BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

DOCKET NO. 2011-0362

For Approval of Power Purchase)
Agreement for As-Available Energy)
With MP2 Hawaii Solar I, LLC and to)
Include Costs in Kauai Island)
Utility Cooperative's Energy Rate)
Adjustment Clause.

DECISION AND ORDER NO. 30872

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DECISION AND ORDER

By this Decision and Order, the commission approves the requests set forth in the application filed by KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), on November 28, 2011. Specifically, the commission: (1) approves the Power Purchase Agreement for As-Available Energy between KIUC and MP2 Hawaii Solar I, LLC ("MP2" or "Seller") (collectively, "Contracting Parties"), dated October 21, 2011, as amended by a Letter

¹Kauai Island Utility Cooperative's Application; Exhibits 1 Through 6; Verification; and Certificate of Service, filed on November 28, 2011; and confidential documents, filed on January 24, 2012 (collectively, "Application"). The Parties to this proceeding are KIUC and the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), ex officio, a party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). No persons moved to intervene or participate in this proceeding.

Agreement, dated November 9, 2011 (together, the "PPA");²
(2) finds that the purchased energy charges to be paid by KIUC pursuant to the PPA are just and reasonable; and (3) authorizes KIUC to include the purchased energy charges and related revenue taxes that it incurs under the PPA in its Energy Rate Adjustment Clause ("ERAC"), to the extent that such costs are not included in KIUC's base rates.

I.

Background

KIUC is a Hawaii not-for-profit electric cooperative engaged in the production, transmission, distribution, purchase, and sale of electric energy on the island of Kauai, State of Hawaii ("State").

²The PPA is attached to the Application as Exhibit 1.

^{&#}x27;Approved by the commission in In re Citizens Commc'ns., Co., Kauai Elec. Div. and Kauai Island Util. Co-op, Docket No. 02-0060 ("Docket No. 02-0060"), Decision and Order No. 19658, filed on September 17, 2002, as amended by Decision and Order 19755, filed on October 30, 2002. KIUC purchased substantially all of the assets and assumed the operations of the Kauai Electric division of Citizens Communications Company ("Kauai Electric") on November 1, 2002. In accordance with this transaction, KIUC was assigned the legislatively granted franchise to manufacture, sell, furnish, and supply electric light, current and power on the island of See Application at 3.

MP2 is a Delaware limited liability company registered to do business in Hawaii, and is wholly owned by its sole member, MP2 Capital, LLC. ("MP2 Capital"). KIUC explains that MP2 Capital, "develops, builds, owns, and operate solar projects, selling the electricity produced to commercial, government, and utility customers under purchase power agreements and feed-in tariffs." MP2 Capital entered into a lease agreement for a parcel of land located in Koloa, Hawaii, upon which MP2 plans to install, operate, and maintain an approximately 300 kilowatt ("kW") photovoltaic generation plant (the "Facility"), pursuant to the terms of the Power Purchase Agreement ("PPA").

II.

Application

On November 28, 2011, KIUC filed its Application pursuant to HRS § 269-27.2 and HAR § 6-60-6(2) requesting commission approval of the following:

1. The PPA;

⁴See Application at 3.

⁵See Id.

 $^{^6}$ The site is more particularly identified by Tax Map Key No. (4) 2-7-003-005:0010, as shown on Exhibit 3 to the Application. See Application at 3.

- 2. The purchased energy charges to be paid by KIUC under the PPA, as just and reasonable;
- 3. The purchased power arrangements (e.g., terms and conditions) under the PPA, pursuant to which KIUC will purchase energy from MP2, as prudent and in the public interest; and
- 4. Authorization to include all purchased energy charges and related revenue taxes incurred under the PPA in KIUC's ERAC, to the extent that such costs are not recovered in KIUC's base rates.

Α.

Power Purchase Agreement

On October 21, 2011, KIUC entered into a PPA with MP2, in which KIUC would purchase as-available energy from the Facility. The Facility's annual energy production is projected to be approximately 525,600 kilowatt hours ("kWh") per year.

 $^{^7{}m The}$ Contracting Parties also executed a Letter Agreement on November 9, 2011, clarifying, <u>inter alia</u>, the location of the Facility. See Exhibit 1.

⁸See Application at 4; Exhibit 4.

