Hawaiian Electric Company, Inc. • PO Box 2750 • Honolulu, HI 96840-0001

December 7, 2009

Darcy L. Endo- Omoto
Vice President
Government & Community Affairs

FILED
2009 DEC -7 P 4: 11
PUBLIC UTILITIES COMMISSION

The Honorable Chairman and Members of the
Hawaii Public Utilities Commission
465 South King Street, First Floor
Kekuanaoa Building
Honolulu, Hawaii 96813

Dear Commissioners:

Subject: Docket No. 2008-0273 – Feed-in Tariff ("FIT") Proceeding
Independent Observer Contract

Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited (collectively the "Hawaiian Electric Companies"), respectfully submit for Commission approval the Hawaiian Electric-ACCION GROUP, INC.-Harry T. Judd contract for the Independent Observer position[1] for the Feed-in Tariff proceeding. (See Attached.)

By letter dated November 13, 2009, the Hawaiian Electric Companies submitted for Commission approval its list of qualified candidates for the Independent Observer position. The five candidates identified to be qualified for the Independent Observer position include: (1) Carl Freedman, Principal, Haiku Design & Analysis, (2) Matthew I. Kahal, Economic Consultant, Exeter Associates, Inc., (3) Barry J. Sheingold, President, New Energy Opportunities, Inc., (4) Alan Kessler, Managing Director, Accion Group, Inc., and (5) Harry T. Judd, Managing Director, Accion Group, Inc. By Order Approving List of Independent Observer Candidates, filed November 25, 2009 in the subject proceeding, the Commission approved the list of qualified candidates for the Independent Observer Position.

The contract for the Independent Observer position is filed pursuant to the Order Setting Schedule filed October 29, 2009 ("Order"), in the above subject proceeding. The Order provides that the contract for Independent Observer be filed a month after Commission approval of the Independent Observer List (i.e. December 25, 2009). As discussed at the FIT Technical Sessions held in November, it is the desire of the Hawaiian Electric Companies to expedite the approval and retention of the Independent Observer so that the Independent

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[1] See, page 93 of the Decision and Order filed September 25, 2009 in the above subject proceeding ("Decision and Order"), which states that "An independent third party... will assist in developing the queuing process, and inform parties of the queue length and their status in it. The independent third party will also monitor how the utility administers the queue."

Observer may begin work on the development of a queuing process as discussed in the Commission's Decision and Order. Accordingly, the Hawaiian Electric Companies respectfully submit the attached Contract for comments and the Commission's approval.

Sincerely,

Darcy L. Endo-Omoto
Hawaiian Electric Company, Inc.
Hawaii Electric Light Company, Inc.
Maui Electric Company, Limited

c: Service List

SERVICE LIST
(Docket No. 2008-0273)

DEAN NISHINA EXECUTIVE DIRECTOR DEPT OF COMMERCE & CONSUMER AFFAIRS DIVISION OF CONSUMER ADVOCACY P.O. Box 541 Honolulu, Hawaii 96809	2 Copies Via Hand Delivery
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	1 Copy Electronically Transmitted
THEODORE PECK DEPARTMENT OF BUSINESS ECONOMIC DEVELOPMENT, AND TOURISM State Office Tower 235 South Beretania Street, Room 501 Honolulu, Hawaii 96813	1 Copy Electronically Transmitted
ESTRELLA SEESE DEPARTMENT OF BUSINESS ECONOMIC DEVELOPMENT, AND TOURISM State Office Tower 235 South Beretania Street, Room 501 Honolulu, Hawaii 96813	1 Copy 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	1 Copy 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	1 Copy Electronically Transmitted

SERVICE LIST
(Docket No. 2008-0273)

