BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC. For Waiver of the Palehua Wind Project from the Framework for Competitive Bidding, and Approval of the Power Purchase Agreement for Renewable As-Available Energy with EE Ewa LLC	Docket No. 2018-0400

HAWAIIAN ELECTRIC APPLICATION

EXHIBITS 1 – 12

VERIFICATION

AND

CERTIFICATE OF SERVICE

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PUBLIC UTILITIES COMMISSION

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HAWAIIAN ELECTRIC APPLICATION

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAI'I:

EXECUTIVE SUMMARY

Hawaiian Electric Company Inc.'s ("Hawaiian Electric" or "Company") strategy for diversifying its renewable resource mix includes integrating more wind resources onto the Company's O'ahu system. Wind generation has fundamentally different electricity production characteristics than solar. As a result, wind can be used to counterbalance the "daytime only" nature of solar resources, thereby increasing the total amount of variable renewable energy capacity that can be integrated into the system. Renewable wind energy is accounted for in the Company's Power Supply Improvement Plan for O'ahu, which includes an onshore, utility-scale, wind project in the Company's near-term resource plan.

Consistent with this plan, the Palehua Wind Project, as described further below, is a proposed 46.8 megawatt wind facility capable of generating up to 148,975 megawatt hours per year – equivalent to the power used by an estimated 25,000 homes. Situated above Kahe Valley

on the southwestern end of the Wai'anae mountain range, the Palehua Wind Project site is one of the few remaining sites suitable for a utility-scale onshore wind project on O'ahu.

The Palehua Wind Project power purchase agreement presents an opportunity for cost-effective incorporation of more renewable energy for O'ahu's power system. The equivalent levelized price of 10.975 cents per kilowatt hour for the Palehua Wind Project is significantly lower than equivalent levelized prices (with tax credits), for other recently-approved renewable energy power purchase agreements for O'ahu. It is estimated that the Palehua Wind Project power purchase agreement would result in reducing the cost of electricity to benefit customers, as more fully described below. Following anticipated commencement of commercial operations by the end of 2022, the Palehua Wind Project will also help reduce the State of Hawai'i's current reliance on imported fossil fuels, improve energy security, allow Hawaiian Electric to avoid the emission of tens of thousands of tons of greenhouse gas emissions each year (over one million tons over the life of the power purchase agreement term), and increase the Hawaiian Electric Companies'[1] consolidated renewable portfolio standards on average by 2% a year.

Due to the anticipated expiration of the federal Business Energy Investment Tax Credits on December 31, 2019, Hawaiian Electric utilized a request for expressions of interest process to solicit proposals for this wind resource. Utilizing the expression of interest process (instead of waiting for the Hawaiian Electric Companies' 2018 renewable energy request for proposals,[2] which did not yield any wind project proposals) gave the Company the best chance of procuring the desired wind resource prior to the end of 2019.

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[1] Hawaiian Electric, Maui Electric Company, Limited, and Hawai'i Electric Light Company, Inc. are collectively referred to as the "Hawaiian Electric Companies".

[2] Docket No. 2017-0352, *To Institute a Proceeding Relating To a Competitive Bidding Process To Acquire Dispatchable and Renewable Generation.*

The Palehua Wind Project's developer, EE Ewa LLC, was the only entity that submitted a response in the expression of interest process. EE Ewa LLC's parent entity, Eurus Energy America LLC, has a proven track record for successfully developing and operating what is currently the largest solar project in operation in the State of Hawai'i. Accordingly, in addition to approving the Palehua Wind Project power purchase agreement, the Company is requesting approval of a waiver for the Palehua Wind Project from the Public Utilities Commission of the State of Hawai'i's Framework for Competitive Bidding.

I. REQUESTED APPROVALS

Hawaiian Electric hereby submits this Application, respectfully requesting that the Public Utilities Commission of the State of Hawai'i ("Commission") issue a decision and order to:

(a) Approve a waiver from the Framework for Competitive Bidding[3] pursuant to Parts II.A.3.b (iii) and II.A.3.d of the Framework, for the proposed 46.8 megawatt ("MW") Palehua Wind Project ("Palehua Project" or "Project") to be located near Kapolei in an area known as Palehua, on the southwestern end of the Wai'anae mountains of O'ahu, Hawai'i, as described herein;

(b) Approve the Power Purchase Agreement for Renewable As-Available Energy, dated October 22, 2018, by and between Hawaiian Electric and EE Ewa LLC,[4] for the Project ("PPA"), as further described below and attached hereto as Exhibit 1;

(c) Find that the purchased energy charges to be paid by Hawaiian

[3] See Framework for Competitive Bidding, adopted by the Commission in Decision and Order No. 23121, issued December 8, 2006, in Docket No. 03-0372 ("Competitive Bidding Framework" or "Framework").

[4] Hawaiian Electric and EE Ewa LLC are jointly referred to herein as the "Parties."

Electric pursuant to the PPA are reasonable;

(d) Find that the purchased power arrangements under the PPA, pursuant to which Hawaiian Electric purchases energy on an as-available basis from the Palehua Project are prudent and in the public interest with explicit consideration if required by law under Hawai'i Revised Statutes ("HRS") § 269-6, of the effect of the State of Hawai'i's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions;

(e) Authorize Hawaiian Electric to include the purchased energy charges (and related revenue taxes) that Hawaiian Electric incurs under the PPA in and through Hawaiian Electric's Energy Cost Adjustment Clause ("ECAC") or Energy Cost Recovery Clause ("ECRC"), as applicable,[5] to the extent such costs are not included in base rates, and to include payments made for Compensable Curtailed Energy (as the term is defined in Exhibit 8, "Key PPA Terms and Conditions," attached hereto) and related revenue taxes that Hawaiian Electric incurs under the PPA in and through Hawaiian Electric's Power Purchase Adjustment Clause ("PPAC") to the extent such costs are not included in base rates;[6]

(f) Upon completion of: an interconnection requirements study for

[5] In Final Decision and Order No. 35545 issued June 22, 2018 in Hawaiian Electric's 2017 test year rate case in Docket No. 2016-0328, at 4-5, the Commission instructed Hawaiian Electric to submit an initial draft of its proposed ECRC tariff, consistent with and within 30 days of the Final Decision and Order. The Final Decision and Order described further steps to be taken prior to a subsequent Commission approval and further direction to implement the ECRC. On July 23, 2018, Hawaiian Electric filed its initial revised draft ECRC tariff proposal. On September 28, 2018, the Commission issued Order No. 35721 establishing a procedural schedule to address the Company's proposed ECRC tariff. On November 8, 2018, the Company responded to comments provided by the Consumer Advocate and Blue Planet Foundation on its ECRC tariff proposal. A Commission order addressing Hawaiian Electric's ECRC tariff proposal is currently pending.

[6] The PPAC is a separate surcharge, which permits pass-through of reasonably incurred purchase power contract costs, including capacity, operations and maintenance costs, and other non-energy costs, upon Commission approval. The PPAC was approved by the Commission in Docket No. 2008-0083, by Final Decision and Order filed December 29, 2010.

the Project ("IRS"); the informational filing of an amendment to the PPA based on the IRS results ("Interconnection Requirements Amendment"); and the filing of such additional information as may be necessary in connection with the requested approval of an above-ground 138 kilovolt ("kV") line extension:

(1) Determine that a 138 kV line extension that is included as part of the Company-owned interconnection facilities may be constructed above the surface of the ground, pursuant to HRS § 269-27.6;

(2) If necessary, conduct a public hearing pursuant to HRS § 269-27.5; and

(g) Grant such other relief as may be just and reasonable under the circumstances.

Hawaiian Electric respectfully requests that the Commission issue this decision and order as soon as practicable in order to help facilitate the implementation of this cost effective renewable energy project, and its safe-harboring of federal tax credits, which is expected to reduce the cost of electricity to benefit customers, as further described herein.

II. BACKGROUND

A. Description of Company

Hawaiian Electric, whose principal place of business and whose executive offices are located at 900 Richards Street, Honolulu, Hawai'i, is a corporation duly organized under the laws of the Kingdom of Hawai'i on or about October 13, 1891, and now exists under and by virtue of the laws of the State of Hawai'i. Hawaiian Electric is an operating public utility engaged in the production, purchase, transmission, distribution and sale of electricity on the

island of O‘ahu.

B. Description of EE Ewa LLC

EE Ewa LLC is a Delaware limited liability company registered to do business in Hawai‘i and is organized for the purposes of developing, financing, constructing, owning, and operating the Palehua Project. EE Ewa LLC is a wholly owned subsidiary of Eurus Energy America LLC, a wholly owned subsidiary of Eurus Energy America Corporation ("Eurus America Corp."). Eurus America Corp. is a wholly owned subsidiary of Eurus Energy Holding Corporation ("Eurus Energy"), which is jointly owned by Toyota Tsusho Corporation (a member of the Toyota group) and Tokyo Electric Power Company Holdings, Inc.

A diagram of EE Ewa LLC's ownership structure is attached hereto as Exhibit 2.[7]

Eurus America Corp. was established in 2002 when it acquired Tomen Power Corporation (established in 1987). Headquartered in San Diego, California, Eurus America Corp. is a clean energy company with more than 625 MW of generating capacity installed in the United States as of year-end 2017. Its parent, Eurus Energy, is headquartered in Tokyo, Japan, and is a clean energy company with over 28 years of wind and solar operating experience, over 2,800 MW of generating capacity in operation worldwide, in addition to other planned solar and wind opportunities in development.

In Hawai‘i, Eurus America Corp. is the greenfield developer, owner, and operator of the 27.6 MW Wai‘anae photovoltaic ("PV") solar project currently in operation on the west side of O‘ahu ("Waianae Solar").[8] Notably, the Waianae Solar project is currently the largest utility-

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[7] See also Attachment A of the PPA for details regarding Eurus and its ownership structure.

[8] Eurus America Corp. formed downstream companies to develop the Waianae Solar project, which has a power purchase agreement with Hawaiian Electric that was approved by the Commission in Decision and Order No. 33035 in Docket No. 2014-0354.

scale solar project in operation in the State of Hawai'i. Through the Waianae Solar project, Eurus America Corp. has demonstrated its capability to successfully develop and operate a utility-scale renewable energy project on O'ahu.

EE Ewa LLC ("Eurus" or "Seller") is an entity in good standing with the Department of Commerce and Consumer Affairs of the State of Hawai'i and the State of Delaware.[9]

C. Hawaiian Electric's Request For Expressions of Interest For Potential Onshore Wind Renewable Energy Development

As part of Hawaiian Electric's long-term resource planning strategy, the Company has considered the Commission's observations and guidance that "pursuing a diverse portfolio of renewable energy resources provides the best long-term strategy to maximize the use of renewables to achieve public policy goals." The Company has therefore sought a "balanced and diverse portfolio of energy resources as the best long-term strategy to achieve the state's energy goals."[10]

Part of its long-term strategy of diversifying its renewable resource mix has been to seek to integrate more wind resources onto Hawaiian Electric's system on the island of O'ahu. As this Commission has specifically found, "wind generation, which has fundamentally different electricity production characteristics than solar[,]" "can be used to counterbalance the 'daytime only' nature of the solar projects[,]" "should increase the amount of variable renewable energy

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[9] See Certificate of Good Standing for EE Ewa LLC, PPA, at Attachment A-1.

[10] See Commission's Inclinations on the Future of Hawai'i's Electric Utilities at 5, Attached as Exhibit A to Decision & Order No. 32052 issued on April 28, 2014 in Docket No. 2012-0036 ("There is clear evidence that pursuing a diverse portfolio of renewable energy resources provides the best long-term strategy to maximize the use of renewables to achieve public policy goals. . . . For these reasons, 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.").

capacity that may be reliable and economically integrated into the grid[,]" and "will provide more 'balance' to [Hawaiian Electric's] portfolio of renewable energy sources[.]"[11] Accordingly, finding ways to integrate more wind resources onto the Hawaiian Electric system has remained a priority for the Company in its long-term renewable resource planning approach.[12] Moreover, in December 2016, the Company also included a provision for an onshore, utility-scale wind project as part of its Power Supply Improvement Plan ("PSIP") near-term resource plan for O'ahu that it submitted to the Commission.[13]

In 2017, as part of this long-term diversification strategy, and with a sense of urgency in view of the expiring federal Business Energy Investment Tax Credits ("ITC") for wind power set for 2019, the Company took action to bring utility-scale onshore wind projects online in the near-term that would be able to capture the ITC for wind, and reduce customer rates. Hawaiian Electric issued its Request For Expressions of Interest For Potential Onshore Wind Energy Development ("EOI") on January 5, 2017.[14]

The EOI sought to identify interested and qualified parties who were able to develop near term, cost competitive, onshore wind energy projects on O'ahu that could take advantage of the federal ITC, and thus could offer energy prices to be able to reduce customer rates.

Under current law, the ITC is 24% for wind projects which started construction by

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[11] Decision and Order No. 32600, filed on December 31, 2014, in Docket No. 2013-0423, at 64.

[12] Hawaiian Electric further notes that the results of a National Renewable Energy Laboratory ("NREL") resource potential study indicated that O'ahu's utility-scale onshore wind potential was significantly lower in comparison to Maui and Hawai'i island. See discussion of the NREL study in the December 2016 Power Supply Improvement Plan "PSIP" Update, "Hawaiian Electric Companies' PSIPs Update Report, Filed December 23, 2016" in Docket No. 2014-0183 at 2-14.

