BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 2008-0273
	)	
Instituting a Proceeding to Investigate the Implementation of Feed-in Tariffs.	)	
	)	
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PUBLIC UTILITIES COMMISSION

TAWHIRI POWER LLC'S
COMMENTS TO SCOPING PAPER APPENDCIES A AND C
(NON-LEGAL QUESTIONS);

EXHIBIT "A"

AND

CERTIFICATE OF SERVICE

HARLAN Y. KIMURA
ATTORNEY AT LAW, A LAW CORPORATION
Central Pacific Plaza
220 South King Street, Suite 1660
Honolulu, Hawaii 96813
Telephone No. (808) 521-4134

Attorney for Tawhiri Power LLC

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TAWHIRI POWER LLC'S
COMMENTS TO SCOPING PAPER APPENDICES A AND C
(NON-LEGAL QUESTIONS)

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

TAWHIRI POWER LLC ("TPL") hereby submits to the Hawaii Public Utilities Commission (the "Commission") its comments on the Scoping Paper Appendices A and C (Non-Legal Questions) on feed-in tariffs, "Feed-in Tariffs: Best Design Focusing Hawaii's Investigation", issued by the Commission on December 11, 2008. TPL's comments are by its consultant, Dr. Mohamed El-Gasseir., and are attached as Exhibit "A" to this filing. Dr. El-Gasseir has extensive experience and knowledge in regards to: (1) the HECO systems; (2) electric industry restructuring; (3) stranded assets, revenue dynamics and rate stability issues; (4) renewable energy economics; (5) distributed resources planning; (6) self-generation assessment; and (7) integrated resource planning. These areas of expertise are part of the knowledge base that would be needed in the consideration of feed-in tariffs. Additionally, Dr. El-Gasseir has advised regulatory and planning commissions for the States of California, New York, Connecticut, New Jersey, and Nevada. He has also been engaged by many utilities, including

some of the largest investor-owned companies such as Con Edison of New York, Commonwealth Edison of Chicago, Pacific Gas & Electric Company, Detroit Edison, Southern Energy, and British Columbia Hydro (to name a few).

Respectfully submitted.

DATED: Honolulu, Hawaii, January 26, 2009.

HARLAN Y. KIMURA

Attorney for Movant
Tawhiri Power LLC

Appendix A: Cost Data Forms

(Responses are due in 45 days.)

Response:

According to the Joint Proposal on Feed-in Tariffs of the HECO Companies and Consumer Advocate filed on December 23, 2008 in this docket, only wind power systems up to and including 100 kW in size on Oahu, Maui, Lanai, Molokai, and Hawaii island would be eligible for Feed-in Tariffs. Tawhiri does not have cost data for such micro wind projects. Gathering cost data for wind projects at or under 100 kW nameplate ratings would require Tawhiri to conduct lengthy and costly research. Accordingly, Tawhiri is unable to complete Appendix A of the NRRI Scoping Paper. If the Commission during the course of these proceedings orders that wind projects in the range of the Tawhiri wind generators on the Big Island be eligible for Feed-in Tariffs, Tawhiri would be able to provide some confidential cost data to the Commission under a protective order.

EXHIBIT "A"

Appendix C: Questions

The Commission should direct the parties to respond to the following questions. Please provide detailed responses including supporting calculations and assumptions, underlying reasoning, and supportive citations. Responses to the threshold legal issues are due within 30 days. Responses to all other questions are due in 45 days.

Threshold Issues (Legal)

1. If the price associated with a feed-in tariff exceeds the utility's avoided cost, then by definition the utility's customers will incur higher costs than they would in the absence of the feed-in tariff. Please comment on the legal implications of this result. For example:

   a) Is this result permissible under current Hawaii statutes?

   b) Does HRS § 269-27.2 create a ceiling on the feed-in tariff price?

   c) If so, how do the signatories to the Energy Agreement (or other parties to this proceeding) propose to demonstrate that each feed-in tariff price does not violate the statute?