MR. HENRY Q CURTIS MS. KAT BRADY LIFE OF THE LAND 76 North King Street, Suite 203 Honolulu, Hawaii 96817	1 Copy Electronically Transmitted
MR. CARL FREEDMAN HAIKU DESIGN & ANALYSIS 4234 Hana Highway Haiku, Hawaii 96708	1 Copy Electronically Transmitted
MR. WARREN S. BOLLMEIER II PRESIDENT HAWAII RENEWABLE ENERGY ALLIANCE 46-040 Konane Place, #3816 Kaneohe, Hawaii 96744	1 Copy Electronically Transmitted
DOUGLAS A. CODIGA, ESQ. SCHLACK ITO LOCKWOOD PIPER & ELKIND TOPA FINANCIAL CENTER 745 Fort Street, Suite 1500 Honolulu, Hawaii 96813 Counsel for BLUE PLANET FOUNDATION	1 Copy Electronically Transmitted
MR. MARK DUDA PRESIDENT HAWAII SOLAR ENERGY ASSOCIATION P.O. Box 37070 Honolulu, Hawaii 96837	1 Copy Electronically Transmitted
MR. RILEY SAITO THE SOLAR ALLIANCE 73-1294 Awakea Street Kailua-Kona, Hawaii 96740	1 Copy Electronically Transmitted
JOEL K. MATSUNAGA HAWAII BIOENERGY, LLC 737 Bishop Street, Suite 1860 Pacific Guardian Center, Mauka Tower Honolulu, Hawaii 96813	1 Copy Electronically Transmitted

SERVICE LIST
(Docket No. 2008-0273)

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.

1 Copy
Electronically Transmitted

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

1 Copy
Electronically Transmitted

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

1 Copy
Electronically Transmitted

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

1 Copy
Electronically Transmitted

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

1 Copy
Electronically Transmitted

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

1 Copy
Electronically Transmitted

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

1 Copy
Electronically Transmitted

SERVICE LIST
(Docket No. 2008-0273)

MR. HARLAN Y. KIMURA, ESQ.
CENTRAL PACIFIC PLAZA
220 South King Street, Suite 1660
Honolulu, Hawaii 96813
Counsel for TAWHIRI POWER LLC

1 Copy
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

1 Copy
Electronically Transmitted

CAROLINE BELSOM
VICE PRESIDENT/GENERAL COUNSEL
Kapalua Land Company, Ltd.,
A wholly owned subsidiary of
MAUI LAND & PINEAPPLE COMPANY, INC.
c/o 200 Village Road
Lahaina, Hawaii 96761

1 Copy
Electronically Transmitted

WORK AUTHORIZATION NO. WA-PQA-09-010
WORK ORDER NO. AD002505

FEED-IN TARIFF THIRD PARTY SERVICES AGREEMENT

This FEED-IN TARIFF INDEPENDENT THIRD PARTY SERVICES AGREEMENT (hereinafter "Agreement" or "Contract") is made on December 1, 2009, by and between HAWAIIAN ELECTRIC COMPANY, INC. (hereinafter "Company"), a Hawaii corporation, whose principal place of business and address is 900 Richards Street, Honolulu, Hawaii 96813 and whose mailing address is P. O. Box 2750, Honolulu, Hawaii 96840-0001 and ACCION GROUP, INC. – Harold T. Judd (hereinafter "Consultant"), a New Hampshire corporation whose principal place of business and mailing address is 244 North Main Street, Concord, NH 03301, doing business in Hawaii.

W I T N E S S E T H:

WHEREAS, Company is in the business of generation, transmission, and distribution of electrical power on the Island of Oahu, State of Hawaii; and

WHEREAS, Company requires certain professional services to be accomplished in connection with feed-in tariff relating to its resource acquisition; and

WHEREAS, Consultant is in the business of performing the professional services needed by Company; and

WHEREAS, Consultant represents that it and its subcontractors are equipped and have the expertise necessary to perform the particular professional services required under this Agreement,

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, Company and Consultant hereby agree that Consultant will perform professional services work for Company under the following terms and conditions:

I. SCOPE OF WORK

1.1 Project Description - Consultant agrees to furnish all labor, tools, materials, equipment, meals, lodging, transportation, and supervision necessary to complete the following work in a professional and diligent manner and as more specifically described in Attachment A. Provide services as an independent third party for the development and monitoring of Queuing and Interconnection Procedures in accordance with the Hawaii Public Utilities Commission's (the "Commission") Feed-In Tariffs Decision & Order No. 2008-0273, dated September 25, 2009. Such services for the Project are hereinafter referred to as the "Work." Without limiting the foregoing, the Work shall include reporting to the Commission and carrying out such tasks as directed by the Commission, including the tasks described in the Decision & Order.

1.2 Term - The Term of this Contract shall be from the date of Commission Approval until the end of first FIT evaluation period, which is currently estimated to be in June 2012.