1.

Term

The term of the PPA shall commence upon the In-Service Date⁹ and shall remain in effect for an initial term of twenty (20) years and shall continue thereafter until terminated by either Contracting Party with at least one year's advance notice as provided in the PPA.¹⁰

2.

Pricing

Subject to other provisions of the PPA, KIUC will accept and pay for the entire net energy generated by the Facility and delivered by MP2 to KIUC, provided that the instantaneous kW output of such energy from the Facility shall not exceed the Allowed Net Capacity, 11 and KIUC shall not be obligated to pay for energy in excess of such amount.

 $^{^9{}m The}$ "In-Service Date" is defined in the PPA as "the date that the Seller's Facility has successfully met all the requirements of the Interconnection Agreement." See PPA at D-3.

¹⁰See id. at 4. See also PPA at 5.

¹¹Pursuant to Appendix A of the PPA, "Allowed Net Capacity" is the lower of 300 kW or the net nameplate kW capacity (net for export) of the Facility that are installed and have successfully completed the control system acceptance test by the In-Service Date. See Application at 4. See also PPA at A-3.

According to Appendix B of the PPA, the energy rate for delivery of energy for sale to KIUC shall be at the rate of \$200.00 per megawatt hour ("MWh") without escalation during the first twenty (20) years of the PPA.¹²

According to KIUC, the pricing is just and reasonable and in the public interest as the energy charges:

- (1) are fixed over the twenty (20) years of the PPA and is "at the same level as, or below, other pricing structures previously approved by the [c]ommission in other proceedings"; 13
- (2) assist in minimizing KIUC's exposure to oil price increases and provides "a natural hedge to future unknown increases in oil prices and KIUC's avoided cost." 14
- (3) are expected to result in lower payments being made by KIUC for the purchase of energy from MP2's Facility, as compared to KIUC's long-term estimated avoided cost; 15 and
- (4) are in compliance with HRS § 269-27.2(c), by de-linking the energy charges and pricing

¹²See Application at 5. See also PPA at B-1.

¹³Application at 8.

¹⁴Id. at 5.

^{15&}lt;u>Id.</u> at 8. KIUC notes that while it did not perform any avoided cost calculations specifically for the instant PPA, it did consider its expected avoided cost in negotiating the agreed upon pricing. Moreover, KIUC advises that it provided a long-range projection of its expected avoided cost as an attachment to response of CA-IR-3, filed in Docket No. 2011-0032 (KIUC's application for approval of a PPA with Green Energy Team), and points out the pricing under the instant PPA is "well below" the long-term forecasted avoided cost. Id.

structure as set forth in the PPA from the price of fossil fuels. 16

KIUC further notes that the PPA was "negotiated by the [Contracting] Parties at arms-length . . . and will not negatively affect KIUC's ability to provide electric service to its members/customers and are not discriminatory to other small power producers that are similarly situated." 17

3.

Qualifying Facility

MP2 shall provide KIUC with certification as a qualifying facility, if applicable, on or before the In-Service Date or KIUC shall not be obligated to accept or pay for energy delivered by MP2 and the PPA may be terminated as set forth in Appendix C of the PPA. 18

¹⁶Id.

¹⁷Application at 10. According to KIUC, no formal studies were conducted to determine the impact the Facility would have on the reliability or power quality of KIUC's electric services. However, KIUC explains that software modeling utilizing conductor capacities and voltage sags and swells was performed. Based on this analysis, KIUC limited the maximum generation size of the proposed PV Facility to 300 kW. <u>Id. See also PPA, Section 7e, at A-3; response to CA-IR-9.a.</u>

¹⁸Application at 5. <u>See also PPA</u>, at 12.

Reactive Power

Appendix B of the PPA requires that the Facility shall maintain a continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading and 0.95 lagging.¹⁹

5.

Interconnection Facilities

The Contracting Parties agreed to specific terms and conditions under which MP2's Facility will be interconnected to KIUC's system via a related, but separately executed Interconnection Agreement. 20 Among other things, the Interconnection Agreement specifies the Contracting Parties' agreements relating to their responsibilities during the PPA, parallel operations obligations, metering, equipment testing and inspection, rights of access, and temporary disconnection.

¹⁹Application at 5. <u>See also</u> B-1.

