

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY,  
INC.

For Approval of Power Purchase  
Agreement for Renewable As-Available  
Energy with Lanikuhana Solar, LLC.

DOCKET NO. 2014-0077

PUBLIC UTILITIES  
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HAWAIIAN ELECTRIC COMPANY, INC.'S REPLY STATEMENT OF POSITION

AND

CERTIFICATE OF SERVICE

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In accordance with Order No. 32450, as amended by Order No. 32743, Hawaiian Electric Company, Inc. ("Hawaiian Electric" or the "Company") respectfully submits this reply ("Reply") to the Division of Consumer Advocacy's ("Consumer Advocate") Statement of Position ("SOP"), filed on April 10, 2015.

**I. INTRODUCTION**

**A. The Consumer Advocate's SOP**

In its SOP, the Consumer Advocate has recommended that the Commission deny Hawaiian Electric's Application (the "Application") in the subject docket for approval of that certain Amended and Restated Power Purchase Agreement for Renewable As-Available Energy dated February 13, 2015 (the "Amended and Restated PPA"), by and between Hawaiian Electric and Lanikuhana Solar, LLC ("Lanikuhana") related to Lanikuhana's proposed 20 megawatt ("MW") photovoltaic ("PV") project to be located in Mililani, on the island of O'ahu (the "Project"). In support of its recommendation, the Consumer Advocate argued that: (1) the

waiver of the Competitive Bidding Framework<sup>1</sup> that was initially granted by the Commission for the Project should be found invalid because the characteristics of the Project have significantly changed since the waiver was granted; and (2) the proposed pricing for the Project does not justify the waiver of the Project from the Competitive Bidding Framework. More specifically, the Consumer Advocate has argued that: (a) the Project is not cost-effective; (b) it is uncertain whether the Project will result in a lower cost supply of electricity to Hawaiian Electric's ratepayers; and (c) it does not appear that the Project is in the public interest as it appears to have the largest adverse impact on customer bills from both a near- and long-term perspective.

**B. Summary of Hawaiian Electric's Position**

Hawaiian Electric respectfully disagrees with the Consumer Advocate's SOP. The current waiver from the Competitive Bidding Framework for the Project is still justified. However, if the Commission is inclined to declare the current waiver invalid, a new waiver is requested and as further described below, is justified under the current circumstances. Finally, as explained below, the Lanikuhana Amended and Restated PPA's pricing is reasonable and should be approved.

At the time Lanikuhana's pricing was agreed to and memorialized in the original PPA, the pricing was well below on-peak avoided costs and well below recently approved utility-scale PV projects on O'ahu. As shown in the discussion below, Lanikuhana's pricing remains below the current three year average monthly on-peak avoided costs. In fact, the Lanikuhana Amended and Restated PPA remains one of the lowest priced PPAs for any utility-scale as-available renewable project negotiated by Hawaiian Electric and it is anticipated that the Project pricing

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<sup>1</sup> The Framework for Competitive Bidding was adopted by the Commission in Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372 ("Competitive Bidding Framework").

will be further offset by the Hawai'i Renewable Energy Tax Credit (as defined in the PPA) upon Project completion.

In addition, the long term fixed price of this Project brings stability and acts as a hedge against future fossil fuel price volatility. As there is no linkage between the Amended and Restated PPA price and the cost of fossil fuels, the Project complies with Hawai'i Revised Statutes ("HRS") § 269-27.2.

The Consumer focuses almost entirely on the immediate "tangible savings from the lowest cost renewable energy projects,"<sup>2</sup> Hawaiian Electric believes that the Project's overall qualitative and quantitative contribution to the State's sustainable energy goals is of equal importance and, given the apparent likelihood that Renewable Portfolio Standards ("RPS") goals may be increased,<sup>3</sup> the Project's positive contribution towards RPS compliance must be accorded great importance.

### **C. Relevant Background**

The Lanikuhana Project was originally proposed by Castle & Cooke as a cluster of four 5-MW PV facilities (the "MSSP Projects"), each to be developed by a different energy provider under separate power purchase agreements with the Company, but capable of achieving economies of scale due to the sharing of certain common expenses and facilities. The Company found merit in the Castle & Cooke proposal as a mechanism to procure lower-cost renewable energy for Hawaiian Electric's customers. Accordingly, in Docket No. 2010-0079, the Company filed a *Petition for a Declaratory Order to determine whether the MSSP Projects were exempt from the competitive bidding process*. In its Decision and Order filed in that docket on December 23, 2010, the Commission declared that the proposed cluster was not exempt from the

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<sup>2</sup> See Consumer Advocate's SOP at 23.

