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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

THURSDAY, FEBRUARY 9, 2017  
2:00 P.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 1566, H.D. 1 - RELATING TO THE PUBLIC  
UTILITIES COMMISSION

DESCRIPTION:

This measure proposes to establish “substantial net benefit” as the Public Utilities Commission’s (“PUC” or “Commission”) standard for a transfer or assignment of an electric utility and specifies certain guidelines to address when examining whether a substantial net benefit exists.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) supports this bill with requested amendments.

COMMENTS:

The Consumer Advocate has consistently argued that “substantial net benefit” should be the standard of review in utility mergers. The Consumer Advocate also notes favorably that the proposed statutory language for Hawaii Revised Statutes (“HRS”) § 269-19(c) would give the PUC the latitude to establish reasonable criteria pursuant to this standard for specific mergers, thus keeping in mind the specific context of each proposed merger that may come before it in the future.

The language proposed to be added as HRS § 269-19(d) is highly prescriptive and, in a few clauses, would be inapplicable to non-electric utility mergers given the references to electricity rates in the proposed statutory language. HRS § 269-19 applies to mergers or transfers of any type of utility regulated by the Commission, including private water, private wastewater, telecommunications carriers, interisland water carriers, and motor transportation carriers. Furthermore, the PUC should be given broad discretion in determining what constitutes a substantial net benefit given the specific issues present in any particular proposed utility merger or acquisition. For example, it may not be appropriate to apply the detailed factors listed in the bill to a cooperative electric utility that may seek to acquire one or more of the Hawaiian Electric Companies or to a company seeking to acquire a failing utility in Hawaii.

The Consumer Advocate suggests that the bill be amended to remove the language proposed to be added as HRS § 269-19(d), thereby leaving the application of the standard to specific proposed utility merger to the judgment of the Commission. Additionally, changes should be made so that the language is not specific to electric utility mergers/acquisitions.

Thank you for this opportunity to testify.

TESTIMONY OF RANDY IWASE  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

**LATE**

February 9, 2017  
2:00 pm

**MEASURE:** H.B. No. 1566, H.D. 1

**TITLE:** RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair McKelvey and Members of the Committee:

**DESCRIPTION:**

This measure requires that “substantial net benefit” be the specific standard for the Public Utilities Commission (“Commission”) to consider in the transfer or assignment of ownership of an electric utility. This measure authorizes the Commission to establish reasonable criteria for specific mergers. This measure also details a number of factors for the Commission to consider in determining whether there is a “substantial net benefit”.

**POSITION:**

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

**COMMENTS:**

The Commission takes no position regarding the proposed requirement that “substantial net benefit” be the specific standard for the Commission to consider in the transfer or assignment of an electric utility.

The Commission notes that the list of factors proposed by this measure on page 5, line 1 to page 8, line 3 appears to be nearly identical to the Commission’s Statement of Issues used in Docket No. 2015-0022, more commonly known as the HECO-NextEra merger proceeding. The HECO-NextEra Statement of Issues identified specific issues associated with the HECO-NextEra merger. Given that the circumstances of each merger proceeding are unique, it may not be appropriate to examine the exact same issues for every transfer or assignment of ownership of an electric utility going forward. The

Commission should have the discretion and flexibility to determine what issues are relevant to each specific situation. As currently written, this measure may limit the Commission's discretion and flexibility to make this determination going forward.

Thank you for the opportunity to testify on this measure.



**LATE**

Email: [communications@ulupono.com](mailto:communications@ulupono.com)

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Thursday, February 9, 2017 — 2:00 p.m. — Room 329

**Ulupono Initiative Supports HB 1566 HD 1 with Amendments, Relating to Public Utilities Commission**

Dear Chair McKelvey, Vice Chair Ichiyama, and Members of the Committee:

My name is Kyle Datta and I am General Partner of Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and reduce waste. Ulupono believes 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 strongly supports HB 1566 HD 1**, which establishes a substantial net benefit as the Public Utilities Commission's standard for a transfer or assignment of an electric utility. This bill is critically important to ensure the specious arguments made by HECO and NextEra that the criteria for public interest in "no net harm" will never again recur and that the correct standard is "substantial net benefits".