[13] See Hawaiian Electric Companies' PSIPs Update Report, filed on December 23, 2016, in Docket No. 2014-0183, at Book 1, p. 6-10.

[14] See EOI, a true and correct copy of which is attached hereto as Exhibit 3.

December 31, 2017. The ITC is reduced to 18% and 12% for those projects which start construction by December 31, 2018 and December 31, 2019, respectively. There is no ITC for projects which start construction after December 31, 2019. See 26 U.S.C. § 48(a)(5)(E).

As such, the Company's primary rationale for pursuing one or more utility-scale wind projects through the EOI process was that timely procurement of cost-effective wind energy could be accomplished more efficiently through bilateral negotiations with parties identified in the EOI process, than through the competitive bidding process. Especially in view of the December 31, 2019 deadline for capturing the expiring ITC, this was a critical incentive the Company understood wind developers would need, given the Company's dual objectives of reducing customer rates while moving towards a 100% renewable energy future. Hawaiian Electric firmly believed then (and still believes now) that given the high degree of complexity in developing an onshore utility-scale wind project, its best chance of procuring energy from an utility-scale onshore wind project on the island of O'ahu was through the EOI and waiver process.[15] As set forth explicitly in the EOI, Hawaiian Electric explained to prospective wind developers that:

> Additionally, responses to this request will help validate the results of a National Renewable Energy Laboratory ("NREL") resource potential study issued in recent Power Supply Improvement Plan ("PSIP") efforts. Hawaiian Electric commissioned NREL to conduct a study to assess utility-scale onshore wind and PV resource potentials on the islands of O'ahu, Maui, and Hawai'i for its April 2016 PSIP Update Report. The report concluded that additional resources such as offshore wind or renewable resources through

[15] Though Hawaiian Electric was aware that the Commission was planning to open a new docket to proceed with competitive procurement of dispatchable firm generation and new renewable energy generation for O'ahu (which eventually occurred by way of Order No. 34856, filed October 6, 2017, in Docket No. 2017-0352), in view of the timing issues caused by the expiring ITC, the Company moved forward with the EOI/waiver process instead of through the request for proposal process, scheduled to be developed in Docket No. 2017-0352. Accordingly, in the development of the requests for proposals that were eventually established through Docket No. 2017-0352, the Company carved out the allocated MWs for wind being pursued through the present EOI/waiver process. See Hawaiian Electric Companies' Proposed Final Draft Variable Requests for Proposals, filed February 2, 2018, in Docket No. 2017-0352, at Exhibit 2, p. 1 n.1.

> interisland transmission may be necessary for O'ahu, however Maui and Hawai'i Island have ample renewable energy resources to attain 100% renewable energy. In July 2016, stakeholder input requested that additional land areas be included in the PSIP to better assess the total onshore renewable energy resource potential on O'ahu and as such, was included in the December 2016 PSIP Update. To identify near term onshore wind projects and determine if the capacity for wind on O'ahu is as limited as provided for in the NREL report, Hawaiian Electric is proactively seeking information regarding onshore wind projects that are able to take advantage of the federal ITC, with the objective of obtaining projects that will lower costs for customers and help Hawai'i achieve its goal of reaching a 100% renewable energy future. If the capacity for onshore wind on O'ahu is in fact limited, then it is important to identify projects able to take advantage of the federal ITC, as the scarcity of available project sites and no federal ITC infers that the price for onshore wind projects on O'ahu in the future may be higher. This EOI is intended to identify potential onshore wind projects on O'ahu that have the ability to reduce customer rates and can be developed in near term in order to be able to pass along the financial benefits associated with capturing the federal ITC that would otherwise be lost due to the scheduled expiration of the federal ITC for Large Wind projects.[16] (Footnote reference omitted).

The EOI set forth several criteria for proposed projects. Among them were: pricing that will provide an attractive reduction in cost for Hawaiian Electric's customers; the availability of historical meteorological wind resource data for one year or longer specific to the project's site location; experience in development and execution of at least one generation project similar in size and technology to the proposed project; proof of site control for the duration of the PPA; evidence of plans for community relations outreach for the project; and demonstration that the project can reasonably attain a commercial operation date no later than the end of 2022.

The terms of the EOI required interested parties to provide information by January 31, 2017.

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[16] See EOI at 1-2.

D. Eurus America Corp.'s Response to Hawaiian Electric's EOI; PPA Negotiations

On January 31, 2017, Eurus America Corp. submitted its timely response to the Company's EOI, proposing the present Project. Eurus America Corp.'s submission was the only proposal received by Hawaiian Electric in response to its EOI.[17]

Hawaiian Electric reviewed Eurus America Corp.'s response and determined that it met the Company's criteria set forth in the EOI. Hawaiian Electric also concluded that with limited sites available for onshore wind development for O'ahu, and Eurus America Corp.'s proposal being the only proposal received in response to the EOI, Hawaiian Electric would not receive more competitive wind proposals through competitive bidding.[18]

By letter dated April 3, 2017, Hawaiian Electric informed Eurus America Corp. that it met the criteria of the EOI, and Hawaiian Electric requested that Eurus America Corp. confirm its willingness to proceed with its proposed Project and enter into negotiations for a PPA based on certain terms and conditions. Negotiations with Eurus America Corp. over the terms and conditions commenced thereafter, and on September 8, 2017, the Parties executed a letter agreement ("Letter Agreement")[19] with terms and conditions to proceed with PPA negotiations.

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[17] Prior to Hawaiian Electric's issuance of the EOI in January 2017, Eurus had approached the Company about a possible wind project for the island of O'ahu. In response to this initial contact, however, the Company did not believe it prudent to move forward with bilateral negotiations without first determining if there were other bona fide wind projects that could be developed for O'ahu. Hence, it therefore proceeded instead, with the EOI process seeking independent power producers that were capable of developing utility scale onshore wind projects that would be eligible to capture the ITC for wind on the island of O'ahu in order to provide reduced rates for customers. As noted above, however, Eurus ultimately ended up being the only developer to submit a proposal in response to the EOI.

[18] See footnotes 11 and 13 supra., discussing Hawaiian Electric's actions to achieve its near-term objective to acquire an onshore utility-scale wind project for O'ahu. While the size of the Project exceeds the 30 MW designated in the Company's PSIP near-term resource plan and was a subject of negotiation between the Parties, Eurus asserted that its proposed Project size was necessary to realize economies of scale for the Project site in order to support its pricing.

[19] A true and correct copy of the Letter Agreement between Eurus and Hawaiian Electric dated September 8, 2017 is attached hereto as Exhibit 4.

Soon thereafter, on October 6, 2017, the Commission opened Docket 2017-0352, *To Institute a Proceeding Relating To a Competitive Bidding Process To Acquire Dispatchable and Renewable Generation.*[20] Hawaiian Electric issued its requests for proposals ("RFP") on February 27, 2018 with bids due on April 30, 2018 ("2018 RDG RFP").[21] Included in the types of projects sought by Hawaiian Electric as part of the 2018 RDG RFP was utility-scale onshore wind projects for the island of O'ahu. In response to the 2018 RDG RFP, Hawaiian Electric received no proposals for wind projects for the island of O'ahu.

On April 4, 2018, as a condition precedent to executing the PPA under the terms of the Letter Agreement, Eurus presented its proposed Project to the public at a community meeting at Kapolei High School, and initiated a 30-day comment period to solicit feedback from the surrounding community, in order to incorporate, where feasible, the input and feedback received into the design of the Project. Eurus's community outreach is more fully discussed in Section IV.E., below.

The IRS for the Project has been initiated, but has not yet been completed. However, the Parties have negotiated and agreed upon the terms and conditions of the PPA, including pricing, which as discussed further below, is attractively low by comparison to several other benchmarks, and is estimated to result in customer savings. Accordingly, on October 22, 2018, the Parties executed the PPA.

E. Description of the Palehua Project

Pursuant to the PPA, Eurus will construct, own, and operate a proposed 46.8 MW

[20] Order 34856, filed on October 6, 2017, opening Docket 2017-0352

[21] Hawaiian Electric Companies' Final Variable Requests for Proposals filed February 27, 2018 in Docket 2017-0352.

(46,800 kW) wind facility located near Kahe in an area known as Palehua, on the southwestern end of the Wai'anae mountains of O'ahu, Hawai'i ("Facility"). Powered by wind energy, the Facility is capable of generating up to 148,975 MWh per year, equivalent to the power used by an estimated 25,000 homes.

1. Site

The proposed Facility will be located on land particularly identified by Tax Map Key Nos. (1) 9-2-045-007, (1) 9-4-049-013, and (1) 9-4-004-008. The land secured by Eurus is approximately 4,500 acres of primarily agricultural and conservation lands zoned AG-1, AG-2, and P-1. A map showing the general location of the Project site is attached hereto as Exhibit 5.

The Palehua area appears to be one of the few remaining sites suitable for an utility-scale onshore wind project on O'ahu, and provides prime conditions for wind energy power. If this PPA is approved, turbines will be located approximately 3.5 miles from Kapolei High School and one mile from Nanakuli High School, separated by a ridge.

2. The Facility

Pursuant to the terms of the PPA, Eurus will construct,[22] own, and operate a proposed renewable electric energy facility, including all developer-owned interconnection facilities and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Eurus in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Eurus to Hawaiian Electric,[23] in parallel with Hawaiian

[22] Eurus, as a developer of renewable energy systems, intends to hire a properly licensed contractor to build the proposed renewable energy facility that is classified as an eligible resource under Hawai'i's Renewable Portfolio Standards Statute, HRS §§ 269-91 – 269-95. See PPA at 1.

[23] See PPA at 10-11 (Definition of "Facility").

Electric's system.

Electric energy produced by the Facility will be provided by Eurus to Hawaiian Electric "on an unscheduled basis as Seller determines it to be available from its Facility, rather than at prearranged times and in prearranged amounts."[24]

The Facility is expected to consist of thirteen 3.6 MW Vestas model V3.6-136m wind turbines, each with an installed hub height of 269 feet, for a total Contract Capacity[25] of 46,800 kW.[26] Subject to the results of the IRS, the Facility will interconnect to the Company's existing Kahe-Waiau 138 kV line via a new switching station.

Upon completion of the IRS for the Project, and execution by the Parties of an Interconnection Requirements Amendment, which will include a preliminary single-line diagram, relay list, relay settings, and trip scheme of the Facility as Attachment E (Single-Line Drawing) and Attachment F (Relay List and Trip Scheme) of the PPA, the Company will file the Interconnection Requirements Amendment with the Commission as an informational filing. A final single-line drawing, relay list and trip scheme of the Facility will then be attached to the PPA and made a part thereof on the Commercial Operations Date of the Facility ("COD"). After the COD, no changes can be made to the final single-line diagram, relay list, and trip scheme without the prior written consent of the Parties.[27]

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[24] See PPA at 3 (Definition of "As-Available Energy").

[25] Unless otherwise stated herein, capitalized terms shall have the meaning set forth in the Definitions section of the PPA.

[26] See PPA, Attachment A.

[27] See PPA, Attachment A.

3. Qualification of the Facility

Eurus represents and warrants that, as of the COD, the Facility will be a qualified renewable resource under the renewable portfolio standards ("RPS") in effect as of the effective date of the PPA ("Effective Date").[28] Accordingly, based on Eurus's representation and warranty, any and all energy delivered by Eurus to Hawaiian Electric from or through the Facility throughout the term of the PPA will meet the definition of "renewable electrical energy" or "renewable energy" as defined under HRS § 269-91.

III. WAIVER JUSTIFICATION

As noted above, the Palehua Project originated from a response to Hawaiian Electric's EOI issued on January 5, 2017.

The Competitive Bidding Framework states: "Competitive Bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or block of generation resources, whether or not such resource has been identified in a utility's [Integrated Resource Plan ("IRP")]."[29]

However, the Competitive Bidding Framework recognizes certain circumstances where competitive bidding may not be appropriate, in which case a waiver may be granted by the Commission.[30] Hawaiian Electric respectfully submits that the circumstances surrounding the current proposed wind Project warrant this Project receiving a waiver from the Competitive Bidding Framework.

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[28] See PPA at § 22.2(E) and preamble.

[29] Competitive Bidding Framework at Part II.A.3 at 3.

[30] Id.

A. Part II.A.3.b.(iii) of the Framework

Part II.A.3.b.(iii) of the Framework states that under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver, competitive bidding may not be appropriate, and that these circumstances include "(iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes."

In this case, the proposed Palehua Project provides Hawaiian Electric with the opportunity to obtain renewable wind energy purchased at a rate that is cost-effective for customers. In consideration of Eurus's desire to safe harbor the 2019 ITC, and the fact that the Palehua area appears to be one of the few remaining sites suitable for a wind project on O'ahu, the Project is more likely to be successfully developed through the current ongoing EOI and bilateral negotiation process, as opposed to competitive bidding.

