BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, and NEXTERA ENERGY, INC. For Approval of the Proposed Change of Control and Related Matters.	))))))))))	DOCKET NO. 2015-0022

ORDER NO. 33795

DISMISSING APPLICATION WITHOUT PREJUDICE AND CLOSING DOCKET

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, and NEXTERA ENERGY, INC.	)	Docket No. 2015-0022
	)	Order No. 33795
For Approval of the Proposed Change of Control and Related Matters.	)	

DISMISSING APPLICATION WITHOUT PREJUDICE AND CLOSING DOCKET

I. INTRODUCTION

It would be difficult to overstate the importance of this proceeding, not only to the ratepayers of the Hawaiian Electric Companies (the "HECO Companies"),[1] but to the State of Hawaii ("State") as well. The challenges facing the electric utility industry in the State are both fundamental and profound. Both residential and commercial electric customers in increasing numbers have turned to solar panels to provide some or all of their electricity requirements. Electric utility system planning and operation has become increasingly complex and challenging as more rooftop solar, utility scale solar, wind, geothermal, and other

[1]The HECO Companies are the Hawaiian Electric Company, Inc. ("HECO"), the Maui Electric Company, Ltd. ("MECO"), and the Hawaii Electric Light Company, Inc. ("HELCO").

renewable energy sources have been developed. The current electric system (the "grid") must be updated and reconfigured so as to integrate these variable renewable energy sources. Moreover, the State has established an ambitious goal of achieving 100% renewable energy by 2045.

The commission has addressed and continues to address these issues in a variety of ongoing proceedings. For example, the commission has directed each of the HECO Companies to develop and implement a Power Supply Improvement Plan ("PSIP") in order to establish a reasonable power supply plan that can and will serve as a strategic basis for pending and future resource acquisition and system operation decisions.

In conjunction with the PSIP proceeding, the commission continues to investigate various issues concerning distributed energy resources ("DER"). Consideration and implementation of DER is essential given the extraordinary levels of distributed renewable energy in Hawaii. At the same time, the commission continues to investigate various types of demand response ("DR") programs, using tools to address peak load shifting, frequency control, and others, through which system operations can be augmented and replaced.

Given this backdrop, the question of whether or not to approve a change of control of the HECO Companies from Hawaiian Electric Industries, Inc. ("HEI"), to NextEra Energy, Inc.

("NextEra"), comes at a critical time. At the outset, the commission observes that the task at hand involves a review of the Application as filed by the HECO Companies and NextEra (collectively, "Applicants").[2] The commission must decide on the basis of the record in this docket whether the Application is "reasonable and in the public interest," and whether NextEra is "fit, willing, and able" to perform the services currently offered by the utility to be acquired.

It is not sufficient for the commission to determine that an application proposing a merger or change of control filed by NextEra, or any other company, meets the statutory standards based on general observations concerning that company's financial, managerial, or other capabilities. While those characteristics are, of course, basic requirements to be considered in any decision, they must be considered in context with what is actually contained in the totality of the Application and the evidentiary support for it. If the Application and supporting evidence are not sufficient to demonstrate that the Application is reasonable

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[2]"Application; Exhibits 1 Through 8; Verifications; and Certificate Of Service," filed January 29, 2015 ("Application"). Throughout this Order, the commission also refers to the "Change of Control" and the "Merger". The "Change of Control" generally refers to the proposal to change the corporate parent of the HECO Companies from HEI to NextEra. It is sometimes also referred to in this Order as the "Proposed Transaction." The "Merger" generally refers to the agreement between NextEra and HEI.

and in the public interest, and that an Applicant is fit, willing, and able to immediately step into the HECO Companies' shoes, the Application cannot be approved. The burden is squarely on Applicants to demonstrate that their Application meets these standards.

The commission observes that while a broad range of interests are represented in this proceeding, there is no global settlement among the parties for the commission to take into consideration in its deliberations. The commission further observes that none of the State agencies that have specific statutory interests in the proceeding support the Application as proposed. The Office of Planning of the State of Hawaii ("OSP") and the Department of Business, Economic Development and Tourism ("DBEDT") oppose the Application, and recommend rejection, although DBEDT discussed a number of conditions deemed essential to find the Application acceptable. The Consumer Advocate opposes the Application, but would recommend approval by the commission if the conditions proposed by the Consumer Advocate are accepted.

In citing the positions of these State agencies the commission does not mean to say that the interests of other Parties are not important. However, the three State agencies have statutorily-mandated public interests that they are duty bound to protect. The interests of the other Intervenors are no less important, but necessarily address the specialized interests that

each represents, as identified in their motions to intervene. Having said that, however, the commission greatly appreciates the contributions of these Intervenors to the evidentiary record in this proceeding.

The determination of whether the Application meets the appropriate legal standards is necessarily both complex and detailed. To ensure a complete record, the commission permitted a large number of parties to fully participate in this proceeding. As detailed in this Order, over the past eighteen months, the commission has examined thousands of pages of responses to information requests ("IRs") and prefiled testimony of all Parties, has conducted twenty-two days of televised, public, contested-case, evidentiary hearings, and has carefully reviewed the positions of the Parties as expressed in their briefs.

In addition, the commission made a significant effort to include input from the public. In this respect, the commission has received and reviewed a large number of public comments, both at the seven public listening sessions that were scheduled for the islands of Maui, Lanai, Molokai, Oahu, Hawaii, and Kauai, and in written form.

The HECO Companies are comprised of three small electric utilities facing challenges and limitations with technical, managerial, and financial resources that are sought to be acquired by NextEra, a large electric utility and renewable energy

development company, which has recognized capabilities and interests that potentially could align with the strategic interests of HECO's customers and Hawaii's clean energy goals.

Based on a review of the record, the commission concludes that the Application both satisfies in part and fails in part to meet the applicable standards of review. Specifically, the commission finds that while NextEra is fit, willing, and able to operate the HECO Companies and can potentially provide assistance with transformation of the HECO Companies, the proposed merger conditions, as filed and updated, do not provide sufficient benefits or adequately address legitimate concerns and risks directly related to the Proposed Transaction. Therefore, the commission concludes that Applicants (the HECO Companies and NextEra) have not demonstrated by a preponderance of the record evidence that their Application is reasonable and in the public interest.

The commission thus dismisses the Application without prejudice. In addition, the commission sets forth specific guidance concerning the elements and issues that should be included and addressed in any future application addressing a proposed merger, acquisition, or other change of corporate control involving the HECO Companies or other utilities in the State, attached hereto as Appendix A.

While a detailed analysis of the commission's reasoning appears below, the commission here summarizes a number of its conclusions with respect to five fundamental areas of concern: benefits, risks, clean energy commitments, local governance, and competition.

First, the commission concludes that the level of benefits provided directly to ratepayers through a combination of rate credits, investment funds, and rate case moratorium commitments, are both inadequate and uncertain. Despite the evidence submitted by Applicants to suggest sufficient benefits could be achieved and the ratepayer assurances provided by Applicants under certain circumstances, these issues were not adequately addressed.

For example, while Applicants describe the $60 million in short-term rate credits over four years as guaranteed, the record evidence does not support that conclusion. The record evidence demonstrates that the credits may be terminated for a number of reasons prior to the end of the four-year period, including for undefined "financial distress" issues. Applicants have not demonstrated by a preponderance of the evidence that ratepayers will receive all or a majority of the promised rate credits.

Similarly, while Applicants have claimed that there are hundreds of millions of dollars in benefits to the State in both

the short and the long term, those estimates have not been proven and are subject to dispute, as detailed in this Order. Furthermore, the record evidence does not include an analytical method or other means for determining in the future whether such benefits were achieved, and, if so, whether those benefits are solely attributable to the Change of Control rather than other factors, such as improvements in technology. Moreover, there is no proposal for any type of enforcement mechanism or penalty to ensure that these promised benefits are realized. Finally, the record evidence does not support a conclusion that these benefits outweigh the risks associated with the Change of Control.

Second, the proposed Change of Control presents a number of concerns that have been subjected to an extensive review by the commission in this proceeding, and which the commission finds to pose substantial risks to ratepayers that cannot be satisfactorily addressed by Applicants' proposals. The commission's existing ratemaking framework would provide some ratepayer protections by prohibiting any costs related to NextEra's nuclear plants or uneconomic business activities from being imposed on, or collected from, the HECO Companies' ratepayers. However, these protections do not address a more fundamental concern, which is a potential bankruptcy by NextEra and/or one of its many affiliates and subsidiaries, and the subsequent impact of any such filing on the HECO Companies and their customers.

The commission concludes that the level of so-called "ring-fencing" set forth by Applicants - which is one of the major tools used to protect against these types of risks - does not adequately insulate the public from the increase in risk that would result from approval of the Application. More specifically, the commission concludes that the level of ring-fencing proposed by Applicants fails to meet the standards a bankruptcy court would likely view to be reasonable and which the commission concludes are necessary to protect, to the greatest extent possible, the HECO Companies and their ratepayers in such circumstances.

Third, with respect to NextEra's ability to address the State's clean energy commitments and goals, the commission concludes that while NextEra possesses the technical capabilities, financial resources, and project execution skills to strengthen and potentially accelerate the development and interconnection of cost-effective, utility-scale renewable energy projects in Hawaii, Applicants did not adequately disclose their plans on this record. In the commitments (the "Commitments"),[3] NextEra stated that it will "collaborate with the Commission, the Consumer Advocate and DBEDT in the development of updated resource plans that the Hawaiian Electric Companies will file within twelve months of

[3]See Section II.B., C., and D. for an initial discussion of the Commitments.

closing." Given the clear guidance on clean energy issues from the Hawaii State Legislature ("Legislature") and the detailed review of such issues by the commission over the past several years, the commission concludes that more detail is required in a transaction of this magnitude.

With respect to this issue, on April 28, 2014, the commission issued a series of four orders designed to meet the challenges associated with renewable energy. The centerpiece of these orders was a white paper entitled "Commission's Inclinations on the Future of Hawaii's Electric Utilities: Aligning the Utility Business Model with Customer Interests and Public Policy Goals" (the "Commission's Inclinations" or the "Inclinations").[4] The Inclinations articulate the vision, business strategies, and regulatory policy changes required to align the utilities' business model with customers' changing expectations and State energy policy.

In its Inclinations, the commission stated that it supports a balanced and diverse portfolio of energy resources as the best long-term strategy to achieve the State's energy goals. Hawaii's clean energy transformation will require a combination of

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[4]In re Public Util. Comm'n, Docket No. 2012-0036, Decision and Order No. 32052, Exhibit A: "Commission's Inclinations on the Future of Hawaii's Electric Utilities," filed April 28, 2014.

utility-scale and distributed energy resources. The latter resource option enables customers to have the ability to choose how best to manage their electric bills.

The commission concludes that NextEra's inability to provide specific DER-related merger conditions as part of its clean energy Commitments is not acceptable, given Hawaii's long-standing national leadership position in integrating high penetrations of distributed solar PV systems. As a result, the commission is left to speculate whether this was simply an oversight, or, possibly, indicative of a predisposition for utility-scale solutions.

Fourth, with respect to local control, the commission finds that in the event of any change of corporate structure, Hawaii will retain local regulatory control over the HECO Companies. The commission's regulatory authority, oversight, and enforcement powers, which are the basis for local economic control over an electric utility, are unchanged by the Proposed Transaction.[5]

With respect to local governance, the commission concludes that Applicants have not provided a full and unambiguous set of corporate governance documents pertaining to Hawaii

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[5]Hawaii Gas is an example of a "local company" -- managed and operated locally, subject to full commission jurisdiction, yet corporate hierarchical relationships vest ultimate control in Macquarie Infrastructure, Inc.

Electric Holdings, LLC ("HEH"), Hawaii Electric Utility Holdings ("HEUH"), and the HECO Companies. This includes the roles, functions, and limitations of these legal entities, as well as the composition of their boards of directors and their respective duties and responsibilities. Further, it is unclear how proposed corporate governance requirements and conditions would be synchronized and coordinated with the proposed ring-fencing requirements and conditions. Additionally, it is unclear how the role of the proposed Advisory Board will differ markedly from the boards of directors of HEH, HEUH, and the HECO Companies.

The commission further observes that the HECO Companies would be a relatively small member of the NextEra corporate family in terms of customers, employees, and contribution to net income, particularly as compared to NextEra's two other principal businesses, Florida Power and Light, Company ("FPL"), and NextEra Energy Resources, Inc. ("NEER"). Applicants have clearly stated that the ultimate decision-making authority for the HECO Companies would reside with the Chairman and Chief Executive Officer ("CEO") of NextEra. Without further detail from Applicants, there is no way to ensure that the interests of the State of Hawaii and its people will not be negatively impacted. The commission also observes that in several recent electric utility change of control transactions, there appears to have been greater transparency and clarity as to corporate governance issues, including management

responsibilities, as compared to what Applicants have submitted in this transaction.[6]

Fifth, the commission finds that Applicants have not provided a sufficiently detailed set of conditions that will ensure, to the greatest extent possible, robust competition in Hawaii's energy markets. Among other things, Applicants have not adequately detailed how the competitive processes they envision will be fair to all bidders.

The commission is mindful of the impact its decision will have on customers, the HECO Companies, and the State. Nevertheless, the commission cannot make its decision based on public opinion polls, personal preferences, or political considerations. As stated above, and for the reasons set forth in this Order, the commission concludes that the Application should be dismissed without prejudice.

In so doing, the commission neither states nor implies that it will never approve a merger, acquisition, or other change

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[6]See, e.g., Maryland Public Service Commission, Case Number 9361, In the Matter of the Merger of Exelon Corporation and PEPCO Holdings, Inc., Order No. 86990, filed May 15, 2015, at 46 and Appendix A at 32-33 ("Maryland Exelon-Pepco Order"); and District of Columbia Public Service Commission, Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction, Order No. 18148, filed March 23, 2016, Appendix B at 10-11 ("D.C. Exelon-Pepco Order").

in corporate control or structure for the HECO Companies, or that the commission would not consider another application from NextEra. The commission's decision is specific to this Application and the evidence produced or not produced on this record. The commission also provides guidance with respect to the requirements that must be met for any future merger or acquisition proceedings in the "Commission Guidance For Any Future Merger or Acquisition Proceedings" attached as Appendix A to this Order.

Finally, the commission observes that while the HECO Companies' witnesses testified that the merger would enhance the HECO Companies' capacity and ability to achieve the State's clean energy goals, they also maintained throughout these proceedings that the HECO Companies were and are capable of meeting the challenges set forth above in the event that the Change of Control is not approved. Indeed, their testimony is that NextEra's offer was unsolicited, and that the HECO Companies were not seeking a suitor.

As discussed above and in the guiding principles set forth by the commission in Appendix A to this Order, the commission expects the HECO Companies to continue to aggressively pursue the State's renewable energy goals, and to provide reliable and safe, electric service at affordable rates, while transforming themselves into customer focused and performance driven utilities.

The Commission opined in its Inclinations that it views the objectives of lower, more stable electric bills and expanded customer energy options, while maintaining reliable energy service in a rapidly changing system operating environment, as essential principles that are the foundation for the future strategic business direction of the HECO Companies. Although recent improvements have been noted, the HECO Companies must redouble their efforts if they are to successfully transform themselves into customer focused, cost efficient, and performance driven utilities.[7]

Notwithstanding the multiple challenges confronting the HECO Companies and the commission's ongoing concerns about the adequate capacity, resources, and skills to address the challenges facing the utility,[8] NextEra and the HECO Companies have collectively failed to present a persuasive case to the commission

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[7]Commission's Inclinations at 3 and 29-30.

[8]Commission's Inclinations at 1, 3, 6, 10-11, and 16-17 (stating that "[t]he commission is compelled to offer the following perspectives on the vision, business strategies and regulatory policy changes required to align the HECO Companies' business model with customers' interests and the [S]tate's public policy goals," as a result of "the HECO Companies fail[ure] to articulate a sustainable business model. . . ."); and In re Maui Elec. Co., Ltd., Docket No. 2011-0092, Decision and Order No. 31288, Exhibit C ("Order No. 31288, Exhibit C"), filed May 31, 2013, at 3 (stating in May 2013 that "[f]rom the commission's perspective, the HECO Companies appear to lack movement to a sustainable business model to address technological advancements and increasing customer expectations.").

for approval of the Proposed Transaction. As a result of this decision, the HECO Companies will continue as a standalone electric utility. As stated in various orders and its Inclinations, the commission expects the HECO Companies to continue to focus on providing lower, more affordable electric rates, safe and reliable electrical service, and excellent customer service while pursuing the State's clean energy goals in a manner that complements the achievement of these fundamental electric utility obligations.

II. THE PROPOSED CHANGE OF CONTROL

A. The Negotiations

According to Constance Lau, HEI's CEO,[9] the idea of the merger was first presented by NextEra's CEO, Jim Robo, to Ms. Lau at a February 2014 Edison Electric Institute ("EEI") CEO meeting.[10] Ms. Lau states that she gave Mr. Robo "[HEI's] standard response that [the HECO Companies] were not for sale, but if a bona fide

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[9]HEI is the parent company of HECO, which, in turn, is the parent of MECO and HELCO. HEI is a Hawaii corporation listed on the New York Stock Exchange ("NYSE"). In addition to HECO, HELCO, and MECO, HEI's subsidiaries also include American Savings Bank ("ASB"), which provides a wide array of banking and other financial services. Application at 18.

[10]Applicants' Response to CA-IR-570(b); see also Applicants' Response to CA-IR-571(d) (stating that the idea for the Merger came solely from NextEra).

offer was made, [HEI] would exercise [its] fiduciary duties to review and act accordingly."[11]

In May of 2014, Mr. Robo requested a meeting with Ms. Lau, during which Mr. Robo proposed a potential merger between NextEra and HEI.[12] At the May 2014 meeting, Mr. Robo presented Ms. Lau with a "preliminary, confidential written proposal valuing HEI in its entirety (including both Hawaiian Electric and American Savings Bank) at $30.00 per HEI share, with the merger consideration to consist of either cash or [NextEra] common stock at HEI's option."[13] Ms. Lau informed Mr. Robo that she would discuss the proposal with the HEI board at an upcoming meeting.[14]

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[11]Applicants' Response to CA-IR-570(b).

[12]Hawaiian Electric Industries, Inc., Proxy Statement, filed pursuant to Section 14(a) of the Securities and Exchange Act of 1934, filed with the United States Securities and Exchange Commission ("SEC") on March 26, 2015 ("Merger Proxy Statement"), at 30. The Merger Proxy Statement is referenced in Applicants' Response to CA-IR-570(a) and (b).

[13]Merger Proxy Statement at 30. The May 2014 proposal also stated that NextEra would not consider ASB as part of the proposed merger, and that NextEra had been developing plans to transfer the bank from under HEI's control in connection with the proposed merger. Id. at 30-31. Ms. Lau's recollection is that she received Mr. Robo's written proposal "at the June 2014 EEI Annual Convention [in Las Vegas]," and refers to it as "the June 9, 2014 letter from Jim Robo, wherein NextEra formally proposed to acquire HEI." Applicants' Response to CA-IR-570(b)(4); see also, Applicants' Response to CA-IR-572.

[14]Merger Proxy Statement at 31; see also Applicants' Response to CA-IR-570(b)(4).

Between June 16 and 18, 2014, at a regularly scheduled HEI annual board retreat, Ms. Lau and other members of HEI's management presented NextEra's preliminary proposal to the HEI board.[15] HEI's management spent the next several weeks analyzing the proposal with fiscal and legal advisors.[16]

On July 21, 2014, the HEI board approved the engagement of J.P. Morgan Securities LLC ("J.P. Morgan") as financial adviser, and Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") as legal counsel.[17] Following discussions with J.P. Morgan, HEI informed NextEra that the preliminary proposal's consideration was insufficient, but that HEI would be willing to enter into a confidentiality agreement with NextEra to allow for due diligence to support an increased proposal.[18] HEI and NextEra subsequently executed a confidentiality agreement on August 2, 2014.[19]

On September 5, 2014, the HEI board met HEI management and representatives from J.P. Morgan and Skadden.[20] James Ajello, HEI's Chief Financial Officer ("CFO"), provided the HEI board with

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[15]Merger Proxy Statement at 31.

[16]Merger Proxy Statement at 31.

[17]Merger Proxy Statement at 31.

[18]Merger Proxy Statement at 31; see also Applicants' Response to CA-IR-570(b)(5).

[19]Merger Proxy Statement at 31.

[20]Merger Proxy Statement at 32.

an update on the negotiations between HEI and NextEra.[21] The HEI board concluded that "the likelihood of securing a superior proposal was low, from both a financial and a deal certainty perspective."[22] Additionally, the HEI board "concluded that the risk of leaks arising from a broader sale process was high and that any such leaks would likely have a negative effect on HEI's ability to successfully negotiate the potential transaction with [NextEra], as well as negative effects on HEI's utility business and bank business[.]"[23] The HEI board authorized management to continue negotiations with NextEra.[24]

Thus, at that point in time, the discussions between NextEra and HEI effectively became exclusive. HEI had concluded that "shopping" the deal was not necessary, and, implicitly, that HEI would not seek competitive bids through an auction or other means. (To pursue an auction, HEI would have had to terminate the confidentiality and standstill agreements.) At the September 5, 2014 HEI board meeting, the board discussed and

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[21]Merger Proxy Statement at 32.

[22]Merger Proxy Statement at 32; see also Applicants' Response to CA-IR-570(c)(4)(b)(2) and (3); Applicants' Response to CA-IR-574(b).

[23]Merger Proxy Statement at 32-33.

[24]Merger Proxy Statement at 33.

dismissed the idea of contacting other third parties that might want to engage in a "strategic transaction."[25]

HEI and NextEra continued to revise the proposed terms and conditions through November 2014.[26] On December 2, 2014, HEI and NextEra reached an agreement on the proposed Merger consideration for HEI shareholders.[27] On December 3, 2014, the HEI board met with HEI management and representatives from J.P. Morgan and Skadden, at which time J.P. Morgan opined that the Merger agreement was fair, from a financial point of view, to HEI shareholders.[28] J.P Morgan was not asked to - and did not - render an opinion as to whether the Merger agreement was fair to the customers of the HECO Companies.

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[25]Merger Proxy Statement at 32.

[26]Merger Proxy Statement at 35. For more information about HEI's review during this period, see Applicants' Response to CA-IR-573.

[27]Merger Proxy Statement at 35.

[28]Merger Proxy Statement at 35. J.P. Morgan's fairness opinion was limited to the exchange ratio of each Companies' common stock, and did not take into account other aspects of the proposed Merger agreement, such as the special cash dividend or the shares of ASB to be distributed to HEI's shareholders in the bank spin-off. Id. Likewise, the fairness opinion did not assess whether the Merger and Change of Control was fair to ratepayers. Applicants' Witness Oshima acknowledged that there was no independent assessment of fairness or risk to ratepayers. Oshima, Tr. 34.

Following the conclusion of this board meeting, HEI and NextEra entered into the Merger agreement.[29] Shortly thereafter, HEI and NextEra issued a joint press release announcing the Merger agreement.[30] Pursuant to the Merger agreement, "NextEra Acquisition Sub II, Inc. will merge with and into HEI, with HEI surviving (the "Initial Merger").[31] HEI will then merge with and into "NextEra Acquisition Sub I, LLC," with "NextEra Acquisition Sub I, LLC" surviving as a wholly-owned subsidiary of NextEra (together with the "Initial Merger," the "Merger").[32] Upon closing of the Merger, "NextEra Acquisition Sub I, LLC" will be re-named "Hawaiian Electric Holdings, LLC".[33]

Additionally:

> [I]mmediately prior to completion of the Merger, HEI will distribute to HEI's shareholders, on a pro-rata basis, all of the issued and outstanding shares of ASB Hawaii, Inc., a Hawaii corporation (ASBH) and a direct parent company of American Savings Bank, F.S.B. (ASB) (such distribution, the Bank Spin-Off). In the Merger, each outstanding share of HEI common stock will be converted into

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[29]Merger Proxy Statement at 35.

[30]Merger Proxy Statement at 35; see also, "NextEra Energy to buy Hawaiian Electric for $4.3B," Honolulu Star Advertiser, December 3, 2014 (available at: http://www.staradvertiser.com/business/nextera-energy-to-buy-hawaiian-electric-for-4-3b/).

[31]Application, Exhibit I at 2.

[32]Application, Exhibit I at 2.

[33]See Application at Exhibit 2. The commission observes that this is a standard approach to transactions of this nature.

> the right to receive 0.2413 shares of [NextEra] common stock. HEI equity awards that are outstanding at the time of closing of the merger will be converted into corresponding equity awards denominated in NextEra common stock, except in the case of certain performance-based restricted stock units, which pursuant to the terms of HEI's Long-Term Incentive Plan, will vest pro-rata and be settled for cash upon the closing of the Merger based on deemed satisfaction of performance goals at target levels.[34]

B. Summary Of The Application

HEI and NextEra officially filed their Application with the commission on January 29, 2015. Under the proposed Merger, control of the HECO Companies would ultimately be transferred from HEI to HEH, a wholly-owned subsidiary of NextEra.[35] In connection with the Merger, HEI would spin-off ASB and establish the bank as a separate, independent, publicly-traded company.[36]

Applicants maintain that commission approval of the proposed Change of Control is reasonable and in the public

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[34]Application, Exhibit 1 at 2. The total Merger value to HEI shareholders was estimated at $33.50 per share, which represented a 21% premium to HEI's 20-day volume-weighted average price through December 2, 2014, and consisted of $25.00 per share in NextEra stock (based on the 0.2413 exchange ratio), a $0.50 per share HEI special cash dividend, and an $8.00 per share estimated value of ASB (the Merger also projected additional value to ASB shareholders through ASB's tax basis step-up). Id. at 12.

[35]Application at 2.

[36]Application at 2, n. 5, and at 20, n. 24. The commission notes that later in the proceeding, Applicants proposed a new holding company, Hawaii Electric Utility Holdings.

interest, and that, following the Change of Control, the HECO Companies will continue to be fit, willing, and able to provide electric utility services.[37] Applicants further contend that approval of the Merger will result in a number of benefits, including, but not limited to, the following:

- An improvement in the financial status of the HECO Companies;
- Lower costs leading to customer savings;
- A strengthening and acceleration of the HECO Companies' clean energy plans and transformation;
- An enhancement of the HECO Companies' ability to continue providing safe and reliable service to their customers;[38] and
- The implementation of a four-year moratorium on filing a general base rate case ("Rate Case Moratorium"), subject to certain conditions,[39] and excluding instances where the HECO Companies suffer financial distress due to the

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[37]Application at 2-3.

[38]Application at 3.

[39]See "Applicants' Responsive Testimonies," filed August 31, 2015, at Exhibit 46 ("Applicants' Exhibit 46"). These conditions include there being no material change in the following: the current formulation of the decoupling mechanisms; the Revenue Balancing Account ("RBA") tariff provisions; the Rate Base Revenue Adjustment Mechanism ("RAM") - Return on Investment Adjustment tariff provisions; the Renewable Energy Infrastructure Program ("REIP"), including the Renewable Energy Infrastructure Program Surcharge; the Integrated Resource Plan ("IRP")/Demand Side Management ("DSM") Cost Recovery tariff provisions; the Electric Cost Adjustment Clause ("ECAC") tariff provisions; the Purchase Power Adjustment Clause ("PPAC"); and the Pension and Other Post-Employment Benefits ("OPEBs") tracker mechanism. Id.

> occurrence of an extraordinary expense (e.g., tropical storm, act of terrorism, etc.), or circumstances that otherwise create a compelling financial need.[40]

Applicants further propose to maintain charitable contributions, retain local management, forego involuntary reductions in the workforce for two years, and establish a local advisory board of between six to twelve members who have substantial ties to the Hawaii community.[41] In addition, NextEra pledges that "it will not seek to recover through rates any acquisition premium, transaction, or transition costs arising from the Proposed Change of Control, and that it will maintain various protections designed to ensure that the Hawaiian Electric Companies and their customers are not harmed by the activities and businesses of other NextEra Energy entities and subsidiaries."[42]

Applicants discuss a variety of other commitments and safeguards, and conclude:

> In sum, Applicants assert that (a) the Proposed Change of Control is reasonable and in the public interest, and (b) the Hawaiian Electric Companies will be fit, willing, and able to provide and perform their respective utility services following the Proposed Change of Control. For the reasons discussed above, the Proposed Change of Control will not have any material adverse effects on the

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[40]Application at 13 and 34-35 (footnotes omitted); see also "Applicants' Responsive Pre-Hearing Testimonies," filed August 31, 2015, at Exhibit 37 ("Applicants' Exhibit 37").

[41]Application at 3 and 10-11.

[42]Application at 13 and 39.

> Hawaiian Electric Companies' operations or customers. The Proposed Change of Control will also provide various material benefits as discussed above. NextEra Energy will bring its wealth of experience, resources, and expertise to the Hawaiian Electric Companies, the companies' operations, and the companies' customers. Ultimately, the Proposed Change of Control will result in the Hawaiian Electric Companies being able to deliver more value to their customers and will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation.[43]

C. Applicants' Exhibit 37

On August 31, 2015, Applicants filed their Responsive Pre-Hearing Testimonies. In their Responsive Pre-Hearing Testimonies, Applicants expanded their "transaction commitments" into eighty-five enumerated Commitments.[44] Applicants' Exhibit 37 reiterated the Commitments set forth in the Application, but added new Commitments which provided additional details and clarifications regarding their scope and nature.[45] These included:

- A pledge to collaborate with government agencies and community organizations in working to reach Hawaii's 100% renewable portfolio standards ("RPS") goal;
- In lieu of the original Operation and Maintenance ("O&M") RAM moratorium, a

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[43]Application at 46.

[44]See Applicants' Exhibit 37.

[45]See Applicants' Exhibit 37.

reduction of the RAM by $60 million over the moratorium period;[46]

- Pre-funding a public interest fund with $2.5 million each year during the moratorium period;

- Providing corporate giving of at least $2.2 million annually for a minimum of ten years following the Merger;

- Inclusion of members from the Counties of Oahu, Maui, and Hawaii on the HECO Companies' advisory board;

- A pledge not to sell HEH or its electric utility subsidiaries for at least ten years following the Merger;

- Provision of a plan, no later than one year following the Merger, to improve the HECO Companies SAIDI[47] and SAIFI[48] by 20%; and

- Pledges aimed at preserving competition between the HECO Companies and NextEra subsidiaries and affiliates and governing

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[46]The "O&M RAM" refers to one component of the RAM, which is an automatic adjustment tariff for each of the HECO Companies. In conjunction with the RBA tariffs, the RAM provides for annual adjustments (usually increases) to each Company's effective rates and accrued revenues. Together, the RBA and RAM tariffs comprise the Companies' "decoupling" mechanisms. The O&M RAM is one component of the RAM that provides annual increases in rates and accrued revenues for O&M expenses.

[47]The System Average Interruption Duration Index ("SAIDI") is an average outage duration for each customer served, measured in units of time, often minutes or hours.

[48]The System Average Interruption Frequency Index ("SAIFI") is the average number of interruptions that a customer would experience, measured in units of interruptions per customer.

transactions between the HECO Companies and NextEra subsidiaries and affiliates.[49]

D. Applicants' Exhibit 37A

On November 27, 2015, Applicants moved to admit a "revised Applicants Exhibit 37,"[50] which again changed Applicants' Commitments. Specifically, as a result of negotiations with the Department of Defense ("DOD"), an intervening party, Applicants changed some of their existing Commitments as stated in Exhibit 37 and added new Commitments, bringing the total to ninety-five Commitments.[51] In general terms, Applicants additionally committed to:

- Provide a rate credit of $60 million over the four-year moratorium period;[52]

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[49]See Applicants' Exhibit 37 (footnotes inserted).

[50]See "Applicants' Motion to Admit Revised Stipulated Commitments into Evidence; Exhibit A; and Certificate of Service," filed November 27, 2015, at Exhibit A ("Applicants' Motion to Admit Exhibit 37A"). Applicants' revised Commitments, found at Exhibit A, shall be referred to as "Applicants' Exhibit 37A."

[51]See Applicants' Motion to Admit Exhibit 37A. Pursuant to Order No. 33429, "(1) Granting Applicants' Motion to Admit Revised Stipulated Commitments into Evidence; (2) Denying the Department of Defense's Motion to Withdraw; and (3) Establishing Further Procedures; and Opinion of Randall Y. Iwase, Chair, Concurring in Part and Dissenting in Part," filed January 4, 2016 ("Order No. 33429"), the commission granted Applicants' Motion and admitted the ninety-five Commitments contained in "Applicants' Exhibit 37A" into evidence.

[52]Originally, the $60 million was credited to ratepayers through the operation of the RAM mechanism.

- Establish a local, independent Hawaiian Electric advisory board with members from each of the Counties of Oahu, Maui, and Hawaii;

- Create a new intermediate holding company, HEUH, between HEH and the HECO Companies, to achieve separation between the unregulated and regulated businesses of HEH;

- Implement certain measures to obtain a non-consolidation legal opinion in the event that: (1) the HECO Companies do not receive a credit rating upgrade from Standard & Poor's ("S&P") following the Merger, or (2) the credit rating of NextEra is downgraded by any two of the three major credit rating agencies (S&P, Moody's, Fitch);

- File an annual compliance report with the commission regarding the ring-fencing Commitments contained in Commitment 55A-74A; and

- Implement certain ring-fencing measures within one hundred eighty (180) days after the Merger.[53]

To avoid confusion with respect to the final set of ninety-five Commitments, throughout this Order, each individual Commitment in Exhibit 37 will be referred to by its original number, and each individual Commitment in Exhibit 37A will be referred to by its final number followed by the suffix "A."

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[53]See Applicants' Exhibit 37A, Commitments 55A-72A.

III. PARTIES AND POSITIONS

A description of Applicants, the Consumer Advocate, and the Parties, along with a summary of each entity's position in this docket, is set forth in Appendix B. The Parties will sometimes be referred to by the following acronyms: (1) AES Hawaii, Inc. ("AES"); (2) Blue Planet Foundation ("Blue Planet"); (3) County of Hawaii ("COH"); (4) County of Maui ("COM"); (5) DBEDT; (6) DOD; (7) Friends of Lanai ("FOL"); (8) The Gas Company, LLC, dba Hawaii Gas ("Hawaii Gas"); (9) Hawaii Island Energy Cooperative ("HIEC"); (10) Hawaii PV Coalition ("HPVC"); (11) Hawaii Renewable Energy Alliance ("HREA"); (12) Hawaii Solar Energy Association ("HSEA"); (13) Hawaii Water Service Company ("HWSC"); (14) HINA Power Corporation ("HINA"); (15) Honolulu Board of Water Supply ("HBWS"); (16) International Brotherhood of Electrical Workers Local Union 1260 ("IBEW"); (17) Ka Lei Maile Ali'i Hawaiian Civic Club ("KLMA"), Life of the Land ("LOL"), and Puna Pono Alliance ("Puna Pono") (collectively, "KLMA/LOL/PPA"); (18) Kauai Island Utility Cooperative ("KIUC"); (19) OSP; (20) Paniolo Power Company, LLC ("Paniolo"); (21) Renewable Energy Action Coalition of Hawaii, Inc. ("REACH"); (22) Sierra Club; (23) SunEdison, LLC ("SunEdison"); (24) SunPower Corporation ("SunPower"); (25) The Alliance for Solar Choice ("TASC"); (26) Tawhiri Power LLC ("Tawhiri"); and (27) Ulupono Initiative, LLC ("Ulupono").

IV. PROCEDURAL BACKGROUND

A full procedural history of the proceedings in this docket is set forth in Appendix C.

V. STATEMENT OF ISSUES

The commission established the following issues to be addressed in this proceeding:

1. Whether the Proposed Transaction is in the public interest.

    a. Whether approval of the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies.

    b. Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.

    c. Whether the Proposed Transaction will impact the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost.

    d. Whether the proposed financing and corporate restructuring proposed in the Application is reasonable.

    e. Whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.

f. Whether adequate safeguards exist to protect the HECO Companies' ratepayers from any business and financial risks associated with the operations of NextEra and/or any of its affiliates.

g. Whether the Proposed Transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.

h. Whether the transfer, if approved, would potentially diminish competition in Hawaii's various energy markets and, if so, what regulatory safeguards are required to mitigate such adverse impacts.

2. Whether the Applicants are fit, willing, and able to properly provide safe, adequate, reliable electric service at the lowest reasonable cost in both the short and the long term.

a. Whether the Proposed Transaction, if approved, will result in more affordable electric rates for the customers of the HECO Companies.

b. Whether the Proposed Transaction, if approved, will result in an improvement in service and reliability for the customers of the HECO Companies.

c. Whether the Proposed Transaction, if approved, will improve the HECO Companies' management and performance.

d. Whether the Proposed Transaction, if approved, will improve the financial soundness of the HECO Companies.

3. Whether the Proposed Transaction, if approved, would diminish, in any way, the commission's current regulatory authority over the HECO Companies, particularly in light of the fact that the ultimate corporate control of the

HECO Companies will reside outside of the State.

4. Whether the financial size of the HECO Companies relative to NextEra's other affiliates would result in a diminution of regulatory control by the commission.

5. Whether NextEra, FPL, or any other affiliate has been subject to compliance or enforcement orders issued by any regulatory agency or court.

6. Whether any conditions are necessary to ensure that the Proposed Transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary.[54]

VI. LEGAL STANDARDS

A. General Powers Of The Commission

There are a number of statutory provisions that guide the commission's review of this Application.[55] The commission has been entrusted with broad powers over the State's public utilities by the Legislature; these broad powers are generally set forth in Hawaii Revised Statutes ("HRS") §§ 269-6 and -7.

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[54]Order No. 32739, "Establishing Issues and Initial Procedural Schedule, and Addressing Related Matters," filed April 1, 2015, at 8-10 ("Order No. 32739").

[55]See Order No. 32695, "Initiating Proceedings; Establishing Standards of Review, Initial Statement of Issues, and Initial Procedures; and Addressing Intervention Requests," filed March 2, 2015, at 14-18, for a discussion of the commission's authority to review the Merger, which the commission adopts and incorporates herein ("Order No. 32695").

HRS § 269-6(a) provides that the commission "shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter." HRS §§ 269-6(b), (c), and (d) establish additional specific powers of the commission.

Pursuant to HRS § 269-7(a):

> The public utilities commission and each commissioner shall have the power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

Thus, the commission has broad powers to review virtually every aspect of the condition and operation of public utilities that are subject to its jurisdiction.

B. Standards Of Review

The Legislature has found it beneficial to further empower the commission to review all mergers and consolidations of

any public utility on behalf of the people of Hawaii. HRS § 269-19(a) (Supp. 2008) provides:

> (a) Except as provided in subsection (b), no public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

The commission has previously addressed the standards of review that will be applied pursuant to HRS § 269-19 with respect to KIUC's proposed acquisition of Citizens Kauai Electric Division.[56] In that case, the commission concluded that the standard of review for HRS § 269-19 would be drawn from the standard in HRS § 269-7.5, which requires that an applicant be "fit, willing, and able to properly perform the service proposed."[57] Accordingly, "before the commission approves any

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[56]See In the Matter of the Application of Citizens Communications Company, Kauai Electric Division and Kauai Island Utility Co-Op For Approval of the Sale of Certain Assets of Citizens Communications Company, Kauai Electric Division and Related Matters, Docket No. 2002-0060, Decision and Order No. 91658, filed September 17, 2002 ("Decision and Order No. 91658")

[57]Decision and Order No. 91658 at 14-15 (footnote omitted).

acquisition of a public utility subject to the commission's jurisdiction under HRS § 269-19, we must find that (1) the acquiring utility is fit, willing, and able to perform the service currently offered by the utility to be acquired, and (2) the acquisition is reasonable and in the public interest."[58]

HRS § 269-7.5 provides, in relevant part:

> **Certificates of public convenience and necessity.** (a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.
>
> . . . .
>
> (c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the

[58]Decision and Order No. 91658 at 15.

privilege granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

Finally, the commission has authority over the proposed Change of Control pursuant to HRS § 269-17.5, which states:

§ 269-17.5 Issuance of voting stock; restrictions.

(a) For purposes of this section "foreign corporation" means a foreign corporation as defined in section 235-1 or a corporation in which a majority of the voting stock is held by a single foreign corporation as defined in section 235-1.

(b) "Nonresident alien" means a person not a citizen of the United States who is not defined as a resident alien by the United States Citizenship and Immigration Services.

(c) No more than twenty-five per cent of the issue and outstanding voting stock of a corporation organized under the laws of the State and who owns, control, operates, or manages any plant or equipment, or any part thereof, as a public utility within the definition set forth in section 269-1 shall be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission, or unless a transaction is exempt. An exempt transaction is:

(1) Any purchase or sale by an underwriter; or

(2) A transaction to acquire shares of a corporation with less than one hundred shareholders and less than $1,000,000 in assets.

> Every assignment, transfer, contract, or agreement for assignment or transfer of any shares in violation of this section shall be void and of no effect; and no such transfer shall be made on the books of the corporation. Nothing herein shall be construed to make illegal the holding of stock lawfully held, directly or indirectly, prior to June 4, 1977.

Previously, the commission has concluded that HRS §§ 269-17.5 and 269-19 also govern a change of control proceeding:

> Paramount in both HRS §§ 269-17.5 and 269-19 are the concepts of ownership and control. While it is the holding company of [Hawaii Gas'] parent that is being transferred (i.e., K-1 HGC), ultimately, it is Hawaii Gas' ownership and control that is being transferred, as proposed in the Application. This type of indirect Change of Control is contemplated under HRS §§ 269-17.5 and 269-19.[59]

Thus, as discussed above and in Order No. 32695, there are two primary standards of review applicable to the proposed Change of Control: (1) whether the acquisition is reasonable and in the public interest, and (2) whether the acquiring utility is fit, willing, and able to perform the service currently offered by the utility to be acquired.

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[59]In the Matter of the Application of The Gas Company, LLC, HGC Holdings, LLC, K1 Ventures Limited, and Macquarie Gas Holdings LLC For Approval of the Transfer of Upstream Membership Interests and Related Matters, Docket No. 2005-0242, Decision and Order No. 22449, filed May 3, 2006, at 22-23, n. 26 ("Decision and Order No. 22449").

C. Burden Of Proof

Because this is a contested case proceeding, as the parties initiating this proceeding, Applicants bear the burden of proof and the burden of persuasion pursuant to HRS § 91-10(5):[60]

> Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

D. Commission Authority To Approve, Reject, Modify, Or Impose Conditions

Given the commission's decision herein, it is unnecessary to address issues concerning the commission's authority to approve, reject, modify, or impose conditions. Suffice it to say that the commission does not agree with the viewpoint expressed by Applicants.[61]

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[60]The commission previously ruled that this matter would be treated as a formal contested case proceeding. See Order No. 32695 at 24.

[61]See "Applicants' Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed on March 31, 2016, at 70-72 ("Applicants Initial Brief"); "Applicants' Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed on May 2, 2016, at 177-186 ("Applicants Reply Brief").

E. Whether The Proposed Restrictions On The Commission's Authority Are Reasonable

Applicants' Exhibit 46, entitled "Updated Base Rate Moratorium Qualifications," would impose a variety of limitations on the commission's statutory authority and powers, presumably in exchange for Applicants' proffered benefits. Applicants offer a number of justifications for these limitations.

First, leaving aside for now the merits of Applicants' moratorium proposal, Applicants state that in exchange for their agreement to impose a four-year moratorium:

- The commission cannot make any changes to the decoupling mechanism as currently formulated; and
- The commission cannot make any changes to a large number of surcharge and tracking mechanisms, including the ECAC, the PPAC, the REIP, the OPEB trackers, and the IRP/DSM charge.[62]

Applicants' Witness Gleason described these restrictions as follows:

> Q. . . . If you look at condition 13, I see no Commitment there by NextEra or HEI. I see restrictions and conditions that the Commission has to follow.
>
> Would you agree with that?
>
> A. I think we're asking the Commission to agree that this is acceptable as part of the package. That does not - my perception is - I'm not a lawyer, but my perception is that

[62]Gleason, Tr. 2879; Applicants' Exhibit 46.

the Commission always has the right to make changes down the road.

Q. But you would agree there's no commitment here for NextEra or HEI?

A. Well, I think our commitment is that this is -- this is acceptable to us. So we're prepared to live with the modified decoupling mechanism as you -- as the Commission's approved.[63]

Second, Applicants state that their Commitment to forego seeking general base rate increases and to forego recovery of incremental base expenses through the RAM mechanism for at least four years shall not apply if (1) any of the HECO Companies suffer financial distress due to the occurrence of an extraordinary event, such as expenses associated with a tropical storm or terrorism event, or (2) "should circumstances otherwise arise that create a compelling financial need for a base rate increase."[64]

Third, with respect to both the base rate increase Commitment and the moratorium Commitment, NextEra states that each is conditioned upon: (1) permitting each of the HECO Companies to "record revenues collected through the RAM Provision starting January 1 of each year of the stay out period, with the recovery period for the RAM Revenue Adjustment remaining unchanged. . .";[65]

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[63]Gleason, Tr. 424-425. Commitment 13, noted above, was later designated as Commitment 14A in Applicants' Exhibit 37A.

[64]Applicants' Exhibit 46 at 1.

[65]The commission observes that, beyond Applicants' condition stated in Applicants' Exhibit 46 that there must be "no material

and (2) not precluding the HECO Companies from requesting changes to rates or charges that are authorized by the Legislature during the stay out period.

In addressing this issue, the commission observes that it could consider accepting some restrictions of this nature in appropriate circumstances, such as (1) a global settlement with all or a majority of the Parties (including the Consumer Advocate); (2) where there are substantial, fixed benefits to ratepayers; or (3) in other similar circumstances.[66] However, as discussed in detail in this Order, those circumstances are not present here.

Thus, under the specific circumstances presented here, the commission finds such restrictions are neither supported by the preponderance of the evidence nor reasonable. In making this determination, the commission must weigh any requested conditions on its powers against its broad mandate to protect the public interest.

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change" in currently authorized ratemaking provisions, Applicants here would require the commission to approve a change in provisions that could substantially increase effective rates as part of the decision in this proceeding, but before Applicants would implement the Rate Commitments. Applicants' Exhibit 46 at 1-2.

[66]Of course, any such settlement would still have to be found to be reasonable and in the public interest. Likewise, any such settlement would be subject to the standards of review discussed in this Order.

For example, as previously discussed, HRS Chapter 269, HRS §§ 269-1, et seq., generally and specifically requires the commission to regulate public utilities in the public interest. Moreover, Chapter 269 also includes within the commission's purview detailed provisions concerning the implementation of various State policies with respect to energy related issues, such as RPS (Part V), the Public Benefits Fee (Part VII), and Green Infrastructure Bonds (Part X). In addition, the Hawaii Supreme Court has recognized that the commission has both adjudicatory and rulemaking authority over HECO.[67]

The breadth and depth of the statutory provisions delegating regulatory authority to the commission demonstrate the Legislature's intent that public utility and related issues are to be determined by the commission in the first instance. Thus, in order to approve any proposed limitations on that authority, the commission must find that such limitations have a rational and reasonable basis, and that they are supported by a preponderance of evidence in the record. The commission cannot make that finding on the record here.

Moreover, while the commission always retains the general authority to change the limitations in the Commitments if

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[67]In re Hawaiian Electric Co., 81 Hawaii 459, 918 P.2d 561 (1996).

necessary in the public interest,[68] that does not provide support for the proposals made in this docket. What is left unsaid is that if Applicants' Exhibit 46 and the related Commitments are approved, the burden of proof will have been shifted from the utility to the commission. Thus, if the commission were to approve the Change of Control and the associated Commitments, it would be up to the commission to identify and investigate particular issues and, at least initially, to demonstrate why one or more of the Commitments is no longer valid. Stated differently, should the commission engage in what would, absent Applicants' Exhibit 46 and the related Commitments, be a proper exercise of its authority, that would provide NextEra the opportunity to have one or more of the other Commitments set aside. Absent a compelling reason to do so, which has not been shown to exist on this record, there is no reason for the commission to approve these restrictions.

Given its statutory mandate, and for the reasons set forth in this Order, the commission concludes that because the Application is not found to be reasonable and in the public interest, the proposed limitations on the commission's authority are likewise not approved. What is necessary for the commission

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[68]Applicants' Witness Oshima agreed, although he further stated that if the commission were to exercise that authority, the Parties who are affected by it would have the right to file appropriate pleadings for relief. Oshima, Tr. 45, 53.

to accept any such limitations in the first instance are that there exist concrete, supported, rational reasons for that acceptance and that those reasons have been fully examined based on the record evidence. Such evidence and reasons are not supported by the record here.

VII. STRUCTURE OF THE DISCUSSION

In the following sections, the commission discusses and analyzes the record evidence in this proceeding with respect to each of the issues established by the commission.

As previously observed, it is important to keep in mind that the commission is reviewing the Application and proposals made by Applicants that are before the commission in this proceeding. The commission's findings are specific to this Application and those proposals, and do not reflect any conclusions with respect to NextEra except as directly germane to the Application and the proposed Change of Control. That being said, Appendix A sets forth guidance by the commission concerning the elements and issues that should be included and addressed in any future application by a potential acquirer, including NextEra.

In the following Sections of this Order, the commission generally concludes that the Application both satisfies in part and fails in part to meet the applicable standards of review.

VIII. ANALYSIS OF THE ISSUES

A. Commission Issue No. 1 - Whether The Proposed Transaction Is Reasonable And In The Public Interest

In assessing whether or not the Application is reasonable and in the public interest, the commission reviews both the general and specific commitments proposed by Applicants. NextEra's Commitments to the State in general, and the customers of the HECO Companies in particular, are primarily set forth in Applicants' Exhibit 37A. There are ninety-five such Commitments in all, with a number of them dependent on the approval of the further conditions set forth in Applicants' Exhibit 46, as previously discussed. These commitments and related conditions are the essential components of Applicants' proposed Change of Control.

The commission's review reveals that there are strengths and weaknesses associated with these Commitments. The commission must assess and weigh each of these Commitments in order to determine whether taken individually and together as a package they are consistent with the reasonable and in the public interest standard. As discussed herein, the commission generally concludes that, in order to carry weight in determining whether the Application is in the public interest, any ratepayer benefits included in the Commitments should be firm, quantifiable, and

essentially irrevocable (except in the most extreme circumstances) in both the short and long term.

The commission further observes that some Parties may construe the Issue No. 1 sub-issues, as set forth in Order No. 32695, as establishing a "net benefit" or "substantial net benefit" standard for determining whether the Application is reasonable and in the public interest. As noted above, however, the commission is reviewing the specific proposals, promised benefits, and Commitments made by Applicants to determine whether or not they are supported by a preponderance of the record evidence.

In making this determination, the commission is not adopting a "net benefits" or a "substantial net benefits" test, as it is unnecessary to do so. Rather, because Applicants have proposed as fundamental components of their Application - supported by their proffered testimony and exhibits - specific proposals, benefits, and Commitments, the commission's review addresses whether these are supported by a preponderance of the evidence, are reasonable, and are in the public interest. There is no need to address whether or not to adopt a net benefits standard because the commission finds that the majority of Applicants' proposals, benefits, and Commitments are not supported by a preponderance of the evidence, and, thus, they do not meet the "reasonable and in the public interest" standard.

The commission observes that while Applicants have opposed the application of a "net benefit" standard,[69] Applicants have nevertheless raised arguments throughout this proceeding that appear to contemplate and accept a "net benefit" standard. Indeed, the issue of potential "net benefits" arising from the proposed Change of Control is at the heart of Applicants' argument that the Application is in the public interest. For example, Applicants state:

> In deciding whether the Proposed Transaction is reasonable and in the public interest, the primary question the Commission should ask is whether the customers of the Hawaiian Electric Companies and the State of Hawai'i are better off with or without the Proposed Transaction in the form presented by Applicants.[70]

Applicants' position in this proceeding is that the proposed Change of Control will result in benefits to the HECO Companies and their customers that would not otherwise occur.[71]

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[69]Applicants Reply Brief at 15-16.

[70]Applicants Initial Brief at 7; see also Applicants' Exhibit 50 (Reed Responsive Testimony) at 42-43 ("The 'public interest standard' . . . is generally applied as a determination of the absence of harm, i.e., 'no net harm,' or the creation of 'benefits' by comparing the Proposed Transaction, inclusive of the commitments made by the applicants, to the status quo.") and 266-267 ("For these reasons, the public interest evaluation framework should be centered on a comparison of the Proposed Transaction to a continuation of current ownership[.]").

[71]See, e.g. Applicants' Exhibit 35 (Oshima) at 17 ("These benefits could not be obtained without the approval and consummation of the Proposed Transaction."); Applicants' Exhibit 36 (Gleason) at 85-86 ("If the Commission rejects the Application

The commission notes that potential transaction benefits set forth in Exhibit 37A are near term in duration. These benefits include the customer rate credits, investment fund contributions, and Rate Case Moratorium, and are limited to the initial four years following the merger closing (see Commitments 9A, 10A, and 15A).

Applicants cite to potential longer term benefits from improvements that result from NextEra's recognized corporate competencies of technical, financial, and managerial capabilities and resources, including supporting a corporate culture based on operational excellence and delivering superior customer value.[72] Applicants state that it could take up to five or more years to achieve full synergy benefits, in which case, the full benefits would occur beyond year four after the closing.[73]

Applicants state that longer term merger benefits are less easily quantified due to uncertainty regarding future events beyond Applicants' control.[74] Although potential longer term benefits could be significant and achievable, these remain

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there will be no second opportunity for the Commission to approve the proposal and take advantage of the benefits the merger provides . . . .").

[72]See, e.g., Applicants' Exhibit 35 (Oshima) at 2-7.

[73]See Gleason, Tr. 1030-1031; Reed, Tr. 2015-2017.

[74]Applicants' Reply Brief at 74.

uncertain.[75] The near-term customer benefits that might mitigate risks regarding realization of uncertain long term benefits are also insufficient to support the Application. As discussed herein, the commission concludes that Applicants' proposals are not supported by a preponderance of evidence in the record.

1. Commission Issue No. 1.a. - Whether Approval Of The Proposed Transaction Would Be In The Best Interests Of The State's Economy And The Communities Served By The HECO Companies

Applicants assert that the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies. Applicants identify several types of benefits, including quantified ratepayer benefits, quantified impacts on the State's economy and unquantified benefits including impacts of specific Commitments identified in Applicants' Exhibit 37A.

In determining whether the overall impacts, savings and benefits resulting from the Change of Control would be reasonable and in the public interest, the commission must consider the certainty and magnitude of expected savings and benefits in comparison with potential costs and risks associated with the Change of Control.

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[75]See Section VIII.A.1.a. and 1.b. for full discussion.

As discussed below, the commission concludes that the asserted savings and benefits are uncertain, and have not been demonstrated by a preponderance of the evidence to be sufficient to balance the identified risks.

a. Projected Impacts On The State's Economy

(1) Applicants' Position

Applicants assert that the proposed Change of Control would result in total benefits of $960.6 million over five years for the State, in general, and the HECO Companies' customers, in particular.[76] Within that total amount, Applicants maintain that the Change of Control would result in $464.4 million savings for the Companies' customers, which would then result in an additional $496.1 million in derivative benefits to the State's economy over the same period.[77] This discussion focuses on the latter projection, that is, the $496.1 million in derivative benefits to the State's economy.

In direct testimony, Applicants present an analysis quantifying asserted benefits to the State's economy that would result from any rate reductions that would result from the Change

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[76]Applicants Initial Brief at 17.

[77]Applicants Initial Brief at 22.

of Control. Applicants' analysis is based on an "IMPLAN" economic impact model. As described by Applicants' Witness Reed:

> IMPLAN is a production-based, IO model that accounts for all of the dollar flows between the different sectors of the economy. Through this approach, and for a specific region, IMPLAN is able to model how dollars injected into one sector of the economy are subsequently spent and re-spent in other sectors of that region's economy, generating what is known as "economic multiplier effects."[78]

The IMPLAN model tracks direct, indirect, and induced economic effects. Direct impacts are defined as "the dollar value of economic activity available to circulate through the economy," equal to the employment and income generated from the rate reductions that are spent locally, net of any dollars applied to savings.[79] Indirect impacts refer to "inter-industry or supply chain impacts resulting from an economic event."[80] Induced impacts are "impacts on household spending by the people holding the new jobs generated by direct and indirect impacts."[81]

Applicants initially asserted in direct testimony that, based on an assumed stream of $100 million rate reductions spread evenly over a four-year period, a total of $109 million derivative

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[78]Applicants' Exhibit 33 at 39-40.

[79]Applicants' Exhibit 33 at 40-41.

[80]Applicants' Exhibit 33 at 41.

[81]Applicants' Exhibit 33 at 41.

benefits would be generated in local economic activity.[82] In responsive testimony, Applicants updated and extended the estimates of asserted derivative economic impacts using the same IMPLAN modeling methods, but using Applicants' expanded estimate of asserted rate reductions that would result from the Change of Control.[83] Applicants thus maintain that the revenue requirement reductions from the asserted O&M and capital program savings would result in additional beneficial impacts to the Hawaii economy of $496.1 million.[84]

(2) Consumer Advocate's Position

The Consumer Advocate contests Applicants' asserted estimates of derivative economic impacts on several grounds. Consumer Advocate Witness Comings asserts that Applicants'

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[82]See Applicants' Exhibit 33 at 39-44. According to the IMPLAN analysis, the assumed $25 million per year rate savings would create more than 675 person-years of employment and would have benefits on personal spending, industrial output, taxes and personal savings. $71.1 million of the rate reductions spent locally in Hawaii would result in an economic multiplier effect (1.53) generating a total of $109 million in State economic activity.

[83]See Applicants' Exhibit 50 at 134.