2. As with any administrative agency decision, a Commission decision approving a feed-in tariff must be supported with substantial evidence.

   a) Focusing on the price term, what evidence is legally necessary? Consider these options, among others:

      i) evidence of actual costs to develop similar projects in Hawaii

      ii) generic (i.e., non-Hawaii) evidence of costs associated with each particular technology

      iii) evidence that the tariff price results in costs equal to or below the utility's avoided cost

   b) By what process do the signatories (and other parties to this proceeding) propose to gather this evidence and present it the Commission, under the procedural schedule proposed by the signatories?

3. Assume the Commission does create feed-in tariffs, which entitle the seller to sell to the utility at the tariff price.

   a) If the tariff price exceeds the utility's avoided cost, is there a violation of PURPA, provided the seller is relying on a state law right to sell rather than a PURPA right to sell?

b) If the tariff price exceeds the utility's avoided cost (as calculated prior to the existence of the tariff), could a seller assert a PURPA right to a sale at the tariff price, on the grounds that the utility now has a new "avoided cost" equal to cost it would have incurred under the state-mandated feed-in tariff?

c) *If the price associated with a feed-in tariff is less than the utility's avoided* cost, what benefit does the tariff offer the developer that is not already available under PURPA?

d) Please offer any other comments concerning the legal and practical relationship between the feed-in tariff and existing PURPA rights and obligations.

Other Threshold Issues

4. Feed-in tariffs, if approved by the Commission, would join an array of legislative and regulatory initiatives to boost production of renewables in Hawaii. Those initiatives include PURPA, the renewable portfolio standard, net metering and various distributed generation actions. Are there overlaps, redundancies, gaps among these multiple initiatives? What is the independent purpose of each of *these, in relation to the others?*

Response: Please note that because it is unclear from the question as to what is meant by "various distributed generation actions", this response does not address these initiatives.

Tawhiri will strongly object to any proposal that would attempt to eliminate and/or replace PURPA, the renewable portfolio standard, or net metering with feed-in tariffs. These mechanisms should allow for distinct yet interdependent initiatives aimed at encouraging the development of renewable energy and/or the efficient use of fossil fuels. Such initiatives should be able to co-exist and compliment each other. Considering that Hawaii's electric loads are relatively small, the ability of the utilities' systems to absorb generating capacity additions is constrained and the Islands are blessed with abundant renewable resources, over subscription is certainly possible. Co-existence and complimentarity require giving serious attention at the outset to proceeding gradually and selectively under carefully set total caps to prevent curtailing production from existing renewable resources. Curtailment of contracted energy from independent power producers (IPPs) – and especially from resources compensated at avoided costs – is counter productive,. It is bad policy to allow FiT generation to displace avoided-cost energy purchases because:

- Properly structured pricing regimes will always lead to FiT energy being more expensive than the utilities' avoided costs; and
- Curtailing existing resources will financially undermine producers, degrading property values and possibly forcing project abandonments for some.

Process and General Feed-in Tariff Issues

5. Please explain the criticality of completing the "best-design" phase of this investigation by March 2009 and having project-based FiTs in place by July 2009 as called for in the Agreement.

Response: Tawhiri cannot explain the criticality of completing the "best-design" phase of this investigation by March 2009 and having the project-based FiTs in place by July 2009 as called for in the Agreement. This overly ambitious schedule is simply unrealistic and irrational. As Tawhiri stated in its comments to the Scoping Paper, it supports the establishment of feed-in tariffs for promoting renewable energy growth in Hawaii, but instituting PBFiTs to increase renewables' share of electricity generation at a high pace of development represents a monumental paradigm shift that cannot be rushed through the proposed schedule, including the response times suggested in the NRRI paper. Developing sound and efficient least-cost PBFiTs should not be dictated by minority decisions or the latest headlines.

