri Motion at 3.

more locally produced food, and less waste."⁹⁴ Ulupono further states that it has made "significant investments (in excess of \$50 million) in the State of Hawaii in a diverse group of enterprises focused on renewable energy generation, district cooling, electric vehicle infrastructure, agriculture (an energy-intensive industry) and waste management," and that "as an investor with substantial commitments in electricity generation, conservation, and consumption in the State of Hawaii, the Ulupono Initiative will be able to provide unique and diverse insights."⁹⁵

Ulupono states that its interests may be impacted by the outcome of this docket for the following reasons, among others:

The Ulupono Initiative has a direct and substantial interest in the purpose and subject matter of this proceeding, which centers on review of the Application and the Proposed Change of Control. Review of the Application and the Proposed Change of Control necessarily entails consideration of complex financial, technical, policy, regulatory, operational, and energy resource issues.

. . . .

⁹⁴"Motion To Intervene Of Ulupono Initiative LLC, Affidavit Of E. Kyle Datta And Certificate Of Service," filed on February 18, 2015, at 1-2 ("Ulupono Motion").

⁹⁵Ulupono Motion at 2.

The Ulupono Initiative has invested tens of millions of dollars to support sustainability and renewable energy enterprises, energy efficiency projects (e.g., district cooling), and agricultural endeavors to provide locally-supplied food sources and waste management. These interests could suffer direct and immediate harm if the Proposed Change of Control were to reverse direction with respect to the clean energy transformation of the state. Review of the Application and the Proposed Change of Control will necessarily include determinations affecting the financial stability of the Hawaiian Electric Companies and the development, construction, and operation of renewable generation and energy storage projects in the State of Hawaii. These determinations will necessarily directly affect the interests of the Ulupono Initiative.⁹⁶

Finally, the commission notes that the Applicants filed oppositions to the intervention motions of Blue Planet, FOL, HIEC, HINA, HREA, HSEA, HWSC, KIUC, KLMA, LOL, Puna Pono, REACH, and TASC.⁹⁷ The commission has considered these oppositions in making its determinations here.

⁹⁶Ulupono Motion at 12-13.

⁹⁷(1) "Memorandum In Opposition To Life Of The Land's Motion To Intervene, Exhibit 1, Declaration Of Kris N. Nakagawa And Certificate Of Service," filed February 6, 2015; (2) "Memorandum In Opposition To Renewable Energy Action Coalition Of Hawaii Inc.'s Motion To Intervene And Certificate Of Service," filed February 13, 2015; (3) "Memorandum In Opposition To Kauai Island Utility Cooperative's Motion To Intervene And Certificate Of Service," filed February 18, 2015; (4) "Memorandum In Opposition To Hawaii Island Energy Cooperative's Motion To Intervene And Certificate Of Service," February 23, 2015; (5) "Memorandum In Opposition To Ka Lei Maile Ali'i Hawaiian Civic Club's Motion To Intervene And Certificate

B.

Commission Ruling

HAR § 6-61-55 states, in pertinent part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;

Of Service," filed February 24, 2015; (6) "Memorandum In Opposition To Hawaii Water Service Company, Inc.'s Motion To Intervene And Certificate Of Service," filed February 24, 2015; (7) "Memorandum In Opposition To Puna Pono Alliance's Motion To Intervene And Certificate Of Service," filed February 25, 2015; (8) "Memorandum In Opposition To Hina Power Corp.'s Motion To Intervene, Exhibits 1 And 2 And Certificate Of Service," filed February 25, 2015; (9) "Memorandum In Opposition To The Alliance For Solar Choice's Motion To Intervene And Certificate Of Service," filed February 25, 2015; (10) "Memorandum In Opposition To Hawaii Renewable Energy Alliance's Motion To Intervene, Exhibit 1, Declaration Of Kris N. Nakagawa And Certificate Of Service," filed February 25, 2015; (11) "Memorandum In Opposition To Friends Of Lanai's Motion To Intervene And Certificate Of Service," filed February 25, 2015; (12) "Memorandum In Opposition To Hawaii Solar Energy Association's Motion To Intervene And Certificate Of Service," filed February 25, 2015; and (13) "Memorandum In Opposition To Blue Planet Foundation's Motion To Intervene And Certificate Of Service," filed February 25, 2015.