[84]See Applicants' Exhibit 50 at 133-135. The asserted cumulative five-year derivative economic impacts resulting from Applicants' asserted $465 million rate reductions are comprised of increased economic activity including: $324 million direct effects; $101 million indirect effects; and $71 million induced effects. (Quantities rounded.)

analysis includes substantial double-counting,[85] conflates nominal and real dollars,[86] ignores potential job losses at the HECO Companies,[87] ignores impacts of reduced spending by the HECO Companies after a Change of Control,[88] and ignores economic impacts of possible negative impacts of the Change of Control.[89]

(3) Discussion And Conclusions

Applicants' quantification of benefits to the State's economy is a proportional amplification of Applicants' quantified asserted revenue requirement reductions ascribed to the Change of Control. The quantification of economic benefits is contested by the Consumer Advocate, and is particularly difficult to analyze due to ambiguities in defining the applicable scope of pertinent impacts and uncertainties in framing and performing meaningful calculations. For example, there is credible debate regarding whether $324 million of asserted benefits, amounting to almost one

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[85]See CA's Exhibit 33 at 4-6. Witness Comings asserts that the inclusion of $324 million direct effect economic activity in Applicants' estimate of derivative economic benefits amounts to double-counting the direct rate impact reductions included in Applicants' total asserted benefits.

[86]See CA's Exhibit 33 at 6.

[87]See CA's Exhibit 33 at 8-9.

[88]See CA's Exhibit 33 at 9-10.

[89]See CA's Exhibit 33 at 10.

third of the total quantified benefits of the Change of Control asserted by Applicants, is inappropriately double-counted.

The Commission generally acknowledges that reductions in revenue requirements passed through to the HECO Companies' customers would have derivative benefits with respect to the State's economy. Beyond this general finding, however, and after careful review of the testimony and arguments, the commission concludes that the specific quantifications of State benefits that have been provided regarding the impacts of revenue requirement reductions on the State economy are not supported by a preponderance of the evidence.

Moreover, the commission observes that, as with many of Applicants' Commitments and projections, the record contains no analytical method for determining whether the benefits have actually occurred, and no penalty if they have not been produced as a result of the Change of Control. Thus, the commission concludes that while some ripple effects may occur, there is no firm evidentiary support on which to conclude that the level of benefits claimed will be the level of benefits ultimately realized.

The commission further observes that the analysis supporting the quantification of impacts on the State economy relies in fundamental part on Applicants' quantification of ratepayer benefits (revenue requirement savings) resulting from the Change of Control. As discussed below, the commission finds

that Applicants' quantification of ratepayer benefits is uncertain. The estimates of resulting economic impacts that are derived from the Applicant's quantification of ratepayer benefits are, therefore, uncertain as well.

The derived economic impacts resulting from revenue requirement reductions and the difficulties faced in their quantification are not unlike other non-revenue-requirement impacts that the commission must consider and balance in assessing the public benefit of the proposed Change of Control. The commission must consider pertinent risks, costs, and benefits that could result from the proposed Change of Control that have not been quantified in this proceeding, some or all of which could also have substantial positive or negative derivative impacts on the State's economy. These unquantified but potentially substantial costs and benefits are not included or considered in Applicants' quantification of possible impacts on the State's economy. The commission finds that there is no analysis in the record that attempts to quantify the impacts of all pertinent factors on the State's economy, and no reasonable assurance that such benefits would ultimately accrue to the State.

b. Proposed Charitable Contributions, Corporate Responsibility Reports, And Public Interest Contributions

Applicants have offered four Commitments with respect to charitable contributions, corporate responsibility, and public interest contributions.

(1) Charitable Contributions

In Commitments 16A - 18A, NextEra commits to maintain HEI's current level of corporate giving, and that it will continue to give at least $2.2 million annually for a minimum of ten years post-closing, consistent with HEI's level of corporate giving in 2013.

Charitable giving is a laudable goal. However, it is a basic regulatory principle that any such expenses are reflected "below the line" so that they do not impact rates. The commission is appreciative of these Commitments and agrees that they would benefit the State in general. Given the commission's decision to dismiss the Application without prejudice, it is unnecessary to further discuss this issue.

(2) Corporate Responsibility Reports

In Commitment 19A, though not entirely clear, NextEra offers to produce an annual "Corporate Responsibility Report," that will include information on its charitable giving, a

description of the activities of NextEra subsidiaries and affiliates doing business in Hawaii, and a "detailed description of the relevant metrics addressing the progress NextEra Energy is making in operating as a Hawaii business, including the concepts of Kuleana, Malama Pono, and Aloha."

Again, while the intention behind this Commitment is worthwhile, the Commitment provides that which is currently required of any utility operating in Hawaii with respect to how the business is operated, and the relationship between the utility and any subsidiaries or affiliates. The commission also observes, as discussed elsewhere in this Order, that Applicants have not on this record proposed any of the "relevant metrics" for addressing such progress; instead, as discussed below, they have simply offered to develop such metrics.

With respect to Commitment 19A, NextEra states that it will "work with the Commission, the Consumer Advocate, and the Office of Planning to develop metrics and assessment tools for use in its Corporate Responsibility Report." In the commission's view, such metrics should have been proposed as part of this Commitment and the Application.

(3) Public Interest Contributions

Finally, in Commitment 15A, NextEra states that it "will establish a funding mechanism and pre-fund $2.5 million per year for each year of the Rate Case Moratorium to be used for appropriate purposes in the public interest, at the Commission's discretion and direction, as permitted by law." The commission is aware that similar proposals have been made with respect to merger and acquisition proceedings and have received favorable consideration by commissions in other jurisdictions. The commission acknowledges the positive aspects of pre-funding mechanisms. However, given the commission's decision to dismiss the Application without prejudice, it is unnecessary to further discuss this issue.

2. Commission Issue No. 1.b. - Whether The Proposed Transaction, If Approved, Provides Significant Quantifiable Benefits To The HECO Companies' Ratepayers Both In The Short Term And Long Term Beyond Those Proposed By The HECO Companies In Recent Regulatory Filings

a. Transaction Commitment To Provide $60 Million In Short Term Rate Credits

(1) Applicants' Position

In Commitment 10A, NextEra commits to provide $60 million in total rate credits to the HECO Companies' ratepayers

over the four-year base rate moratorium period.[90] These credits would be provided to ratepayers in increments that increase from $6 million in 2016, to $12 million in 2017, to $18 million in 2018, and to $24 million in 2019.[91] According to Applicants, "[t]he $60 million in rate credits alone, proposed to begin immediately upon consummation of the merger, is at the very top end of the guaranteed customer benefits in other transactions."[92]

(2) Consumer Advocate's and Intervenors' Positions

The Consumer Advocate states that "the $60 million in fixed RAM credits . . . is diluted by offsetting conditions and ratemaking claw backs that are demanded by Applicants," and is "not remotely guaranteed," and "unworkable" in light of Applicants' Exhibit 46.[93] DBEDT similarly found the rate credits

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[90]NextEra originally offered to forego recovery of any incremental base expenses through the O&M RAM during the four-year base moratorium period.

[91]These amounts are totals for the three HECO Companies.

[92]Applicants Initial Brief at 5; see also Applicants' Exhibit 50 at 17 ("Based on my review of more than 30 electric utility mergers that have taken place over the past 20 years, this level of customer benefits is unprecedented. The guaranteed benefits of $60 million alone are at the very top end of the guaranteed customer benefits in other transactions.")

[93]"Division of Consumer Advocacy's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 16, 19, and 20 ("CA Initial Brief"). Observe that this refers to Applicants' initial proposal to credit the $60 million through

offered by Applicants "inadequate when compared to the level of benefits proposed by other utilities in merger proceedings."[94]

FOL,[95] COM,[96] and COH[97] also expressed concerns about the conditional nature of the $60 million in light of Applicants' Exhibit 46. Sierra Club states that the $60 million "is not based on any analyses," but is an arbitrary concession that is "based on what is comfortable for NextEra, rather than what is fair and appropriate for customers."[98]

Ulupono expressed concerns that "the $60 million in rate commitments still remain far from a guarantee to Hawaiian Electric Companies' customers," because Applicants "have refused to eliminate seven vague caveats in Applicants' Exhibit-46 that would

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the RAM. This was later modified in Applicants' Exhibit 37A to provide the $60 million as rate credits.

[94]"The Department of Business, Economic Development, and Tourism's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 24 ("DBEDT Initial Brief").

[95]"Friends of Lanai's Post-Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 2 ("FOL Initial Brief").

[96]"County of Maui's Post Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 23 ("COM Initial Brief").

[97]"County of Hawaii's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 4 ("COH Initial Brief").

[98]"Sierra Club's Post-Evidentiary Hearing Brief; and Certificate of Service," filed March 31, 2016 at 25 ("Sierra Club Initial Brief").

allow broad discretion to the Hawaiian Electric Companies to terminate the four-year base rate case moratorium, thereby rendering the commitment to rate credits speculative at best and illusory at worst."[99] Ulupono therefore suggests that "$100 million in rate credits over the four-year rate moratorium period is a more appropriate benefit in light of the substantial savings projected by Applicants with respect to the Proposed Change of Control."[100]

(3) Discussion And Conclusions

For the following reasons, the commission finds and concludes, based on a preponderance of the evidence, that Applicants have not demonstrated that their proposed $60 million in rate credits is guaranteed. Applicants state that the significant resources and time committed and expended by parties and the commission in rate cases could be more effectively used for the utility's operational needs during a rate case moratorium.[101] A rate case moratorium could enable the HECO Companies to instead focus on completion of critical corporate

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[99]"Post-Evidentiary Hearing Opening Brief of Ulupono Initiative LLC; and Certificate of Service," filed March 31, 2016, at 10-12 ("Ulupono Initial Brief").

[100]Ulupono Initial Brief at 10-12.

[101]Applicants' Exhibit 7 (Gleason) at 27.

initiatives like their transformation and post-merger integration implementation.[102]

However, while the Application speaks of the $60 million as being at the very "top end" of guaranteed customer benefits in other transactions,[103] the record evidence does not support that claim.

First, contrary to Applicants' statements on brief, Applicants' Witness Dewhurst agreed that the $60 million in rate credits is a "conditional guarantee" and that it is "not irrevocable."[104] The record evidence clearly supports this conclusion, as further discussed below.

Second, as discussed with respect to Applicants' Exhibit 46, above, Applicants acknowledge the fact that early termination of the Rate Case Moratorium would be permissible under the proposed commitment due to either financial distress or "a compelling financial need for a base rate increase."[105] Thus, Applicants can request that the moratorium be ended at any time Applicants' decide to make such a claim, which, if accepted by the

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[102]See CA Exhibit 11 (Brosch) at 36-37.

[103]Applicants Initial Brief at 5; see also Applicants' Exhibit 50 at 17.

[104]Dewhurst, Tr. 2609.

[105]Applicants' Exhibit 46 at 1-2.

commission, would result in termination of the payment of the $60 million in rate credits. This conclusion is of concern to the commission, particularly in light of the fact that the payment of the credits is much higher in the later years of the moratorium.

Third, the commission finds and concludes that the conditions under which NextEra could request an end to the Rate Case Moratorium lack clarity, thus rendering the $60 million subject to termination at any time for a variety of reasons. Applicants' Witness Gleason agreed with this conclusion:

> Q. And if you look at the first qualification, the first qualification to the rate case moratorium is "if any of the Hawaiian Electric Companies suffers financial distress due to an occurrence of an extraordinary expense. Example, an expense caused by a tropical storm, an act of terrorism, et cetera."
>
> Is "financial distress" defined anywhere?
>
> A. No.
>
> Q. And is "extraordinary expense" defined anywhere?
>
> A. Not here.
>
> Q. Do you know if Hawaiian Electric has a definition of "extraordinary expense"?
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> A. I don't know. And let me just add that my understanding is that these concepts were lifted from other, you know, language from several other approved mergers here in Hawaii. So it may be that these - for example, it may be - I don't know - that these terms were defined in the orders or the settlements around those cases.

Q. The second qualification is "should circumstances otherwise arise that create a compelling financial need for a base rate increase."

Do you see that?

A. I do.

Q. And is "compelling financial need" defined anywhere?

A. Again, subject to the caveat that I just mentioned, not here.

Q. And do you know how Hawaiian Electric defines "compelling financial need"?

A. I do not.[106]

Fourth, the record is clear that if a new rate case was filed and new rates implemented prior to the end of the Rate Case Moratorium, the unpaid portion of the $60 million would not be passed through to ratepayers:

> If there is a new rate case and new rates are put into effect prior to the end of the four-year moratorium, the balance of the $60 million that has not yet been credited to ratepayers is forfeited.[107]

Fifth, and related, footnote 3 to Commitment 10A specifically states that:

> [i]f a base rate-setting proceeding occurs during the four-year period, as a result of a general base rate request submitted by the Hawaiian Electric Companies pursuant to sections (a) or (b) in the second sentence of Commitment 9[A] above, or by

[106]Gleason, Tr. 504-505.

[107]Ajello, Tr. 2780.

> Commission order, and base rates are reset, all of the aforementioned rate credits would terminate prospectively on the effective date of the rates set on a final or interim basis in the rate setting proceeding, because any rates that are established through such a rate-setting proceeding would incorporate O&M merger savings net of costs to achieve and, thus, in effect would incorporate and supersede the rate credits provided therein.

Despite the claim that such a proceeding would incorporate the remainder of the rate credits, however, the commission finds that it is possible that in such circumstances the O&M savings net of costs would not be greater than the remaining portion of the $60 million in credits:

> Q. So if we were two years into the moratorium period and we had new rates that took effect on 1/1/18 -- are you with me so far?
>
> A. Yes.
>
> Q. -- then according to that footnote, there would be no further rate credits because, quote, any rates that are established through such a rate-setting would incorporate O&M merger savings net of cost and thus, in effect, would incorporate and supersede the rate credits.
>
> Is that a fair summary?
>
> A. I think it is.
>
> Q. So if we look at the chart of how you're going to return the 60 million, if we had a collection for 2016 and 2017, that would be a total of 18 million that had been returned; correct?
>
> A. Correct.
>
> . . .

Q. We're going to get a new rate case because of one of the two conditions. Commission approves it. New rates go into effect 1/1/18.

If what's built into there, into those rates, are O&M savings - O&M merger savings net of cost of $5 million, then for those two years that would be a total of $10 million. And what ratepayers would get is the 18 million plus 10 million which is 28 million.

Is that correct under those assumptions?

A. If the Commission agreed to it, yes.[108]

Stated simply, under this scenario, over the four years following the Change of Control, ratepayers would receive a total of $28 million instead of the "guaranteed" $60 million. Moreover, it bears noting that the circumstances that would permit the termination of the Rate Case Moratorium are those involving catastrophic events or financial distress. It is likely that in those circumstances, any merger-related benefits would be largely or completely offset by expenses related to those circumstances.

Sixth, should the commission decide to change or terminate any of the restrictions in Applicants' Exhibit 46, and the related Commitments 9A, 10A, 11A, 12A, 14A, and 15A, NextEra would have the opportunity to attempt to terminate the rate

[108]Gleason, Tr. 3036-3038.

credits. The issues with these conditions are discussed in a previous section of this Order.

Seventh, the $60 million in rate credits are contingent upon Applicants' conditions requiring the commission to approve ratemaking changes that could ultimately cost customers more than the value of the rate credits. For example, Applicants' Exhibit 46 would require the commission to authorize the HECO Companies to accelerate the accrual of RAM adjustments for the duration of the Rate Case Moratorium.

> NextEra Energy's commitments also are conditioned upon: (i) each of the Hawaiian Electric Companies being authorized to record revenues collected through the RAM Provision starting January 1 of each year of the stay out period, with the recovery period for the RAM Revenue Adjustment remaining unchanged (i.e., recovery of the RAM Revenue Adjustment shall continue to commence on June 1 of the applicable year and shall continue over the subsequent twelve months, and if the accrual period terminates (for example, due to the implementation of new rates pursuant to a rate case decision after the stay out period), any accrued but unrecovered RAM Revenue Adjustment amount will be collected through an adjustment to the RBA Rate Adjustment. . . .[109]

Thus, if the commission approves the accelerated accrual of RAM adjustments, this could potentially increase rates under the terms of the proposed Rate Case Moratorium.[110] While the exact

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[109]Applicants' Exhibit 46 at 1-2.

[110]Applicants have not performed a complete analysis of the potential revenue impacts of the accelerated RAM accrual required by the conditions in Applicants' Exhibit 46. Sekimura,

amount of costs to be borne by ratepayers pursuant to this proposal has not been quantified by Applicants, it is clear that this adjustment has the potential to offset, at least in part, the rate credits.

Eighth, Applicants failed to present sufficient evidence in support of their claim that the $60 million is an appropriate amount. Applicants did not retain an independent third party to do any type of quantitative analysis, and Applicants themselves only did a high level analysis whereby Applicants made a projection of what they believed would be passed through the O&M RAM over the four-year moratorium, added that up, and came up with about $60 million.[111] With respect to the latter, Witness Gleason stated that the $60 million was at the "high end" of what was contained in other mergers in other jurisdictions, and well above anything that had ever been given to customers in Hawaii in a utility merger.[112] However, Applicants failed to show how these statements are relevant to the unique circumstances present in either Hawaii in general or their Application in particular.

Tr. 1404-1405. However, at the time of an interim order in a general rate case, HECO would expect to be allowed to recover the accrued but not realized balance accumulated in the RAM regulatory account. Sekimura, Tr. 1395-1396.

[111]Gleason, Tr. 417.

[112]Gleason, Tr. 417.

According to Witness Oshima, the HECO Companies had no significant input into the determination of the $60 million. He stated that "it's really NextEra's decision on the regulatory package that they're willing to offer as part of getting regulatory approval."[113] Moreover, the HECO Companies "did not suggest a different package" and suggested no changes to the $60 million.[114]

The HECO Companies, as entities with the most direct experience with revenues and expenses and their impact on customer bills in Hawaii, also did not perform an analysis or have one performed on their behalf regarding what might be a reasonable amount of rate relief that could be provided to ratepayers in the short term (i.e., over the period of the proposed moratorium) as a result of the Change of Control. The HECO Companies effectively deferred this calculation to NextEra, an entity with no experience with rates in Hawaii, including, but not limited to, the impact of the RAM on ratepayers.

Ninth, the $60 million proposal can also be compared to other costs that ratepayers must pay to determine if it is reasonable and sufficient. One cost the commission has expressly authorized for full recovery by the HECO Companies from ratepayers is the price of fuel in general, and the price of oil in particular.

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[113]Oshima, Tr. 32.

[114]Oshima, Tr. 31-32.

Given Applicants' position that the ECAC and PPAC surcharges, among others, cannot be changed during the Rate Case Moratorium, it is possible, and, perhaps, likely, that despite the $60 million in credits over four years, the "bottom line" of ratepayer bills would increase, as Applicants' Witness Gleason conceded:

> Q. And do you know what would happen to customer bills if oil went back up to $75 or $100?
>
> A. They would go up.
>
> Q. They'd go up significantly, wouldn't they?
>
> A. Yes, they would.
>
> Q. And they would dwarf the 60 million, I would think?
>
> A. Yes. Of course, the point of the 60 million is savings relative to what Hawaiian Electric could achieve on their own.
>
> Q. I understand that. To the average customer, they're looking at the bottom line of their bill; right?
>
> A. Yes.[115]

While not dispositive of the issue, the commission observes that the impact of the $60 million on the "bottom line" of ratepayers' bills is fairly small. By some estimates, the impact is about $0.52 to $0.92 per month for a residential customer over the course of the four-year moratorium.[116] The commission is

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[115]Gleason, Tr. 433-434.

[116]See CA's Exhibit 29 (Brosch) at 28. The maximum cumulative total impact over the four-year Rate Case Moratorium period is for

concerned that these savings may pale in comparison to other factors that are likely to increase rates during the moratorium, such as the costs of major capital projects passed through to customers under the currently-effective RAM provisions (which remain effective during the proposed moratorium).

b. Other Asserted Ratepayer Benefits

In addition to the $60 million discussed above, Applicants' quantification of benefits to be realized by the HECO Companies' customers if the Change of Control is approved is summarized in Applicants' "Witness Reed Table 3," which is set forth below for convenience. As previously noted, the $60 million in RAM credits, which is included in Witness Reed Table 3, has been modified; Exhibit 37A states that the $60 million will be provided as rate credits.

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the Maui Division of MECO at $43.99, and the minimum impact is for the Molokai Division of MECO at $25.09.

Applicants' Witness Reed Table 3: Summary of Projected Savings[117]

	2016	2017	2018	2019	2020	Total Savings	Costs to Achieve	Net Benefits to Customers
O&M and Rate Savings								
Four-Year General Base Rate Moratorium	$1.66	$37.07	$46.19	$47.85	$0	$132.77	($0)	$132.76
Four Year Credits to RAM	$6	$12	$18	$24	$0	$60	($0)	$60
Lower cost of debt on capital additions	$0.63	$0.64	$0.48	$0.45	$.045	$2.65	($0)	$2.64
Non-Fuel O&M Savings	$0	$0	$0	$0	$40	$40	($10)	$30
Fuels	$7.5	$15	$15	$15	$15	$67.5	($0)	$67.5
Total O&M and Rate Plan Savings	$15.78	$64.71	$79.67	$87.30	$55.45	$302.92	($10)	$292.92
Capital Savings								
10% Savings on capital program following integration	$80	$80	$73	$62	$62	$357	($0)	$357
ERP/ EAM Savings	$20	$0	$0	$0	$0	$20	($0)	$20
Total Capital Savings	$100	$80	$73	$62	$62	$377	($0)	$377
Revenue Requirement Reduction from CapEx	$12.13	$25.16	$36.09	$44.99	$53.14	$171.52	($0)	$171.52
Total Revenue Requirements Savings	$27.91	$89.87	$115.76	$132.29	$108.59	$474.44	($10)	$464.44

[117]Applicants' Exhibit 50 at 74 ("Witness Reed Table 3").

As discussed below, the commission finds and concludes that the additional quantified ratepayer benefits resulting from the Change of Control asserted by Applicants have not been sufficiently quantified or supported by the record evidence. The components of the asserted benefits identified in Witness Reed Table 3 are addressed individually below.[118]

(1) Customer Benefits And Rate Commitments

The commission first addresses Applicants' projected $292.9 million in Total O&M and Rate Plan Savings. The majority of this total - $228.8 million - is attributable to Commitments 9A, 10A, and 11A, which are set forth in Applicants' Exhibit 37A under the heading "Applicants' Customer Benefit and Rate Commitments." For the five-year period following the Change of Control, Applicants provide the following partial breakdown of this amount: $132.8 million is attributable to the proposed Rate Case Moratorium (Commitment 9A); $60 million is attributable to the rate credits, as discussed in the previous section (Commitment 10A); and $30 million is attributable to non-fuel O&M savings in the year following the Change of Control (Commitment 11A).

[118]The issue of $60 million in rate credits was previously addressed, infra. at Section VIII.A.2.a.

First, the commission finds and concludes that Applicants' quantifications of these benefits are likely to be overstated because they fail to account for several pertinent factors. To the extent that non-fuel O&M expenses are reduced during the Rate Case Moratorium, the moratorium on base rate cases (which is discussed in some detail below) would not be a benefit to customers; instead, it would prevent customers from sharing in those benefits.[119] Applicants did not attempt to demonstrate that any such benefits were likely to be less than the $60 million in rate credits.

Second, these benefits are subject to commission approval or acceptance of other proposals. These are included in Applicants' Exhibit 37A, which specifies that "Commitments 9, 10, 11, 12, 14 and 15, are subject to the Commission's approval of all Rate Commitments."[120] Among these, perhaps the most significant is Commitment 14A, which incorporates the proposed limitations on the commission's authority set forth in Applicants' Exhibit 46, as discussed in detail above. Commitment 14A provides:

> The modified decoupling mechanism approved by the Commission in Order No. 32735 shall remain in effect during the general base rate case moratorium period, subject to the conditions outlined in Applicants Exhibit-46 to the Responsive Testimony

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[119]See discussion infra., regarding the asserted benefits of a Rate Case Moratorium.

[120]Applicants' Exhibit 37A at 2.

of Witness Gleason and any Commission-authorized changes.[121]

(2) Impacts On Costs Of Debt

Applicants state that the HECO Companies would realize a substantial financial benefit from affiliation with NextEra, noting that NextEra has the largest credit facility in the industry (approximately $9.2 billion in credit commitments from 68 banks) demonstrating its robust liquidity and exceptional access to capital markets.[122]

Leaving aside any analysis of direct savings from an upgrade in the HECO Companies' credit rating that could follow from a Change of Control, Applicants offered two Commitments that directly pertain to post-merger treatment of the HECO Companies' financing:

- Commitment 63A - The HECO Companies will maintain their debt separate and apart from NextEra Energy and NextEra Energy's affiliates and non-utility subsidiaries.

- Commitment 64A - The HECO Companies will maintain their own credit ratings for outstanding long-term debt from at least two of the three major credit rating agencies.

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[121]See Applicants' Exhibit 46.

[122]Application at 25.

The issue of the HECO Companies' credit strength was addressed by the Applicant and six Intervenors.

(a) Applicants' Position

Applicants maintain that the proposed Merger will be beneficial to the HECO Companies because it will result in an improvement in the HECO Companies' financial health. Applicants suggest that the financial benefits accrued to the HECO Companies by way of the Merger will be both significant and sustainable over time.[123]

Applicants further assert that improvements to the HECO Companies' financial condition will permit them to accelerate the transition to a significantly cleaner and more sustainable environmental profile, and to meet the State's renewable energy goals for 2045.[124] Applicants' position appears to be that a ratings upgrade is virtually assured simply by affiliation with NextEra.[125]

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[123]Applicants Initial Brief at 17, 34, and 58.

[124]Applicants Initial Brief at 6.

[125]Applicants Initial Brief at 58.

(b) Consumer Advocate's Position

The Consumer Advocate argues that the extensive network of financial obligations attendant to NextEra's non-regulated businesses may negatively affect the HECO Companies' credit ratings in the future, citing Applicants' Witness Sekimura.[126] The Consumer Advocate further characterizes Applicants' references to the effect of a credit upgrade (i.e., reduced debt service cost) as simply another promise that might or might not occur.[127]

For example, the Consumer Advocate challenges the strength of Applicants' claims, observing that only one of the three major ratings agencies have expressed any support for an upgrade, that Applicants have offered no evidence that an upgrade would translate to lower debt service cost, and that the single ratings agency referenced by Applicants (S&P) cannot be regarded as objective.[128] Furthermore, the Consumer Advocate states that the two other principal ratings agencies (Fitch and Moody's) have indicated the current ratings for the HECO Companies would remain unchanged.[129]

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[126]CA Initial Brief at 41.

[127]CA Initial Brief at 53.

[128]CA Initial Brief at 53.

[129]CA Initial Brief at 54.

Finally, the Consumer Advocate asserts that the financial impact of any credit upgrade to the HECO Companies' debt portfolio would be much smaller than suggested by Applicants.[130] The Consumer Advocate cites an exchange with Applicants' Witness Gleason that suggests that if it were possible to refinance all of the HECO Companies' debt with a 25 basis point reduction as suggested by Applicants, this would result in savings of only about $4 million per year.[131] Subsequently, on cross-examination, Applicants' Witness Sekimura further reduced that estimate to $200,000 per year given the likelihood that only a portion of the debt could be re-financed in the near future.[132]

(c) Intervenors' Position

COM takes issue with Applicants' suggestion that an improved credit rating is more important than greater ring-fencing provisions.[133] FOL questions the long-term benefit of any improved credit rating for the HECO Companies.[134] Furthermore, FOL argues that Applicants' claims must be viewed as speculative given their

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[130]CA Initial Brief at 53-54.

[131]CA Initial Brief at 53 (citing Gleason, Tr. 3047-3048).

[132]CA Initial Brief at 54.

[133]COM Initial Brief at 6-7.

[134]FOL Initial Brief at 18-19.

failure to show how any credit upgrade would benefit HECO.[135] Additionally, FOL cites to its own rebuttal testimony that questions the relevance and reliability of any credit rating, arguing its limited value.[136] Finally, FOL asserts that the record in this proceeding does not support any conclusion that the transaction will improve the HECO Companies' financial "soundness" given Applicants' reliance upon a credit "uplift" as the basis for its opinion.[137]

HIEC does not challenge Applicants' representations of their financial strength or experience. However, HIEC does argue that the lack of specific plans that translate that strength and experience to the benefit of Hawaii serves to show that the Proposed Transaction is not in the public interest.[138]

OSP asserts that Applicants' representations of credit enhancement and ring-fencing requirements are simply too good to be true. OSP does not directly challenge Applicants' representations that a credit upgrade for the HECO Companies could be realized by merging HEI with NextEra; however, OSP asserts that

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[135]FOL Initial Brief at 34-35.

[136]FOL Initial Brief at 36.

[137]FOL Initial Brief at 35-36.

[138]"Intervenor Hawaii Island Energy Cooperative's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 5 ("HIEC Initial Brief").

the price to realize that upgrade (i.e., the Merger) is simply more than bearable by the people of Hawaii.[139] OSP points to the concerns of the Sierra Club that the lure of a possible credit upgrade outweighs the risks of ceding control of the HECO Companies to NextEra as a summary of its own concerns.[140]

Ulupono offers no challenge to Applicants' claim that a credit lift can be realized by approval of the Merger agreement. However, Ulupono objects to Applicants' claim that enhancements to the ring-fencing provisions proposed by Applicants would threaten any expected credit uplift. Ulupono argues that Applicants' Witness Lapson was unable to offer any support for that claim under cross-examination.[141]

Ulupono further asserts that foregoing any interest savings achieved by consolidating the HECO Companies' credit ratings with NextEra is a small price to pay for the assurance provided by true ring-fencing measures.[142] Finally, Ulupono states that Applicants can improve the financial metrics of the HECO Companies and realize better credit ratings despite adopting

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[139]"Office of Planning, State of Hawaii's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 27 ("OSP Initial Brief").

[140]OSP Initial Brief at 27.

[141]Ulupono Initial Brief at 22-23.

[142]Ulupono Initial Brief at 24.

stronger ring-fencing measures; it only takes time and commitment on their part to doing so.[143]

(d) Discussion

The commission observes that public capital markets exist to match those seeking outside sources of capital with those that are able and willing to provide it. The match is predicated upon the perception of risk of the investment and the appetite of the investor for that risk.[144] It is that risk and risk tolerance that were given considerable attention by the Parties during the course of this proceeding. The record is replete with discussion of the relative positives and negatives associated with the credit upgrade.

As discussed below, Applicants have demonstrated that NextEra possesses substantial financial resources. NextEra's financial and managerial capabilities could assist in the more efficient and effective deployment of capital for HECO's operations and transformation.[145] However, that fact alone is not

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[143]Ulupono Initial Brief at 24.

[144]The commission observes that upon approval of the Merger, the equity of the HECO Companies would be subsumed by NextEra and no longer traded in the market. Any additional infusions of equity to the HECO Companies would be the sole responsibility of NextEra. Consequently, the balance of this discussion is limited to matters of debt issued on behalf of, and in the name of, the HECO Companies.

[145]Applicants' Exhibit 7 (Gleason) at 16-22.

dispositive of these issues. The commission finds that Applicants have not demonstrated by a preponderance of the evidence that a credit upgrade for the HECO Companies is certain or guaranteed, or that any credit upgrade approved for the HECO Companies will result in an appreciable reduction in the Companies' debt service cost. The commission notes the concern expressed by OSP that any upgrade is unlikely to generate any substantive or sustainable economic benefit.

The record in this proceeding shows that even if upgraded, the projected benefit to the HECO Companies and to its customers substantially reduced by the fact that only a small portion of the HECO Companies' debt matures in the near future. The Consumer Advocate notes that if all of the HECO Companies' current outstanding debt of about $1.5 billion was immediately refinanced following a Change of Control, the savings would be about $4 million per year.[146] However, if a more realistic level of refinancing of $80 million is considered, the annual savings would only be about $200,000 per year.[147] Coupled with the fact that only S&P has actually stated that it would increase the debt rating (although it did not guarantee it would do so), while the other two major credit ratings agencies have not, the commission

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[146]Gleason, Tr. 3047-3048.

[147]Applicants' Exhibit 28 (Sekimura) at 26.

finds and concludes that the dollar value of any credit ratings uplift actually achieved would be relatively small, assuming that it occurs.

The commission also has concerns with Applicants' benefit calculations given the lack of any definitive means to track Applicants' re-financing efforts. The commission observes that the Commitments contained in Applicants' Exhibit 37A do not expressly require NextEra to re-issue the HECO Companies' debt in the HECO Companies' name.[148] If it is assumed that any of the HECO Companies' new or existing debt financed following any approval of the Application will be issued under NextEra's imprimatur, that would effectively eliminate any ability to directly measure the effects of a credit upgrade. Should this occur, Commitment 64A to maintain separate ratings for the HECO Companies' outstanding long-term debt would become much less important.

More importantly, the lack of a means to track this proposed benefit effectively means that the commission does not have the ability to ensure that all of the estimated economic

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[148]Commitment 63A only provides that the HECO Companies will maintain their debt separate and apart from NextEra and NextEra Energy's affiliates and non-utility subsidiaries. This does not preclude NextEra from issuing debt under its name on behalf of the HECO Companies so long as that debt is segregated. The absence of any proposed sequestration mechanism severely weakens this Commitment by affording NextEra considerable latitude with respect to how it would comply with this requirement.

benefits to be provided by the Change of Control will flow directly to the HECO Companies and their customers. Applicants' Witness Reed suggests that the pricing difference between bonds issued by the HECO Companies and those issued by NextEra is substantially greater than 25 basis points, and could be as much as 77 basis points.[149] However, the lack of any provisions in Applicants' Exhibit 37A to ensure that the full benefit of the HECO Companies' association with NextEra will actually be realized by the HECO Companies and their customers leaves NextEra with an opportunity to arbitrage on the HECO Companies' current debt to the benefit of NextEra and not the HECO Companies.

Finally, the current set of Commitments affords NextEra the option to assign debt obligations to the HECO Companies at an internal cost that exceeds NextEra's actual cost, but less than its current cost, and remain compliant with the terms of Exhibit 37A.

(e) Conclusion

Upon review of all the evidence and argument that has been presented by Applicants, the Consumer Advocate, and the Intervenors, the commission concludes that Applicants have not presented sufficient evidence for the commission to conclude that

[149]Applicants' Exhibit 50 at 119.

the Commitments made by Applicants in Exhibit 37A are adequate, or that the interests of the public are fully recognized and protected by Applicants. Specifically, the commission concludes that Applicants have not carried either the burden of proof or the burden of persuasion to show that:

- a credit upgrade to the HECO Companies' debt is imminent or certain;
- any credit upgrade that may be forthcoming in the future would provide an appreciable - and sustainable - benefit to the HECO Companies; and
- the full economic benefit of any reduced cost of debt will be recognized by the HECO Companies and their customers.

Likewise, the commission cannot conclude on this record that Applicants' approach to improving the HECO Companies' financial condition is reasonable and in the public interest. The commission makes no judgment concerning the relative merits of NextEra's proposal other than that, as presented, it lacks sufficient clarity and commitment. Applicants' asserted quantification of benefits resulting from impacts on costs of debt has not been sufficiently substantiated and has not been demonstrated to exceed impacts of updating costs of debt in existing rates to current actual costs.

c. Transaction Commitments Related To The Rate Case Moratorium

(1) The Four Year Moratorium

(a) Applicants' Position

Applicants' Commitment 9A provides for the Rate Case Moratorium:

> NextEra Energy commits to a four-year moratorium on its ability to file a general base rate case, subject to the conditions outlined in Applicants Exhibit-46 to the Responsive Testimony of witness Gleason. The Hawaiian Electric Companies may seek a general base rate increase only if (a) any of the Hawaiian Electric Companies suffer financial distress due to the occurrence of an extraordinary expense (e.g., an expense caused by a tropical storm, an act of terrorism, etc.), or (b) circumstances otherwise arise that create a compelling financial need for a base rate increase, consistent with Commission precedent.[150]

Applicants further assert that:

> These benefits begin with a moratorium of at least four years foregoing the opportunity to file a request for a general base rate increase, which is a substantial benefit in and of itself. In recent years, the Hawaiian Electric Companies have had rate cases at a pace of about one per year. Not only are potential general base rate increases avoided by this merger commitment, but the expenses and time consumed by rate proceedings are also avoided.[151]

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[150]Applicants' Exhibit 37A at 2.

[151]See, e.g., Applicants' Exhibit 33 (Reed) at 17.

Applicants state that they estimate that there will be more than $132 million in savings from the proposed Rate Case Moratorium, that they have provided commitments that non-fuel O&M cost increases will be kept below the rate of inflation, and that "all net merger savings will go to benefit customers in the first rate case after the rate moratorium."[152]

(b) Consumer Advocate's And Intervenors' Positions

The Consumer Advocate states that "the rate case moratorium proposed by Applicants would deny ratepayer participation in the anticipated reduction of the HECO Companies' costs resulting from the proposed Merger by freezing presently excessive base rates,"[153] and refuted Applicants' proposed $132 million in savings from the Rate Case Moratorium, testifying that "Applicants' proposed base rate case moratorium would actually create negative value for ratepayers by delaying the needed accounting for the utilities' currently lower costs of capital at the same time non-fuel O&M expense growth is minimal or non-existent."[154]

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[152]Applicants Initial Brief at 18.

[153]CA Initial Brief at 10.

[154]CA's Exhibit 29 at 15 (footnote omitted).

Ulupono,[155] DBEDT,[156] COM,[157] COH,[158] additionally note Applicants' broad discretion to end the Rate Case Moratorium, and list numerous scenarios under which Applicants could choose to do so, among which are loosely-defined "financial distress" and "compelling financial need."

(c) Discussion And Conclusions

In his responsive testimony, Applicants' Witness Reed projects that ratepayers will save $132.77 million for the moratorium period from 2016-2019 inclusive following the effective date of the Change of Control.[159] This estimate is based on the assumption that the historical increases in non-fuel O&M expenses are an approximation of the increases in costs that ratepayers would have to pay in the absence of the Rate Case Moratorium.[160]

Applicants' Witness Reed acknowledges that his calculations are based on the historical increases in non-fuel O&M expenses allowed in the final commission orders between specified

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[155]Ulupono Initial Brief at 10.

[156]DBEDT Initial Brief at 22.

[157]COM Initial Brief at 23.

[158]COH Initial Brief at 4.

[159]See Witness Reed Table 3 (Applicants' Exhibit 50 at 74).

[160]See Applicants' Exhibit 50 at 68.

general rate cases for each of the HECO Companies. Specifically, Witness Reed calculated the increases in allowed non-fuel O&M expense for HECO between the 2009 and 2011 test year rate cases, for MECO between the 2010 and 2012 test year rate cases, and for HELCO between the 2006 and 2010 test year rate cases.[161]

The calculated increases for each of the HECO Companies were then applied to each year of the Rate Case Moratorium, starting with and following the date of the next scheduled rate case for each Company.[162] The sum of these calculated increases in non-fuel O&M expenses comprise Applicants' quantification of the benefits of the Rate Case Moratorium, that is, $132.7 million.[163]

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[161]See Applicants' Exhibit 50 at 68; and Applicants' Response to CA-IR-303, Attachment 1 (Supplement 7/9/2015), filed also as Applicants' Exhibit 85. Non-fuel O&M expenses tabulated in the quantification exclude Power Purchase Agreement expense. Quantification of asserted savings are stated to exclude capital projects and O&M costs associated with new initiative, processes, or requirements.

[162]See Applicants' Response to CA-IR-303, Attachment 1 (Supplement 7/9/2015), filed also as Applicants' Exhibit 85. For HECO, the increase in non-fuel O&M expense for the two-year period between the 2009 and 2011 test year rate cases was calculated and applied to each of the years 2017 and 2018 of the Rate Case Moratorium and then summed. For MECO, the increase for the two-year period between the 2010 and 2012 test year rate cases was calculated and applied to the 2018 year of the Rate Case Moratorium. For HELCO, the increase in non-fuel O&M expense for the four-year period between the 2009 and 2010 test year rate cases was calculated and applied to each of the years 2016, 2017, and 2018 of the Rate Case Moratorium and then summed.

[163]See Applicants' Exhibit 85 at 2.

Other witnesses, however, take issue with Applicants' Witness Reed's calculations. Consumer Advocate's Witness Brosch maintains that several assumptions in Applicants' analysis are either wrong or overstated,[164] and, as a result, Applicants' proposed Rate Case Moratorium would actually create negative value for ratepayers.[165] In support of this conclusion, the Consumer Advocate states as follows.

First, Consumer Advocate's Witness Brosch contends that the use of historical growth rates in non-fuel O&M expense to estimate the amount that future increases would exceed general inflation levels is arbitrary and superficial.[166] Witness Brosch cites historical data provided by Applicants, which indicates that the recent rate of growth in recorded non-fuel O&M expenses is lower than the rate of growth during the historical period used by Applicants' Witness Reed.[167]

> The growth trend in more recent non-fuel O&M expense growth for the utilities has flattened. Since 2012, the last year of prior rate case test years relied upon by Mr. Reed to project O&M expense trends, the actual levels of non-fuel O&M expenses incurred by the utilities has grown at a rate close to general levels of inflation. However, in years prior to 2011, when frequent base rate cases were

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[164]See CA's Exhibit 29 at 11.

[165]See CA's Exhibit 29 at 15.

[166]See CA's Exhibit 29 at 12, and CA's Exhibit 11 at 50-51.

[167]See CA's Exhibit 29 at 13, and CA's Exhibit 11 at 50-51, with n. 51 (both citing Applicants' Response to CA-IR-354).

being submitted, non-fuel O&M expenses were growing more rapidly. . . .[168]

Consumer Advocate's Witness Brosch also states that forecasted O&M expenses in Applicants' long-term financial forecasts are not expected to grow at the rate assumed by Applicants' Witness Reed.[169]

Second, Consumer Advocate's Witness Brosch states that Applicants' Witness Reed's quantification of customer savings that would result from the Rate Case Moratorium fails to account for several offsetting factors. Witness Brosch first testifies that the Rate Case Moratorium would delay the rate case accounting and resulting pass-through to ratepayers of the impacts of actual current costs of capital that are lower than what is reflected in currently-effective rates.[170] He then calculates that updating the cost of debt from what is currently reflected in effective rates to the actual costs of debt for calendar year 2014, as reported in the annual decoupling filings for each of the HECO Companies, would result in a decrease in revenues charged to customers of $5.7 million per year for the combined HECO Companies.[171]

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[168]CA's Exhibit 29 at 13, and n. 15.

[169]See CA's Exhibit 29 at 14, citing Applicants' response to CA-IR-211 and CA-IR-490 (filed as confidential and restricted under protective order).

[170]See CA's Exhibit 29 at 15; CA's Exhibit 11 at 51.

[171]See CA's Exhibit 11 at 54-56, and CA's Exhibit 13 at line 1. This cost of debt update calculation was performed in conjunction

Consumer Advocate's Witness Brosch next calculates the impact of a lower return on equity ("ROE") and an adjusted capital structure to reflect the updated levels that he asserts could be reasonably expected to appear in any general rate case absent the proposed Rate Case Moratorium.[172] The need for, and reasonableness of, the Consumer Advocate's proposed changes to allowed ROE and capital structure weights were contested in Applicants' testimony.[173]

With respect to the $132.77 million savings projected by Applicants' Witness Reed, Consumer Advocate's Witness Brosch concludes:

> [] There is no way to reliably predict future rate case outcomes in the absence of the proposed merger, as attempted by Mr. Reed. As noted in my Direct Testimony, the absence of any recent base rate increase requests from the utilities, the utilities reported excess earnings for RAM sharing purposes and the known overstatement of capital costs within presently effective base rates all suggest that existing rates are presently excessive. Thus, I expect that Applicants'

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with determining the Consumer Advocate's rate plan proposed as a recommended Commitment to the Change of Control, using actual cost of debt and capital structure weight reported in Schedule H of each of the Companies' annual decoupling filings.

[172]See CA's Exhibit 11 at 54, 56-57. These calculations were performed in conjunction with determining the Consumer Advocate's rate plan proposed as a recommended Commitment to the Change of Control. Witness Brosch calculates the impacts of the Consumer Advocate's proposed adjustments to allowed ROE and changes in capital structure weights to be $46.6 million per year during the period of the Rate Case Moratorium. (CA's Exhibit 13 at 1).

[173]See generally Applicants' Exhibit 50 at 96-104.

> proposed base rate case moratorium would actually create negative value for ratepayers by delaying the needed accounting for the utilities' currently lower costs of capital at the same time non-fuel O&M expense growth is minimal or non-existent. The obvious need for an updating of the cost of debt and equity capital within presently effective base rate levels is a key element of the Consumer Advocate's proposed rate plan that should be undertaken before any base rate case moratorium is initiated.[174]

Based upon the limited record evidence, the commission cannot determine conclusively at this time whether the growth in non-fuel expenses passed through to customers in rate cases absent the proposed Rate Case Moratorium will be greater than inflation over the four year moratorium period. The commission agrees with the Consumer Advocate that several factors not considered in Applicants' analysis could drive the value of the Rate Case Moratorium negative. Applicants' calculations regarding their projected non-fuel O&M expense growth rates are based on historical time periods that do not reflect recent experience, and also ignore significant offsetting factors. Based on this review, the commission determines that Applicants have not demonstrated by a preponderance of the evidence that the estimated savings from a moratorium are as large or certain as presented in Witness Reed Table 3.

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[174]CA's Exhibit 29 at 14-15.

(2) Non-Fuel O&M Savings

(a) Applicants' Position

Applicants' Commitment 11A states:

> NextEra Energy commits to reflect 100% of all net non-fuel O&M savings achieved by each of the Hawaiian Electric Companies in the first test period following the proposed general base rate case moratorium for the benefit of the Hawaiian Electric Companies' customers, and that the non-fuel O&M to be included in revenue requirements in each of the Hawaiian Electric Companies' first general base rate case following the four-year general base rate case moratorium will be no higher than the non-fuel O&M in calendar year 2014, adjusted for inflation. The calendar year 2014 non-fuel O&M is reflected in Applicants Exhibit-80 to the Responsive Testimony of Witness Sekimura.[175]

Applicants assert that a net $30 million benefit would be realized by passing on non-fuel O&M savings to customers in the year following the Rate Case Moratorium as a result of the Change of Control and Commitment 11A.[176] For the reasons discussed below, the commission concludes that Applicants' quantification of these asserted benefits are not supported by a preponderance of evidence.

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[175]Applicants' Exhibit 37A at 3.

[176]See Witness Reed Table 3 (Applicants' Exhibit 50 at 74).

(b) Discussion

(i) Commitment To Reflect All Net Non-Fuel O&M Savings In The Next General Rate Case

In the first component of this Commitment, NextEra commits to reflect all net non-fuel O&M savings in the next general rate case following the end of the Rate Case Moratorium. This aspect of the Commitment is no different than conventional rate case protocols. As a matter of established convention, in a general rate case, the determination of allowed revenue requirements would be based, in appropriate part, on test year non-fuel O&M expenses, which should reflect all non-fuel O&M savings that are realized by the HECO Companies.

(ii) Cap On Non-Fuel O&M Expenses

In the second component of this Commitment, NextEra Energy commits to limiting the amount of non-fuel O&M expenses allowed in the next general rate case to be no higher than the recorded adjusted non-fuel O&M expense in calendar year 2014, adjusted for inflation, as quantified in Applicants' Exhibit 80. While this assurance has some value as a "back-stop" provision, this assurance would not apply to circumstances where Applicants successfully move to terminate the Rate Case Moratorium due to financial distress or compelling financial need as provided by the conditions in Applicants' Exhibit 46. The commission thus finds

that the Commitment would not apply under the circumstances when it would have most value to customers.[177] Under expected circumstances, Applicants anticipate achieving substantial reductions in non-fuel O&M expenses.[178]

(iii) Other Considerations

Several additional matters are pertinent to an evaluation of Applicants' Commitment to pass through O&M savings to customers starting in the year following the Rate Case Moratorium. These matters include (1) the magnitude of expected non-fuel O&M savings; (2) whether the savings are the result of the proposed Change of Control; and (3) whether and to what extent realized savings would be passed on to the benefit of customers.

First, Applicants' Witness Reed quantifies asserted gross non-fuel O&M savings of approximately $40 million per year, or a net of $30 million per year.[179] Witness Reed's quantification is based, in part, on estimates of non-fuel O&M savings resulting

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[177]As discussed above, Applicants have not defined the meaning of financial distress or compelling financial need as it applies to Applicants' prerogative to terminate the Rate Case Moratorium.

[178]See Applicants' Exhibit 33 (Reed) at 19 (identifying "quick hit opportunities for cost reductions") and 30-33 (discussing expected savings).

[179]As stated in Witness Reed Table 3 (Applicants' Exhibit 50 at 74), the $40 million estimated savings are offset by $10 million in costs to achieve the savings.

from several recent merger transactions. According to Witness Reed's testimony, the savings resulting from the Change of Control would not include savings associated with synergies associated with adjacent or proximate service areas and that the near-term savings resulting from the Change of Control would not include impacts of labor reductions.[180] Witness Reed's projection of non-fuel O&M savings also considers savings associated with insurance expenses, professional service fees, information technology costs, and routine supply chain costs.[181]

Consumer Advocate's Witness Brosch asserts that there are several types of costs or potential costs that would or could result from the proposed Change of Control. These costs, to the extent they are realized and allowed in rates, would offset the non-fuel O&M savings projected by Witness Reed. Costs identified by Witness Brosch include incentive compensation costs,[182] diminution of net operating loss tax benefits,[183] corporate aviation costs,[184] executive management costs,[185] and captive

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[180]See Applicants' Exhibit 33 at 30-33.

[181]See Applicants' Exhibit 33 at 34-38.

[182]See CA's Exhibit 11 at 75-78.

[183]See CA's Exhibit 11 at 79-82.

[184]See CA's Exhibit 11 at 82-83.

[185]See CA's Exhibit 11 at 84-86.

insurance affiliate costs.[186] On balance, the Consumer Advocate, while maintaining that projected savings are highly uncertain, acknowledges that there is a potential for beneficial savings to the HECO Companies as a result of the Change of Control.[187]

Second, a central question in evaluating the benefit to customers is the amount of O&M expense savings that are directly attributable to the Change of Control. If the asserted savings in net non-fuel O&M expense are indeed feasible assuming the Change of Control, one issue is whether and to what extent these savings are possible with prudent management by the HECO Companies in the absence of the Change of Control. Another is whether Applicants have demonstrated that the Change of Control is a necessary precedent to achievement of the asserted savings.

Applicants' Witness Reed asserts that the non-fuel O&M savings projected in Applicants' quantification are the result of the Change of Control and would not otherwise be achievable by the HECO Companies.[188] This assertion is questioned by the Consumer Advocate, Ulupono, and DBEDT.[189]

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[186]See CA's Exhibit 11 at 87-89.

[187]See CA's Exhibit 11 at 30.

[188]See Applicants' Exhibit 33 at 38.

[189]CA Initial Brief at 13-17; Ulupono Initial Brief at 6-7. See also, DBEDT's Exhibit 1 at 38-41 (challenging Applicants' Witness Reed's IMPLAN projections).

Third, the Commission observes that, in the absence of the Change of Control, if any savings in non-fuel O&M are prudently realized, these savings would be passed through to customers sooner and to a greater extent through the general rate cases than would occur with a Rate Case Moratorium.[190] In this respect, the Rate Case Moratorium serves to prevent customers from realizing any non-fuel O&M savings, rather than providing a benefit.[191]

Fourth, the actual savings also depend on the "cost-to-achieve." If these costs exceed the estimated $10 million, then net benefits decrease.

(c) Conclusion

Applicants' Commitment 11A provides that realized non-fuel O&M savings will be passed on to customers in the next general rate case for each of the HECO Companies immediately following the termination of the Rate Case Moratorium. The

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[190]For example, savings could pass through to customers in much the same way and according to the same timing, and could be quantified by similar methods as assumed by Witness Reed in his analysis of non-fuel O&M costs avoided by customers shown in Applicants' Exhibit 85.

[191]The benefits ascribed to non-fuel O&M savings are quantified by Applicants as shown in Witness Reed Table 3 (Applicants' Exhibit 50 at 74). Asserted benefits for the four years of the Rate Case Moratorium are identified as zero. This essentially presumes and implies that there would be no non-fuel O&M savings attained by the HECO Companies and passed through in rate cases in the absence of the Change of Control.

commission concludes, however, that in order for customers to benefit from this Commitment as quantified in Witness Reed Table 3, general rate cases for all three HECO Companies would have to be effective on Day One and for the full year immediately following the termination of the Rate Case Moratorium. Otherwise, realized savings would continue to accrue to the HECO Companies rather than customers.[192] Moreover, Applicants have made clear that the rate credits will terminate with the termination of the moratorium. In addition, Applicants have not determined, or committed to, a process that would smoothly transition customers out of the moratorium and allow them to immediately realize any benefits of lower non-fuel O&M expenses.[193]

The commission further concludes that Applicants' quantification of $30 million in asserted revenue requirement reductions resulting from the Change of Control as set forth in Commitment 11A is not supported by a preponderance of the evidence. The determination of the amount of expected savings resulting from the Change of Control is approximated based on experience in other, non-related mergers, without an explicit accounting for specific

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[192]The commission also observes that, in the circumstance assumed by Applicants, one hundred percent of any allowed accelerated RAM accrual accumulated in the RAM regulatory asset account would be recoverable from ratepayers.

[193]See CA's Exhibit 29 at 18 (citing Applicants' Response to CA-IR-413).

savings measures or balancing effects of several identified potential costs. The calculation implicitly presumes that there would be no non-fuel O&M savings by the HECO Companies passed through rate cases that would take place without the Change of Control.

(3) Impact Of Moratorium On Deferred Accounting

(a) Introduction

To further evaluate the impacts of the proposed Rate Case Moratorium, the following issues must also be addressed, among others: (1) the treatment and impact of deferred expenditures during and after the moratorium; (2) the impact of expenses that are included in currently effective rates until the next rate case; (3) the impact of the pension tracker;[194] and (4) as part of the

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[194]Under the pension tracking mechanism, an amount is identified in rates in each rate case as pension costs. Once new rates are effective, and until rates are changed in a subsequent rate case, the amount of pension costs are separately tracked.

In the next succeeding rate case, the cumulative amount of pension costs in rates since the last rate proceeding are compared to the cumulative amount of contributions to the pension fund, and the difference is an addition (if the cumulative contribution exceeds the cumulative amount in rates) or a deduction (if the cumulative amount in rates exceeds the cumulative contribution) in the calculation of rate base. The test year ending pension balance in rate base is then amortized over five years beginning when new rates are effective.

The implementation of the pension tracking mechanism eliminated ratemaking issues associated with the inclusion of prepaid assets (an investment that results when the cumulative

Rate Case Moratorium, whether it is reasonable to bar the HECO Companies from filing any additional deferred accounting requests.

In determining whether Applicants' proposed moratorium is beneficial or detrimental to ratepayer interests, it is necessary to consider the impact of deferred expenditures that are included in current rates, and deferred expenditures that are approved both during and immediately following any moratorium.

The commission is concerned about the effects that will be felt by ratepayers as a result of the extended period between general rate cases regarding deferred and accumulated regulatory assets that each of the HECO Companies will propose to roll into base rates in the next rate case filing following the Rate Case Moratorium. Applicants did not discuss, quantify, or account for these impacts, despite the potentially large detrimental impact on ratepayers.

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funds contributed to the pension fund exceed the cumulative Net Periodic Pension Costs ("NPPC"), or the current period charge for the pension) in rate base in future proceedings and allowed for smoothing of the impact of pension costs on ratepayers.

(b) Deferred Expenditures

As agreed to by Applicants' Witness Sekimura, the categories of deferred expenditures are as follows for purposes of evaluating the impact of the Rate Case Moratorium on ratepayers:[195]

- Deferred expenditures approved and accounted for before or during the test year of the last rate case;
- Deferred expenditures approved and to be included in the next rate case;
- Deferred expenditures approved but subject to prudency review and recovery in the next rate case; and
- Deferred expenditures that become fully amortized during the Rate Case Moratorium period.

Applicants' Witness Sekimura agreed that, considered in isolation, some of these deferred expenditures could accrue to the benefit of the HECO Companies during the Rate Case Moratorium period. Thus, deferred expenditures that are currently included in present rates will continue to be reflected in rates at the unamortized amount until rates are reset in the next rate case.[196]

In addition, deferred expenditures that may become fully amortized during the Rate Case Moratorium will also continue to be

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[195]Sekimura, Tr. 1431-1433.

[196]Sekimura, Tr. 1433-1434.

included in base rates until the next rate case.[197] For example, if a deferred expenditure becomes fully amortized after two years of the moratorium, rates will nevertheless continue to include the expenditure.[198]

With respect to deferred expenditures that are approved, but that are not included in current rates (that is, deferred expenditures that will not be included in rates until the next rate case), generally such amounts will continue to accrue a carrying charge. Thus, at the conclusion of the Rate Case Moratorium, and assuming such expenses are to be fully recovered, with interest, at the end of the moratorium period, the amount will be higher than if there were a rate case sooner, rather than later, such as after the termination of the moratorium period.[199]

The Inter-Island Wind Project is an example of this type of deferred expense. In HECO's 2011 test year rate case, the commission approved the deferred accounting treatment of the Inter-Island Project Support costs. The commission limited the deferred amount to $2,850,000 per year, for three years, and a carrying cost of 1.75 percent (the short-term debt rate) was established to apply from the date of the commission's Interim

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[197]Sekimura, Tr. 1433-1434.

[198]Sekimura, Tr. 1433-1434.

[199]Sekimura, Tr. 1434-1438.

Decision and Order.[200] However, if current rates are essentially frozen as a result of the moratorium, carrying charges will continue to accrue well beyond three years; that is, the deferred amount will continue to accrue carrying costs until the effective date of the interim rates in HECO's next general rate case.

Applicants' Witness Sekimura stated that she was not aware of any quantifications done by Applicants with respect to these categories of deferred expenditures.[201] Thus, there is no quantification of the total amount of deferred expenditures and accrued interest charges that the HECO Companies may propose to include in base rates at the conclusion of the Rate Case Moratorium, or the associated impact on customer rates for these deferred accounts.

Applicants' Witness Sekimura also confirmed that there is no explicit adjustment in RAM for deferred expenditures that will be fully amortized at some time during the proposed moratorium.[202] She did not acknowledge or confirm that the amortization expense that remains in rates once the deferred expenditure is fully amortized was a benefit to the HECO Companies, asserting that there are other costs the HECO Companies incur that

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[200]See Docket No. 2010-0080, Order No. 30229, filed February 24, 2012, at 19-20.