²⁰See Exhibit 2.

Other Provisions

The PPA includes, among other important provisions, agreements between the Contracting Parties relating to Permits, Licenses and Land Rights; ²¹ Conditions Precedent (and Termination Rights); ²² Indemnification; ²³ Insurance; ²⁴ Assignment; ²⁵ Force Majeure; ²⁶ and Financial Compliance. ²⁷

В.

Renewable Portfolio Standards and Renewable Energy

KIUC asserts that purchase of energy from the Facility will assist in meeting its Renewable Portfolio Standard ("RPS") goals and is consistent with KIUC's "Strategic Plan to move towards energy independence and decreased reliance on foreign

 $^{^{21}}$ PPA at 4.

²²<u>Id.</u> at 5.

 $^{^{23}}$ Id. at 7.

²⁴<u>Id.</u> at 8.

 $^{^{25}}$ Id. at 9.

 $^{^{26}}$ Id. at 10.

²⁷Id. at 12.

imported oil $"^{28}$ According to KIUC, the Facility is expected to contribute approximately 0.11% towards its RPS goals. 29

KIUC further argues that the proposed Facility will further the Hawaii Clean Energy Initiative and the State's movement toward energy self-sufficiency.³⁰

III.

Consumer Advocate's Position

On May 25, 2012, the Consumer Advocate filed its Statement of Position, stating that it does not object to the commission's approval of KIUC's requested relief of:

(1) approving the PPA; (2) finding the energy charges to be paid by KIUC pursuant to the PPA are just and reasonable; (3) finding that the purchased power arrangements (e.g., terms and conditions) under the PPA are prudent and in the public interest; and (4) allowing KIUC to include the purchased energy

 $^{^{28}}$ Application at 9. KIUC's Strategic Plan aims to have at least fifty percent (50%) of KIUC's annual electricity sales be produced by renewable resources by 2023.

²⁹See <u>id.</u> at 9 and Exhibit 6.

³⁰ See Application at 9.

charges and related revenue taxes in KIUC's ERAC, to the extent they are not included in base rates.³¹

In determining whether to recommend approval of the PPA, the Consumer Advocate considered: (1) the reasonableness of the purchase energy charges; (2) the reasonableness of the purchased power arrangements; (3) the contribution of MP2's Facility to KIUC's RPS; and (4) the impacts that MP2's PPA has or may have upon KIUC's ability to provide reliable and quality electric service to KIUC's ratepayers.³²

The Consumer Advocate notes that the Energy Payment Rate "compares favorably to the energy rates set forth in other purchase power agreements approved by the [c]ommission in recent past," 33 citing two KIUC PPAs with other independent power producers with the same, fixed \$200 per MWh pricing as the instant PPA. 34 The Consumer Advocate stressed its concerns with the ultimate cost to ratepayers associated with any utility project and underscored its desire to balance this goal against the various State objectives.

³¹Division of Consumer Advocacy's Statement of Position; and Certificate of Service, filed on May 25, 2012 ("CA's SOP").

³²See CA's SOP at 7.

³³Id. at 8.

 $^{^{34}}$ The Consumer Advocate notes in its SOP that it refers to In re Kauai Island Util. Coop., Docket No. 2011-0180 and In re Kauai Island Util. Coop., Docket No. 2010-0179.

In balancing all of the various issues and objectives, the Consumer Advocate noted the following about the PPA pricing:

- Although KIUC did not perform an avoided cost calculation specifically associated to the proposed PPA, KIUC projects that the PPA pricing is below the long-term estimated avoided cost and that there is a projected annual cost savings for KIUC's customers as a result of the PPA.³⁵
- The pro forma information provided by MP2 includes estimates that cannot be verified. However, relying on the representations made by MP2 and KIUC, the return on equity does not appear to be unreasonable.³⁶

Based on these factors and others, the Consumer Advocate does not object to the proposed Energy Payment Rate and a commission finding that the pricing is reasonable.

The Consumer Advocate also finds that the purchased power arrangements as set forth in the PPA are reasonable, again noting the similarities between the instant PPA and others reviewed by the Consumer Advocate and commission in the past.³⁷ The Consumer Advocate also states that the terms and conditions

³⁵See CA's SOP at 11.