As explained above, as part of its long-term resource planning strategy, Hawaiian Electric has sought a balanced and diverse portfolio of renewable energy resources. Because of wind's fundamentally different production characteristics compared to solar, and its ability to counterbalance the "daytime only" nature of solar projects thereby increasing the total amount of variable renewable energy capacity that can be integrated into the system, Hawaiian Electric has been seeking opportunities to integrate more wind resources onto its grid. This, however, has been a challenge, as there appears to be few remaining sites on O'ahu where utility-scale onshore wind generation can be developed.[31]

Therefore, integrating an utility-scale onshore wind project like the Palehua Project onto the Company's grid improves the system's renewable energy diversity and adds more renewable

[31] See also footnote 10 supra.

resources onto its system. This is so, especially given: (i) the marginal utility-scale onshore wind potential for O'ahu and (ii) the fact that Eurus is a known entity with a proven track record for successfully developing and operating an utility-scale renewable project on O'ahu. These factors lead Hawaiian Electric to believe that this Project is viable and preferable to other options, including wind projects currently unknown to the Company.

In addition, Hawaiian Electric submits that the proposed Project is cost-effective. As explained above, the Company's pursuit - in early 2017 - of more utility-scale wind projects for the island of O'ahu, included the Company's concurrent requirement that any new wind project have the ability to reduce customer rates. This condition made the upcoming December 31, 2019 deadline for wind developers to capture the expiring ITC a critical factor in Hawaiian Electric's decision to utilize the EOI process to ascertain whether there were viable desired wind projects for O'ahu. Given the high degree of complexity and extended time involved in developing utility-scale onshore wind projects, Hawaiian Electric believed then (and still believes now) that utilizing the EOI process (instead of waiting for the 2018 RDG RFP) gave it the best chance of procuring renewable wind energy, particularly in view of the December 31, 2019 deadline for the ITC.

As noted above, Eurus's project proposal was the only proposal received by Hawaiian Electric in response to the EOI. This fact, together with the proposed energy pricing based on the federal ITC, which will be reduced yearly until its ultimate expiration at the end of 2019, convinced Hawaiian Electric that bilateral negotiations would be the most efficient way to achieve a negotiated PPA with Eurus, and that the process would be completed more quickly than one that resulted from a competitive bidding process under the Framework.

If Eurus is unable to proceed with this cost effective renewable energy project in an

expeditious manner, anticipated customer cost savings will not only start later, but may be reduced overall as the ITC for wind is reduced or eliminated in the future. By proceeding quickly, this Project should be able to offer lower energy rates to Hawaiian Electric customers on an expedited basis. The Commission has specifically advised that Hawaiian Electric "must move quickly to enable customers to benefit from available tax credits, such as the federal ITC, which is set to expire within the near-term action plan period. As such, the [C]ommission expects the [Company] to devote attention and resources to ensure a transparent, timely, and successful procurement process."[32] Hawaiian Electric respectfully submits that it has sought to act accordingly in this case.

Finally, as discussed above, in February of 2018, the Company issued its draft RFP under the Competitive Bidding Framework, in an effort to seek viable renewable generation projects (including any potential onshore utility-scale wind projects for O'ahu).

As part of that process, the Company received no proposals for wind projects for O'ahu. Though this result was not unexpected, the Company respectfully submits that it validates Hawaiian Electric's belief that the existing EOI and bilateral negotiations process selected for this Project serves to give the Project the best chance for success, and creates the most efficient path for the Company to procure wind energy in support of a diversified portfolio of renewable energy resources for O'ahu.

For these reasons, Hawaiian Electric firmly believes that a waiver from the Competitive Bidding Framework is justified for this Project.[33]

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[32] See Decision and Order No. 34696, filed on July 14, 2017, in Docket No. 2014-0183, at 27-28.

[33] Hawaiian Electric is aware that the Commission has recently advised that "[i]n future efforts to add new renewable generation, the commission expects that the HECO Companies will continue to seek ways to utilize competitive bidding, rather than sole source procurement, and to negotiate with developers in order to drive down

B. Part II.A.3.d of the Framework

Part II.A.3.d of the Competitive Bidding Framework states that "the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body or ratepayers, or is otherwise in the public interest."

The Company submits that the proposed Palehua Project satisfies the waiver requirements set forth above in that it reflects energy pricing that is significantly lower than existing renewable PPAs with Hawaiian Electric, and is projected to reduce customer bills every year over the Project's 22-year PPA term. The energy price under the PPA is a sliding scale ranging from $109.75 per megawatt-hour ("MWh") to $115.50 per MWh for the 22-year term.[34] The estimated bill impacts of the Project on a typical residential customer using 500 kWh per month is a reduction of $0.70 per month.[35]

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costs for the benefit of ratepayers, to lower customer bills and to increase renewable generation." Decision and Order No. 35609, filed on July 30, 2018, in Docket No. 2018-0053, at 86. Though this proposed Project is not a result of competitive bidding, Hawaiian Electric respectfully believes that factors such as: (1) the limited options for developing utility-scale onshore wind projects on the island of O'ahu; (2) the unique timing for qualifying for the ITC for wind; (3) the formal EOI process the Company voluntarily utilized that produced the present Project proposal; and (4) the fact that no utility-scale wind project proposals were received for the island of O'ahu through the 2018 RDG RFP, justifies the Company's decision to move forward with bilateral negotiations and supports the Company's request for a waiver from competitive bidding.

[34] See Section IV.A. below for a discussion of the sliding scale pricing.

[35] The projected bill impact calculation is only intended to provide an illustrative example of potential customer bill savings. The scenario-specific assumptions and results used in the bill impact calculations are provided in the Pricing Evaluation attached hereto as Exhibit 7. See also, Exhibit 6, Seller's Price Justification and Pro Forma, attached hereto. Redacted versions of Exhibit 6 and Exhibit 7 are attached, as these exhibits contain confidential and/or proprietary financial information, which if disclosed publicly could disadvantage and competitively harm the Company and/or Eurus in future power purchase negotiations. Unredacted copies of these exhibits will be provided upon issuance of a protective order in this docket.

As noted above, the equivalent levelized price of 10.975¢ per kWh for this Project is significantly lower than equivalent levelized prices, with tax credits, for other recent renewable energy PPAs for projects on O'ahu that were approved by the Commission:

- 12.18¢ per kWh -- Waipio PV (Decision and Order, filed on July 27, 2017, in Docket No. 2017-0108)
- 13.05¢ per kWh -- Lanikuhana Solar (Decision and Order, filed on July 27, 2017, in Docket No. 2017-0108)
- 12.73¢ per kWh -- Kawailoa Solar (Decision and Order, filed on July 27, 2017, in Docket No. 2017-0108)
- 14.5¢ per kWh – Waianae Solar (Decision and Order, filed on July 31, 2015, in Docket No. 2014-0354)
- 15.0¢ per kWh – Na Pua Makani Wind (Decision and Order, filed on December 31, 2014, in Docket No. 2013-0423)
- 21.6¢ per kWh -- Kalaeloa Renewable Energy Park (Decision and Order, filed on October 22, 2011, in Docket No. 2011-0384)
- 21.8¢ per kWh -- Kalaeloa Solar 2 (Decision and Order, filed on September 21, 2011, in Docket No. 2011-0051)
- 22.9¢ per kWh -- Kahuku Wind (Decision and Order and Dissenting Opinion of Leslie H. Kondo, Commissioner, filed on May 12, 2010, in Docket No. 2009-0176)
- 22.9¢ per kWh -- Kawailoa Wind (Decision and Order No. 30012, filed on December 12, 2011, in Docket No. 2011-0224)
- 23.6¢ per kWh -- FIT Tier 3 photovoltaic (Order No. 30074, filed on December 29, 2011, in Docket No. 2008-0273)[36]

Moreover, inasmuch as Part II.A.3.d. of the Framework also allows the Commission to grant a waiver when to do so would "increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest[,]" Hawaiian Electric believes

[36] See also Decision and Order No. 30950, filed on January 17, 2013, in Docket No. 2012-0129, at 23.

that approving this waiver process to integrate an utility-scale onshore wind project onto O'ahu's grid will improve the system's renewable energy diversity (given its differing generating characteristics as compared to solar), thereby increasing the supply of renewable generation to Hawaiian Electric's customers. In doing so, as discussed in Section VI supra., the Palehua Project will help reduce Hawai'i's current reliance on imported fossil fuels, improving energy security, allowing Hawaiian Electric to avoid the production of tens of thousands of tons of greenhouse gas emissions each year, and helping Hawaiian Electric increase its renewable energy portfolio.[37]

The Commission has advised that "given the uncertainty about future conditions, and because planning is a continuous and ongoing activity, the commission encourages flexibility and anticipates variation and modification of the plans, as time goes on. Future applications 'will be evaluated on [their] own merits pursuant to applicable statutory and regulatory standards, as well as [their] relationship to the final PSIPs.' As such, in subsequent applications for approval or cost-recovery, the utility will bear the burden of supporting the merits of each proposed resource or action. . . . In subsequent application, the Companies must fully support the merits of each resource or proposed action." [38] Hawaiian Electric respectfully submits that this Application and the analysis set forth in the Pricing Evaluation attached as Exhibit 7 hereto supports the merits of the proposed Project and the approvals sought by the Company herein.

For all of these reasons, Hawaiian Electric submits that the Palehua Project is projected to result in a lower cost supply of electricity to Hawaiian Electric's customers and thus, respectfully

[37] See Decision and Order, filed on August 8, 2008, in Docket No. 2008-0091, at 7 (agreeing that the granting a waiver from the Competitive Bidding Framework for a biomass energy project for Hawai'i island "is in the public interest[,]" and further noting that "[i]n the [C]ommission's view, such acquisition [of renewable energy] can provide energy security, reduce greenhouse gas emissions, and reduce our State's dependence on foreign oil.").

[38] See Decision and Order No. 34696, filed on July 14, 2017, in Docket No. 2014-0183, at 45-46.

requests that the Commission grant a waiver from the Competitive Bidding Framework.

IV. APPROVAL OF PPA

A. "Modified Risk-Adjusted Pricing" Pricing

As more thoroughly discussed in Exhibit 8, "Key PPA Terms and Conditions" attached hereto, this PPA is a "Modified Risk-Adjusted Pricing" ("Modified RAP") energy PPA, pursuant to which Hawaiian Electric will purchase the energy made available to the Company in accordance with the terms and conditions of the PPA, subject to Hawaiian Electric's rights in the PPA to curtail, interrupt or reduce deliveries of electric energy for certain enumerated purposes or causes.

Similar to other RAP energy PPAs previously entered into by Hawaiian Electric and approved by the Commission, this PPA requires Hawaiian Electric to pay for certain curtailed energy, or "Compensable Curtailed Energy" as defined in the PPA.

Essentially, Hawaiian Electric will pay the same contract rate for both electric energy delivered pursuant to the PPA and for Compensable Curtailed Energy. This pricing structure for electric energy is sometimes referred to as "RAP Pricing" herein. This concept was approved by the Commission in Hawaiian Electric's PPAs with Waianae Solar, Waipio PV, Kawailoa Solar and Lanikuhana Solar.

For this Project, the Parties agreed to a modified RAP Pricing rate structure that allocates some curtailment risk to Eurus, while seeking to avoid a higher fixed long-term price associated with a peak curtailment threshold.

The Parties agreed to sliding scale pricing to address risk associated with the potential for excess energy curtailment to fluctuate annually over the 22-year PPA Term,

with Hawaiian Electric making an initial Compensable Curtailed Energy Threshold election for the first five (5) Contract Years not less than six (6) months prior to the start of the calendar year in which the COD falls. Thereafter, the Company will have the option to update its election on an annual basis for the remaining Contract Years for the Initial Term.[39] Instead of setting a fixed five percent (5%) threshold at a higher risk adjusted price, the sliding scale allows the Company to elect lower levels of excess energy curtailment at a reduced price in years when curtailment is forecast to be lower. Eurus, in turn, gets compensated for excess energy curtailment (Compensable Curtailed Energy) above Hawaiian Electric's elected Compensable Curtailed Energy Threshold, based on the sliding scale pricing:

COMPENSABLE CURTAILED ENERGY THRESHOLD	CONTRACT PRICE ($/MWh)
0%	109.75
0.50%	110.30
1%	110.86
1.5%	111.42
2%	111.99
2.5%	112.56
3%	113.14
3.5%	113.73
4%	114.32
4.5%	114.92
5%	115.53

For example, if the Company elects a Compensable Curtailed Energy Threshold of 5% for a given Contract Year, Eurus will be paid for any Compensable Curtailed Energy that

[39] See PPA at § 2.6(B); PPA, Attachment J at Table J-2; Key PPA Terms and Conditions, Exhibit 8 at 10.

exceeds 5% of the Annual Contract Energy for that Contract Year (Compensable Curtailed Energy Threshold) at a rate of $115.53/MWh, but will not be paid for any Compensable Curtailed Energy up to the 5% threshold.

The pricing terms for the Project are covered in Attachment J of the PPA, and specifically, Table J-1 of Attachment J sets forth the contract rates for each level of the Compensable Curtailed Energy Threshold that Company may elect for each Contract Year during the Initial Term pursuant to Section 2.6(B) of the PPA. The base Contract Price is set at $109.75/MWh and adjusts upward based on the following adjusted price formula: ($109.75/MWh)/((100%-X)/100), where X is the elected Compensable Curtailed Energy Threshold, and also that X does not exceed five percent (5%).[40] Under the PPA, the amount of Compensable Curtailed Energy paid for by Hawaiian Electric will be "banked" such that at the end of the Initial Term, Hawaiian Electric will have the option of extending the Term of the PPA for a Banked Curtailed Energy Term. The contract rate for energy delivered during the Banked Curtailed Energy Term is approximately fifty percent (50%) less than the contract rate during the Initial Term, and Eurus will not be paid for Compensable Curtailed Energy during the Banked Curtailed Energy Term.[41] The Banked Curtailed Energy Term will expire on the first to occur of

[40] See PPA at § 2.6(B); PPA, Attachment J at § 1; PPA, Attachment J at Table J-1; Key PPA Terms and Conditions, Exhibit 8 at 11.