6. Please explain why project-based FiTs are superior to other methods that require a utility to purchase renewable electricity.

Response: Tawhiri cannot respond to this question because it does not view project-based FiTs to be superior to other methods for requiring a utilities to purchase renewable electricity. Thus, Tawhiri has recommended to the Commission that it should proceed with caution by: (i) allowing more time to conduct a thorough and open evaluation of the potential direct and indirect impacts on ratepayers of implementing PBFiTs at a scale and pace greater than pilot projects. (Direct impacts will be caused by the need to subsidize new FiT contracts. The indirect ones will reflect the costs of potential stranded assets and curtailment of renewable generation priced at unsubsidized avoided utility costs.); (ii) If allowing more time for FiT development and implementation is not possible, the Commission should limit PBFiTs to pilot-scale programs for the promising options; (iii) If the Commission must immediately venture beyond pilot-scale PBFiTs, then it should adopt a total (all technologies) cap for each HECO Company equal to each utility's projected increase in electricity demand over the ensuing 12 months; and (iv) Irrespective of the adopted scale of development or cap levels, the Commission should institute a policy of ***do no harm*** to prevent curtailment of renewable energy production from existing avoided-cost priced resources and to compensate the owners of such resources in cases where curtailment cannot be circumvented.

7. Please quantify the costs over avoided costs of an open-ended PBFiT program assuming the utility meets the RPS goals set forth in the Agreement.

Response: Tawhiri does not understand what is being asked for in this question. Perhaps, Tawhiri will be in a better position to respond once it has an opportunity to review and analyze the many documents and information yet to be submitted in this proceeding. Tawhiri has noted, however, that this proceeding also must investigate and

consider the risk to current intermittent renewable energy investments of facing increasing technical and/or economic curtailments as a result of growing infusion of new intermittent and must-take resources acquired through new bilateral contracts and PBFiTs. It does not make sense to buy future renewable energy at premium prices while curtailing renewable resources secured at prices guaranteed not to exceed utility costs of production.

Tawhiri reserves its right to address this question at a later date in this proceeding.

8. Please quantify the benefits of lowering oil imports, increasing energy security, and increasing both jobs and tax base for the state mentioned in the Agreement.

Response: As a private company, Tawhiri is not in a position to quantify the benefits of lowering oil imports, increasing energy security and increasing both jobs and tax base for the state. Perhaps, Tawhiri will be in a better position to respond once it has an opportunity to review and analyze the many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

9. Is the goal to encourage as much use of renewable resources as possible as soon as possible, or is it to encourage the orderly introduction of renewable resources based upon cost effectiveness?

Response: Tawhiri supports the deployment of renewable resources. However, this goal cannot let us forget about the risk to current intermittent renewable energy investments of facing increasing technical and/or economic curtailments as a result of growing infusion of new intermittent and must-take resources acquired through new bilateral contracts and PBFiTs. Does it make sense to buy future renewable energy at premium prices while curtailing renewable resources secured at prices guaranteed not to exceed utility costs of production?

The PBFiT proponents' objective to provide financial incentives to disseminate high-cost renewable energy technologies is understandable but they should not lose sight of the need to avoid reducing the contributions of existing intermittent resources or degrading their property values. If developing PBFiT technologies is a must and curtailing current renewables production is unavoidable, then mitigation measures are warranted, including imposing caps on contracted PBFiT capacities and energy, and compensating owners of pre-existing renewable resources for incurred losses. There is no basis or need for discriminating between different investments in green technologies.

10. How long a period should exist between mandatory Commission reviews of the PBFiTs?

Response: Tawhiri recommends that the Commission start with a pilot PBFiT program at the distribution level of each HECO operating company that can be effectively improved and expanded with time using mandatory Commission PBFiTs reviews on an annual basis.. Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri reserves its right to address this question further at a later date in this proceeding.