[201]Sekimura, Tr. 1433.

[202]Sekimura, Tr. 1433-34.

are not included in customer rates, and that any excess earnings are recovered through the earnings sharing mechanism (decoupling mechanism).[203]

However, as pointed out to Applicants' Witness Sekimura with respect to the discussion of a number of expenses, the only way to determine the impact of a particular deferred expenditure or other expense is to consider it in isolation, holding all else constant.[204] While Witness Sekimura agreed with the proposition, she simply stated that she was looking at things more broadly.[205] This response does not address the commission's concerns with the impact of deferred expenditures following the termination of the Rate Case Moratorium.

(c) Impact Of 2011 Test Year Expenses Remaining In Effective Rates Until Next Rate Case Is Filed

Applicants' Witness Sekimura was also questioned concerning the impact of including $551,696 of outside consulting costs related to the enterprise resource planning ("ERP") and enterprise asset management system ("EAM") in HECO's 2011 test year expenses. In the absence of a rate case, these amounts would

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[203]Sekimura, Tr. 1433-1434.

[204]Sekimura, Tr. 1434.

[205]Sekimura, Tr. 1434.

continue to be included in customer rates throughout the Rate Case Moratorium period until rates are reset in the next rate case, possibly in 2020.[206]

Applicants' Witness Sekimura agreed that, "in isolation," the $551,696 included as an expense in HECO's 2011 test year rate case would continue to be included in customer rates and recovered by HECO until the rates are changed in its next rate case.[207] Moreover, this result would occur even though the recovery of these costs was only authorized for three years, 2011 to 2013.[208] Thus, if rates remain unchanged through the proposed moratorium period, this expenditure would remain in rates and continue to be recovered from ratepayers for a period of at least seven years, all else being equal.[209]

(d) Pensions

During the cross examination of Applicants' Witness Sekimura, pension costs and associated regulatory liabilities were discussed with respect to the impact of the proposed Rate Case Moratorium on future customer rates. Witness Sekimura agreed that

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[206]Sekimura, Tr. 1438-1439.

[207]Sekimura, Tr. 1439.

[208]Sekimura, Tr. 1439-1440.

[209]Sekimura, Tr. 1439-1440.

in HECO's 2011 test year rate case, HECO's NPPC was $33 million and its regulatory liability was $2.5 million. She further agreed that in HECO's abbreviated rate case filing for HECO in 2014, the NPPC was $42 million, resulting in a net regulatory asset of $47.5 million.[210] Finally, with respect to continued growth in pension expense, she agreed that in 2015, the NPPC amount that HECO was projecting was approximately $60 million.[211]

Due to the nature of pension costs, there was some disagreement over whether these amounts would continue to increase, or might even decrease somewhat, in the future. However, what was not in dispute was the fact that an increase in the net regulatory asset balance over the 2011 test year, when the next rate case is filed, would result in an increase in base rates.

> Q. Whatever the increased balance is over the 2011 test year, when the next rate case is filed, all else being equal, that would result in an increase in base rates, would it not?
>
> A. Yes. And that amount would be amortized over five years, in accordance with the tracker.[212]

As with deferred expenditures, Applicants' Witness Sekimura testified that while the pension regulatory asset balance could change from its 2011 test year amount, the HECO Companies

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[210]Sekimura, Tr. 1441.

[211]Sekimura, Tr. 1441-1442.

[212]Sekimura, Tr. 1443-1444.

have not conducted or quantified the impact of this for any year during the Rate Case Moratorium.[213] Finally, Witness Sekimura would not commit to freezing the pension tracker regulatory asset balance at the 2014 test year balance of $47.5 million.[214]

Like other deferred expenditures, it is clear that because the pension regulatory asset balance will continue to grow over the Rate Case Moratorium, rates proposed in the first rate case following the termination of the moratorium may be impacted. Based on the above analysis, this impact may result in a substantial increase in base rates due to the inclusion of these expenditures. However, Applicants did not address this issue in their presentation.

(e) Additional Deferred Accounting Requests

Applicants' Witness Sekimura testified that the HECO Companies have not had any discussions concerning whether or not they are barred from filing any additional deferred accounting requests during the Rate Case Moratorium period.[215] However, in her opinion, it is possible for the HECO Companies to file a

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[213]Sekimura, Tr. 1442-1444.

[214]Sekimura, Tr. 1444-1445.

[215]Sekimura, Tr. 1445-1446.

deferred accounting request during the moratorium.[216] Obviously, to the extent that any such requests are made by the HECO Companies, they will present the types of issues discussed above.

(f) Impact of Maintaining Currently Approved Rates Through The Proposed Rate Case Moratorium

The commission observes that Applicants have not proposed to reset rates prior to entering the proposed Rate Case Moratorium.[217] The commission further observes that HECO's current rates are based on a 2011 test year, MECO's are based on a 2012 test year, and HELCO's are based on a 2010 test year. Thus, the cost of service that underlies current rates is far from current. In recognition of these facts, and as discussed above, the Consumer Advocate argues that several aspects of current rates need to be adjusted prior to a Rate Case Moratorium in order for rates to be reasonable.[218]

The commission is also aware that HECO and MECO have filed what they have described as abbreviated rate cases. Although the commission has not yet acted upon those filings, Applicants'

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[216]Sekimura, Tr. 1446.

[217]See the Consumer Advocate's discussion of its alternative rate plan in CA Initial Brief at 22-23 and CA's Exhibit 11 at 52-53.

[218]See CA's Exhibit 11 (Brosch) at 42-48, and CA's Exhibit 29 (Brosch) at 34-53.

Witness Sekimura contends that currently effective rates are "reasonable," without offering any supplemental evidence to support that statement.[219] Applicants' Witness Reed also argues that the current rate of return is reasonable.[220]

The question for the commission is whether rates should be reset prior to implementation of any moratorium in general, and Applicants' proposed four-year Rate Case Moratorium in particular. As with other proposed limitations on the commission's authority as previously discussed, the answer to this issue lies in what is being offered in exchange for the commission's acceptance of a moratorium.

As discussed in this Order, Applicants have not adequately supported their claims of ratepayer and State benefits. Consistent with these findings, the commission concludes that there is not a preponderance of evidence in this record to demonstrate that these benefits are sufficient to offset rates that would remain unchanged from current levels through at least 2020 (the end of the Rate Case Moratorium). Stated differently, the record evidence does not support a conclusion that the proposed benefits are sufficient to justify leaving rates unchanged for a

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[219]Sekimura, Tr. 1440.

[220]See Applicants' Exhibit 50 at 202-103.

period of nine years for HECO, eight years for MECO, and ten years for HELCO.

This is not to say that Applicants must propose to reset rates prior to the implementation of a proposed Rate Case Moratorium. Rather, the commission is concluding that in order to justify such a request, the proposed benefits for ratepayers would have to be firm, substantial, and permanent (with the possible exception of certain specific, detailed, extraordinary circumstances).

(4) The Proposed Rate Case Moratorium Is Not A Rate Freeze

The commission observes that the proposed Rate Case Moratorium is neither a rate freeze nor a moratorium on base rate changes. Applicants' Witness Oshima agreed:

> Q. Okay. So one thing that we can conclude for certain is that the rate moratorium is not a rate freeze?
>
> A. Rate moratorium has always been presented as a base rate moratorium with other adjusters in place.[221]

The following conclusions demonstrate the difference between an overall rate freeze and a Rate Case Moratorium as proposed here.

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[221]Oshima, Tr. 65.

First, in addition to several existing adjustment mechanisms, the HECO Companies' target revenues as associated with their decoupling mechanisms (which essentially serve as the HECO Companies' effective non-fuel base rates), would continue to be adjusted (and, on balance, most likely increased) during the Rate Case Moratorium in accordance with the existing RAM. Thus, the proposed Rate Case Moratorium would not prevent the total rates or base non-fuel rates charged to the HECO Companies' customers from increasing during the moratorium period.

Second, the historical increases in non-fuel O&M expenses used in Applicants' quantification of asserted benefits of the proposed Rate Case Moratorium are not necessarily indicative of the direction or magnitude of net changes in non-fuel O&M expenses that could be reasonably assumed without the Change of Control during the period of the Rate Case Moratorium. In light of evidence to the contrary (as discussed above) that indicates that (1) recent actual non-fuel O&M expenses differ and are lower than the historical expenses relied upon in Applicants' analysis, and (2) recent increases in non-fuel O&M expenses are occurring at a rate close to the level of general inflation that would be reflected in rate increases through the RAM during the proposed Rate Case Moratorium, Applicants have not demonstrated by a preponderance of the evidence that historical expense increases

are an appropriate proxy for the net savings that would result from the proposed Rate Case Moratorium.

Third, Applicants' quantification of asserted benefits resulting from the proposed Rate Case Moratorium does not consider or account for several factors that could affect revenue requirements and rates resulting from the general rate cases that may occur without the proposed Rate Case Moratorium. As identified above, these factors include the likely results of updating the allowed cost of debt, the possible results of changes in the allowed rate of ROE and capital structure weights, and the resolution of pending deferred expenses. Applicants' quantification of customer savings benefits resulting from the Rate Case Moratorium ignores these factors, focusing solely on the asserted calculated effects of increases in non-fuel O&M expenditures.

The commission also has concerns regarding the rate impacts at the end of the Rate Case Moratorium when the rate credits would automatically terminate. The annual increments of the $60 million in rate credits would increase each year during the proposed Rate Case Moratorium, but would terminate abruptly following the fourth year. Applicants assert that there would be some mitigating savings that would begin in the year following the moratorium resulting in projected savings from reductions in

non-fuel O&M expenses of a net of $30 million.[222] However, according to Applicants' calculations, even if these mitigating savings were to occur, the total "O&M and Rate Plan Savings" would decrease (and, thus, customer rates would increase as compared to the final year of the moratorium) by more than $30 million, in the year 2020.[223]

This projection assumes that the results of simultaneous general rate cases for each of the HECO Companies would be in full effect on day one following the end of the Rate Case Moratorium and remain in effect for the entire year.[224] Thus, if the effective date of rates from a general rate case for any of the HECO Companies is delayed for any period of time following the end of the Rate Case Moratorium, the rate credits would abruptly cease, but the asserted savings in non-fuel O&M would continue to accrue to the benefit of the HECO Companies, rather than being passed on to customers.[225]

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[222]See Witness Reed Table 3 (Applicants' Exhibit 50 at 74).

[223]See Witness Reed Table 3 (Applicants' Exhibit 50 at 74). Asserted Total O&M and Rate Plan Savings for 2019 are $87.30 million for the last year of the Rate Case Moratorium. For 2020, the year following the moratorium, asserted savings are $55.45 million.

[224]See CA's Exhibit 29 (Brosch) at 17-18.

[225]See CA's Exhibit 29 (Brosch) at 17-18.

(5) Summary Of Conclusions Regarding The Proposed Rate Case Moratorium

Applicants have cited to some of the potential positive outcomes from a Rate Case Moratorium. However, for the reasons discussed in Sections VIII.A.2.c.(1)-(4), infra., the commission concludes that Commitment 9A, in which "NextEra Energy commits to a four-year moratorium on its ability to file a general rate base case, subject to the conditions outlined in Applicants' Exhibit 46 to the Responsive Testimony of witness Gleason," has not been shown to provide firm, quantifiable benefits to ratepayers by a preponderance of the evidence. The commission concludes that the opposite outcome may occur where during the Rate Case Moratorium, certain benefits that should otherwise be realized by ratepayers through a reduction in rates would instead accrue to shareholders, and certain other expenses would continue to accrue to be included in rates following the moratorium.

A moratorium can be a form of incentive regulation where the utility must manage its cost and operations within a defined amount of annual base revenues. The Commitments do not evidence that. During the Rate Case Moratorium, Applicants would retain the ability to file applications for deferred accounting treatment of expenditures incurred between rate cases, which, if approved by the commission, would be subject for recovery in each of the HECO Companies' next rate cases. Additionally, the pension tracking

mechanism keeps the HECO Companies whole by allowing the HECO Companies to recover pension costs through base rates, amortization of its regulatory asset account, and through rate base.

The commission is also concerned about the effects that would be felt by ratepayers in the future as a result of the extended period between general rate cases regarding deferred and accumulated regulatory assets that each of the HECO Companies will propose to roll into base rates in the next rate case filing following the Rate Case Moratorium. Applicants simply did not discuss, quantify, or account for these impacts despite the potentially large detrimental impact on ratepayers. The commission concludes that a failure to consider this issue is inconsistent with the public interest.

Finally, by entering into the Rate Case Moratorium without resetting current rates or some reasonable proxy therefore, the commission will be unable to address several factors that underpin the ongoing reasonableness of the HECO Companies' rates, including updating the actual cost of debt, reviewing the appropriate ROE and capital structure (HECO's and HELCO's current rates are based on a 10% ROE, and MECO's rates are based on a 9% ROE), resetting embedded ECAC heat rates and deadbands;[226] and

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[226]The HECO Companies' effective rates are adjusted monthly, with quarterly and annual reconciliations, by an ECAC automatic

realigning the allocation of substantial, accumulating rate adjustments that are implemented solely on a per kilowatt hour ("kWh") basis.[227] Moreover, HECO's, MECO's, and HELCO's last rate cases were based on the test years 2011, 2012, and 2010, respectively, and do not take into account additional significant changes that have transpired since these rate cases were adjudicated.

The commission observes that the adoption of decoupling has changed the HECO Companies' expectations on what, when, and how expenditures will and should be recovered. Decoupling, which according to Applicants' Exhibit 46 must remain unchanged, has clearly reduced the HECO Companies' need to have periodic rate cases. Implicit in Applicants' Exhibit 46 is a further condition: that the HECO Companies need not, for an extended period of time, file the Mandatory Triennial Rate Case filings pursuant to the

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adjustment mechanism. The ECAC rate adjustments are determined based on actual fuel prices multiplied by heat rates (fuel use efficiency factors) and deadbands. The heat rates and the deadbands applied in the fuel cost calculations and reconciliations are determined and approved by the commission in each general rate case according to analysis of the test year utility system configuration and operations.

[227]A predominant fraction of the HECO Companies' rates is subject to adjustment between general rate cases by several rate adjustment mechanisms implemented by changes in kWh charges, including the fixed and non-fuel O&M expenses adjusted by the RAM. These adjustments result in changes to the allocation of rates to customer classes and to effective rate design.

approved decoupling mechanism that are designed to provide the commission and the Consumer Advocate with a regular opportunity to evaluate the efficacy and appropriateness of decoupling and re-calibrate RAM inputs using commission-approved values.[228]

Finally, the commission further observes that, if the Change of Control was not approved by the commission by June 3, 2016, the record in this proceeding suggests that HEI's investors are eligible to receive a $90 million payment from NextEra. When asked about the difference between the proposal to pay HEI and HECO Companies' shareholders a flat $90 million if and when commission approval was not obtained, and the proposal to pay ratepayers only $70 million[229] over four years with all of the

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[228]Docket No. 2008-0274, "Final Decision and Order and Dissenting Opinion of Leslie H. Kondo, Commissioner," filed August 31, 2010, at 73. As noted above, HECO and MECO filed self-styled "abbreviated" rate cases for the test year 2014 (Docket No. 2013-0373) and 2015 (Docket No. 2014-0318), respectively. The commission has not ruled on whether these abbreviated rate cases comply with the commission's decoupling order in Docket No. 2013-0141. In addition, on November 19, 2015, in Docket No. 2015-0170, the commission granted HELCO an extension to file its rate case from the end of 2015, to no later than December 30, 2016, and allowed HELCO to utilize a 2016 calendar year test period. See Docket No. 2015-0170, Order No. 33342, "Granting Hawaii Electric Light Company, Inc.'s Motion to Extend Date to File Rate Case and for Approval of Test Period Waiver; and Dissent of Randall Y. Iwase, Commission Chair," filed November 29, 2015.

[229]The $70 million is comprised of the $60 million in rate credits under Commitment 10A, and the $10 million in the so-called public interest fund proposed to be established under

conditions discussed above, the Applicants' answer was non-responsive. Applicants' Witness Dewhurst responded as follows:

> A. So, to me, they are two different things and arrived at completely different directions.
>
> In the context of a public company transaction, it is normal to have a breakout fee, particularly to protect the smaller company. And that is simply the result of a commercial negotiation. In this case we ended up at the 90 million.
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> The 70 million short-term financial commitment really comes from a completely different direction. Here we're looking to make sure that in the short-term, as I discussed last night and yesterday afternoon, there is a reasonable balance between shareholders being able to earn a fair rate of return and demonstrating some immediate flow-through of financial benefits to customers. The 70 million is, in the end, the judgment as to how that balance should be struck, in our view.
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> So I just think they're very different concepts.
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> Q. Well, either way, under that scenario NextEra is going to pay a significant sum of money; correct?
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> It's either going to pay 90 million or it's going to pay 70 million.

Commitment 15A, to be paid in four even installments of $2.5 million over four years.

A. Yes, but they are -- the two situations are different. I just don't see them as being comparable.[230]

d. Capital Program Savings

Applicants assert that substantial savings in capital expenditures would result from the proposed Change of Control.

> NextEra Energy expects to achieve an average savings of 10% on the Hawaiian Electric Companies' capital expenditures. For example, if the Hawaiian Electric Companies fund 100% of the PSIPs, investing $8 billion, approximately $800 million of savings are expected to be achieved. The average 10% savings on the capital programs is comprised of 3% design optimization, 3% improved supply chain pricing, 2% incorporating best practices, and 2% improved construction management. A specific estimate of the costs to achieve these savings has not been prepared, but such costs are not expected to be significant.[231]

Applicants' Witness Reed calculates asserted savings of $357 million in capital expenditures for the five years following the proposed Change of Control, as shown in Witness Reed Table 3, discussed Section VIII.A.2.b., infra. In conjunction with $20 million additional asserted capital expenditure savings from

[230]Dewhurst, Tr. 2609-2610.

[231]Applicants' Exhibit 50 (Reed) at 69.

ERP/EAM opportunities, Witness Reed estimates reduced revenue requirements of $171.52 million for the years 2016 through 2020.[232]

The commission finds that several aspects of Witness Reed's analysis do not support the level of the asserted benefits. First, and most importantly, the commission observes that there is no strong analytical or evidentiary basis for the assumed 10% reduction that shows that it is a reasonable proxy for capital expenditure savings on an across-the-board basis for every project:

> Q. Right. So let me try to review and see if we're on the same page here. You said that NextEra staff looked at four specific projects, estimated potential cost savings for those four projects, then extrapolated from those four projects to a more generalized 10 percent estimate.
>
> Does that sound right?
>
> A. Yes. With regard to capital expenditures, that's correct.[233]

Second, Witness Reed's quantification of capital program savings is based on assumed capital expenditures identified in the HECO Companies' PSIPs. Since the filing of the PSIPs, however, the HECO Companies have revised projected capital expenditures

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[232]Tabulation of Witness Reed's estimates of asserted savings is further documented in Applicants' Response to CA-IR-303, Attachment 2 (Supplement 8/25/2015).

[233]Reed, Tr. 1868-1869.

downward significantly.[234] Witness Reed's estimates therefore overstate the amount of savings benefit that would result from a using a simple 10% reduction in capital expenditures in all circumstances.

Third, the PSIPs that were the foundation of the projections of capital expenditures used in Witness Reed's calculations of asserted savings have been subsequently revised and updated by the HECO Companies, and are the subject of ongoing further optimization and improvement subject to the commission's oversight and ultimate approval. This process will continue regardless of whether or not the proposed Change of Control is executed, and should result in more optimal capital plans than what was assumed as the basis for Witness Reed's analysis. The PSIPs relied upon in Witness Reed's analysis do not necessarily represent plans that will ultimately be approved by the Commission and may overstate the pace and magnitude of capital expenditures in approved plans.[235]

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[234]See CA's Exhibit 29 at 21-23.

[235]In response to the PSIPs relied upon in Witness Reed's analysis, the commission addressed the problematic level of assumed capital expenditures in Docket No. 2014-0183, Order No. 33320, filed November 4, 2015, at 57-65. The HECO Companies filed a PSIP update with substantially revised resource plans in the same docket on April 1, 2016. See Docket No. 2014-0183, "Hawaiian Electric PSIP Update Report Books 1 and 2; and Certificate of Service," filed April 1, 2016 ("PSIP Update Report").

Fourth, it is reasonable to assume that the capital projects that will ultimately result from the HECO Companies' planning process will undergo some further degree of refinement. Without the Change of Control, but with oversight by the commission, the HECO Companies can be expected to apply at least some degree of design optimization, application of competitive pricing, and utilization of best practices and competent construction management.

Applicants have not identified specific actions, measures, resources, programs, or changes in resource plans that would be implemented only as a result of the Change of Control that would result in the percentages of savings asserted by Witness Reed for 3% design optimization, 3% improved supply chain pricing, 2% incorporating best practices, and 2% improved construction management.

Fifth, Witness Reed's analysis of capital program savings as reflected in Witness Reed Table 3 appears to presume that the asserted reductions in revenue requirements would occur in the same year that capital expenditures would be reduced.[236] It does not appear that Witness Reed's analysis accounts for the timing of plant additions associated with the assumed capital

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[236]See Applicants' Response to CA-IR-303, Attachment 2 (Supplement 8/25/2015).

expenditures or the accounting for incorporation of plant additions into average effective rate base.

Typically, one or more years can transpire between the time capital expenditures are made and the resulting projects are placed in service and subject to revenue recovery.[237] Witness Reed's analysis of asserted revenue requirement savings in Witness Reed Table 3 and asserted annual customer savings in Witness Reed Table 4[238] would appear to overstate the pace and magnitude of savings projected for the five years following the proposed Change of Control.

The commission concludes that a preponderance of the evidence shows that Witness Reed's quantification of these savings is based on superseded plans that (1) are subject to further expected improvements; and (2) do not identify specific measures that would result in the asserted improvements, and, instead, rely on general estimates of several categories of potential savings. Moreover, Witness Reed's quantification appears to improperly

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[237]Furthermore, according to the ratemaking conventions applied in a rate case test year and applied annually in the HECO Companies' RAM tariffs, the first year that plant is placed in service, only one half of the amount of the plant addition is reflected in average rate base in the determination of revenue requirements.

[238]See Applicants' Exhibit 50, "Table 4: Residential Customer Savings," at 76 ("Witness Reed Table 4").

reflect the timing of the impacts of capital expenditures on revenue requirements.

e. Transaction Commitments That Are Aspirational Or That Restate Existing Obligations

(1) Introduction

As stated by Applicants, "[i]n deciding whether the Proposed Transaction is reasonable and in the public interest, the primary question the Commission should ask is whether the customers of the Hawaiian Electric Companies and the State of Hawaii are better off with or without the Proposed Transaction in the form presented by Applicants."[239] In Applicants' view, the primary answer to this question lies in the ninety-five Commitments.

Certain specific Commitments have been discussed in detail in other sections of this Order. However, there are a number of Commitments that, in the commission's view, simply affirm obligations that are required by statute, order, regulation, or contract, or that are aspirational in nature. This raises a question of whether Applicants are simply acknowledging that such requirements exist, or whether there is some attempt to limit in some fashion the utilities' obligations.

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[239]Applicants Initial Brief at 7.

Moreover, as previously discussed, Applicants have proposed no method by which to measure or analyze whether various Commitments have been achieved, nor are there penalties or other enforcement mechanisms for failure to achieve them. Thus, with respect to these Commitments, the commission concludes that neither ratepayers nor the State are better or worse off with or without the Commitments.

(2) Commitments That Restate Existing Obligations

(a) Commitments Related To The Change Of Control

The following Commitments affirm existing obligations of the utility. Each listed Commitment is followed by a reference to a particular statute, order, regulation, contract, or standard ratemaking principle that requires the HECO Companies or a successor to comply, regardless of whether the Change of Control transaction is approved.

- 5A - NextEra [] commits to fully support the [HECO] Companies in their work to achieve the 100% [RPS] consistent with the RPS law.
    - Existing Standard: Required by HRS § 269-92.
- 35A - All existing collective bargaining agreements will be honored.
    - Existing Standard: Self-explanatory, IBEW collective bargaining agreement.

- 45A - To the extent NextEra['s] subsidiaries continue to participate in Hawaii's competitive power generation markets, or choose to participate in any future competitive transmission solicitation, such participation would be subject to the applicable rules and regulations of the Commission.

  - Existing Standard: Commission's Competitive Bidding Framework.[240]

- 50A - The Commission will have access to the books and records of affiliated entities providing services chargeable to the [HECO] Companies as necessary for determining that charges are appropriately billed in accordance with service level agreements and cost allocation manual requirements.

  - Existing Standard: General powers pursuant to HRS §§ 269-6 and 269-7; general ratemaking principles.

- 51A - NextEra Energy commits that the [HECO] Companies' reports concerning intercompany transactions will disclose the nature of the transactions and the annual value of transactions occurring between each [HECO] Company and each of NextEra [] and its other affiliates or subsidiaries.

  - Existing Standard: General powers pursuant to HRS §§ 269-6 and 269-7; general ratemaking principles.

- 53A (Partial) - In all general rate cases filed following the general base rate case moratorium in Commitment 9, the respective filing of each of the [HECO] Companies shall include direct testimony and exhibits

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[240]See Docket No. 03-0372, Decision and Order No. 23121, filed December 8, 2006.

demonstrating the reasonableness of its affiliate transactions.

- Existing Standard: General powers pursuant to HRS §§ 269-6, 269-7, and 269-19; general ratemaking principles.

- 63A - HEUH and the [HECO] Companies will not assume any obligation or liability as guarantor, endorser, surety, or otherwise for NextEra [] or NextEra['s] non-utility subsidiaries.

  - Existing Standard: Required by HRS §§ 269-17 and 269-19.

- 64A - NextEra [] will not pledge any assets of the business of the [HECO] Companies as backing for any securities that NextEra [] or NextEra['s] non-utility subsidiaries may issue.

  - Existing Standard: Required by HRS §§ 269-15(a) and 269-17.

- 65A - The Commission will continue to have full authority over the [HECO] Companies' issuance of securities.

  - Existing Standard: Required by HRS §§ 269-17 and 269-19.

- 67A - NextEra [] commits that there will be no cross-collateralization or cross-financial guarantees between the [HECO] Companies and NextEra [] and its subsidiaries or affiliates, no money pools or shared credit facilities, and no pledging of [HECO] Company utility assets for any obligation of another affiliate.

  - Existing Standard: HRS §§ 269-17 and 269-19; general ratemaking principles and regulatory accounting methods.

- 68A - NextEra [] commits that the [HECO] Companies and their operating utilities will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future NextEra [] acquisition.

  - Existing Standard: HRS §§ 269-17 and 269-19; general ratemaking principles and regulatory accounting methods.

- 71A - NextEra [] commits to provide notice to the Commission if NextEra [] or any of the [HECO] Companies are put on negative outlook or are downgraded below current bond ratings by any of the three major credit rating agencies (Standard & Poor's, Moody's Investors Service, or Fitch Ratings).

  - Existing Standard: General powers pursuant to HRS §§ 269-6 and 269-7; information is publicly available.

- 75A - NextEra [] will not seek rate recovery of any goodwill amortization, acquisition premium costs, or goodwill impairment charges incurred as a result of the change of control.

  - Existing Standard: General ratemaking principles and regulatory accounting methods.

- 76A - NextEra [] will not seek rate recovery of transaction or transition costs incurred as a result of the change of control. See Exhibit 84 to the Responsive Testimony of Witness Sekimura for definitions and a discussion of the accounting treatment for various categories of costs.

  - Existing Standard: General ratemaking principles and regulatory accounting methods.

- 77A - Transaction-related fees and expenses related to seeking and receiving shareholder and regulatory approvals, the change of

control, shareholder litigation costs, and transition expenses shall be recorded in non-operating expense accounts that are not reflected in utility operating income accounts and such amounts shall be excluded from any base rate increase requests and in determining annual utility earnings for earnings sharing calculations within the decoupling mechanism.

- Existing Standard: General powers pursuant to HRS §§ 269-6 and 269-7; general ratemaking principles.

- 82A - Under no circumstances will the cost of programs related to change in control agreements in place for certain HEI executives be included in [HECO] Companies' rates.

  - Existing Standard: General ratemaking principles and regulatory accounting methods.

- 83A - Merger accounting shall be rate-neutral for customers of the [HECO] Companies. No post-Merger integration of accounting methods shall result in higher rates charged to customers of the [HECO] Companies.

  - Existing Standard: General powers pursuant to HRS §§ 269-6 and 269-7; general ratemaking principles.

- 89A - Applicants commit to make ratemaking adjustments to remove costs for charitable contributions, image or promotional advertising and marketing from any NextEra [] affiliated company except to the extent any such amounts are approved for recovery in rates, and that, during the base rate moratorium, such amounts shall be excluded in determining annual utility earnings for earnings sharing calculations within the decoupling mechanism. These ratemaking adjustments and exclusions from earnings sharing calculations shall not apply to informational or goodwill/institutional advertising incurred by the [HECO] Companies,

as these expenses have been approved for recovery in rates.

- Existing Standard: General ratemaking principles.

- 91A - The [HECO] Companies will continue to abide by and comply with all Commission decisions, orders, and rules applicable to the [HECO] Companies, as authorized by law.

  - Existing Standard: Statement of the obvious.

- 92A - [HEH] (which will be the parent company of the [HECO] Companies following the change of control) will continue to abide by and comply with all Commission decisions, orders, and rules that remain applicable to HEI following consummation of the change of control, as authorized by law.

  - Existing Standard: Statement of the obvious.

- 94A - To the extent NextEra [] desires to form any new non-utility subsidiaries under [HEH] or the [HECO] Companies at any point in the future, NextEra [] will seek Commission approval prior to doing so.

  - Existing Standard: Required by HRS §§ 269-17 and 269-19.

For example, Commitment 5A states that NextEra will "fully support the Hawaiian Electric Companies in their work to achieve the 100% [RPS] consistent with the RPS law." Likewise, in Commitment 41A, NextEra commits to support the ongoing efforts of the Reliability Standards Working Group as well as its subgroups. And, in Commitment 49A, NextEra commits to "continue the practice of providing the Commission with reports concerning intercompany

transactions." Each of these represents something that the HECO Companies are already doing, are required to do, and/or will continue to do whether or not the Change of Control is approved.

Some of the Commitments state the obvious. For example, Commitment 45A states that if NextEra's subsidiaries continue to participate in Hawaii's competitive power generation markets, or in any future solicitation, "such participation would be subject to the applicable rules and regulations of the Commission." Likewise, Commitment 91A states that the HECO Companies will continue to abide by and comply with all commission decisions, orders, and rules as applicable and authorized by law.

Thus, the commission concludes that these Commitments reaffirm that which the HECO Companies are already required to do.

(b) Commitments Related To Accounting For Costs Attributable To The Merger

Here the commission addresses a number of Commitments that specifically address costs associated with effectuating the Change of Control. The commission concludes that these Commitments again state that NextEra will do that which is already required of the HECO Companies, or which is a common business practice for a regulated utility. With respect to the latter, a number of these Commitments simply reflect current commission policy.

To begin, Commitments 80A and 81A relate to the merger related costs. In Commitment 80A, NextEra states that it will not elect to apply "pushdown" accounting and that goodwill will not be allocated to or recognized within the HECO Companies' balance sheets. In Commitment 81A, NextEra likewise states that it will not reflect any goodwill impairments.

In Citizens Communications Company, Kauai Electric Division and Kauai Island Utility Co-op Sale of Certain Assets, Docket No. 02-0060, Decision and Order No. 19658, the commission stated as follows:

> 8. The Stipulation is approved in its entirety, including, without limitations, the following conditions derived from said Stipulation:
>
> d. Applicants acknowledge the commission's policy to not allow recovery from utility customers of goodwill or acquisition premium amounts arising from utility merger and acquisition transactions. In accordance with this policy, KIUC will not seek rate recovery of any goodwill amortization, acquisition premium costs or goodwill impairment changes pursuant to Generally Accepted Accounting Principles in future rate proceedings.
>
> f. Applicants acknowledge the commission's policy to not allow accounting deferral or recovery from utility customers of transaction and transition costs arising from utility merger and acquisition transactions. In accordance with this policy, KIUC will not seek rate recovery of any transaction or transition costs or

> amortization of such costs in future rate proceedings.[241]

Commitments 80A and 81A state that NextEra will adhere to these existing Commission policies.

Likewise, Commitment 85A states, among other things, that the HECO Companies will continue to make ratemaking adjustments to remove incentive compensation costs until costs are approved for recovery in rates. The Commission has also previously dealt with this issue:

> The commission agrees with the Consumer Advocate and the DOD. We recognize that incentives encourage cost reductions in some instances. However, we believe that a utility employee, especially at the executive level, should perform at an optimum level without additional compensation. Ratepayers should not be burdened with additional costs for expected level of service.
>
> We conclude that HECO's projection of $368,000 for executive incentive compensation is unreasonable. We accept as just and reasonable the Consumer Advocate's A&G salaries estimate of $8,519,000, which reflects HECO's correction for labor overhead expense.[242]

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[241] In re Citizens Communications Co., Kauai Electric Division and Kauai Island Utility Co-op Sale of Certain Assets, Docket No. 02-0060, Decision and Order No. 19658, filed September 17, 2002, at 27-29.

[242] In re Hawaiian Elec. Co., Inc., 1990 Test Year Rate Case, Docket No. 6531, Decision and Order No. 11317, filed October 17, 1991, at 59.

Commitment 85A thus adheres to an existing Commission policy.

The following list addresses the other Commitments pertaining to treatment of costs associated with effectuating the Change of Control, and the commission's existing orders or rules with respect to each such item.

- Commitment 52A (Partial) - Within 90 days following the closing of the transaction, the [HECO] Companies will provide the Consumer Advocate a draft Hawaii-specific cost allocation manual ("CAM") governing charges by the [HECO] Companies to NextEra [], containing detailed affiliated transaction policies, practices and guidelines (including direct charging of corporate costs when possible, allocation of common or shared costs using direct measures of cost causation when identifiable, and allocation of shared services costs using general allocation techniques as necessary among all benefiting affiliated entities) designed to protect against cross-subsidization.

  - Existing Standard: This would generally be required or expected from any affiliated company wishing to allocate certain expenses to a regulated utility.

- 79A - No Internal Revenue Code [("IRC")] 338(h)(10) election will be made in regards to the Merger. Unless expressly and specifically authorized by the commission after notice and hearing, the proposed acquisition and merger shall have no impact on the [HECO] Companies' pre-merger ADIT balances.

  - Existing Standard: This is a clarification of a ratemaking issue. Generally, a company would make an IRC 338(h)(10) election only if they would benefit from the election.

Thus, if the tax benefits could be passed on to the ratepayers this would be a beneficial Commitment. This Commitment would, however, allow the commission the opportunity to review the impact to ratepayers of this election.

- 84A - Within 135 days following completion of accounting for the Merger, NextEra [] will file with the Commission all journal entries resulting from the Merger.

  - Existing Standard: This Commitment may be required or expected from any regulated company involved in a merger. Thus, it provides no additional benefit to ratepayers.

- 86A - The [HECO] Companies commit to make ratemaking adjustments to remove costs for company-owned or leased aircraft until such costs are approved for recovery in rates and that, during the general base case rate moratorium, such amounts shall be excluded in determining annual utility earnings for earnings sharing calculations within the decoupling mechanism.

  - Existing Standard: General ratemaking principles and regulatory accounting methods. While this Commitment clarifies a ratemaking issue, it provides no benefit to ratepayers as costs for company-owned or leased aircraft are not currently recovered in the HECO Companies' rates.

- 87A - The [HECO] Companies commit to make ratemaking adjustments to remove costs for compensation of "Named Executive Officers" of NextEra [], until such costs are approved for recovery in rates and that, during the base rate moratorium, such amounts shall be excluded in determining annual utility earnings for earnings sharing calculations within the decoupling mechanism.

- Existing Standard: This Commitment reflects general ratemaking principles and regulatory accounting methods.

Finally, the commission observes that two of these conditions may, in certain circumstances, provide benefits to ratepayers assuming that the Change of Control is ultimately approved.

- 54A - (Partial) In determining annual utility earnings for earnings sharing calculations within the decoupling mechanism in all periods prior to the completion of each utility's next general rate case, NextEra [] commits that the amount of shared services costs for such services provided by FPL or any other NextEra [] affiliate that are included in the calculation shall not exceed the actual costs charged or allocated to the [HECO] Companies by HEI for its comparable shared services costs in calendar year 2014, escalated by ["Gross Domestic Product Price Index"] GDPPI thereafter.

  - Existing Standard: This Commitment appears to be beneficial to ratepayers since requiring costs not to exceed the actual costs charged or allocated to the HECO Companies by HEI for its comparable shared services will prevent possible excess costs from being passed on to ratepayers, which may have a negative impact on the earnings sharing calculation. However, this also assumes that the HECO Companies' calendar year 2014 costs are reasonable, a proposition that has not been supported on this record.

- 88A (Partial) - In determining annual utility earnings for earnings sharing calculations within the decoupling mechanism in all periods prior to the completion of each utility's next general rate case, NextEra [] commits that the amount of commercial insurance services or

coverage charged or allocated by NextEra [] Captive affiliate shall be equal to the actual costs incurred by the [HECO] Companies in calendar year 2014, escalated by GDPPI thereafter.

- Comment: This Commitment appears to be beneficial to ratepayers since requiring commercial insurance services or coverage charged or allocated by a NextEra captive affiliate to be equal to the actual costs incurred by the HECO Companies in calendar year 2014 will prevent possible excess costs from being passed on to ratepayers. However, this again assumes that the HECO Companies' calendar year 2014 costs are reasonable.

Thus, the majority of the proffered Commitments concerning the treatment of costs associated with effectuating the Merger and Change of Control are mainly restatements of existing ratemaking and regulatory policies.

(3) Aspirational Commitments

The following Commitments are aspirational goals. There are no consequences associated with the Applicants' inability to achieve the stated goals. Applicants have been generally unable to provide specific metrics to demonstrate achievement of a particular Commitment and to verify that such progress is attributable to the Change of Control. While many of these Commitments are commendable and generally reasonable, they are inadequate to meet the requisite standards of review without specific measures for implementation and enforcement.

- 1A - NextEra [] commits to strengthening and accelerating the [HECO] Companies' clean energy transformation, consistent with Commission directives and guidance, the State of Hawaii's energy policy, and customer interests and public policy goals.

- 2A - NextEra [] commits to collaborate with the Commission, the Consumer Advocate and DBEDT in the development of updated resource plans that the [HECO] Companies will file within 12 months post-closing.

- 3A - NextEra [] commits that the [HECO] Companies will engage in stakeholder and community outreach with respect to these updated resource plans.

- 6A - Subject to the Commission's approval in this proceeding, NextEra [] commits that each of the [HECO] Companies will undertake good faith efforts to achieve a consolidated [RPS] of thirty-five per cent of their net electricity sales by December 31, 2020, and fifty per cent of their net electricity sales by December 31, 2030.

- 8A - NextEra [] commits to continue to support the [HECO] Companies' work in the area of green technology innovation, including collaborating with DBEDT, Energy Excelerator and the University of Hawai'i system.

- #20A - NextEra [] commits to work with the Commission, Consumer Advocate and other relevant government agencies to discuss the development of specific programs that will directly benefit low-income customers, including the potential use of the funds described in Commitment 15 above to pay for such programs.

- 33A - NextEra [] commits to make good faith efforts to develop employees from within the [HECO] Companies to fill executive vacancies at the [HECO] Companies.

- 41A - NextEra [] commits to support the ongoing efforts of the Reliability Standards Working Group and its subgroups.

In Commitment 6A, NextEra commits that each of the HECO Companies will undertake "good faith efforts" to achieve "a consolidated [RPS] of thirty-five percent of their net electricity sales by December 31, 2020, and fifty percent of their net electricity sales by December 31, 2030."[243] These standards are above those required by HRS § 269-92, which are thirty percent of net electricity sales by December 31, 2020, and forty percent of net electricity sales by December 31, 2030.

The commission notes that attempts to achieve results greater than those outlined by statute are commendable. However, the Applicants have not set forth in specific detail what proposed actions constitute a "good faith effort" to achieve those results. There is simply no specific metric or means to enforce this Commitment, as Applicants' Witness Gleason stated:

> Q. This is another one of these things where it's sort of an aspirational goal?
>
> A. We've committed to make good faith efforts.
>
> Q. But there's no penalties associated with a failure to meet those goals; correct?

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[243]The commission observes that there is no reason why the HECO Companies cannot establish and attempt to meet such a goal even in the absence of the Change of Control.

A. That's correct.[244]

Applicants did not develop any analytic metrics to determine whether and to what extent the achievement of any of these Commitments is directly attributable to the Change of Control rather than to other factors:

> Q. Okay. Now, we've had this discussion before, but assuming that those goals are met, how do we know that that's attributable to the merger as opposed to, say, attributable to a great leap forward in technology?
>
> A. Well, we have had this discussion before. And I recall saying a couple of things. The first is that I am hopeful that the Commission, with the benefit of hindsight, will look back and say, you know, there are some things here that we think were achieved that maybe wouldn't have been achieved but for the merger.
>
> And then I also said that I thought Witness Reed would have some more insights into how we might be able to demonstrate that in a more systematic way. I don't know that he was ever asked those questions, but I know that there are ways, for example, to -- that, in other mergers, utilities have tracked the financial benefits of a merger. And so I would think there would be some ways that we could find to track the nonfinancial benefits as well.
>
> Q. Okay. And those have not been developed at this point in time?
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> A. They have not.[245]

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[244]Gleason, Tr. 2894.

[245]Gleason, Tr. 2894-2895.

(4) Conclusion

The commission concludes that the Commitments discussed above either restate existing requirements or general regulatory principles or set forth goals that are purely aspirational. Further, the commission concludes that Applicants have not demonstrated by a preponderance of the evidence that there are methods that would permit analysis and quantification of these benefits in the future, or that would permit a determination that any such benefits are solely attributable to the Change of Control. Finally, Applicants have provided no concrete methods to enforce these commitments.

f. Fuel Savings

Applicants assert that "between $10 and $20 million of savings in fuel costs relative to costs included in the previous plan" have been identified for the years 2016 through 2022.[246] These savings, totaling $67.5 million for the years 2016 through 2020, are identified and incorporated in the sum of O&M and Rate Savings Benefits shown in Witness Reed Table 3.[247]

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[246]Applicants' Exhibit 50 at 71.

[247]See Applicants' Exhibit 50 at 74.

These savings, to the extent they will be realized, are customer benefits. However, the commission observes that these asserted fuel savings result from actions already taken by Applicants, and would accrue to customers regardless of whether the proposed Change of Control is ultimately executed.

g. Transaction Commitment Related To Fuel Cost Incentive Mechanism

Applicants' Commitment 13A states:

> NextEra [] supports the immediate adoption upon closing of the fuel cost incentive mechanism reflected in Applicants Exhibit-45 to the Responsive Testimony of witness Gleason, which includes penalties and incentives of up to $10 million across all three of the [HECO] Companies based upon fuel cost performance.

The impacts and benefits of this Commitment have not been quantified by Applicants.

This Commitment is essentially an agreement to support a fuel cost incentive mechanism that has been proposed by the HECO Companies in Docket No. 2013-0141. As such, it is not a benefit that is associated with the proposed Change of Control.

h. Transaction Commitment Related To Incentive Based Ratemaking

Applicants' Commitment 12A states:

> NextEra [] supports the development of an incentive-based ratemaking construct that could apply after the base rate moratorium ends.

Commitment 12A is an agreement to support the development of an incentive-based ratemaking "construct" that could apply after the end of the proposed Rate Case Moratorium. Although commendable, this Commitment does not bind the HECO Companies to support any specific mechanism. Likewise, it does not bind the HECO Companies to support any mechanism that may ultimately be developed. The impacts and benefits of this Commitment have also not been quantified.

The commission observes that incentive-based ratemaking constructs are the subject of a separate pending proceeding, Docket No. 2013-0141. In the commission's view, Commitment 12A is, in essence, simply a reiteration of the pre-existing position of the HECO Companies in Docket No. 2013-0141. For these reasons, Commitment 12A does not provide any incremental benefit to the public that would be a result of, or that is contingent upon, the Change of Control.

i. Transaction Impacts On Current Regulatory Filings

Pursuant to Commitment 2A, NextEra continues to "reserve" the right to file its own "updated resource plans" within twelve months of closing. While this issue is discussed further with respect to clean energy issues, a number of comments are in order here.

Presumably, included within these updated resource plans are the major docket initiatives undertaken and currently under review by the commission that are necessary to achieving, among other things, the State's clean energy goals. These dockets include those addressing the HECO Companies' PSIP (Docket No. 2014-0183), DER plans (Docket No. 2014-0192), and Demand Response ("DR") programs (Docket No. 2015-0142). In addition, as discussed above, the Rate Case Moratorium may cause a further delay in the consideration of any number of issues related to these resource plans.

Applicants have not adequately demonstrated why the commission should delay or change its consideration of these dockets based on this Commitment. Indeed, if NextEra decides to propose significant changes to any or all of these plans, programs, and investigations, that would constitute a significant step backwards in the commission's view, as the commission would seemingly have to revisit many issues that have already been reviewed and decided.

The commission reiterates its concerns that the Change of Control does not result in stalling or reversing progress on programs and required submissions by the HECO Companies. The commission made it clear that during the pendency of this docket, the HECO Companies were to proceed with "business as usual," that is, that "unless and until the proposed acquisition [at issue here]

is approved by the commission, it is incumbent upon the HECO Companies to operate as stand-alone entities."[248] The HECO Companies have continued to do so, although in some cases, they have presented alternate scenarios that include what they would do if the Change of Control is approved.

The commission does not address the merits of these proposals here, but notes that they underscore the commission's concerns as discussed in this Order. Consistent with the commission's Inclinations, the HECO Companies must continue to aggressively pursue these issues now.

j. Enforcement Of Transaction Commitments

As discussed in various sections of this Order, a fundamental issue with many of Applicants' commitments is the failure to provide any metrics or method by which to measure whether the promised benefits have actually occurred, and the absence of any measures to ensure that the promised benefits to ratepayers are actually achieved. This does not support a conclusion that the proposals being offered by Applicants are adequate to provide customers with the promised benefits.

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[248]See, e.g., In re Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited's Letter Request for Expedited Approval to Issue Unsecured Obligations, Guarantees and Authorization to Enter into Related Agreements, Docket No. 2014-0299, Decision and Order No. 32860, filed May 26, 2015, at 23.

k. Benefits To HEI's Investors

Applicants' submissions in this proceeding demonstrate that HEI's investors would receive substantial guaranteed benefits whether or not the Change of Control is approved. If it is approved, investors would obtain significant benefits immediately upon closing.

> In the Merger, HEI shareholders will have the right to receive 0.2413 shares of NextEra common stock for each share of HEI common stock held at the time of the Merger, which we refer to as the exchange ratio, with cash to be paid in lieu of the issuance of any fractional share of NextEra common stock. The value of the Merger consideration to be received in exchange for each share of HEI common stock will fluctuate with the market value of NextEra common stock.[249]
>
> Immediately prior to completing the Merger, HEI will distribute to its shareholders, on a pro rata basis, all of the issued and outstanding shares of common stock of ASB Hawaii, Inc., which we refer to as ASB Hawaii, the direct parent company of American Savings Bank, F.S.B., a federal savings bank, which we refer to as American Savings Bank. Also, immediately prior to completing the Merger, HEI will pay a one-time special cash dividend of $0.50 per share of HEI common stock, which we refer to as the special cash dividend.[250]

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[249]As of July 15, 2016, the 52 week range of NextEra common stock was $94.62 - $130.89. The most recent close on July 14, 2016 was $127.24. For the same period, the range of HEI common stock was $27.23 - $34.48. The most recent close on July 14, 2016 was $32.20.

[250]See Hawaiian Electric Industries, Inc., Notice of Special Meeting of Shareholders to be Held on May 12, 2015, dated March 26, 2016, Summary (Cover).

If the Change of Control is not approved, HEI's investors may be entitled to receive an immediate $90 million payment from NextEra. As succinctly summarized by Applicants' Witness Oshima:

> If NextEra is – if the regulatory approvals are not obtained in a form that is acceptable to NextEra to allow consummation of the transaction by, I think, June 3 – that was the end date noted in IR responses – then, yes. NextEra would be responsible for paying HEI $90 million termination fee.[251]

The commission does not mean to suggest that shareholders should not be compensated for risks that they have assumed. The commission also acknowledges that benefits to HEI and the HECO Companies can provide positive impacts for Hawaii's overall economy. However, one of the commission's major tasks in reviewing the Application, including the commitments and conditions proposed therein, is to determine whether they are supported by a preponderance of evidence in the record to demonstrate ratepayer benefits. A comparison of these substantial benefits to HEI's shareholders with the nature of the benefits for ratepayers, assuming that the Rate Case Moratorium remains in place for the four-year period, underscores the conclusion that those benefits are not adequate.

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[251]Oshima, Tr. 41.

1. Conclusions

In determining whether the overall savings and benefits proposed in the Application and resulting from the Change of Control would be reasonable and in the public interest, the commission considered the certainty and magnitude of expected savings and benefits in both the short and the long run, considering - and in comparison with - the risks, uncertainties, and potential costs associated with the Change of Control.

As discussed, the commission concludes that the asserted savings and benefits have not been shown, by a preponderance of the evidence, to be certain or to be sufficient to offset the identified risks, uncertainties, and potential costs associate with the transaction. Likewise, Applicants' quantification of projected savings and benefits are subject to contention, and, again, are not supported by a preponderance of the evidence.

The commission therefore concludes that Applicants have not sufficiently demonstrated that the overall projected savings and benefits for ratepayers outweigh the risks and potential costs that have not been considered or sufficiently analyzed in Applicants' quantitative analysis. For these reasons, the commission cannot conclude that these savings and benefits are reasonable and in the public interest.

3. Commission Issue No. 1.c. - Whether The Proposed Transaction Will Impact The Ability Of The HECO Companies' Employees To Provide Safe, Adequate, And Reliable Service At Reasonable Cost

This issue has two major aspects. First, there are the practical considerations concerning whether NextEra is capable of continuing to provide safe, adequate, and reliable service. The commission recognizes the record evidence that demonstrates that NextEra's virtuous circle management philosophy and strong commitment to operational excellence can potentially assist the HECO Companies to provide safe, adequate, and reliable service to customers.[252] This consideration is more fully addressed with respect to issues concerning whether NextEra is fit, willing, and able to provide the services currently being provided by the HECO Companies (see Section VIII.B, Commission Issue No. 2, below).

Second, there are considerations concerning whether such services can be provided at reasonable cost. For a number of reasons, the commission cannot make this conclusion at this time.

To begin, for the reasons discussed in the previous section with respect to Commission Issue No. 1.b, the commission has concluded that Applicants have not sufficiently demonstrated that the overall projected savings and benefits for ratepayers as

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[252]See, e.g., Applicants' Exhibit 7 (Gleason) at 11 (citing to Applicants' Exhibit 9); and Applicants' Exhibit 36 (Gleason) at 36-39.

proposed in their Application are reasonable and in the public interest.

Next, as discussed with respect to Commission Issue No. 1.g, below, Applicants have declined to provide any specific action plans that set forth how they intend to operate the HECO Companies if the Change of Control is approved. Rather, Applicants have "committed" to providing specific, detailed resource plans within 12 months following commission approval. This proposal does not provide the commission with sufficient evidence to determine how the proposed Change of Control will affect the services currently offered by the HECO Companies.

4. Commission Issue No. 1.d. - Whether The Proposed Financing And Corporate Restructuring Proposed In The Application Is Reasonable

a. Introduction

There are three groups of sub-issues for consideration with respect to this issue. The first concerns the corporate structure of the various holding companies as proposed by Applicants. These sub-issues are more appropriately and directly addressed with respect to Commission Issue No. 1.f. concerning adequate safeguards to protect ratepayers from business and financial risks associated with the operations of NextEra and/or any of its affiliates.

The second group concerns the impact of any affiliate transaction on the HECO Companies as a result of becoming a member of a much larger corporate family. These sub-issues are more appropriately and directly addressed with respect to Commission Issue No. 1.e. concerning cross subsidization of any affiliates, and the ability of the commission to audit the books and records of the HECO Companies, including affiliate transactions.

The third group concerns the impact of the proposed Change of Control on local control of the HECO Companies. This issue is discussed below.

b. Transaction Impact On Local Control

(1) Applicants' Position

Applicants have proposed thirteen "Local Management and Governance Commitments." Applicants state that, in their view, "the Merger will simply substitute NextEra Energy for HEI as the ultimate parent of the Hawaiian Electric Companies," and, as a result, "the Commission's regulatory authority over the utilities will be wholly unchanged."[253]

In their testimony, Applicants stressed that the HECO Companies would continue to be managed by a team of executives located in Honolulu, with the President and CEO of the HECO

[253]Applicants Initial Brief at 64.

Companies reporting directly to the Chairman and CEO of NextEra. Furthermore, Applicants have proposed to establish a "Hawaiian Electric advisory board" in lieu of the existing Board of Directors. This board would be comprised of six to twelve members with "substantial ties to the Hawaii community."[254] In addition, NextEra has proposed to form a new intermediate utility holding company, HEUH, where a majority of the members of the board would be residents of Hawaii.

(2) Consumer Advocate's And Intervenors' Positions

The Consumer Advocate concludes that the Proposed Transaction would diminish the commission's regulatory authority. The Consumer Advocate states:

> The Commission's regulatory oversight will be diminished by the dilution effect of the HECO Companies becoming a small portion of the larger NextEra enterprise, without additional regulatory conditions beyond those offered by the Applicants. It is impossible, however, to predict the extent to which the Commission's regulatory oversight over transactions between the HECO Companies and the much larger, geographically diverse NextEra and its affiliates, headquartered thousands of miles away from Hawaii, could be diminished.[255]

DBEDT states that Applicants' Commitments do not offer an incremental benefit of the Merger and either maintain the status

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[254]Applicants' Exhibit 37A at 5.

[255]CA Initial Brief at 54.

quo or are inferior to the status quo.[256] For example, DBEDT states that absent a Change of Control, HEI has no plans to move its headquarters out of Honolulu or to transfer HEI's president or management team out of Hawaii; thus, there is no incremental benefit to the public from NextEra's commitments not to relocate management if the Change of Control occurs (referencing Applicants' Commitments 21A and 22A).[257]

Sierra Club states that "the proposed acquisition will cause a fundamental loss of local control just in its nature and structure," asserting that "the importance of the HECO Companies in its corporate family will shrink drastically overnight, and accountability to the Commission and the customers and public in Hawaii will proportionately shrink with it."[258]

Blue Planet states that while the concept of creating a Hawaiian Electric advisory board is partially responsive to the need for local control, the advisory board lacks actual control or authority, and appointments to the board will be controlled by NextEra, ensuring neither effectiveness nor independence.[259] Blue

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[256]DBEDT Initial Brief at 30-35.

[257]DBEDT Initial Brief at 30-31.

[258]Sierra Club Initial Brief at 37.

[259]"Blue Planet Foundation's Post-Evidentiary Opening Brief; and Certificate of Service," filed March 31, 2016, at 17 ("Blue Planet Initial Brief"). To remedy this, Blue Planet recommends that appointments to the advisory board be completely independent of the utility, and the Board should be given the authority to

Planet additionally recommends that the commission require NextEra to appoint one person from Hawaii to the NextEra Board of Directors, and two people from Hawaii to the HEH Board, to ensure that issues related to Hawaii are appropriately considered by the NextEra Energy Board of Directors.[260]

COM concludes that "it is clear, that all major company decisions, including approval of budgets, appointment of senior executives, and establishment of the local boards of directors will be made in Florida."[261] OSP states its concern that decisions such as "if and when the utilities should seek rate increases or decreases," "whether, when and how much to spend on cybersecurity and storm response," and "when to pay dividends to the parent, [and] in what amounts," among others, will be "subject to NextEra's control."[262]

(3) Discussion And Conclusions

Based on its review of the entire record in this docket, the commission agrees with the Consumer Advocate's conclusion that

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review and revise executive compensation of the HECO Companies and NextEra. Id.

[260]Blue Planet Initial Brief at 18.

[261]COM Initial Brief at 18 (citing Tr. 445-446, and 448-449). COH makes similar arguments in its Initial Brief. COH Initial Brief at 7.

[262]OSP Initial Brief at 8-9.

it is impossible to state with certainty the extent, if any, to which the Commission's regulatory oversight over the HECO Companies could or would be diminished by the Merger. To begin, in the event of any change of in corporate structure, Hawaii will retain local regulatory control over the HECO Companies. The commission's regulatory authority, oversight, and enforcement powers, which are the basis for local economic control over an electric utility, are unchanged by the Proposed Transaction.[263]

Nevertheless, it must be recognized that the HECO Companies would be a smaller portion of the NextEra enterprise in terms of customers, employees, and contribution to net income in comparison to NextEra's two other principal businesses, FPL and NEER. This is in sharp contrast to the current position of the HECO Companies within the HEI portfolio of companies. Furthermore, Applicants have clearly stated that ultimate decision-making authority for the HECO Companies would reside with the Chairman and CEO of NextEra.[264]

These facts, by themselves, do not automatically indicate that the management decisions by NextEra senior

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[263]Hawaii Gas is an example of a "local company"; it is managed and operated locally, subject to full commission jurisdiction, yet corporate hierarchical relationships vest ultimate control in Macquarie Infrastructure, Inc.

[264]See, e.g., Gleason, Tr. 594 (concerning capital and operating budgets).

executives that reside outside of Hawaii will inherently conflict with (1) decisions initially made by local management; (2) the regulatory authority of, and directives issued by, the commission; or (3) State policy. The commission recognizes that good and bad decisions can be made in Hawaii or elsewhere. However, Applicants' Commitments addressing local management and governance nevertheless are subject to review and ultimate determination by the Chairman and CEO of NextEra.