Ulupono was an active intervenor in the NextEra merger case and is well versed in the legal issues. As such, we have recommendations for modifications of HB 1566 HD1 to the extent that the intent of the Legislature is to enshrine in law the criteria for public interest embodied in the PUC Final Order.22796. Docket 2015-0022, in Appendix A: "Commission Guidance for Future Merger or Acquisition Proceedings" (attached) ([https://puc.hawaii.gov/wp-content/uploads/2016/07/FINAL.ORDER\\_33795.Docket2015-0022.pdf](https://puc.hawaii.gov/wp-content/uploads/2016/07/FINAL.ORDER_33795.Docket2015-0022.pdf)).

The Legislature should also address another pernicious argument made by HECO and NextEra, namely that the PUC does not have the authority to impose conditions on the merger.<sup>1</sup> The PUC deemed that this extraordinary arrogance did not deem a response beyond "Suffice it to say that the commission does not agree with the viewpoint expressed by the applicants<sup>2</sup>." Nevertheless, the Legislature should close the door to this legal argument; otherwise, the substantial net benefits criteria contained in HB 1566 HD1 could be rendered moot.

We anticipate that HECO may make the argument that this law is unnecessary because the

<sup>1</sup> Applicants Post Evidentiary Hearing Brief, filed May 2, 2016 at 177-186.

<sup>2</sup> PUC Final Order.22796. Docket 2015-0022, p. 38

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PUC has already set forth the standards and criteria for future mergers. The Legislature should reject this argument for the simple reason that future commissions can overrule prior commissions in making determinations and history has shown us that political interference by the executive branch is possible.

UluPono offers the following recommendations to ensure that the people of Hawai'i will always benefit from any future merger, and that judicial authority and independence of the Public Utilities Commission cannot be questioned.

Change Section 2c to read: The specific standard for the public utilities commission to consider in the transfer or assignment of an electric **or gas** utility shall be substantial net benefit. **The public utilities commission has the authority to approve, reject, modify or impose conditions on any such transfer or assignment.** The public utilities commission may establish reasonable criteria for specific mergers.<sup>3</sup>

Change Section 2(d)(1)(B) to read: The proposed transaction, if approved, would provide significant, quantifiable **and guaranteed** benefits to the public utility's ratepayers in both the short and long-term beyond those ~~proposed by~~ **that the public utility would otherwise provide in the absence of the assignment or transfer in recent regulatory filing;**

Change Section 2(d)(1)(F) to read: Adequate safeguards exist to protect the public utility's ratepayers from any business, ~~and financial~~ **and bankruptcy** risks associated with the operations of the transferee or assignee.<sup>5</sup>

Change Section 2(d)(1)(G) to read: The proposed transaction, if approved, would enhance or **not** detrimentally impact the State's clean energy goals.<sup>6</sup>

UluPono greatly appreciates the Committee's willingness to define the criteria for what is in the public interest for all future mergers. The unrepentant and defiant tone of the Applicants' final brief in May 2016 underscores the need for this legislation.

Thank you for this opportunity to testify.

Respectfully,

Kyle Datta  
General Partner

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<sup>3</sup> The rationale for these modifications is to extend the criteria to gas utility companies and ensure that no party can question the Commission's authority to place conditions on change of control transactions.

<sup>4</sup> The legal standard espoused in the PUC Final Order is that the net benefits must be in addition to what would have otherwise been executed by the existing utility absent a change of control. Since most of these benefits are forward looking, they may not be in the utility's last regulatory filing.

<sup>5</sup> UluPono testified at length about ring fencing conditions needed in the event of bankruptcy. This change is to avoid any legal arguments on the matter.

<sup>6</sup> We assume this was a drafting error.

APPENDIX A - COMMISSION GUIDANCE FOR ANY FUTURE MERGER OR  
ACQUISITION PROCEEDINGS

The commission has emphasized the importance of this proceeding, not only to ratepayers but to the future of the State of Hawaii. The commission also acknowledges that Applicants, the Consumer Advocate, and the other Parties to this proceeding have invested significant time and resources since the Application was submitted in January 2015. In recognition of the critical importance of the future ownership and control of the HECO Companies, the substantial efforts by all Parties to develop the record in this proceeding, and the commission's decision in this proceeding to dismiss the Application, the commission provides guidance in this section on key elements that would be necessary to meet the public interest standard in any future applications seeking a change of control of the HECO Companies.