<sup>3</sup> There were a number of proposed bills this legislative session that would set higher RPS requirements, e.g., HB623, which is pending before the legislature at the time of this Reply.

Competitive Bidding Framework, but granted “a waiver from the competitive bidding process for the [MSSP Projects],”<sup>4</sup> subject to the satisfaction of several conditions.<sup>5</sup>

The Company entered into term sheets with the developers of each of the four MSSP Projects. The energy pricing was different under each of the four term sheets and was based on various assumptions with respect to (i) interconnection costs, (ii) the availability of the federal 30% cash grant under Section 1603 of the federal American Recovery and Reinvestment Act of 2009 and (iii) the availability of the State of Hawai‘i refundable tax credit for solar energy technologies.

While the Company was still negotiating power purchase agreements with each of the developers of the MSSP Projects, on February 22, 2013, entirely independent of such negotiations, the Company issued its *Invitation for Low Cost Renewable Energy Projects on Oahu through Request for Waiver from Competitive Bidding* (“Invitation” or “Waiver Invitation”). Under the Waiver Invitation, the Company initially selected five projects with a total average levelized price of 15.9347 cents per kilowatt-hour (“kWh”).<sup>6</sup> The Company also allowed projects not selected under the Waiver Invitation the opportunity to submit a pricing refresh (the “Pricing Refresh”). Under the Pricing Refresh, the Company selected an additional six projects with a total average levelized energy price of 15.576 cents per kWh.

In light of the proposals received in response to the Waiver Invitation, the Company informed the MSSP Projects that, although their projects were obviously much further advanced than the projects proposed under the initial Waiver Invitation in terms of power purchase

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<sup>4</sup> Decision and Order, Docket 2010-0079, at 19.

<sup>5</sup> *Id.* at 19-20.

<sup>6</sup> The Company’s Application for Approval of Waivers from the Framework for Competitive Bidding, filed June 18, 2013, in Docket No. 2013-0156 (the “Waiver I Application”) included requests for waivers for five projects. On November 4, 2013, the Company submitted a letter informing the Commission that two developers had withdrawn from the Invitation. By letters dated September 23, 2014, and October 6, 2014, the Company informed the Commission that two other developers had withdrawn from the Invitation.

agreement negotiations and interconnection requirement study work, the energy pricing of the five proposals covered in the Waiver I Application did provide a benchmark against which the Consumer Advocate and the Commission would likely evaluate the “fairness” of the price negotiated by the Company for each of the four MSSP Projects. Accordingly, the Company urged all of the MSSP Projects to re-evaluate their respective energy pricing proposals with the objective of narrowing the gap between those proposals and the pricing proposed through the initial Waiver Invitation. Several of the MSSP Projects informed the Company that their final energy pricing would likely be in excess of the average pricing proposed through the initial Waiver Invitation.

In July 2013, the Company informed Castle & Cooke, as owner of the land and developer of the overall site for the MSSP Projects, that, in light of the energy pricing indications from the MSSP Projects and the lack of progress in finalizing power purchase agreements for execution, the Company would not further extend the term sheets. However, the Company informed Castle & Cooke that, in consideration of the time, effort, and resources expended by both sides on the MSSP Projects to date, the Company might extend the term sheets if there was one MSSP Project developer willing to commit to a single 20 MW project at an energy price below the average pricing proposed through the initial Waiver Invitation. Castle & Cooke subsequently negotiated with each of the MSSP Project developers and informed the Company that Lanikuhana was prepared to finalize a power purchase agreement with the Company for a 20 MW photovoltaic facility at the MSSP Projects’ site. The MSSP Projects’ term sheets were then assigned to Lanikuhana, and the Company and Lanikuhana began final negotiations on energy pricing and the form of the power purchase agreement. A levelized energy price was agreed at 15.6 cents per kWh, which was substantially below the range of energy pricing for the separate MSSP Projects set forth in the MSSP Projects’ term sheets and below even the total average

levelized energy price of 15.8 cents per kWh for the nine remaining projects, at such time, in the Waiver Invitation. The Lanikuhana PPA was executed on October 11, 2013, prior to completion of the interconnection requirements study (“IRS”).