Additionally, there is no means of ensuring that the decisions made by NextEra's management will reflect the interests of Hawaii given that the local management can only make recommendations and, ultimately, are employees of NextEra. Indeed, despite repeated assurances that the HECO Companies would remain locally managed, Applicants' Witness Gleason admitted that it is possible that the presidents of HECO, MECO, and HELCO could be executives from NextEra.[265]

Likewise, Applicants' position throughout this proceeding to defer disclosing details of their plans for transforming the HECO Companies has contributed to uncertainty concerning whether future management decisions will either align or conflict with local management and regulatory decisions. Applicants' lack of clarity regarding NextEra's post-merger

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[265]Gleason, Tr. 1000.

operational plans, the structure and operation of HEH, HEUH, the HECO Companies, and the Advisory Board, and the fact that corporate governance documents are not complete and unambiguous, preclude the commission from concluding that the proposed structure and commitments are sufficient to ensure that the commission retains adequate regulatory authority over the HECO Companies and that management decisions made outside of the State will be consistent with the best interests of the HECO Companies' customers.

The commission further observes that if the Application is approved, the HECO Companies would become subsidiaries of NextEra, and part of NextEra's corporate family, which includes FPL, NEER, and hundreds of other regulated and unregulated affiliates and subsidiaries. This would fundamentally transform the corporate nature of the HECO Companies, as they would go from being one of two subsidiaries of HEI, along with ASB, to one of hundreds of subsidiaries and affiliates of NextEra.

Concurrent with this transition into a larger corporate family, there is a corresponding increase in financial risk, as the HECO Companies would be linked to the financial well-being of NextEra and all of its subsidiaries and affiliates. As discussed in detail with respect to Commission Issue No. 1.f., Applicants have attempted to address this concern through their ring-fencing commitments, a fundamental component of which is the establishment of a holding company (HEUH) for the sole purpose of holding

NextEra's interest in the HECO Companies. However, among its conclusions with respect to that issue, the commission concludes that Applicants have not shown that their proposal, including HEUH, meets the standards necessary for an appropriate bankruptcy-remote entity.

Accordingly, the commission concludes that Applicants have not demonstrated by a preponderance of the evidence that the proposed corporate restructuring is reasonable and adequate to sufficiently safeguard the Companies or their customers from financial risk.

5. Commission Issue No. 1.e. - Whether Adequate Safeguards Exist To Prevent Cross Subsidization Of Any Affiliates And To Ensure The Commission's Ability To Audit The Books And Records Of The HECO Companies, Including Affiliate Transactions

a. Introduction

Applicants offered four Commitments pertaining to matters of company books and records: Commitments 49A, 50A, 52A, and 59A:[266]

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[266]The Commitments shown here are as presented in Applicants' Exhibit 37A. It should be noted that Applicants also proposed modifications to the 1982 Agreement made between the HECO Companies and the commission. See Applicants' Exhibit 37A at Commitment 93A, and Applicants' Exhibit 86. It is the opinion of several of the Intervenors that, if these changes are approved, the effect would be to even further restrict the accessibility rights of the commission to books and records than that provided by Commitments 50A, 52A and 59A. Given the ultimate determination by the commission with respect to the Application, the commission finds

- 49A - NextEra [] will continue the practice of providing the Commission with reports concerning intercompany transactions.

- 50A - The Commission will have access to the books and records of affiliated entities providing services chargeable to the [HECO] Companies as necessary for determining that charges are appropriately billed in accordance with service level agreements and cost allocation manual requirements.

- 52A - Within 90 days following the closing of the transaction, the [HECO] Companies will provide the Consumer Advocate a draft Hawaii-specific cost allocation manual ("CAM") governing charges by the [HECO] Companies to NextEra [], containing detailed affiliate transaction policies, practices and guidelines (including direct charging of corporate costs when possible, allocation of common or shared costs using direct measures of cost causation when identifiable, and allocation of shared service costs using general allocation techniques as necessary among all benefiting affiliated entities) designed to protect against cross-subsidization. NextEra [] commits to collaborate with the Consumer Advocate to review, discuss and revise the draft CAM with a goal of filing a joint recommendation with the Commission for its consideration. Pending Commission review, NextEra Energy will apply the FPL CAM methodologies and approaches for all transactions between NextEra [] affiliates and the [HECO] Companies. The FPL CAM, which is Applicants Exhibit-53 to the Responsive Testimony of witness Reed, will apply with respect to charges to the [HECO] Companies from NextEra [] and its affiliates and subsidiaries.

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it unnecessary to address the additional issues raised with respect to the 1982 Agreement in this Order.

- 59A - The [HECO] Companies will maintain their own separate books, records, bank accounts and financial statements reflecting their separate assets and liabilities.

These four Commitments differ in certain respects, but, collectively, they provide a proposed framework that severely limits the commission's ability to review, reference, or requisition material that the commission deems necessary when addressing NextEra affiliates and their relationships with the HECO Companies.

b. Applicants' Position

Applicants assert that they have committed to provide significant safeguards that collectively will protect the HECO Companies' customers from any business and financial risks associated with operations of NextEra and/or any of its affiliates.[267] Applicants maintain that the record demonstrates their intent to ensure the commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.[268] Finally, Applicants assert that the Commitments afford the commission access to all books and records for costs incurred by the HECO Companies, furnish the commission with reports concerning intercompany transactions, and provide the commission

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[267]Applicants Initial Brief at 28.

[268]Applicants Initial Brief at 29.

with all of the authority it has today regarding the costs that will be included in, or excluded from, rates for the utilities.[269]

c. Consumer Advocate's Position

The Consumer Advocate concludes that Applicants have not proposed adequate measures to ensure the commission's ability to audit the books and records of HECO and its new affiliates.[270] The Consumer Advocate states that, post-Merger, the HECO Companies will have over 900 affiliates, leading to significantly more complex affiliate transactions and a greater potential for the Hawaii utilities to directly or indirectly cross-subsidize NextEra's unregulated affiliates.[271]

The Consumer Advocate proposes that Applicants guarantee access to all affiliate books and records, arguing that technology makes this relatively easy to accomplish.[272] The Consumer Advocate also asserts that limiting access to only entities transacting directly with the HECO Companies deprives the commission of useful information when judging the effect of intercompany allocation

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[269]Applicants Initial Brief at 29.

[270]CA Initial Brief at 38.

[271]CA Initial Brief at 8-30.

[272]CA Initial Brief at 60.

factors and allocated costs associated with entities that only deal with HECO indirectly.[273]

d. Intervenors' Positions

Opinions on this topic were submitted by eight intervenors; fifteen intervenors offered no substantive comment or opinion.[274]

COH echoes the concerns of the Consumer Advocate, arguing that the proposed Commitments do not afford adequate audit privileges to protect the public.[275] COH suggests that the commission "would be constrained in its ability to prevent cross-subsidization and routinely monitor the fiscal transactions of the post-Merger company."[276] COH proposes supplemental safeguards to ensure against cross-subsidization and afford easier ability to audit company activities, including the following:

- the merged utility should maintain its books and records at the HECO Companies' headquarters in Hawaii, and keep them open and available to the Commission for inspection when needed;

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[273]CA Initial Brief at 60.

[274]The following intervenors offered no substantive comment or opinion on the topic: Blue Planet, DBEDT, DOD, Hawaii Gas, HPVC, REACH, HSEA, HIEC, HINA, KIUC, OSP, Sierra Club, SunEdison, SunPower and TASC.

[275]COH Initial Brief at 7.

[276]COH Initial Brief at 7.

- NextEra should permit the Commission the same level of access to NextEra's books and records as to the merged utility's books and records; and

- that no merger-related expenses, including any premiums paid for the acquisition of the utility, should be recoverable from ratepayers in future rate cases or through any other mechanism.[277]

COM expresses concerns about the growing number of NextEra affiliates, the commission's limited staff resources, and the difficulties associated with identifying inappropriate affiliate transactions and enforcing penalties against such transactions, stating that these activities pose challenges that require additional commitments, policing, and enforcement by the commission.[278] COM asserts that the inherent limitations of Applicants' Commitments may expose customers of the HECO Companies to unwarranted risk by leaving them "powerless" to audit the books and records of certain affiliates or to investigate certain

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[277]COH Initial Brief at 8. Thus, it appears that COH is of the opinion that full access to the books and records of all NextEra's business units is necessary to ensure that Merger related-charges otherwise not eligible for recovery are not channeled to Hawaii through an intermediary. COH's concerns with respect to merger-related expenses are addressed in a previous section of this Order.

[278]COM Initial Brief at 5.

transactions because there are no charges between the HECO Companies and the affiliate.[279]

FOL maintains that the record confirms the commission's access and ability to audit the books and records of the HECO Companies, including affiliate transactions will be impaired, and that safeguards to prevent this are missing.[280] FOL takes issue with Applicants' effort to proscribe the commission's powers to seek information and to place the burden on the commission to show why information is needed.[281] In sum, FOL argues that there are inadequate safeguards to ensure the Commission's ability to audit the books and records regarding transactions between the HECO Companies and affiliates.[282] KLMA/LOL/PPA state that adequate safeguards do not exist to prevent cross subsidization of any affiliates and to ensure the commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.[283]

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[279]COM Initial Brief at 6.

[280]FOL Initial Brief at 24.

[281]FOL Initial Brief at 25.

[282]FOL Initial Brief at 25.

[283]KLMA/LOL/PPA "Joint Parties Opening Brief; and Certificate of Service," filed March 30, 2016, at 23 ("KLMA/LOL/PPA Initial Brief").

REACH offers no independent opinion on this matter but defers to the analysis and judgment of the Consumer Advocate.[284] Tawhiri suggests that affiliation brings with it opportunities for cross-subsidization that cannot be adequately addressed simply by monitoring and post-event auditing. According to Tawhiri, the only way to prevent cross subsidization (one of the principle purposes for accessing books and records) is to bar any affiliate transactions.[285] Ulupono draws a connection between effective ring-fencing measures and requirements to maintain separate corporate books and records.[286] However, Ulupono offers no opinion on matters of access to those books and records by those responsible for monitoring the ring-fencing framework.

e. Discussion And Conclusions

Open and complete access to a utility's books and records is fundamental to effective regulation. Such access is crucial to the ability of the regulator to protect the public interest. In this instance, the commission concludes that the Commitments that

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[284]"Renewable Energy Action Coalition of Hawaii, Inc.'s Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 30, 2016, at 30 ("REACH Initial Brief").

[285]"Tawhiri Power LLC's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016 at 13 ("Tawhiri Initial Brief").

[286]Ulupono Initial Brief at 20.

have been proffered do not address critical matters of availability, location, scope, and responsiveness that are critical to any inspection process.

Applicants have not claimed that the commission has abused its current inspection authority.[287] Applicants cannot argue that the proposed Commitments represent an effort to restore legitimate boundaries between management prerogative and regulatory interests.

The commission respects the right of NextEra to engage in a broad range of business endeavors that it views to be outside the purview of State regulators. However, the commission has a statutory duty to ensure the public's interest in the business operations of NextEra that are subject to commission authority are protected. It cannot fulfill that duty without being able to verify that the representations made to it on behalf of the parent company and its many affiliates are complete and accurate.

The commission does not accept the premise that requiring full disclosure of books and records constitutes an onerous and burdensome responsibility for the HECO Companies, NextEra, or NextEra's affiliates. In this proceeding, Applicants

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[287]In response to questioning by the Consumer Advocate, Applicants' Witness Sekimura could not cite to an instance in which the commission abused its authority to investigate any matter, activity, or transaction between HEI and the HECO Companies. Sekimura, Tr. 1471.

have proposed the creation of a Special Purpose Entity - HEUH - but have been unable to definitively state whether the commission's right to inspect books and records extends beyond that corporate entity or not. In an extensive discussion of this matter with Witness Gleason, it was apparent that there is considerable ambiguity concerning the authority of the commission to extend its investigatory powers beyond HEUH. Applicants offered no further clarification or details on redirect.[288]

The commission finds that establishing the specific scope of the commission's rights to access books and records beyond HEUH is fundamental to the commission's ability to discharge its general statutory duties. Given that Hawaii has not previously approved use of a Special Purpose Entity (or a bankruptcy-remote entity), it is important that such details be presented, and the responsibility to do so rests with Applicants.

The commission concludes that its duty to ensure that the public's interest is protected is not diminished by the existence of business activities that fall outside the commission's jurisdiction. In this case, the sheer number of NextEra's corporate affiliates makes it difficult to conclude that any proposed limitation to its current inspection rights would be

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[288]Gleason, Tr. 2927-2930. Ring-fencing is addressed in detail in the commission's discussion of Commission Issue No. 1.f.

in the public interest. To the contrary, NextEra's business model and business strategies suggest that the public interest would be better served with greater access to the books of NextEra and its affiliates and subsidiaries. Applicants have not demonstrated, by a preponderance of the evidence, that these four Commitments adequately address these issues.

The commission further concludes that the record evidence does not support Applicants' proposed changes to the rules, regulations, and requirements currently adopted for the HECO Companies - including the location of records and rights to inspect those records - at this time. Those same requirements should also apply to NextEra and members of its corporate family. Finally, the commission concludes that Applicants have not demonstrated, by a preponderance of the evidence, that adequate safeguards exist and have been provided for in the Application as filed to prevent cross subsidization of any affiliates post-closing.

6. Commission Issue No. 1.f. - Whether Adequate Safeguards Exist To Protect The HECO Companies' Ratepayers From Any Business And Financial Risks Associated With The Operations Of NextEra And/Or Any Of Its Affiliates

a. Introduction

One of the major concerns the Parties to this docket raised is whether or not the "ring-fencing" provisions set out in

Applicants' Exhibit 37A are sufficient to protect the HECO Companies and their customers from the threat of possible bankruptcy or other major problems that may occur in the future with respect to NextEra or other members of its corporate family. In this section, the commission ultimately concludes that the ring-fencing Commitments proposed by Applicants are not sufficient in strength to protect the interests of the HECO Companies' customers in the face of such events.

Among other things, Applicants have not presented conclusive evidence from their witnesses, qualified counsel, or other experts that the ring-fencing measures Applicants proposed are sufficient to protect the public's interest in the event they must be invoked. In light of NextEra's size and number of corporate entities, the commission concludes that effective ring-fencing measures are critical components with respect to any proposal such as the Change of Control. However, the commission cannot conclude that Applicants' proffered measures adequately protect the HECO Companies' ratepayers or that they represent the totality of what should be reasonably expected from Applicants given the present business conditions in the electric industry.

b. Applicants' Position

In response to initial criticisms and comments by the Intervenors, Applicants' proposed a series of amended ring-fencing

measures in Exhibit 37A. The major change between Applicants' initial proposals and their revised proposals in Exhibit 37A is the proposal to form HEUH, which would become the parent company of the HECO Companies, and a subsidiary of HEH.

Specifically, the ring-fencing and related Commitments as now proposed by Applicants are as follows:

- 55A - A new intermediate holding company, [HEUH] will be formed between [HEH] and [the HECO Companies], to achieve separation between the unregulated and regulated business of [HEH]. [HEUH] will become the parent company of the [HECO] Companies following the Proposed Transaction.

- 56A - HEUH will have no employees and no operational functions other than those related to holding the equity interests in the [HECO] Companies.

- 27A - A voting board of directors will be installed at HEUH, and a majority of the members of the board of directors will be residents of Hawaii.

- 57A - It is expected that the [HECO] Companies will benefit from credit ratings consolidation with NextEra [] upon closing the proposed transaction. NextEra [] agrees to take the following steps designed to achieve ratings separation only if the [HECO] Companies do not receive a credit rating upgrade from Standard & Poor's after closing the proposed transaction: NextEra [] commits to implement measures necessary to obtain a non-consolidation legal opinion in customary form and substance based on laws in effect as of the date of the final order in Docket No. 2015-0022 demonstrating that a bankruptcy court would not consolidate the assets and liabilities of the [HECO] Companies with NextEra [] in the event of a bankruptcy. In

the event that such opinion cannot be obtained, NextEra [] will use reasonable best efforts to promptly implement such measures as are required to obtain such opinion.

- 58A - HEUH will not hold any debt or engage in any line of business other than to hold its interest in the [HECO] Companies.

- 59A - The [HECO] Companies will maintain their own separate books, records, bank accounts and financial statements reflecting their separate assets and liabilities.

- 60A - HEUH will not make loans to NextEra [] or any of NextEra['s] subsidiaries without prior Commission approval.

- 61A - HEUH and the [HECO] Companies will not assume any obligation or liability as guarantor, endorser, surety, or otherwise for NextEra [] or NextEra['s] non-utility subsidiaries.

- 62A - NextEra [] will not pledge any assets of the business of the [HECO] Companies as backing for any securities that NextEra [] or NextEra['s] non-utility subsidiaries may issue.

- 63A - The [HECO] Companies will maintain their debt separate and apart from NextEra [] and NextEra['s] affiliates and non-utility subsidiaries.

- 64A - The [HECO] Companies will maintain their own credit ratings for outstanding long-term debt from at least two of the three major credit rating agencies.

- 65A - The Commission will continue to have full authority over the [HECO] Companies' issuance of securities.

- 66A - NextEra [] will restrict payment of dividends in the event the consolidated common

stock equity of the [HECO] Companies falls below 35% of the total capitalization of the [HECO] Companies (excluding short-term borrowings).

- 67A - NextEra [] commits that there will be no cross-collateralization or cross-financial guarantees between the [HECO] Companies and NextEra [] and its subsidiaries or affiliates, no money pools or shared credit facilities, and no pledging of [HECO Companies'] utility assets for any obligation of another affiliate.

- 68A - NextEra [] commits that the [HECO] Companies and their operating utilities will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future NextEra [] acquisition.

- 69A - NextEra [] commits that the [HECO] Companies will file with the Commission an annual compliance report with respect to the ring-fencing Commitments contained in Commitments 55-74, which is certified by an executive under penalty of perjury.

- 71A - NextEra [] commits to provide notice to the Commission if NextEra [] or any of the [HECO] Companies are put on negative outlook or are downgraded below current bond ratings by any of the three major credit rating agencies (Standard & Poor's, Moody's Investors Service, or Fitch Ratings).

- 72A - In the event the credit ratings of NextEra [] are downgraded to below investment grade by any of the three major credit ratings agencies (Standard & Poor's, Moody's Investors Service, or Fitch Ratings), NextEra [] commits to implement measures necessary to obtain a non-consolidation legal opinion in customary form and substance based on laws in effect as of the date of the final order in Docket No. 2015-0022 demonstrating that a bankruptcy

court would not consolidate the assets and liabilities of the [HECO] Companies with NextEra [] in the event of a bankruptcy.

- 73A - The Applicants agree to implement the ring-fencing measures set out in Commitments 55 to 72 within 180 days of Merger closing for the purpose of providing protections to customers. Ten years after the closing of the Merger, the Applicants shall have the right to review the provisions contained in Paragraphs 55 through 72, and to make a filing with the Commission requesting authority to modify or terminate those provisions. Notwithstanding such right, Applicants agree not to proceed with any such modification or termination without first obtaining Commission approval in a written order.

In the context of this proceeding, Applicants assert that the proposed measures represent significant safeguards, compare favorably with those in other utility change of control proceedings, and meet the prevailing legal standard in Hawaii. In summary, Applicants argue:

> The Hawaiian Electric Companies will remain fully subject to the Commission's jurisdiction, and highly responsive to the needs, preferences and aspirations of the customers and communities they service, while continuing to provide their employees with attractive career opportunities and compensation.
>
> * * * * * * * * *
>
> NextEra Energy's significantly better credit ratings will improve the financial strength of the Hawaiian Electric Companies, enhance their access to the global capital markets, and reduce their cost of debt at a time when the utilities' need to raise external capital has never been greater. . . .

> The corporate restructuring proposed in the Application is also reasonable. The Hawaiian Electric Companies will continue to be locally managed under the oversight of the Commission with the President and CEO of the Companies reporting to the CEO and Chair of the Companies' parent. The primary differences are that the President and CEO of the Companies will report to the CEO and Chair of NextEra Energy rather than the Chair of HEI, and the Companies will receive all of the benefits of the Proposed Transaction articulated in Applicants' Commitments.[289]

Based on these conclusions, Applicants contend that the the proposed ring-fencing measures are reasonable, and that stronger ring-fencing restrictions are not common, not needed, and of no benefit.[290] Applicants maintain that their proposed Commitments "provide adequate safeguards to protect the Hawaiian Electric Companies' customers from any potential business and financial risks associated with the operations of NextEra Energy and/or any of its affiliates."[291]

c. Consumer Advocate's Position

The Consumer Advocate expresses a number of concerns with Applicants' proposed ring-fencing measures, and concludes that Applicants have failed to offer adequate safeguards to protect

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[289]Applicants Initial Brief at 6, 27-28.

[290]Applicants' Exhibit 56 (Lapson) at 6.

[291]Applicants Initial Brief at 33-34.

ratepayers from the business and financial risks associated with the operations and affiliates of NextEra.[292] The Consumer Advocate states that NextEra has "substantial investment in unregulated operations, which carry greater operating and investment risk than utility operations" as well as "several nuclear generation facilities (some regulated and some unregulated)" which carry substantial risks not currently faced by the HECO Companies.[293]

The Consumer Advocate observes that the proposed corporate structure for NextEra post-Merger does not provide financial protections for the HECO Companies in the event of financial problems at the NextEra level.[294] According to the Consumer Advocate, this situation is exacerbated by an extremely complicated financial structure, limited accountability, inadequate transparency, and lack of substantive local involvement in governance.[295] Thus, the Consumer Advocate maintains that Applicants' proposed ring-fencing provisions do not pass muster as effective financial protections that actual ring-fencing is meant to provide.[296]

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[292]CA Initial Brief at 40.

[293]CA Initial Brief at 40.

[294]CA Initial Brief at 40-44.

[295]CA Initial Brief at 41-43.

[296]CA Initial Brief at 41-43.

The Consumer Advocate therefore argues that:

- HEUH should be eliminated and that a governing board of directors should be formed at HEH with representatives of both NextEra and the HECO Companies.

- One of the directors of HEH would be an independent director who would have sole authority regarding bankruptcy matters. That is, the HEH Board plus the one independent director would be required to unanimously approve any bankruptcy filing by the HECO Companies.[297]

- NextEra should be required to execute a non-consolidation opinion indicating that it would not force the HECO Companies into bankruptcy to satisfy NextEra's debt and that such opinion be affirmed reasonable and effective by competent counsel.[298]

d. Intervenors' Positions[299]

Blue Planet argues that Applicants' proposed ring-fencing provisions are inadequate and, thus, supports stronger conditions, as recommended by Ulupono.[300] Additionally, Blue Planet proposes that the Commission require that NextEra appoint

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[297]CA Exhibit 34 at 6-8.

[298]CA Initial Brief at 44.

[299]The following intervenors offered no comment on this topic in their Initial Briefs: TASC, COH, COM, DOD, Hawaii Gas, HIEC, HPVC, HREA, HSEA, HINA, KIUC, REACH, Sierra Club, SunEdison, SunPower, and Tawhiri.

[300]Blue Planet Initial Brief at 7.

one person from Hawaii to the NextEra Board of Directors, and two people from Hawaii to the HEUH Board of Directors.[301]

FOL asserts that the additional ring-fencing measures proposed in Applicants' Exhibit 37A are inadequate to address the transaction's primary financial and business risk: that NextEra's operations elsewhere could severely restrict or impede access to the capital the HECO Companies would need from their new parent.[302] FOL further maintains that there is no guarantee that sufficient capital would be made available to cover operations in Hawaii post-Merger and indefinitely into an uncertain future.[303]

KLMA/LOL/PPA express concerns about the inherent risks of NextEra's business model, and concur with positions taken by the Consumer Advocate, DOD, and OSP, echoing the need for regulatory scrutiny of potential cross-subsidization and inappropriate affiliate transactions.[304]

Hawaii Gas summarizes its concerns with Applicants' ring-fencing Commitments by asserting that ring-fencing mechanisms

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[301]Blue Planet's Exhibit 7 at 3.

[302]FOL Initial Brief at 26.

[303]FOL Initial Brief at 26.

[304]KLMA/LOL/PPA Initial Brief at 24. While DOD's testimony remains part of the record evidence, as discussed above, the commission observes again that DOD "abstained" from filing an initial brief in this docket as it has reached a settlement with Applicants.

are structures put in place within a corporate family to separate risks associated with one or more enterprises from affecting another affiliate.[305]

Ulupono asserts that the ring-fencing proposals made by Applicants offer inadequate protections from the financial risks of association with NextEra and its existing affiliates.[306] Specifically, Ulupono argues that NextEra faces multiple risks not currently faced by the HECO Companies,[307] and that the proposed ring-fencing measures do not reduce the risk of bankruptcy to the HECO Companies, which is the primary purpose of ring-fencing.[308] Finally, Ulupono notes that the proposed Commitments do not prohibit the merger or consolidation of HEUH with any entity, or satisfy other general structural protections that characterize an effective special purpose entity.[309]

Ulupono states that it supports "the creation of a new intermediate holding company formed between" HEH and the HECO Companies, as well as the proposal that HEUH would have no employees and no operational functions other than those related to

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[305]Tierney, Tr. 4014-4044.

[306]Ulupono Initial Brief at 14-80.

[307]Ulupono Initial Brief at 14.

[308]Ulupono Initial Brief at 18-19.

[309]Ulupono Initial Brief at 22.

holding the equity interest in the HECO Companies.[310] Nevertheless, Ulupono states that the draft Limited Liability Company Agreement of HEUH is "wholly inadequate" because it does not limit the ability of HEUH to engage in activities that are not in the best interests of the HECO Companies.[311]

Finally, Ulupono recommends a series of supplemental conditions to be applied to any commission approval of the Application. Specifically, Ulupono recommends that HEUH: (a) incur no debt; (b) covenant not to merge or consolidate with a lower-rated entity; (c) observe "separateness" covenants (including maintaining a separate office from its parent, its own financial records and statements, its own corporate books and records, and separate bank accounts); (d) obtain a non-consolidation opinion from counsel; and (e) designate an independent director or a special class of stock (i.e., a "golden share").[312]

DBEDT acknowledges that it has not focused directly on matters of ring-fencing. Nevertheless, DBEDT states that at a

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[310]Ulupono Initial Brief at 17 (citing Ulupono's Exhibit 6 at 23).

[311]Ulupono Initial Brief at 16-17.

[312]Ulupono Initial Brief at 18-25.

minimum any order approving the proposed Change of Control must incorporate all of Applicants' proposed Commitments.[313]

OSP concludes that the proposed ring-fencing measures are insufficient.[314] OSP maintains that there are "no legal limits on NextEra's appetite for acquisitions" given the repeal of the Public Utility Holding Company Act of 1935; thus, "after acquiring HEI, [NextEra] can acquire anything else it wants wherever it wants, whenever it wants," be it regulated or non-regulated.[315] OSP asserts that the risks facing NextEra from its non-regulated business activities are magnified by NextEra's investment in nuclear power, and that these risks are well-documented in NextEra's current SEC 10-K filings.[316]

OSP further observes that approval of the Change of Control would eliminate HECO's independent access to equity, making it completely dependent for equity on a company that can make unlimited acquisitions and take on unlimited risk.[317] OSP also argues that approval of the Application as proposed cedes legal control of Hawaii utility decisions to NextEra's CEO, and

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[313]DBEDT Initial Brief at 37.

[314]OSP Initial Brief at 15-16.

[315]OSP Initial Brief at 11-12.

[316]OSP Initial Brief at 12-14.

[317]OSP Initial Brief at 15.

that NextEra remains free to acquire any number of additional companies, anywhere in the world, involving any risk.[318]

Additionally, OSP recommends any approval of the Application be conditioned so as to require prior approval by the commission of any proposed acquisition irrespective of size or type (meeting a specific damage threshold) by NextEra.[319] Finally, OSP suggests that any conditions and commitments adopted by the commission will be difficult to enforce and costly to monitor and that any commitments without enforceable consequences are not real commitments.[320]

e. Discussion and Conclusions

At the outset, the commission observes that there is no single accepted definition for the term "ring-fencing." Similarly, there is no single standard for judging the efficacy of any ring-fencing provisions that might be adopted for protection of any regulated utility. However, there are a number of concepts and requirements that have been generally accepted as necessary to properly effectuate ring-fencing protections for ratepayers. These are reflected in both the record evidence in this proceeding,

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[318]OSP Initial Brief at 16.

[319]OSP Initial Brief at 16.

[320]OSP Initial Brief at 21.

as well as in decisions from other jurisdictions that have dealt with mergers, acquisitions, or other forms of utility restructuring.[321]

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[321]The commission's review encompassed twelve merger proceedings conducted in the past decade that have been subjected to extensive scrutiny by one or more state regulatory agencies. Merger proceedings for gas, water, and telecommunication were not considered, nor were special case situations such as the transfer of operational control by Long Island Power Authority from National Grid USA to PSEG Corporation due to unique issues.

The commission reviewed the following proceedings: (i) the Public Utility Commission of Texas' review of the TXU merger with Energy Future Holding addressed in Joint Report and Application of Oncor Electric Delivery Company and Texas Energy Future Holdings Limited Partnership Pursuant to PURA §14.101, Docket No. 34077 (Joint Report and Application filed April 2, 2007; Order on Rehearing issued April 24, 2008); (ii) the State of Connecticut Public Utilities Regulatory Authority's review of the Iberdrola, NA, merger with United Illuminating addressed in Joint Application of Iberdrola, S.A., Iberdrola USA Inc., Iberdrola USA Networks, Inc., Green Merger Sub, Inc. and UIL Holdings Corporation for Approval of a Change of Control, Docket No. 15-07-38 (Joint Application filed July 31, 2015; Final Decision issued December 9, 2015); (iii) the New Mexico Public Utilities Regulation Commission's review of Emera, Inc.'s acquisition of TECO Energy addressed in In the Matter of New Mexico Gas Company, Inc., TECO Energy, Inc., EMERA Inc., EMERA US Holdings Inc., and EMERA US Inc., for Approval of the Merger of EMERA US Inc. with TECO Energy, Inc. and EMERA US Holding Inc.'s Acquisition of TECO Energy, Inc. and for all other Approvals and Authorizations Required to Consummate and Implement the Acquisition, Docket No. 15-00327-UT (Joint Application filed October 19, 2015; Unopposed Stipulation filed April 11, 2016 [pending approval as of this writing]); (iv) the Arizona Corporation Commission's review of the Fortis merger with UNS Energy addressed in In the Matter of the Reorganization of UNS Energy Corporation, Docket No. E-04230A-14-0011 (Joint Notice of Intent to Reorganize filed January 10, 2014; Opinion and Order filed August 12, 2014); (v) the Washington State Utilities and Transportation Commission's review of Puget Sound Holdings LLC's acquisition of Puget Sound Energy in Joint Application of Puget Sound Holdings LLC and Puget Sound Energy, Inc. - Docket No. U-072375 (Joint Application filed

December 17, 2007; Order 08 Approving and Adopting Settlement Stipulation; Authorizing Transaction Subject to Conditions dated December 30, 2008); (vi) the Vermont Department of Public Service's review of the GAZ Metro acquisition of Central Vermont Public Service Company in Amended Joint Petition of Central Vermont Public Service Corporation ("CVPS"), Danaus Vermont Corp., Gaz Metro Limited Partnership ("Gaz Metro"), Gas Metro Inc., Northern New England Energy Corporation ("NNEEC") for itself and as agent for Gaz Metro's parents, Green Mountain Power Corporation ("GMP") and Vermont Low Income Trust for Electricity, Inc. ("VLITE") for approval of: (1) the merger of Danaus into and with CVPS; (2) the acquisition by NNEEC of the common stock of CVPS; (3) the amendment to CVPS's Articles of Association; (4) the merger of CVPS into and with GMP; and (5) the acquisition by VLITE of a controlling interest in Vermont Electric Power, Inc., Vermont Docket No. 7770 (Petition filed September 2, 2011; Final Board Order issued June 15, 2012); (vii) the Maryland Public Service Commission's review of Exelon's acquisition of Constellation Energy addressed in In the Matter of the Merger of Exelon Corporation and Constellation Energy Group, Inc.- Case Number 9271 (Application filed May 25, 2011; Order No. 84698 approving the merger subject to conditions issued on February 17, 2012); (viii) the Massachusetts Department of Public Utilities' review of NSTAR's acquisition of Northeast Utilities in Joint Petition for Approval of Merger between NSTAR and Northeast Utilities - Massachusetts D.P.U. 10-170-B (Joint Petition filed November 24, 2010; Order approving merger filed April 4, 2012); (ix) the Maryland Public Service Commission's review of Exelon's acquisition of PEPCO Holdings addressed in In the Matter of the Merger of Exelon Corporation and PEPCO Holdings, Inc., Case Number 9361 (Application filed August 19, 2014; Order No. 86990 approving the merger with conditions, filed May 15, 2015); (x) the Louisiana Public Service Commission's review of the Macquarie Infrastructure and Real Assets acquisition of Central Louisiana Electric Company addressed In re: Joint Application of Cleco Power LLC and Cleco Partners L. P. for: [1] Authorization for the Change of Ownership and Control of Cleco Power LLC and [2] Expedited Treatment, Docket Number U-33434 (Joint Application filed October 21, 2014; Order denying merger issued March 8, 2016);(xi) the Wisconsin Public Service Commission's review of the acquisition by Wisconsin Energy of Integrys in Application of Wisconsin Energy Corporation for Approval to Acquire the Outstanding Common Stock of Integrys Energy Group, Inc. - Docket No. 9400-YO-100 (Application filed August 6, 2014; Final Decision issued May 21, 2015); and (xii) the New Hampshire Public Utilities Commission's review of the acquisition by Liberty Utilities of Granite State Electric Company and Energy

For example, Ulupono offers the following description of ring-fencing:

> Ring-fencing is . . . commonly used to make utility companies bankruptcy remote. This use of ring-fencing is a response to holding company structures, in which the utility company is often a subsidiary of one or more operating companies that may engage in riskier transactions. Bankruptcy remoteness helps to ensure that the utility company can continue providing essential utilities to the public, notwithstanding the bankruptcy of the parent company.[322]

Other jurisdictions have defined ring-fencing as follows:

- Maryland: In 2005, staff at the Maryland Public Service Commission drafted a report which describes ring-fencing as "measures [] intended to insulate a regulated utility from the potentially riskier activities of an unregulated affiliate . . . intended to ensure the financial stability of the utility and the reliability of its service."[323] The report explains that "[t]he most often mentioned benefits of ring-fencing are bankruptcy protection and credit ratings separation[,]"

North Natural Gas addressed in Transfer of Ownership of Granite State Electric Company and Energy North Natural Gas, Inc. to Liberty Energy NH, Docket No. DG 11-040 (Joint Petition filed March 7, 2011; Order No. 25,370 approving settlement filed May 30, 2012).

[322]Ulupono Initial Brief at 15 (citing Ulupono Exhibit 2 at 45-46).

[323]Miles H. Mitchell, et al., Maryland Public Service Comm'n, Commission Staff Analysis of Ring-Fencing Measures for Investor-Owned Electric and Gas Utilities ("Maryland PSC Staff Ring-Fencing Report"), dated February 18, 2005, available at: http://www.psc.state.md.us/wp-content/uploads/RevisedRing-FencingReport.pdf, at 1.

and states that the following measures and mechanisms can be used to effectively implement ring-fencing measures: capital structure requirements, dividend restrictions, unregulated investment restrictions, prohibitions on utility asset sales, collateralization requirements, working capital restrictions, prohibitions on inter-company loans, maintenance of stand-alone bonds, and independence of board members.[324]

- Utah: In 2005, staff at the Utah Public Service Commission also drafted a report on ring-fencing, defining ring-fencing as "operational and structural isolation of a regulated utility from its parent and affiliates," which is "primarily defensive in that it seeks to protect the utility and its ratepayers from being affected by negative factors affecting the parent holding company or affiliates."[325] The staff further observed that "[r]ing-fencing strategies may also help to protect ratepayers from overcharges resulting from transactions between the utility and its parent or affiliates."[326]

- Massachusetts: In the 2015 order regarding the "Joint Petition of UIL Holdings Corporation, Iberdrola USA, Inc., and Green Merger Sub, Inc., for Approval of a Change of Control of UIL Holdings Corporation," ("Massachusetts Iberdrola-UIL Docket") the Massachusetts Department of Public Utilities ("D.P.U.") defined ring-fencing as "corporate

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[324]Maryland PSC Staff Ring-Fencing Report at 5.

[325]Charles E. Peterson and Elizabeth M. Brereton, Utah State Department of Commerce, Division of Public Utilities, Report on Ring-Fencing ("Utah Ring-Fencing Report"), dated September 2005, available at: http://www.psc.state.ut.us/utilities/telecom/05docs/0505301/Dir%20Test%20C%20Peterson%20DPU%20Exhibit%2010.1.doc, at 1.

[326]Utah Ring-Fencing Report at 1.

organization and governance provisions that are intended to protect companies from adverse situations involving other affiliates, such as bankruptcy."[327]

- In a 2014 article in the Southern California Law Review exploring ring-fencing as a regulatory solution in the areas of banking, finance, public utilities and insurance, Professor Steven L. Schwarcz further defines ring-fencing as "legally deconstructing a firm – viewing a 'firm' broadly as a nexus-of-contracts – to reallocate and reduce risk more optimally, such as by protecting a firm's assets and operations and minimizing its internal and affiliate risks."[328] He goes on to state that "[t]he very fact of a utility company being a monopoly effectively creates a structural mandate for ring-fencing: the utility company should be protected from risk because it is the only entity in its service area able to provide its essential services."[329]

The commission observes that historically, ring-fencing measures were employed by companies seeking to limit any negative effects, principally financial effects, that might result as a consequence of failure by an affiliated enterprise believed to

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[327]Massachusetts D.P.U., Docket No. 15-26, "Joint Petition of UIL Holdings Corporation, Iberdrola USA, Inc., and Green Merger Sub, Inc. for Approval of a Change of Control of UIL Holdings Corporation, a Holding Company of The Berkshire Gas Company pursuant to G.L. c. 164, § 96," filed on December 15, 2015, at 9 ("Massachusetts Iberdrola-UIL Decision").

[328]Schwarcz Ring-Fencing Article at 82.

[329]Schwarcz Ring-Fencing Article at 105.

embody a measure of unwanted risk.[330] By surrounding a risky enterprise with ring-fencing measures, the corporate parent sought to protect itself from the consequences of failure by the venture, while ensuring any benefits realized from success of the venture would nevertheless accrue to the parent.

For much of the twentieth century, the investor-owned public utility community had little, if any, interest in ring-fencing. However, over the past few decades, regulatory interest in ring-fencing tools grew as conventional regulatory frameworks and legal constraints were challenged by increasing waves of consolidation and diversification within the industry.[331]

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[330]As used in this discussion, an affiliated enterprise is a corporate entity that simply shares some degree of common ownership with another corporate entity. It should not be construed that such risk - and protective measures - as are discussed here are only applicable to entities that have a direct business relationship with one another.

[331]See Maryland PSC Staff Ring-Fencing Report at 1-2 (stating that over the preceding decade, "viability issues arose when vertically integrated generation-transmission-distribution companies changed their corporate structure to conform to new market structure and regulatory requirements," which "created opportunities for affiliates to engage in unregulated activities that may place individual utility [] companies at increased financial risk."); see also Utah Ring-Fencing Report at 5-6 (stating "[t]wo things are probably responsible for the evolution of the ring-fencing concept and its emergence as a basis of securing utility assets. . . . First, the recent securitization experience in California [involving separate Pacific Gas and Electric Co. and Edison International efforts to ring-fence subsidiaries] . . . because it created a pattern of providing protection for investors . . . [and] [s]econd, utility commissions have frequently asserted that because funds held by public utility holding companies are derived at least in part from dividends from

In search of greater returns on their investments, utility holding companies pursued business opportunities that had significantly different risk profiles than their "core" regulated utility business.

Both the HECO Companies and FPL represent "core" elements of their respective parent corporations - HEI and NextEra. If the proposed Change of Control at issue in this docket is approved as proposed, the HECO Companies would become wholly-owned subsidiaries of NextEra, as well as members of the NextEra family of business enterprises, many of which operate with significantly different business models and risk tolerances compared to those familiar to HEI or the HECO Companies. Applicants submitted evidence to address the assessment of NextEra's corporate risks which the commission carefully considered.[332] The commission thus

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the utility subsidiaries, ratepayer monies are involved in some way . . . and [ratepayers] are asserted to be in some sense the equitable co-owners of those funds and the investments established with those funds."); and Arizona Corporation Commission Docket No. E-04230A-14-0011, "In the Matter of the Reorganization of UNS Energy Corporation," Decision No. 74689, filed on August 12, 2014, at 32 ("Fortis-UniSource Energy Decision") (discussing the Commission's decision to impose conditions in a 1997 order regarding Tucson Electric Power's request to form a holding company "in response to diversifications by various utilities in the early 1980s which placed several Arizona utilities in financial distress and close to bankruptcy.")

[332]Applicants' Exhibit 56 (Lapson) at 38-39.

undertook prudent review of proposed protective measures to determine the adequacy of such safeguards.

State regulators are acutely aware of the growing non-regulated business interests of the utility companies they oversee. Furthermore, state regulators recognize the need to protect and preserve the entities for which they have statutory responsibilities. Increasingly, regulators use opportunities such as a change of control to evaluate the need for greater protective measures, and the public record is replete with numerous examples of where this issue continues to be evident.[333]

In this docket, the need for and type of ring-fencing measures has been debated at length by the various Parties, as

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[333]See Fortis-UniSource Energy Decision at 29 (emphasizing that an attribute of the approved transaction was that "[t]he Regulated Utilities are protected from the activities of Fortis and Fortis' other subsidiaries," and noting the commission's authority "over the Regulated Utilities and their investments in or divestment of any subsidiaries or assets, and [ability to] re-implement conditions as necessary to protect ratepayers."); Maryland Public Service Commission, Case No. 9361, "In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.," Order No. 86990, ("Maryland Exelon-Pepco Merger Decision"), filed on May 15, 2015, at 32 (stating that Maryland statute "requires [the commission] to ensure that ratepayers are protected against any increased risks of harm from this merger; it is our job to eliminate [risks] by denying approval outright or through conditions, not to offset them with benefits.") (quoting Maryland Public Service Commission, Case No. 9173, Phase II, Order No. 82986, "In the Matter of the Current and Future Financial Condition of Baltimore Gas and Electric Company," at 45 ("Exelon-Constellation Merger Decision") (internal quotations omitted).

discussed above. The subject represents one of the most significant and substantive dimensions of this proceeding.

Having reviewed the testimony, record, briefs, and decisions from other jurisdictions, the commission concludes that the following definition of ring-fencing is appropriate for this proceeding:

> Ring-fencing provisions are those provisions that serve to effectively insulate a specific corporate entity, such as the HECO Companies, from any potential risk posed to that entity by virtue of its corporate affiliation. Additionally, if threatened by actions and/or events not of that entity's own making, ring-fencing provisions are those provisions that afford that entity evidence of its diligence, responsibility, and accountability so as to avoid, to the extent possible, any liability resulting from the potential risk.

As discussed above, ring-fencing strategies are meant to address possible threats and risks by preparing defenses capable of withstanding challenge. However, the commission observes that Applicants made no reference to "risk" in general, or ring-fencing in particular, in their Application or direct testimonies and supporting exhibits. Instead, Applicants left the subject to be raised by the Intervenors, and only then proposed ring-fencing measures to meet the expressed concerns. Thus, Applicants initially offered no suggestion that any ring-fencing measures were needed.

In later stages of the proceeding, Applicants made some effort to address this subject in response to testimony filed by the Consumer Advocate, OSP, DBEDT, and others.[334] Thus, Applicants augmented their initial Commitments with some additional measures directed at ring-fencing. Applicants assert that these additional ring-fencing Commitments, in conjunction with other Commitments concerning financing and other corporate Commitments, satisfy the interests of both the Intervenors and the commission.[335]

The centerpiece of Applicants' supplemental ring-fencing Commitments is the establishment of a holding company, HEUH, for the sole purpose of holding NextEra's interest in the HECO Companies.[336] Applicants characterize this as a "Special Purpose Entity" or "SPE," and assert that this intercessory corporate entity affords all of the protections sought by the Intervenors.[337] Applicants further argue that any additional protections, such as

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[334]Applicants' Witnesses John Reed and Ellen Lapson submitted responsive testimony on behalf of Applicants.

[335]A list of these nineteen ring-fencing commitments is set forth above in subsection b.

[336]Applicants' Exhibit 37A, Commitment 58A. This Commitment further provides that HEUH will not hold any debt or engage in any line of business other than to hold its interest in the HECO Companies.

[337]In certain circumstances and jurisdictions, such entities are also referred to as "Special Purpose Vehicles" or "SPVs". The terms are synonymous and used to describe the same corporate structure and purpose in both instances.

those sought by the Consumer Advocate and Intervenors, are unnecessary.[338] Applicants generally assert that, in their view, there are no serious concerns that the HECO Companies might be affected by the bankruptcy of, or other legal action against, NextEra and/or its other affiliates and subsidiaries.[339]

The Consumer Advocate and the Intervenors have clearly demonstrated the importance of requiring that a "bankruptcy-remote entity" be established as a condition to any approval of the Application.[340] While Applicants have made some concessions in this regard, significant differences remain between what is desired by the Intervenors (a "bankruptcy-remote entity") and what is being offered by Applicants (a "special purpose entity").[341]

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[338]Applicants' Initial Brief at 32-34 ("[T]he Proposed Transaction including the commitments contained in Exhibit-37A provide adequate safeguards to protect the Hawaiian Electric Companies' customers from any potential business and financial risks associated with the operations of NextEra Energy and/or any of its affiliates."); see also Applicants' Exhibit 56 at 6, 12, 13, and 46.

[339]See Applicants' Exhibit 56 at 6-7, 12-13, 14, 29, and 31.

[340]See, e.g., CA Initial Brief at 42; Ulupono's Exhibit 1 at 66-67; Ulupono Initial Brief at 16-18.

[341]See Applicants' Exhibit 56 at 29. The distinction between a "special purpose entity" and a "bankruptcy-remote entity" might seem to be a matter of semantics, but the difference is substantive. A bankruptcy-remote entity by definition meets the accepted definition of a special purpose entity. However, a special purpose entity does not necessarily meet the generally accepted standards needed to be considered a bankruptcy-remote entity.

In the commission's view, Applicants' proposed measures are not adequate for the commission to conclude that the intrests of the general public are protected in the event of bankrupcy by NextEra and/or its regulated or unregulated affiliates and subsidiaries. More importantly, the failure of Applicants to offer any authoritative legal opinion or bankruptcy analysis in this proceeding to address the concerns raised by the other Parties leaves the commission unable to conclude that the proposed measures will be adequate to avoid consolidation by a bankruptcy court, if ever invoked.

The commission first observes that Congress has never defined either a "bankruptcy-removed" entity or a "bankruptcy-remote" entity, which effectively leaves such determination in the hands of the bankruptcy courts. 11 U.S.C. § 105 empowers federal bankruptcy courts to substantively consolidate separate but related entities of any petitioner in pursuit of expeditious and economic resolution of any bankruptcy petition placed before it. The court's sole objective is to maximize recovery of creditor claims against the debtor's estate; accordingly, the court is empowered to take extraordinary action if required by the unique aspects of the case including substantive consolidation.[342]

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[342]No two corporate organizational structures are exactly alike. The legal form and the associated financial support for

Substantive consolidation provides the bankruptcy court a means to treat the assets and liabilities of any affiliated entity, regulated or not, that share common ownership as if they were one with the petitioner, enabling the creditors of any formerly separate estate to reach the assets of the consolidated estate and thereby maximize recovery of any recognized claim against the estate. The attractiveness of substantive consolidation to creditors is directly related to the monetary value of assets that are argued by the debtor to be exempt from consideration by the court. Those same reasons make consolidation attractive to bankruptcy courts.[343]

Simply put, in the event of any bankruptcy filing by NextEra, creditors' claims against NextEra would act as the principal "driver" to any decision by the court to consolidate. If a bankruptcy judge elects to consolidate, that judge can take

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that form of American corporations reflect an effort to address certain corporate objectives. These include such things as de-leveraging the balance sheet, limiting tort liability, satisfying government requirements, and balancing collective bargaining influence. In an effort to address solvency issues that may or may not emanate from that structural form, the court is empowered to generally dismiss alleged "shields" separating affiliate entities.

[343]In certain instances, consolidation may be appealing to the petitioner if it would afford it the means to resolve the matter sooner and more easily. The petitioner does have the right to ask the court to consolidate other affiliated entities in those instances. The court is not obliged to do so even if consolidation is not opposed by anyone.

steps to appoint a trustee/receiver, eliminate the board of directors, assign the utility to control by the creditors' committee, or order sale of any related assets, regulated or non-regulated. Bankruptcy courts have a wide range of powers that can be invoked to achieve their objectives. They can annul contracts (including collective bargaining agreements, health care packages, and methods of calculating employee retirement benefits), terminate a Board of Directors, replace management, revise capital programs, and re-direct dividend payments.[344] Obviously, if substantive consolidation occurs and includes the HECO Companies, the impact on ratepayers in particular and the State in general could be significant.

Thus, the challenge is to demonstrate that a particular entity, such as HEUH, is likely to be determined by such courts to

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[344]The last measure is a judicial power that has been proclaimed in several instances but not exercised to date. Accordingly, this claim has not been court-tested and upheld. Instead, the threat of such action to state regulatory authority has been sufficient for regulators to take action on their own to ensure funds otherwise available to the estate of the debtor are not unnecessarily impaired. The bankruptcy petitions of Pacific Gas & Electric (2001) and El Paso Electric (1992) tested this thesis. Those experiences serve as inspiration to most bankruptcy attorneys and regulators. The general opinion is that state regulators will not challenge the "implied" authority of the bankruptcy court for fear the court's authority would be upheld and only further marginalize the power of the states. In most instances, regulators believe they can be more effective if they can avoid any erosion of their perceived powers, including, at times, acting as a willing instrument of the bankruptcy court to resolve the creditors' claims.

be a bankruptcy-remote entity so as to avoid such consolidation. The burden of proof and burden of persuasion that HEUH qualifies as a bankruptcy-remote entity is squarely on Applicants. The fact that there are no prescribed statutory standards defining what constitutes an effective bankruptcy-remote entity means that NextEra must demonstrate both to this commission in this proceeding and, subsequently if necessary to any bankruptcy court, that it has done everything possible to insulate the HECO Companies from any potential harm presented to them by virtue of their corporate association with NextEra.

In this proceeding Applicants belatedly offered to form an "intermediate utility holding company," HEUH, to serve as a point of separation between the regulated and non-regulated business interests of HEH, another newly-created corporate subsidiary of NextEra Energy. In testimony, NextEra rationalized this as a meaningful response to certain concerns expressed by other Parties to this proceeding. On cross-examination and in their Initial Brief, Applicants reiterated their opinion that the special purpose entity that NextEra proposed, as well as the other ring-fencing commitments, were sufficient.[345]

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[345]Applicants' Exhibit 56 at 6, 12, 13, and 46; Applicants Initial Brief at 33-34.

It merits mention that NextEra was careful to characterize HEUH as only a special purpose entity, rather than a bankruptcy-remote entity. The commission concludes that HEUH, as defined by Applicants, does not satisfy the qualifications necessary for an effective bankruptcy-remote entity. Moreover, the lack of detail afforded the commission by Applicants in this proceeding regarding the structure, relationship, and authority associated with HEUH leaves the commission with no basis on which to conclude that HEUH's structure can be substantively improved so as to provide sufficient independence of action and operation to meet the expectations of a bankruptcy court. The commission further observes that NextEra's unwillingness to seek an opinion of qualified counsel prior to forming HEUH only serves to support a conclusion that HEUH will not qualify as a bankruptcy-remote entity.

In this regard, the commission first observes that robust ring-fencing conditions have been required in a number of recent mergers, including the Fortis-UniSource Energy Decision that was approved in 2014 by the Arizona Corporation Commission ("ACC"), the Iberdrola-UIL merger that was approved in Connecticut and Massachusetts ("Iberdrola-UIL Decisions"), and the Exelon-Pepco Holdings merger that has now been approved by state utility regulators in New Jersey, Delaware, Maryland, and the District of Columbia ("Exelon-Pepco Decisions").

- Fortis-Unisource Energy Decision, issued August 23, 2014: On January 10, 2014, UNS Energy Corporation, Fortis Inc., FortisUS, and Color Acquisition filed a Joint Notice of Intent to Reorganize with the Arizona Corporation Commission, stating that they had entered into an Agreement and Plan of Merger, which would result in Color Acquisition's merge with UNS Energy, which would become a wholly-owned subsidiary of FortisUS. In the course of approving the Joint Notice of Intent, with its associated Settlement Agreement and Conditions ("Fortis-Unisource Energy Decision Condition [#]"), the ACC approved several ring-fencing measures that were designed "to protect the Regulated Utilities and their ratepayers from any financial distress that may be encountered by Fortis or its other affiliates," several of which are detailed below:[346]

    - In appointing the UNS Energy Board of Directors, Fortis must ensure that a majority of the board members will have had a permanent residence in Arizona for at least three years, and also that a majority of members are independent;[347]

    - One independent person, a resident of Arizona for at least three years, will hold a "golden share" and will be required to consent for UNS Energy or any of its Regulated Utilities to file for voluntary bankruptcy;[348]

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[346]Fortis-Unisource Energy Decision at 12. Fortis-Unisource Energy Decision Condition 36 summarizes many of the ring-fencing measures established in the Decision, including the establishment of a "golden share," and prohibitions on intercompany loans and guarantees burdening the regulated utilities.

[347]Fortis-Unisource Energy Decision Condition 37.

[348]Fortis-Unisource Energy Decision Condition 38.

- The UNS Energy Board of Directors commits to give first priority to the needs of the Regulated Utilities to meet their regulatory obligations to serve their customers;[349]

- The corporate headquarters for UNS Energy will remain in Tucson, Arizona;[350]

- Management of the Regulated Utilities will remain with their local boards of directors and managers, and it will be the boards of the Regulated Utilities who will make decisions on capital budgets, staffing levels, dividends and capital requirements, and who will continue to be the direct contact and decision-making authority in regulatory matters;[351] and

- The Regulated Utilities will amend their organizational documents to provide protections to ensure legal separateness from UNS Energy and Fortis.[352]

• Iberdrola-UIL Decisions, issued on December 9, 2015 by the Connecticut Public Utilities Regulatory Authority ("PURA") and on December 15, 2015 by the Massachusetts DPU:

  - Connecticut: On July 31, 2015, Iberdrola, S.A. and UIL Holdings Corporation filed a Joint Application for Approval of a Change of Control.[353] In the final order approving the change of control ("Connecticut

[349]Fortis-Unisource Energy Decision Condition 39.

[350]Fortis-Unisource Energy Decision Condition 40.

[351]Fortis-Unisource Energy Decision Condition 41.

[352]Fortis-Unisource Energy Decision Condition 42.

[353]Connecticut PURA, Docket No. 15-07-38, "Joint Application of Iberdrola, S.A., Iberdrola USA, Inc. Iberdrola USA Networks, Inc. Green Merger Sub, Inc., and UIL Holdings Corporation for Approval of a Change of Control" filed on December 9, 2015.

Iberdrola-UIL Decision"), Connecticut PURA approved the parties' settlement agreement, which contained thirty-two ring-fencing conditions, that were described by the authority as "comprehensive in their protection of the [] [u]tilities. Among these commitments ("Connecticut Iberdrola-UIL Decision Condition [#]") were:

- Creation of a tax neutral SPE that is a direct, wholly-owned subsidiary, with four appointed directors, one of which is required to be an independent employee of an administration company in the business of protecting SPEs;[354]

- SPE's issuance of a non-economic interest ("Golden Share") to an administration company in the business of protecting special purpose entities, and any voluntary petition for bankruptcy by the SPE will require the affirmative consent of the holder of the Golden Share as well as the affirmative vote of SPE's Board of Directors;[355]

- Maintenance of a separate corporate existence, at all times holding itself out as an entity separate from its affiliates;[356]

- No commingling of funds or other assets with the funds or assets of any other entity, and nor maintaining funds in a

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[354]Connecticut Iberdrola-UIL Decision Condition 16. The condition goes on to state that the SPE will have no other operational functions, and none of the costs of establishing, operating, or modifying the SPE will be recovered from utility customers.

[355]Connecticut Iberdrola-UIL Decision Condition 30.

[356]Connecticut Iberdrola-UIL Decision Condition 17.

manner that will be costly or difficult to segregate, ascertain or identify;[357]

- Massachusetts: On March 25, 2015, Iberdrola, S.A. and UIL Holdings Corporation filed a similar petition with the Massachusetts DPU, requesting approval of change of control. The order issued by the Massachusetts DPU ultimately approved the change of control, included many commitments similar to those included in the Connecticut Iberdrola-UIL Decision, including creation of a tax-neutral SPE,[358] which maintains a separate corporate existence as a separate corporate subsidiary,[359] with separate books, records, bank accounts, and financial statements;[360]issuance of a golden share in the SPE to an independent administration company, and any voluntary bankruptcy petition by the SPE would require the affirmative consent of the holder of the Golden Share and SPE's Board of Directors.[361]

- *Exelon-Pepco Decisions*, approving application for Exelon Corporation to acquire the power to exercise substantial influence over the policies and actions of Delmarva Power & Light Company ("Delmarva") and Potomac Electric Power Company ("Pepco") issued on Maryland PSC on May 15, 2015, New Jersey Board of Public Utilities on March 19, 2015, Delaware Public Service Commission on June 2, 2015, and the

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[357]Connecticut Iberdrola-UIL Decision Condition 21.

[358]Massachusetts Iberdrola-UIL Decision Condition 17.

[359]Massachusetts Iberdrola-UIL Decision Condition 18.

[360]Massachusetts Iberdrola-UIL Decision Condition 19.

[361]Massachusetts Iberdrola-UIL Decision Condition 31.

District of Columbia PSC on March 23, 2016.[362] For purposes of illustration, the commission will discuss the Maryland PSC's decision and ring-fencing conditions included in the Maryland Exelon-Pepco Decision approving the application.