PBFiT General Design Issues

11. Do each of the technologies listed as a renewable resource in the RPS legislation require a PBFiT?

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion as whether each of the technologies listed as a renewable resource in the RPS legislation require a PBFiT. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

12. Should PBFiTs for certain technologies be established now while others are deferred?

Response: Tawhiri recommends that the Commission start with a pilot PBFiT program at the distribution level of each HECO operating company that can be effectively improved and expanded with time.

13. Should the Commission cap purchases under PBFiTs? If yes, what is the maximum amount? Should individual caps be set for each technology? What period should the cap cover? What is the measurement for the cap (e.g., dollars, percent of sales, kW, or kWh)?

Response: The Commission should set an initial total cap for each utility equal to next year's forecasted increase in electricity demand (in kWs) plus an adequate reserve margin adder if needed (If a pilot project is implemented, the initial cap can be less than the projected load growth.) The total cap should be updated downward to account for projects entering the queue and upwards for projects exiting it. The total cap should be updated once a year by accounting for subsequent years' demand growth

14. What limitations exist for integrating renewable resources onto the grid? Should these limits affect the PBFIT design or caps, or are they just another cost that developers must consider?

Response: While Tawhiri believes there are loads, system constraints and prior commitments that will have to be considered in the integration of renewable resources onto the grid and that such consideration are bound to PBFiTs design and caps. Tawhiri as a private company that provides power to HELCO does not have the information needed to respond adequately to this questions. Perhaps, Tawhiri will be in a better position to respond once it has an opportunity to review and analyze the many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule. Meanwhile, Tawhiri urges the Commission to make certain that the FiT debates are conducted in full transparency and without compromising the due process requirements for such important public policy proceedings. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

Specific Tariff Design Issues

15. How long should the Commission set for the PBFiT's term of obligation? Should it be different for different technologies? Is there a common basis (e.g., a conservative estimate of expected useful life) for establishing the term of obligation? On what basis should a utility pay for electricity after the term expires?

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion as whether each of the technologies listed as a renewable resource in the RPS legislation require a PBFiT. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

Tawhiri recommends that the Commission start with a pilot PBFiT program at the distribution level of each HECO operating company so that the Commission can acquire some experience in how to deal with the issues posed in this question.

16. Should PBFiTs require the utility to purchase the project's gross or net output at the PBFIT price?

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion as whether PBFiT should require the utility to purchase the project's gross or net output at the PBFiT price. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

Tawhiri recommends that the Commission start with a pilot PBFiT program at the distribution level of each HECO operating company so that the Commission can some

experience in how to deal with the issues posed in this question.

17. How should the utility determine the price paid for renewable energy not covered by a PBFiT (e.g., purchases above the cap or beyond the term of obligation)?

Response: According to PURPA it should be paid avoided cost.

18. What inflation adjustment, if any, should the PBFiT include, using what base and indexes?

Response: 2-3%. No base or index should be used because it creates uncertainty in the market.

19. What milestones (e.g., commercial operations) should the Commission set to determine eligibility for the PBFiT? Are Hawaii's RPS statute requirements an eligibility requirement? Should utility affiliates be eligible to receive the PBFiT price?

Response: Non-utility resources interconnected at the transmission level already play a pivotal role in making Hawaii the leading state in terms of renewables' share of electric power generation. Moreover, the Big Island, where Tawhiri is a leading producer of renewable energy, has by far the greatest renewable penetration in Hawaii. The majority of these resources supply power at **utility-determined** avoided utility costs; a form of FiTs that ensures consumers would not pay more than they would have paid their power company for the energy purchased on their behalf. That is to say renewable energy is being procured without the need to pay premiums. In contrast, the amount of renewable capacity interconnected at the distribution level is comparatively severely lagging. The opportunities for PBFiT are at the low end of the voltage spectrum. Developing and implementing PBFiTs requires a complex process and one that necessitates adequate time and resources. The prudent strategy is to narrow the scope of the investigation and associated Commission efforts to distribution applications.