On April 11, 2014, the Company filed its Application for Approval of Power Purchase Agreement for Renewable As-Available Energy with Lanikuhana Solar, LLC in the instant docket (the “Application”). In the Application, the Company requested the Commission to “modify, if necessary, the existing waiver from the [Competitive Bidding Framework] for the four individual 5-MW facilities to be located at the MSSP to apply to the proposed one 20-MW Project at the same location or, in the alternative, grant a new waiver for the 20-MW Project from the Competitive Bidding Framework.”<sup>7</sup>

On January 20, 2015, the IRS, with the exception of the N-1-1 Analysis,<sup>8</sup> was completed and the Company and Lanikuhana began negotiations of an amendment to the PPA to incorporate the results of the interconnection requirements study (the “IRS Amendment”). The IRS Amendment was completed and reflected in the Amended and Restated PPA. During the discussions for the IRS Amendment, the Company and Lanikuhana agreed to a further price reduction from 15.6 cents per kWh to 14.05 cents per kWh in exchange for Lanikuhana accepting the power purchase agreement terms substantially set forth in the form of the power purchase agreement submitted in Docket No. 2014-0357 on December 4, 2014, also between Hawaiian Electric and Lanikuhana (the “Lanikuhana II PPA”).

On February 13, 2015, the Company filed the Amended and Restated PPA with the Commission and reiterated its request for the Commission to modify, if necessary, the existing waiver from the Competitive Bidding Framework or, in the alternative, grant a new waiver.

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<sup>7</sup> Application, § I.A.1(e) at 2.

<sup>8</sup> As defined in the Company’s February 13, 2015 letter to the Commission, at 1.

## II. HAWAIIAN ELECTRIC'S REPLY COMMENTS

### A. Continued Validity of Original Waiver and/or Request for Current Waiver

In its SOP, the Consumer Advocate stressed that the Application should be denied because the underlying reasons for the original waiver granted by the Commission are no longer applicable to the Project.<sup>9</sup> The Consumer Advocate argues that because the original cost-saving mechanism of the Project (i.e., four (4) small (5 MW) projects sharing interconnection and other costs) has been substantially changed subsequent to the granting of the waiver, allowing the waiver under the Project's current format would set a dangerous precedent.<sup>10</sup>

Hawaiian Electric respectfully contends that an underlying purpose of the waiver, to generate a reduced price for a renewable energy source for the benefit of Hawaiian Electric's customers, is still valid, and that the waiver has resulted in the negotiation of a reasonable, competitive energy price.

Hawaiian Electric recognizes, however, that a key component of the original project structure is no longer in place—specifically, four (4) independent project developers able to take advantage of opportunities reserved for smaller projects while still being able to take advantage of the cost-saving benefits of a larger project through the sharing of interconnection and other related project costs.

Accordingly, without waiving the validity of the current waiver, Hawaiian Electric renews its prior request, if deemed necessary by the Commission, that a new waiver from the *Competitive Bidding Framework* be granted for the Project. According to Section II.A.3 of the *Competitive Bidding Framework*, there are a number of reasons why a waiver from the

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<sup>9</sup> See CA SOP at 19.

<sup>10</sup> *Id.* Hawaiian Electric notes that in Docket No. 2014-0355 the Consumer Advocate also raised concerns with the *Competitive Bidding Framework*. As stated in Docket No. 2014-0355, Hawaiian Electric is agreeable to discussing revisions to the framework, if determined necessary by the Commission.



Competitive Bidding Framework may be justified. According to the Competitive Bidding Framework, a project does not need to meet each of these qualifications to be granted a waiver, but rather each condition would be evaluated separately to determine if a waiver is justified and meeting any one of the conditions may qualify a project for a waiver from the Competitive Bidding Framework.

As stated previously, the Company believes that a waiver from the Competitive Bidding Framework is justified for this Project pursuant to Sections II.A.3.b.(iii)<sup>11</sup>, II.A.3.c.(iii)<sup>12</sup>, and II.A.3.d of the Competitive Bidding Framework.<sup>13</sup> A waiver from the framework is justified under these sections because: (1) the price for energy under the PPA is reasonable and represents a significant decrease in the cost for energy as compared to current avoided cost figures providing a lower cost supply of electricity to the utility's general body of customers; (2) as the Consumer Advocate has noted, the Project will facilitate the acquisition of power from a non-fossil fuel facility that is being installed to meet a governmental objective – specifically, contributing to the State's RPS goals for sustainable, renewable energy that reduces the State's dependence on fossil fuels, and (3) by providing low-cost, renewable energy that protects customers from the volatility of fossil fuel prices, the Project serves the public interest.

**B. Lanikuhana's Amended and Restated PPA and Energy Price Are Reasonable**

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<sup>11</sup> This section of the Competitive Bidding Framework states that a waiver may be appropriate "when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes."