[41] See Exhibit 6 at 4.

(i) the last Day of the calendar month during which the last of the Banked Curtailed Energy is delivered to Hawaiian Electric or (ii) the fifth anniversary of the end of the Initial Term. The rationale for the lower contract rate during the Banked Curtailed Energy Term is that Hawaiian Electric has already paid for the Banked Curtailed Energy and payments to Seller during the Banked Curtailed Energy Term should be for purposes of covering Seller's operating and maintenance costs. Exhibit 8 (Seller's Price Justification and Pro Forma) attached hereto includes Eurus's explanation and support for the contract rate for the Banked Curtailed Energy Term.

Hawaiian Electric believes that it would be reasonable to allow for full cost recovery for payments made to Eurus for Compensable Curtailed Energy because the contractual mechanism for such payments has reduced financing uncertainty for Eurus and has thereby enabled an additional reduction in Eurus's energy price. Without this risk adjusted pricing arrangement, Eurus's rate would be higher than the energy price set forth in the PPA.

Hawaiian Electric submits that the energy pricing for this Project is reasonable and in the interests of Hawaiian Electric's customers in that the equivalent levelized price for this Project of 10.975¢ per kWh is lower than: (1) Hawaiian Electric's estimated long-run avoided costs over the twenty-year contract term for the Project; and (2) the equivalent levelized prices, with tax credits, for other recently approved renewable energy projects on O'ahu.

In addition, the energy pricing for the Palehua Project is consistent with the requirements of HRS § 269-27.2(c),[42] as the energy price is not indexed to, and does not vary with changes in the price of fuel oil. Thus, the Project is expected to contribute to stabilizing Hawaiian Electric's overall energy prices over time.

Based on the foregoing, Hawaiian Electric respectfully submits that the energy pricing for the Palehua Project is just and reasonable, and is consistent with HRS § 269-27.2. For these reasons, Hawaiian Electric requests that the Commission find that the purchased energy charges to be paid by Hawaiian Electric pursuant to the PPA are reasonable, and further, that the purchased energy charges and payments under the PPA may be recovered through Hawaiian Electric's ECAC or ECRC, as applicable, and PPAC, to the extent that the costs are not recovered in base rates.

B. Key PPA Terms and Conditions

The terms and conditions of the PPA were negotiated by the Parties at arms-length. The PPA contains indemnification, insurance and other provisions, including, among other things, provisions pertaining to the Term, Eurus's delivery of as-available energy from the Facility, and Eurus's compliance with laws, which will serve to protect Hawaiian Electric and its customers from certain risks associated with interconnecting with the Facility. Moreover, the terms and conditions of the PPA will not affect Hawaiian Electric's ability to provide electric service to its customers. Hawaiian Electric contends that, for these reasons, the purchased power

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[42] HRS § 269-27.2(c) provides, in relevant part:

> The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. [Emphasis added.]

arrangements (i.e., terms and conditions) under the PPA, pursuant to which Hawaiian Electric purchases energy from Eurus, are prudent and in the public interest.

A summary and detailed discussion of some of the key terms and conditions of the PPA is set forth in the document entitled Key PPA Terms and Conditions, attached hereto and incorporated herein as Exhibit 8.

C. Interconnection

To take advantage of favorable pricing under the PPA, the Parties agreed to execute the PPA prior to the completion of the IRS for the Project.[43] Following completion of the IRS (including the completion by the Company of the Total Estimated Interconnection Costs and the project schedule), the Parties will execute an Interconnection Requirements Amendment, substituting new versions of Attachment B (Facility Owned by Seller), Attachment E (Single-Line Drawings), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), Attachment L (Reporting Milestones), and Attachment N (Acceptance Test General Criteria) to reflect the results of the IRS.[44] Under Section 12.4(B) of the PPA, if Eurus is dissatisfied with the results of the IRS (because, for example, of the technical requirements imposed or the cost of the interconnection work), it has the option, by written notice delivered to the Company no later than the Termination Deadline,[45] to declare the PPA null and void.

Importantly, the PPA does not allow for any adjustment to pricing upon completion of

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[43] See PPA § 12.4.

[44] See PPA § 12.4(A).

[45] As defined in the PPA, "Termination Deadline" means the 30th Day following the date the completed IRS (including the Total Estimated Interconnection Costs and project schedule completed by Company) is provided to Seller, or such later date as Company and Seller may agree to by a written agreement.

the IRS and interconnection cost estimates. Thus, the equivalent levelized pricing of 10.975¢ per kWh under the PPA is locked in, and may be reviewed as a part of the PPA even while the IRS is pending.

D. Accounting and Financial Impacts

1. Consolidation Accounting

Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, Consolidation,[46] addresses variable interest entities ("VIE") and primary beneficiaries (entities that consolidate VIEs). FASB ASC 810 could potentially require that the purchaser under a PPA, such as Hawaiian Electric, consolidate the seller, such as Eurus. If the PPA is determined to constitute a variable interest in Eurus and that Hawaiian Electric is the primary beneficiary, then Hawaiian Electric will be required to consolidate Eurus onto its financial statements. Consolidating Eurus onto Hawaiian Electric's financial statements will have uncertain impacts on the assessments of investors and/or credit rating agencies on the risks associated with this PPA and Hawaiian Electric's creditworthiness. In addition, if Hawaiian Electric is required to consolidate Eurus onto its financial statements, then Hawaiian Electric's management will be required to assess the adequacy of its internal controls over financial reporting, in order to comply with Section 404 of the Sarbanes-Oxley Act of 2002. Hawaiian

[46] Formerly FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" and FASB Statement of Financial Accounting Standards No. 167, "Amendments to FASB Interpretation No. 46R." Effective July 1, 2009, all various Generally Accepted Accounting Principles issued by FASB, American Institute of Certified Public Accountants, Emerging Issues Task Force ("EITF"), etc. (with the exception of the Securities Exchange Commission) have been codified into a single source of authoritative guidance. For purposes of this Application, included is the new codification reference, as well as the original standard reference for ease of review. See "Summary of Interpretation No. 46 (revised December 2003)" filed in Docket No. 04-0113, Hawaiian Electric's 2005 test year rate case, HECO-2114 for additional information on this accounting guidance.

Electric is unwilling to be subject to accounting treatment that results from VIE treatment as set forth in FASB ASC 810.[47]

A preliminary consolidation evaluation of the PPA and Eurus was performed under FASB ASC 810, and it appears consolidation is not required. An evaluation will be performed when Commission approval is received. Thereafter, FASB ASC 810 requires Hawaiian Electric to continuously reassess its evaluation on an on-going basis.

2. Lease Accounting

FASB ASC 842, Leases, effective January 1, 2019,[48] specifies tests to be applied to an arrangement, in this case, the PPA, to determine: (1) whether or not the arrangement contains a lease and specifies the circumstances under which an arrangement should be evaluated to determine whether or not it contains a lease; and (2) if it is deemed a lease, whether it is an operating or finance lease.

If the PPA is deemed a lease, it would be classified as either an operating or a finance lease. If it is deemed an operating lease, Hawaiian Electric will report the right-of-use asset, lease obligation and lease expense. If the PPA is deemed a finance lease, Hawaiian Electric will report the right-of-use asset, lease obligation and related interest and amortization expense.

A preliminary evaluation of the PPA was performed under FASB ASC 842, and it appears that the PPA does not contain a lease. FASB ASC 842 also specifies certain conditions when Hawaiian Electric must re-assess whether lease accounting treatment is required. Hawaiian Electric will re-perform this analysis when Commission approval is received.

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[47] See PPA at § 24.5.

[48] ASC 842 is effective on January 1, 2019, and supersedes ASC 840, Leases. The PPA was evaluated under ASC 842, as it is expected that this PPA will be effective when ASC 842 is effective.

Thereafter, an evaluation will be performed, if there are modifications to the PPA.

3. Impact of Imputed Debt on Credit Quality

The payments Hawaiian Electric is required to make under this PPA are for energy purchases, as well as for Compensable Curtailed Energy, as set forth in the PPA. While there is no recorded liability for the long-term lease expense payments, credit rating agencies would reflect these obligations as imputed debt in the ratios used to evaluate Hawaiian Electric's risk profile. On May 7, 2007, Standard & Poor's ("S&P") published an article titled "Standard & Poor's Methodology For Imputing Debt For U.S. Utilities' Power Purchase Agreements" ("S&P's 5-7-07 Article"). In this article, S&P described that for PPAs with energy purchases only, it considers "an implied capacity price that funds the recovery of the supplier's capital investment to be subsumed within the all-in energy price."[49] S&P determines an implied capacity payment for the PPA in order to calculate imputed debt.[50]

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[49] S&P's 5-7-07 Article at 5.

[50] In this regard, S&P's 5-7-07 Article states:

> The pricing for some PPA contracts is stated as a single, all-in energy price. Standard & Poor's considers an implied capacity price that funds the recovery of the supplier's capital investment to be subsumed within the all-in energy price. Consequently, we use a proxy capacity charge, stated in $/kW, to calculate an implied capacity payment associated with the PPA. The $/kW figure is multiplied by the number of kilowatts under contract. In cases of resources such as wind power that exhibit very low capacity factors, we will adjust the kilowatts under contract to reflect the anticipated capacity factor that the resource is expected to achieve.
>
> We derive the proxy cost of capacity using empirical data evidencing the cost of developing new peaking capacity. We will reflect regional differences in our analysis. The cost of new capacity is translated into a $/kW figure using a weighted average cost of capital and a proxy capital recovery period. This number will be updated from time to time to reflect prevailing costs for the development and financing of the marginal unit, a combustion turbine.

S&P's 5-7-07 Article at 5-6.

New lease accounting rules effective January 1, 2019 will require all leases with terms greater than twelve months to be included on the balance sheet. On April 16, 2018, S&P published a Credit FAQ titled "What Do New Lease Accounting Changes Mean For Corporate Credit Ratings?" ("S&P's 4-16-18 Article"). In this article, S&P states "forthcoming changes to lease accounting within international and U.S. accounting standards that come into force from 2019 will generally not affect S&P Global Ratings' view of the creditworthiness of companies it rates, because nothing will be changing about the underlying credit fundamentals of these companies. That said, we do not rule out the possibility that, in certain cases, the new financial reporting might highlight new information that we will need to factor into our analysis. Yet, although some components of certain individual credit ratings might change, we expect the overall effect to be limited."[51] For companies that follow U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), S&P expects to continue applying current methodology for operating leases.[52]

Hawaiian Electric prepared estimates of the imputed debt and rebalancing costs based on S&P's methodology as described. Imputed debt at inception is estimated to be approximately $7,500,000, with annual rebalancing costs estimated at about $357,000.

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[51] S&P's 4-16-18 Article at 1.

[52] In this regard, S&P's 4-16-18 Article at 4 states:

> Under our current methodology for operating leases, the lease-related expense is allocated to interest and depreciation. Interest expense is increased by the product of the 7% standard discount rate we currently use, multiplied by the average net present value of the lease payments for the current and previous years. Additionally, our EBITDA calculation increases because we add back in the interest and depreciation. We expect to continue applying this approach for companies that follow U.S. GAAP.

E. Community Outreach

The Parties have made a significant commitment to provide transparency and community engagement for this Project. Prior to the execution of the PPA, Eurus was required to (and did) host a public meeting with community and neighborhood groups in the area to apprise the community about the Project, and to allow an opportunity for community concerns and questions to be raised.[53] The Parties negotiated specific PPA provisions detailing the Eurus's community outreach obligations during the entire development period, which includes soliciting written community comments, and submitting all received written community comments as part of this Application.[54] Attached hereto as Exhibit 9 are copies of public comments from Eurus' community outreach efforts, as well a summary of Eurus's community outreach efforts made to date.[55]

V. 138kV TRANSMISSION LINE OVERHEAD

As set forth above, the Facility is currently planned to interconnect to a new switching station through the Company's existing Kahe-Waiau 138 kV line. A 138 kV overhead extension of the Kahe-Waiau 138 kV line will need to be built, and reconductoring of certain portions of the existing conductors of the circuit may need to be performed to connect to this new Facility. The IRS will determine the exact point of interconnection ("POI") onto the Kahe-Waiau 138 kV

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[53] A video of the April 4, 2018 community meeting at Kapolei High School can be viewed at the following link: https://www.dropbox.com/s/d1pyg1eki8oduqp/EURUS_180404MEETING_R1_V1.mp4?dl=0

[54] See PPA at § 29.26.

[55] A redacted version of Exhibit 9 is attached, as it contains personal contact information such as email addresses, street addresses, and telephone numbers of members of the public who submitted comments. Such contact information has been redacted due to privacy concerns. The Company will file unredacted versions of any pages from which confidential information has been redacted upon issuance of an appropriate protective order in this docket.

line, as well as other interconnection upgrades, requirements, and costs, which will include the construction of a Project substation and a switching station that will be located near the POI.[56] Subject to completion of the IRS for the Project, and the filing of the Interconnection Requirements Amendment based on the IRS results, the Company seeks a determination from the Commission that the 138 kV line extension be constructed above the surface of the ground, pursuant to HRS § 269-27.6.