Because of the unavoidability of conflicts of interest, utility affiliates should not be eligible to receive the PBFiT price.

20. Please comment on the need for stepped tariffs based upon location, size, fuel mix, and output.

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion on the need for stepped tariffs based upon location, size, fuel mix, and output. Thus, Tawhiri

reserves its right to address this question at a later date in this proceeding.

21. Under what circumstances should the PBFiT price be time-differentiated?

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion on whether the PBFiT price should be time-differentiated. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

22. How highly leveraged (i.e., bearing how much debt compared to equity) are these projects?

Response: Tawhiri is unable to answer this question at this time because it does not know how the question is defining "these projects".

23. Does a PBFiT create a financing environment through a reliable revenue stream from the ratepayer to the investor, allowing for greater leverage and thus lower cost financing than would be available under an avoided-cost tariff?

Response: Generally yes, but would depend on the rates authorized under the PBFiT.

24. If the PBFiTs are to encourage early development of resources, does the reasonable return need to be set higher for these early tariffs? Are there reasons other than encouraging early development to set the profit margin higher, such as risks associated with early implementation? Is this true across all project classes?

Response: In general, higher returns may have to be used to overcome initial barriers to entry. However, since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion on the inquiries posed in this question. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

25. Does the current "credit crunch" affect the financing costs, including expected profits by equity investors?

Response: One would say, yes. However, since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri has yet to form an opinion on the inquiries posed in this question. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

Related Issues

26. Please provide a quantitative analysis demonstrating the public interest aspect of the concept that 10% of the utility's purchases under the feed-in tariff PPA should be included in the utility's rate base through 2015. In addition to the overall prudence of the rate base recommendation, please address the 10% and 2015 date included in the Agreement.

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri is currently not in a position to respond to this question. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

27. What is the appropriate rate of return for the PBFiT portion of rate base that consists of a mandated purchase with guaranteed recovery and no capital outlay?

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri is currently not in a position to respond to this question. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

28. Are there preferable utility incentives, other than putting PBFiT revenues into the rate base, to encourage the development of renewable resources?

Response: Since this investigative docket has only recently begun and there are many documents and information yet to be submitted in this proceeding in accordance with the Commission ordered procedural schedule, Tawhiri is currently not in a position to respond to this question. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

29. Should the PBFiT require developers to assign credits (e.g., investment tax credits, renewable energy credits, and carbon credits) earned from a project to the purchasing utility as a condition of receiving payments under the PBFiT? If not, how should these credits be included in the estimation of a typical project's cost?

Response: No, if the utility is interested in the credits they should purchase them from the developer under a separate contract. Tawhiri is currently unable to answer the second part of the question because there is currently no REC market in Hawaii. Thus, Tawhiri reserves its right to address this question at a later date in this proceeding.

CERTIFICATE OF SERVICE

The foregoing Comments to Scoping Paper was served on the date of filing by mail, postage prepaid, hand delivery, or electronically transmitted to each such Party.

CATHERINE P. AWAKUNI EXECUTIVE DIRECTOR DEPT OF COMMERCE & CONSUMER AFFAIRS DIVISION OF CONSUMER ADVOCACY P.O. Box 541 Honolulu, Hawaii 96809	2 Copies Via Hand Delivery
DEAN MATSUURA MANAGER REGULATORY AFFAIRS HAWAIIAN ELECTRIC COMPANY, INC. P.O. Box 2750 Honolulu, HI 96840-0001	Electronically transmitted
JAY IGNACIO PRESIDENT HAWAII ELECTRIC LIGHT COMPANY, INC. P. O. Box 1027 Hilo, HI 96721-1027	Electronically transmitted
EDWARD L. REINHARDT PRESIDENT MAUI ELECTRIC COMPANY, LTD. P. O. Box 398 Kahului, HI 96732	Electronically transmitted
THOMAS W. WILLIAMS, JR., ESQ. PETER Y. KIKUTA, ESQ. DAMON L. SCHMIDT, ESQ. GOODSILL, ANDERSON QUINN & STIFEL Alii Place, Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813	Electronically transmitted
ROD S. AOKI, ESQ. ALCANTAR & KAHL LLP 120 Montgomery Street Suite 2200	Electronically transmitted