In offering this guidance, the commission has focused on six key areas that have been the subject of considerable attention and debate in this proceeding. These key areas include: ratepayer benefits, mitigation of risks, achievement of the State's clean energy goals, competition, corporate governance, and the HECO Companies' transformation. The commission views these key areas as foundational for any future applications, but in selecting these areas for additional discussion, does not preclude consideration

of other topics and areas that may be relevant to the specific circumstances of future applications.

#### A. Ratepayer Benefits

**Principle:** Applicants should provide ratepayer benefits that are meaningful, certain, and direct in the short-term, and that effectively and accountably insulate customers from bearing the costs of the merger/acquisition, transition, and integration. Ratepayer benefits, in conjunction with other clearly supported direct benefits, should also provide short-term and long-term value that is commensurate with costs and risks assumed by customers as a result of the merger/acquisition.

The commission expects that any future application will meet the following standards at a minimum:

(a) The application should provide benefits to customers in the short- and long-term that are substantial and certain enough to be meaningful. These benefits can be provided in many forms, including rate reductions, rate freezes, grid improvements, improvements in safety and reliability, etc., but must provide net positive value to customers.

Once such commitments are made, any potential rate credit adjustment relief should be subject to commission approval and limited to (1) changes in governmental policy, rules or taxes which significantly affect the HECO Companies' base rate revenue



requirements; (2) catastrophic damage to electric grid infrastructure due to acts of God or terrorism; and (3) Mobile-Sierra doctrine standard of public interest requirements.<sup>1</sup>

Pre-funding of rate credit commitments by the acquiring entity, similar to what was required in the recent Exelon Pepco merger, should be provided to provide a benefit bridge akin to a down payment until significant, longer term benefits take effect as shown by mechanisms that demonstrate net benefit.

(b) Any rate plan should effectively contribute to the provision of short-term and long-term benefits that are commensurate with the costs and risks assumed by customers as a result of any proposed change of control.

(c) The application should clearly and accountably insulate customers from bearing costs resulting from the change of control, transition, and integration implementation.

#### B. Mitigation Of Risk

**Principle:** Proposed ring fencing measures should protect the HECO Companies' customers from the impacts of possible

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<sup>1</sup>See United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956) ("Mobile") and Fed. Power Comm'n v. Sierra Pacific Power Co., 350 U.S. 348 (1956) ("Sierra") (establishing the public interest application of the "just and reasonable" standard).

bankruptcy or other major problems that may occur in the future with respect to other members of an applicant's corporate family.

The commission concludes that requiring any applicant seeking authority to own/operate a public utility in Hawaii to provide certain basic protections as a pre-condition for approval is both reasonable and necessary. Moreover, any potential applicant seeking authority from the commission to own or operate a public utility must be willing to take all reasonable, prudent, and necessary steps to insulate the public as well as investors from the uncertainties associated with other business interests the applicant has or might have now or in the future.

The investor-owned utility sector is widely recognized and respected for its durability and resiliency. Its track record over decades of providing safe, reliable, and affordable service evokes trust and confidence on the part of the public. Its dedication and devotion to the communities served by its members has generated considerable benefit to our state and our economy.

In some measure, the financial success of this industry and the benefit it has provided the public is attributable to the following:

- strong third-party oversight (both regulatory and investor oversight);
- relatively predictable capital requirements;
- modest strategic ambitions;

- consistent financial discipline; and
- manageable market conditions.

The commission considers it important to the people of Hawaii now and in the future to preserve and protect the benefits that have been afforded in the past. In the face of changing public expectations and corporate business models, it is essential that the commission entertain changes to the regulatory framework for the public utilities for which it is responsible. For this reason, guidance regarding what is expected in the future is warranted.

The commission fully respects the right of any business enterprise to pursue its business interests in a manner that satisfies its investors. Furthermore, the commission fully respects the right of any business enterprise to engage in ownership and operation of a public utility. The commission has no intention of purposefully designating entire segments of the investor community as unqualified candidates simply because their business interests may introduce risks that this community and this commission have not previously experienced.

Instead, the commission finds that the public's interests are better served by adopting a set of "threshold" principles that if accommodated by an applicant balance the risks and benefits of broader participation in the market. The measures proposed herein provide meaningful protections to the public

without compromising the strategic ambitions, managerial efficiency, or economic value of the regulated enterprise.