 $^{^{36}}$ See CA's SOP at 12 - 13.

 $^{^{37}}$ See id. at 13.

of the PPA appear to be reasonable and non-discriminatory to other independent power producers or KIUC's ratepayers. 38

Although the Consumer Advocate notes that the contribution to be made by the MP2 Facility of approximately 0.11 % toward its RPS goals is "not significant," 39 the Consumer Advocate recognizes that the proposed Facility falls within the subset of currently possible and available projects that are anticipated to facilitate KIUC's ability to meet the RPS.

Since the Consumer Advocate does not object to the commission's approval of the PPA or the Interconnection Agreement with MP2, the Consumer Advocate does not object to the inclusion of the PPA purchased energy costs in KIUC's ERAC to the extent that such costs are not included in KIUC's base rates. Accordingly, the Consumer Advocate concludes that the PPA and its Energy Payment Rate are reasonable, prudent, and in the public interest.

³⁸ See id.

³⁹CA's SOP at 14.

IV.

KIUC's Reply

On June 4, 2012, KIUC filed its Response Statement of Position. 40 In its Reply SOP, KIUC states that it does not have any issues, concerns or rebuttal to the statements and recommendations of the Consumer Advocate and notes that the proceeding is ready for decision making by the commission. 41

V.

Discussion

As set forth in Stipulated Procedural Order No. 30147, filed on January 27, 2012, the issues in this docket are:

- (1) Whether the PPA should be approved, pursuant to Hawaii Revised Statutes § 269-27.2;
- (2) Whether the purchased energy charges to be paid by KIUC pursuant to the PPA are just and reasonable;
- (3) Whether the purchased power arrangements (e.g., terms and conditions) under the PPA, pursuant to which KIUC shall purchase energy from MP2, are prudent and in the public interest;
- (4) Whether KIUC should be authorized to include all of the purchased energy charges (and related revenue taxes) to be incurred by KIUC

⁴⁰See Kauai Island Utility Cooperative's Response Statement to Division of Consumer Advocacy's Statement of Position and Certificate of Service, filed June 4, 2012 ("Reply SOP").

 $^{^{41}}$ Reply SOP at 2 - 3.

under the PPA in KIUC's Energy Rate Adjustment Clause, pursuant to Hawaii Administrative Rules ("HAR") § 6-60-6(2); and

(5) Whether any other approvals and/or relief as may be required or otherwise just and reasonable under the circumstances should be granted by the Commission.

KIUC seeks the commission's approval of the PPA and the recovery of certain associated costs through the ERAC, pursuant to HRS § 269-27.2 and HAR § 6-60-6(2).

HRS § 269-27.2(c), governing non-fossil fuel producers, states:

The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

The commission's determination of the just and reasonable rate shall be accomplished establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. As the commission deems appropriate, the just and reasonable rate for nonfossil fuel generated electricity supplied to the public utility by the producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for <u>inflation</u> or <u>other</u> <u>acceptable</u> <u>adjustment</u> <u>mechanisms</u>. 42

HAR § 6-60-6(2) states:

No changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission.⁴³

Thus, as a condition precedent to authorizing KIUC to recover, through its ERAC, the costs of the energy purchased pursuant to the PPA, the commission must first approve the PPA, including the purchased energy rates set forth therein.

Α.

The PPA

The commission, upon review of the docket record, makes the following findings and conclusions:

- 1. Pursuant to the PPA, the energy purchase rate from the Facility will be a fixed at \$200.00 per MWh. In addition, KIUC represents that the energy purchase rate is well below its long-term estimated avoided cost.⁴⁴
- 2. As the energy purchase payments from the Facility will be fixed over the term of the PPA, the pricing structure is

 $^{^{42}}$ See HRS § 269-27.2(c) (emphasis added).

⁴³See HAR § 6-60-6(2).

⁴⁴Application at 8; Response to CA-IR-1.a.

delinked from KIUC's future oil prices, consistent with the requirements of HRS § 269-27.2(c).