<sup>12</sup> This section of the Competitive Bidding Framework states that a waiver may be appropriate when "the acquisition of power is from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective."

<sup>13</sup> This section of the Competitive Bidding Framework states that a waiver may be appropriate if it will "result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest." (Emphasis added).

The Consumer Advocate also argued that the proposed pricing does not justify a waiver of the Competitive Bidding Framework. Hawaiian Electric respectfully disagrees. As set forth in further detail below, the pricing offered for the Project is reasonable and should be approved.

**1. Billing Impact Analysis Should Not be the Sole Determining Factor in PPA Approval**

In its SOP, the Consumer Advocate has relied heavily on the bill impact analysis and the estimated short- and long-term increase for a typical residential monthly bill attributable to the Lanikuhana Project.<sup>14</sup> However, as the Consumer Advocate also acknowledged, the bill impact analysis relies upon a number of assumptions in the Power Supply Improvement Plan (“PSIP”), such as projections of fuel costs and the ability to import low-priced liquefied natural gas (“LNG”),<sup>15</sup> and accordingly, has argued that this necessitates seeking “tangible savings from the lowest cost renewable energy projects.”<sup>16</sup> However, the PSIP is the subject of an open docket and if one or more of the PSIP assumptions change based on the result of the docket or other intervening factors, this could also change the billing impact analysis figures and conclusions. Given this uncertainty, Hawaiian Electric’s billing impact analysis in its Application should only be one of many factors considered in determining the reasonableness of the Lanikuhana PPA and its energy pricing.

**2. The Lanikuhana PPA Remains One of the Lowest Priced Utility-Scale As-Available PPAs Negotiated by Hawaiian Electric**

At the time the original PPA for the Project was executed on October 11, 2013, and again when the Amended and Restated PPA was executed on February 12, 2015, the Project pricing represented one of the lowest PPA energy payment rates for utility-scale as-available renewable energy previously negotiated by the Company. The on-peak avoided cost at the time the original

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<sup>14</sup> Id. at 21-22.

<sup>15</sup> Id. at 22.

<sup>16</sup> Id. at 23.

PPA was executed on October 11, 2013 was 22.697 cents per kWh.<sup>17</sup> The original PPA provided for a price of 15.6 cents per kWh, which, as can be seen, was substantially below the on-peak avoided cost at such time. Furthermore, the Project's pricing remains below the current three year monthly average on-peak avoided costs of 22.039 cents per kWh (April 2012 to April 2015).<sup>18</sup>

Although current on-peak avoided costs (which are largely dependent on fuel prices) are at the lowest level in a number of years, it is also prudent to take a broader view of avoided costs to account for volatility. As shown above, such an analysis indicates that the Project pricing is reasonable.

In addition, Hawaiian Electric notes that the projected long-term levelized energy price against which the Project is evaluated in the Application is based on a current forecast of fossil fuel prices (LNG, Low Sulfur Fuel Oil and diesel fuel oil) and a successful transition of fossil fuel generation units from oil to LNG and other lower-cost renewables during the contract period, consistent with the PSIP. Actual fossil fuel prices and other resource costs may be higher or lower than currently forecast. If, for example, actual fossil fuel prices are higher than currently forecast, Hawaiian Electric's projected long-run avoided cost would be higher, and would have an associated positive impact on the relative difference between Lanikuhana's Project pricing and long-run avoided costs.

Hawaiian Electric therefore believes that the Lanikuhana Amended and Restated PPA pricing is reasonable both in the short term and long term because the pricing compares favorably with the current three year monthly average avoided costs and because customers will benefit from a stabilized energy price as a hedge against future energy price volatility.

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<sup>17</sup> See <http://www.hawaiianelectric.com/heco/Residential/Electric-Rates/Avoided-Energy-Costs-for-Hawaiian-Electric,-Maui-Electric-and-Hawaii-Electric-Light-Company>.

<sup>18</sup> Id.

**3. Project Approval Will Allow Customers to Benefit From the Limited Remaining Availability of the Federal Tax Credit**

As described in the Application and upon transmittal of the Amended and Restated PPA, a key driver in Hawaiian Electric's strategy to secure the low cost renewable energy projects it has presented to the Commission, is the limited opportunity to take advantage of the 30% Federal investment tax credit ("ITC"), which is available in its present form until the end of 2016. The PPA is structured to allow projects such as the Lanikuhana Project to proceed quickly and take advantage of the Federal ITC while it is still available for the benefit of Hawaiian Electric's customers. Due to the long development timeline required to execute utility-scale renewable projects in Hawai'i, it is a likely possibility that future renewable energy projects, in the near term, will not have access to such favorable tax incentives as the Lanikuhana Project, which could ultimately result in higher proposed energy rates from future renewable project developers.