- (3) The effect of the pending order as to the applicant's interest;
- (4) The other means available whereby the applicant's interest may be protected;
- (5) The extent to which the applicant's interest will not be represented by existing parties;
- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." The general rule concerning the granting of intervention is well settled: intervention is not a guaranteed right of a movant, but is "a matter resting within the sound

discretion of the commission," so long as that discretion is not exercised arbitrarily or capriciously.⁹⁸

Given the nature of the Proposed Transaction as discussed above, the commission finds that it is in the public interest to ensure that a broad spectrum of interests are represented in the proceeding. Moreover, the commission observes that it has, in the past, granted intervention in investigatory and policy proceedings.⁹⁹

Consistent with these conclusions, the commission finds, based on its review of the motions to intervene, and any opposition thereto, that each of the following entities has demonstrated that its property, financial, and/or other interests are or may be affected if the Proposed Transaction is approved, and that each of the entities can assist the commission in developing a sound record.

⁹⁸In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262-263, 535 P.2d 1102, 1104 (1975).

⁹⁹See, e.g., (1) In the Matter of Public Utilities Commission Regarding Integrated Resource Planning, Docket No. 2012-0036, "Order No. 31443 Addressing Filed Motions to Intervene and Motion to Participate Without Intervention, and Providing Guidance on Integrated Resource Planning Matters," filed September 9, 2013; and (2) In the Matter of Public Utilities Commission Instituting a Proceeding to Investigate the Implementation of Reliability Standards for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited, Docket No. 2011-0206, "Order Granting Intervention, Approving RSWG Purpose, Scope of Work and Work Plan, and Clarifying Role of Commission's Consultant," filed October 12, 2011.

For these reasons, the commission grants the motions to intervene of each of the following: AES, Blue Planet, COH, COM, DBEDT, FOL, Hawaii Gas, HIEC, HINA, HPVC, HREA, HSEA, HWSC, HBWS, IBEW, KIUC, KLMA, LOL, Planning Office, Paniolo, Puna Pono, REACH, Sierra Club, SunEdison, SunPower, Tahwiri, and Ulupono.

The commission also conditionally grants the motion to intervene of TASC. However, it does not appear that counsel for TASC is a member of the Hawaii bar. HAR § 6-61-12(b)(2) states that in order to participate in a formal hearing before the commission, an attorney who is in good standing with the bar of any state but is not licensed to practice in Hawaii must associate with a member in good standing of the Hawaii bar. Within ten (10) days of the date of this Order, TASC shall file an affidavit confirming that it has met the requirements of HAR § 6-61-12(b)(2).

C.

Conditions Of Intervention

The commission cautions the Intervenors permitted herein that their participation will be limited to the issues as established by the commission in this docket. Moreover, the commission reminds all Parties that it is

imperative that their involvement in this docket reflect a high standard of quality, relevance, and timeliness.

Finally, the commission will preclude any attempts to broaden the issues or to unduly delay the proceeding, and will reconsider any Intervenor's participation in this docket if, at any time during the course of this proceeding, the commission determines that any Intervenor is attempting to unreasonably broaden the pertinent issues established by the commission in this docket, is unduly delaying the proceeding, or is failing to meaningfully participate and assist the commission in the development of the record in this docket.

VII.

Orders

THE COMMISSION ORDERS:

1. The motion to intervene of each of the following entities is granted: AES, Blue Planet, COH, COM, DBEDT, FOL, Hawaii Gas, HIEC, HINA, HPVC, HREA, HSEA, HWSC, HBWS, IBEW, KIUC, KLMA, LOL, Planning Office, Paniolo, Puna Pono, REACH, Sierra Club, SunEdison, SunPower, Tawhiri, and Ulupono.

2. The motion to intervene of TASC is conditionally granted provided that TASC files an affidavit demonstrating compliance with HAR § 6-61-12(b)(2) within ten (10) days of this Order.