- 3. On balance, based on findings 1 and 2, the energy purchase rates set forth in the PPA appear reasonable and consistent with, and satisfy: (A) HRS chapter 269 in principle; and (B) HRS § 269-27.2(c), in particular, as a pricing methodology that significantly reduces any linkage between the price of fossil fuels and the rate for the non-fossil fuel generated electricity, which supports the development of non-fossil fuel generation such as renewable energy resources.⁴⁵
- 4. As a result, the commission approves the purchase energy rates set forth in the PPA, by which KIUC will purchase energy from MP2's Facility. While the commission, in this instance, finds the pricing to be reasonable, the commission makes clear that its decision to approve the PPA is not based solely on energy pricing, but includes other factors, such as the State's need to limit its dependence on fossil fuels and mitigate against volatility in oil pricing, among other policy concerns.⁴⁶

⁴⁵See also HRS § 269-6(b) (the commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under HRS chapter 269).

 $^{^{46}}$ See also HRS § 269-6(b) (the commission shall consider the need to reduce the State's reliance on fossil fuels through

- 5. The provisions governing interconnection are reasonable, and: (A) set forth the terms and conditions for the delivery of as-available energy from MP2's Facility to KIUC's system, consistent with the PPA; and (B) provide KIUC's system and equipment with the appropriate protection and safeguards related to the interconnection of MP2's Facility.
- 6. In all other respects, the terms and conditions of the PPA, as a whole, appear reasonable and consistent with the State's overall energy policy of reducing the State's dependence on fossil fuel. Thus, the purchased power arrangements under the PPA, pursuant to which KIUC will purchase energy from MP2, appear prudent and in the public interest.
- 7. Based on the foregoing findings and conclusions, the commission approves the PPA as reasonable and consistent with the public interest.

В.

Cost Recovery Through the ERAC

KIUC seeks to recover, through its ERAC, all of the purchased energy charges and related taxes it incurs pursuant to the PPA. KIUC makes its request in accordance with HAR \S 6-60-6(2). HAR \S 6-60-6, in turn, provides in pertinent part:

energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. . . .).

Automatic adjustment clauses. The utility's rate schedules may include automatic rate adjustment clauses, only for those clauses previously approved by the commission. Upon [the] effective date of this Chapter, any fuel adjustment clause submitted for commission approval shall comply with the following standards:

- (1) "Fuel adjustment clause" means a provision of a rate schedule which provides for increases or decreases or both, without prior hearing, in rates reflecting increases or decreases or both in costs incurred by an electric or gas utility for fuel and purchased energy due to changes in the unit cost of fuel and purchased energy.
- (2) No changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission.
- (3) The fuel adjustment clause shall cover only increases or decreases in the unit cost of fuel and purchased energy adjusted for the resulting changes in revenue taxes, from those found reasonable in the last rate case proceeding for the utility; where such unit cost were included in the base rate for each schedule.
- (4) The adjustment shall be effective on the date of change and when a cost change occurs during a customer's billing period, the fuel adjustment shall be prorated for the number of days each cost was in effect.

HAR § 6-60-6.

Based on the commission's approval of the PPA, the commission finds it reasonable and appropriate to allow KIUC to include the purchased energy charges and the related revenue

taxes that it incurs under the PPA in its ERAC, to the extent that such costs are not recovered in KIUC's base rates. 47

VI.

<u>Orders</u>

THE COMMISSION ORDERS:

- 1. The PPA between KIUC and MP2, dated October 21, 2011, as amended by a Letter Agreement, dated November 9, 2011, is approved.
- 2. The terms and conditions of the purchased power arrangements under the PPA pursuant to which KIUC will purchase energy on an as-available basis from MP2 are prudent and in the public interest.
- 3. The purchased energy charges to be paid by KIUC pursuant to the Power Purchase Agreement for As-Available Energy between KIUC and MP2 Hawaii Solar I, LLC, dated October 21, 2011, on balance, are reasonable.

⁴⁷ See also Act 55, 2012 Haw. Sess. Laws, p. 121, stating

All power purchase costs . . . 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 . . .

- 4. KIUC is authorized to include the purchased energy charges and related revenue taxes that it incurs under the PPA in its ERAC, to the extent that such costs are not recovered in KIUC's base rates.
- 5. This docket is considered closed, unless ordered otherwise by the commission.

DONE	at	Honolulu,	Hawaii	DEC - 5 2012
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PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

Michael E. Champley, Commissioner

Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni Commission Counsel

2011-0362.do

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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