Accordingly, it would be inappropriate to give up the current benefit of the ITC-driven pricing for this Project, in favor of a future possibility of equipment price decreases, which is inherently uncertain and which, in any event, may not be of such a magnitude sufficient to offset the reduction of 20 percentage points in the current Federal ITC from 30% to 10%, as well as uncertainty in the availability and value of Hawai'i State tax credits in the future.

**4. Lanikuhana's Pricing Does Not Yet Reflect Hawai'i State Tax Credits, Which Could Significantly Reduce the Project's Effective Energy Price**

Due to the uncertainty regarding the availability of Hawai'i Renewable Energy Tax Credits applicable to the Project when it achieves commercial operations, the Project's energy price does not yet reflect the projected price lowering effect of these tax credits. Rather, the benefits of any Hawai'i Renewable Energy Tax Credits for the Project will be captured through Attachment J, Section 3 of the PPA, which will provide Hawaiian Electric an Energy Price Credit (as defined in the PPA) equal to 90% of the net Hawai'i Renewable Energy Tax Credits

for which Lanikuhana is eligible and receives during the term.<sup>19</sup> To illustrate the potential impact of this provision, if the current Hawai'i tax incentive structure remains in place, and assuming for purposes of this illustration that there are no Pass-Through Costs (as defined in the PPA) for refundable credits and that there are Monetization Costs (as defined in the PPA) of roughly [REDACTED] for non-refundable credits, then according to Lanikuhana's calculations, the maximum tax credit opportunity to customers under current law will result in [REDACTED] in non-refundable tax credits or refundable tax credits passed through to customers. Such a pass through could result in fixed pricing of approximately [REDACTED] per MWh.<sup>20</sup>

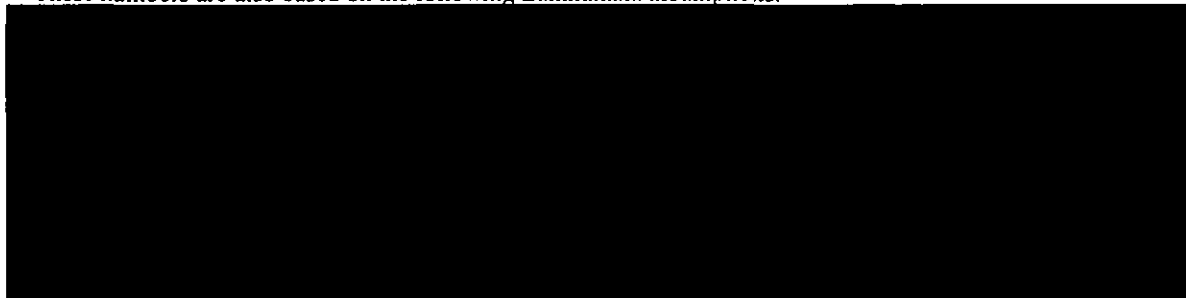
**5. The Project's Cost and Price are Reasonable when the Lanikuhana II Project is also Taken Into Account**

As stated in the Company's February 13, 2015 letter to the Commission submitting the Amended and Restated PPA, the Project will share interconnection facilities with the project set forth in the Lanikuhana II PPA (the "Lanikuhana II Project"). The Project and the Lanikuhana II Project will be constructed together to reduce engineering, procurement and construction ("EPC") costs, and to allow the more efficient utilization of the new high-fixed-cost interconnection infrastructure to be installed in the area at Lanikuhana's expense. This ensures the lowest total pricing for what can be thought of as essentially a 34.7 MW (gross AC capacity) solar project. When weighted according to capacity, the two projects together offer a blended

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<sup>19</sup> The Company asserts that this approach is reasonable given that it provides developers with an incentive to pursue recovery of all applicable tax benefits while providing the bulk of the tax savings benefit to the Company's customers.