Until the IRS is completed, the specific details of the 138 kV overhead line work that will be required for interconnection of the Project are not yet known. If it is discovered that the 138 kV overhead line will not be near existing nearby homes or will not be in a residential area, then a public hearing pursuant to HRS § 269-27.5 may not be required. However, should the Commission determine that a public hearing is necessary pursuant to HRS § 269-27.5, Hawaiian Electric additionally requests that the Commission schedule a public hearing subsequent to the Company's filing of the Interconnection Requirements Amendment.

VI. HAWAI'I ENERGY POLICY

The Palehua Project is consistent with the State of Hawai'i's ("State") energy policy, which encourages the use and development of renewable energy.[57] Moreover, the Palehua Project will help Hawaiian Electric meet the State's energy policy goals by reducing Hawaiian Electric's reliance on fossil fuels and implementing additional renewable energy resources. Based on the analysis set forth in Attachment 3 of Exhibit 7, it is estimated that the renewable energy supplied by the Palehua Project may save Hawaiian Electric millions of dollars in total

[56] See Site Map, Exhibit 5.

[57] See Title 15, Chapter 269, Part V, HRS.

avoided fuel costs over the term of the PPA based on a forecasted fuel consumption reduction of 970,586 barrels of low sulfur fuel oil, 5,340 barrels of diesel, 1,544,514 barrels of ultra-low sulfur diesel, and 3,342 barrels of biodiesel.[58] The State's overall energy objectives are set forth in HRS § 226-18(a), which states, in relevant part:

> (a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:
>
> (1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
>
> (2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;
>
> (3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; and
>
> (4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

The objectives in the area of renewable energy are to promote commercialization of Hawai'i's sustainable energy resources and technologies to reduce the State's high dependence on imported oil, increase local economic development, and reduce the potential negative economic impacts of oil price fluctuations.

In support of these objectives, renewable portfolio standards ("RPS") for electric utilities were established by the State Legislature in 2001, and amended in 2006, 2009 and 2015. Pursuant to HRS § 269-92(a), each electric utility company[59] that sells electricity for consumption in Hawai'i is required by law to establish a RPS of: (a) 10% of its net electricity sales by December 31, 2010; (b) 15% of its net electricity sales by December 31, 2015; (c) 30%

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[58] See Exhibit 7, Attachment 3.

[59] Pursuant to HRS § 269-93, "[a]n electric utility company and its electric utility affiliates may aggregate their renewable portfolios in order to achieve the [RPS]."

of its net electricity sales by December 31, 2020; (d) 40% of its net electricity sales by December 31, 2030; (e) 70% of its net electricity sales by December 31, 2040; and (f) 100% of its net electricity sales by December 31, 2045. In addition, HRS § 269-92(b)(1) requires that after December 31, 2014, the entire RPS be met by electrical energy generated using renewable energy sources, and HRS §269-92(b)(2) requires that beginning January 1, 2015, electrical energy savings shall not count toward the RPS.

Hawai'i's current reliance on imported fossil fuels, without any real opportunity for hedging against dramatic increases in oil prices, is untenable from an economic and security standpoint. In order to achieve the State's aggressive RPS, Hawaiian Electric must take advantage of and fully utilize wind power such as that presented by the Palehua Project, which represents a promising opportunity to significantly advance the development and use of renewable energy for O'ahu.

Moreover, HRS § 269-6(b) requires that the Commission:

> [C]onsider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the [C]ommission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on price volatility, expert of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The [C]omission may determine that short-term costs or direct costs that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.

Accordingly, Hawaiian Electric respectfully requests that the Commission explicitly take into consideration the avoidance of production of tens of thousands of tons of greenhouse gas

emissions each year, for an estimated total of 1,217,483 tons of greenhouse gas emissions that will be avoided during the 22-year term of the PPA.[60]

Accordingly, Commission approval of the PPA for the Palehua Project: (1) will help Hawaiian Electric increase its renewable energy portfolio on average 2.7% per year over the 22-year term of the PPA and increase the Companies' consolidated RPS on average 2% per year;[61] (2) is consistent with the State's energy policy encouraging the use and development of renewable energy resources; (3) advances the need to reduce the State's reliance on fossil fuels and the reduction of greenhouse gas emissions as articulated in HRS § 269-6(b); and (4) promotes the State's overall energy objectives set forth in HRS § 226-18(a).

VII. SUPPORTING EXHIBITS

The following exhibits are attached to, and hereby incorporated into, this Application:

Exhibit 1 Power Purchase Agreement for Renewable As-Available Energy, dated October 22, 2018, by and between Hawaiian Electric Company, Inc. and EE Ewa LLC

Exhibit 2 Ownership Structure Chart of Eurus

Exhibit 3 Hawaiian Electric Request for Expressions Of Interest For Potential Onshore Wind Renewable Energy Development – Island of O'ahu dated January 5, 2017

Exhibit 4 Hawaiian Electric Letter Dated September 8, 2017 Re: Eurus Energy America's Proposal for the Palehua Wind Project

Exhibit 5 Site Map of Seller's Facility

Exhibit 6 Seller's Price Justification and Pro Forma

Exhibit 7 Pricing Evaluation

[60] See Projected Change in Greenhouse Gas Emission, attached hereto and incorporated herein as Exhibit 10.

[61] See Projected Impacts on RPS, attached hereto and incorporated herein as Exhibit 11.

Exhibit 8 Key PPA Terms and Conditions

Exhibit 9 Community Outreach Summary and Public Comments

Exhibit 10 Projected Avoided Greenhouse Gas Emissions

Exhibit 11 Palehua's Projected RPS Impact

Exhibit 12 Confidentiality Justification Table[62]

VIII. CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications regarding this Application should be addressed to:

Kevin M. Katsura
Director, Regulatory Non-Rate Proceedings
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawai'i 96840-0001

IX. AUTHORITY FOR REQUESTED APPROVALS

A. HAR Chapter 6-61

Commission approval is sought pursuant to the Rules of Practice and Procedure before the State of Hawai'i Public Utilities Commission, Title 6, Chapter 61, of the Hawai'i Administrative Rules ("HAR").

B. Waiver from Competitive Bidding

As set forth in the Competitive Bidding Framework, Hawaiian Electric is required to use

[62] Redacted versions of Exhibit 6, Exhibit 7 and Exhibit 9 are attached in support of this Application. Exhibit 12, Confidentiality Justification Table, is being provided in order to identify the redacted information and basis for confidentiality for each exhibit in accordance with Section IV (Guidance Regarding the Frustration Exception to the UIPA) of the Commission's Order No. 34367, filed on January 30, 2017, in Docket No. 2016-0328. The Company will file unredacted versions of any pages from which confidential information has been redacted upon issuance of an appropriate protective order in this docket.

competitive bidding as the mechanism to acquire future generation resources or a block of generation resources, whether or not such resource has been identified in Hawaiian Electric's Integrated Resource Plan ("IRP").[63] The Framework, however, recognizes certain circumstances where competitive bidding may not be appropriate, in which case a waiver may be granted by the Commission. Part II.A.3.b.(iii) of the Framework states that under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver, competitive bidding may not be appropriate, and that these circumstances include "(iii) when more cost-effective . . . generation resources are more likely to be acquired more efficiently through different procurement processes." In addition, Part II.A.3.d of the Framework states that "the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest."

C. PPA Approval

Commission approval of the PPA and the purchased energy charges is sought pursuant to HRS § 269-27.2 and HAR Chapter 6-74, which generally guide the Commission's review of the rates agreed upon between Hawaiian Electric and Eurus. Specifically, HRS § 269-27.2(c) provides, in relevant part:

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

[63] See Competitive Bidding Framework, Part II.A.3.

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

HAR § 6-74-22(a) also provides that the rates for purchase shall:

> (1) Be just and reasonable to the electric consumer of the electric utility and in the public interest;
>
> (2) Not discriminate against qualifying cogeneration and small power production facilities; and
>
> (3) Be not less than one hundred per cent of avoided cost for energy and capacity purchases to be determined as provided in [HAR §] 6-74-23 from qualifying facilities and not less than the minimum purchase rate.[64]

In addition, Commission authorization is sought, pursuant to HAR § 6-60-6(2), to include the purchased energy charges that are incurred by Hawaiian Electric under the PPA in Hawaiian Electric's ECAC or ECRC. Specifically, HAR § 6-60-6(2) states:

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

Finally, in making the threshold determination of reasonableness of the terms of the PPA and purchased energy charges, HRS § 269-6(b) states:

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[64] Notwithstanding, HAR § 6-74-15(b)(1) states that nothing in HAR Title 6, Chapter 74, Subchapter 3 (i.e., HAR §§ 6-74-15 to 28) "[p]rohibits an electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subchapter[.]"

> The public utilities commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the [C]ommission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on price volatility, expert of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The [C]omission may determine that short-term costs or direct costs that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.

As stated above in Part VI of this Application, Hawaiian Electric respectfully requests that the Commission explicitly take into consideration the avoidance of production of tens of thousands of tons of greenhouse gas emissions each year during the 22-year term of the PPA.

D. <u>Purchased Power Adjustment Clause</u>

The risk adjusted pricing terms for this PPA are similar to other renewable PPAs the Company has previously executed. As described in Hawaiian Electric's July 25, 2014 letter filed in Docket Nos. 2013-0156 and 2013-0381, this change to the PPA structure provides a mechanism to limit the developer's financial risk associated with excess energy curtailment in exchange for reduced pricing to benefit customers. Furthermore, this change is consistent with Order No. 31354, issued in Docket 2011-0225, in which the Commission directed Hawaiian Electric to "seek proposals from renewable energy developers regarding optional curtailment compensation contract provisions in order to ascertain whether reductions in curtailment uncertainty would translate into equivalent bid price reductions. This information would establish the economic cost of curtailment or alternatively, the economic benefits of renewable

energy curtailment reduction."[65] Recent PPAs approved by the Commission,[66] and this PPA, which contain the concept of Compensable Curtailment Event and payment for Compensable Curtailed Energy[67] have significantly lower energy pricing. Thus, the total energy payments (purchased energy charges and payments for Compensable Curtailed Energy) represent the total cost of energy used (see also Section VIII.A. below).

Consequently, Commission authorization is requested to include the payments made for Compensable Curtailed Energy that are incurred by Hawaiian Electric through the Company's PPAC.

E. HRS § 269-27.6 – 138 kV Overhead Transmission Line

Subject to completion of the Project's IRS, which will provide specific details about the location of the 138 kV line extension, and the filing of the Interconnection Requirements Amendment based on the IRS results, the Company will request Commission approval to construct a 138 kV line extension above the surface of the ground, pursuant to HRS § 269-27.6. This section provides:

> Construction of high-voltage electric transmission lines; overhead or underground construction.
>
> (a) Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities

[65] See Order 31354 filed on July 11, 2013, in Docket No. 2011-0225 at 41.

[66] See, for example, Hawaiian Electric's PPA with EE Waianae Solar Project LLC approved by the Commission in Decision and Order No. 33035 in Docket No. 2014-0354, and Hawaiian Electric's three PPAs with NRG Renew, LLC approved by the Commission in Decision and Order No. 34714 in Docket 2017-0108.

[67] PPA at 6 (Definitions of "Compensable Curtailment Event" and "Compensable Curtailed Energy").

commission shall consider:

(1) Whether a benefit exists that outweighs the costs of placing the electric transmission system underground;

(2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected or built underground and the governmental agency establishing the policy commits funds for the additional costs of undergrounding;

(3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding;

(4) The recommendation of the division of consumer advocacy of the department of commerce and consumer affairs, which shall be based on an evaluation of the factors set forth under this subsection; and

(5) Any other relevant factors.

(b) In making the determination set forth in subsection (a), for new 138 kilovolt or greater high-voltage transmission systems, the public utilities commission shall evaluate and make specific findings on all of the following factors:

(1) The amortized cost of construction over the respective usable life of an above-ground versus underground system;

(2) The amortized cost of repair over the respective usable life of an above-ground versus underground system;

(3) The risk of damage over the respective usable life of an above-ground versus an underground system;

(4) The relative safety and liability risks of an above-ground versus underground system;

(5) The electromagnetic field emission exposure from an

above-ground versus underground system;

(6) The proximity and visibility of an above ground system to:

(A) High density population areas;

(B) Conservation and other valuable natural resource and public recreation areas;

(C) Areas of special importance to the tourism industry; and

(D) Other industries particularly dependent on Hawaii's natural beauty;

(7) The length of the system

(8) The breadth and depth of public sentiment with respect to an above-ground versus underground system; and

(9) Any other factors that the public utilities commission deems relevant.

(c) A public utility making an application to the public utilities commission under this section shall clearly and fully state and support its evaluation of each factor set forth in subsection (b).

F. <u>HRS § 269-27.5 – Public Hearing</u>

Subject to completion of the IRS for the Project, and the filing of the Interconnection Requirements Amendment based on the IRS results, if the proposed 138kV overhead line will run through any residential area, Hawaiian Electric will request that the Commission conduct a public hearing, if necessary, under HRS § 269-27.5, which provides:

> Whenever a public utility plans to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system above the surface of the ground through any residential area, the public utilities commission shall conduct a public hearing prior to its issuance of approval thereof. Notice of the hearing shall be given in the manner provided in section 269-16 for notice of public hearings.