II. COMPENSATION

2.1 Time and Expenses – Consultant shall be entitled to compensation for Work performed and expenses incurred under this Contract on a time and expenses basis. The hourly rates and types of expenses which Consultant may invoice to Company under this Contract are stated in Attachment B. Except as set forth in Attachment B, no other rates or expenses may be charged by Consultant unless agreed to by the parties in an amendment hereto. It is expected that the total amount invoiced pursuant to this Contract will not exceed One-Hundred Sixty-Five Thousand Dollars ($165,000), the Contract Cap, which consists of the following sub-categories of the Work: FIT Queuing Development and Monitoring = $120,000 and Website Services = $45,000. In the event that Consultant projects that the total cost of services to be provided under this Contract will be in excess of the Contract Cap, or the cost of any phase of the Work described above will exceed the cost for such phase, then Consultant shall prepare in writing an explanation of the services provided to date and the associated cost, the expected services to be provided in the future under the Contract and the estimated cost thereof, and a request for an increase in the budget for Work in excess of the Contract Cap if anticipated to be necessary. Company shall approve or disapprove the request in its reasonable discretion, provided that any approval to increase the Contract Cap shall be subject to Commission approval.

2.2 Invoicing – Within 15 days after completion of each month's Work, Consultant will submit its invoice for all Work rendered and all allowable expenditures incurred during that month. Such invoice shall be in a form approved by Company and shall at a minimum show the total hours of Work for that month by each Consultant employee or subcontractor, the hourly rate for each employee or subcontractor, and an itemized list of all allowable expenditures made during the month. Upon request by Company, Consultant shall provide supporting documentation, including but not limited to invoices and receipts, as evidence of such expenditures. The invoice shall reference the Company's Designated Representative, the Company purchase order or Service Contract number, if any, and any additional information required as part of the Scope of Work hereunder. All invoices should be addressed as follows:

Nathan Yuen
Project Manager, Competitive Bidding
Hawaiian Electric Company, Inc.
P. O. Box 2750
Honolulu, Hawaii 96840-0001

The ORIGINAL invoice with ALL REQUIRED SUPPORTING DOCUMENTATION must be sent to the Company's Designated Representative as indicated above. Failure to follow this procedure may cause a delay in payment.

2.3 Payments - Payment of a properly submitted monthly invoice shall be made within thirty (30) days after receipt by Company. Contractor may submit the monthly invoice by email.

2.4 Withholding of Payments; Set-off - Company may withhold from any payment: (1) any portion of the invoiced amount that is incorrectly invoiced, or (2) any portion of the invoiced amount that is disputed in good faith by Company; provided that the Company states the basis in writing for such withholding and the Commission consents to any such withholding. Company shall promptly pay the undisputed amount of the invoice or the amount or the amount of the invoice that is correctly invoiced.

III. STATUS OF THE PARTIES

3.1 Independent Contractor - Consultant will act solely as an independent contractor of Company, and not as Company's agent or servant for any purpose. All employees of Consultant will work under the supervision of Consultant and not act as Company's agents or servants for any purpose.

3.2 Subletting or Assigning Contract - Consultant shall not assign any portion of the Contract or any rights or obligations under this Contract without the prior written consent of Company, and of the Commission, if required. Company acknowledges that Consultant has the right to engage the subcontractors identified in Attachment A, if any, to assist Company in the performance of the Work, and Company approves Consultant's engagement of such subcontractors. In addition, Consultant may retain additional subcontractors that satisfy the requirements set forth in Attachment A with the written consent of Company.

IV. POINTS OF CONTACT

4.1 Company's Designated Representative - As used in this Contract, "Company's Designated Representative" shall be Nathan Yuen, HECO's Project Manager. Company's Designated Representative shall be the point of contact for and have the authority to speak on behalf of Company concerning all matters related to this Contract, except that he shall not have the authority to amend the Contract.

4.2 Consultant's Designated Representative - As used in this Contract, "Consultant's Designated Representative" shall be Harold Judd. During the performance of the Work hereunder, he can be reached at the Consultant offices in 244 North Main Street, Concord, NH 03301. He shall be the point of contact for and have the authority to speak on behalf of Consultant concerning all matters related to this Contract.

V. PERFORMANCE STANDARDS AND WARRANTY

5.1 Performance Standards - In selecting employees to undertake the Work under this Contract, Consultant shall select only those persons who are qualified by the necessary education, training and experience to provide diligent and professional performance of the particular Work for which each such employee is responsible. Consultant shall perform all Work in a professional and diligent manner. Consultant's personnel shall exercise that degree of skill and care consistent with the accepted professional standards in Consultant's field, and shall indemnify and hold Company harmless from any loss, including but not limited to reasonable attorneys' fees and costs, incurred by Company as a result of the negligent professional acts, errors or omissions of Consultant or any of Consultant's personnel; provided, that neither Consultant nor Company shall be shall be liable to the other for any special indirect, consequential, incidental, punitive or exemplary damages.