<sup>20</sup> These numbers are also based on the following Lanikuhana assumptions:



price of 13.849 cents per kWh. In other words, if each project were priced at 13.849 cents per kWh, Hawaiian Electric's customers would pay the same amount throughout the term of both PPAs as customers are expected to pay pursuant to the projects actual pricing of 14.050 cents per kWh and 13.575 cents per kWh. This is demonstrated in the following table:

	Lanikuhana	Lanikuhana II	Blended
MW	20	14.7	34.7
% of MW	58%	42%	100%
Price/MW	\$140.50	\$135.75	\$138.49

While the Project and the Lanikuhana II Project will share interconnection facilities, [REDACTED]

[REDACTED]

[REDACTED] Regarding interconnection costs, the total cost of the shared interconnection facilities for the two projects is approximately \$14.5 million. The Amended and Restated PPA and the Lanikuhana II PPA and regulatory filings for the projects allocate approximately \$13.3 million of this cost to the Lanikuhana II Project, and \$1.1 million to the Project. However, for the purposes of comparing project cost, Lanikuhana has informed the Company that it has allocated the costs between the two projects on a per-MW basis (as shown in the chart below) so that neither project's balance sheet bears a disproportionate amount of the interconnections costs. Similarly, Lanikuhana has informed the Company that it has allocated EPC costs on a per MW basis. Lanikuhana has stated that it then developed prices for the projects that achieved the same [REDACTED]

[REDACTED]. Accordingly, the difference between the pricing of the two projects [REDACTED]

[REDACTED]



**C. The Project's Positive RPS Impact Should Not Be Disregarded**

In its SOP, the Consumer Advocate has focused solely on pricing in deciding whether to recommend waiver from the Competitive Bidding Framework and subsequent approval of the Lanikuhana Amended and Restated PPA. In doing so, the Consumer Advocate has ignored the positive impact the Project contributes to Hawaiian Electric's and the State of Hawaii's mandated RPS compliance goals. Because Hawaiian Electric is currently ahead of its 2015 RPS target and Hawaiian Electric's PSIP projects 61% renewables by 2030, the State is now considering an even loftier goal, as evidenced by Governor Ige's "long-term commitment to [a] 100 percent renewable future for the electric utility."<sup>21</sup> Additionally, this intent is shared by the Legislature, as evidenced by current H.B. No. 623. Therefore, increased RPS targets and a *Project's contribution towards the same should not be discounted or ignored, but should remain a*

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<sup>21</sup> See March 11, 2015 StarAdvertiser interview of Governor Ige.

key factor and considered a benefit in deciding Project approval. Further, as noted previously, several projects have already chosen to voluntarily withdraw from the waiver process and further Hawaiian Electric's experience has been that not all power purchase agreements which receive Commission approval will actually result in developed projects that achieve commercial operations. Approving this Project provides a hedge against one or more of the current pending Waiver Projects not achieving successful development, thereby further reducing uncertainty of RPS compliance.

Accordingly, as the Consumer Advocate has noted, whether the validity of the current waiver from the Competitive Bidding Framework is still warranted or not, the Project is still worthy of a current waiver from the framework as the Project furthers a stated governmental objective, namely, the acquisition of power from a non-fossil fuel facility that is being installed to meet a governmental objective, e.g., the State's RPS.<sup>22</sup>

As stated above, although a proposed project's estimated bill impact is a very important consideration, it alone should not be determinative of project approval. Instead, Hawaiian Electric respectfully contends that the totality of circumstances, including but not limited to RPS compliance, the Project's hedge against curtailment greater than projected, and the availability of both State and Federal tax credits (which may not be available in the future) all weigh in favor of Lanikuhana Project approval here.

**D. The Project is in the Public Interest.**

As stated above, although a proposed project's estimated bill impact is a very important consideration, it alone should not be determinative of project approval. Instead, Hawaiian Electric respectfully contends that the totality of circumstances, including but not limited to,

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<sup>22</sup> See Article II, Section A.3.c (iii), Framework for Competitive Bidding, December 8, 2006, State of Hawaii Public Utilities Commission.



unprecedented low pricing for a renewable, non-fossil fuel energy source, positive contribution to current and future RPS goals, reducing the dependency on fossil fuels for the State's energy needs, and removing any linkage between the PPA price and the cost of fossil fuels in compliance with HRS § 269-27.2(c), indicates that the Project is consistent with the public interest of this State and Hawaiian Electric's utility customers.

**E. Costs Associated with N-1-1 Contingency**

The Consumer Advocate has noted that any costs incurred by Hawaiian Electric associated with the N-1-1 contingency should not be recoverable from Hawaiian Electric's customers. Hawaiian Electric respectfully disagrees. Hawaiian Electric clarifies that there are generally two sets of costs that may be incurred associated with the N-1-1 contingency (as described in the PPA), and appropriate cost recovery may differ depending on the nature of such costs.