X. CONCLUSION

Based on the foregoing, Hawaiian Electric respectfully requests that the Commission:

(a) Approve a waiver from the Framework for Competitive Bidding, pursuant to Parts II.A.3.b.(iii) and II.A.3.d of the Framework, for the 46.8 MW Palehua Project, as described herein;

(b) Approve the Power Purchase Agreement for Renewable As-Available Energy, dated October 22, 2018, by and between Hawaiian Electric and Eurus for the Project, attached hereto as Exhibit 1;

(c) Find that the purchased energy charges to be paid by Hawaiian Electric pursuant to the PPA are reasonable;

(d) Find that the purchased power arrangements under the PPA, pursuant to which Hawaiian Electric purchases energy on an as-available basis from Eurus are prudent and in the public interest with explicit consideration if required by law under HRS § 269-6, of the effect of the State's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions;

(e) Authorize Hawaiian Electric to include the purchased energy charges (and related revenue taxes) that Hawaiian Electric incurs under the PPA in and through Hawaiian Electric's ECAC or ECRC, as applicable, to the extent such costs are not included in base rates and to include payments made for Compensable Curtailed Energy (as the term is defined in Exhibit 8, "Key PPA Terms and Conditions," attached hereto) and related revenue taxes that Hawaiian Electric incurs under the PPA in and through Hawaiian Electric's PPAC to the extent such costs are not included in base rates;

(f) Upon completion of: an interconnection requirements study for

the Project; the informational filing of an amendment to the PPA based on the IRS results; and the filing of such additional information as may be necessary in connection with the requested approval of an above-ground 138 kV line extension:

(1) Determine that a 138 kV line extension that is included as part of the Company-owned interconnection facilities may be constructed above the surface of the ground, pursuant to HRS § 269-27.6;

(2) If necessary, conduct a public hearing pursuant to HRS § 269-27.5; and

(g) Grant such other relief as may be just and reasonable under the circumstances.

Hawaiian Electric respectfully requests that the Commission issue this decision and order as soon as practicable in order to help facilitate the implementation of this cost-effective renewable energy project, and its safe-harboring of the ITC, which is expected to help reduce customers' bills in the near term, as further described herein.

For the foregoing reasons, Hawaiian Electric respectfully requests that the application be granted.

DATED: Honolulu, Hawai'i, November 21, 2018.

Duke T. Oishi
Senior Associate General Counsel
HAWAIIAN ELECTRIC COMPANY, INC.

EXHIBIT 1

Power Purchase Agreement for Renewable As-Available Energy, dated October 22, 2018, by and between Hawaiian Electric Company, Inc. and EE Ewa LLC

Hawaiian Electric

Power Purchase Agreement For Renewable As-Available Energy

EE Ewa LLC

a Delaware limited liability company

Dated: October 22, 2018

POWER PURCHASE AGREEMENT FOR RENEWABLE AS-AVAILABLE ENERGY

THIS POWER PURCHASE AGREEMENT FOR AS-AVAILABLE ENERGY ("Agreement") is made this 22nd day of October, 2018 (the "Execution Date"), by and between **Hawaiian Electric Company, Inc.**, a Hawaii corporation (hereinafter called the "Company") and **EE Ewa LLC**, a Delaware limited liability company (hereinafter called the "Seller").

WHEREAS, Company is an operating electric public utility on the Island of Oahu, subject to the Hawaii Public Utilities Law (Hawaii Revised Statutes, Chapter 269) and the rules and regulations of the Hawaii Public Utilities Commission (hereinafter called the "PUC"); and

WHEREAS, the Company System is operated as an independent power grid and must both maximize system reliability for its customers by ensuring that sufficient generation is available and meet the requirements for voltage stability, frequency stability, and reliability standards; and

WHEREAS, Seller is a developer of renewable energy systems and intends to hire a properly licensed contractor to build a renewable energy facility that is classified as an eligible resource under Hawaii's Renewable Portfolio Standards Statute (codified as Hawaii Revised Statutes ("HRS") 269-91 through 269-95), that Seller intends to own and operate; and

WHEREAS, Seller understands the need to use all commercially reasonable efforts to maximize the overall reliability of the Company System; and

WHEREAS, the Facility will be located at Kapolei, Oahu, State of Hawaii and is more fully described in Attachment A (Description of Generation and Conversion Facility) and Attachment B (Facility Owned by Seller) attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell to Company electric energy generated by the Facility, and Company agrees to purchase such electric energy from Seller, upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the premises and the respective promises herein, Company and Seller hereby agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"Acceptance Test": A test conducted by Seller and witnessed by Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria and test procedures determined by Company and Seller as set forth in Section 2(f) (Acceptance Test Procedure) of Attachment G (Company-Owned Interconnection Facilities), to determine conformance with Article 3 (Facility Owned and/or Operated by Seller) to the extent applicable to the Interconnection Facilities and Attachment G (Company-Owned Interconnection Facilities) and Good Engineering and Operating Practices. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. Successful completion of the Acceptance Test shall be a condition precedent for the performance of the Control System Acceptance Test and the In-Service Date.

"Actual Output": The total quantity of electric energy (measured in kilowatt hours) produced by the Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter.

"Actual Wind Turbine Generating System (WTGS) Production": For each WTGS, the total quantity of electrical energy (measured in kilowatt hours) produced by such WTGS over a given time period as measured at such WTGS.

"Adjusted Allowed Capacity": Shall have the meaning set forth in Section 2.3(A) (Curtailment Priority Date).

"Adjustment Amount": Shall have the meaning set forth in Section 2.9(A) (General) of this Agreement.

"Adjustment Events": Collectively, (i) events or conditions of Force Majeure for so long as Seller is in compliance with the requirements of Section 21.4 (Satisfaction of Certain Conditions), (ii) Curtailment Events (including Compensable Curtailment Events) exclusive of curtailments by Company because Facility was not operating in compliance with Good Engineering and Operating Practices or other requirements set forth in this Agreement, and (iii) outages on the Company System or the inability of Company to accept energy from Seller unless such outages or inability were

caused by Seller's actions or inactions that were not in compliance with this Agreement.

"Agreement": Shall have the meaning set forth in the preamble to this Agreement.

"Allowed Capacity": Shall have the meaning set forth in Section 5(c) of Attachment A (Description of Generation and Conversion Facility) to this Agreement.

"Annual Adjusted Energy": The Actual Output during a Contract Year, as increased by the amount of electric energy that was not delivered because of Adjustment Events during such Contract Year.

"Annual Contract Energy": The Initial Annual Contract Energy, as adjusted downward (if applicable) in accordance with Section 2.2(B) (After the Fourth Contract Year) of this Agreement.

"Appeal Period": Shall have the meaning set forth in Section 29.20(B) (Non-appealable PUC Approval Order) of this Agreement.

"As-Available Energy": Electric energy provided to Company on an unscheduled basis as Seller determines it to be available from its Facility, in accordance with the terms and conditions of this Agreement, rather than at prearranged times and in prearranged amounts.

"Average Annual Energy": A three-year average of Annual Adjusted Energy over a rolling period of three (3) consecutive Contract Years, calculated at the end of each Contract Year, beginning with the end of the fourth Contract Year.

"Banked Curtailed Energy": Shall have the meaning set forth in Section 12.10(A) (Banked Curtailed Energy and Term Extension) of this Agreement.

"Banked Curtailed Energy Term": Shall have the meaning set forth in Section 12.10(B)(1) (Company's Option to Extend Term) of this Agreement.

"Bankrupt": With respect to any entity, such entity that (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar Law, (ii) has any such petition filed or commenced against it which is not dismissed within sixty (60) Days of the filing of such

petition, (iii) makes an assignment (other than a collateral assignment for financing purposes) or general arrangement for the benefit of creditors, (iv) otherwise becomes bankrupt or insolvent (however evidenced), (v) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) is generally unable to pay its debts as they become due.

"Base Load Unit": A generating unit that is normally on-line twenty-four (24) hours a Day. This includes any unit that is scheduled to be on-line continuously for a given Day because a unit which is normally a Base Load Unit is on maintenance or otherwise temporarily out of service.

"Base Rate": The primary index rate established from time to time by the Bank of Hawaii in the ordinary course of its business and published by intrabank circular letters or memoranda for the guidance of its loan officers in pricing all of its loans which float with the Base Rate. A change in the Base Rate shall take effect on the date upon which a change in the Base Rate is made effective by the Bank of Hawaii. In the event the Bank of Hawaii no longer establishes a Base Rate, the term "Base Rate" shall mean the primary index rate established by a leading Hawaii financial institution that is the most similar to the former Bank of Hawaii Base Rate.

"Bill of Material": A list of all major or critical equipment to be installed at the Facility including, but not necessarily limited to, items such as relays, breakers, and switches.

"Business Day": Any calendar day that is not a Saturday, a Sunday, or a federal or Hawaii state holiday.

"Calculated Output": The number of kilowatt hours ("kWh") that the Facility is capable of producing over a given period of time calculated by the Facility Output Model and taking into account actual operating conditions during such period (for example, wind speed measured at the Facility, self-curtailed units, and derated units or units that are otherwise unavailable to produce electric energy), as demonstrated by Seller to Company's reasonable satisfaction. Such demonstration shall include but not be limited to reporting to Company, and providing Company with access to, data establishing wind speed and unit availability. Such access shall include but not be limited to electronic access on a real time basis 24-hours per Day, as well as physical access to

Seller's operator log books. "Calculated Output" shall also take into account any electric energy consumed by the Facility and electric energy losses from the WTGS(s) to the Point of Interconnection. Subject to the foregoing, the Calculated Output of a wind project during a Curtailment Event shall be calculated as provided in Section 3(b) (Calculation Guidelines) of Attachment U (Calculation and Reporting of Curtailed Energy).

"Claim": Any claim, suit, action, demand or proceeding.

"Claiming Entity": Shall mean Seller and any direct or indirect owner of a membership interest in Seller which is eligible to claim Hawaii Renewable Energy Tax Credit in a given year.

"Construction Delay Liquidated Damages (LD) Period": Shall have the meaning set forth in Section 13.4(A) (Daily Delay Damages).

"Commercial Operations": Upon satisfaction of the following conditions, the Facility shall be considered to have achieved Commercial Operations on the Day specified in Seller's written notice described below: (i) the Acceptance Test has been passed, (ii) generating units representing 80% of the Contract Capacity have passed the Control System Acceptance Test, (iii) the Transfer Date has occurred, and (iv) Seller provides Company with written notice that (aa) Seller is ready to declare the Commercial Operations Date, (bb) Seller reasonably expects that the generating units representing the remaining 20% (or less, if applicable) of the Contract Capacity will be ready to undergo the Control System Acceptance Test within the following ninety (90) days, and (cc) the Commercial Operations Date will occur within 24 hours (i.e., the next Day).

"Commercial Operations Date" or "COD": The date on which Facility first achieves Commercial Operations.

"Company": Shall have the meaning set forth in the preamble to this Agreement.

"Company-Owned Interconnection Facilities" or "COIF": Shall have the meaning set forth in Section 1(a) (Description of Company-Owned Interconnection Facilities) of Attachment G (Company-Owned Interconnection Facilities).

"Company-Owned Interconnection Facilities Prepayment Amount": The total of the amounts payable under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment), Section 3(b)(iii) (Company

Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment), and Section 3(b)(iv) (Balance of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) of this Agreement.

"Company System": The electric system owned and operated by Company (to include any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

"Company System Operator": The authorized representative of Company who is responsible for carrying out Company dispatch and curtailment of electric energy generation interconnected to the Company System.

"Compensable Curtailed Energy": The Curtailed Energy that results from a Compensable Curtailment Event.

"Compensable Curtailed Energy Threshold": Shall have the meaning set forth in Section 2.6(A) (Payment for Compensable Curtailed Energy) of this Agreement.

"Compensable Curtailment Event": Any Curtailment Event other than a Curtailment Event due to (a) an Emergency, (b) a Forced Outage, (c) the Facility not operating in compliance with Good Engineering and Operating Practices such that curtailment is necessary to protect the Company System or because Company cannot accept the energy as delivered, as determined by the Company System Operator at his or her reasonable discretion, (d) the Company's construction, installation, maintenance, repair, replacement, removal, investigation, testing or inspection of any of its equipment or any part of the Company System, including, but only to the extent reasonably necessary to accommodate the installation and/or acceptance test of non-utility owned facilities to Company System or (e) Force Majeure. Curtailment pursuant to Section 8.2 (Negative Avoided Cost) or due to Excess Energy Conditions shall be Compensable Curtailment Events. For avoidance of doubt, a loss of curtailment priority for Subordinate Allowed Capacity under Section 2.3 (Adjustment of Curtailment Priority) of this Agreement does not constitute a Compensable Curtailment Event and the electric energy that is not purchased by the Company due to such loss of curtailment priority does not constitute Compensable Curtailed Energy.

"Construction Financing Milestone": Shall have the meaning set forth in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones).

"Construction Milestones": The Reporting Milestones set forth in Attachment L (Reporting Milestones) and the Guaranteed Project Milestones set forth in Attachment K (Guaranteed Project Milestones).

"Construction Start Date Milestone": The date by which continuous construction of permanent structures shall begin at the Site in accordance with Attachment K (Guaranteed Project Milestones). The Construction Start Date occurs when Seller begins grading the Site.

"Consumer Advocate": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Consumer Price Index": The Consumer Price Index for All Urban Consumers (CPI-U).