5.2 Warranty - Correction of Defective or Substandard Work - Consultant acknowledges its responsibility for insuring that the procedures used in the performance of this Contract are sufficient to satisfactorily accomplish the Work. Consultant warrants that it shall promptly correct without expense to Company all Work which is not completed to the reasonable satisfaction of Company or Commission or which does not meet the performance standards established herein. Consultant shall make such corrections of defective work upon Company's written notice thereof anytime during the term of this Contract and up to 180 days after the Commission's final Decision and Order on Company's application for approval of the contract resulting from the Project ("Warranty Period").

5.3 Right to Reject - Due to the critical nature of Company's operations, Consultant agrees that if Company, with the consent of the Commission, and after reasonable consultation with Consultant, determines that any Consultant employee or subcontractor provided under this Contract shall be unsuitable for the performance of the Work, or that the continued presence of such employee or subcontractor on Company property is not consistent with the best interests of Company, then in such an instance Company may request that Consultant remove such employee from the Work and Consultant shall forthwith comply with this request. Consultant will then promptly replace such employee or subcontractor with an employee or subcontractor who fully meets the standards under this Contract and will do so at no cost to Company.

VI. INSURANCE AND INDEMNITY

6.1 Workers' Compensation - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of this Contract, Workers' Compensation and other similar insurance required by state or federal laws. In the event that Consultant fails to maintain such insurance as required by law, Consultant acknowledges and agrees that it will not seek or be entitled to any coverage under Owner's insurance.

6.2 Commercial General Liability Insurance - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of this Contract, Commercial General Liability insurance with a bodily

injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS ($1,000,000) for any occurrence.

6.3 Automobile Liability Insurance - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full effect at all times during the term of this Contract, Automobile Liability insurance with a bodily injury and property damage combined single limit of at least ONE MILLION DOLLARS ($1,000,000) ($$1,000,000) per accident.

6.4 Waiver of Subrogation - Consultant and anyone acting under its direction will cause its insurers (except for Workers' Compensation insurance) to waive all rights of subrogation which Consultant or its insurers may have against Company, Company's agents, or Company's employees.

6.5 Company as Additional Insured - Insurance policies (except Workers' Compensation and Automobile Liability) providing the insurance coverage required in this Article will name Company, Company's agents, and/or Company's employees as an additional insured, as appropriate. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Company will be excess only and not contribute with this insurance.

6.6 Certificates of Insurance - Within ten (10) days of the date of this Contract, Consultant shall file with the Company's Designated Representative certificates of insurance certifying that each of the foregoing insurance coverages is in force, and further providing that the Company will be given thirty (30) days' written notice of any material change in, cancellation of, or intent not to renew any of the policies. Receipt of any certificate showing less coverage than requested is not a waiver of the Consultant's obligation to fulfill the requirements.

6.7 Indemnity - Consultant and anyone acting under its direction or control or on its behalf shall indemnify, defend and hold harmless Company from and against all losses, damages, claims and actions, and all expenses incidental to such losses, damages, claims or actions, including but not limited to reasonable attorneys' fees and costs, based upon or arising out of damage to property or injuries to persons, or other tortious acts to the extent negligently or tortiously caused or contributed to by Consultant or anyone acting under its direction or control or in its behalf in the course of its performance under this Contract; provided Consultant's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability to the extent based upon the negligence or tortuous conduct of Company.

VII. CONFIDENTIALITY AND NON-DISCLOSURE

7.1 Confidentiality and Non-Disclosure. During the course of the Work, Company may disclose to Consultant (a) confidential Company business or other proprietary information, and (b) confidential proposals submitted to Company and information relating thereto from bidders (collectively, "Confidential Information"). Subject to Consultant's obligations under the Framework, which obligations shall prevail over any actual or perceived limitations contained in this section, the following shall apply to Consultant's receipt of Confidential Information.