These protective and preventive measures are designated as "ring-fencing." Their express purpose is solely to preserve and protect the benefits that have come to be expected from prudent and proper management of a public service company. They are meant not only to reassure the public that its expectations will be realized in the future but to minimize risks from unforeseeable acts that might endanger that realization.

Commitments need to be made to prevent inappropriate movement of capital out of the HECO Companies to the parent company in any post-merger structure. A merger severance clause provision should be set forth that would enable the commission, based upon the occurrence of pre-defined conditions and after an investigation and hearing, to order the parent to divest the HECO Companies. Such a clause would allow the HECO Companies to extract themselves from an untenable financial position under the parent if such action is found by the commission to be warranted and justified.

Thus, at a minimum, an applicant must clearly demonstrate the willingness to:

- form a qualified Bankruptcy-Remote Entity ("BRE") to serve as the sole owner of the regulated utility, and to:

- o provide a written non-consolidation opinion from a recognized professional services firm attesting to the strength of the measures taken by the Applicant on behalf of the entity and to submit any such opinion for review and approval during the change of control proceeding; and
  - o demonstrate that the approved BRE is operational prior to closing the transaction and is designated by the Applicant as the sole repository of any equity interest in the regulated utility;
- submit a written non-consolidation opinion from a recognized professional services firm attesting to the separateness of any holding company, corporate parent, or other financial entity assuming control of the BRE; the opinion should clearly enunciate the extent to which the holding company, corporate parent, or other financial entity has any claim on the BRE that might be construed as subject to consolidation;
- appoint a disinterested independent party to the BRE Board of Directors with no economic interest (the appointee may be an individual or an administration company in the business of protecting special purpose entities) to assume responsibility for reviewing and approving any petition for voluntary bankruptcy, liquidation, or receivership agreed to by the Board of Directors prior to issuance of any such petition no matter who seeks such a petition;
- appoint a Board of Directors for the BRE with at least one-third as independent directors; such directors must meet all material respects of the rules and regulations promulgated in the NYSE Listed Company Manual (Section 303A) and, in addition:
  - o no independent Director can serve as a Director of the parent corporation or any affiliate of either the parent or the utility; and

- o no independent Director has a past or present business relationship within the past 10 years with any affiliate, subsidiary, or parent company of the utility;
- hold out notices of separateness of the BRE to all lenders in negotiating any new debt and acknowledge such separateness in all new debt instruments - including those associated with the proposed transaction;<sup>2</sup>
- submit for commission review and approval any proposal for the BRE to own, operate, or construct any capital asset;
- maintain separate books, records, and debt for the BRE from those of the corporate parent, its subsidiaries, and/or its other affiliates; furthermore, the BRE will maintain its own corporate and debt credit ratings, as well as ratings for long-term debt and preferred stock;
- provide an annual financial audit of the BRE performed by a recognized independent auditor;
- prohibit loans of any type to/from the corporate parent or to/from any affiliate, joint venture partners, or contractor;
- require that debt follows assets in any approved sale, transfer, or other asset disposal by the BRE; and
- reduce or suspend dividends and distributions if either (a) the leverage of the BRE exceeds the maximum regulatory debt-to-equity ratio established by the commission in the most recent rate case or (b) a majority of the independent or disinterested directors decide it is in the best

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<sup>2</sup>This constitutes formal notification to any debtholder that there is no recourse on default, eliminating any implied recourse that might otherwise be construed from representations of the issuers or agents.

interest of the BRE to retain such amounts to meet expected future requirements.

The establishment of these "threshold" principles does not in any way suggest that the commission will limit its efforts to require additional protective measures as the business interests of the applicant warrant or the public's interest demands.

### C. Achievement Of The State's Clean Energy Goals

**Principle:** Any future applications should provide clarity on the applicant's positions on clean energy transformation and distributed energy resources ("DER") with clear affirmation of the Commission's guidance on these areas in the Inclinations and relevant subsequent related decisions. In addition, where feasible, applicants should back the application with specific, near-term commitments to clean energy transformation.