The first set includes the costs associated with any "Mitigating Measures" identified as a result of the Additional IRS. As stated in the PPA, if Mitigating Measures are identified and if Hawaiian Electric determines it will pursue completion of the Mitigating Measures, Hawaiian Electric shall, as it considers the N-1-1 contingency a system issue not attributable to any single generating project, apply to the Commission for approval to commit capital funds and/or seek recovery of the costs for such Mitigating Measures through Hawaiian Electric's rates or other cost recovery mechanisms. If Hawaiian Electric obtains Commission approval for the commitment of capital funds and/or cost recovery for such Mitigating Measures, then Hawaiian Electric shall use commercially reasonable efforts to implement such Mitigating Measures.

The second set of potential costs that may be incurred as a result of the N-1-1 contingency are costs for the Wahiawa 138 kV Maintenance exceeding the Maintenance Cap that results in Compensable Curtailed Energy. Hawaiian Electric agrees with the Consumer

Advocate's recommendation to take care in conducting such maintenance so as to mitigate incurring payments for Compensable Curtailed Energy during the pendency of the Wahiawa 138 kV Maintenance, and will do so appropriately. Notwithstanding the above, Hawaiian Electric notes that, subject to Commission approval, payments for Compensable Curtailed Energy may still be recoverable. Hawaiian Electric is not waiving any decision to seek such recovery as may be appropriate under the circumstances.

**F. Hawaiian Electric and Lanikuhana are Agreeable to Providing Written Notice of Termination Under the Evergreen Clause**

The Consumer Advocate has also objected to the Amended and Restated PPA evergreen clause and recommends the following:

[T]he Consumer Advocate recommends that Hawaiian Electric file a written notice with the Commission and Consumer Advocate one year prior to the ninety (90) day advance written notice by which the parties to the PPA may terminate the agreement indicating whether Hawaiian Electric intends to extend the initial term of the proposed PPA and provide the basis for such extension.<sup>23</sup>

Hawaiian Electric and Lanikuhana are agreeable to providing this notice to the Commission and the Consumer Advocate if required by the Commission.

**G. The Consumer Advocate Does Not Object to the Recovery of Lanikuhana Energy Costs through the ECAC**

Although the Consumer Advocate characterizes the issue of whether Hawaiian Electric should be allowed to recover Lanikuhana PPA energy costs through the ECAC as moot, it nevertheless acknowledges that if the Lanikuhana PPA is approved, until the recovery of costs associated with PPA payment are reflected in base rates, it is reasonable that Hawaiian Electric

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<sup>23</sup> See Consumer Advocate's SOP at 25.

recover Lanikuhana PPA energy costs through the ECAC to the extent that the costs are not already included in base rates.<sup>24</sup>

The Consumer Advocate further noted, however, that the costs associated with Compensable Curtailed Energy are not known at this time and therefore that such costs should not be automatically included in Hawaiian Electric's ECAC. The Consumer Advocate stated that any costs associated with the Compensable Curtailed Energy provisions of the PPA should be reviewed for reasonableness prior to being recovered from Hawaiian Electric's customers. HRS § 269-16.22 allows for recovery of all power purchase costs.<sup>25</sup> Therefore, Hawaiian Electric requests that if the Commission determines that it is not appropriate to recover the costs associated with Compensable Curtailed Energy through the ECAC, that such costs instead be recovered through the Company's Purchased Power Adjustment Clause ("PPAC").

The Purchased Power Adjustment Clause ("PPAC") is an existing adjustment clause approved by the Commission,<sup>26</sup> which allows Hawaiian Electric to pass through to customers through a separate cents per kilowatt-hour surcharge, reasonably incurred purchase power contract costs, including all capacity, operations and maintenance ("O&M") and other non-energy payments approved by the Commission.

Hawaiian Electric therefore request, that if the Commission determines that payments made for Compensable Curtailed Energy and related revenue taxes under the Amended and Restated PPA should not be recoverable through the ECAC, that the Commission authorize

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<sup>24</sup> See Consumer Advocate's SOP at 27.

<sup>25</sup> HRS § 269-16.22 provides that: "All power purchase costs, including costs related to capacity, operations and maintenance, and other costs that are incurred by an electric utility company, arising out of power purchase agreements that have been approved by the public utilities commission and are binding obligations on the electric utility company, shall be allowed to be recovered by the utility from the customer base of the electric utility company through one or more adjustable surcharges, which shall be established by the public utilities commission. The costs shall be allowed to be recovered if incurred as a result of such agreements unless, after review by the public utilities commission, any such costs are determined by the commission to have been incurred in bad faith, out of waste, out of an abuse of discretion, or in violation of law."