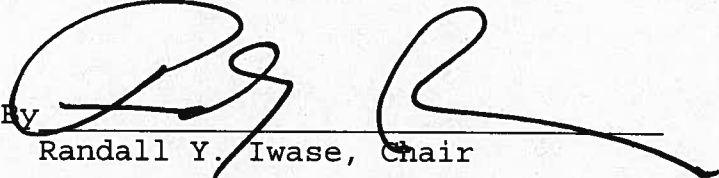
3. Within twenty (20) days of the date of this Order, the Parties may propose additions and/or modifications to the list of issues set forth in Section III of this Order.

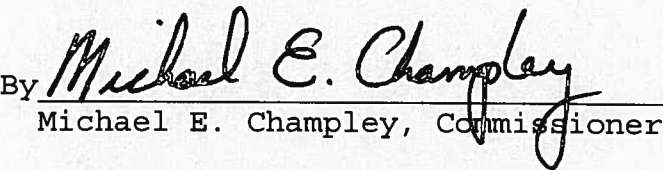
4. Within twenty (20) days of the date of this Order, the Parties shall submit for the commission's review and approval a proposed stipulated procedural order setting forth the schedule and procedures to govern this proceeding consistent with the directives in this Order.

5. Any motion not specifically addressed in this Order is hereby denied.

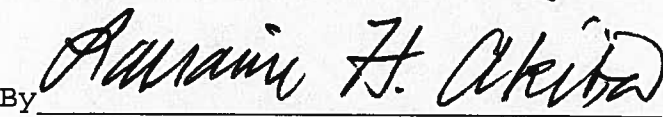
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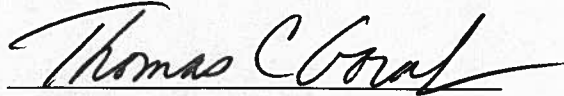
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Michael E. Champley, Commissioner

APPROVED AS TO FORM:

By 
Lorraine H. Akiba, Commissioner


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Commission Counsel

CERTIFICATE OF SERVICE

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

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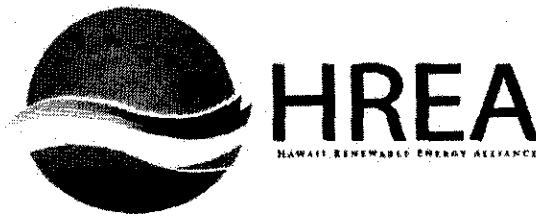
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**TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE
HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE
HOUSE COMMITTEE ON FINANCE**

**HB 619 HD2, Relating to the Merger, Acquisition, and Consolidation of
Electric Utilities**

March 3, 2015

Chair Luke, Vice-Chair Nishimoto and members of the Committee I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance ("HREA"). HREA is an industry-based, nonprofit corporation in Hawaii established in 1995. Our mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically-sound future for Hawaii. One of our goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purpose of HB 619 HD2 is to establish standards and criteria for the Public Utilities Commission and Division of Consumer Advocacy to apply when determining whether to approve a merger, acquisition, or consolidation of an electric utility.

HREA **supports** the intent of this measure and offers proposed amendments which are highlighted in "yellow" in the attached. In addition to a number of technical amendments, the proposed amendments would:

1. Require consideration of the effect on the competitive electricity generation, since we believe competition in the generation market would benefit customers by providing the most efficient and reliable power at the most competitive rates;
2. Require that the transaction provide a positive benefit to customers and the public in general; and
3. Require consideration of whether the acquiring or merging party was selected through an open competitive bidding process to ensure that the best party has been selected for the merger or acquisition.

Mahalo for this opportunity to testify

A BILL FOR AN ACT

RELATING TO THE MERGER, ACQUISITION, AND CONSOLIDATION OF
ELECTRIC UTILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the merger, acquisition, or consolidation of an electric ~~public~~ utility could have far-reaching effects on the health of the State's citizens, local industries, and environment. Therefore, it is necessary that the proposed merger, acquisition, or consolidation of an electric utility be subject to a thorough examination to determine whether the transaction is reasonable and in the public interest, and whether the successor electric utility is fit, willing, and able to perform the service currently offered by the existing electric utility.

The legislature further finds that public participation in the examination of any electric utility merger, acquisition, or consolidation is essential to safeguard the public interest when a proposed merger, acquisition, or consolidation is considered.

The purpose of this Act is to:

- (1) Establish standards to evaluate a proposed merger, acquisition, or consolidation of an electric utility; and
- (2) Afford a reasonable opportunity for public participation in the evaluation process.