The commission in its Inclinations repeatedly emphasized the importance of enabling customer choice and providing customers with options to manage their electric bills. The commission also stated that an appropriate balance of utility-scale and distributed generation ("DG") resources is required. In the Inclinations, the commission stated:

The commission supports a balanced and diverse portfolio of energy resources as the best long-term strategy to achieve the state's energy goals. This principle overarches a wide spectrum of issues, such as firm versus variable resources, types of renewable resources (e.g., wind, solar, biomass, hydro, geothermal, and waste to energy, etc.), geographic location, and utility-scale versus distributed resources.<sup>3</sup>

The commission expects that any future applications will demonstrate support, consistent with the Inclinations, for a diverse portfolio of energy resources necessary to meet the state's energy goals and offer tangible, near-term commitments consistent with this guidance.

With respect to DER technologies in particular, any future applicants must recognize that DER technologies and markets are evolving, and that developing a sustainable, competitive DER market is essential for meeting the State's clean energy goals. Potential applicants must indicate a willingness to actively participate in and contribute to advancing these efforts.

Furthermore, potential applicants must acknowledge that customer energy solutions can also provide grid solutions that, in some cases, may be more cost-effective than traditional grid investments. Any future applications will demonstrate commitments

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<sup>3</sup>In re Public Util. Comm'n, Docket No. 2012-0036, Decision and Order No. 32052, Exhibit A: "Commission's Inclinations on the Future of Hawaii's Electric Utilities" ("Commission's Inclinations"), filed April 28, 2014, at 5.



to encourage and utilize customer demand response options, including customer-sited energy storage, and to provide ancillary services and other grid support services where demand response is the more cost effective option. Plans should set forth how the HECO Companies would utilize the full technical capabilities of advanced inverter technologies to provide maximum grid benefits and the timeline for implementation post-merger closing.<sup>4</sup>

Potential applicants must commit that the HECO Companies will work collaboratively with stakeholders to develop a long term DER market structure which would enable DER to sustainably provide value to all customers on the grid.<sup>5</sup>

Finally, future applicants should consider making firm commitments to open and transparent transmission-and-distribution planning and interconnection processes, as well as specific support and funding for clean energy demonstration projects.

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<sup>4</sup>Commission's Inclinations at 15-16 (observing the importance that plans address "[t]he utilization of grid support functionality embedded in advanced inverters, customer-sited energy storage, and energy management systems to provide ancillary services").

<sup>5</sup>Commission's Inclinations at 15-16.

#### D. Competition

**Principle:** Applicants must demonstrate that their proposal will promote robust competition in Hawaii's energy markets. Any proposed measures should ensure that projects (1) with the best customer value consistently win competitive solicitations; (2) employ best practices for bidding and procurement; (3) protect confidential and proprietary information of competitors; and (4) clarify the role of oversight for any proposed changes to the competitive bidding process.

A proposed change of control raises legitimate concerns about possible affiliate abuse and potential impacts on competition. Potential future applicants should present a complete proposal at the time of the application that will address how the applicants intend to conduct solicitations that will promote robust competition that ultimately delivers the best value for the HECO Companies' customers.

However, there is need to distinguish between adverse effects on competition versus adverse effects on a competitor. Concerns should focus on the effects on the former not the latter, so that competition is not further diminished. The commission has a major role in ensuring the equivalent outcome of a well-functioning wholesale competitive market in Hawaii.<sup>6</sup> As the

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<sup>6</sup>See H.R.S. §§ 269-141 to -149.

commission pointed out in the Inclinations, the wholesale power market is not working optimally so as to result in providing the lowest cost project prices to benefit utility customers. Past bidding strategies appear to be driven by simply pricing below the HECO Companies' avoided oil costs and not by lowest project development costs.<sup>7</sup>

This situation is exacerbated by HECO's current Power Purchase Agreement ("PPA") negotiation process, which is uncertain, lengthy, and replete with numerous complaints from Independent Power Producers ("IPPs"). The commission previously provided guidance to the HECO Companies regarding how to improve their capabilities, as well as the bidding, contracting and project management process.<sup>8</sup> In addition, the HECO Companies have sought

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<sup>7</sup>Commission's Inclinations at 3-5. The commission observed that "in spite of the recent decline in the cost of renewable energy projects in Hawaii, [] these costs remain appreciably higher than corresponding costs of similar utility-scale renewable energy projects on the mainland," noting that while solar projects included in HECO's application in a recent docket "represent[ed] a significant savings over HECO's avoided cost, [they were] still priced more than three times greater than recent mainland projects." Id. at 4, n. 7. The commission directed the HECO Companies to "continue to pursue alternative procurement strategies to ensure that the lowest cost utility-scale renewable energy projects are acquired." Id. at 5.