<sup>26</sup> See Final Decision and Order issued December 29, 2010, in Docket No. 2008-0083 (Hawaiian Electric's 2009 Test Year rate case), at 51-55.

Hawaiian Electric to include such payments for recovery through the PPAC. To facilitate review of Compensable Curtailed Energy Costs to be passed through the ECAC or PPAC, Hawaiian Electric is willing to submit a periodic filing at least annually which quantifies the Compensable Curtailed Energy payments made over a prior period. For administrative efficiency, such periodic filing would include all Compensable Curtailed Energy costs to be recovered under RAP-PPAs that have been approved by the Commission.

#### **H. Selection Methodology**

Finally, the Consumer Advocate states that it is important to develop a selection methodology to evaluate all of the pending Waiver Projects and this Project, especially if there are concerns that the Commission will not approve all of the PPAs that are currently filed with the Commission for approval.<sup>27</sup> Hawaiian Electric maintains that this is not necessary as each of the pending projects can be reasonably accommodated onto Hawaiian Electric's system according to Hawaiian Electric's PSIP. The Preferred Plan in the PSIP addresses the addition of utility-scale PV in excess of the total capacity of all the Waiver Projects and the Lanikuhana Project in conjunction with the planned aggregate amount of distributed solar PV capacity.<sup>28</sup> Under the Preferred Plan, the projects will, in their entirety, help contribute to the balanced, low-cost portfolio of renewable energy resources contemplated in the PSIP.<sup>29</sup> Therefore, Hawaiian Electric does not believe it is necessary to develop a selection methodology to further weigh each project's value.

#### **III. CONCLUSION**

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<sup>27</sup> *Id.* at 31.

<sup>28</sup> The PSIP assumes the addition of approximately 286 MW of utility-scale PV by the end of 2016. See page 4-41 and Table 502 of the PSIP.

<sup>29</sup> The Preferred Plan is expected to reduce monthly bills for full service residential customers by 23% from 2014 to 2013. See Figure ES-6 of the PSIP.

For all the foregoing reasons, as well as those stated in the underlying Application,

Hawaiian Electric respectfully requests that the Commission:

- (a) Approve the Power Purchase Agreement For As-Available Energy dated October 11, 2013, by and between Hawaiian Electric and LSLLC, as amended and restated by the Amended and Restated Power Purchase Agreement dated February 13, 2015;
- (b) Find that the purchased energy charges to be paid by Hawaiian Electric pursuant to the PPA are just and reasonable;
- (c) Find that the purchased power arrangements under the PPA, pursuant to which Hawaiian Electric purchases energy on an as-available basis from Lanikuhana, are prudent and in the public interest;
- (d) Authorize Hawaiian Electric to include the purchased energy charges and related revenue taxes that Hawaiian Electric incurs under the PPA in and through Hawaiian Electric's ECAC to the extent such costs are not included in base rates;
- (e) If the Commission determines that payments made for Compensable Curtailed energy and related revenue taxes should not be recovered through the ECAC, that Hawaiian Electric be authorized to include such payments in and through Hawaiian Electric's PPAC;
- (f) Modify, if necessary, the existing waiver from the Competitive Bidding Framework for the four individual 4-MW facilities to be located at the Mililani South Solar Park<sup>30</sup> to apply to the proposed 20-MW Project at the same location or, in the alternative, grant a new waiver for the 20-MW Project from the Competitive Bidding Framework; and
- (g) Grant such other relief as may be just and reasonable under the circumstances.

DATED: Honolulu, Hawai'i, April 24, 2015.



Rebecca Dayhuff Matsushima  
Senior Associate General Counsel

HAWAIIAN ELECTRIC COMPANY, INC.

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<sup>30</sup> See Decision and Order filed on December 23, 2010 in Docket No. 2010-0079.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII**

**In the Matter of the Application of**

**HAWAIIAN ELECTRIC COMPANY,  
INC.**

**For Approval of Power Purchase  
Agreement for Renewable As-Available  
Energy with Lanikuhana Solar, LLC.**

**DOCKET NO. 2014-0077**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served two copies of Hawaiian Electric's Reply Statement of Position, together with this Certificate of Service, by making personal service to the following and at the following address:

Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, April 24, 2015.

HAWAIIAN ELECTRIC COMPANY, INC.



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Marisa K. Chun