"Contract Capacity": Shall have the meaning set forth in Section 5(b) (Design and Capacity) of Attachment A (Description of Generation and Conversion Facility) to this Agreement.

"Contract Price": The price that Company will pay Seller for electric energy delivered to Company in accordance with the terms and conditions of this Agreement and for Compensable Curtailed Energy, as set forth in Attachment J (Energy Purchases by Company) to this Agreement.

"Contract Year": A twelve (12) calendar month period which begins on the first Day of the month coincident with, or next following, the Commercial Operations Date and, thereafter, each anniversary thereof; provided, however, that, in the event the Commercial Operations Date is not the first Day of the calendar month, the initial Contract Year shall also include the Days from the Commercial Operations Date to the first Day of the succeeding month.

"Contract Year 1": The initial Contract Year.

"Control System Acceptance Test": A test performed on the centralized control system and Curtailment Control Interface of the Facility in accordance with procedures set forth in Section 1(h) (Control System Acceptance Test Procedures) of Attachment B

(Facility Owned by Seller). Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test.

"Curtailed Energy": The positive difference (measured in kilowatt hours) between the Facility's Calculated Output and its Actual Output over the duration of a Curtailment Event or an Adjustment Event.

"Curtailment Control Interface": Shall have the meaning set forth in Section 1(g) (Curtailment Control Interface) of Attachment B (Facility Owned by Seller) of this Agreement.

"Curtailment Event": The temporary curtailment, interruption or reduction of deliveries of electric energy from the Facility initiated by Company as a result of circumstances described in Article 8 (Continuity of Service) and Article 9 (Personnel and System Safety) of this Agreement. A Curtailment Event shall commence at the time the Facility receives the curtailment signal from the Company System Operator and shall end at the time the Facility receives the curtailment control signal from the Company System Operator to end or modify the curtailment set point. Curtailment Events in which the Company System Operator modified the curtailment set point shall constitute separate Curtailment Events, using the time of which the Facility receives the curtailment control signal modifying the curtailment set point as the end time of the first Curtailment Event and the start time of the subsequent Curtailment Event. Certain Curtailment Events will satisfy the definition of Adjustment Events.

"Curtailment Priority Date": The Effective Date or such other date that is determined pursuant to Section 2(e)(ii) (Curtailment Methodology) of Attachment B (Facility Owned by Seller) to this Agreement.

"Curtailment Report": Means the monthly report of Curtailed Energy in the form specified in Section 4 (Format of Curtailment Report) of Attachment U (Calculation and Reporting of Curtailed Energy).

"Daily Delay Damages": Shall have the meaning set forth in Section 13.4(A) (Daily Delay Damages) of this Agreement.

"Day": A calendar day.

"Defaulting Party": The Party whose failure, action or breach of its obligations under this Agreement results in an Event of Default under Article 15 (Events of Default) of this Agreement.

"Development Period Security": An amount equal to $50/kW of the Contract Capacity.

"Dispute": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"Dispute Prevention and Resolution, Inc." or "DPR": Shall have the meaning set forth in Section 28.2 (Dispute Resolution Procedures, Mediation).

"Escrow Agent": Shall have the meaning set forth in Section 14.9 (L/C Proceeds Escrow).

"Effective Date": Shall mean the last to occur of (i) the Non-appealable PUC Approval Order Date, (ii) the date that the Interconnection Requirements Amendment is executed as such date is set forth in the Interconnection Requirements Amendment, and (iii) any PUC approval required by applicable Laws (for example, for overhead lines) for the interconnection solution set forth in the Interconnection Requirements Amendment.

"Emergency": Shall mean, as determined by the Company in its reasonable discretion, a condition or situation, unless caused by Excess Energy Conditions, requiring immediate action (a) to maintain the integrity of the Company System; (b) to prevent or limit the loss of load or generation; (c) to maintain public safety or the safety of Company's personnel; or (d) to protect Company, customer, or third-party tangible personal property.

"Energy Cost Adjustment Clause": The provision in Company's rate schedules that allows Company to pass through to its customers Company's costs of fuel and purchased power.

"Engineering and Design Work": Shall have the meaning set forth in Section 3(a) (Seller Payment to Company) of Attachment G (Company-Owned Interconnection Facilities).

"Environmental Credits": Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Seller based in whole or in part on the

fact that the Facility is a non-fossil fuel facility. Such Environmental Credits shall include, without limitation, the non-energy attributes of renewable energy including, but not limited to, any avoided emissions of pollutants to the air, soil, or water such as sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, and hazardous air pollutants; any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States; and avoided emissions of carbon dioxide and any other greenhouse gas, along with the renewable energy certificate reporting rights to these avoided emissions, but in all cases shall not mean tax credits.

"Event of Default": Shall have the meaning set forth in Article 15 (Events of Default) of this Agreement.

"Excess Energy Conditions": An operating condition on the Company System that may occur when Company has more energy available than is required to meet the load on the Company System at any point in time and the generating assets interconnected with the Company System are operating at or near their minimum levels, taking into consideration factors such as the need to maintain system reliability and stability under changing system conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for base-loaded firm capacity or scheduled energy, and the normal minimum loading levels of such units. Excess Energy Conditions are more likely to occur during light loading conditions.

"Execution Date": The date designated as such on the first page of this Agreement or, if no date is so designated, the date the Parties exchanged executed signature pages to this Agreement.

"Extended Term": The period of time for which this Agreement automatically continues in effect following the expiration of the Initial Term, or (if Company has exercised its option under Section 12.10 (Company's Option to Extend Term for Banked Curtailed Energy)) the Banked Curtailed Energy Term, subject to the right of either Party to terminate the Agreement upon not less than ninety (90) Days' advance written notice to the other Party, all as set forth in Section 12.1 (Term) of the Agreement.

"Facility": Seller's renewable electric energy facility that is the subject of this Agreement, including all Seller-Owned Interconnection Facilities and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production,

generation, transmission, delivery or furnishing of electric energy by Seller to Company and required to interconnect with the Company System.

"Facility Debt": The obligations of Seller to any lender, lessor, investor or similar party pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, rent, other periodic lease payments, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Facility Lender": Any lender(s), lessor(s), investor(s) or similar parties providing any Facility Debt and any successor(s) or assign(s) thereto, collectively.

"Facility Output Model": The Facility Output Model calculates the power (kW) and energy (kWh) output of the Facility at the Point of Interconnection for a given period of time using data from the supervisory control and data acquisition (SCADA) and the methodology described in Attachment U.

"Financial Accounting Standards Board" or "FASB": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"FASB Accounting Standards Codification (ASC) 810": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Financial Termination Costs": Shall have the meaning set forth in Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller).

"Financing Documents": The loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, tax equity financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

"Fitch": Shall mean Fitch Ratings Ltd. or its successor.

"Force Majeure": Shall have the meaning set forth in Section 21.1 (Definition of Force Majeure) of this Agreement.

"Forced Outage": An unplanned unit shutdown caused by factors such as automatic or programmed protective trips and operator-initiated trips due to equipment malfunction, and which terminates when Company determines according to Good Engineering and Operating Practices that it is safe to bring the Facility back onto the Company System.

"Further Reductions": Shall have the meaning set forth in Section 2.3(C) (Further Reduction) of this Agreement.

"Good Engineering and Operating Practices": The practices, methods and acts engaged in or approved by a significant portion of the electric utility industry for similarly situated U.S. facilities, considering Company's isolated island setting, that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability for an island system, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

(A) Adequate materials, resources and supplies are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.

(B) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.

(C) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.

(D) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide

assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.

(E) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as temperature, moisture content, chemical content, operating voltage, current, frequency, polarity, synchronization, control system limits, etc.

"Governmental Approvals": All permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities, as well as any agreements with Governmental Authorities, required for the construction, ownership, operation and maintenance of the Facility and the Company-Owned Interconnection Facilities, and all amendments, modifications, supplements, general conditions and addenda thereto.

"Governmental Authority": Any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Guaranteed Commercial Operations Date": The date specified as such in Attachment K (Guaranteed Project Milestones) of this Agreement, by which Seller guarantees that it will achieve the Commercial Operations Date.

"Guaranteed Project Milestone": Each of (i) the Procurement Payment Milestone, (ii) the Permit Application Filing Milestone, (iii) the Construction Financing Milestone, (iv) the Construction Start Date Milestone, and (v) Commercial Operations.

"Guaranteed Project Milestone Date": Each of (i) the Procurement Payment Milestone Date, (ii) any other Payment Milestone Dates specified in Attachment G (as amended, if it has been), (iii) the Permit Application Filing Milestone Date, (iv) the Construction Financing Milestone Date, (v) the Construction Start Date Milestone, and (vi) the Guaranteed Commercial Operations Date.

"Hawaii Investment Tax Credit": Shall mean a credit against

Hawaii source income for which Seller is eligible on the Commercial Operations Date or thereafter because of investment in renewable energy technologies incorporated into the Facility.

"Hawaii Production Tax Credit": Shall mean a credit against Hawaii source income for which Seller is eligible on the Commercial Operations Date or thereafter because of the energy produced by the Facility.

"Hawaii Renewable Energy Tax Credit": The Hawaii Investment Tax Credit and the Hawaii Production Tax Credit.

"HEI": Hawaiian Electric Industries, Inc.

"HERA": The Hawaii electricity reliability administrator.

"HERA Law": Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawaii Legislature in the form of S.B. No. 2787, S.D. 2, H.D.2, C.D.1 on May 2, 2012 and signed by the Governor on June 27, 2012. The effective date for the law is July 1, 2012. The HERA Law authorizes (i) the PUC to develop, adopt, and enforce reliability standards and interconnection requirements, (ii) the PUC to contract for the performance of related duties with a party that will serve as the HERA, and (iii) the collection of a Hawaii electricity reliability surcharge to be collected by Hawaii's electric utilities and used by the HERA. Reliability standards and interconnection requirements adopted by the PUC pursuant to the HERA Law will apply to any electric utility and any user, owner, or operator of the Hawaii electric system. The PUC also is provided with the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner or operator of the Hawaii electric system, or other person, business, or entity, considered by the PUC to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system.

"In-Service Date": The date that both the Acceptance Test and Control System Acceptance Test for generating units representing 80% of the Contract Capacity are deemed by Seller and Company to have been successfully completed.

"Indemnified Company Party": Shall have the meaning set forth in Section 17.1(A) (Indemnification Against Third Party Claims) of this Agreement.

"Indemnified Seller Party": Shall have the meaning set forth in Section 17.2(A) (Indemnification Against Third Party Claims) of this Agreement.

"Independent Evaluator": A person empowered, pursuant to Section 23.5 (Failure to Reach Agreement) and Section 23.10 (Dispute) of this Agreement, to resolve disputes due to failure of the Parties to agree on a Performance Standards Revision Document.

"Information": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Initial Annual Contract Energy": Shall mean the estimate of expected annual average electric energy deliveries to Company under this Agreement over the Initial Term. As of the Execution Date, the Initial Annual Contract Energy is deemed to be 148,975 MWh for a full Contract Year as provided in Section 2.11 (Determination of Initial Annual Contract Energy).

"Initial Term": Shall have the meaning set forth in Section 12.1 (Term).

"Interconnection Facilities": The equipment and devices required to permit the Facility to operate in parallel with, and deliver electric energy to, the Company System and provide reliable and safe operation of, and power quality on, the Company System in accordance with applicable provisions of the PUC's General Order No. 7, Company tariffs, operational practices, interconnection requirements studies, and planning criteria, such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

"Interconnection Requirements Amendment": Shall have the meaning set forth in Section 12.4 (Interconnection Requirements Study) of this Agreement.

"Interconnection Requirements Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreement to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Performance Standards for the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"Interconnection Requirements Study Letter Agreement" or "IRS Letter Agreement": The letter agreement and any written, signed amendments thereto, between Company and Seller that describes the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

"Issuer": Shall refer to the bank or other financial institution located in the United States referred to in Section 14.5 (Form of Security) of this Agreement.

"kV": Kilovolt.

"kW": Kilowatt.

"Land Rights": All easements, rights of way, licenses, leases, surface use agreements, rights of entry, use and occupancy agreements and other interests or rights in real estate.

"Laws": All federal, state and local laws, rules, regulations, orders, ordinances, permit conditions and other governmental actions.

"L/C Proceeds": Shall have the meaning set forth in Section 14.8 (Failure to Renew or Extend Letter of Credit).

"Losses": Any and all direct, indirect or consequential damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs, expenses (including reasonable attorneys' fees and court costs) and disbursements.

"Major Release": Shall mean a new release of the Required Model(s) that adds features and functionality improving overall product performance, efficiency and usability.

"Make Whole Amount": Shall have the meaning set forth in Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller).

"Management Meeting": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"Minor Release": Shall mean a new release of the Required Model(s) that impacts overall product performance, efficiency and usability.

"MMS": Meteorological monitoring station.

"MMT": Meteorological monitoring tower.

"Monthly Progress Report": Shall have the meaning set forth in Section 13.7 (Monthly Progress Reports).

"Moody's": Shall mean Moody's Investors Service, Inc., or its successor.

"MW": Megawatt.