- Maryland: The applicants filed their application for approval with the Maryland PSC on August 19, 2014, which issued approval of the application on May 15, 2015, with a detailed set of ring-fencing related commitments, which included, among others:

  - Creation and use of a bankruptcy-remote SPE;[363]

  - For the proceeding five years, Exelon committed that:

    - Delmarva and Pepco will maintain separate existences and separate franchises and privileges;

    - Delmarva and Pepco will maintain separate books and records;

    - Delmarva's and Pepco's books and records pertaining to their operations in Maryland will be available for inspection and examination by the [Maryland PSC];

    - Delmarva and Pepco will maintain separate debt so that they will not be responsible for the debts of affiliated companies, will maintain separate preferred stock, if any, and will maintain their own corporate and

[362]Exelon Corporation, Pepco Holdings, Inc., Pepco and Delmarva filed separate applications requiring separate approvals in each jurisdiction.

[363]Maryland Exelon-Pepco Decision, Appendix A, Condition 30.

> debt credit ratings, as well as ratings for long-term debt and preferred stock.[364]

Based upon the commission's review of the record and its review of ring-fencing protections imposed in recently-approved change of control proceedings in other jurisdictions, the commission finds and concludes that Applicants' proposed ring-fencing commitments are not adequate. These commitments either do not, or do not specifically:

- provide for a "golden shareholder;"[365]
- ensure incorporation in the state where the associated assets are located;[366]
- prohibit paying any liabilities of HEUH other than those of its own making - or afford anyone

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[364]Maryland Exelon-Pepco Decision at 45; Maryland Exelon-Pepco Decision, Appendix A, Condition 30.

[365]Applicants do not provide for any independent directors in Commitment 26A (Gleason, Tr. 2900-2901) be that director vested with the extraordinary powers of a "golden shareholder," or simply an independent director. On cross-examination Applicants stated that, in their view, use of a golden share is not necessary to protect the public's interest. (Lapson, Tr. 2036). However, Applicants acknowledge that such a condition was proposed by Exelon and adopted by the Maryland PSC in the Exelon-PHI merger. (Lapson, Tr. 2036).

[366]Applicants offer no details on the form of incorporation for HEUH, or the domicile of HEUH or any entity it creates. If HEUH is meant to be a Hawaii-only business entity, there should be no objection to domiciling it in the State of Hawaii. Domiciling HEUH in Hawaii reinforces the "separateness" of HEH/HEUH from NextEra's other business interests in the event of bankruptcy on the part of any such entity.

else power to pay its liabilities or manage its receivables on its behalf;[367]

- require an annual financial audit of the HECO Companies, as well as HEH and HEUH, performed by a recognized independent auditor;[368]

- prohibit HEUH from sharing employees and sharing services with other NextEra subsidiaries and affiliates, although the commission recognizes that Applicants have stated HEUH will have no employees;[369]

- prohibit loans of any type to/from the corporate parent or to/from any affiliate, joint venture partner or contractor that has a business relationship with NextEra or any NextEra business entity;[370]

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[367]As discussed in this Order, Applicants offer limited information regarding the powers of HEH or HEUH. Commitment 68A addresses this subject in part, but only limits the prohibition to future NextEra acquisitions, and, thus, is not applicable to current affiliates and subsidiaries. The prohibition referenced here will further reinforce the "separateness" of HEH/HEUH from NextEra's other business interests in the event of bankruptcy on the part of any such entity.

[368]The commission observes that Condition #4 of the "Thomas Report" requires HEI to furnish to the commission and the Consumer Advocate, annual consolidated financial statements "in reasonable detail" certified by independent certified public accountants. "Review of the Relationship between Hawaiian Electric Industries and Hawaiian Electric Company," Dennis Thomas and Associates, January 1995, at 2 of 10. Applicants make no comparable commitment to independent audits for each corporate entity (HEH, HEUH, and the HECO Companies) in Exhibit 37A.

[369]While this condition may not appear necessary, in the commission's view, it will assist in avoiding future problems. This condition is consistent with the "separateness" principle that underlies the bankruptcy-remote entity concept.

[370]Commitments 60A and 61A provide qualified commitments that leave the option to make such loans if the commission approves them. This option is not consistent with the "separateness" principle because it does not recognize the range of loan

- require distinct legal entity and corporate identity;[371]

- directly prohibit the sale/transfer of any HEUH-owned assets to or from another subsidiary or affiliate of the corporate parent;[372]

- prohibit consolidation or combining with any other entity - whether or not affiliated - without prior consent of the respective regulatory authorities;[373]

- prohibit amending any transaction documentation related to the indebtedness of HEUH or its HECO subsidiaries as long as any such security is outstanding;[374]

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counterparts that remain eligible for loans from HEUH, and does not preclude loans from HEH to any party not otherwise eligible for direct borrowing from HEUH.

[371]Applicants have expressed a willingness to establish a separate entity(ies) for Hawaii as a condition of approval (i.e., HEH/HEUH) in Commitment 55A. The Commitment as stated is implicitly limited both in scope and duration. Applicants make no corresponding commitment to (a) maintain HEH/HEUH for perpetuity or (b) prohibit joint marketing, information-sharing, or business assignments generally associated with distinct corporate identity.

[372]This condition is not addressed by Applicants in the context of Exhibit 37A Commitments. Commitments 61A, 62A, and 67A only limit efforts on the part of NextEra to extend credit or support to an affiliated entity.

[373]This condition is not addressed by Applicants in the context of Exhibit 37A Commitments. During the hearing, there was very little discussion about post-sale organizational matters. This condition is designed to reinforce the "separateness" principle.

[374]Applicants have only referenced HECO's outstanding debt obligations by committing (in Commitment 64A) to maintaining an independent credit rating for HECO so long as those obligations remain outstanding.

- directly prohibit holding out credit as available to satisfy the obligation of any other entity, affiliate or otherwise;[375]

- prohibit the comingling of assets or liabilities by HEUH with any other entity - affiliated or otherwise;[376]

- prohibit "parking" excess cash of HEUH or the HECO Companies with the corporate parent, another subsidiary, or a designated agent of either;[377]

- prohibit participation in any joint ventures with enterprises - affiliate or otherwise - without prior consent of the respective regulatory authorities;[378]

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[375]Commitments 61A and 62A relate to (a) assuming obligations as a guarantor, endorser, surety, or otherwise and (b) pledging HECO assets to back securities offerings of its non-regulated subsidiaries. The above condition differs from what is offered by Applicants because it requires Applicants to explicitly disclose those facts in any bond solicitation made by NextEra or any NextEra-controlled entity issuing bonds at the time any offering is made.

[376]Applicants addressed this, in part, in Commitment 59A. However, that Commitment reflects only a recording and reporting commitment on their part. It does not eliminate the practice of comingling of assets or liability, only the ability to recognize that comingling in the recording and reporting systems.

[377]Applicants do not address any aspect of their current financial management practices or those proposed for Hawaii in the context of Exhibit 37A or their associated testimony. The above condition represents another "separateness" measure.

[378]This is not a topic directly addressed by Applicants in Exhibit 37A or testimony. Applicants have suggested in Commitment 58A that HEUH will not hold any debt or engage in any line of business other than to hold its interest in the Hawaiian Electric Companies; however, this does not prohibit HEH or the HECO Companies from engaging in these activities.

- commit management to correct any known misunderstanding regarding the separate identity and limited business interests of HEUH or the HECO Companies;[379]

- provide distinct legal counsel and financial advice separate from that of the corporate parent;[380]

- include a requirement that debt follows assets in any approved sale, transfer, or other asset disposal by HEUH or the HECO Companies;[381]

- restrict dividend payments to the corporate parent that are tied directly to the financial performance of HEUH or the HECO Companies and executable without dispute;[382]

- prohibit reorganization or realignment of the HECO Companies by NextEra, HEUH, or the HECO

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[379]Applicants commit to utilizing a separate legal entity, but offer no comparable commitment to ensure that the "separateness" of its business interest is correctly understood.

[380]Applicants have made no express commitment with respect to this issue in either Exhibit 37A or their testimony. Similar to the other conditions listed above, this condition is meant to reinforce the "separateness" principle.

[381]Applicants have made no express commitment to ensuring that this practice is consistently applied in every instance. GAAP standards generally prescribe this approach, but affirming it here ensures that practice follows principle.

[382]Applicants express a willingness to restrict dividends payable to NextEra in Commitment 66A. Applicants propose a "hard trigger" in the event HECO's common stock equity falls below 35% of its total capitalization. The commission finds that the threshold for suspension is too low, that the "trigger" is automatic, and that there is no provision against simply accruing the obligation to a future date. Commitment 66A also does not specifically provide the Commission any ability to intercede for any reason. In contrast, the condition set forth above is meant to require commission review and consent for any dividend payment by HEUH/HEH to the parent.

Companies without prior consent of the respective regulatory authorities;[383]

- prohibit HEH, HEUH, or the HECO Companies from holding any non-regulated business interest, foreign or domestic, active or passive;[384]

- prohibit any financial dealings between subsidiaries of a common parent without prior consent of the respective regulatory authorities;[385] and

- prohibit any internal reorganization, realignment of work, or increase in shared services by the HECO Companies prior to

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[383]Applicants proposed limited commitments regarding their post-sale operations. Commitments 34A, 35A, 36A, and 37A afford limited insulation from reorganization and realignment in the future. This condition preserves the rights of the commission to review and approve any proposed reorganization and realignment before it is adopted.

[384]Commitment 58A expressly limits "direct" ownership interests but fails to address two other options: (a) an "indirect" ownership interest through direct acquisition or engagement in any non-regulated business by the HECO companies; and (b) "direct" investment, acquisition, or engagement in non-regulated business by HEH. This condition ensures the suggested commitment of NextEra to the HECO Companies matches the prescribed obligations that NextEra must satisfy.

[385]Applicants assume that future negotiations with the Commission regarding a Hawaii-specific Cost Allocation Manual ("CAM") satisfy any concern the commission might have regarding affiliate transactions (Commitment 52A). This condition is designed to require an applicant to satisfy a defined set of qualification tests in advance of any business relationship that shows the purpose of the relationship, the costs and benefits associated with it, the qualifications of the counter-party to the relationship, and a demonstration that the services provided under the agreement do not constitute a duplication of services already performed by HECO. The requirement for pre-approval is meant to ensure that the HECO Companies are the beneficiaries of any such relationship.

> approval of the proposed ring-fencing measures.[386]

Moreover, OSP Witness Hempling opined that there are five risks that even ring-fencing does not address:

> [] Ring-fencing does not purport to remove, and does not remove, five risks NextEra brings to HECO's utilities: holding company-imposed limits on the utilities' access to equity capital, increases in the utilities' cost of equity and debt capital, certain bankruptcy risks, NextEra's interference in the utilities' business decisions, and inter-affiliate transaction abuse. Nor does ring-fencing add the extra staff the Commission will need to ensure that NextEra complies with the ring-fencing measures.[387]

The commission considers the concerns expressed by Witness Hempling, in conjunction with the findings above, as sufficiently serious to conclude that the current proposed ring-fencing measures are inadequate to protect the interests of the public.

For these reasons, the commission concludes that a bankruptcy-remote entity is in the public's interest and that

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[386]This represents a subject that was not addressed by Applicants in Exhibit 37A or in their associated testimony. Commitment 73A provides Applicants with a 180-day "window" in which to undertake any changes to the post-sale operation of HECO without the ring-fencing commitments made in Exhibit 37A Order. This condition both protects the HECO Companies and their customers until ring-fencing measures are formally in place and would encourage Applicants to complete their ring-fencing efforts as quickly as possible.

[387]OSP's Exhibit 4 at 87.

Applicants have not demonstrated by a preponderance of the evidence that their proposal will satisfy the expectations of this commission or a bankruptcy court, particularly in light of the fact that Applicants are unwilling to seek a formal, professional opinion that would serve to demonstrate the adequacy of their proposal prior to closing. Applicants' ring-fencing proposals do not provide adequate protections that are in the best interests of the State, and, thus, are not reasonable or in the public interest.

7. Commission Issue No. 1.g. - Whether The Proposed Transaction, If Approved, Will Enhance Or Detrimentally Impact The State's Clean Energy Goals

In this section, the commission concludes that, on balance, the evidence in the record, including the proposed Commitments, does not support an affirmative conclusion that the Change of Control in its current form will enhance efforts to achieve the State's clean energy goals.

a. Applicants' Position

NextEra states that it is "fully committed to achieving a 100% RPS by 2045 and accelerating and maximizing the use of cost-effective renewable energy including rooftop solar," and that it is both one of the most successful renewable energy developers in North America and has exceptional access to financial markets, so "[a]ccordingly, there should be no question that the Proposed

Transaction, if approved will enhance achieving the State's clean energy goals."[388] Applicants state that they included six new or modified Commitments in Exhibit 37 related to the State's clean energy goals,[389] and one additional Commitment in Exhibit 37A.[390] Applicants state that each of these Commitments was added to the original set of Commitments to address stakeholder concerns.[391]

b. Consumer Advocate's And Intervenors' Positions

The Consumer Advocate summarizes its position as follows: "[t]hus, similar to other issue areas, Applicants have made various assertions that reflect broad or vague Commitments and entreats the Commission to 'trust us - the benefits will be there.'"[392]

Moreover, a review of the record shows that many Intervenors still find that the Clean Energy Transformation

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[388]Applicants Initial Brief at 34.

[389]Applicants Initial Brief at 36. Applicants' commitments are set forth in the discussion portion of this subsection.

[390]See Applicants' Exhibit 37A at 1-2.

[391]Applicants' Exhibit 36, at 6.

[392]CA Initial Brief at 48. The Consumer Advocate points to the example of development of a Smart Meter Program as "a cautionary tale to NextEra's clean energy expertise," citing a 4% cost increase for the Smart Meter deployment plan under a merged scenario, and finding that the HECO Companies' "belief that the FPL smart grid experience will provide substantial value to the HECO Companies was not based on any analysis." Id. at 47.

Commitments are both too broad and vague, and that they lack enforceable mechanisms to conclude that the Change of Control will enhance that State's clean energy goals.

DBEDT concludes that "the eight 'Clean Energy Transformation Commitments' are plagued by numerous flaws and deficiencies. Therefore, this critical element of Applicants' proposal fails to support a finding that the proposed Change of Control is in the public interest."[393] Sierra Club finds that NextEra's proposed commitments related to the State's clean energy goals "lack commitments for enforcement," and notes the absence of concrete plans for "specific practices and benefits for Hawaii and its highly distributed grid."[394]

FOL states that "Hawaii is far and away ahead of other utilities in integrating and supporting variable generation, and it would have behooved [NextEra] to acknowledge this and provide

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[393]DBEDT Initial Brief at 11. DBEDT further adds that "Hawaii's energy future is too important to wager on aspirations that NextEra is not willing to back up with firm, enforceable, meaningful commitments." DBEDT Reply Brief at 14.

[394]Sierra Club Initial Brief at 28-30. Sierra Club notes that the commission repeatedly asked for further details regarding how the Proposed Transaction would address smart meters and grid modernization, but states that "[a]pplicants offered no responses beyond admitting the lack of such specifics and reiterating the generalized 'clean energy' commitments or the HECO Companies' plans, which only confirmed NextEra's lack of any customer-focused business experience and strategy relevant for Hawaii." Id. at 31-32.

some answers regarding how DER might or could provide solutions," ultimately stating that "[NextEra] has failed to provide the [c]omission a clear and convincing plan that approving the transaction would enhance the State's — much less each island's — renewable energy goals."[395] Ulupono states that while Applicants' Commitment 6A "is a step in the right direction," it falls short by merely requiring Applicants to use good faith efforts to achieve accelerated renewable energy targets, rendering Commitment 6A "unenforceable."[396]

COM expresses concerns that "[a]pproval of the proposed transaction may detrimentally impact the achievement of the State's clean energy goals because stranded cost issues could make the achievement of [] Hawaii's 100% renewable energy goal unacceptably unaffordable, particularly to low income ratepayers," citing concerns with Applicants rapid development of centralized infrastructure that could become stranded assets due to a market disruption from DER services.[397]

HREA "believes NextEra should have be[en] able to share more about their overall approach to the preparation and

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[395]FOL Initial Brief at 28-29.

[396]Ulupono Initial Brief at 27. Ulupono recommends the language contained in "Ulupono Initiative's Commitment 34," which would commit the HECO Companies to exceed the renewable targets for 2020 and 2030 established in Act 97. Id. at 26.

[397]COM Initial Brief at 8-9.

implementations of their detailed plans to meet our State's Clean Energy Goals," stating that NextEra did not provide definitive answers to several questions regarding how it intended to work with energy stakeholders and customers.[398] HSEA states that NextEra has "left [HSEA] guessing" as to how or if its plans differ from those of the HECO Companies.[399]

COH states that while "[a] transformed HECO Companies' business model is critical to achieving the [S]tate's clean energy goals . . . throughout their testimony, Applicants were unable to clearly explain what tangible clean energy achievements the merged companies could obtain as a result of the merger."[400] TASC similarly finds that "NextEra has not suggested one idea, or committed to any type of vision, for facilitating this [clean energy] transition beyond what the HECO [C]ompanies have proposed."[401]

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[398]"Hawaii Renewable Energy Alliance's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 7 ("HREA Initial Brief").

[399]"Hawaii Solar Energy Association's Post Evidentiary Hearing Final Brief; and Certificate of Service," filed March 31, 2016, at 15 ("HSEA Initial Brief").

[400]COH Initial Brief at 9-10.

[401]"The Alliance for Solar Choice Opening Brief; and Certificate of Service," filed March 31, 2016, at 29 ("TASC Initial Brief").

SunPower expresses its "skepticism . . . regarding NextEra's commitment to capturing the value of DERs in contributing materially to the State of Hawaii's clean energy goals as communicated most clearly in the [c]ommission's *Inclinations* document," stating that "SunPower shares the [c]ommission's view that the best path forward for Hawaii is a renewable energy-fueled future that integrates both large-scale renewable energy generation and small-scale distributed energy resources. . . ."[402]

c. Discussion

(1) Introduction

The commission concludes that, on balance, the record evidence, including the proposed Commitments, does not demonstrate with certainty that the Change of Control in its current form will enhance efforts to achieve the State's clean energy goals.

With respect to NextEra's ability to enhance the State's clean energy goals, NextEra represents that it possesses both the financial and project management capabilities and considerable experience with renewable energy issues.[403] Intervenors

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[402]"SunPower Corporation's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, at 5 ("SunPower Initial Brief").

[403]Application at 25-26; "Applicants' Exhibit List; Direct Testimonies; Supporting Exhibits; Testimony Issues Matrix/Table; and Certificate of Service," filed April 13, 2015, Exhibit 7 (Direct Testimony of Eric S. Gleason) at 18-21 ("Applicants'

acknowledged that NextEra is the parent of NEER, which is one of the largest and most experienced developers of utility scale renewable energy projects.[404] FPL has also been recognized for its capabilities and experience with smart meter implementation and grid modernization.[405]

However, NextEra also admits that its experience is not as extensive with respect to the specific issues that are most pressing for the State, such as integrating very high levels of distributed energy resources, and, in particular, residential rooftop solar PV systems, on island grids.[406]

Exhibit 7") (stating that "NextEra Energy's superior access to capital, together with its distinctive capabilities as an industry leader in clean and renewable energy, will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation, and thereby reduce Hawaii's dependence on imported oil," id. at 19, and "NextEra Energy Resources, as North America's largest producer of renewable energy from the wind and the sun, adds unrivaled experience in developing, constructing, and operating renewable power generation." Id. at 21.)

[404]"Blue Planet Foundation's Exhibit List, Testimony, Issues Matrix/Table, Supporting Exhibits 3-6; and Certificate of Service," filed July 20, 2015, Exhibit 1 (Testimony of Ronald J. Binz) at 6 and 14; and "SunPower Corporation's Direct Testimony of Thomas J. Starrs; Exhibits; Testimony Issues Matrix; and Certificate of Service," filed July 20, 2015, Exhibit 1 (Testimony of Thomas J. Starrs) at 9-10.

[405]"Answering and Direct Testimony (Redacted) of E. Kyle Datta on Behalf of Ulupono Initiative, LLC; and Certificate of Service," filed July 20, 2015, Exhibit 1 (Answering and Direct Testimony of E. Kyle Datta) at 8-9 (citing generally Applicants' Exhibit 19 (Olnick)).

[406]Applicants' Exhibit 7 at 36 ("[T]he relative amount of distributed generation in Florida is much less than Hawaii . . . . [S]o, from an industry-wide perspective, the Hawaiian Electric

The commission has reiterated the importance of the clean energy transformation and that it requires an appropriate balance and diversity of utility scale and distributed generation ("DG") resources.[407] While recognized potential abilities and capacity are commendable, achievement of the clean energy transformation needs near and long term commitments for specific actions to accomplish the clean energy goals. The Application has not provided sufficient specificity regarding such commitments.

(2) Applicants Have Not Provided Details Concerning How They Would Achieve State Energy Goals

The commission observes that, on this record, Applicants have consistently declined to offer specific details on how they would meet the State's energy goals. Applicants have asserted that the Change in Control would "strengthen and accelerate" the State's clean energy transformation. Yet, Applicants included in the Application the following footnote explaining that they were unwilling to provide specific plans on the clean energy

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Companies' interconnection challenges are in largely uncharted territory."); Gleason, Tr. 784-785 (acknowledging that NEER's "focus is on commercial and industrial distributed energy… residential customers are not the focus of the business.").

[407]Commission's Inclinations at 5 (stating that "the Commission supports a balanced and diverse portfolio of energy resources as the best long-term strategy to achieve the [S]tate's energy goals.").

transformation until after consummation of the Proposed Transaction:

> Unless and until the Proposed Change of Control is approved and consummated, NextEra Energy will be unable to identify the specific plans and projects that NextEra Energy would implement as the owner of the Hawaiian Electric Companies, as such plans and projects can only feasibly be developed after NextEra Energy has sufficient time and access to information and resources as owner to better understand the strengths and any limitations in the Hawaiian Electric Companies' respective electric grids, systems, operations, and plans. NextEra Energy is willing to commit to file for Commission review its specific plans on how it will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation following consummation of the Proposed Change of Control.[408]

At the time of the Application, Applicants claimed that time and access to information prevented NextEra Energy from disclosing future plans and projects. When Applicants later filed their Responsive Testimonies, NextEra stated they would need up to twelve months post-closing to develop and submit resource plans to allow sufficient time for stakeholder engagement and avoid claims of "gun-jumping." Applicants' Exhibit 36 states:

> The other major resource planning issue raised by intervenors is when and how NextEra Energy should be required to produce its own resource plans for the Hawaiian Electric Companies.[48] As touched on previously and addressed more extensively by Applicants' witness Reed, the suggestion that this should happen prior to Commission approval of the merger is not feasible, partly because the timing would preclude meaningful stakeholder and community

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[408]See Application at 42, n. 57.

> input, an integral part of the process in our view. However, we have already committed to produce updated plans post-completion, and the suggestion by several parties to put a time limit on this is a reasonable one, which we are incorporating into our commitments.[409]

In Exhibit 50, Applicants address the issue of gun-jumping as it relates to the development of plans with the HECO Companies. In response to a question concerning whether "NextEra Energy is constrained from making decisions and developing plans to be implemented by the Hawaiian Electric Companies," Applicants' Witness Reed states:

> There are legal and practical constraints on NextEra Energy's ability to develop plans and projects in coordination with the Hawaiian Electric Companies prior to the consummation of the Proposed Transaction. The prohibition against "gun-jumping" under antitrust law restricts an acquirer from exercising control prematurely.[410]

Applicants' Reply Brief subsequently stated that they have clearly articulated their clean energy plans. Applicants now state:

> What Applicants have done is to propose a viable, cost effective means of transitioning away from oil with its attendant emissions and its volatile and often costly pricing to a cleaner, cheaper fuel source with more price stability as the technology develops that will allow the state to move towards the 100% RPS.[411]

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[409] See Applicants' Exhibit 36 at 36-37.

[410] See Applicants' Exhibit 50 at 52.

[411] See Applicants Reply Brief at 126.

The above quotation is unclear because Applicants have not offered the referenced proposal into the record in this proceeding. The PSIP and any updates are not being reviewed as part of this proceeding.[412] The statement in Applicants' Reply Brief is at odds with its previous statement concerning gun-jumping and other restraints that allegedly prevent NextEra from presenting its resource plans sooner rather than later.

Applicants' reluctance to provide details of their vision and the mechanisms by which the HECO Companies will meet the State's clean energy goals is of major concern to the Commission.

(3) Applicants' Clean Energy Transformation Commitments Lack Specific Actions And Enforceable Measures

Applicants proposed "Clean Energy Transformation Commitments" lack specific actions and enforceable measures to ensure successful progress and achievement of the State's energy

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[412]See, generally, Docket No. 2014-0183, PSIP Update Report, filed April 1, 2016; see also, Docket No. 2014-0183, "Letter From: D. Codiga to: Commission Re: Docket No. 2014-0183: Review of Hawaiian Electric Companies' Power Supply Improvement Plans: Involvement of NextEra Energy, Inc.," filed December 31, 2015.

goals. Applicants have proposed eight commitments in the area of "Clean Energy Transformation Commitments."[413]

The first Clean Energy Transformation Commitment was somewhat general in nature and contained in the original Application:

> In that regard, NextEra Energy commits to strengthening and accelerating the Hawaiian Electric Companies' clean energy transformation, consistent with Commission directives and guidance, the State of Hawaii's energy policy, and customer interests and public policy goals, towards a more affordable, equitable and inclusive, and economic clean energy future, through increased renewable energy (including integrating more rooftop solar energy), electric grid modernization, energy storage and customer demand response programs, all as a key part of the efforts to reduce Hawaii's dependence on imported oil and to lower customer bills.[414]

Six new or modified Commitments were included in Applicants' Exhibit 37 (numbered as in original):

- 2. [new/modified] NextEra [] commits to collaborate with the Commission, the Consumer Advocate and DBEDT in the development of updated resource plans that the [HECO] Companies will file within 12 months post-closing.

- 3. [new] NextEra [] commits that the [HECO] Companies will engage in stakeholder and community outreach with respect to these updated resource plans.

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[413]See Commitment 1A - 8A in Applicants' Exhibit 37A.

[414]See Application at 42 (footnotes omitted). This Commitment is identical in substance to Commitment 1A in Applicants' Exhibit 37A.

- 4. [new] NextEra Energy commits to produce a comprehensive response to the Commission's Inclinations in conjunction with the development of these updated resource plans, i.e., within 12 months post-closing.

- 5. [new] NextEra [] commits to fully support the [HECO] Companies in their work to achieve the 100% [RPS] consistent with the RPS law.

- 6. [new] Provided the [HECO] Companies' application to deploy smart meters across all three utilities is approved in an acceptable form by June 30, 2016, NextEra [] commits that: (a) the majority of customers will have smart meters installed by July 1, 2018, with access to energy dashboard and remote billing by October 31, 2018; (b) full smart meter deployment to all customers will be complete by December 31, 2019; (c) meters will be capable of executing fixed time-of-use rates by July 1, 2018, with dynamic pricing capabilities by December 31, 2019; and (d) requests for approval of time-of-use rate schedules to implement this Commitment will be filed at least six months prior to meter capability and no later than July 1, 2019.

- 7. [new] NextEra [] commits to continue to support the [HECO] Companies' work in the area of green technology innovation, including collaborating with DBEDT, Energy Excelerator and the University of Hawai'i system.

The most recent Clean Energy Transformation Commitment was included in Applicants' Exhibit 37A (numbered as in original):

- 6A. Subject to the Commission's approval in this proceeding, NextEra [] commits that each of the [HECO] Companies will undertake good faith efforts to achieve a consolidated renewable portfolio standard of thirty-five per cent of their net electricity sales by

> December 31, 2020, and fifty per cent of their net electricity sales by December 31, 2030.

Applicants state that each of these Commitments was added to the original set of Commitments to address stakeholder concerns.[415]

Finally, in their Reply Brief, Applicants have again stated that they are not able to make further guarantees beyond the ninety-five Commitments, including the eight proposed Clean Energy Transformation Commitments:

> Applicants have made clear commitments that will be binding subject only to very reasonable and practical conditions that have been explored at length in the record in this proceeding. Beyond that, Applicants are not able to make guarantees, and the Commission will have to make a judgment, based upon the record and the collective track record of Applicants operating in their respective jurisdictions, whether Applicants will work in good faith to achieve all of the customer benefits that *have been identified in this proceeding* - particularly considering that the Hawaiian Electric Companies will remain regulated utilities under the jurisdiction of this Commission.[416]

Applicants assert that they have made reasonable attempts to address stakeholder concerns. However, a review of the record shows that many Intervenors still maintain that the Clean Energy Transformation Commitments are both too broad and vague, and that they lack enforceable mechanisms to conclude that the Change of Control will enhance the State's clean energy goals.

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[415]See Applicants' Exhibit 55 at 17-25.

[416]See Applicants Reply Brief at 131.

For example, as noted above, the Consumer Advocate summarizes its position by stating that Applicants have made various assertions that reflect broad or vague Commitments.[417] DBEDT likewise concludes that the eight Clean Energy Transformation Commitments have numerous flaws and deficiencies, and, thus, that this "critical element" of Applicants' proposal fails to support a finding that the proposed Change of Control is in the public interest.[418]

The commission makes the following findings and conclusions with respect to the individual Clean Energy Transformation Commitments.

First, pursuant to Commitment 1A, NextEra makes a broad Commitment to "strengthening and accelerating the Hawaiian Electric Companies' clean energy transformation," but declines to provide any further details on how NextEra would achieve these goals. NextEra has deferred providing further details to within twelve months post-closing.

The commission observes that throughout this proceeding, Applicants have provided inconsistent explanations for their unwillingness to offer details on the means to "strengthen and accelerate" the State's clean energy transition. These varying

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[417]CA Initial Brief at 48.

[418]DBEDT Initial Brief at 11.

explanations concern the commission because they appear to reflect NextEra's unwillingness to discuss its vision and action items at any level unless the Change of Control is approved.

Second, under Commitment 2A, NextEra states that it would provide updated resource plans within twelve months post-closing, and collaborate with the commission, Consumer Advocate, and DBEDT in the development of these plans. Applicants are still requesting that the commission approve the Change of Control without providing the requisite specificity now and for some period following closing as to how NextEra intends to meet State energy policy goals.

Third, under Commitment 3A, Applicants commit to engaging in stakeholder and community outreach, while updating resource plans. This Commitment is commendable as a re-affirmation of continuing the existing collaborative process for stakeholder input and community outreach, which is important. But it does not set forth specific actions to move forward on clean energy goals.

Fourth, in Commitment 4A, NextEra commits to produce a comprehensive response to the Commission's Inclinations within twelve months post-closing. Applicants' Witness Gleason stated in his direct testimony that NextEra would not have full access to the information required to make this response until

post-closing.[419] However, NextEra has previously provided detailed responses on other issues before the commission, such as, in Docket No. 2013-0169. NextEra Energy Hawaii presented several detailed technical analyses and filings on a proposed Oahu-Maui grid connection within sixty days of the opening order of the docket without the benefit of having access to all of the HECO Companies' system information.[420]

Applicants indicated that the commission's April 2014 Orders and Inclinations were a precipitating event in pursuing the Proposed Transaction and that "NextEra has repeatedly stated that it embraces the Commission's utility of the future ("UOF") Vision, and is committed to achieve that vision."[421] Given the importance of alignment between the commission's directives and guidance and the HECO Companies' proposed plans and business strategies to achieve the State's clean energy goals, Applicants' inability to provide the response concerns the commission.

Similar to the Commitment on resource planning, NextEra has declined the opportunity to share its perspectives on both utility transformation and clean energy transformation. Applicants' decision to avoid responding to the Inclinations

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[419]Gleason, Tr. 484.

[420]See Docket No. 2013-0169, Order No. 31356, filed July 11, 2013, at 18.

[421]See Applicants Reply Brief at 125.

contributes to the uncertainty that the Proposed Transaction in its current form will enhance achievement of the State's energy goals.

Fifth, pursuant to Commitment 5A, NextEra commits to fully support the HECO Companies' work to achieve the 100% RPS. As discussed above, this Commitment is a commendable reaffirmation but only reiterates that which the HECO Companies are already obligated to do by State law.

Sixth, pursuant to Commitment 6A, NextEra commits to undertake "good faith efforts" to achieve higher RPS levels in 2020 and 2030 than currently required by law. This Commitment could actually "strengthen and accelerate" clean energy goals, and directly incorporates a specific condition advocated by Ulupono.[422] However, Applicants do not include any further definition of what specific actions they could undertake as "good faith efforts" or proposed mechanisms to measure progress under the Commitment.

Seventh, in Commitment 7A, NextEra proposes to accelerate deployment of smart meters relative to the implementation schedule projected without the Proposed

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[422]Ulupono Initial Brief at 25-26 (citing Ulupono's Exhibit 1 at 110). It is also important to note that the Consumer Advocate raised concerns about the cost-effectiveness of increasing these near-term RPS targets. CA Initial Brief at 46-47. Applicants did not submit any supporting evidence on the cost-effectiveness of this proposal.

Transaction. The Commitment is also dependent on an approval of the smart meter program application, which was filed by the HECO Companies on March 31, 2016 ("Smart Grid Filing").[423]

This Commitment proposes accelerating a specific, tangible action that could enhance clean energy goals, which is commendable. However, the Commitment, as currently constructed, would require the commission to approve the Smart Grid Filing, with an estimated cost of $340 million, which is a significant capital expenditure project that still requires separate review and determination in another docket proceeding.[424]

Moreover, a review of recent timelines for other proposals from the HECO Companies concerning this project indicates that the proposed timeline for full smart meter deployment under Commitment 7A is not markedly different from prior submittals by the HECO Companies. Under Commitment 7A, full deployment of smart meters would occur three and a half years from the date of commission approval of the program. Similarly, based on the HECO Companies' projected schedule for the smart meter program contained in the Distributed Generation Interconnection Plan submitted in August 2014, the timeline for full deployment of

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[423]See In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 2016-0087, filed March 31, 2016 ("Smart Grid Filing").

[424]Docket No. 2016-0087.

smart meters and other associated smart grid programs, including volt/var optimization, distribution automation, dynamic pricing, prepay, and customer energy portal, would occur within three years post commission approval of the application.[425] The commission understands that deployment timelines for major programs can change. However, Applicants have not explained the differences between what was submitted in prior smart grid filings and the proposed Commitment. The record evidence does not provide sufficient information on what specific action items are involved in the proposed "acceleration" of the Smart Grid project timeline and how that provides improvements over smart grid submittals from the HECO Companies prior to the Smart Grid Filing.

Eighth, under Commitment 8A, NextEra commits to continue to support the HECO Companies' work in the area of green technology innovation. The Commitment is commendable as a reaffirmation of the HECO Companies' work, but does not contain any specific project actions or funding support beyond the pledge to support the HECO Companies' current collaboration with DBEDT, the Energy Excelerator, and the University of Hawaii system. Based on the current form of the Commitment, Applicants have not submitted evidence to demonstrate how the Commitment would enhance

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[425]See Docket No. 2014-0192, Distributed Generation Interconnection Plan, filed on August 26, 2014, at 4-17.

achievement of the State's energy goals, other than NextEra's commitment to support the HECO Companies' on-going DER and DR pilot projects.[426]

d. Conclusions

Based on its review of the Commitments in Applicants' Exhibit 37A and the evidence in the record, the commission makes the following conclusions concerning Applicants' proposed clean energy transformation Commitments.

First, Applicants were not willing to provide specific details on their proposed plans and strategies to "strengthen and accelerate" the HECO Companies' progress towards the State's clean energy goals. Specifically, with respect to Commitments 1A, 2A, and 4A, Applicants initially declined to provide any detail on their plans to "strengthen and accelerate" the HECO Companies clean energy transformation, and then later chose to postpone providing these plans to within twelve months post-closing.

Second, with respect to Commitments 3A, 5A, and 8A, these Commitments are either already required by law, or follow and maintain current planning practices and work of the HECO Companies. Thus, these are not benefits that would result from approval of the proposed Change of Control.

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[426]Gleason, Tr. at 1019-1021; Dewhurst, Tr. at 2625-2628.

Third, in areas where Applicants have provided more specific Commitments to "strengthen and accelerate" clean energy transformation efforts, the Commitments are not supported with specific actions and measures to ensure performance, or are contingent upon commission approvals in other separate major dockets yet to be decided, or may not demonstrate actual acceleration of progress on clean energy implementation.

Commitment 6A proposes to increase near-term RPS targets, but dilutes the realization and implementation of this Commitment with the vague reference to "good faith efforts." Commitment 7A proposes to speed up the implementation of a major program, but also requires the commission approval of a significant capital expenditure program application in another major docket yet to be decided. Furthermore, based on submittals from the HECO Companies prior to the Proposed Change of Control, the proposed timeline in the Commitment may not represent an acceleration of the program.

Based on these observations and the information provided by Applicants, the commission is unable to conclude that the Clean Energy Transformation Commitments proposed by Applicants will ultimately enhance the State's clean energy goals. Under the current terms of the Proposed Transaction, the commission agrees with the Consumer Advocate and DBEDT that the proposed Commitments are too broad and vague.

Applicants and Intervenors have cited references about NextEra's track record as a major renewable energy developer in North America with financial and project management expertise that is well-capitalized to meet the State's future clean energy investment requirements. Although the commission acknowledges these attributes and recognizes these potential abilities and capacities, a major missing element from this Application has been clarity and specificity as to how NextEra would use these capabilities to achieve the State's clean energy goals in a manner that is consistent with the public interest. Applicants have had numerous opportunities throughout this proceeding to provide their vision to meet the State's energy goals, but have taken the position that they are unwilling to share this vision until after the proposed Change of Control is approved.

Finally, the commission notes that some Parties have stated that the proposed Change of Control would have the opposite effect - that it would detrimentally impact the State's clean energy goals.[427] TASC and the Sierra Club have argued that NextEra Energy's regulated subsidiary - FPL - has been hostile to efforts to increase the use of customer-sited solar and energy efficiency in their service territory, and that FPL's track record foreshadows

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[427]See TASC Initial Brief at 28-30, and Sierra Club Initial Brief at 28-32.

similar actions in this jurisdiction if the proposed Change of Control is approved.

This position requires speculation about the future actions of the HECO Companies, and ignores the fact that the State of Hawaii has statutory mandates for RPS, energy efficiency portfolio standards, tax credits to support customer-sited solar PV, and a public benefits fund to support energy efficiency programs. Applicants submitted their Application with full knowledge of the existing statutory and regulatory framework supporting clean energy goals, and would remain a regulated entity within this framework. Based on the record in this proceeding, the commission cannot endorse the positions espoused by TASC and the Sierra Club that the Proposed Transaction would detrimentally impact the State's clean energy goals.

8. Commission Issue No. 1.h. - Whether The Transfer, If Approved, Would Potentially Diminish Competition In Hawaii's Various Energy Markets And, If So, What Regulatory Safeguards Are Required To Mitigate Such Adverse Impacts

a. Applicants' Position

Applicants assert that the Proposed Change of Control will not diminish competition in Hawaii's various energy markets and that the proposed Commitments will ensure no adverse effect as

a result of the Change of Control.[428] Applicants have offered four commitments in this regard under the heading "Commitments to Safeguard Competition in Hawaii's Competitive Energy Markets."[429]

Applicants' position is that competition is protected by the commission's existing Competitive Bidding Framework, which will "ensure that a level playing field is maintained for all market participants," as well as NextEra's commitments to "limit[] competing proposals from the NextEra Energy family of companies to being either from the utility or an unregulated affiliate, but not both; [] to develop and implement enhanced information protection protocols; and [] to [develop and implement] protections and procedures that ensure that no improper subsidies are created among or between regulated and unregulated businesses."[430]

b. Consumer Advocate's Position

The Consumer Advocate states that in order to effectively safeguard competition, Applicants would have to be required to incorporate additional recommendations above and beyond the four aforementioned commitments, including the following: (1) the bidding entity represents the lowest possible

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[428]Applicants Initial Brief at 37.

[429]Applicants' Exhibit 37A at 7 (Commitments 45A-48A).

[430]Applicants Initial Brief at 38.

bid; (2) any proposal by a NextEra affiliate would be submitted under "open book" requirements and provide a final cost report, if selected; (3) a clarification by Applicants that their commitment not to seek waivers from the Competitive Bidding Framework applies to PPAs; and (4) measures put in place to "limit the possibility that customers of the regulated services are unfairly or unknowingly directed to unregulated affiliates as well as measures to prevent joint or shared advertising or promotions that might intentionally or unintentionally mislead customers regarding the relationship between regulated and unregulated affiliates and services."[431] The Consumer Advocate further states that while Applicants have a draft Code of Conduct for competitive power procurement, they failed to provide it in the record as part of this proceeding, leaving the Consumer Advocate to state that Applicants' commitment to a Code of Conduct is "problematic" and "currently unknown."[432]

c. Intervenors' Positions

FOL, after reviewing several witnesses' testimony relating to the issue of competition, concludes that "it is now

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[431]CA Initial Brief at 66-67 (citing CA's Exhibit 32 at 22-23, and CA's Exhibit 1 at 41, 42).

[432]CA Initial Brief at 48-49.

clear [NextEra] is unwilling to forego any self-build opportunities, even until a [C]ode of [C]onduct is drafted, reviewed, submitted to the Commission, and approved . . . leaving open the very real risk there are inadequate safeguards to prevent self-dealing and protect competition well into the future[.]"[433]

OSP concludes that "[o]wning and controlling HECO creates more opportunities for NextEra than continuing in Hawaii as merely an independent developer," because "owning renewables and controlling regulated assets" will allow it to "control a vertically integrated monopoly in a state that wants to boost renewables."[434]

Expressing its concerns that approval of the proposed Change of Control would diminish competition and allow NextEra to gain market share, COM states that "[w]hether intentionally or through pure happenstance, [NextEra's] proposed merger with HEI appears to have eliminated the HECO Companies' opposition to the proposed undersea cable between the islands of Oahu and Maui, likely to [NextEra's] benefit," and notes other examples, including NextEra's settlement with DOD.[435]

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[433]FOL Initial Brief at 31.

[434]OSP Initial Brief at 5-6.

[435]COM Initial Brief at 9-11.

Ulupono states that "[c]ompetition to develop resources will benefit Hawaii, and any restriction of NextEra Energy affiliates from participating in the competitive bidding processes of Hawaiian Electric Companies would be antithetical to such benefits," and thus urges "that the [c]omission require a commitment that the Applicants will work with the Commission and stakeholders to ensure that all participants in the competitive bidding processes of Hawaiian Electric Companies are on equal footing."[436]

Tawhiri finds that "Mr. Gleason's testimony provided incontrovertible evidence that achieving effective competition in a market in which utility affiliate(s) are eligible to compete for utility solicitations for generation and energy storage projects is highly unlikely," since "such an objective cannot be reconciled with [NextEra's] goal to maximize its shareholder value from the Proposed Transaction."[437]

HREA recommends a number of conditions that the commission should place on Applicants related to competition, including "[p]reclude NextEra from building new conventional generation and repowering or making improvements on existing generation," "[p]hase out NextEra ownership of existing generation

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[436]Ulupono Initial Brief at 30-31.

[437]Tawhiri Initial Brief at 3 (emphasis in original).

over time," and preclude NextEra from participating in Independent Power Producer ("IPP") and DER markets.[438]

SunEdison notes its concern that in the future the HECO Companies could "seek[] to drastically curtail the amount of generation and storage procured from competitors," because they will have "significant financial interests to self-build [] projects and little financial incentive to foster competition," so to truly understand NextEra's plans for the HECO Companies "the [c]omission would need to know what NextEra's plans would be for the future."[439]

REACH states that it "defers to the Consumer Advocate's analysis whether the Proposed Transaction, if approved, would potentially diminish competition in Hawaii's various energy markets and . . . what regulatory safeguards are required to mitigate such adverse impacts."[440] COH also makes arguments similar to those expressed by the Consumer Advocate.[441]

Sierra Club asserts that "NextEra's confidence in its capabilities should motivate it to win all the business opportunities it wants by merit in full market competition," but

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[438]HREA Initial Brief at 22-23.

[439]SunEdison Initial Brief at 3-4.

[440]REACH Initial Brief at 32.

[441]COH Initial Brief at 10-11.

states that instead, "the opposite motivation drives this [P]roposed [T]ransaction."[442]

d. Discussion And Conclusions

Under Commitment 45A, NextEra subsidiaries that choose to participate in future generation or transmission solicitations would be "subject to the applicable rules and regulations of the Commission." This Commitment simply restates an existing requirement that any utility subsidiaries, and any participants in competitive solicitations regardless of ownership, would "be subject to applicable rules and regulations of the Commission." Thus, this Commitment does not provide further safeguards to the existing rules and regulations regarding competitive energy markets in Hawaii.

Commitment 46A states that non-utility subsidiaries and affiliates would not participate in the same competitive solicitations as any of the HECO Companies' operating utilities. In effect, when considering any bid in a competitive solicitation, NextEra is committing to bid as either a non-utility subsidiary or affiliate or as an operating utility, but not both. In the commission's view, this Commitment does not provide adequate safeguards to protect competition.

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[442]Sierra Club Initial Brief at 32-33.

Pursuant to Commitment 47A, the HECO Companies would not seek any exemption or waivers from the Competitive Bidding Framework for any other NextEra subsidiary or affiliate. This Commitment provides some additional safeguards for competition in that it essentially limits certain members of NextEra's corporate family from seeking exemptions or waivers from the Competitive Bidding Framework. However, from a plain reading of the Commitment, the commission concludes that the HECO Companies could still seek an exemption or waiver from the Competitive Bidding Framework for a utility self-build option and receive support services from other subsidiaries or affiliates from within the network of NextEra Energy companies.

Commitment 48A would require NextEra to provide the Consumer Advocate with a draft Code of Conduct within ninety days following the close of the Proposed Transaction. The Code of Conduct would include guidelines on the access to confidential information (both utility and supplier) in the preparation and conduct of competitive generation solicitations. NextEra also commits to collaborate with the Consumer Advocate in the process of filing a joint communication protocol recommendation to the commission.

The commission concludes that given the size of NextEra's corporate family, a proposed Code of Conduct should have been filed with the Application for commission review and

approval.[443] The commission further observes that this Commitment includes a timeline for providing a draft of the Code of Conduct after the Change of Control is approved. It does not, however, include any discussion of how the proposed conduct between HECO Companies employees and NextEra personnel would be reviewed in the interim period before commission approval. Thus, numerous solicitations could be conducted before the process envisioned by the Commitment would result in a commission-approved Code of Conduct. Given this, the commission concludes that a Code of Conduct is essential to the protection of the competitive bidding process, and is required to be in place before, not after, any Change of Control.

Ultimately, the commission's conclusion as to whether the Change of Control, if approved, would potentially diminish competition depends on future speculation about the conduct of bidding under the Competitive Bidding Framework and any possible future changes to the framework, including any independent oversight of the procurement process. Whether Hawaii's existing wholesale generation market is currently competitive and what restrictions would be placed on the HECO Companies' or NextEra

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[443]As noted by the Consumer Advocate, Applicants have indicated that the draft Code of Conduct already exists, but has not been included in the record of this proceeding. CA Initial Brief at 48.

affiliates' participation in generation markets post-closing are also questions to be addressed.[444]

Applicants have contended that commission oversight of the bidding process, including the current framework, is sufficient to protect competition: "[t]he competitive framework is protected by the Commission continuing to ensure that a level playing field is maintained for all market participants, as it does today through the application of its Competitive Bidding Framework."[445] Moreover:

> Witness Oliver concluded that all of the necessary safeguards are already in place to assure that the effectiveness of the Framework and Code of Conduct (as part of the overall guidelines and requirements required by the Commission for resource solicitations) will not be impacted in any manner by the Proposed Transaction.[446]

Applicants further emphasize their perception that there will be a negligible impact on competition in their conclusion with respect to Commission Issue No. 1.h of the issues established for review in this proceeding:

> The Proposed Transaction will not diminish competition, and the record in this case is devoid of any credible evidence suggesting that approval would diminish competition in Hawai'i's various energy markets. The Commission has the authority to ensure that competition is fair and benefits

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[444]See, e.g., Gleason, Tr. at 1007-1014; and Oliver, Tr. at 2129-2144.

[445]Applicants Initial Brief at 38.

[446]Applicants Initial Brief at 39.

> customers and the State. The Framework (i.e., the Commission's applicable rules and regulations and strict affiliate standards of conduct) will continue to exist as it did before the Proposed Transaction. There will be no changes in market power, ease of entry, ease of exit, or adequacy of information caused by the Proposed Transaction.[447]

Applicants assert that the Proposed Transaction would not affect competition because the transaction would not cause further consolidation among suppliers (no change in market power), affect market entry and exit, or the supply of information. This list, however, ignores the fact that the HECO Companies' service territories currently have a single buyer for generation and transmission services, and, under the Proposed Transaction, the buyer of these services would change markedly.

Likewise, Applicants fail to discuss the fact that the HECO Companies currently do not have non-regulated subsidiaries or affiliates participating in competitive solicitations. However, the new buyer in the Hawaii market would have a broad network of non-regulated subsidiaries and affiliates within NextEra that would likely seek competitive opportunities for new generation and transmission projects. The commission finds it implausible to conclude that competitive concerns are negligible with such a substantial change in the buyer of services.

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[447]Applicants Initial Brief at 40.

The commission further observes that Applicants' Commitments concerning HEH do not preclude HEH from having non-regulated subsidiaries. Commitment 55A provides that "[a] new intermediate holding company, [HEUH], will be formed between [HEH] and Hawaiian Electric Company, to achieve separation between the unregulated and regulated businesses of [HEH]." Commitment 94A, in turn, provides that NextEra Energy will seek the commission's approval prior to forming any new non-utility subsidiaries under HEH or the HECO Companies at any point in the future.

Commitment 55A simply agrees to separate such entities and fails to state the form that such separation would take (actual structural versus accounting only). As further discussed below, the commission concludes that this Commitment is inadequate with respect to competitive issues as it permits the HECO Companies, HEH, and NextEra all to participate in the competitive bidding process in some form without additional protections.

Applicants have further argued that the current Competitive Bidding Framework coupled with their four Commitments are sufficient to ensure that Hawaii's markets remain competitive. However, under the proposed Change of Control, the entity responsible for designing, conducting, and evaluating competitive solicitations would transfer from an entity that currently has no meaningful commercial interests in the services procured through a solicitation (beyond possibly owning the assets as a regulated

utility) to an entity that has an extensive network of non-regulated subsidiaries and affiliates with significant commercial interests in the supply of services. Under the current Competitive Bidding Framework, a commission-appointed Independent Observer oversees the entire bidding process. However, the regulated utility still makes the final decisions on the design and conduct of the bidding process.[448]

The potential impact of the Change of Control depends on whether there is a level competitive playing field maintained when the incumbent utility has a considerably more complex set of affiliates and subsidiaries. Applicants assert that this change will increase competition to the benefit of customers, but other Parties have come to the opposite conclusion. The limited evidence presented in this proceeding indicates that the Competitive Bidding Framework, as well as the level of oversight required by the commission, would need to adjust significantly to the increased complexity in the local energy market. However, Applicants have not demonstrated, by a preponderance of evidence, that the proposed Change of Control will result in only limited risk to future

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[448]The commission takes administrative notice of the fact that the Independent Observer process has been the subject of recent controversy. See In re Public Util. Comm'n, Docket No. 2012-0092, Independent Observer's Final Report, dated May 12, 2015 (transmitted by commission letter, dated May 26, 2015).

competitive processes and that their Commitments are sufficient to mitigate these risks.

The commission concludes that safeguards are necessary beyond the existing rules and regulations regarding competitive energy markets in Hawaii. The existing Competitive Bidding Framework, as well as the level of oversight required by the commission, would need to be adjusted significantly to embrace the increased complexity in the local energy market resulting from incumbent utilities that would have extensive affiliates and subsidiaries. Moreover, a Code of Conduct is essential to the protection of the competitive bidding process, and would have to be in place before, not after, any Change in Control.

The burden is upon Applicants to address these issues in their Application and testimony and to show that their proposals are adequate by a preponderance of the evidence. The commission cannot conclude on the basis of this record that Applicants have fully met this burden.

9. Conclusions: The Application Has Not Been Shown To Be Reasonable And In The Public Interest By A Preponderance Of The Evidence

Based on the commission's review of the particular Commitments presented in the Application and Applicants' testimony, as well as a review of the entire evidentiary record in this matter, the commission finds and concludes that Applicants

have not sufficiently demonstrated, by a preponderance of the evidence, that the Change of Control would be reasonable and in the public interest. The commission finds that the benefits to the HECO Companies' ratepayers, communities, and the State's economy Applicants assert are neither certain enough nor great enough to offset the identified risks, uncertainties, and potential costs that could reasonably be expected from the Change of Control. Thus, in accordance with the standards of review and burden of proof established in this matter, the commission concludes that the Change of Control, as characterized in the Application and maintained by Applicants has not been demonstrated to be reasonable and in the public interest.

B. Commission Issue No. 2 - Whether Applicants Are Fit, Willing, And Able To Properly Provide Safe, Adequate, Reliable Electric Service At The Lowest Reasonable Cost In Both The Short And Long Term

The second major standard of review for this Application is whether the acquiring utility is "fit, willing, and able to perform the service currently offered by the utility."[449] The

[449]The commission observes that, similar to Commission Issue No. 1, some may construe the sub-issues set forth with respect to this issue as set forth in Order No. 32695 as establishing a "net benefit" standard for determining whether Applicants are "fit, willing, and able." See, e.g., Applicants Reply Brief at 14-16 (arguing that other Parties have sought to impose an alternative "net benefit" standard). For the reasons set forth above, the

commission set forth a number of issues to assist in the analysis of this issue; these are each addressed below. On balance, the commission finds that NextEra is fit, willing, and able to perform the service currently offered by the HECO Companies.

1. Commission Issue No. 2.a. - Whether The Proposed Transaction, If Approved, Will Result In More Affordable Electric Rates For The Customers Of The HECO Companies

NextEra's financial resources and access to competitive capital financing have not been disputed by the Parties. Applicants have also demonstrated that FPL has been recognized for providing low rates and top quartile performance in cost management, reliability, and customer service.[450]

However, Applicants have not provided specific Commitments that are guaranteed to lower rates.

The commission observes that this issue has been extensively discussed with respect to the public interest standard, and is more germane to that issue.[451] Thus, the commission will not further address this issue here.

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commission clarifies that it is not adopting either a net benefit or a substantial net benefit test.

[450]Applicants Initial Brief at 49; Gleason, Tr. 1028; Applicants' Exhibit 19 (Olnick) at 5-6 and Exhibit 50 (Reed) at 112.

[451]See Order, infra. at Section VIII.A.2.

2. Commission Issue No. 2.b. - Whether The Proposed Transaction, If Approved, Will Result In An Improvement In Service And Reliability For The Customers Of The HECO Companies

Applicants have submitted substantial evidence testifying to the size, resources, and experience of NextEra. It is evident that NextEra presently has access to large financial reserves and has benefited from the successful operations and experiences of its subsidiary, FPL. However, the HECO Companies are currently facing challenges in both the near and long term that NextEra, including FPL, has not faced, a fact which NextEra readily admits.[452]

The commission observes that NextEra began studying the challenges facing the HECO Companies and opined on areas where NextEra believes its experiences are directly transferrable.[453] The commission concludes that NextEra has demonstrated the potential capabilities and the resources to improve reliability and service for the HECO Companies' customers. However, specific commitments or analysis concerning how it will do so have not been submitted with the current Application, other than proposing the

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[452]See Applicants' Exhibit 69 at 22 and 24; see also, Olnick, Tr. 1053-1054.

[453]See, e.g., Olnick, Tr. 1052-1053 and 1055-1056; Applicants' Exhibit 69 at 10-16 and 22-23. As discussed above, however, no specific plans have been provided.

submission of a reliability plan for review after the proposed Change of Control.

3. Commission Issue No. 2.c. - Whether The Proposed Transaction, If Approved, Will Improve The HECO Companies Management And Performance

As with NextEra's potential to contribute towards the HECO Companies' efforts to provide improved reliability and service, NextEra has pointed to its successful management of FPL, another regulated electric utility. The commission observes that FPL has demonstrated success in Florida, and believes that NextEra is capable of producing similar success in Hawaii.[454]

NextEra possesses the requisite technical, operational, financial, and managerial capabilities to potentially enhance the HECO Companies' management and performance.[455] However, as discussed previously, Applicants' proposed Commitments do not set forth specific actions to demonstrate how NextEra will implement such improvements at the HECO Companies.[456]

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[454]See Docket No. 2011-0092, Order No. 31288, Exhibit C.

[455]Applicants' Exhibit 7 (Gleason) at 11 and 48-49; Applicants' Exhibit 90 (Dewhurst) at 4-5 and 9.

[456]See Order, infra. at Section VIII.A.7.

4. Commission Issue No. 2.d. - Whether The Proposed Transaction, If Approved, Will Improve The Financial Soundness Of The HECO Companies

Applicants note that NextEra has substantial financial resources. As stated in the Application:

> A Fortune 200 company, NextEra Energy's market capitalization approximates $45 billion [as of December 2, 2014]. With total assets exceeding $72 billion and electric generation capacity of more than 44 gigawatts primarily across 27 states and Canada, NextEra Energy has generated average annual consolidated revenues during the previous three years of approximately $15 billion.
>
> . . . .
>
> NextEra Energy is well positioned to meet the balance sheet requirements to effectuate the Hawaiian Electric Companies' clean energy transformation, while also reducing the associated costs for the benefit of customers. With the largest credit facility in the industry, NextEra Energy has robust liquidity that is comprised of approximately $9.2 billion of credit commitments from 68 banks. NextEra Energy's balanced, well-diversified lending group that spans 20 countries across four continents has provided NextEra Energy with approximately $18.5 billion of credit since 2003, which includes corporate credit facilities commitments and term loans outstanding as of August 31, 2014, and original balances of project debt funded or committed by banks. NextEra Energy has access to and regularly secures long-term financing in the public debt and equity markets and is committed to supporting the Hawaiian Electric Companies with plans to subsequently access the capital markets to raise long-term financing as appropriate. Since 2011, NextEra Energy has demonstrated its superior access to the capital markets, raising over $26 billion of debt and equity capital to fund a like amount of growth.