Consultant will hold in confidence and, without Company's consent, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information except as permitted herein. Consultant may only disclose the Confidential Information to its officers, directors, employees, professional advisors and independent contractors and consultants with a need to know the information for the implementation or exercise of rights and/or performance of obligations under or arising from this Agreement, provided that such professional advisors and independent contractors and consultants are bound by written confidentiality agreements with terms and conditions that are no less restrictive than those contained in this section. Without limiting the foregoing, Consultant agrees that it will exercise at least the same standard of care in protecting the confidentiality of the Confidential Information as it does with its own confidential information of a similar nature, but in any event, no less than reasonable care.

Confidential Information for purposes of this Agreement shall not include information if and only to the extent that the information: (i) is or becomes a part of the public domain through no act or omission of the Consultant; (ii) was in the Consultant's lawful possession prior to the disclosure and had not been obtained by the Consultant either directly or indirectly from Company; or (iii) is lawfully disclosed to Consultant by a third party without restriction on disclosure. Confidential Information may also be disclosed by Consultant pursuant to a requirement the Commission or other governmental agency, regulatory body or by operation of law, provided that Consultant shall disclose only that part of the Confidential Information that it is required to disclose and, with respect to subpoenas or other legal process, shall notify Company prior to such disclosure in a timely fashion in order to permit Company to lawfully attempt to prevent or restrict such disclosure should it so elect, and shall take all other reasonable and lawful measures to ensure the continued confidential treatment of the same by the party to which the Confidential Information is disclosed.

Notwithstanding the foregoing, this section shall not prohibit Consultant from disclosing Confidential Information to the Commission (or others as directed by the Commission) to the extent necessary to comply with Consultant's obligations under the Framework and the Scope of Work hereunder.

VIII. TERMINATION FOR CAUSE

8.1 Conditions Allowing Termination – The Commission's approval is necessary before Company may terminate this Contract. Further, Consultant acknowledges and agrees that the Commission may terminate this Contract, with or without Company's consent, on behalf of the Company if the Commission deems it to be in the public interest in the furtherance of the objectives of the Framework to do so. In addition, The Company (or the Commission) may terminate this Contract for cause if:

(1) Consultant fails or is unable to perform its obligations under this Contract;

(2) Consultant is in material breach of its obligations under this Contract;

(3) Consultant makes a general assignment for the benefit of its creditors;

(4) Consultant has a receiver appointed because of insolvency; or

(5) Consultant files bankruptcy or has a petition for involuntary bankruptcy filed against it.

8.2 Notice Required Before Termination - Before seeking to terminate this Contract for cause, Company shall give written notice to Consultant of the existence of grounds ("default") allowing termination for cause under Section 8.1 herein and of Company's intention to seek termination if the default is not cured to the reasonable satisfaction of Company within fifteen (15) days of such notice or such longer period of time as shall be stated in the notice. Consultant shall have the right to cure the default during the stated time period.

8.3 Company's Rights Upon Termination - If Consultant fails to cure the default within fifteen (15) days or such longer time as has been specified, Company may terminate this Agreement with the consent of the Commission and secure such substitute services as necessary and appropriate to complete the Work. In the event Company acquires substitute services under this provision, Consultant agrees to pay Company upon demand the difference between what the substitute services actually costs Company and what Consultant would have been paid had it completed the Work itself, provided that Company shall take all reasonable efforts to mitigate any damages resulting from the actions of or termination of Consultant. This provision shall survive termination of this Agreement for a period of two years.

IX. TERMINATION FOR CONVENIENCE

9.1 Company's Rights – Notwithstanding Article VIII above, Company shall have the right to terminate this Contract for convenience at any time, with the consent of the Commission, by giving written notice of such to Consultant. Upon receiving notice of termination, Consultant shall discontinue the Work on the date specified in the notice.

9.2 Termination Prior to Commencement of Work - If this Contract is terminated prior to Consultant's having commenced any Work or preparation for Work, no payment shall be made to Consultant.

9.3 Termination After Commencement of Work - If this Contract is terminated for Company's convenience after Consultant has commenced any Work, Consultant will be compensated for costs properly incurred and for labor at the rates specified in the Contract for Work actually performed prior to the notice of termination and for any Work performed thereafter if necessary to finish a portion or portions of Work in progress at the time of termination, to the extent approved by Company.

9.4 Consultant's Duty to Mitigate - Consultant agrees that it has an affirmative duty to mitigate all costs upon notice of termination of this Contract for convenience of Company.