San Francisco, CA 94104

MARK J. BENNETT, ESQ.
DEBORAH DAY EMERSON, ESQ.
GREGG J. KINKLEY, ESQ.
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, Hawaii 96813
Counsel for DBEDT

Electronically transmitted

CARRIE K.S. OKINAGA, ESQ.
GORDON D. NELSON, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 110
Honolulu, Hawaii 96813

Electronically transmitted

LINCOLN S.T. ASHIDA, ESQ.
WILLIAM V. BRILHANTE JR., ESQ.
MICHAEL J. UDOVIC, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Electronically transmitted

MR. HENRY Q CURTIS
MS. KAT BRADY
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, Hawaii 96817

Electronically transmitted

MR. CARL FREEDMAN
HAIKU DESIGN & ANALYSIS
4234 Hana Highway
Haiku, Hawaii 96708

Electronically transmitted

MR. WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, Hawaii 96744

Electronically transmitted

DOUGLAS A. CODIGA, ESQ.
SCHLACK ITO LOCKWOOD PIPER & ELKIND
TOPA FINANCIAL CENTER
745 Fort Street, Suite 1500

Electronically transmitted

Honolulu, Hawaii 96813
Counsel for BLUE PLANET FOUNDATION

MR. MARK DUDA
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, Hawaii 96837

Electronically transmitted

RILEY SAITO
THE SOLAR ALLIANCE
73-1294 Awakea Street
Kailua-Kona, Hawaii 96740

Electronically transmitted

JOEL K. MATSUNAGA
HAWAII BIOENERGY, LLC
737 Bishop Street, Suite 1860
Pacific Guardian Center, Mauka Tower
Honolulu, Hawaii 96813

Electronically transmitted

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813
Counsel for HAWAII BIOENERGY, LLC
Counsel for MAUI LAND & PINEAPPLE COMPANY, INC.

Electronically transmitted

MR. THEODORE E. ROBERTS
SEMPRA GENERATION
101 Ash Street, HQ 12
San Diego, California 92101

Electronically transmitted

MR. CLIFFORD SMITH
MAUI LAND & PINEAPPLE COMPANY, INC.
P.O. Box 187
Kahului, Hawaii 96733

Electronically transmitted

MR. ERIK KVAM
CHIEF EXECUTIVE OFFICER
ZERO EMISSIONS LEASING LLC
2800 Woodlawn Drive, Suite 131
Honolulu, Hawaii 96822

Electronically transmitted

JOHN N. REI
SOPOGY INC.
2660 Waiwai Loop
Honolulu, Hawaii 96819

Electronically transmitted

GERALD A. SUMIDA, ESQ.
TIM LUI-KWAN, ESQ.
NATHAN C. NELSON, ESQ.
CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Counsel for HAWAII HOLDINGS, LLC,
dba FIRST WIND HAWAII

Electronically transmitted

MR. CHRIS MENTZEL
CHIEF EXECUTIVE OFFICER
CLEAN ENERGY MAUI LLC
619 Kupulau Drive
Kihei, Hawaii 96753

Electronically transmitted

SANDRA-ANN Y.H. WONG, ESQ.
ATTORNEY AT LAW, A LAW CORPORATION
1050 Bishop Street, #514
Honolulu, HI 96813
Counsel for ALEXANDER & BALDWIN, INC.,
Through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY

Electronically transmitted

DATED: Honolulu, Hawaii, January 26, 2009.

HARLAN Y. KIMURA

Attorney for Movant
Tawhiri Power LLC