NextEra Energy is rated "A-" by S&P and Fitch, and "Baa1" by Moody's.[457]

Applicants state that NextEra's financial strength will benefit the HECO Companies by improving the HECO Companies' credit rating, enhancing their access to investment capital, and lowering the cost of capital.[458]

The Parties generally do not take issue with NextEra's financial strength. The commission finds that Applicants have demonstrated that NextEra possesses substantial financial resources which could, if properly deployed and managed, assist in improving the financial condition of the HECO Companies.

5. Conclusion - On Balance, Applicants Have Demonstrated That NextEra Is Fit, Willing, And Able To Adequately Fulfill The Responsibilities Of The HECO Companies

A review of the record indicates that some of the Intervenors indicated that they believe Applicants have fully met the fit, willing, and able standard.[459] No Party disputes the knowledge, expertise, and experience of NextEra. Rather, the

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[457]Application at 25-26.

[458]See Applicants Initial Brief at 60.

[459]See "Hawaii Solar Energy Association's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016, at 12 ("HSEA Reply Brief"); and SunPower Initial Brief at 13. Additionally, the commission observes that many of the Intervenors did not distinguish between the "reasonable and in the public interest standard" and the "fit, willing, and able standard."

Parties' arguments concerning the "fit, willing, and able" standard revolve around Applicants' lack of quantifiable commitments to improve reliability, and/or unfamiliarity with the specific, unique challenges facing the HECO Companies.[460]

Applicants observe that FPL has experience in a number of areas which could immediately be applied to improve the HECO Companies' reliability, including:

> [T]he deployment of additional automation and technology including expanding the deployment and use of an outage management system, SCADA, using substation voltage regulators to mitigate high demand conditions, smart meters and other smart grid devices, . . . implementing all or some form of our storm hardening initiative, which hardens existing infrastructure serving critical community needs . . . [and] [t]he incorporation of several of our key reliability initiatives (e.g. underground cable rehabilitation and priority feeders)[.][461]

Likewise, even for those challenges facing the HECO Companies for which FPL has less experience (i.e., residential rooftop solar PV systems and other forms of DER), NextEra notes that its experience with smart meters and other smart grid

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[460]See, e.g., CA Initial Brief at 33 and 51 (lack of detailed plan to improve service or reliability); FOL Initial Brief at 33-34 (lack of detailed plan to improve reliability); OSP Initial Brief at 21-22 (lack of experience in unique challenges facing HECO Companies); and Sierra Club Initial Brief at 34 (lack of plans for improving reliability and inapplicability of FPL's solutions to Hawaii's unique challenges).

[461]Applicants' Exhibit 69 at 15-16; see also Olnick, Tr. 1055-1056.

equipment can be useful in interconnecting and integrating growing levels of DER and DG onto the HECO Companies' system.[462]

Applicants also readily acknowledged distinctions between Hawaii and Florida.[463] NextEra has discussed the operational challenges facing the HECO Companies and visited the major islands of Hawaii to personally inspect infrastructure and observe local challenges first-hand.[464] Applicants note that the HECO Companies and FPL face similar challenges, and that FPL's knowledge and experience in dealing with these challenges can be directly transferred and implemented to the HECO Companies.[465] NextEra's efforts in this regard are commendable. Its unfamiliarity with some of Hawaii's unique challenges by itself is not conclusive evidence that it could not come "up to speed" quickly with respect to these issues.

Applicants also refer to NextEra's experience in successfully managing a regulated utility, as demonstrated by its

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[462]See Applicants' Exhibit 69 at 24; see also, Applicants' Exhibit 71 at 12-13; and Olnick, Tr. 1072-1073.

[463]See Applicants' Exhibit 69 at 22.

[464]See Olnick, Tr. 1052-1053; see also, Applicants' Exhibit 69 at 10-14.

[465]See Applicants' Exhibit 69 at 22; see also, Olnick, Tr. 1053-1054.

management of FPL.[466] Applicants note that FPL has reduced its reliance on foreign oil by 99%, improved its overall fuel efficiency by 20%, and saved its customers more than $7.5 billion in fuel costs.[467] Applicants point out that among U.S. utilities with more than 100,000 customers, FPL has the lowest non-fuel operations and maintenance expenses per retail kWh.[468]

Applicants highlight FPL's reputation for service and reliability, noting that "FPL's reliability has been the best among the Florida electric IOUs over the last decade and, for the last three years, was 20% better than the next closest Florida IOU, as measured by SAIDI."[469] When comparing the reliability metrics SAIDI (an overall measure of service reliability) and SAIFI (a measure of frequency of outages), between FPL and the HECO Companies, FPL's approximate outage time is approximately half that currently experienced by the HECO Companies' customers.[470]

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[466]Applicants' Exhibit 7 at 7-11; and Applicants' Exhibit 90, at 8-9.

[467]Applicants' Exhibit 7 at 9.

[468]Applicants' Exhibit 7 at 10.

[469]See Applicants Initial Brief at 49; Applicants' Exhibit 69 at 16.

[470]See Olnick, Tr. 1050-1053.

The record evidence demonstrates that NextEra is a successful, well-run company, with practical experience managing a regulated electric utility. NextEra has indicated that it is aware of the challenges facing the HECO Companies and has begun examining the unique challenges facing the HECO Companies. Likewise, the HECO Companies have expressed confidence in NextEra's financial and management ability to meet these challenges.[471]

Additionally, NextEra's witness testimony noted similar confidence in and demonstration of its ability to finance the necessary projects.[472] As summarized by Applicants' Witness Reed: "NextEra's balance sheet can be used to support an investment of this magnitude without incurring a significant diminution in credit quality and credit metrics that could otherwise occur if the Hawaiian Electric Companies were to undertake this level of capital investment as a stand-alone entity."[473]

No Party has put forth any substantive argument challenging the resources and expertise of NextEra. Various

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[471]See Applicants' Exhibit 69 at 10-16 and 22; see also, Olnick, Tr. 1052-1056 and Sekimura, Tr. 1027.

[472]Applicants' Exhibit 7 at 7-9, 16, and 19-22; Applicants' Exhibit 11; and Applicants' Reply Brief at 30-32 (citing to Blue Planet's Exhibit 1 at 6 and 13-14; SunPower's Opening Brief at 13; and Ulupono's Opening Brief at at 39-40).

[473]Applicants' Exhibit 50 at 121.

Parties have acknowledged and referred to the financial strengths, extensive experience, and project management capabilities of both NextEra and NEER.[474] While some have challenged NextEra's ability to address Hawaii's unique electric system issues, this, alone, is insufficient to support a conclusion that NextEra is unfit and/or unable to step into the HECO Companies' shoes. NextEra would be working in collaboration with existing employees of the HECO Companies, a process that would combine the HECO Companies' experience in dealing with these types of issues with NextEra's financial and professional resources.

Accordingly, on balance, the commission finds that NextEra is "fit, willing, and able" to perform the services currently offered by the HECO Companies.

C. Commission Issue No. 3 - Whether The Proposed Transaction, If Approved, Would Diminish, In Any Way, The Commission's Current Regulatory Authority Over The HECO Companies, Particularly In Light Of The Fact That The Ultimate Corporate Control Of The HECO Companies Will Reside Outside Of The State

In light of the commission's decision to dismiss the Application without prejudice, it is unnecessary for the commission to provide findings and conclusions with respect to this issue.

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[474]See, e.g., Blue Planet's Exhibit 1 at 6 and 13-14; Sunpower's Exhibit 1 at 4 and 9-10; Ulupono's Exhibit 1 at 8; and Rabago, Tr. 3853-3854.

D. Commission Issue No. 4 - Whether The Financial Size Of The HECO Companies Relative To NextEra's Other Affiliates Would Result In A Diminution Of Regulatory Control By The Commission

In light of the commission's decision to dismiss the Application without prejudice, it is unnecessary for the commission to provide findings and conclusions with respect to this issue.

E. Commission Issue No. 5 - Whether NextEra, FPL, Or Any Other Affiliate Has Been Subject To Compliance Or Enforcement Orders Issued By Any Regulatory Agency Or Court

In light of the commission's decision to dismiss the Application without prejudice, it is unnecessary for the commission to provide findings and conclusions with respect to this issue.

F. Commission Issue No. 6 - Whether Any Conditions Are Necessary To Ensure That The Proposed Transaction Is Not Detrimental To The Interests Of The HECO Companies' Ratepayers Or The State And To Avoid Any Adverse Consequences And, If So, What Conditions Are Necessary

In light of the commission's decision to dismiss the Application without prejudice, it is unnecessary for the commission to provide findings and conclusions with respect to this issue.

IX. FUTURE TRANSACTIONS RELATED TO THE HECO COMPANIES' STRUCTURE

HEI and the HECO Companies have consistently maintained that they were not actively seeking to be acquired by, or merged with, another company.[475]

As part of their statutory mandate, the HECO Companies must continue to operate to provide safe, reliable, reasonably priced electric service, while meeting the challenges of the current market in general and the various State renewable energy goals in particular. Applicants' Witness Oshima agreed that the HECO Companies can and will continue to operate even if the Change of Control is not approved.[476]

As discussed, the HECO Companies have stated throughout this proceeding that they can and will proceed if the Change of Control is not approved.

Given the Commission's Inclinations, as well as the many dockets in which the commission has provided specific guidance to the HECO Companies, the burden is squarely on the shoulders of the HECO Companies to perform better and more consistently than they have in the past. The Commission's Inclinations observed that guidance was necessary because the HECO Companies had failed to

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[475]Oshima, Tr. 84 and 158-59.

[476]Oshima, Tr. 79-80.

articulate a sustainable business model.[477] Given this conclusion, the commission provided fundamental guidance on three major issues: (1) the need to create a twenty-first century generation system; (2) the need to create modern transmission and distribution grids; and (3) the need for changes to regulatory policy and rate structures that the commission believed to be necessary to achieve Hawaii's clean energy future.[478]

These issues have been and are being addressed in a variety of dockets, including dockets concerning the PSIPs, DER resources, DR programs, and community based renewable energy. Although there has been progress on each of these issues, the commission observes that progress by the HECO Companies has been very slow. In the commission's view, the time has come for the HECO Companies to finalize and put into action their plans for achieving the State's clean energy transformation.

Throughout these proceedings, the HECO Companies have maintained that they have the ability under their current structure to address these challenges. Given the complexities of the challenges and the dynamic changes occurring in the electric industry, the commission will continue to give guidance to the HECO Companies as appropriate.

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[477]Commission's Inclinations at 1.

[478]Commission's Inclinations at 3.

The commission reiterates that the dismissal of this particular Application without prejudice does not deny HEI and the HECO Companies the ability to pursue another partner, or to seek another proposal from NextEra. The HECO Companies' attributes that were attractive to NextEra are still available to other potential suitors.

Applicants' Witness Oshima agreed that NextEra was not the only entity that could meet the standards for approval of a Change of Control.[479] HEI nevertheless signed a non-solicitation clause, under which HEI could consider other offers if made, but could not solicit them:

> We were not for sale, we were open to offers but not really welcoming offers, we did not have a for sale sign on the company. And as part of the Merger agreement, we were allowed to entertain other [offers], unsolicited [offers] - offers that were to come in after the signing of the Merger agreement up to final shareholder approval, we could entertain other offers, but no offers were made.[480]

As observed by Applicants' Witness Oshima, the HECO Companies are unique, and face significant issues not faced by mainland utilities such as grid impacts from high penetration of rooftop solar PV systems. Even where mainland utilities are

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[479]Oshima, Tr. 160.

[480]Oshima, Tr. 84.

beginning to face similar issues they are not of the magnitude present in the Hawaii.

In dismissing this Application without prejudice, the commission is not concluding that NextEra can never meet the legal standards required for approval of a change in control. The commission is instead concluding that the preponderance of evidence does not support a conclusion that this Application meets the reasonable and in the public interest standard.

X. COMMISSION GUIDANCE FOR ANY FUTURE MERGER OR ACQUISITION PROCEEDINGS

As noted, the commission's dismissal without prejudice here does not mean that HEI and the HECO Companies cannot pursue another partner, or seek another proposal from NextEra. Should the HECO Companies wish to file another application in the future, the commission has set forth guidance concerning any future merger or acquisition proceedings in Appendix A to this Order.

XI. ORDERS

THE COMMISSION ORDERS:

1. The Application seeking commission approval of the proposed Change of Control be, and hereby is, dismissed without prejudice.

2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii JUL 15 2016.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Randall Y. Iwase, Chair

By _____
Lorraine H. Akiba, Commissioner

By (ABSTAINED)
Thomas C. Gorak, Commissioner

APPROVED AS TO FORM:

_____
Michael Azama
Commission Counsel

_____
Caroline C. Ishida
Commission Counsel

_____
Mark Kaetsu
Commission Counsel

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

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

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

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

A. Ratepayer Benefits

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

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

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

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

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

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

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

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

B. Mitigation Of Risk

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

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

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

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

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

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

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

- consistent financial discipline; and
- manageable market conditions.

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

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

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

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

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

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

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

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

- o provide a written non-consolidation opinion from a recognized professional services firm attesting to the strength of the measures taken by the Applicant on behalf of the entity and to submit any such opinion for review and approval during the change of control proceeding; and

- o demonstrate that the approved BRE is operational prior to closing the transaction and is designated by the Applicant as the sole repository of any equity interest in the regulated utility;

- submit a written non-consolidation opinion from a recognized professional services firm attesting to the separateness of any holding company, corporate parent, or other financial entity assuming control of the BRE; the opinion should clearly enunciate the extent to which the holding company, corporate parent, or other financial entity has any claim on the BRE that might be construed as subject to consolidation;

- appoint a disinterested independent party to the BRE Board of Directors with no economic interest (the appointee may be an individual or an administration company in the business of protecting special purpose entities) to assume responsibility for reviewing and approving any petition for voluntary bankruptcy, liquidation, or receivership agreed to by the Board of Directors prior to issuance of any such petition no matter who seeks such a petition;

- appoint a Board of Directors for the BRE with at least one-third as independent directors; such directors must meet all material respects of the rules and regulations promulgated in the NYSE Listed Company Manual (Section 303A) and, in addition:

  - o no independent Director can serve as a Director of the parent corporation or any affiliate of either the parent or the utility; and

- no independent Director has a past or present business relationship within the past 10 years with any affiliate, subsidiary, or parent company of the utility;

- hold out notices of separateness of the BRE to all lenders in negotiating any new debt and acknowledge such separateness in all new debt instruments - including those associated with the proposed transaction;[2]

- submit for commission review and approval any proposal for the BRE to own, operate, or construct any capital asset;

- maintain separate books, records, and debt for the BRE from those of the corporate parent, its subsidiaries, and/or its other affiliates; furthermore, the BRE will maintain its own corporate and debt credit ratings, as well as ratings for long-term debt and preferred stock;

- provide an annual financial audit of the BRE performed by a recognized independent auditor;

- prohibit loans of any type to/from the corporate parent or to/from any affiliate, joint venture partners, or contractor;

- require that debt follows assets in any approved sale, transfer, or other asset disposal by the BRE; and

- reduce or suspend dividends and distributions if either (a) the leverage of the BRE exceeds the maximum regulatory debt-to-equity ratio established by the commission in the most recent rate case or (b) a majority of the independent or disinterested directors decide it is in the best

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

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

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

C. Achievement Of The State's Clean Energy Goals

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

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

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

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

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

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

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

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

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

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

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

[5]Commission's Inclinations at 15-16.

D. Competition

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

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

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

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[6]See H.R.S. §§ 269-141 to -149.

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

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

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

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

a number of waivers from the formal Competitive Bidding Framework solicitations.[9]

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

E. Corporate Governance

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

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

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

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

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

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

F. HECO Companies' Transformation

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

provide the strategy for how the acquiring utility intends to transform and improve the HECO Companies' performance.[10]

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

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

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

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

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

APPENDIX B - PARTIES AND POSITIONS

A. The Applicants

The HECO Companies have been providing electric service to Hawaii ratepayers for more than 100 years, and supply power to approximately 450,000 customers, which comprises roughly 95% of Hawaii's population.[1]

Specifically:

> [HECO] is an operating public utility engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu. Since July 1, 1983, [HECO] has been a wholly-owned subsidiary of [HEI]. The book cost and original cost of [HECO's] assets are $4,120,102,000 and $5,365,797,000, respectively, as of September 30, 2014.
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> [HELCO] is an operating public utility engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii. Since February 1, 1970, [HELCO] has been a wholly-owned subsidiary of [HECO]. The book cost and original cost of [HELCO's] assets are $878,835,000 and $1,350,879,000, respectively, as of September 30, 2014.
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> [MECO] is an operating public utility engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai; and the production, purchase, distribution, and sale of electricity on the island of Lanai. Since November 1, 1968, [MECO] has been a wholly-owned subsidiary of [HECO]. The book cost and original cost of [MECO's] assets are

[1]Application at 3.

$782,915,000 and $1,232,721,000, respectively, as of September 30, 2014.[2]

NextEra is a large energy company that is headquartered in Juno Beach, Florida. Its principal subsidiaries include FPL and NEER.[3] FPL is the third-largest electric utility in the United States.[4] NEER is North America's largest producer of renewable energy from the wind and sun.[5]

As of September 30, 2014, NextEra reportedly owns and operates more than 44 gigawatts of generating capacity, primarily across 27 states and Canada, as well as 8,300 circuit miles of high-voltage transmission, 67,000 miles of distribution lines, and 750 substations across North America.[6] NextEra states that it has over 50 years of experience working in North America and internationally, and technical expertise in engineering, constructing, operating, and maintaining large-scale infrastructure assets (over $72 billion in aggregate).[7] NextEra is a publicly traded company that is listed on the New York Stock

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[2]Application at 17-18.

[3]Application at 3-4.

[4]See http://www.nexteraenergy.com/company/our_company.shtml

[5]Application at 3-4.

[6]Application at 4.

[7]Application at 4.

Exchange, and is subject to oversight by the SEC, as well as the Federal Energy Regulatory Commission ("FERC").

Applicants' position is summarized in their Application, as modified by subsequent filings in the record.[8]

B. The Consumer Advocate

The Consumer Advocate is an ex officio Party to this proceeding pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a), and is tasked with representing, protecting, and advancing the interests of all consumers, including small businesses, of utility services.

The Consumer Advocate opposes the Change of Control as proposed by Applicants, but offers conditions that would make the Application acceptable to the Consumer Advocate.[9] The Consumer Advocate maintains that Applicants have: (1) failed to demonstrate that the Change of Control offers significant and quantifiable benefits to Hawaii's consumers;[10] and (2) failed to reasonably address the risks and other costs that will result from the proposed Change of Control.[11] The Consumer Advocate emphasizes

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[8]See, Section II.B., supra.

[9]CA Initial Brief at 2.

[10]CA Initial Brief at 2-3.

[11]CA Initial Brief at 12.

that a "quantifiable net benefits" standard should apply to the Application and that Applicants have failed to meet their evidentiary burden.[12]

Specifically, the Consumer Advocate states:

> Applicants have not justified their purported benefits because: 1) Applicants' estimated merger savings are highly subjective estimates that cannot be validated [and] are seriously overstated as more fully explained in section B below; 2) Applicants' estimated benefits are subject to a number of errors, such as double-counting certain benefits; 3) Applicants offer no significant guaranteed rate reductions that are commensurate to the Applicants' purported benefits and the means to ensure the flow of benefits to customers; 4) the rate credits that are offered by Applicants are temporary and are clawed back through numerous regulatory constraints and unreasonable conditions; and 5) the rate case moratorium proposed by Applicants would deny ratepayer participation in the anticipated reduction of the HECO Companies' costs resulting from the proposed Merger by freezing presently excessive base rates.[13]

The Consumer Advocate proposes a detailed rate plan and series of conditions, which, if adopted by the commission, would, in its view, support a finding that NextEra is fit, willing, and able, and that the proposed Change of Control is in the public

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[12]CA Reply Brief at 2-5.

[13]CA Initial Brief at 9-10.

interest.[14] Absent these conditions, the Consumer Advocate concludes that the Application should be denied.[15]

C. Intervenors

1. AES Hawaii, Inc. ("AES")

AES owns and operates a cogeneration facility located on Oahu, typically dispatched at a capacity of 180 MW, which uses coal as its primary energy source.[16] AES is an IPP that sells capacity and associated electrical energy from the AES Facility to HECO under a Power Purchase Agreement ("PPA") dated March 25, 1988, as amended.[17] Accordingly, AES' primary interest in the proceeding is the potential effect the proposed Change of Control could have on the HECO Companies' resource planning, and specifically, the possibility that the dispatch of AES' Facility could be limited.[18]

AES does not appear to oppose the proposed Change of Control, but states that a number of conditions should be adopted

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[14]See CA Initial Brief at 3 and 58; see also CA Exhibit 4 (listing the Consumer Advocate's recommended forty-eight Merger conditions); and CA Reply Brief at 35.

[15]See CA Reply Brief at 35-36.

[16]Order No. 32695 at 27 (citing "Motion to Intervene of AES Hawaii, Inc.; Affidavit of Jeffrey Walsh; Declaration of Dean T. Yamamoto; Exhibit '1;' and Certificate of Service," filed February 18, 2015 ("AES Motion to Intervene") at 2).

[17]Order No. 32695 at 27 (citing AES Motion to Intervene at 2).

[18]Order No. 32695 at 28 (citing AES Motion to Intervene at 10).

by the commission prior to any approval. In particular, AES proposes a number of conditions intended to preserve competition and transparency in the procurement process.[19]

2. Blue Planet Foundation ("Blue Planet")

Blue Planet states that it is a "Hawaii public interest organization . . . dedicated to promoting Hawaii's swift transition to a clean energy economy through the rapid adoption of renewable energy and increased energy efficiency."[20] Blue Planet is interested in how the Merger may affect purposes and subjects important to Blue Planet, such as the integration of clean energy by the HECO Companies, energy resource planning, and the advancement of clean energy in Hawaii.[21]

Blue Planet does not oppose the proposed Change of Control in principle, but states that in its view, certain

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[19]See "AES Hawaii, Inc.; Exhibit List; Issues Matrix/Table; Direct Testimony and Exhibits; and Certificate of Service, filed July 20, 2015, Direct Testimony of William Monsen ("Monsen Testimony"), at 8-9. It is unclear if AES' position changed following the admission of Applicants' Exhibit 37A or the evidentiary hearings, as AES did not file Rebuttal Testimony, a Pre-Hearing Opening Brief, or Post-Evidentiary Hearing Briefs.

[20]Order No. 32695 at 29-30 (citing "Blue Planet Foundation's Motion to Intervene; Declaration of Richard Wallsgrove; and Certificate of Service," filed February 18, 2015 ("Blue Planet Motion to Intervene"), at 3).

[21]Order No. 32695 at 30 (citing Blue Planet Motion to Intervene at 5-6).

conditions are necessary to ensure that the Application is in the public interest.[22] Specifically, these conditions deal with: (1) measuring Applicants' promised acceleration of achieving the State's RPS goals, including interim targets and shareholder-borne penalties; (2) facilitating Applicants' replacement of the existing "cost-of-service ratemaking" model with a "performance-based utility revenue model;" (3) ensuring the independence and effectiveness of the HECO Companies' local advisory board; (4) developing accelerated resource planning for the HECO Companies with penalties for unsatisfactory results; and (5) ensuring on-going transparency regarding NextEra's and the HECO Companies' contact with Hawaii and federal legislators, agencies, and regulators.[23]

3. County of Hawaii ("COH")

COH is the municipal government for the island of Hawaii, or "Big Island." As the largest single customer of HELCO, COH has

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[22]See Blue Planet Initial Brief, at 3-5; see also, Blue Planet Reply Brief at 2.

[23]See Blue Planet Initial Brief, Appendix A; see also, Blue Planet Reply Brief at 2.

an interest in how the Change of Control may impact rates, and quality and reliability of service on the island of Hawaii.[24]

COH takes the position that the Application should either be rejected, or, if approved, should be made subject to certain conditions in order to protect the interests of ratepayers and the State.[25] Specifically, COH requests that the commission: (1) require a per kWh rate reduction of 10% by the end of the first year following the Change of Control, which will escalate to 20% by year five following the Change of Control, or, alternatively, require the HECO Companies to file a rate case within six months following the Change of Control; (2) open a "Utility of the Future" docket to establish objectives and requirements for the HECO Companies; (3) prohibit the HECO Companies from engaging in third party energy services through its regulated utilities for four years following the Change of Control; (4) strengthen the ring-fencing provisions offered by Applicants; and (5) adopt a moratorium on construction of any undersea cable by Applicants for at least ten years following the Merger.[26]

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[24]Order No. 32695 at 30 (citing "County of Hawaii's Motion to Intervene; and Certificate of Service," filed February 18, 2015 ["COH Motion to Intervene"], at 4).

[25]See COH Initial Brief at 3 and 11; see also, "County of Hawai'i's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("COH Reply Brief"), at 12.

[26]COH Initial Brief at 11-12.

4. County of Maui ("COM")

COM is the municipal government for the island of Maui, and is the largest single customer of MECO. As with COH, the proposed Change of Control may affect COM's economic development, financial, customer-generated or prosumer, and energy security, interests.[27]

COM states that the Application is not in the public interest and recommends that the commission deny it.[28] COM concludes that the benefits Applicants promise are not guaranteed, quantifiable, or enforceable, but rather, are merely affirmations of general practices that will occur whether or not the Merger is consummated.[29] Additionally, COM states that the Application should not be approved subject to conditions, as none of the proposed conditions improve the Application to the point of being in the public interest and demonstrating that NextEra is fit, willing, and able to transform the HECO Companies into "independent" power supply integrators and operators.[30] Rather, COM suggests that the commission convene a "restructuring" docket

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[27]Order No. 32695 at 31 (citing "County of Maui's Motion to Intervene; Affidavit of Karl K. Kobayashi; and Certificate of Service," filed February 17, 2015 ("COM Motion to Intervene"), at 4-14).

[28]See COM Initial Brief at 2.

[29]COM Initial Brief at 25.

[30]COM Reply Brief at 23.

to "continue to effectuate the concepts and provisions suggested in the Commission's Inclinations white paper."[31]

5. Department of Business, Economic Development, and Tourism ("DBEDT")

DBEDT has a mandate to manage and oversee statewide business and economic development, energy development, economic research and analysis, and ocean resource planning, as well as encouraging the development and promotion of industry and international commerce.[32] The Director of DBEDT serves as the State's "energy resources coordinator" and is charged with serving "as consultant to the governor, public agencies, and private industry on energy-related matters."[33] Accordingly, DBEDT states that it has a broad interest in energy-related matters, such as the fitness, willingness, and ability of NextEra to provide essential electric service to Hawaii.[34]

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[31]COM Initial Brief at 16; see also, COM Reply Brief at 13 and 23-24

[32]Order No. 32695 at 32 (citing "The Department of Business, Economic Development, and Tourism's Motion to Intervene; and Certificate of Service," filed February 18, 2015 ("DBEDT Motion to Intervene"), at 2); see also HRS § 28-16(a).

[33]Order No. 32695 at 32 (citing DBEDT Motion to Intervene at 2).

[34]Order No. 32695 at 32-33 (citing DBEDT Motion to Intervene at 4).

DBEDT concludes that the proposed Change of Control is not in the public interest and recommends that the commission reject the Application.[35] DBEDT maintains that it is Applicants who bear the burden of proof, and that rejection may be the only way to prompt NextEra into putting forward its "best and final offer."[36] Alternatively, DBEDT states that if the commission is inclined to approve the Change of Control, it should impose conditions on any such approval.[37]

6. Department of Defense ("DOD")

The Department of the Navy, on behalf of DOD, maintains numerous military installations within Hawaii, and is the largest purchaser of electric services in the State.[38] Accordingly, DOD states that it has an interest in this proceeding, as the Merger could "have a material impact on the DOD mission and energy security as well as system reliability, quality of service, and cost of electricity."[39]

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[35]See DBEDT Initial Brief at 3-4; DBEDT Reply Brief at 2-3.

[36]DBEDT Initial Brief at 3-4 and 38-40.

[37]DBEDT Reply Brief at 18-25.

[38]"Motion to Intervene and Become a Party," filed by DOD on March 16, 2015 ("DOD Motion to Intervene"), at 2-3.

[39]DOD Motion to Intervene at 4.

DOD initially opposed the Change of Control.[40] After negotiating a settlement with Applicants (which did not include any other parties even though it purported to bind them), DOD supports the Application. In light of Applicants' revised Commitments, as stated in Applicants' Exhibit 37A, DOD states that its concerns have been addressed and that it now believes that the proposed Commitments will "benefit all rate payers, help protect the local utility's assets and continue pursuit of clean energy for all of Hawaii."[41]

7. Friends of Lanai ("FOL")

FOL is a "non-profit organization that represents the interests of numerous Lanai property owners, residents, taxpayers, MECO ratepayers, and individuals from all islands in Hawaii that has: (1) opposed big wind industrial development; and (2) advocated that each island in Hawaii should be energy independent and energy

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[40]See "Testimony of Ralph C. Smith, CPA" (at 18-20) and "Exhibits in Support of the Testimony of Ralph C. Smith," filed July 20, 2015.

[41]See "Department of Defense's Motion to Withdraw; and Certificate of Service," filed November 27, 2015 ("DOD Motion to Withdraw"), at 1-2. Following Applicants' filing of Exhibit 37A, DOD has made two unsuccessful motions to withdraw, and has been re-designated as a participant. See Order No. 33429 and "Order No. 33560, Denying the Department of Defense's Renewed Motion to Withdraw," filed March 2, 2016 ("Order No. 33560").

self-sustaining.[42] FOL states that it has an interest in future plans for MECO's operations, including how the Application, if approved, will impact rates, the use of LNG, increase solar photovoltaic ("PV") rooftop systems, and address Lanai's aging electric infrastructure.[43]

FOL states that Applicants have failed to meet their evidentiary burden and, thus, recommends that the commission deny the Application.[44] Additionally, FOL does not recommend proposing conditions under which the Application would become acceptable, because (1) it is not the commission's burden; (2) there is insufficient information to fully assess the risks inherent in the proposed Change of Control; and (3) FOL believes there are no conditions that could protect the HECO Companies' customers or the State from the risk of harm posed by the proposed Change of Control.[45]

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[42]Order No. 32695 at 33 (citing "Motion to Intervene; Declaration of Robin Kaye; and Certificate of Service," filed February 17, 2015 ("FOL Motion to Intervene"), at 3).

[43]Order No. 32695 at 33 (citing FOL Motion to Intervene at 8).

[44]FOL Initial Brief at 38-39.

[45]FOL Initial Brief at 37.

8. Honolulu Board of Water Supply ("HBWS")

HBWS is a semi-autonomous agency of the City and County of Honolulu that manages Oahu's municipal water resources and distribution system.[46] HBWS stated that it has an interest in this proceeding because HBWS' ability to respond to the needs of the water system infrastructure and its affordability to consumers is directly impacted by HECO's rates.[47] HBWS describes this as a "symbiotic relationship," as each is one of the other's largest customers, and that "any changes to ownership, operations, and cost structure [of HECO] has a direct impact [on] [HBWS'] ability provide water for residential, agricultural, government, and military and visitor-related activities."[48]

HBWS did not articulate a particular position on the proposed Change of Control,[49] but raised four major concerns, including: (1) putting in place a detailed Emergency Response Program, involving the obligations of HECO, HBWS, and others, when

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[46]Order No. 32695 at 41 (citing "Honolulu Board of Water Supply's Motion to Intervene; Declaration of Ernest Y.W. Lau; and Certificate of Service," filed February 19, 2015, at 1 ("HBWS Motion to Intervene")).

[47]Order No. 32695 at 41 (citing HBWS Motion to Intervene at 3).

[48]Order No. 32695 at 41-42 (citing HBWS Motion to Intervene at 3).

[49]See "Written Testimony and Supporting Exhibits of Honolulu Board of Water Supply; and Certificate of Service," filed July 20, 2015, Exhibit 1, at 2.

a major emergency or a catastrophic loss occurs on Oahu; **(2)** establishing regularly scheduled periodic meetings at different levels (operations, senior executive, and CEO/Manager-Chief Engineer) to discuss procedures and operations; **(3)** detailing a cooperative, mutual help plan for numerous renewable energy and energy efficiency projects in order to reduce energy consumption and produce savings to consumers; and **(4)** enhancing power quality to many of HBWS' pumping stations with the goal of realizing substantial savings.[50]

Subsequently, HBWS and HECO entered into a "Memorandum of Understanding on October 30, 2015 ("MOU"), which HBWS states resolved many of its concerns.[51] As a result, HBWS requested commission approval to withdraw from the proceeding, which the commission granted on November 12, 2015.[52]

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[50]"Board of Water Supply of the City and County of Honolulu's Motion to Withdraw from the Proceeding; and Certificate of Service," filed November 2, 2015, at 3 ("HBWS Motion to Withdraw").

[51]See HBWS Motion to Withdraw at 2-3. The MOU itself is attached as an exhibit to HBWS' Motion to Withdraw.

[52]See "Order No. 33326 Granting Board of Water Supply of the City and County of Honolulu's Motion to Withdraw from the Proceeding," filed November 12, 2015.

9. The Gas Company, LLC, dba Hawaii Gas ("Hawaii Gas")

Hawaii Gas is a public utility providing gas service throughout the major islands of Hawaii.[53] Hawaii Gas engages in both regulated and non-regulated gas utility operations, serving approximately 68,700 customers throughout the State, and its regulated gas operations consist of the purchase, production, transmission, distribution (through underground gas pipelines), and sale (for residential, commercial, and industrial uses) of synthetic natural gas, liquefied petroleum gas, and LNG.[54] Hawaii Gas states that it has an interest in this proceeding pursuant to its gas distribution franchise and related business, as well as its continuing participation in the development of state-wide LNG delivery infrastructure to facilitate Hawaii's clean energy future.[55]

Hawaii Gas concludes that the proposed Change of Control is not in the public interest and emphasizes the negative impact

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[53]Order No. 32695 at 34.

[54]Order No. 32695 at 34 (citing "Motion to Intervene; Affidavit of Nathan C. Nelson; Declaration of Dean T. Yamamoto; and Certificate of Service," filed February 18, 2015 ("Hawaii Gas Motion to Intervene"), at 2).

[55]Order No. 32695 at 34 (citing Hawaii Gas Motion to Intervene at 6).

on competition.[56] Hawaii Gas recommends that the commission deny the Application, but argues that if the commission is inclined to approve the Change of Control, that it is essential to include conditions to safeguard, protect, and enhance competition in Hawaii's energy markets.[57] Specifically, Hawaii Gas states that the commission should condition any approval of the Application on the list of conditions recommended by its witness, Dr. Susan Tierney.[58]

10. Hawaii Island Energy Cooperative ("HIEC")

HIEC is a non-profit association formed under Chapter 421C, HRS, for the purpose of providing its members, on a cooperative basis, with reliable, cost effective electric energy and other energy solutions in an environmentally responsible and community-supported manner consistent with sound business

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[56]See "The Gas Company, LLC, dba Hawaii Gas' Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("Hawaii Gas Reply Brief"), at 2-19.

[57]See "The Gas Company, LLC, dba Hawaii Gas' Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016 ("Hawaii Gas Initial Brief"), at 1-2 and 40; see also, Hawaii Gas Reply Brief at 24.

[58]See Hawaii Gas Initial Brief at 29 and Hawaii Gas Reply Brief at 19 (both citing "The Gas Company, LLC, dba Hawaii Gas' Rebuttal Testimonies Exhibit List; Rebuttal Testimonies and Supporting Exhibits; Rebuttal Testimony Issues Matrix; and Certificate of Service," filed October 7, 2015, Exhibit 37 ("Hawaii Gas' Exhibit 37") at 1-4.

practices.[59] HIEC states that its interests may be impacted by the outcome of this docket because "[t]he Commission's determination in this [A]pplication, whether approval or disapproval, will necessarily affect HIEC as a potential member-owned, not for profit electric utility serving the island of Hawaii."[60]

HIEC concludes that Applicants' have not met their burden of demonstrating that the proposed Change of Control is in the public interest as it pertains to Hawaii Island.[61] That being said, HIEC suggests that if the commission is inclined to approve the Application, such approval should be conditioned on the opening of a separate investigatory docket, which would explore whether an alternative form of ownership, such as a cooperative, would be in the best interest of the communities served by HELCO.[62] Furthermore, HIEC indicates that it would like to participate in any such docket.[63]

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[59]Order No. 32695 at 35 (citing "Hawaii Island Energy Cooperative's Motion to Intervene; Declaration of Brian T. Hirai; Exhibit 'A;' and Certificate of Service," filed February 11, 2015 ("HIEC Motion to Intervene"), at 1-2).

[60]Order No. 32695 at 35-36 (citing HIEC Motion to Intervene at 3).

[61]HIEC Initial Brief at 4.

[62]HIEC Initial Brief at 13-14; see also, "Intervenor Hawai'i Island Energy Cooperative's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("HIEC Reply Brief"), at 7.

[63]HIEC Initial Brief at 14 and HIEC Reply Brief at 7.

11. Hawaii PV Coalition ("HPVC")

HPVC states that it is a professional trade association whose goals "are to promote the development of sound and fair energy policies that enhance Hawaii's energy security and promote environmental and economic sustainability in the state's energy sector."[64] HPVC states that because its member companies design, build, develop, and operate distributed PV solar and energy efficiency products and systems in Hawaii, there is the possibility that a different parent company will seek to make dramatic changes to the development, distribution, and management of solar and other renewable energy resources in Hawaii, which could have a financial impact on HPVC's members and their customers.[65] HPVC urges the commission to reject the Application.[66]

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[64]Order No. 32695 at 36 (citing "Hawaii PV Coalition's Motion to Intervene; Affidavit of Mark Duda; and Certificate of Service," filed February 18, 2015 ("HPVC Motion to Intervene"), at 2).

[65]Order No. 32695 at 36-37 (citing HPVC Motion to Intervene at 4).

[66]See "Hawai'i PV Coalition Joinder to The Alliance for Solar Choice's Opening Brief; and Certificate of Service," filed March 31, 2016 (stating that it joins in the position taken by TASC); and TASC Initial Brief at 3 (opposing the Change of Control). HPVC also joined TASC in its Reply Brief. See "Hawai'i PV Coalition Joinder to The Alliance for Solar Choice's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016.

12. Hawaii Renewable Energy Alliance ("HREA")

HREA states that it is a Hawaii-based non-profit whose members include "companies, consultants or agents involved in and/or considering manufacturing, marketing, selling, installing and maintaining wind and solar systems in residential applications."[67] HREA voices concern over the proposed Change of Control's potential to financially or organizationally weaken the HECO Companies, which would negatively impact HREA's working relations with them, or potentially result in new management that de-emphasizes renewable energy or threatens the competition among Hawaii's independent and distributed renewable energy sectors.[68]

HREA states that it is unable to determine whether to recommend that the commission approve or disapprove the Application, and "take[s] no position on the merits of the Proposed Transaction."[69] That being said, HREA suggests that if the

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[67]Order No. 32695 at 37 (citing "Motion to Intervene of Hawaii Renewable Energy Alliance; Affidavit of Warrant S. Bollmeier II; and Certificate of Service," filed February 18, 2015 ("HREA Motion to Intervene"), at 2 and 4).

[68]Order No. 32695 at 37-38 (citing HREA Motion to Intervene at 4-5).

[69]HREA Initial Brief at 24; see also, "Hawaii Renewable Energy Alliance's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("HREA Reply Brief"), at 9 and 11.

commission is inclined to approve the Application, it should "consider" the conditions recommended by HREA.[70]

13. Hawaii Solar Energy Association ("HSEA")

HSEA states that it is a non-profit professional trade association with an organizational purpose "to promote the utilization and commercialization of renewable energy resources, including solar water heating and solar electricity in the State of Hawaii, to advance consumer education and understanding of solar energy technologies, and to develop sound trade and technical practices among its member companies."[71] HSEA states that it has 90 member companies, most of which are Hawaii-based, owned, and operated.[72]

Accordingly, HSEA states that the proposed Change of Control will have an impact on HSEA's members' property, financial, and economic interests, "as the proposed sale stands to completely transform our current relationship with the utility in charge

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[70]HREA Initial Brief at 24 and HREA Reply Brief at 9-11; see also, "Hawaii Renewable Energy Alliance's Pre-Hearing Brief; and Certificate of Service," filed November 20, 2015, at 5-6 (recommending conditions for approval of the Merger).

[71]Order No. 32695 at 38 (citing "Motion to Intervene of the Hawaii Solar Energy Association; Affidavit of Leslie Cole-Brooks; and Certificate of Service," filed February 17, 2015 ("HSEA Motion to Intervene"), at 2).

[72]Order No. 32695 at 38 (citing HSEA Motion to Intervene at 2).

regarding access to interconnection, implementation of policies on [DG] and advanced [DER] functionality, and the overall culture and perception of locally generated energy and its place in the new company's business model."[73]

HSEA states that the proposed Change of Control does not satisfy the public interest standard and, therefore, recommends that the commission reject the Application.[74] In particular, HSEA states that the Change of Control is not necessarily the remedy the HECO Companies need, and that, under certain circumstances, the HECO Companies may be able to make the necessary transformation "at far less cost and risk than that posed by this transaction."[75] Finally, HSEA states that it does not believe that there are any conditions that could be placed on approval that would make the Application acceptable to HSEA.[76]

14. Hawaii Water Service Company ("HWSC")

HWSC is a public utility which is authorized to provide potable water service in Ka'anapali, Maui, and wastewater service

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[73]Order No. 32695 at 39 (citing HSEA Motion to Intervene at 4).

[74]HSEA Initial Brief at 21.

[75]HSEA Reply Brief at 5.

[76]HSEA Initial Brief at 21.

in Pukalani, Maui.[77] HWSC also owns the stock of the following public utilities which provide wastewater service in the County of Hawaii: Waikoloa Water Co., Inc., dba West Hawaii Water Company; Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Company; Waikoloa Resort Utilities, Inc., dba West Hawaii Utility Company; and Kona Water Service Company, Inc.

HWSC states that electrical costs comprise a large percentage of the retail bills paid by its customers.[78] According to HWSC, these electrical costs originate with MECO and HELCO, and are passed on through HWSC to HWSC's customers through various automatic rate adjustment clauses, such as the power cost adjustment clause and the power post charge.[79] Accordingly, HWSC stated that it has an interest in this proceeding due to the harm being caused to its customers from high power costs and HWSC's inability to help reduce these costs through renewable energy projects.[80] In particular, HWSC is concerned with how the proposed

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[77]Order No. 32695 at 39 (citing "Hawaii Water Service Company, Inc.'s Motion to Intervene; Verification; and Certificate of Service," filed February 17, 2015, at 1 ("HWSC Motion to Intervene")).

[78]HWSC Motion to Intervene at 4 (according to HWSC, this is due, in part, by the need for large pumps to extract water from deep wells).

[79]HWSC Motion to Intervene at 4.

[80]Order No. 32695 at 40 (citing HWSC Motion to Intervene at 6-7).

Change of Control will affect HWSC's ability to generate and sell power to MECO and HELCO and to participate in DR programs, which might thereby reduce the amounts charged to HWSC's customers for water and wastewater services.[81]

Initially, HWSC expressed concern over Applicants' lack of specific plans to enhance the State's renewable energy goals.[82] However, HWSC subsequently stated that it believed that its concerns would be adequately addressed by other Parties in this proceeding, and that informal discussions with Applicants have given HWSC a better understanding of HECO's renewable energy and DR programs.[83] As a result, HWSC filed a motion to withdraw from this proceeding, which the commission approved on October 13, 2015.[84]

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[81]Order No. 32695 at 40 (citing HWSC Motion to Intervene at 6-7). According to HWSC, its ability to participate in renewable energy generation and DR programs is largely dependent upon agreements with MECO and HELCO. HWSC Motion at 5.

[82]See "Hawaii Water Service Company, Inc.'s Exhibit List; Direct Testimony; Testimony Issue Matrix; and Certificate of Service," filed July 20, 2015, at 5-7 and 10.

[83]"Hawaii Water Service Company, Inc.'s Motion to Withdraw; and Certificate of Service" at 2 ("HWSC Motion to Withdraw").

[84]See "Order No. 33260 Granting Hawaii Water Service Company, Inc.'s Motion to Withdraw," filed on October 13, 2015.

15. HINA Power Corporation ("HINA")

HINA states that it is a for-profit corporation "engaged in the development, installation, integration, construction, marketing, sale and distribution of clean energy generation systems and energy storage systems in the state of Hawaii, on islands served by the Hawaiian Electric Companies."[85] HINA states that the Application, if approved, may or may not affect the interconnection of clean energy generation systems with the HECO Companies. The resolution of this issue will have a direct financial and economic impact on HINA.[86]

It appears that HINA has not taken a definitive position on the Application as currently proposed. However, in its Direct Testimonies, HINA states that "Applicants have not presented specific plans and projects to achieve the State's energy goals," a situation which HINA describes as "unacceptable."[87]

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[85]Order No. 32695 at 40 (citing "Motion for Intervention of HINA Power Corp, Inc.; and Certificate of Service," filed February 18, 2015 ("HINA Motion to Intervene"), at 4).

[86]Order No. 32695 at 40-41 (citing HINA Motion to Intervene at 5).

[87]See "HINA Power Corp's Issues Matrix/Table and Testimony; and Certificate of Service," filed July 21, 2015, Exhibit 1 ("HINA Direct Testimony") at 5; and "HINA Power Corp's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed April 1, 2016 (stating that "[t]his brief has no further discussion on the topic. Everything was submitted into the record during the proceedings.").

16. International Brotherhood of Electrical Workers Local Union 1260 ("IBEW")

IBEW states that it is "the labor union and legal bargaining representative for over 3,000 bargaining unit (union) employees employed by companies doing business in the State of Hawaii and the Territory of Guam."[88] Specifically, IBEW "collectively bargains with the Hawaiian Electric Companies and represents over 1,300 bargaining unit employees employed by the Hawaiian Electric Companies in Hawaii."[89] Accordingly, IBEW stated that it has an interest in the proceeding, as the proposed Change of Control, if approved, may impact the working conditions, wages, benefits, management, and policies of IBEW members.[90] In particular, IBEW raised concerns over NextEra's actions following its proposed two-year moratorium on involuntary workforce reductions.[91]

During the course of the proceedings, IBEW expressed concerns over Applicants' long-term commitments with regard to:

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[88]Order No. 32695 at 42 (citing "International Brotherhood of Electrical Workers Local Union 1260's Motion to Intervene; Declaration of Brian F. Ahakuelo; Declaration of Amy E. Ejercito; and Certificate of Service," filed February 18, 2015, at 2 ("IBEW Motion to Intervene")).

[89]Order No. 32695 at 42 (citing IBEW Motion to Intervene at 2).

[90]Order No. 32695 at 42 (citing IBEW Motion to Intervene at 5-6).

[91]Order No. 32695 at 42-43 (citing IBEW Motion to Intervene at 5-6).

(1) current (and future) IBEW Local members employed by the HECO Companies; (2) local union contractors doing business with the HECO Companies' clean energy future and 2045 goal; and (3) the people, community, and State of Hawaii.[92]

Before the evidentiary hearings for this proceeding commenced, IBEW notified the commission and the Parties that after discussions with NextEra, the IBEW was now satisfied with NextEra's commitment to the IBEW's members, local union contractors, and the State of Hawaii. Accordingly, IBEW now endorses the proposed Change of Control as being in the public interest.[93] As a result, IBEW moved to withdraw from this proceeding, and the commission granted that request on October 29, 2015.[94]

17. Ka Lei Maile Ali'i Hawaiian Civic Club ("KLMA"), Life of the Land ("LOL"), and Puna Pono Alliance ("Puna Pono") (collectively, "KLMA/LOL/PPA")

KLMA states that it is "a Native Hawaiian hui promoting the true history of Hawaii and protecting traditional and customary

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[92]See "International Brother of Electrical Workers Local Union 1260's Motion to Withdraw; and Certificate of Service," filed October 20, 2015, at 2 ("IBEW Motion to Withdraw").

[93]IBEW Motion to Withdraw at 2-3.

[94]See "Order No. 33295 Granting International Brotherhood of Electrical Workers Local Union 1260's Motion to Withdraw," filed October 29, 2015.

practices for subsistence, cultural, and religious purposes."[95] KLMA states that it its interests in this proceeding are to: (1) safeguard their rights to a clean and healthful environmental rights on their islands; (2) work towards increasing awareness of political sovereignty and building economic resiliency and self-reliance; and (3) voice its belief that any undersea high voltage transmission cable deployed in Hawaii should not be located within the Hawaiian Islands Humpback Whale National Marine Sanctuary, nor within the South Molokai Fringing Reef.[96]

LOL states that it is a non-profit, Hawaii-based organization whose members live, work, and recreate in Hawaii.[97] LOL states that its interests may be affected by the outcome of this proceeding due the proposed Change of Control's potential to alter policy choices regarding the switch from fossil fuel to low

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[95]Order No. 32695 at 43 (citing "Ka Lei Maile Ali'i Hawaiian Civic Club's Motion to Intervene; Affidavit of Henry Q. Curtis; and Certificate of Service," filed February 17, 2015 ("KLMA Motion to Intervene"), at 2).

[96]Order No. 32695 at 43-44 (citing KLMA Motion to Intervene at 2 and 5).

[97]Order No. 32695 at 45 (citing "Life of the Land's Motion to Intervene; Affidavit of Henry Q. Curtis; and Certificate of Service," filed January 29, 2015 ("LOL Motion to Intervene"), at 5).

climate impact, environmentally-sound, culturally- and community-friendly indigenous renewable resources.[98]

Puna Pono is a non-profit, unincorporated association which is "interested in issues of health, safety, economy and quality of life in lower Puna as it is affected by energy production and distribution, and particularly geothermal generating facilities, as well as in relation to alternative energy sources."[99] Puna Pono states that its interest in the proceeding arises primarily from experiences and concerns its members have regarding issues of health, safety, economy, regulatory oversight, and quality of life in relation to geothermal generating facilities, as well as the comparison of geothermal facilities to alternative energy sources.[100]

LOL, KLMA, and Puna Pono filed a joint Post-Evidentiary Hearing Opening Brief.[101] KLMA/LOL/PPA are opposed to the Merger, and ask the commission to reject the Application.[102] Furthermore,

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[98]Order No. 32695 at 45-46 (citing LOL Motion to Intervene at 5).

[99]Order No. 32695 at 49 (citing "Puna Pono Alliance's Motion to Intervene; Memorandum in Support of Motion; Declaration of Thomas L. Travis; Exhibit A; and Certificate of Service," filed February 17, 2015 ("Puna Pono Motion to Intervene"), at 2).

[100]Order No. 32695 at 49 (citing Puna Pono Motion to Intervene at 4).

[101]See KLMA/LOL/PPA Initial Brief, filed March 30, 2016.

[102]KLMA/LOL/PPA Initial Brief at 43.

KLMA/LOL/PPA argue against commission issuance of a conditioned approval, stating that NextEra has failed to meet its burden of proof, and that any conditions on approval should be preceded by the re-opening of the evidentiary hearings or require the filing of a new application.[103]

18. Kauai Island Utility Cooperative ("KIUC")

KIUC is a not-for-profit generation, transmission, and distribution cooperative owned and controlled by the members its serves, which currently serves more than 32,000 electric accounts on the island of Kauai.[104] KIUC states that its interest may be impacted by this proceeding because of the possibility that conditions imposed by the commission in connection with the proposed Change of Control may have significant effects on all Hawaii electric utilities.[105]

KIUC does not appear to take a definitive position on the merits of the Application, but states that a "smaller, stand-alone utility, either investor owned or privately owned by a

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[103]KLMA/LOL/PPA Initial Brief at 39 and 42; see also, "Joint Parties Reply Brief; and Certificate of Service," filed May 2, 2016, at 3.

[104]Order No. 32695 at 44.

[105]Order No. 32695 at 44-45 (citing "Kauai Island Utility Cooperative's Motion to Intervene; Declaration of Brian T. Hirai; Exhibit "A;" and Certificate of Service," filed February 11, 2015 ("KIUC Motion to Intervene"), at 2).

private equity group, could be a viable alternative for Oahu in the event the Commission denies the [Application], or approves the [Application] with conditions requiring a sale of either MECO or HELCO."[106] KIUC disagrees with Applicants' position that the formation of a new cooperative would not be in the public interest.[107]

19. Office of Planning, State of Hawaii ("OSP")

OSP operates under several statutory mandates: (1) pursuant to HRS § 225M-2(b), OSP gathers, analyzes, and provides information to the governor to assist in the overall analysis and formulation of State policies; (2) pursuant to HRS § 226-53, OSP conducts strategic planning by identifying and analyzing significant issues, problems, and opportunities

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[106]"Kaua'i Island Utility Cooperative's Exhibit List, Issues Matrix Table; Testimony & Exhibits; and Certificate of Service," filed July 20, 2015, Exhibit 1 ("KIUC Direct Testimony"), at 10; see also, "Intervenor Kauai Island Utility Cooperative's Statement Regarding Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016, and "Intervenor Kauai Island Utility Cooperative's Statement Regarding Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 (both stating that KIUC's position is reflected in its filings contained in the record and that KIUC is not submitting any Post-Evidentiary Hearing Briefs).

[107]"Kaua'i Island Utility Cooperative's Supplemental Exhibit List, Supplemental Issues Matrix Table, and Rebuttal Testimony; and Certificate of Service," filed October 7, 2015, Exhibit 4 ("KIUC Rebuttal Testimony") at 5-6.

confronting the State, and formulating strategies to respond to identified problems and opportunities; and (3) pursuant to HRS § 226-18, OSP plans for the State's facility systems with regard to energy.[108]

OSP states that it has an interest in this proceeding because the proposed Change of Control has the potential to impact (1) the development and addition of new renewable resources to the utility grid; (2) Hawaii's dependence on imported fossil fuels; and (3) price stability and energy security, all of which may have significant impact on the State's energy costs.[109] Additionally, the Proposed Change of Control may also impact other areas under OSP's review, such as employment levels, customer savings, improved value to customers, and community contributions.[110]

OSP states that the commission should reject the Application.[111] Additionally, following rejection of the Application, OSP recommends that the commission take concrete steps to identify the type of company that is best-suited for Hawaii, including (1) completing the commission's planning

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[108]Order No. 32695 at 46 (citing "The Office of State Planning, State of Hawaii's Motion to Intervene; and Certificate of Service," filed February 18, 2015 ("OSP Motion to Intervene"), at 2-5).

[109]OSP Motion to Intervene at 5.

[110]Order No. 32695 at 47 (citing OSP Motion to Intervene at 5-6).

[111]OSP Initial Brief at 1.

dockets, so as to identify Hawaii's needs; (2) creating a merger policy that attracts the type of companies that can best meet Hawaii's needs; and (3) inviting the HECO Companies to issue applications for potential suitors based on Hawaii's identified needs and in accordance with the commission's Merger policy.[112]

20. Paniolo Power Company, LLC ("Paniolo")

Paniolo is a wholly-owned subsidiary of Parker Ranch, Inc., and was established in April of 2014 to promote and pursue community-level, regional-scale, and island-wide clean energy solutions to address higher energy costs and seek reasonably-priced clean energy for the Waimea and Kohala communities.[113] In particular, Paniolo states that in 2013, Parker Ranch embarked on a comprehensive analysis of its resources, with the goal of developing a competitive plan to transform the island of Hawaii's energy landscape over the next ten years (the "Paniolo Power Plan").[114] Paniolo stated that it has an interest in this

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[112]OSP Initial Brief at 33-40; see also, "Office of Planning, State of Hawaii's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("OSP Reply Brief"), at 3.

[113]Order No. 32695 at 47 (citing "Motion to Intervene; Affidavit of Jose S. Dizon; Declaration of Dean T. Yamamoto; Exhibits 1 and 2; and Certificate of Service," filed February 18, 2015, at 3 ("Paniolo Motion to Intervene")).

[114]Order No. 32695 at 48 (citing Paniolo Motion to Intervene at 3).

proceeding, as the proceeding will likely discuss: "(1) issues related to the fitness, willingness, and ability of the post-merger utilities; (2) issues related to the Applicants' resource planning; and (3) issues related to competition, industry structure, and regulatory frameworks."[115]

In furtherance of these interests, Paniolo sought to consolidate this proceeding with the commission's investigatory docket examining the HECO Companies Power Supply Improvement Plan ("PSIP").[116] The commission denied Paniolo's motion to consolidate on March 20, 2015.[117]

Based on the commission's denial of Paniolo's motion to consolidate this proceeding with the commission's PSIP docket, Paniolo sought to withdraw from this proceeding.[118] Specifically, Paniolo stated that it believes that the PSIP docket will be the principal forum to explore the concerns and issues that compelled

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[115]Order No. 32695 at 48 (citing Paniolo Motion to Intervene at 8-9).

[116]See "Motion to Consolidate; Declaration of Dean T. Yamamoto; Exhibits 1 and 2; and Certificate of Service," filed March 9, 2015. The HECO Companies' PSIP is the subject of Docket No. 2014-0183.

[117]"Order No. 32727; Denying Motion to Consolidate of Paniolo Power Company, LLC," filed March 20, 2015.

[118]See "Motion to Withdraw; and Certificate of Service," filed by Paniolo on July 15, 2015, at 2 ("Paniolo Motion to Withdraw").

Paniolo to intervene in this proceeding.[119] The commission granted Paniolo's request to withdraw from this proceeding on September 23, 2015.[120]

21. Renewable Energy Action Coalition of Hawaii, Inc. ("REACH")

REACH states that it is a Hawaii non-profit trade association whose members include businesses engaged in the production, manufacture, development, installation, integration, construction, marketing, sale, and/or distribution of distributed clean energy generation systems and distributed energy storage systems in Hawaii.[121] REACH states that commission approval of the proposed Change of Control would have a direct and substantially adverse effect on REACH's property, financial, and economic interests, because such approval would affect whether or not distributed clean energy generation systems and distributed energy storage systems may be interconnected with the HECO Companies distribution circuits and systems.[122]

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[119]Paniolo Motion to Withdraw at 1-2.