X. FORCE MAJEURE

10.1 Excuse of Performance - Notwithstanding anything in this Contract to the contrary, neither party shall be liable nor responsible for failure to carry out any of its obligations under this Contract caused by Force Majeure. A party rendered unable to fulfill any obligation under this Contract by reason of Force Majeure shall make reasonable efforts to remove such inability in the shortest possible time, and the other party shall be excused from performance of its obligations until the party relying on Force Majeure shall again be in full compliance with its obligations under this Contract.

10.2 Definition - The term "Force Majeure" as used herein shall mean any cause beyond the control of the party affected, and which by reasonable efforts the party affected is unable to overcome, including without limitation the following: acts of God; fire, flood, landslide, lightning, earthquake, hurricane, tornado, storm, freeze, volcanic eruption or drought; blight, famine, epidemic or quarantine; act or failure to act of the other party; theft; casualty; war; invasion; civil disturbance; explosion; acts of public enemies; or sabotage.

XI. LAWS, REGULATIONS AND PUBLIC ORDINANCES

11.1 Compliance - Consultant shall comply with applicable federal, state, and local statutes, regulations and public ordinances of any nature governing the Work, including without limitation, those statutes specifically referred to in this Article. Consultant shall indemnify and defend Company from any liability, fines, damages, costs, or expenses arising from Consultant's failure to comply with this Article.

11.2 Taxes - Consultant assumes exclusive liability for all contributions, taxes or payments required to be made because of persons hired, employed or paid by Consultant by the federal and state Unemployment Compensation Act, Social Security Acts and all amendments, and by all other current or future acts, federal or state, requiring payment by the Consultant on account of the person hired, employed, or paid by Consultant for Work performed under this Contract. Sales, use and excise taxes applicable to the value or use of any property incorporated, furnished, or otherwise supplied by Consultant shall be stated separately from the price or rates specified in Article II (COMPENSATION), and shall not be included in any computation of profit allowed by this Contract. Consultant assumes exclusive liability for all such taxes charged or chargeable upon any such goods or materials supplied by Consultant pursuant to this Contract.

11.3 Safety and Health Regulations - Consultant shall comply with all applicable federal, state and local laws and regulations pertaining to health, safety, sanitary facilities, and waste disposal. Consultant shall meet all applicable requirements of the Occupational Safety and Health Act of 1970 (OSHA) including all applicable amendments. Consultant shall also comply with any applicable standards, rules, regulations and orders promulgated under OSHA and particularly with the agreement for State development and enforcement of Occupational Health and Safety Standards as authorized by Section 18 of the Act to the extent applicable.

11.4 Equal Employment Opportunity - (Applicable to all contracts of $10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5.) Consultant is aware of and is

fully informed of Consultant responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part), if applicable, and shall be bound by and agrees to the provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference, to the extent applicable.

11.5 Employment of Disabled Veterans and Veterans of the Vietnam Era - (Applicable to all contracts of $10,000 or more in the whole or aggregate. 41 CFR 60-250.4 and 41 CFR 60-741.5.) Consultant agrees that it is and will remain in compliance with the applicable rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, The Affirmative Action Clause set forth in 41 CFR 60-250.4, the Rehabilitation Act of 1973 and the Equal Opportunity Clause set forth in 41 CFR 60-741.5, which clauses are incorporated by reference herein.

11.6 Notice of Employee Rights Concerning Payment of Union Dues or Fees - (Applicable to all contracts exceeding $100,000) Consultant agrees that it shall comply with Executive Order 13201 and 29 CFR Part 470 regarding notice of employee rights concerning payment of union dues or fees, which are incorporated by reference herein, if applicable.

XII. MISCELLANEOUS

12.1 Patents and Copyrights - Consultant agrees that in performing Work under this Contract, it will not use any process, program, design, device, or material which infringes on any United States patent or copyright or any trade secret agreement. Consultant agrees to indemnify, defend and hold harmless Company from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against Company for patent, copyright or trade secret infringement arising out of Consultant's Work. Company shall promptly notify Consultant of any such suit or proceeding and shall assist Consultant in defending the action by providing any necessary information.

12.2 Security and Company Rules - When on Company premises or carrying out Consultant's duties for Company, Consultant personnel shall comply with all applicable provisions of Company's Corporate Code of Conduct, Competitive Bidding Code of Conduct, Company's security regulations, information resource policies and all other applicable Company policies and practices that Company personnel and consultants are now or during the Work are asked to follow; provided, that Consultant has been provided actual notice of such practices and procedures and as long as compliance is not inconsistent with Consultant's Obligations under the Framework. Consultant shall advise its employees of these practices and procedures and secure their consent to abide by these procedures. Unless otherwise agreed to by the parties, Consultant's personnel shall observe the working hours of Company while working on Company's premises. Consultant agrees to cooperate fully and to provide any assistance necessary to Company in investigation of any security breaches which may involve Consultant or Consultant's employees or subcontractors.