SECTION 2. Section 269-19, Hawaii Revised Statutes, is amended to read as follows:

"§269-19 Merger and consolidation of public utilities. (a) Except as provided in subsection (b), no public utility shall [~~sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly,~~] be acquired by, or merge or consolidate with any other public utility, or any person, company, or entity without first having secured from the public utilities commission an order authorizing it so to do. Every such [~~sale, lease, assignment, mortgage, disposition, encumbrance,~~] acquisition, merger[~~7~~] or consolidation[~~7~~] made other than in accordance with the order of the commission shall be void.

(b) Whenever proposing a transaction involving an electric public utility covered by subsection (a), the electric public utility shall file an application with the public utilities

commission in a form as the commission may require. Upon filing of the application, the commission shall open a docket to determine whether the transaction is reasonable and in the public interest and whether the successor electric public utility is fit, willing, and able to perform the service currently provided by the electric public utility. In their evaluation of the application, the commission and division of consumer advocacy shall:

(1) Consider the impact of the proposed transaction upon the following elements of the public interest:

- (A) Affordability of electric service;
- (B) Safety and reliability of electric service;
- (C) Access to onsite generation and other options for customers to manage their energy usage;
- (D) Achievement of clean energy goals and related public policy objectives articulated by the State and the commission;
- (E) Effect on the competitive market for electricity generation in Hawaii and whether it would encourage and facilitate the continued development of energy projects by competitive and independent power producers, which would benefit electric public utility customers, and

(1) Economic benefits to Hawaii, including employment and industries in the State;

(2) In determining whether the transaction is reasonable and in the public interest:

(A) The applicants will be required to show that the transaction will provide a positive benefit to the electric public utilities' ratepayers and the general public; and

(B) The commission and the division of consumer advocacy shall also consider whether proposals were openly sought in a bona fide competitive selection process to select the other party to the transaction, which would indicate that the best and most qualified party to the transaction was selected to maximize the benefit of ratepayers and the general public.

(3) In determining whether the successor electric utility is fit, willing, and able to perform the service currently offered, consider whether the utility has the commitment and demonstrated ability to:

(A) Provide safe and reliable electric service at just and reasonable rates;

- (B) Implement the clean energy goals and related public policy objectives articulated by the State and the commission;
- (C) Develop and maintain the transmission and distribution infrastructure to optimize the system and maximize customer benefits; and
- (D) Expand customer energy options, including energy efficiency and distributed energy resources;
- (4) Review the electric utility's franchise in light of the elements of the public interest set forth in paragraph (1) and recommend to the legislature whether the language of the franchise should be revised; and
- (5) Afford a reasonable opportunity for interested persons to be heard, by:
 - (A) In so far as practicable, holding a public hearing in each service territory affected by the proposed transaction; and
 - (B) Liberaly construing any applicable standard of intervention for interested persons to become parties to the proceeding in order to enable the participation of a diverse group of stakeholders.

If the commission approves the application, the commission may impose terms and conditions as the commission determines are

necessary for the transaction to satisfy the standards set forth in paragraphs (1) through (5).

~~[(b)]~~ (c) A public utility, under circumstances that it deems exigent and in its judgment require a response that rapidly restores one of its customers to normal, or near normal, operating status in order to prevent serious disruption of essential public services, or avoid serious risk to public safety, or to mitigate severe economic losses to that customer, may transfer, assign, or otherwise dispose of its property without prior approval from the public utilities commission as required in subsection (a); provided that in so doing:

- (1) The public utility does not unduly hinder or degrade the public utility's operation with respect to its services or other customers;
- (2) The public utility is duly compensated for its property; and
- (3) The public utility reports in detail to the public utilities commission within thirty days of any such action unless otherwise approved by the public utilities commission for good cause shown.

For purposes of this subsection, "property" does not include real property."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2112.

Report Title:

Public Utilities Commission; Division of Consumer Advocacy;
Electric Utility Companies; Mergers and Consolidations;
Standards; Hearings

Description:

Establishes standards and criteria for the Public Utilities
Commission and Division of Consumer Advocacy to apply when
determining whether to approve a merger, acquisition, or
consolidation of an electric utility. (HB619 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.