[120]"Order No. 33155 Granting Paniolo Power Company, LLC's Motion to Withdraw," filed September 23, 2015.

[121]Order No. 32695 at 50 (citing "Motion for Intervention of Renewable Energy Action Coalition of Hawaii, Inc.; and Certificate of Service," filed February 6, 2015 ("REACH Motion to Intervene"), at 4).

[122]Order No. 32695 at 51 (citing REACH Motion to Intervene at 6).

While REACH does not appear opposed to the acquisition of the HECO Companies by NextEra in principle, REACH's position appears to be that the HECO Companies are not yet in an ideal position to be acquired, and will not be, until they can successfully create a "renewable planning process that inspires everyone's confidence, and validates that confidence by successful implementation of the first step of that plan[.]"[123]

22. Sierra Club

The Sierra Club states that it is (1) a national non-profit organization with 60 chapters and over 615,000 members nationwide; and (2) a leading public interest organization and the largest public interest environmental and clean energy membership organization in Hawaii, with over 120,000 members and supporters across the State.[124] Accordingly, Sierra Club states that its interests in this proceeding are related to NextEra's claims regarding clean energy transformation, and to ensuring that the

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[123]REACH Initial Brief at 28; see also, "Renewable Energy Action Coalition of Hawaii, Inc.'s Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("REACH Reply Brief"), at 24-25.

[124]Order No. 32695 at 51 (citing "Sierra Club's Motion to Intervene; Affidavit of Scott Glenn; Exhibit A; and Certificate of Service," filed February 18, 2015 ("Sierra Club Motion to Intervene"), at 3).

Merger is consistent and compliant with the public interest and Hawaii's clean energy needs and mandates.[125]

Sierra Club opposes the proposed Change of Control on the basis that Applicants have failed to meet their evidentiary burden and, instead, have demonstrated that the proposed Change of Control will undermine Hawaii's clean energy goals.[126] Moreover, Sierra Club states that conditioned approval of the Application would be insufficient, because (1) Applicants' burden of proof should not be shifted to the commission and the Parties; and (2) there are no conditions that can resolve the underlying structural problems (such as misalignment with Hawaii's priorities and cultural values).[127]

23. SunEdison, LLC ("SunEdison")

SunEdison states that it is "a global leader in transforming how energy is generated, distributed and owned, and is the world's largest renewable energy development company," and is specifically involved in the manufacture of solar technology and the development, financing, installation, and operation of

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[125]Order No. 32695 at 52 (citing Sierra Club Motion to Intervene at 8).

[126]Sierra Club Initial Brief at 1; see also, "Sierra Club's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("Sierra Club Reply Brief") at 20.

[127]Sierra Club Initial Brief at 39.

distributed solar power plants, delivering electricity and services to residential, commercial, governmental, and utility customers.[128] SunEdison has a number of renewable energy projects in Hawaii, including 150 megawatts ("MW") of utility-scale wind projects, and had three utility-scale solar projects on Oahu.[129] Accordingly, SunEdison states that how the commission reviews and evaluates the proposed Merger and what conditions, if any, it attaches to the Merger will impact SunEdison's existing and future operations in Hawaii.[130]

SunEdison does not object to the proposed Change of Control in principle, but submits that the commission should only grant approval of the Application subject to certain conditions to "properly ensure that full and robust competition continues to exist in Hawai'i's power generation market."[131] These conditions

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[128]Order No. 32695 at 52 (citing "Motion to Intervene by SunEdison, Inc.; Affidavit of Kelly O'Brien; and Certificate of Service," filed February 18, 2015 ("SunEdison Motion to Intervene"), at 3).

[129]Order No. 32695 at 53 (citing SunEdison Motion to Intervene at 3). The commission takes judicial notice of the fact that three commission-approved SunEdison solar projects set to be built in Kalaeloa, Mililani, and Waipio were terminated by HECO in February of 2016. See Docket Nos. 2014-0356, 2014-0357, and 2014-0359.

[130]Order No. 32695 at 53-54 (citing SunEdison Motion to Intervene at 6).

[131]SunEdison Initial Brief at 2; see also, "Intervenor SunEdison, LLC's Post-Evidentiary Hearing Reply Brief; and

include: (1) revising the Code of Conduct governing communications between the HECO Companies and NextEra; (2) revising the Competitive Bidding Framework; (3) imposing limitations on self-build and waiver projects; and (4) requiring the HECO Companies to complete the PSIP process, with specific Commitments regarding the procurement of renewable energy and energy storage.[132]

Additionally, SunEdison states that if the commission approves the Application, it should impose a moratorium on Applicants' (as well as their subsidiaries' and affiliates') ability to participate in any solicitations or seek waivers from the Competitive Bidding Framework for any generation or storage project to be owned by NextEra or any self-build project to be owned by the HECO Companies, pending the completion of the conditions proposed by SunEdison.[133]

24. SunPower Corporation ("SunPower")

SunPower states that it designs and manufactures high efficiency DER projects, including solar PV and battery storage projects, and designs, finances, builds, and operates PV projects worldwide, including over 40 MW of residential and commercial

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Certificate of Service," filed May 2, 2016 ("SunEdison Reply Brief"), at 2.

[132]SunEdison Initial Brief at 9-31.

[133]SunEdison Initial Brief at 31.

systems in Hawaii.[134] Given its property and financial interests in DER services, SunPower states that it has an interest in this proceeding, as the proposed Change of Control may result in substantial changes to the HECO Companies rates and services, which may impact the ability for customers to engage in SunPower's DER projects.[135]

SunPower does not appear to take a definitive position on the Application, but states its concerns over Applicants' alleged lack of commitment to supporting rooftop solar and other customer-side DER, as set forth in the Commission's Inclinations.[136] As such, SunPower states that if the commission approves the Application, the commission should condition any such approval on ensuring that Applicants will "embrace the role of rooftop solar and other customer-sited DER as an integral component of a more efficient, reliable, and resilient, and more secure grid in each of the HECO Companies' networks."[137]

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[134]Order No. 32695 at 54 (citing "SunPower Corporation's Motion to Intervene; Verification; and Certificate of Service," filed February 18, 2015 ("SunPower Motion to Intervene"), at 2).

[135]Order No. 32695 at 55 (citing SunPower Motion to Intervene at 5).

[136]See Sunpower Initial Brief at 2-3.

[137]Sunpower Initial Brief at 15-16.

25. The Alliance for Solar Choice ("TASC")

TASC's stated mission is to lead advocacy across the country for the rooftop solar industry.[138] TASC's membership includes the "vast majority of the nation's rooftop solar market and include SolarCity, SunRun, and Solar Universe," and that "[t]hese companies and their partners collectively serve the majority of solar customers in Hawaii, are responsible for over 10,000 residential, school, government and commercial installations in the State, and collectively employ hundreds of Hawaii residents."[139] TASC thus states that it has an interest in ensuring that NextEra, as a potential successor utility to the HECO Companies, is committed to preserving and expanding the market for service and products provided by TASC's members, as well as maintaining the value of investments made by TASC's customers.[140]

TASC urges the commission to reject the Application outright[141] because it will harm ratepayers and detrimentally

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[138]Order No. 32695 at 28 (citing "Motion to Intervene of the Alliance for Solar Choice; Verification; and Certificate of Service," filed February 18, 2015 ("TASC Motion to Intervene") at 3).

[139]Order No. 32695 at 28-29 (citing TASC Motion to Intervene at 3). The commission observes that Solar City has since withdrawn its membership in TASC.

[140]Order No. 32695 at 29 (citing TASC Motion to Intervene at 7-8 [footnote omitted]).

[141]TASC Initial Brief at 3.

impact achievement of the State's clean energy goals.[142] In particular, TASC argues that the record demonstrates that NextEra is "committed to impose an outdated utility-centric business model that is fundamentally at odds with empowering customers to manage their energy use and bills and the increasingly non-traditional utility business functions that the HECO Companies must perform to meet the State's renewable energy goals."[143]

26. Tawhiri Power LLC ("Tawhiri")

Tawhiri states that it operates a wind farm in the Ka'u District of the County of Hawaii, and is a Qualifying Facility that has an existing PPA with HELCO.[144] Tawhiri states it has an interest in the proceeding due to the possibility that the Application, if approved, might result in curtailment of wind farm production, which would directly affect Tawhiri's revenues from HELCO.[145]

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[142]TASC Initial Brief at 3; see also, "The Alliance for Solar Choice Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("TASC Reply Brief"), at 3.

[143]TASC Reply Brief at 4.

[144]Order No. 32695 at 55-56 (citing "Tawhiri Power LLC's Motion to Intervene; Verifications; and Certificate of Service," filed February 18, 2015 ("Tawhiri Motion to Intervene"), at 2-3).

[145]Order No. 32695 at 56 (citing Tawhiri Motion to Intervene at 3-4).

Tawhiri opposes the Application as currently proposed.[146] Specifically, Tawhiri raises concerns with the potential effect on competition, NextEra's attitude toward the risk of utility death spirals, and NextEra's endorsement of the HECO Companies' outdated DER plans.[147] However, if the commission is inclined to grant approval, Tawhiri submits that the commission should impose conditions on the Application that would bar Applicants (and any affiliates and subsidiaries) from competing in any RFPs or requesting exemption or waiver from the Competitive Bidding Framework for five to ten years.[148] Alternatively, if the HECO Companies are allowed to bid, Tawhiri recommends that the commission establish a moratorium on such bidding until the PSIPs are complete, and the commission concludes a reexamination of the Competitive Bidding Framework and develop a Code of Conduct.[149]

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[146]Tawhiri Initial Brief at 1; see also, "Tawhiri Power LLC's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016 ("Tawhiri Reply Brief"), at 1.

[147]Tawhiri Initial Brief at 2-4; see also, Tawhiri Reply Brief at 2.

[148]Tawhiri Initial Brief at 17-18 and Tawhiri Reply Brief at 9.

[149]Tawhiri Initial Brief at 18.

27. Ulupono Initiative ("Ulupono")

Ulupono states that it is a "Hawaii-focused social impact investment organization" whose mission is to "improve the quality of life for island residents in three areas: more renewable energy, more locally produced food, and less waste."[150] Ulupono states that it has an interest in the Application because it has "invested tens of millions of dollars to support sustainability and renewable energy enterprises, energy efficiency projects (e.g. district cooling), and agricultural endeavors" in Hawaii, and Ulupono believes it is necessary to review how the Merger will affect the financial stability of the HECO Companies, as well as the development, construction, and operation of renewable generation and energy storage projects in Hawaii.[151]

Ulupono opposes the Application in its current form, but supports conditioned approval.[152] Ulupono expresses support for the acquisition of the HECO Companies by NextEra, but laments the lack of unconditional, enforceable commitments offered by

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[150]Order No. 32695 at 56-57 (citing "Motion to Intervene of Ulupono Initiative LLC; Affidavit of E. Kyle Datta; and Certificate of Service," filed February 18, 2015 ("Ulupono Motion to Intervene"), at 1-2).

[151]Order No. 32695 at 58 (citing Ulupono Motion to Intervene at 12-13).

[152]See Ulupono Initial Brief at 1 and 35; see also, "Post-Evidentiary Hearing Reply Brief of Ulupono Initiative LLC," filed May 2, 2016 ("Ulupono Reply Brief"), at 1 and 10.

Applicants.[153] In particular, Ulupono argues that approval of the Application should contain conditions that require: (1) $100 million in guaranteed rate credits; (2) an acceleration of near-term RPS targets; (3) "true" ring-fencing measures; and (4) protection of the competitive framework for Hawaii's electric markets.[154]

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[153]Ulupono Initial Brief at 1.

[154]Ulupono Reply Brief at 9. Ulupono states that these conditions are "[o]f the utmost importance," id. at 9, but also argues for the inclusion of additional conditions, as listed in its Initial Brief at pages 36-39. See Ulupono Initial Brief at 36-39.

APPENDIX C - PROCEDURAL HISTORY[1]

On January 29, 2015, the HECO Companies and NextEra ("Applicants") filed an Application with the commission requesting that the commission approve the proposed Change of Control of the HECO Companies, and other related matters.

On January 29, 2015, LOL filed its Motion to Intervene in this docket. On February 6, 2015, REACH filed its Motion to Intervene, on February 11, 2015 HIEC and KIUC filed Motions to Intervene, and on February 17, 2015 HWSC, KLMA, COM, HSEA, FOL, and Puna Pono filed their Motions to Intervene in this docket.[2]

On February 18, 2015, COH, IBEW, Ulupono, TASC, AES, Blue Planet, SunPower, Tawhiri, HPVC, Paniolo, Hawaii Gas, HREA, OSP, DBEDT, Sierra Club, SunEdison, HINA, and HBWS filed Motions to Intervene in this docket.

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[1]Due to the multitude of Information Requests and Responses that were filed with the commission throughout this docket by various Parties, this Procedural History does not detail the various dates that IRs and their Responses were filed. In addition, due to the volume of Public Comments that the commission has received throughout this proceeding, this Procedural History does not list the dates and times of filing of each comment. However, all of these documents are posted on the Commission's Docket Management System in Docket No. 2015-0022.

[2]The Motions to Intervene were described in detail in Appendix B, above.

The Consumer Advocate timely filed responses to all of the aforementioned Motions to Intervene stating that it did not take a position on any of the Parties' intervention.[3]

On February 4, 2015, Applicants filed a Stipulation for Protective Order to establish procedures regarding the use and disclosure of information considered to be confidential in the docket.[4]

On February 6, 2015, Applicants filed a Memorandum in Opposition to Life of the Land's Motion to Intervene, asking the commission to deny LOL's Motion to Intervene because LOL had failed to satisfy the legal requirements for intervention.[5]

Applicants filed similar Memoranda in Opposition to REACH's Motion to Intervene on February 13, 2015; KIUC's Motion to Intervene on February 18, 2015; HIEC's Motion to Intervene on February 23, 2015; KLMA and HWSC's Motions to Intervene on February 24, 2015; Puna Pono, HINA, TASC, HREA, FOL, Blue Planet, and HSEA's Motions to Intervene on February 25, 2015; HBWS' Motion

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[3]The Consumer Advocate did not file a response to COH or HREA's Motions to Intervene, and on March 6, 2015, the Consumer Advocate filed letters with the commission explaining that it had not been served with a copy of COH or HREA's Motions to Intervene, and that it was why it did not file a response.

[4]HECO Companies' "Stipulation for Protective Order; Exhibit A; and Certificate of Service," filed February 4, 2015.

[5]Applicants' "Memorandum in Opposition to Life of the Land's Motion to Intervene; Exhibit 1; Declaration of Kris N. Nakagawa; and Certificate of Service," filed February 6, 2016.

to Intervene on February 26, 2016; and HPVC, Ulupono, Sierra Club, SunPower, AES, SunEdison, Hawaii Gas, Tawhiri, and Paniolo's Motions to Intervene on February 27, 2015.[6]

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[6]Applicants' "Memorandum in Opposition to Renewable Energy Action Coalition of Hawaii Inc.'s Motion to Intervene; and Certificate of Service," filed February 13, 2015; "Memorandum in Opposition to Kauai Island Utility Cooperative's Motion to Intervene; and Certificate of Service," filed February 18, 2015; "Memorandum in Opposition to Hawaii Island Energy Cooperative's Motion to Intervene; and Certificate of Service," filed February 23, 2015; "Memorandum in Opposition to Ka Lei Maile Ali'i Hawaiian Civic Club's Motion to Intervene; and Certificate of Service;" and "Memorandum in Opposition to Hawaii Water Service Company Inc.'s Motion to Intervene; and Certificate of Service filed February 24, 2015; "Memorandum in Opposition to Puna Pono Alliance's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to Hina Power Corp.'s Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to The Alliance for Solar Choice's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to Hawaii Renewable Energy Alliance's Motion to Intervene; Exhibit 1; Declaration of Kris N. Nakagawa; and Certificate of Service;" "Memorandum in Opposition to Friends of Lanai's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to Hawaii Solar Energy Association's Motion to Intervene; and Certificate of Service;" and "Memorandum in Opposition to Blue Planet Foundation's Motion to Intervene; and Certificate of Service;" filed February 25, 2015; "Memorandum in Opposition to Honolulu Board of Water Supply's Motion to Intervene; and Certificate of Service," on February 26, 2015; "Memorandum in Opposition to Hawaii PV Coalition's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to Ulupono Initiative LLC's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to Sierra Club's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to SunPower Corporation's Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to AES Hawaii, Inc.'s Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to SunEdison, Inc.'s Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to The Gas Company, LLC dba Hawaii Gas' Motion to Intervene; and Certificate of Service;" "Memorandum in Opposition to Tawhiri Power LLC's Motion to Intervene; and Certificate of Service;" and "Memorandum in

On February 18, 2015, the Consumer Advocate filed its Preliminary Statement of Position, stating that it was unable to state its position regarding the proposed Change of Control, and that it had initiated in-depth discovery "to aid in its assessment of numerous issues, including and not limited to affordability of electric service, safety and reliability of the relevant systems, access to onsite generation, achievement of clean energy goals and applicable public policies, and economic benefits."[7]

Applicants filed a Statement of No Opposition to OSP's and DBEDT's Motions to Intervene on February 20, 2015,[8] and a Statement of No Opposition to COH's and COM's Motions to Intervene on February 26, 2015.[9]

On February 27, 2015, KIUC filed a Motion for Leave to File a Reply to Applicants' Memorandum in Opposition to KIUC's

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Opposition to Paniolo Power Company LLC's Motion to Intervene; and Certificate of Service," filed February 27, 2015.

[7]"Division of Consumer Advocacy's Preliminary Statement of Position," filed February 18, 2015, at 2.

[8]"Applicants' "Statement of No Opposition to The Office of Planning, State of Hawaii's Motion to Intervene; and Certificate of Service," and "Statement of No Opposition to the Department of Business, Economic Development, and Tourism, State of Hawaii's Motion to Intervene; and Certificate of Service," filed February 20, 2015.

[9]Applicants' "Statement of No Opposition to the County of Hawaii's Motion to Intervene; and Certificate of Service," and "Statement of No Opposition to the County of Maui's Motion to Intervene; and Certificate of Service," filed February 26, 2015.

Motion to Intervene, setting forth the basis for KIUC's interest in intervening in the docket.[10]

On February 27, 2015, Applicants also filed a Memorandum in Response to IBEW's Motion to Intervene, stating that it did not oppose granting IBEW limited participation status.[11]

On March 2, 2015, the commission issued Order No. 32695, initiating the instant proceeding, establishing standards of review, an initial statement of issues and initial procedures, and resolved the pending motions to intervene, permitting intervention to AES, Blue Planet, COH, COM, DBEDT, FOL, Hawaii Gas, HIEC, HINA, HPVC, HREA, HSEA, HWSC, HBWS, IBEW, KIUC, KLMA, LOL, OSP, Paniolo, Puna Pono, REACH, Sierra Club, SunEdison, SunPower, Tawhiri, and Ulupono, as well as conditional intervention to TASC.[12]

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[10]KIUC's "Motion for Leave to File Reply to Hawaiian Electric Company, Inc., Maui Electric Company, Limited, Hawaii Electric Light Company, Inc. and NextEra Energy, Inc.'s Memorandum in Opposition to Kauai Island Utility Cooperative's Motion to Intervene; Reply Memorandum; Declaration of Peter J. Hamasaki; Exhibit 'A'; and Certificate of Service," filed February 27, 2015.

[11]Applicants' "Memorandum in Response to International Brotherhood of Electrical Workers Local Union 1260's Motion to Intervene; and Certificate of Service," filed February 27, 2015.

[12]Order No. 32695, "Initiating Proceeding; Establishing Standards of Review, Initial Statement of Issues, and Initial Procedures; and Addressing Intervention Requests," filed March 2, 2015. The commission granted TASC conditional intervention, requiring that it file an affidavit confirming that it had met the requirements of HAR § 6-61-12(b)(2). On March 10, 2015, TASC filed a motion requesting that Timothy J. Lindl be permitted to participate as counsel for TASC in this docket.

On March 9, 2015, Paniolo filed a Motion to Consolidate, requesting that the commission consolidate the instant docket with Docket No. 2014-0183 (regarding the HECO Companies' Power Supply Improvement Plan) because of "inextricably-related common questions of law and fact."[13]

On March 11, 2015, the Consumer Advocate filed a motion requesting that the commission adopt its proposed procedural schedule and extend the August 31, 2015 deadline for submission of all discovery requests and testimony ("Motion for Approval of Proposed Procedural Schedule").[14]

On March 13, 2015 COM filed a response in support of Paniolo's Motion to Consolidate. On March 16, 2015, HBWS filed a statement of no position, and LOL, Puna Pono, and FOL filed responses in opposition to Paniolo's Motion to Consolidate. On March 17, COH filed a response in support of Paniolo's Motion to Consolidate, and on March 18, 2015, Applicants, Tawhiri, and the Consumer Advocate filed responses in opposition to; KIUC, HIEC, DBEDT, OSP, Sierra Club, HPVC, HSEA, TASC, SunPower, HWSC, and

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[13]Paniolo's "Motion to Consolidate; Declaration of Dean T. Yamamoto; Exhibits '1' and '2'; and Certificate of Service," filed March 9, 2015.

[14]"Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony; Attachment 1; and Certificate of Service," filed March 11, 2015.

KLMA took no position on; Blue Planet filed a response stating that it had no opposition to; and SunEdison, REACH, IBEW, HREA, Hawaii Gas, Ulupono, and AES filed a joinder, to Paniolo's Motion to Consolidate. On March 20, 2015, KLMA filed a statement of no position on Paniolo's Motion to Consolidate.[15]

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[15]The following responses to the Paniolo Motion were filed with the commission: (1) "County Of Maui's Response To Paniolo Power Company's Motion To Consolidate And Certificate Of Service," in support of Motion, filed March 13, 2015; (2) "Opposition To Docket Consolidation, Verification And Certificate Of Service," filed jointly by Life of the Land and Puna Pono Alliance on March 16, 2 015; (3) "Friends Of Lanai's Motion In Opposition To Paniolo Power's Motion To Consolidate & Certificate Of Service," filed March 16, 2015; (4) "Honolulu Board Of Water Supply's Statement Of No Position To Paniolo Power Company, LLC's Motion To Consolidate Filed On March 9, 2015 And Certificate Of Service," filed March 16, 2015; (5) "County Of Hawaii's Response To Paniolo Power Company's Motion To Consolidate And Certificate Of Service," filed March 17, 2015; (6) "Hawaii Water Service Company, Inc.'s Statement Of No Position To Paniolo Power Company, LLC's Motion To Consolidate Filed on March 9, 2015, And Certificate Of Service," filed March 18, 2015; (7) "Intervenor Hawaii Island Energy Cooperative's Statement Of No Position As To Paniolo Power Company, LLC s Motion To Consolidate Filed on March 9, 2015, And Certificate Of Service," filed March 18, 2015; (8) "Intervenor Kauai Island Cooperative's Statement Of No Position As To Paniolo Power Company, LLC's Motion To Consolidate Filed on March 9, 2015, And Certificate Of Service," filed March 18, 2015; (9) "SunEdison, LLC, Renewable Energy Action Coalition Of Hawaii, Inc., International Brotherhood Of Electrical Workers Local Union 1260, Hawaii Renewable Energy Alliance, The Gas Company, LLC, dba Hawaii Gas, and Ulupono Initiative LLC's Joined To Paniolo Power Company, LLC's Motion To Consolidate And Certificate Of Service," filed March 18, 2015; (10) "AES Hawaii, Inc.'s Joinder To Paniolo Power Company, LLC's Motion To Consolidate And Certificate Of Service," filed March 18, 2015; (11) "Blue Planet Foundation's Response To Paniolo Power Company, LLC's Motion To Consolidate And Certificate Of Service," filed March 18, 2015; (12) "Division Of Consumer Advocacy's Memorandum In Opposition To Paniolo Power Company, LLC's Motion To Consolidate And Certificate Of Service," filed March 18, 2015; (13) "Memorandum In Opposition To Paniolo Power

On March 16, 2015, the Department of the Navy on behalf of the DOD filed an untimely Motion to Intervene and Become a Party, stating that it met the requirements for intervention in this proceeding and that it had good cause for submitting its motion after the deadline for intervention.[16]

On March 16, 2015, LOL and Puna Pono filed a response in partial support of, and Applicants' filed a motion for leave to file an opposition and memorandum in opposition to, the Consumer Advocate's Motion for Approval of Proposed Procedural Schedule.[17] On March 18, 2015, HBWS filed a memorandum in support of the

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Company, LLC's Motion To Consolidate And Certificate Of Service," filed by the HECO Companies and NextEra Energy, Inc., on March 18, 2015; (14) "Tawhiri Power LLC's Memorandum In Opposition To Paniolo Power Company, LLC's Motion To Consolidate And Certificate Of Service," filed March 18, 2015; (15) "The Department Of Business, Economic Development, And Tourism, The Office Of Planning, State Of Hawaii, Sierra Club, Hawaii PV Coalition, Hawaii Solar Energy Association, The Alliance For Solar Choice, And Sunpower Corporation's Statement Of No Position In Response To Motion To Consolidate And Certificate Of Service," filed March 18, 2015; and (16) "Ka Lei Maile Ali'i Hawaiian Civic Club's Position Re Paniolo Motion to Consolidate; and Certificate of Service," filed March 20, 2015.

[16]DOD "Motion to Intervene and Become a Party; and Certificate of Service," filed March 16, 2015.

[17]LOL and Puna Pono's "Partial Support for Docket Expansion; Verification; and Certificate of Service;" and "Hawaiian Electric Company's and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony; Exhibit 1; and Certificate of Service," filed March 16, 2015.

Consumer Advocate's Motion for Approval of a Proposed Procedural Schedule.[18]

On March 16, 2015, LOL and Puna Pono also filed a response in opposition to Applicants' request for a Protective Order, filed on February 4, 2015.[19] On March 20, 2015, Paniolo filed a response to Applicants' request for a Protective Order.[20]

On March 19, 2015, on its own motion, the commission issued Protective Order No. 32726, which governs the classification, acquisition, and use of trade secrets, and other confidential information produced in this docket.

On March 20, 2015, COH, COM, Sierra Club, FOL, HPVC, HSEA, HINA, KLMA, REACH, SunPower, Tawhiri, TASC, Ulupono, Hawaii Gas, Paniolo, AES, SunEdison, IBEW, DBEDT, and HREA filed responses in support of; KIUC and HIEC filed statements of no position on; the Office of Planning filed a statement of no objection to; and HWSC filed a response in support of the deadline extension in, the

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[18]"Honolulu Board of Water Supply's Memorandum in Support of the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony Filed on March 11, 2015; and Certificate of Service," filed March 18, 2015.

[19]"Opposition to Proposed Protective Order; Verification; and Certificate of Service," filed March, 16, 2015.

[20]"Paniolo Power Company, LLC's Response to Stipulation for Protective Order Filed February 4, 2015; and Certificate of Service," filed on March 20, 2015.

Consumer Advocate's Motion for Approval of Proposed Procedural Schedule.[21]

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[21]On March 20, 2015, the following responses were filed with the commission: (1) "Intervenor County of Hawaii's Response to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Compete All Discovery and File All Testimony; and Certificate of Service;" (2) "County of Maui's Response to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony; and Certificate of Service;" (3) "Joinder and Statement in Support of Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony; Declaration of James M. Van Nostrand; and Certificate of Service;" (4) "Intervenor Hawaii Island Energy Cooperative's Statement of No Position As To Division of Consumer Advocacy's Motion for Approval of Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, Filed March 11, 2015; and Certificate of Service;" (5) "The Office of Planning, State of Hawaii's Statement of No Objection to Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony; and Certificate of Service;" (6) "Hawaii Water Service Company, Inc.'s Statement of Position on the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony Filed on March 11, 2015; and Certificate of Service;" (7) "Intervenor Kauai Island Utility Cooperative's Statement of No Position As To Division of Consumer Advocacy's Motion for Approval of Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, Filed March 11, 2015; and Certificate of Service;" and (8) Response of Ulupono Initiative, LLC, The Gas Company, LLC, dba Hawaii Gas, Paniolo Power Company, LLC, AES Hawaii, Inc., SunEdison, Inc., International Brotherhood of Electrical Workers Local Union 1260, Department of Business, Economic Development, and Tourism, and Hawaii Renewable Energy Alliance to The Division of Consumer Advocacy's Motion for Approval of the Consumer

On March 20, 2015, the commission issued Order No. 32727, denying Paniolo's Motion to Consolidate, concluding that "given the complexity of the issues raised by the Merger application, as well as the number of parties that have been granted Intervenor status in this docket, the commission concludes that it would not be practical, reasonable, or prudent to merge these dockets at this time."[22]

On March 20, 2015, the Consumer Advocate filed a response stating that it was not taking a position on DOD's Motion to Intervene.[23]

Pursuant to Order No. 32695, on March 23, 2015, various Parties submitted comments, additions, and/or modifications to the list of issues set forth in Order No. 32695, and the proposed procedural orders setting forth the schedule and procedures to govern the proceeding.[24]

Advocate's Proposed Procedural Schedule and an Extension of Time From the August 31, 2015 Deadline to Complete All Discovery and File All Testimony; and Certificate of Service."

[22]Order No. 32727, "Denying Motion to Consolidate of Paniolo Power Company, LLC," filed March 20, 2015, at 3-4.

[23]"Division of Consumer Advocacy's Response to the Motion to Intervene and Become a Party by the Department of the Navy on Behalf of the Department of Defense; and Certificate of Service," filed March 20, 2015.

[24]"Life of the Land's & Puna Pono Alliance's Comments on Order 32695 Re: Initial Statement of the Issues; Verification; and Certificate of Service;" "International Brotherhood of Electrical Workers Local Union 1260's Proposed Additions and Modifications to the Initial Statement of Issues Set Forth in the Commission's Order

No. 32695 and Proposed Procedural Order; and Certificate of Service;" "Honolulu Board of Water Supply's Comments and Suggestions, With Regard To Commission Order No. 32695, Filed on March 2, 2015; and Certificate of Service;" "The Department of Business, Economic Development, and Tourism's Proposed Additions and Modifications to the List of Issues Set Forth in Section III or Order No. 32695; and Certificate of Service;" "Office of Planning, State of Hawaii's Response to the Commission's Order No. 32695 Relating to the Statement of Issues; and Certificate of Service;" "Joinder by the County of Hawaii and the County of Maui ("Counties") to the Procedural Order, Exhibit 1, Proposed by Ulupono Initiative, LLC et al ("Joint Respondents"); Counties' Joint Comments on the Statement of Issues; and Certificate of Service;" "Letter from David J. Minkin, Brian T. Hirai, and Peter J. Hamasaki to the commission on behalf of HIEC; and Certificate of Service;" "Letter from David J. Minkin, Brian T. Hirai, and Peter J. Hamasaki to the commission on behalf of KIUC; and Certificate of Service;" "Letter from Sandra-Ann Y.H. Wong to the commission on behalf of Tawhiri Power LLC; and Certificate of Service"; "Paniolo Power Company, LLC's (I) Proposed Additions and Modifications to the List of Issues Set Forth in the Commission's Order No. 32695 and (II) Proposed Procedural Order; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' (I) Proposed Additions and Modifications to the List of Issues Set Forth in the Commission's Order No. 32695 and (II) Proposed Procedural Order; and Certificate of Service;" "AES Hawaii, Inc.'s (I) Proposed Additions and Modifications to the List of Issues Set Forth in the Commission's Order No. 32695 and (II) Proposed Procedural Order; and Certificate of Service;" "Blue Planet Foundation's Response to Proposed Procedural Orders; and Certificate of Service;" "Hawaii Renewable Energy Alliance's Proposed Additions and Modifications to (I) The List of Issues Set Forth in the Commission's Order No. 32695 and (II) Proposed Procedural Order; and Certificate of Service;" "Letter from Sandra-Ann Y.H. Wong to the commission on behalf of SunPower Corporation, Hawaii PV Coalition, Hawaii Solar Energy Association, HINA Power Corp, Renewable Energy Action Coalition of Hawaii, Sierra Club, and The Alliance for Solar Choice (the "Joint Parties"); and Certificate of Service;" "Letter from Thomas W. Williams, Jr., Peter Y. Kikuta, Kent D. Morihara, Kris N. Nakagawa, Lauren M. Imada, and Yvonne Y. Izu to the commission on behalf of Applicants; and Exhibit 1 ("Stipulated Procedural Order"); and Certificate of Service;" and "Letter from Robin Kaye to the commission on behalf of Friends of Lanai," filed on March 23, 2015.

On March 25, 2015, HIEC and KIUC filed responses stating that they were not taking a position on Applicants' Motion for Leave to file an opposition to the Consumer Advocate's Motion for Approval of Proposed Procedural Schedule.[25]

On March 25, 2015, HIEC and KIUC filed statements of no position on the DOD's Motion to Intervene.[26] IBEW, Sierra Club, Blue Planet, DBEDT, FOL, HPVC, HSEA, HINA, KLMA, LOL, OSP, REACH, SunEdison, TASC, Ulupono, AES, Hawaii Gas, Paniolo, Tawhiri, and SunPower filed statements of no position regarding: (1) Applicants' Motion for Leave to file an opposition to the Consumer

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[25]"Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, Filed March 16, 2015; and Certificate of Service;" and "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, Filed March 16, 2015; and Certificate of Service," filed March 25, 2015.

[26]"Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to the Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party, Filed March 16, 2015; and Certificate of Service;" and "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to the Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party, Filed March 16, 2015; and Certificate of Service," filed March 25, 2015.

Advocate's Motion for Approval of Proposed Procedural Schedule; and (2) DOD's Motion to Intervene.[27]

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[27]"Joint Statement of No Opposition to (1) Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, and (2) The Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party; and Certificate of Service;" "AES Hawaii Inc.'s Statement of No Position To (1) Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, and (2) The Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' Statement of No Position to (1) Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, and (2) The Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party; and Certificate of Service;" "Paniolo Power Company, LLC's Statement of No Position To (1) Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, and (2) The Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party; and Certificate of Service;" and Tawhiri Power, LLC and SunPower Corporation's "Statement of No Position To (1) Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Opposition to the Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony, and (2) The Department of the Navy on Behalf of the Department of Defense's Motion to Intervene and Become a Party; and Certificate of Service," filed March 25, 2015.

On April 1, 2015, the commission issued Order No. 32738, "Denying the 'Division of Consumer Advocacy's Motion for Approval of the Consumer Advocate's Proposed Procedural Schedule and an Extension of Time from the August 31, 2015 Deadline to Complete All Discovery and File All Testimony' and Clarifying Certain Procedures," and Order No. 32729, "Establishing Issues and Initial Procedural Schedule, and Addressing Related Matters."

The commission also issued Order No. 32740, "Addressing Intervention Request Submitted by the Department of the Navy on Behalf of the Department of Defense," in which it concluded that "[g]iven the nature of the proposed transaction, and the commission's decision to ensure that a broad spectrum of interests are represented in the proceeding, the commission will grant DOD's Motion, subject to [] conditions."[28]

On April 6, 2015, LOL issued its First Information Requests to NextEra and HECO.[29] Throughout the following seven months, the Parties issued and responded to a multitude of information requests, directed from the other Parties and the commission to Applicants, and from Applicants to the other

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[28]Order No. 32740 at 6.

[29]"LOL's First Information Requests; LOL-IR-1 thru 30 to Applicant NextEra; LOL-IR-31 thru 53 to Applicant Hawaiian Electric Company; & Certificate of Service," filed April 6, 2015.

Parties.[30] All information requests and responses were filed with commission, and documents designated by the filing Party as confidential were filed under seal, pursuant to Protective Order No. 32726.

On April 7, 2015, LOL filed a Motion for Partial Reconsideration of Commission's Order 32729.[31]

On April 13, 2015, Applicants filed their exhibit list, direct testimonies, supporting exhibits, and a testimony issues matrix/table with the commission.[32]

On April 14, 2015, AES filed a Memorandum in Opposition to Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729.[33] Hawaii Gas and HREA filed joinders to AES's Memorandum in Opposition, Paniolo filed its own Memorandum in Opposition, and COH, COM, KIUC, HIEC, Sierra Club, Blue Planet,

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[30]The commission's first set of information requests directed to Applicants was issued on May 8, 2015.

[31]"LOL's Motion for Partial Reconsideration of Commission's Order 32729; Memorandum in Support of Motion for Partial Reconsideration; Request for a Hearing; & Certificate of Service," filed April 7, 2015.

[32]Applicants' Exhibit List; Direct Testimonies; Supporting Exhibits; Testimony Issues Matrix/Table; and Certificate of Service," filed April 13, 2015.

[33]"AES Hawaii, Inc.'s Memorandum in Opposition to Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729; and Certificate of Service," filed April 14, 2015.

DBEDT, HPVC, HSEA, HINA, IBEW, REACH, SunEdison, SunPower, Tawhiri, and TASC filed statements of no position.[34]

On April 15, 2015, HBWS filed a Notice of Appearance of Counsel.[35]

On April 17, 2015, the commission issued Order No. 32787, "Denying Life of the Land's Motion for Partial Reconsideration of Commission Order No. 32739."[36]

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[34](1) "The Gas Company, LLC, dba Hawaii Gas' Joinder to AES Hawaii, Inc.'s Memorandum in Opposition to Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729; and Certificate of Service;" (2) "Paniolo Power Company, LLC's Memorandum in Opposition to Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729; and Certificate of Service;" (3) "Hawaii Renewable Energy Alliance's Joinder to AES-Hawaii, Inc.'s Memorandum in Opposition to Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729; and Certificate of Service;" (4) "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to the Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729, Filed on April 7, 2015; and Certificate of Service;" (5) "Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to the Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729, Filed on April 7, 2015; and Certificate of Service;" (6) "Statement of No Position By the County of Hawaii and the County of Maui on Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729 and Request for Hearing Filed on April 7, 2015; and Certificate of Service;" and (7) "Joint Statement of No Position on Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729, Filed on April 7, 2015; and Certificate of Service," filed April 14, 2015.

[35]HBWS "Notice of Appearance of Counsel; and Certificate of Service," filed April 15, 2015.

[36]On April 27, 2015, FOL filed its Statement of No Position on Life of the Land's Motion for Partial Reconsideration of Commission's Order 32729." FOL's "Statement of No Position on Life of the Land's Motion for Partial Reconsideration of

On May 7, 2015, the commission issued Order No. 32832, "Granting Motion to Appear," which granted the "Motion to Appear on Behalf of The Alliance for Solar Choice," filed on March 10, 2015.

On May 8, 2015, Applicants filed a letter with the commission, informing the commission that Applicants had hosted a series of 13 informational open houses across Hawaii to introduce residents to NextEra and discuss the proposed Merger, which included attached written comments filed by the public.

On May 18, 2015, House Resolution No. 158 H.D. 2 was filed with the commission.

On May 29, 2015, Applicants filed a withdrawal and replacement of counsel, stating that Schlack Ito, LLC, would be replacing Morihara Lau & Fong LLP as NextEra's counsel in this proceeding.[37]

Commission's Order 32729; Memorandum in Support of Motion for Partial Reconsideration; Request for a Hearing, Filed on April 7, 2015," filed April 27, 2015.

[37]"Withdrawal and Replacement of Counsel; and Certificate of Service," filed May 29, 2015. On May 29, 2015, Hawaii Gas also filed a "Notice of Appearance of Co-Counsel for The Gas Company, LLC, dba Hawaii Gas," which gave notice that the law firm of Sullivan Meheula Lee, LLLP would be appearing on behalf of Hawaii Gas.

On June 16, 2015, Kristin J. Tarnstrom entered her appearance as co-counsel for the County of Maui.[38]

On July 6, 2015, AES filed a withdrawal and replacement of counsel pursuant to HAR § 6-61-12(b)(2).[39]

On July 9, 2015, LOL, Puna Pono, and KLMA (referring to themselves as the "Joint Parties"), filed their Revised Exhibit List, Revised Issues Matrix/Table, and Supplemental Testimony and Exhibits.[40]

On July 10, 2015, the commission issued Order No. 32984, granting the Motion to Appear of AES Hawaii, Inc., filed on July 6, 2015.

On July 15, 2015, Paniolo filed a Motion to Withdraw from this proceeding.[41]

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[38]"County of Maui's Notice of Appearance of Co-Counsel and Protective Agreement; and Certificate of Service," filed June 16, 2015.

[39]AES "Withdrawal and Replacement of Counsel; and Certificate of Service," and "Motion to Appear on Behalf of AES Hawaii, Inc.; Affidavit of Greggory L. Wheatland and Jeffery D. Harris; and Certificate of Service," filed July 6, 2015.

[40]"Joint Parties Revised Exhibit List; Revised Issues Matrix/Table; Supplemental Testimony & Exhibits; and Certificate of Service," filed July 9, 2015.

[41]"Motion to Withdraw; and Certificate of Service," filed July 15, 2015.

On July 17, 2015, HIEC filed its Exhibit List, Issues Matrix Table, Testimony, and Exhibits with the commission,[42] and on July 20, 2015, REACH and TASC independently filed their Issues Matrix/Table, Testimony, and Exhibits.[43]

On July 20, 2015, DOD filed the testimony of its witness, Ralph C. Smith., and supporting exhibits.[44] AES, OSP, DBEDT, KIUC, IBEW, HSEA, HWSC, HBWS, HREA, COM, Tawhiri, SunPower, COH, HPVC, Ulupono, SunEdison, Blue Planet, Sierra Club, Hawaii Gas, and FOL also independently filed their Exhibit Lists, Issues Matrix/Tables, and Direct Testimony and Exhibits.[45]

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[42]"Hawaii Island Energy Cooperative's Exhibit List, Issues Matrix Table, Testimony & Exhibits; and Certificate of Service," filed July 17, 2015.

[43]"Renewable Energy Action Coalition of Hawaii, Inc.'s Issues Matrix/Table, Testimony and Exhibits; and Certificate of Service;" and "Exhibit List, Direct Testimony, Supporting Exhibits and Testimony Issues Matrix/Table of The Alliance for Solar Choice; and Certificate of Service," filed July 20, 2015.

[44]"Testimony of Ralph C. Smith, CPA" and "Exhibits in Support of the Testimony of Ralph C. Smith," filed July 20, 2015.

[45]"AES Hawaii, Inc. Exhibit List, Issues Matrix/Table, Direct Testimony and Exhibits; and Certificate of Service;" "Office of Planning, State of Hawaii's Exhibit List, Direct Testimonies, Supporting Exhibits; and Certificate of Service;" "The Department of Business, Economic Development, and Tourism's Exhibit List, Issues Matrix, Answering and Direct Testimony, Supporting Exhibits; and Certificate of Service;" "Kauai Island Utility Cooperative's Exhibit List, Issues Matrix Table, Testimony & Exhibits; and Certificate of Service;" "International Brotherhood of Electrical Workers Local Union 1260's Exhibit List, Issues Matrix List, Direct Testimonies and Exhibits; and Certificate of Service;" "The Hawaii Solar Energy Association's Answering and Direct Testimony and Exhibits; and Certificate of Service;" "Hawaii Water Service Company, Inc.'s Exhibit List, Direct

On July 21, 2015, HINA filed its Issues Matrix/Table and Testimony.[46]

On July 22, 2015, the Consumer Advocate stated that it was not taking a position on Paniolo's Motion to Withdraw.[47]

Testimony, Testimony Issues Matrix; and Certificate of Service;" "Written Testimony and Supporting Exhibits of Honolulu Board of Water Supply; and Certificate of Service;" "Hawaii Renewable Energy Alliance's Direct Testimony of Warren S. Bollmeier II; and Certificate of Service," "County of Maui's Table of Testimony Issues, Exhibit List, Answering and Direct Testimony, Supporting Exhibits; and Certificate of Service;" "Tawhiri Power LLC's Exhibit List; Direct Testimonies; Supporting Exhibits; and Certificate of Service;" "SunPower Corporation's Direct Testimony of Thomas J. Starrs; Exhibits; Testimony Issues Matrix; and Certificate of Service;" "County of Hawaii's Exhibit List, Issues Matrix Table, Testimony & Exhibits; and Certificate of Service;" "Exhibit List, Direct Testimony, Support Exhibit and Testimony Issues Matrix/Table of The Hawaii PV Coalition; and Certificate of Service;" "Answering and Direct Testimony (Redacted) of E. Kyle Datta on Behalf of Ulupono Initiative, LLC; and Certificate of Service;" "Intervenor SunEdison, Inc.'s Exhibit List, Testimony Issues Matrix, Direct Testimony, Supporting Exhibits; and Certificate of Service;" "Blue Planet Foundation's Exhibit List, Testimony, Issues Matrix/Table, Supporting Exhibits 3-6; and Certificate of Service;" "Sierra Club's Exhibit List, Direct and Answering Testimony of Natalie A. Mims, Table of Issues Addressed, Supporting Exhibits; and Certificate of Service;" "The Gas Company, LLC, dba, Hawaii Gas' Exhibit List, Answering and Direct Testimonies Supporting Exhibits, Testimony Issues Table/Matrix; and Certificate of Service;" and "Written Testimony of Robin Kaye for Friends of Lanai; & Certificate of Service," filed July 20, 2015.

[46]"Hina Power Corp's Issues Matrix/Table and Testimony; and Certificate of Service," filed July 21, 2015.

[47]"Division of Consumer Advocacy's Response to the Motion to Withdraw of Paniolo Power Company, LLC; and Certificate of Service," filed July 22, 2015.

On August 3, 2015, Hawaii Gas filed a Motion to Compel, seeking production of any and all emails and attachments related to LNG between NextEra and HEI from January 1, 2014 up to the date of the Motion to Compel, as requested in HG-IR-14(e), and requesting a hearing on the motion.[48]

On August 4, 2015, the commission issued Order No. 33041, "Establishing Formal Evidentiary Hearing Dates and Location, Dates for Certain Procedural Matters, and Public Listening Session Dates and Locations."

On August 10, 2015, Applicants filed a Memorandum in Opposition to Hawaii Gas' Motion to Compel.[49] On August 10, 2015, the Consumer Advocate also filed its Direct Testimonies and Exhibits.[50]

On August 12, 2015, Hawaii Gas filed a Motion for Leave to file a reply in support of its August 3, 2015 Motion to Compel.[51]

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[48]"The Gas Company, LLC, dba Hawaii Gas' Motion to Compel; Memorandum in Support of Motion; Exhibits 1 to 2; and Certificate of Service," filed August 3, 2015.

[49]"Hawaiian Electric Companies' and NextEra Energy's Memorandum in Opposition to the Gas Company, LLC DBA Hawaii Gas' Motion to Compel; Exhibit A; Affidavit of Liann Ebesugawa; and Certificate of Service," filed August 10, 2015.

[50]"Division of Consumer Advocacy's Direct Testimonies and Exhibits," filed August 10, 2015.

[51]"The Gas Company, LLC, dba Hawaii Gas' Motion for Leave to File Reply in Support of The Gas Company, LLC, dba Hawaii Gas' Motion to Compel, Filed August 3, 2015; Declaration of William

Sierra Club and Blue Planet filed a Joint Statement of No Opposition to Hawaii Gas' Motion to Compel.[52]

On August 12, 2015, Sierra Club also filed a Notice of Appearance of Counsel and Designation of Representatives for Service, naming Kyle W. Wager as co-counsel for Sierra Club in this proceeding.[53]

On August 13, 2015, IBEW filed a Statement of No Opposition to Hawaii Gas' Motion to Compel.[54] On August 17, 2015 KIUC filed its Statement of No Position regarding Hawaii Gas'

Meheula; Exhibit 1; and Certificate of Service," filed August 12, 2015.

[52]"Sierra Club's and Blue Planet Foundation's Joint Statement of No Opposition to The Gas Company, LLC, dba Hawaii Gas's Motion to Compel, Filed on August 3, 2015; and Certificate of Service," filed August 12, 2015.

[53]"Notice of Appearance of Counsel and Designation of Representatives for Service; and Certificate of Service," filed August 12, 2015.

[54]"International Brotherhood of Electrical Workers Local Union 1260's Statement of No Opposition to The Gas Company, LLC, dba Hawaii Gas' Motion to Compel, Filed on August 3, 2015; and Certificate of Service," filed August 13, 2015.

Motion to Compel.[55] Ulupono filed a joinder to Hawaii Gas' Motion to Compel.[56]

On August 17, 2015, Ulupono also filed a Motion for Approval of the association of co-counsel Jason Kuzma.[57]

On August 19, 2015, the Consumer Advocate filed a Request to Take Testimony by Deposition Upon Oral Examination, requesting that the commission issue an order requiring the attendance of James L. Robo and Constance H. Lau to provide testimony at the upcoming evidentiary hearing, if necessary.[58]

On August 19, 2015, the Consumer Advocate also filed its Response to Ulupono Initiative LLC's Motion for Approval of

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[55]"Intervenor Kauai Island Utility Cooperative's Statement of No Position as to The Gas Company, LLC, dba Hawaii Gas' Motion to Compel, Filed on August 3, 2015; and Certificate of Service," filed August 17, 2015.

[56]"Ulupono Initiative LLC's Joinder to The Gas Company, LLC, dba Hawaii Gas' Motion to Compel, Filed on August 3, 2015; and Certificate of Service," filed August 17, 2015.

[57]"Ulupono Initiative LLC's Motion for Approval of Association of Co-Counsel Jason Kuzma; Declaration of Michael R. Marsh; Declaration of Jason Kuzma; [Form] Order Granting Ulupono Initiative, LLC's Motion for Approval of Association of Co-Counsel Jason Kuzma; and Certificate of Service," filed August 17, 2015.

[58]"Division of Consumer Advocacy's Request to Take Testimony by Deposition Upon Oral Examination; and Certificate of Service," filed August 19, 2015.

Association of Co-Counsel Jason Kuzma, stating that it did not take a position on the motion.[59]

On August 19, 2015, the Consumer Advocate filed a Motion for an Order to Compel Answers to Information Requests, requesting that the commission issue an order requiring Applicants to file responses to certain information requests.[60]

On August 20, 2015, a Notice of Public Listening Session in Kahului, Maui and Lanai City, Lanai was filed in this docket. LOL also filed a Motion for Media Access, requesting that the commission allow Olelo Community Television to film the evidentiary hearing.[61]

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[59]"Division of Consumer Advocacy's Response to Ulupono Initiative LLC's Motion for Approval of Association of Co-Counsel Jason Kuzma; and Certificate of Service," filed August 19, 2015.

[60]"Division of Consumer Advocacy's Motion for an Order to Compel Answers to Information Requests; Memorandum in Support of Division of Consumer Advocacy's Motion for an Order to Compel Answers to Information Requests; and Certificate of Service," filed August 19, 2015.

[61]"Life of the Land's Motion for Media Access; and Certificate of Service," filed August 20, 2015. The following responses were filed to LOL's Motion for Media Access: (1) "Tawhiri Power LLC's Response to Life of the Land's Motion for Media Access; and Certificate of Service," filed August 27, 2015; (2) "Joint Statement in Support of Life of the Land's Motion for Media Access; and Certificate of Service," filed August 27, 2015; (3) "County of Maui's Statement of Support of Life of the Land's Motion for Media Access; and Certificate of Service," filed August 28, 2015; (4) "Division of Consumer Advocacy's Response to Life of the Land's Motion for Media Access; Attachment 'A'; and Certificate of Service," filed August 28, 2015; (5) "Applicants' Statement of No Opposition to Life of the Land's Motion for Media Access; and Certificate of Service," filed August 28, 2015; (6) "Intervenor

On August 25, 2015, Hawaii Gas filed a statement in support of the Consumer Advocate's request to take testimony by deposition upon oral examination,[62] and a statement in support of the Consumer Advocate's motion for an order to compel answers to information requests.[63]

On August 27, 2015, DBEDT and OSP filed a joinder to the Consumer Advocate's request to take testimony by deposition upon oral examination.[64]

On August 27, 2015, Tawhiri and SunPower independently filed their responses to the Consumer Advocate's Motion for an Order to Compel Answers to Information Requests, and Request to

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Hawaii Island Energy Cooperative's Statement of No Position as to Life of the Land's Motion for Media Access, Filed on August 20, 2015; and Certificate of Service," filed September 3, 2015; and (7) "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to Life of the Land's Motion for Media Access, Filed on August 20, 2015; and Certificate of Service," filed September 3, 2015.

[62]"The Gas Company, LLC, dba Hawaii Gas' Statement in Support of Division of Consumer Advocacy's Request to Take Testimony by Deposition Upon Oral Examination, Filed August 19, 2015; and Certificate of Service," filed August 25, 2015.

[63]"The Gas Company, LLC, dba Hawaii Gas' Statement in Support of Division of Consumer Advocacy's Motion for an Order to Compel Answers to Information Requests, Filed August 19, 2015; and Certificate of Service," filed August 25, 2015.

[64]"The Department of Business, Economic Development, and Tourism, and the Office of Planning, State of Hawaii's Joinder to Division of Consumer Advocacy's Request to Take Testimony by Deposition Upon Oral Examination; and Certificate of Service," filed August 27, 2015.

Take Testimony by Deposition Upon Oral Examination, taking no position on either request.[65] Applicants also filed their opposition to the Consumer Advocate's request for depositions,[66] as well as a Memorandum in Response to the Division of Consumer Advocacy's Motion to Compel Answers to Information Requests.[67]

On August 27, 2015, Sierra Club, DBEDT, FOL, HPVC, HREA, HSEA, HINA, IBEW, KLMA, LOL, and TASC filed a joint statement in support of the Consumer Advocate's Motion for Order to Compel Answers to Information Request, and Request to Take Testimony by Deposition Upon Oral Examination.[68]

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[65]"Tawhiri Power LLC's Response to Division of Consumer Advocacy's Motion for an Order to Compel Answers to Information Requests and Request to Take Testimony by Deposition Upon Oral Examination; and Certificate of Service;" and "SunPower Corporation's Response to Division of Consumer Advocacy's Motion for an Order to Compel Answers to Information Requests and Request to Take Testimony by Deposition Upon Oral Examination; and Certificate of Service," filed August 27, 2015.

[66]"Applicants' Opposition to Division of Consumer Advocacy's Request for Depositions; Affidavit of Douglas A. Codiga; and Certificate of Service," filed August 27, 2015.

[67]"Hawaiian Electric Companies' and NextEra Energy's Memorandum in Response to the Division of Consumer Advocacy's Motion to Compel Answers to Information Requests; Exhibits A-C; Affidavit of Kurt K. Murao; and Certificate of Service," filed August 27, 2015.

[68]Sierra Club, DBEDT, FOL, HPVC, HREA, HSEA, HINA, IBEW, KLMA, LOL, and TASC's "Joint Statement in Support of Division of Consumer Advocacy's Motion for Order to Compel Answers to Information Request, and Request to Take Testimony by Deposition Upon Oral Examination; and Certificate of Service," filed August 27, 2015.

On August 31, 2015, Applicants filed their Responsive Testimonies.

On September 1, 2015, DOD filed a Motion for Order Establishing Definite Date for Testimony of DOD Expert Witness, ("Motion for Order Establishing Definite Date") to "avoid unnecessary costs for room and board for housing a visiting witness during the duration of the scheduled hearings before the [c]ommission."[69]

On September 3, 2015, HIEC and KIUC filed statements of no position on the Consumer Advocate's request to take testimony by deposition upon oral examination.[70] Life of the Land also filed a Motion for Order Establishing Definite Nature of Evidentiary Hearing, requesting information regarding how the commission intended to handle the evidentiary hearing process.[71]

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[69]"Department of Defense Motion for Order Establishing Definite Date for Testimony of DOD Expert Witness; and Certificate of Service," filed September 1, 2015, at 1.

[70]"Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to the Division of Consumer Advocacy's Request to Take Testimony by Deposition Upon Oral Examination, Filed on August 19, 2015; and Certificate of Service;" and "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to the Division of Consumer Advocacy's Request to Take Testimony by Deposition Upon Oral Examination, Filed on August 19, 2015; and Certificate of Service," filed September 3, 2015.

[71]"Life of the Land's Motion for Order Establishing Definite Nature of Evidentiary Hearing; and Certificate of Service," filed September 3, 2015.

On September 3, 2015, the commission issued Order No. 33096, "Granting The Gas Company, LLC, dba Hawaii Gas' Motion to Compel." The commission also issued Order No. 33097, "Directing The Gas Company, LLC, dba Hawaii Gas to Verify the Completeness and Accuracy of its Direct Testimonies and Exhibits," that were filed with the commission on July 20 and 21, 2015.

On September 3, 2015, Applicants also filed a Motion for Leave to File Memorandum in Opposition to the Joint Statement in Support of Division of Consumer Advocacy's Motion to Compel Answers to Information Request, and Request to Take Testimony by Deposition Upon Oral Examination.[72]

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[72] "Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Memorandum in Opposition to the Joint Statement in Support of Division of Consumer Advocacy's Motion to Compel Answers to Information Request, and Request to Take Testimony by Deposition Upon Oral Examination; Exhibit A; and Certificate of Service," filed September 3, 2015. On September 9, 2015, Sierra Club, DBEDT, FOL, HPVC, HREA, HSEA, HINA, IBEW, KLMA, LOL, OSP, Puna Pono, and TASC filed a statement of no position on Applicants' "Motion for Leave to File Memorandum in Opposition to the Joint Statement In Support of Division of Consumer Advocacy's Motion to Compel Answers to Information, and Request to Take Testimony by Deposition Upon Oral Examination." "Joint Statement of (1) No Position on Hawaiian Electric Companies' and NextEra Energy's Motion for Leave to File Memorandum in Opposition to the Joint Statement in Support of Division of Consumer Advocacy's Motion to Compel Answers to Information Request, and Request to Take Testimony by Deposition Upon Oral Examination; and (2) Support of Department of Defense Motion for Order Establishing Definite Date for Testimony of DOD Expert Witness; and Certificate of Service," filed September 9, 2015.

On September 3, 2015, a Notice of Public Listening Session in Kaunakakai, Molokai was filed in this docket.