12.3 Amendments - This Contract may be amended or supplemented by and only by written instrument duly executed by each of the parties.

12.4 Severability of Provisions - In the event a court or other tribunal of competent jurisdiction at any time holds that any provision of this Contract is invalid, the remainder of this Contract shall not be affected thereby and shall continue in full force and effect .

12.5 Entire Contract - This Contract shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Contract in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. Neither party shall claim at any time that it entered into this Contract in whole or in part based on any representation not stated in this Contract.

12.6 Applicable Law/Forum - This Contract is made under and shall be governed by and construed in accordance with the laws of the State of Hawaii. Each party agrees and consents that any dispute arising out of this Contract, however defined, shall be brought in the State of Hawaii in a court of competent jurisdiction, provided, however, that either party, at its option may elect to submit any such dispute to binding arbitration pursuant to the commercial arbitration rules of the American Arbitration Association then in effect.

12.7 No Waiver - The failure at any time of either party to enforce any of the provisions of this Contract, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way construed to affect the validity of this Contract or any part hereof, or the right of any party thereafter to enforce each and every such provision.

12.8 Access to Records - Upon request, Consultant shall make available for inspection and audit by Company in Honolulu, Hawaii any and all records and/or documents relating to Work performed under this Contract during the performance of the Work and for a period of up to two (2) years from the completion of all Work under this Contract.

12.9 Regulatory Approvals - This Contract shall be contingent upon any and all required governmental and regulatory approvals, including those of the Commission.

12.10 Gender and Number - The terms "Company" and "Consultant," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine and neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

12.11 Attorneys' Fees and Costs - If there is a dispute between the parties and either party institutes a lawsuit, arbitration, mediation, or other proceeding to enforce, declare, or

interpret the terms of this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

12.12 Survival of Obligations – All defense, hold harmless, indemnity and confidentiality obligations hereunder shall survive termination of this Contract.

XIII. COUNTERPARTS CLAUSE

The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by appropriate representatives of each as of the date indicated.

HAWAIIAN ELECTRIC COMPANY, INC.
("Company")

By _____

Its Executive Vice President

Date: December 4, 2009

ACCION GROUP, INC.
("Consultant")

By _____

Its President

Date December 4, 2009

Attachment A

Scope of Work

Provide independent observer services consistent with Decision & Order dated September 25, 2009 in Docket No. 2008-0273. This will include, but not be limited to, providing assistance to the Company for the development of the queuing procedures for the Company's Feed-In Tariff programs for HECO, MECO, and HELCO. The independent observer will also monitor the Company's administration of the queue and inform parties of the queue length and their status in it.

In addition, the Company recognizes that there are a number of contracting mechanisms currently available to parties seeking as-available renewable energy contracts. These include competitive bidding, FIT, bi-lateral PPAs, NEM, Schedule Q, and standard interconnection agreements. To help manage these various contracting mechanisms, the independent observer will provide assistance to the Company with the development of queuing procedures that fairly and transparently govern power procurement and interconnection and avoid unfair advantages that can be gained be developers.

ATTACHMENT B

CONSULTANT'S PERSONNEL AND HOURLY RATES

Consultants	Hourly Rate
Harold T. Judd	$325
Alan Kessler	$325
Philip B. Layfield	$250
Kevin Carden	$175
Assistants	$85

Consultant shall have the right to supplement or replace the foregoing personnel with the written approval of Company and without an amendment to the Contract; provided, that such personnel have the requisite expertise and experience for the work to be performed and the hourly rates are reasonable and not in excess of the rates set forth above for comparable work.

Consultant shall be entitled to compensation for all reasonable, actual out-of-pocket expenses incurred in connection with the Work, including but not limited to reasonable airfare (coach class or equivalent), rental car and other transportation costs, lodging, parking and tolls while on business travel, meals while on business travel, telephone (except for telephone calls not specially billed), delivery charges, copying and printing by third parties, and other necessary expenses. Use of an automobile other than a rental automobile shall be reimbursed at the rate approved by the Internal Revenue Service.