<sup>8</sup>See In re Public Util. Comm'n, Docket No. 2011-0225, Order No. 31354, filed on July 11, 2013; and Order No. 31911, filed on February 11, 2014.

a number of waivers from the formal Competitive Bidding Framework solicitations.<sup>9</sup>

The merger docket is not the appropriate venue to thoroughly address and resolve competitive market issues, some of which exist regardless of whether a merger is proposed for the HECO Companies. An examination of the Competitive Bidding Framework appears to be warranted even without considering the implications of any future merger proposal.

#### E. Corporate Governance

**Principle:** Applicants should provide documentation of the proposed corporate structure and clearly demonstrate how the proposed structure will ensure a meaningful, representative role for local governance and Hawaii stakeholders.

Commitments need to address reasonable concerns regarding corporate governance and local representation in corporate decision-making. In future applications, applicants

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<sup>9</sup>See, e.g., In re Hawaiian Elec. Co., Inc., Docket No. 2016-0136 (Kahe Combined Cycle Project waiver request); In re Hawaiian Elec. Co., Inc., Docket No. 2013-0423 (Na Pua Makani Wind Project waiver request); In re Hawaiian Elec. Co., Inc., Docket No. 2013-0381 (six independent solar power producer projects waiver request); In re Hawaiian Elec. Co., Inc., Docket No. 2013-0360 (Kahe Utility-Scale PV Project waiver request); and In re Hawaiian Elec. Co., Inc., Docket No. 2013-0156 (three independent solar power producer projects waiver request).

should submit a complete set of corporate governance documents to support the proposed corporate structure, clearly delineate the roles of any local board of directors or advisory group, and demonstrate how input from local stakeholders will be factored into corporate decision-making that affects Hawaii.

Such documents should include a Delegation of Authority ("DOA") document included in the application. The DOA will delineate, among other things, levels of expenditures and defined categories of management decisions that can be authorized solely by HECO Companies' management without approval of parent entities. Subsequent changes to the DOA would be subject to commission review and oversight.

Corporate governance documents should enhance local input into parent entity decision making related to or affecting Hawaii through mechanisms such as the addition of a qualified Hawaii resident as an independent director to the parent board of directors, and periodically holding parent board of directors and shareholder meetings in Hawaii.

#### **F. HECO Companies' Transformation**

**Principle:** Applicants should provide specific commitments that reflect the critical importance of transforming the HECO Companies into a customer focused, cost efficient, and performance driven electric utility. These commitments would

provide the strategy for how the acquiring utility intends to transform and improve the HECO Companies' performance.<sup>10</sup>

The commission expects that any future applications will demonstrate how the acquiring entity will address the transformation of the HECO Companies, and provide a merger integration plan that sets forth near and long term strategies for achieving and maintaining affordable and stable electric rates for each island service territory, while providing excellent customer service and reliability within twelve months post-merger closing.

This demonstration would include submission of a merger integration plan that identifies the commitments and actions that would supplement the HECO Companies' current executive leadership team with a meaningful number of senior level executives from the acquiring entity to assist in corporate transformation and to provide additional leadership.

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<sup>10</sup>The commission previously stressed the importance of such a strategy in its Inclinations, stating that "[b]y providing direction on future business strategy, energy resource planning, and project review in [the Inclinations], the Commission has outlined broad strategic focus in key areas of the electric utility business and potential regulatory reforms," and explaining that "[i]t is now incumbent on the HECO Companies to utilize this guidance in developing a sustainable business model that explicitly governs the Companies' capital expenditure plans, major programs, and projects submitted for regulatory review and approval." Commission's Inclinations at 29-30.

The plan should also identify the process that will be utilized to measure and track actual performance in implementing the transformation commitments and conditions in a proposed merger, including submission of annual reports to the commission.

Finally, the plan should identify the amount and timing of the expected merger synergies for programs and staffing, priority transformation actions and costs to achieve them, and the potential impact on local utility employment levels.