On September 8, 2015, Applicants filed a statement of no opposition to DOD's Motion for Order Establishing Definite Date.[73] On September 9, 2015, SunEdison filed a joinder to DOD's request for an order regarding witness scheduling, as well as a Motion for Definite Date for SunEdison Witness.[74]

On September 9, 2015, Sierra Club, DBEDT, FOL, HPVC, HREA, HSEA, HINA, IBEW, KLMA, LOL, OSP, Puna Pono, and TASC filed a joint statement in support of LOL's Motion for Order Establishing Definite Nature of Evidentiary Hearing.[75]

On September 9, 2015, the Consumer Advocate filed a Motion to Amend Order No. 33041 to Include an Early Prehearing Conference ("Motion to Amend Order No. 33041").[76] The Consumer

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[73]"Applicants' Statement of No Opposition to Department of Defense's Motion for Order Regarding Witness Scheduling; and Certificate of Service," filed September 8, 2015.

[74]"Intervenor SunEdison, LLC's Joinder to Department of Defense's Motion for Order Establishing Definite Date for Testimony of Expert Witnesses and Motion for Definite Date for SunEdison Witness; and Certificate of Service," filed September 9, 2015.

[75]"Joint Statement in Support of Life of the Land's Motion for Order Establishing Definite Nature of Evidentiary Hearing; and Certificate of Service," filed September 9, 2015.

[76]"Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference; and Certificate of Service," filed September 9, 2015.

Advocate also filed a response to DOD's Motion for Order Establishing Definite Date, stating that in lieu of taking a position on DOD's motion, the Consumer Advocate filed a separate motion asking for Order No. 33041 to be amended to include an early prehearing conference.[77]

On September 11, 2015, the commission issued Order No. 33116, "Establishing Dates for Additional Prefiled Testimony and Modifying Certain Procedural Dates," setting forth additions and modifications to the current procedural schedule.

On September 14 and 15, 2015, KIUC and HIEC filed statements of no position regarding DOD's Motion for Establishing Definite Date.[78]

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[77]"Division of Consumer Advocacy's Response to Department of Defense Motion for Order Establishing Definite Date for Testimony of DOD Expert Witness; and Certificate of Service," filed September 9, 2015. The Consumer Advocate also filed a response to SunEdison's joinder to DOD's "Motion for Order Establishing Definite Date," stating that in lieu of taking a position it filed its own motion seeking to amend Order No. 33041 to request an early prehearing conference. "Division of Consumer Advocacy's Response to Intervenor SunEdison, LLC's Joinder to Department of Defense's Motion for Order Establishing Definite Date for Testimony of Expert Witnesses and Motion for SunEdison Witness; and Certificate of Service," filed September 10, 2015. On September 10, 2015, the Consumer Advocate filed its response to LOL's "Motion for Order Establishing Definite Nature of Evidentiary Hearing," stating that in lieu of taking a position it filed its own motion seeking to amend Order No. 33041 to request an early prehearing conference. "Division of Consumer Advocacy's Response to Life of the Land's Motion for Order Establishing Definite Nature of Evidentiary Hearing; and Certificate of Service," filed September 10, 2015.

[78]"Intervenor Kauai Island Utility Cooperative's Statement of No Position as to the Department of Defense Motion for Order

On September 15, 2015, HIEC filed responses to LOL's Motion for Order Establishing Definite Nature of Evidentiary Hearing and a statement in support of the Consumer Advocate's request to amend Order No. 33041.[79] On September 16, 2015, KIUC filed similar responses.[80]

On September 15, 2015, Puna Pono and LOL also filed a Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings ("Motion for Consideration").[81]

Establishing Definite Date for Testimony of DOD Expert Witness, Filed on September 1, 2015; and Certificate of Service," filed September 14, 2015, and "Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to the Department of Defense Motion for Order Establishing Definite Date for Testimony of DOD Expert Witness, Filed on September 1, 2015; and Certificate of Service," filed September 15, 2015.

[79]"Intervenor Hawaii Island Energy Cooperative's Statement of No Opposition to Life of the Land's Motion for Order Establishing Definite Nature of Evidentiary Hearing, Filed on September 3, 2015; and Certificate of Service;" and "Intervenor Hawaii Island Energy Cooperative's Statement in Support of the Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference, Filed on September 9, 2015, filed September 15, 2015.

[80]"Intervenor Kauai Island Utility Cooperative's Statement of No Opposition to Life of the Land's Motion for Order Establishing Definite Nature of Evidentiary Hearing, Filed on September 3, 2015; and Certificate of Service;" and "Intervenor Kauai Island Utility Cooperative's Statement in Support of the Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference, Filed on September 9, 2015, filed September 16, 2015.

[81]"Puna Pono Alliance's Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings; and Certificate of Service," filed September 15, 2015.

On September 16, 2015, the commission issued Order No. 33128, "(1) Authorizing the Consumer Advocate to Issue Information Requests Directly to James L. Robo and Constance H. Lau; (2) Denying the Division of Consumer Advocacy's Motion for an Order to Compel Answers to Information Requests Without Prejudice; (3) Denying the Joint Parties' Request to Receive Restricted Information, and (4) Denying Applicants' Motion to File an Opposition to the Joint Parties' Joint Statement."

On September 16, 2015, several Parties filed responses to the Consumer Advocate's Motion to Amend Order No. 33041.[82]

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[82] "Applicants' Statement of No Opposition to Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' Statement in Support of Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference, Filed September 9, 2015; and Certificate of Service;" "Life of the Land and Puna Pono Alliance Joint Statement in Partial Support For and In Partial Opposition to Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference to the Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., Maui Electric Company, Limited, and NextEra Energy, Inc.; and Certificate of Service;" Intervenor SunEdison, LLC's Joinder to Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference; and Certificate of Service;" and "Joint Statement Re: Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Prehearing Conference; and Certificate of Service," filed September 16, 2015. COM filed its response on September 17, 2015. "County of Maui's Response to the Division of Consumer Advocacy's September 9, 2015 Motion to Amend Order 33041 to Include an Early Prehearing Conference; and Certificate of Service," filed September 17, 2015.

On September 16, 2015, a Notice of Public Listening Session in Kailua-Kona and Hilo, Hawaii was filed in this docket.

On September 17, 2015, the commission issued Order No. 33136, "Granting Life of the Land's Motion for Media Access and Adopting, With Modifications, the Proposed Orders and Guidelines for Media Access as Proposed by the Consumer Advocate."

On September 18, 2015, Applicants filed their Production of Documents and Log Pursuant to Order No. 33096.

On September 21, 2015, OSP filed a Notice of Appearance of Co-Counsel, naming Terrance M. Revere as co-counsel, along with the Department of the Attorney General.[83]

On September 21 and 22, 2015, several Parties filed responses to Puna Pono's Motion for Consideration.[84]

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[83] "Notice of Appearance of Co-Counsel for the Office of Planning, State of Hawaii; and Certificate of Service," filed September 21, 2015.

[84] "Division of Consumer Advocacy's Response to Puna Pono Alliances' Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings; and Certificate of Service," filed September 21, 2015; "Intervenor Hawaii Island Energy Cooperative's Statement in Support of Puna Pono Alliance's Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings, Filed on September 15, 2015; and Certificate of Service;" "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to Puna Pono Alliance's Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings, Filed on September 15, 2015;" "Applicants' Response to Puna Pono Alliance's Motion Concerning Participation in Evidentiary Hearing; and Certificate of Service;" DBEDT and OSP "Joint Statement of No Opposition With Respect to Puna Pono Alliance's Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings; and Certificate of Service;"

On September 23, 2015, the commission filed Order No. 33156, "Granting Ulupono Initiative LLC's Motion for Approval of Association," and Order No. 33157, "Granting Paniolo Power Company, LLC's Motion to Withdraw."

Between September 30 and October 9, 2015, the Parties filed their Supplemental Exhibit Lists, Supplemental Issues Matrix/Tables, and Rebuttal Testimony.[85]

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and "Joint Statement in Support of Puna Pono Alliance's Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings; and Certificate of Service," filed September 22, 2015.

[85]"Renewable Energy Action Coalition of Hawaii, Inc.'s Supplemental Exhibit List, Supplemental Issues Matrix/Table, and Rebuttal Testimony; and Certificate of Service," filed September 30, 2015; "Hawaii Island Energy Cooperative's Supplemental Exhibit List, Supplemental Issues Matrix/Table, Rebuttal Testimony, & Supporting Exhibits; and Certificate of Service," filed October 5, 2015; "Rebuttal Testimony of Ralph C. Smith, CPA, On Behalf of Department of Defense; and Certificate of Service," filed October 6, 2015; "Kauai Island Utility Cooperative's Supplemental Exhibit List, Supplemental Issues Matrix Table, and Rebuttal Testimony; and Certificate of Service;" "The Alliance for Solar Choice's Exhibit List, Rebuttal Testimony, Issues Matrix; and Certificate of Service;" "Hawaii Renewable Energy Alliance's Rebuttal Testimony of Warren S. Bollmeier II; and Certificate of Service;" "Joint Parties (LOL-PPA-KLMA) Rebuttal Testimony; and Certificate of Service;" "Blue Planet Foundation's Rebuttal Testimony and Supplemental Exhibit List; and Certificate of Service;" "The Office of Planning, State of Hawaii's Supplemental Exhibit List; Rebuttal Testimonies; and Certificate of Service;" "DBEDT Exhibit List, Issues Matrix, Rebuttal Testimonies; and Certificate of Service;" "International Brotherhood of Electrical Workers Local Union 1260's Exhibit List, Issues Matrix, and Exhibits/Rebuttal Testimonies; and Certificate of Service;" "Intervenor SunEdison, Inc.'s Supplemental Exhibit List, Supplemental Issues Matrix, Rebuttal Testimony; and Certificate of Service;" "County of Hawaii's Supplemental Exhibit List, Supplemental Issues Matrix Table, Supplemental Testimony, &

On October 6, 2015, HWSC filed a Motion to Withdraw from this proceeding.[86]

On October 7, 2015, the commission issued Order No. 33246, "Regarding: (1) The Department of Defense Motion for Order Establishing Definite Date for Testimony of DOD Expert Witness; (2) Life of the Land's Motion for Order Establishing Definite Nature of Evidentiary Hearing; (3) Division of Consumer Advocacy's Motion to Amend Order No. 33041 to Include an Early Pretrial Conference; (4) Hawaii Solar Energy Association's Requests for

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Supplemental Exhibits; and Certificate of Service;" "Division of Consumer Advocacy's Rebuttal Testimonies and Exhibits;" "Hawaii Solar Energy Association's Rebuttal Testi[m]ony Pursuant to Order No. 33116, Establishing Dates for Additional Prefiled Testimony and Modifying Certain Procedural Dates; and Certificate of Service;" "SunPower Corporation's Rebuttal Testimony of Thomas J. Starrs; Rebuttal Testimony Issues Matrix; and Certificate of Service;" "Tawhiri Power LLC's Rebuttal Testimony of Mohamed M. El-Gasseir, Ph.D.; Rebuttal Testimony Issues Matrix; and Certificate of Service;" "Sierra Club's Exhibit List, Rebuttal Testimony of Nathan A. Skop; Table of Issues Addressed; Supporting Exhibits; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' Rebuttal Testimonies Exhibit List, Rebuttal Testimonies and Supporting Exhibits, Rebuttal Testimony Issues Matrix; and Certificate of Service," filed October 7, 2015; "County of Maui's Exhibit List and Table of Testimony Issues, Rebuttal Testimony, Exhibit-10, Supporting Exhibits, Exhibits 11-22; and Certificate of Service," filed October 8, 2015; "Rebuttal Testimony of Friends of Lanai Pursuant to Order No. 33116, Establishing Dates for Additional Prefiled Testimony and Modifying Certain Procedural Dates; & Certificate of Service," filed October 9, 2015.

[86]"Hawaii Water Service Company, Inc.'s Motion to Withdraw; and Certificate of Service," filed October 6, 2015.

Substitution of Parties for Evidentiary Hearing; and (5) Puna Pono Alliance's Motion for Consideration for Participation of Neighbor Island Groups in Scheduled Hearings."

The commission also issued a Notice of Public Listening Session in Lihue, Kauai, on October 7, 2015.

On October 12, 2015, Applicants filed a Motion for Prehearing Order, which set forth proposals for various procedural aspects of the evidentiary hearing.[87]

On October 13, 2015, the commission issued Order No. 33259, "Regarding the Admission of Filed Responses to Information Requests Into the Evidentiary Record," stating that the commission intended to admit all of the IR Responses filed in this docket into the evidentiary record in advance of the evidentiary hearings.

The commission also issued Order No. 33260 on October 13, 2015, "Granting Hawaii Water Service Company, Inc.'s Motion to Withdraw."[88]

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[87]Applicants' Motion for Prehearing Order; Memorandum in Support; and Certificate of Service," filed October 12, 2015.

[88]On October 13, 2015, the Consumer Advocate filed its response to HWSC's Motion to Withdraw stating that it was not taking a position. "Division of Consumer Advocacy's Response to Hawaii Water Service Company, Inc.'s Motion to Withdraw; and Certificate of Service," filed October 13, 2015.

On October 14, 2015, the commission issued a Notice of Public Listening Session in Honolulu, Hawaii.

Between October 14 and 20, 2015, various Parties filed responses to Applicants' Motion for Prehearing Order.[89]

On October 16, 2015, NextEra filed a Motion for Approval of Association, of several co-counsel.[90]

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[89]"Life of the Land's Comments Re: Applicants' Motion for Prehearing Order and A Memorandum in Support; Verification; and Certificate of Service," filed October 14, 2015; "Department of Defense Response Opposing Certain Portions of Applicants' Motion for Prehearing Order; and Certificate of Service," filed October 16, 2015; "Intervenor Hawaii Island Energy Cooperative's Response to Applicants' Motion for Prehearing Order, Filed on October 12, 2015; and Certificate of Service;" "Intervenor Kauai Island Utility Cooperative's Response to Applicants' Motion for Prehearing Order, Filed on October 12, 2015; and Certificate of Service;" "The Department of Business, Economic Development, and Tourism, and the Office of Planning, State of Hawaii's Joint Response to Applicants' Motion for Prehearing Order; and Certificate of Service;" "County of Hawaii's Response to Applicants' Motion for Prehearing Order Filed on October 12, 2015; an Certificate of Service;" "Joint Statement in Opposition to Applicants' Motion for Prehearing Order; and Certificate of Service;" "SunPower Corporation's Response to Applicants' Motion for Prehearing Order Filed on October 12, 2015; and Certificate of Service;" "Tawhiri Power LLC's Response to Applicants' Motion for Prehearing Order Filed on October 12, 2015; and Certificate of Service;" "Division of Consumer Advocacy's Statement in Opposition to Applicants' Motion for Prehearing Order Filed on October 12, 2015; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' Memorandum in Opposition to Applicants' Motion for Prehearing Order, Filed October 12, 2015; and Certificate of Service;" IBEW "Statement of No Position as to Applicant's Motion for Prehearing Order; and Certificate of Service," filed October 19, 2015; and "Intervenor SunEdison, LLC's Response to Applicants' Motion for Prehearing Order; Exhibit A; and Certificate of Service," filed October 20, 2015.

[90]"NextEra Energy, Inc.'s Motion for Approval of Association of Co-Counsel R. Wade Litchfield, Bryan S. Anderson, Kenneth M.

On October 16, 2015, Applicants also filed their Surrebuttal Testimonies.[91]

On October 20, 2015, IBEW filed a Motion to Withdraw from this proceeding.[92] On October 20, the Consumer Advocate also filed a Motion to Strike the testimony of Applicants' Witnesses, Morey P. Dewhurst, Shelee M. T. Kimura, and Colton K. Ching, and Applicants' Exhibit-65, and sought to exclude witnesses Dewhurst and Kimura from testifying.[93]

Rubin, Charles L. Schlumberger, and Alvin B. Davis; Declaration of Douglas A. Codiga; Exhibits 'A'-'E'; and Certificate of Service," filed October 16, 2015. On October 22, 2015, the Consumer Advocate stated that it was not taking a position on NextEra's motion. "Division of Consumer Advocacy's Response to NextEra Energy, Inc.'s Motion for Approval of Association of Co-Counsel R. Wade Litchfield, Bryan S. Anderson, Kenneth M. Rubin, Charles L. Schlumberger, and Alvin B. Davis; and Certificate of Service," filed October 22, 2015.

[91]"Applicants' Exhibit List, Surrebuttal Testimonies, Supporting Exhibits; and Certificate of Service," filed October 16, 2015.

[92]"International Brotherhood of Electrical Workers Local Union 1260's Motion to Withdraw; and Certificate of Service," filed October 20, 2015. On October 21, 2015, the Consumer Advocate stated that it did not oppose IBEW's Motion to Withdraw. "Division of Consumer Advocacy's Response to International Brotherhood of Electrical Workers Local Union 1260's Motion to Withdraw; and Certificate of Service," filed October 21, 2015.

[93]"Division of Consumer Advocacy's Motion to Strike Testimony of Morey P. Dewhurst, Shelee M.T. Kimura and Colton K. Ching, and Applicants' Exhibit-65, and to Exclude Witnesses Morey P. Dewhurst and Shelee M.T. Kimura from Testifying; and Certificate of Service," filed October 20, 2015.

On October 20, 2015, Applicants also filed three motions: (1) Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of the Issues in Order No. 32739; (2) Motion to Compel The Alliance for Solar Choice to Respond Appropriately to Applicants' Information Request 51; and (3) Motion to Compel The Gas Company, LLC, dba Hawaii Gas to Appropriately Respond to Certain of Applicants' Information Requests.[94]

Between October 22 and 27, 2015, several Parties filed responses to Applicants' October 20, 2015 Motions to Compel.[95]

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[94]"Applicants' Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of the Issues in Order No. 32739; Memorandum in Support; and Certificate of Service;" "Applicants' Motion to Compel The Alliance for Solar Choice to Respond Appropriately to Applicants' Information Request 51; Affidavit of Mark F. Ito; Exhibits '1'-'2'; and Certificate of Service;" and "Applicants' Motion to Compel The Gas Company, LLC, dba Hawaii Gas to Appropriately Respond to Certain of Applicants' Information Requests; Affidavit of Mark F. Ito; Exhibits '1'-'4'; and Certificate of Service," filed October 20, 2015.

[95]"Division of Consumer Advocacy's Response to Applicants' Motion to Compel The Gas Company, LLC, dba Hawaii Gas to Appropriately Respond to Certain of Applicants' Information Requests; and Certificate of Service," and "Division of Consumer Advocacy's Response to Applicants' Motion to Compel The Alliance for Solar Choice to Respond Appropriately to Applicants' Information Request 51; and Certificate of Service," filed October 22, 2015; "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to Applicants' Motion to Compel the Gas Company, LLC, dba Hawaii Gas to Appropriately Respond to Certain of Applicants' Information Requests, Filed on October 20, 2015; and Certificate of Service," and "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to Applicants' Motion to Compel The Alliance for Solar Choice to Respond Appropriately to Applicants' Information Request 51, Filed on

On October 23, 2015, NextEra filed a notice of Appearance of Co-Counsel of Rod S. Aoki, Mark J. Bennett, and Naomi U. Kuwaye.[96]

On October 26, 2015, the commission issued Order No. 33286, "Addressing Certain Evidentiary Hearing Issues and Changing Location For Prehearing Conference."

Applicants filed their Opposition to the Consumer Advocate's Motion to Strike Testimony on October 27, 2015.[97]

October 20, 2015; and Certificate of Service," "Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to Applicants' Motion to Compel the Gas Company, LLC, dba Hawaii Gas to Appropriately Respond to Certain of Applicants' Information Requests, Filed on October 20, 2015; and Certificate of Service," and "Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to Applicants' Motion to Compel The Alliance for Solar Choice to Respond Appropriately to Applicants' Information Request 51, Filed on October 20, 2015; and Certificate of Service," filed October 26, 2015; and "The Alliance for Solar Choice's Opposition to Applicants' Motion to Compel The Alliance for Solar Choice to Respond Appropriately to Applicants' Information Request 51, Affidavit of Mark F. Ito, Exhibits '1'-'2'; Exhibit A; Affidavit of Timothy J. Lindl; and Certificate of Service," and "The Gas Company, LLC, dba Hawaii Gas' Memorandum in Opposition to Applicants' Motion to Compel The Gas Company, LLC dba Hawaii Gas to Appropriately Respond to Certain of Applicants' Information Requests, Filed October 20, 2015; Exhibit A; Exhibit B; and Certificate of Service," filed October 27, 2015.

[96]"Appearance of Co-Counsel on Behalf of NextEra Energy, Inc.; and Certificate of Service," filed October 23, 2015.

[97]"Applicants' Opposition to Division of Consumer Advocacy's Motion to Strike Testimony of Moray P. Dewhurst, Shelee M.T. Kimura and Colton K. Ching, and Applicants' Exhibit-65, and to Exclude Witnesses Moray P. Dewhurst and Shelee M.T. Kimura From Testifying; and Certificate of Service," filed October 27, 2015. No other Parties filed an opposition to the Consumer Advocate's Motion to Strike Testimony.

On October 27, 2015 several Parties filed responses to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing.[98]

On October 27, 2015, Sierra Club, Blue Planet, DBEDT, FOL, HPVC, HREA, HSEA, HINA, KLMA, LOL, OSP, Puna Pono, SunPower, Tawhiri, and TASC (referring to themselves as the "Joint Parties"), filed a Joint Statement in Response to Various Motions, taking no position on IBEW's Motion to Withdraw, Applicants' Motions to Compel, or Applicants' Motion for Approval of Association, stating that they did not oppose the Consumer Advocate's Motion to Strike

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[98]"County of Maui's Response to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of the Issues in Order No. 32729; and Certificate of Service," "Intervenor Hawaii Island Energy Cooperative's Response to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of Issues in Order No. 32739, Filed on October 20, 2015; and Certificate of Service," "Intervenor Kauai Island Utility Cooperative's Response to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of Issues in Order No. 32739, Filed on October 20, 2015; and Certificate of Service," "The Gas Company, LLC, dba Hawaii Gas' Memorandum in Opposition to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of the Issues in Order No. 32739, Filed October 20, 2015; and Certificate of Service," and "Division of Consumer Advocacy's Response to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing to Issues Identified in Statement of Issues in Order No. 32739; and Certificate of Service," filed October 27, 2015.

Testimony, and voicing their opposition to Applicants' Motion for Order Limiting Scope of Evidentiary Hearing.[99]

On October 27, 2015, the commission also issued Order No. 33287, "Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference."[100]

On October 28, 2015, Applicants filed a letter with the commission stating that they were withdrawing their Motion to Compel The Alliance for Solar Choice based on TASC's statements that it had no responsive documents other than the ones provided.

On October 29, 2015, the commission issued Order No. 33295, "Granting International Brotherhood of Electrical Workers Local Union 1260's Motion to Withdraw."

On October 30, 2015, the commission issued Order No. 33296, "Addressing the Four Procedural Motions Filed on October 20, 2015," which: (1) granted in part Applicants' motion to limit the scope of the evidentiary hearing to the Statement of Issues set forth in Order No. 32729, limiting the scope of oral testimonies and exhibits at the evidentiary hearing to the commission's Statement of Issues; (2) denied Applicants' motion to

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[99]"Joint Statement in Response to Various Motions; and Certificate of Service," filed October 27, 2015.

[100]The commission's Order No. 33288, issued on October 27, 2015, voided Order No. 33286 because of a file-stamping error and stated that it was replaced by Order No. 33287.

compel Hawaii Gas to appropriately respond to Applicants' Information Requests 20, 26, 29, 30, and 33; (3) dismissed as moot Applicants' motion to compel TASC to appropriately respond to Applicants' information request 51; and (4) denied the Consumer Advocate's motion to strike certain of Applicants' pre-filed testimonies and one exhibit, and to exclude certain of Applicants' Witnesses from orally testifying at the evidentiary hearing.

On November 2, 2015, in response to Order No. 33287, the Parties filed their lists identifying the witnesses that they did not plan to cross examine.[101]

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[101] (1) "TASC List in Response to Order No. 32287; and Certificate of Service;" (2) "Department of Defense's List of Applicant's Witnesses DOD Will Not Cross Examine; and Certificate of Service;" (3) "The Office of Planning, State of Hawaii's List of Witnesses that Party Does Not Intend to Cross Examine; and Certificate of Service;" (4) "Intervenor Hawaii Island Energy Cooperative's Statement Regarding Cross Examination of Witnesses; and Certificate of Service;" (5) "Intervenor Kauai Island Utility Cooperative's Statement Regarding Cross Examination of Witnesses; and Certificate of Service;" (6) "[FOL] List in Response to Order No. 33287; and Certificate of Service;" (7) "AES Hawaii, Inc.'s List of Witnesses Pursuant to Order No. 33287; and Certificate of Service;" (8) "County of Maui's List of Witnesses It Is Not Intending to Cross-Examine, Pursuant to Order No. 33287;" (9) "Ulupono Initiative LLC's List of Applicants' Witnesses That Ulupono Initiative LLC Does Not Intend to Cross Examine; and Certificate of Service;" (10) "Life of the Land, Ka Lei Maile Ali'i Hawaiian Civic Club and Puna Pono Alliance Reply to Commission Order No. 33287; and Certificate of Service;" (11) "The Department of Business Economic Development, and Tourism's List of Witnesses Not Intended for Cross Examination; and Certificate of Service;" (12) "Intervenor SunEdison, LLC's List of Witnesses That It Does Not Intend to Cross Examine; and Certificate of Service;" (13) "Sierra Club's List of Witnesses It Does Not Intend to Cross-Examine During the Evidentiary Hearing;" (14) "Hina Power Corp's List of Witnesses That It Does Not Intend to Cross-Examine and

On November 2, 2015, HBWS also filed a Notice of Withdrawal of Counsel, and a Motion to Withdraw from the Proceeding.[102]

On November 2, 2015, LOL also filed a Motion in Partial Opposition to Public Utility Commission Order No. 33287 Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference, however, on November 3, 2015, LOL filed a different version of the motion ("Motion in Opposition to Public

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Final List of Its Prefiled Testimony and Exhibits; and Certificate of Service;" (15) "SunPower Corporation's List of Applicants' Witnesses Which It Does Not Currently Intend To Cross-Examine During Evidentiary Hearing; and Certificate of Service;" (16) "Tawhiri Power LLC's List of Applicants' Witnesses Which It Does Not Currently Intend to Cross-Examine During Evidentiary Hearing; and Certificate of Service;" (17) "County of Hawaii's Statement Regarding Witnesses It Does Not Intend to Cross Examine;" (18) "The Gas Company, LLC, dba Hawaii Gas' List of Witnesses It Does Not Intend to Cross Examine; and Certificate of Service;" (19) "Hawaii Solar Energy Association's Response to Order No. 33287;" (20) "Renewable Energy Action Coalition of Hawaii, Inc.'s List of Witnesses That It Does Not Intend to Cross-Examine and Final List Of Its Prefiled Testimony And Exhibits; and Certificate of Service;" (21) "Applicants' Response to Paragraph 17.m of Order No. 33287 Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference; and Certificate of Service;" (22) "Blue Planet Foundation's List of Witnesses Not Intended For Cross-Examination; and Certificate of Service;" (23) "Designation of Witnesses the Division of Consumer Advocacy Does Not Intend to Cross Examine at Evidentiary Hearing; and Certificate of Service;" and (24) "Hawaii Renewable Energy Alliance's List of Witnesses That It Does Not Inten[d] to Cross Examine; and Certificate of Service," filed November 2, 2015.

[102]"Notice of Withdrawal of Counsel; and Certificate of Service," and "Board of Water Supply of the City and County of Honolulu's Motion to Withdraw from the Proceeding; and Certificate of Service," filed November 2, 2015.

Utility Commission Order No. 33287") and a Request to Void the previous version filed on November 2, stating that it had inadvertently filed an early draft of the memorandum.[103] The Motion in Partial Opposition set forth LOL's concerns about Order No. 33287's rulings regarding cross-examination.

On November 3, 2015, the commission issued Order No. 33311, "Granting NextEra Energy, Inc.'s Motion for Approval of Association of Co-Counsel of R. Wade Litchfield, Bryan S. Anderson, Kenneth M. Rubin, Charles L. Schlumberger, and Alvin B. Davis."

On November 4, 2015, the Consumer Advocate filed a statement in response to HBWS' Motion to Withdraw from the proceeding, stating that it was not taking a position.[104]

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[103] "Life of the Land's Motion in Partial Opposition to Public Utility Commission Order No. 33287 Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference; Memorandum in Support of Motion; and Certificate of Service," filed November 2, 2015, and "Life of the Land's Request to Void Motion, Motion in Partial Opposition to Public Utility Commission Order No. 33287 Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference; Memorandum in Support of Motion; and Certificate of Service," filed November 3, 2015. The commission granted LOL's Request to Void and denied LOL's Motion in Partial Opposition to Public Utility Commission Order No. 33287 on November 24, 2015, in Order No. 33355.

[104] "Division of Consumer Advocacy's Response to Board of Water Supply of the City and County of Honolulu's Motion to Withdraw From the Proceeding; and Certificate of Service," filed November 4, 2015.

On November 4, 2015, a prehearing conference was held in preparation for the evidentiary hearing scheduled to commence on November 30, 2015.

On November 5, 2015, the commission issued a "Hearing Officer's Recommended Prehearing Conference Order," which stated that the hearing officer would not reconsider any of the orders issued thus far by the commission, but that the hearing officer recommended specific clarification to parts of Order No. 33287, discussed the potential for a site visit for the Parties to the Blaisdell Center Hawaii Suites in advance of the evidentiary hearing, made additional recommendations regarding sponsoring witnesses, transcripts, and closure of the hearing to the public, and allowed the Parties to file written exceptions to the Order by November 10, 2015.

Between November 6 and 16, 2015, pursuant to Order No. 33287, the Parties filed their Final Lists of Pre-filed Testimony and Exhibits with the Commission.[105]

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[105] (1) "The Office of Planning, State of Hawaii's Final List of Prefiled Testimony and Exhibits; and Certificate of Service," and (2) "The Hawaii Solar Energy Association's Final List of Pre-Filed Testimony and Exhibits; and Certificate of Service," filed November 6, 2015; (3) "County of Hawaii's Final List of Pre-Filed Testimony and Exhibits; and Certificate of Service," and (4) "Department of Defense's Final List of Its Prefiled Testimony and Exhibits; and Certificate of Service," filed November 9, 2015; (5) "Intervenor Kauai Island Utility Cooperative's Final List of Pre-Filed Testimony and Exhibits; and Certificate of Service," and (6) "Intervenor Hawaii Island Energy Cooperative's Final List of Pre-Filed Testimony and Exhibits; and Certificate of Service," filed

On November 9, 2015, the commission issued a "Notice of Evidentiary Hearing" in this docket, setting forth the hearing dates and times and the issues to be considered at the hearing.

November 12, 2015; (7) "The Department of Business, Economic Development, and Tourism's Final List of Prefiled Testimony and Exhibits; and Certificate of Service," filed November 13, 2015; (8) "Life of the Land Final List of Pre-Filed Testimony and Exhibits; Substitution of Witness; Prehearing Brief; and Certificate of Service," (9) "Puna Pono Alliance Notice of Appearance Before the Commission; Substitution of Witness; Final List of Pre-Filed Testimony and Exhibits; Prehearing Brief; and Certificate of Service," (10) "Ka Lei Maile Ali'i Hawaiian Civic Club Final List of Pre-Filed Testimony and Exhibits; Prehearing Brief; and Certificate of Service," (11) "The Alliance for Solar Choice's Final List of Pre-Filed Testimony and Exhibits; and Certificate of Service," (12) "Blue Planet Foundation's Final List of Prefiled Testimony and Exhibits; and Certificate of Service," (13) "County of Maui's Final List of Prefiled Testimonies and Exhibits; and Certificate of Service," (14) "AES Hawaii, Inc. Final List of Prefiled Testimony and Exhibits; and Certificate of Service," (15) "Intervenor SunEdison, Inc.'s Final List of Prefiled Testimony and Exhibits; and Certificate of Service," (16) "Tawhiri Power LLC's Final List of Prefiled Testimonies and Exhibits; and Certificate of Service," (17) "SunPower Corporation's Final List of Prefiled Testimonies and Exhibits; and Certificate of Service," (18) "Sierra Club's Final List of Prefiled Testimonies and Exhibits; Direct and Responsive Testimony of Natalie A. Mims (Corrected) and Supporting Exhibits; Rebuttal Testimony of Nathan A. Skop (Corrected) and Supporting Exhibits; Table of Issues Addressed; and Certificate of Service," (19) "Hawaii Renewable Energy Alliance's [] Final List of Pre-Filed Testimony and Exhibits, and Corrected Testimonies and Corrected Exhibits; and Certificate of Service," (20) "The Gas Company, LLC, dba Hawaii Gas' Final List of Prefiled Testimony and Exhibits; and Certificate of Service," (21) "Applicants' List of Prefiled Testimony and Exhibits; and Certificate of Service," (22) "Ulupono Initiative LLC Final List of Pre-Filed Testimony and Exhibits; and Certificate of Service," and (23) "Division of Consumer Advocacy's Final List of Prefiled Witness Testimony and Exhibits for Evidentiary Hearing; and Certificate of Service," filed November 16, 2015.

On November 10, 2015, both Applicants and the Consumer Advocate filed oppositions to LOL's Motion in Opposition to Public Utility Commission Order No. 33287.[106]

On November 10, 2015, several Parties also filed written responses to the "Hearing Officer's Recommended Prehearing Conference Order."[107]

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[106] "Applicants' Opposition to Life of the Land's Motion in Partial Opposition to Public Utility Commission Order No. 33287 Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference; and Certificate of Service," and "Division of Consumer Advocacy's Memorandum in Opposition to Life of the Land's Motion in Partial Opposition to Public Utilities Commission Order No. 33287 Addressing Certain Evidentiary Hearing Issues and Changing Location for Prehearing Conference; and Certificate of Service," filed November 10, 2015.

[107] (1) FOL "Exception to Hearing Officer's Recommended Prehearing Conference Order; and Certificate of Service," (2) "Applicants' Written Exceptions to Hearing Officer's Recommended Prehearing Conference Order; and Certificate of Service," (3) "The Gas Company, LLC, dba Hawaii Gas' Joinder in Sierra Club's Statement in Response to Hearing Officer's Recommended Prehearing Conference; and Certificate of Service," (4) "Hawaii Renewable Energy Alliance's Joinder to Sierra Club's Statement in Response to Hearing Officer's Recommended Prehearing Conference Order; and Certificate of Service," (5) "Sierra Club's Statement in Response to Hearing Officer's Recommended Prehearing Conference Order," (6) "Joinder to Sierra Club's Statement in Response to Hearing Officer's Recommended Prehearing Conference Order," and (7) "Blue Planet Foundation's Joinder and Response to Hearing Officer's Recommended Prehearing Conference Order; and Certificate of Service," filed November 10, 2015; and (8) "County of Hawaii's Joinder to Sierra Club's Statement in Response to Hearing Officer's Recommended Prehearing Conference Order; and Certificate of Service," filed November 13, 2015.

On November 12, 2015, the commission issued Order No. 33326, "Granting Board of Water Supply of the City and County of Honolulu's Motion to Withdraw from the Proceeding."

On November 16, 2015, Applicants filed a request for a supplemental and "back-up" form of media access that would be available to the public and Parties in the event that primary coverage by Olelo is interrupted or otherwise unavailable.[108]

On November 18, 2015, the commission issued its "Prehearing Conference Order," which adopted, in part, the recommended prehearing conference order filed by the Hearings Officer on November 5, 2015.

FOL, TASC, Hawaii Gas, COM, DBEDT, SunEdison, OSP, COH, HREA, Sierra Club, and Applicants filed their pre-hearing briefs on November 19 and 20, 2015.[109]

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[108]"Applicants' Request for Supplemental Media Access; and Certificate of Service," filed November 16, 2015. On November 23, 2015, TASC filed a joinder to Applicants' Request for Supplemental Media Access. "The Alliance for Solar Choice's Joinder to Applicants' Request for Supplemental Media Access; and Certificate of Service," filed November 23, 2015.

[109]KIUC and HIEC filed separate "Statements Regarding Pre-Hearing Brief" on November 18, 2015, stating that their current positions were reflected in testimony, supporting exhibits, and responses to information requests, and were accordingly not submitting a pre-hearing brief.

On November 23, 2015, the Consumer Advocate filed a Motion for Enlargement of Time to file its pre-hearing brief, as well as its pre-hearing brief.[110]

Also on November 23, 2015, KIUC, HIEC, REACH, SunEdison, AES, COM, COH, Tawhiri, SunPower, Sierra Club, TASC, Hawaii Gas, OSP, FOL, Ulupono, LOL, KLMA, Puna Pono, HINA, DBEDT, Consumer Advocate, Applicants, Blue Planet, and HREA filed their lists of sponsoring witnesses for Information Request Responses with the commission, pursuant to the commission's November 18, 2015 Prehearing Conference Order. HPVC also filed a list of sponsoring witnesses on November 25, 2015.

On November 24, 2015, the Consumer Advocate filed an objection to Applicants' list of sponsoring witnesses, stating that Applicants specifically excluded James L. Robo and Constance H. Lau from the list despite their importance as "the chief executive officers of the Merger principals…."[111]

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[110] "Division of Consumer Advocacy's Motion for Enlargement of Time; Memorandum in Support; Attachment 'A'; and Certificate of Service," and "Division of Consumer Advocacy's Pre-Hearing Brief; and Certificate of Service," filed November 23, 2015. The commission granted the Consumer Advocate's Motion for Enlargement of Time on November 27, 2015, in Order No. 33364, "Granting Division of Consumer Advocacy's Motion for Enlargement of Time."

[111] "Division of Consumer Advocacy's Objection to Applicants' List of Sponsoring Witnesses; and Certificate of Service," filed November 24, 2015.

On November 25, 2015, the commission issued Order No. 33356, "Denying Applicants' Request for Supplemental Media Access," and Order No. 33357, "Denying Without Prejudice Division of Consumer Advocacy's Objection to Applicants' List of Sponsoring Witnesses."

On November 27, 2015, DOD filed a Motion to Withdraw from these proceedings.[112]

On November 27, 2015, Applicants also filed a Motion to Admit Revised Stipulated Commitments into Evidence, stating that they submitted the motion "because they have entered into an agreement with [DOD] pursuant to which Applicants have agreed to submit the Revised Applicants' Exhibit-37 for [c]ommission approval…."[113]

On November 27, 2015, Applicants filed an amended list of the Parties that it did not intend to cross-examine at the evidentiary hearing.[114]

The evidentiary hearing in this matter began on November 30, 2015.

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[112] "Department of Defense's Motion to Withdraw; and Certificate of Service," filed November 27, 2015.

[113] "Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence; Exhibit A; and Certificate of Service," filed November 27, 2015, at 2-3.

[114] "Applicants' Amendment of List of Parties to be Cross Examined at Evidentiary Hearing; and Certificate of Service," filed November 27, 2015.

On December 3, 2015, the presiding officer at the evidentiary hearing made an oral ruling requesting that Parties identify in writing any evidence that they intended to use to cross-examine Applicants that was designated as confidential, and provide support, where deemed necessary, for why the documents should not be considered confidential and should be unsealed and discussed in open hearing. Ulupono made an oral request for permission to use confidential exhibits Ulupono-3 and -4 at the evidentiary hearing on December 3, 2015.

In response, on December 4, 2015, four Parties — OSP, the Consumer Advocate, Hawaii Gas, and Sierra Club — filed statements regarding confidential evidence that they intended to use to cross-examine Applicants ("Confidential Document Filings").[115]

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[115](1) "Office of Planning, State of Hawaii's Motion to Make Public CA Exhibits 35 and 37 and Applicants' Response to CA-IR-298 Attachments 1-4, and, in the Alternative, to Allow Closed Proceeding Examination of the Same; Memorandum in Support of Motion; Exhibit 1; CA Exhibits 35 and 37; Attachments 1-4 of Applicants Responses to CA-IR 298; and Certificate of Service" (filed under seal); (2) "Division of Consumer Advocacy's List of Proposed Confidential and Confidential Restricted Hearing Exhibits; and Certificate of Service" (filed under seal); (3) "The Gas Company, LLC, dba Hawaii Gas' Memorandum Re (1) Relevancy of Confidential Documents; and (2) Whether Documents Designated Confidential Should be Declassified; Attachments 1 through 4; and Certificate of Service;" and (4) "Sierra Club's Statement Regarding Confidential Evidence; and Certificate of Service," filed December 4, 2015.

Between December 4 and 8, 2015, several Parties filed responses to DOD's Motion to Withdraw and Applicants' Motion to Admit Revised Stipulated Commitments into Evidence.[116]

On December 7, 2015, DOD filed a statement concerning the disposition of DOD written testimony on the record, stating that it did not take a position regarding the Consumer Advocate

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[116] (1) "Intervenor Hawaii Island Energy Cooperative's Statement of No Position as to Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence, Filed on November 27, 2015; and Certificate of Service," (2) "Intervenor Kauai Island Utility Cooperative's Statement of No Position as to Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence, Filed on November 27, 2015; and Certificate of Service," and (3) "Division of Consumer Advocacy's Response to the Department of Defense's Motion to Withdraw; and Certificate of Service," filed December 4, 2015; (4) "Life of the Land's Comments Re November 27, 2015 Motions; and Certificate of Service," (5) "Friends of Lanai's Motion to Suspend Hearing in Response to Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence; and Certificate of Service," (6) "The Department of Business, Economic Development, and Tourism's Response to (1) Department of Defense's Motion to Withdraw, and (2) Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence; and Certificate of Service," (7) Division of Consumer Advocacy's Memorandum in Opposition to Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence, Filed on November 27, 2015; and Certificate of Service," (8) Sierra Club's Joinder in Division of Consumer Advocacy's (1) Memorandum in Opposition to Applicants' Motion to Admit Revised Stipulated Commitments into Evidence; and (2) Response to Department of Defense's Motion to Withdraw; and Certificate of Service," and (9) "Ulupono Initiative LLC Response to the Department of Defense's Motion to Withdraw and Applicants' Motion to Admit Revised Stipulated Commitments into Evidence; and Certificate of Service," filed December 7, 2015; and (10) "Office of Planning, State of Hawaii's Joinder to the Department of Business, Economic Development, and Tourism's Response to (1) Department of Defense's Motion to Withdraw, and (2) Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence; and Certificate of Service," filed December 8, 2015.

and LOL's requests to maintain written testimony, exhibits, and responses to IRs of DOD witness Ralph Smith.[117]

On December 7, 2015, Applicants filed their responses to the Confidential Document Filings, dated December 4, 2015.[118]

On December 14, 2015, LOL, Puna Pono, and KLMA filed a revised list of Applicants' Witnesses that they intended to cross-examine.[119] OSP and Consumer Advocate also filed requests to examine Applicants' Witness James Ajello.[120]

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[117]"Department of Defense Statement Regarding Disposition of DOD Written Testimony on the Record; and Certificate of Service," filed December 7, 2015.

[118](1) "Applicants' Opposition to The Gas Company, LLC dba Hawaii Ga's Memorandum re (1) Relevancy of Confidential Documents; and (2) Whether Documents Designated Confidential Should Be Declassified; Exhibit A; Declaration of Eric S. Gleason; and Certificate of Service," (2) "Applicants' Response to Sierra Club's Statement Regarding Confidential Evidence; Exhibit A; and Certificate of Service," (3) Applicants' Response to Division of Consumer Advocacy's List of Proposed Confidential and Confidential Restricted Hearing Exhibits; Exhibit A; and Certificate of Service," and (4) "Applicants' Response to Office of Planning's Motion to Make Public Certain Confidential Documents; Exhibit A; and Certificate of Service," filed December 7, 2015. Applicants also filed their response to Ulupono's request for permission to use confidential documents in the evidentiary hearing. "Applicants' Response to Ulupono Initiative LLC's Request for Permission to Use Confidential Ulupono Exhibit-3 and Ulupono-4 in Evidentiary Hearing; and Certificate of Service."

[119]"Life of the Land, Puna Pono Alliance, Ka Lei Maile Ali'i Hawaiian Civic Club Re: Cross-Examining Applicant Witnesses; and Certificate of Service," filed December 14, 2015.

[120]"Office of Planning, State of Hawaii's Request to Examine Applicants' Witness James Ajello; Exhibit 1; and Certificate of Service," and "Division of Consumer Advocacy's Request for Applicants' Information Request Sponsor, Mr. James A. Ajello, to

On December 14, 2015, the Consumer Advocate also filed a Request to Issue Subpoena, asking that the commission issue a subpoena requiring the attendance of Mr. James A. Ajello to provide testimony at the evidentiary hearing.[121]

On December 14, 2015, pursuant to the presiding officer's December 11, 2015 ruling at the evidentiary hearing, Applicants and Hawaii Gas filed statements with the commission listing the IR Response sponsoring witnesses that they intended to cross-examine.[122]

On December 14, 2015, the commission issued a written statement ("Statement") at the evidentiary hearing session regarding the Confidential Document Filings, which included a list of "Documents Applicants Previously Filed as Confidential to be Re-Filed as Non-Confidential," and "Documents about which the Commission has Questions."

Present Testimony at the Evidentiary Hearing," filed December 14, 2015.

[121]"Division of Consumer Advocacy's Request to Issue Subpoena; and Certificate of Service," filed December 14, 2015. The Consumer Advocate withdrew this subpoena request on December 17, 2015 because of an agreement reached between Applicants and the Consumer Advocate that allowed the Consumer Advocate to cross-examine Mr. Ajello.

[122]"Applicants' Identification of Parties' Information Requests and Sponsoring Witnesses; and Certificate of Service," and "The Gas Company, LLC, dba Hawaii Gas' List of Applicants' Sponsoring Witnesses for Cross-Examination; and Certificate of Service," filed December 14, 2015.

On December 15, 2015, in response to the commission's December 14, 2015 Statement regarding the Confidential Document Filings, Applicants re-filed the documents on the list consistent with the Statement.

On December 16, 2015, the first round of the evidentiary hearing came to a close, but the presiding officer announced, in light of the number of witnesses that remained to be cross-examined, that the hearing would be extended and would resume from February 1-10, 2016.

On December 29, 2015, the commission issued Order No. 33424, "Amending Protective Order No. 32726," consistent with the presiding officer's direction at the evidentiary hearing session held on December 14, 2015 related to the filing of confidential information.

On January 4, 2016, the commission issued Order No. 33429, "(1) Granting Applicants' Motion to Admit Revised Stipulated Commitments Into Evidence; (2) Denying the Department of Defense's Motion to Withdraw; and (3) Establishing Further Procedures; and Opinion of Randall Y. Iwase, Chair, Concurring in Part and Dissenting in Part," which, among other things, authorized the Parties to issue new Information Requests to Applicants and DOD regarding the new and modified commitments in Applicants' revised Exhibit 37 ("Exhibit 37A"), and DOD's Agreement with

Applicants, to the extent that it related to Exhibit 37A, by January 13, 2016.

On January 11, 2016, LOL filed a Request for Clarification of Commission's Order 33429.[123]

On January 19, 2016, Applicants filed an opposition to LOL's Request for Clarification of Commission's Order 33429.[124]

The Parties issued Information Requests to Applicants regarding Exhibit 37A, and Applicants and DOD responded to those Information Requests by January 20, 2016, pursuant to Order No. 33429.

The commission issued Order No. 33502, "Addressing Certain Evidentiary Hearing Matters," on January 20, 2016, in advance of the resumption of the evidentiary hearing on February 1, 2016.

On January 20, 2016, pursuant to Order No. 33429, DOD named Rear Admiral John W. Korka as its witness to sponsor the new and modified commitments contained in Exhibit 37A.[125]

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[123] "Life of the Land's Request for Clarification of Commission's Order 33429; and Certificate of Service," filed January 11, 2016.

[124] "Applicants' Opposition to Life of the Land's Request for Clarification of Order No. 33429, and Certificate of Service," filed January 19, 2016.

[125] "Department of Defense's Designation of Its Witness; and Certificate of Service," filed January 20, 2016.

On January 22, 2016, Blue Planet filed a sponsoring witness substitution, naming Ronald Binz as a sponsoring witness in place of Richard Wallsgrove, for certain responses to information requests.

On January 22, 2016, the commission issued a letter to the Parties detailing procedures for the resumption of the evidentiary hearing on February 1, 2016.

On January 25, 2016, Hawaii Gas, Sierra Club, and COM filed responses to the commission's directives in Order No. 33502 regarding substitution of witnesses and the use of confidential documents to cross-examine certain of Applicants' Witnesses.[126]

On January 27, 2016, the Department of Defense filed its Request to Schedule the Testimony of Rear Admiral John W. Korka on February 2 or 3, 2016.[127]

On January 27 through 29, 2016, pursuant to Order No. 33429, FOL, KIUC, HIEC, TASC, SunPower, AES, Blue Planet, the Consumer Advocate, REACH, and SunEdison, filed responses stating

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[126](1) "The Gas Company, LLC, dba Hawaii Gas' Response to Order No. 33502 Addressing Certain Evidentiary Hearing Matters, Filed January 20, 2016; and Certificate of Service;" (2) Sierra Club's Notice Regarding Its Requested Limited Cross Examination;" and (3) "The County of Maui's List of Sponsoring Witnesses for Responses to Information Requests, Pursuant to Commission Order No. 33502," filed January 25, 2016.

[127]"Department of Defense's Request to Schedule the Testimony of Rear Admiral John W. Korka on February 2 or 3, 2016; and Certificate of Service," filed January 27, 2016.

that they did not intend to cross examine any of Applicants or DOD's sponsoring witnesses at the reconvened evidentiary hearings in February. OSP, COM, COH, Ulupono, Sierra Club, Hawaii Gas, DBEDT, and Tawhiri filed responses stating that they intended to cross-examine various Applicant witnesses when the evidentiary hearing resumed.

On January 28, 2016, Applicants filed a response affirming their intention to conduct cross-examination of TASC's sponsoring witness, Kelly Trombley.[128]

On February 1, 2016, Applicants filed a response stating their intention to conduct cross-examination of FOL's rebuttal witnesses, Robin Kaye and/or Sally Kaye, during the second round of the evidentiary hearing.[129]

On February 2, 2016, FOL filed a statement with the commission that it expected Applicants to abide by their prior representations made on January 22, 2016 to not cross-examine FOL, but that FOL would be available to answer any questions from the commission on February 8-10, 2016.

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[128] "Applicants' Cross-Examination of Information Request Sponsoring Witnesses; and Certificate of Service," filed January 28, 2016.

[129] "Applicants' Cross-Examination of Friends of Lanai; and Certificate of Service," filed February 1, 2016.

On February 2, 2016, the commission issued Order No. 33520, "Denying Life of the Land's Request for Clarification of Commission's Order 33429."

On February 3, 2016, DOD presented a renewed oral motion to withdraw from this proceeding at the evidentiary hearing.

On February 9, 2016, LOL and KLMA filed a motion requesting that Kat Brady be allowed to participate as a representative of LOL and KLMA for the purpose of Applicants' re-direct questioning of Henry Curtis, if any.[130]

On February 10, 2016, Applicants identified IRs for cross-examination of witnesses sponsoring IR responses.[131]

On February 10, 2016, the second round of the evidentiary hearing went into recess.

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[130]"Motion to Appear on Behalf of Life of the Land and Ka Lei Maile Ali'i Hawaiian Civic Club; and Certificate of Service," filed February 9, 2016. The Consumer Advocate responded to this motion on February 9, 2016, stating that it did not take a position. "Division of Consumer Advocacy's Response to the Motion to Appear on Behalf of Life of the Land and Ka Lei Maile Ali'i Hawaiian Civic Club; and Certificate of Service," filed February 9, 2016. Applicants filed a statement of no position regarding this request on February 17, 2016. "Applicants' Statement of No Position With Regard To Motion to Appear on Behalf of Life of the Land and Ka Lei Maile Ali'i Hawaiian Civic Club; and Certificate of Service," filed February 17, 2016.

[131]"Applicants' Identification of IRs for Cross-Examination of IR Sponsoring Witnesses; and Certificate of Service," filed February 10, 2016.

On February 16, 2016, the commission filed a letter directed at Applicants and the Consumer Advocate requesting that they respond to certain transcript requests.[132]

On February 17, 2016, the commission filed a Memorandum to the Parties ("February 17 Memo") stating that the evidentiary hearing, which went into recess on February 10, 2016, was scheduled to resume on February 19, 2016, and that the commission intended to conclude the evidentiary hearing by March 4, 2016, at the latest. The February 17 Memo also included procedural details regarding the third round of the hearing.

On February 24, 2016, Applicants responded to the commission's transcript request dated February 16, 2016, and on February 25, 2016, the Consumer Advocate filed its response to the commission's transcript request.[133]

On February 26, 2016, the commission issued Order No. 33556, "Denying the Motion to Appear Filed On February 9, 2016, By Life of the Land and Ka Lei Maile Ali'i Hawaiian Civic Club; and Dissenting Opinion of Randall Y. Iwase, Chair."

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[132]"Public Utilities Commission of the State of Hawaii Transcript Requests," filed February 16, 2016.

[133]"Applicants' Response to Transcript Request (PUC/Applicants-TR-1) issued by the Commission on February 16, 2016; and Certificate of Service," filed February 24, 2016; and "CA Response to PUC/CA-TR-1; and Certificate of Service," filed February 25, 2016.

On March 1, 2016, before the close of the evidentiary hearing, Applicants filed comments with the commission regarding the post-hearing briefing schedule.[134]

The third, and final, round of the evidentiary hearing came to a close on March 1, 2016.

On March 2, 2016, the commission issued Order No. 33560, "Denying the Department of Defense's Renewed Motion to Withdraw."

On March 7, 2016, the commission issued Post-Hearing Order No. 33570, which memorialized the deadline dates and procedures to govern the post-evidentiary phase of the subject proceeding.

On March 7, 2016, DOD filed a statement with a commission that it was abstaining from submitting a post-hearing brief.

On March 8, 2016, the Parties filed lists of the exhibits that were admitted into evidence during the course of the evidentiary hearing, pursuant to the commission's directive at the evidentiary hearing on March 1, 2016.

On March 30 and 31, 2016, all Parties, with the exception of DOD, filed their Initial Briefs.[135]

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[134]"Applicants' Comments Regarding Briefing Schedule; and Certificate of Service," filed March 1, 2016.

[135]These include: "Renewable Energy Action Coalition of Hawaii, Inc.'s Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" KLMA/LOL/PPA "Joint Parties Opening Brief; and Certificate of Service," filed March 30, 2016; "Friends of Lanai's Post-Hearing Opening Brief; and Certificate of

On April 1, 2016, HINA filed its Post-Evidentiary Hearing Opening Brief, and HSEA filed an amended Post-Hearing Opening Brief.[136]

Service;" "The Alliance for Solar Choice Opening Brief; and Certificate of Service;" "Office of Planning, State of Hawaii's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Hawaii PV Coalition Joinder to the Alliance for Solar Choice's Opening Brief; and Certificate of Service;" "Applicants' Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "County of Hawaii's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "The Department of Business, Economic Development, and Tourism's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Intervenor Kauai Island Utility Cooperative's Statement Regarding Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Intervenor Hawaii Island Energy Cooperative's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Post-Evidentiary Hearing Opening Brief of Ulupono Initiative LLC; and Certificate of Service;" "SunPower Corporation's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Tawhiri Power LLC's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Blue Planet Foundation's Post-Evidentiary Opening Brief; and Certificate of Service;" "Hawaii Solar Energy Association's Post Evidentiary Hearing Final Brief; and Certificate of Service;" "Hawaii Renewable Energy Alliance's Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Intervenor SunEdison, Inc.'s Post-Evidentiary Hearing Brief; and Certificate of Service;" "County of Maui's Post Evidentiary Opening Brief; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' Post-Evidentiary Hearing Opening Brief; and Certificate of Service;" "Sierra Club's Post-Evidentiary Hearing Brief; and Certificate of Service;" and "Division of Consumer Advocacy's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," filed March 31, 2016.

[136]"Hina Power Corp's Post-Evidentiary Hearing Opening Brief; and Certificate of Service," and "Hawaii Solar Energy Association's Post-Hearing Opening Brief; and Certificate of Service," filed April 1, 2016.

On May 2, 2016, the Parties filed their Post-Evidentiary Reply Briefs with the commission ("Reply Briefs").[137] On

[137]These include: "Office of Planning, State of Hawaii's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Blue Planet Foundation's Post-Evidentiary Reply Brief; and Certificate of Service;" "Post-Evidentiary Hearing Reply Brief of Ulupono Initiative LLC; and Certificate of Service;" "The Department of Business, Economic Development, and Tourism's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" KLMA/LOL/PPA "Joint Parties Reply Brief; and Certificate of Service;" "County of Hawaii's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Renewable Energy Action Coalition of Hawaii, Inc.'s Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Intervenor SunEdison, LLC's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Applicants' Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Hawaii PV Coalition Joinder to the Alliance for Solar Choice's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Intervenor Kauai Island Utility Cooperative's Statement Regarding Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Intervenor Hawaii Island Energy Cooperative's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "The Alliance for Solar Choice Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Sierra Club's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Hawaii Solar Energy Association's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "County of Maui's Post Evidentiary Hearing Reply Brief; and Certificate of Service;" "The Gas Company, LLC, dba Hawaii Gas' Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" "Division of Consumer Advocacy's Post-Evidentiary Hearing Reply Brief; and Certificate of Service;" and "Tawhiri Power LLC's Post-Evidentiary Hearing Reply Brief; and Certificate of Service," filed May 2, 2016. On May 3, 2016, Tawhiri filed a letter with the commission stating that it had initially filed an incomplete version of its Reply Brief on May 2, 2016, but that it filed a corrected version later that day. On May 4, 2016, OSP filed an errata to its Reply Brief. "Office of Planning, State of Hawaii's Errata to its Post-Evidentiary Hearing Reply Brief; and Certificate of Service." On May 5, 2016, OSP filed a letter with the commission stating that it had erroneously filed two copies of its Reply Brief with the commission on May 2, 2016, and clarified that the first filing was a mistake.

May 2, 2016, FOL informed the commission that it would not be filing a Reply Brief because its Post-Evidentiary Opening Brief addressed each of the claims and assertions Applicants set forth in their Opening Brief.[138]

[138] "Letter from Robin Kaye to commission re: Post-Evidentiary Reply Brief," filed May 2, 2016.

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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