"Net Amount": Shall mean, with respect to any Hawaii Renewable Tax Credit, the amount remaining after deducting costs and expenses of applying for, pursuing and receiving the applicable Hawaii Renewable Tax Credit, payments by (or reserves established for the payment by) Seller and/or its investors on account of federal or state income taxes (at the highest applicable marginal corporate rate) payable with respect to receipt of such Hawaii Renewable Tax Credit, and all payments to or reserves required by Seller's lenders or other financing parties in connection with the application for or receipt of such Hawaii Renewable Tax Credit.

"Non-appealable PUC Approval Order": Shall have the meaning set forth in Section 29.20(B) (Non-appealable PUC Approval Order) of this Agreement.

"Non-appealable PUC Approval Order Date": Shall have the meaning set forth in Section 29.20(D) (Non-appealable PUC Approval Order Date) of this Agreement.

"Non-defaulting Party": Shall have the meaning set forth in Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract) of this Agreement.

"Non-performing Party": The Party who is in breach of, or is otherwise failing to perform, its obligations under this Agreement.

"Non-Refundable Tax Credit": Shall mean any Hawaii Investment Tax Credit for which the State of Hawaii is not required to refund any tax credit which exceeds the tax payments due to the State of Hawaii by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Operating Period Security": Shall have the meaning set forth in Section 14.4 (Operating Period Security).

"Party": Each of Seller or Company.

"Parties": Seller and Company, collectively.

"Performance Standards": The various performance standards for the operation of the Facility and the delivery of electric energy from the Facility to Company specified in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller), as such standards may be revised from time to time pursuant to Article 23 (Process for Addressing Revisions to Performance Standards) of this Agreement.

"Performance Standards Information Request": A written notice from Company to Seller proposing revisions to one or more of the Performance Standards then in effect and requesting information from Seller concerning such proposed revision(s).

"Performance Standards Modifications": For each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the Facility to achieve the performance requirements of such Performance Standards Revision.

"Performance Standards Pricing Impact": Any adjustment in Contract Price in $/MWh necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Performance Standards Modification necessary to comply with a Performance Standard Revision, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the Performance Standards Revision is made effective following a PUC Performance Standards Revision Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery of electric energy to Company under this Agreement, which shall consist of (yy) an increase in payments necessary to compensate Seller for expected reduced electric energy payments under this Agreement; and (zz) to the extent applicable, an increase in

payments necessary to compensate Seller for reasonably expected reductions in receipt of or recapture of investment tax credits (pursuant to section 48 of the Internal Revenue Code) calculated on an after-tax basis.

"Performance Standards Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Performance Standards Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefor; (ii) the Performance Standards Modifications proposed by Seller to comply with the Performance Standards Revision; (iii) the capital and incremental operating costs of any necessary technical improvements, and any other incremental net operating or maintenance costs associated with any necessary operational changes, and any expected lost revenues associated with expected reductions in electric energy delivered to Company; (iv) the Performance Standards Pricing Impact of such costs and/or lost revenues; (v) information regarding the effectiveness of such technical improvements or operational modifications; (vi) proposed contractual consequences for failure to comply with the Performance Standard Revision that would be commercially reasonable under the circumstances; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Seller's own initiative.

"Performance Standards Revision": A revision, as specified in a Performance Standards Information Request or a Seller-initiated Performance Standards Proposal, to the Performance Standards in effect as of the date of such Request or Proposal.

"Performance Standards Revision Document": A document specifying one or more Performance Standards Revisions and setting forth the changes to the Agreement necessary to implement such Performance Standards Revision(s). A Performance Standards Revision Document may be either a written agreement executed by Company and Seller or as directed by the Independent Evaluator pursuant to Section 23.10 (Dispute) of this Agreement, in the absence of such written agreement.

"Permit Application Filing Milestone Date": The date as specified in Attachment K (Guaranteed Project Milestones) by which Seller shall file all applications for material discretionary Government Approvals required for the construction of the Facility and

Company-Owned Interconnection Facilities, as set forth in Attachment K (Guaranteed Project Milestones).

"Point of Interconnection": The point of delivery of electric energy and/or capacity supplied by Seller to Company, where the Facility owned by Seller interconnects with the Company System. The Seller shall own and maintain the facilities from the Facility to the Point of Interconnection, excluding any Company-Owned Interconnection Facilities located on the Site. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's System. The Point of Interconnection shall be identified in the IRS and set forth on the Single Line Diagram in Attachment E (Single-Line Drawing).

"PPA Amendment Deadline": means the 45th Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by written agreement.

"Procurement Payment Milestone": The payment in full by Seller to Company of the amount required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities).

"Project": The Facility as described in Attachment A (Description of Generation and Conversion Facility).

"Project Documents": This Agreement, any ground lease or other agreement or instrument in respect of the Site and/or the Land Rights, all construction contracts relating to the Facility to which Seller is or becomes a party thereto, operation and maintenance agreements relating to the Facility, and all other agreements, documents and instruments to which Seller is or becomes a party thereto in respect of the Facility, other than the Financing Documents, as the same may be modified or amended from time to time in accordance with the terms thereof.

"Proprietary Rights": Shall have the meaning set forth in Section 29.17 (Proprietary Rights) of this Agreement.

"PUC": Shall have the meaning set forth in the Recitals.

"PUC Approval Order": Shall have the meaning set forth in Section 29.20(A) (PUC Approval Order) of this Agreement.

"PUC Approval Order Date": Shall have the meaning set forth in Section 29.20(C) (Company's Written Statement) of this Agreement.

"PUC Approval Time Period": Shall have the meaning set forth in Section 12.6(B) (Time Period for PUC Approval).

"PUC Performance Standards Revision Order": The decision and order of the PUC approving the application or motion by the Parties seeking (i) approval of the Performance Standards Revision in question and the associated Performance Standards Revision Document, (ii) finding that the impact of the changes to the Contract Price on Company's revenue requirements is reasonable, and (iii) approval to include the costs arising out of pricing changes in Company's Energy Cost Adjustment Clause (or equivalent).

"PUC Submittal Date": The date of the submittal of Company's complete application or motion for a satisfactory PUC Approval Order pursuant to Section 12.3 (PUC Approval) of this Agreement.

"PUC's Standards": Standards for Small Power Production and Cogeneration in the State of Hawaii, issued by the Public Utilities Commission of the State of Hawaii, Chapter 74 of Title 6, Hawaii Administrative Rules, currently in effect and as may be amended from time to time.

"PURPA": Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) as amended from time to time and as applied in Hawaii by the PUC.

"Qualifying Facility": As defined in the Public Utility Regulatory Policies Act of 1978 and the regulations issued thereunder.

"Recipient": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Refundable Tax Credit": Shall mean any Hawaii Investment Tax Credit for which the State of Hawaii is required to refund any tax credit which exceeds the tax payments due to the State of Hawaii by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Renewable Portfolio Standards" or "RPS": The Hawaii law that mandates that Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. The RPS requirements in Hawaii are currently codified as HRS 269-91 through 269-95.

"Reporting Milestones": Each of the milestones identified as such in Attachment L (Reporting Milestones).

"Required Model" or "Required Models": Shall have the meaning set forth in Section 6(a) (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller) of this Agreement.

"Revenue Metering Package": The revenue meters, revenue metering potential transformers (PTs) and current transformers (CTs), and secondary wiring.

"RPS Amendment": Any amendment to the RPS subsequent to Effective Date that revises the definition of "renewable electric energy" under the RPS such that the electric energy delivered from the Facility no longer comes within such revised definition.

"RPS Modifications": Any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" resulting from a RPS Amendment.

"RPS Modifications Document": Shall have the meaning set forth in Section 3.4(C) (RPS Modifications Document).

"RPS Pricing Impact": Any adjustment in Contract Price in $/MWh necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any RPS Modification, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the RPS Modification is made effective following a PUC RPS Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery of electric energy to Company under this Agreement, which shall consist of (yy) an increase in payments necessary to compensate Seller for expected reduced electric energy payments under this Agreement; and (zz) to the extent applicable, an increase in payments necessary to compensate Seller for reasonably expected reductions in receipt of Production

Tax Credits (pursuant to section 45 of the Internal Revenue Code) calculated on an after-tax basis.

"SCADA": Company's supervisory control and data acquisition equipment as set forth in Section 1(b)(iii)(B) (Certain Specifications for the Facility) of Attachment B (Facility Owned by Seller) of this Agreement.

"Security Funds": Shall have the meaning set forth in Section 14.6 (Security Funds).

"Seller": Shall have the meaning set forth in the preamble to this Agreement.

"Seller-Owned Interconnection Facilities": The Interconnection Facilities constructed and owned by Seller.

"Seller's RPS Modifications Proposal": Shall have the meaning set forth in Section 3.4(A) (Renewable Portfolio Standards).

"Site": The parcels of real property on which the Facility will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility. The Site is identified in Attachment A (Description of Generation and Conversion Facility) to this Agreement.

"Source Code": Shall mean the human readable source code of the Required Models which: (i) will be narrated documentation related to the compilation, linking, packaging and platform requirements and any other materials or software sufficient to enable a reasonably skilled programmer to build, modify and use the code within a commercially reasonable period of time for the purposes set forth in Section 6(b)(v) (Authorized Use) of Attachment B (Facility Owned by Seller); and (ii) can reasonably be compiled by a computer for execution.

"Source Code Authorized Use": Shall have the meaning set forth in Section 6(b)(v) (Authorized Use) of Attachment B (Facility Owned by Seller) of this Agreement.

"Source Code Escrow": Shall mean the escrow established with the Source Code Escrow Agent under the terms of the Source Code Escrow Agreement under which Source Code shall be confidentially deposited by a Source Code Owner for safekeeping and, upon the satisfaction of certain conditions, released to the Company.

"Source Code Escrow Agent": Shall mean Iron Mountain Intellectual Property Management, Inc. or such other similar escrow agent approved by Company.

"Source Code Escrow Agreement": Shall mean a multi-party escrow agreement between Company, Source Code Escrow Agent and any and all Source Code Owners depositing Source Code into the Source Code Escrow which, among other matters, names Company as beneficiary thereunder, and is otherwise acceptable in form and substance to Company.

"Source Code Escrow Deadline": The date, no later than thirty (30) Days after the Guaranteed Commercial Operations Date, upon which Seller has provided the Required Models in the form of Source Code or placed the current version of the Source Code with the Escrow Agent as required in Section 6(b) (Escrow Establishment) of Attachment B (Facility Owned by Seller) to this Agreement.

"Source Code Owner": Shall mean the developer and/or owner of the Required Models utilizing Source Code authorized to deposit the Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

"SOX 404": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Standard & Poor's": means Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"Subordinate Allowed Capacity": Shall have the meaning set forth in Section 2.3(B) (No Priority for Subordinate Allowed Capacity).

"Term": Shall mean, collectively, the Initial Term, the Banked Curtailed Energy Term (if applicable), and the Extended Term (if any).

"Termination Damages": Shall have the meaning set forth in Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract) and shall be calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

"Termination Deadline": means the 30th day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by a written agreement.

"Third Party": Any person or entity other than Company or Seller, and includes, but is not limited to, any subsidiary or affiliate of Seller.

"Threshold": For each Contract Year, an amount equal to 110% of the Annual Contract Energy for such Contract Year.

"Total Actual Interconnection Cost": Actual costs for Company's work and related services for the Interconnection Facilities as provided in Attachment G (Company-Owned Interconnection Facilities).

"Total Actual Relocation Cost": Shall have the meaning set forth in Section 5(b) (Relocation of Company-Owned Interconnection Facilities) of Attachment G (Company-Owned Interconnection Facilities).

"Total Estimated Interconnection Cost": Estimated costs for Company's work and related services for the Interconnection Facilities as provided in Attachment G (Company-Owned Interconnection Facilities).

"Total Estimated Relocation Cost": Shall have the meaning set forth in Section 5(a) (Relocation of Company-Owned Interconnection Facilities) of Attachment G (Company-Owned Interconnection Facilities).

"Transfer Date": The date, prior to the In-Service Date, upon which Seller transfers to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent, if any, that such facilities were constructed by Seller and/or its contractors.

"Unfavorable PUC Order": Shall have the meaning set forth in Section 29.20(e) (Unfavorable PUC Order).

"WTGS": A wind turbine generating system and its internal components and subsystems.

ARTICLE 1
PARALLEL OPERATION

Company agrees to allow Seller to interconnect and operate the Facility to provide As-Available Energy in parallel with the Company System; provided, however, that such interconnection and operation shall not: (i) adversely affect Company's property or the operations of its customers and customers' property; (ii) present safety hazards to the Company System, Company's property or employees or Company's customers or the customers' property or employees; or (iii) otherwise fail to comply with this Agreement. Such parallel operation shall be contingent upon the satisfactory completion, as determined solely by Company in its reasonable discretion, of the Acceptance Test and, to the extent applicable, the Control System Acceptance Test, in accordance with Good Engineering and Operating Practices.

ARTICLE 2
PURCHASE AND SALE OF ENERGY; RATE FOR PURCHASE AND SALE; PAYMENT FOR COMPENSABLE CURTAILED ENERGY; BILLING AND PAYMENT

2.1 Purchase and Sale of Electric Energy. Seller agrees to deliver to Company all of the Actual Output produced by the Facility from the In-Service Date through the end of Term, in accordance with the terms and conditions of this Agreement. Company agrees to purchase all electric energy produced by the Facility from Seller and delivered to Company in accordance with and subject to the terms and conditions of this Agreement. Included in the purchase and sale of electric energy are all of the Environmental Credits associated with the electric energy. Company will not reimburse Seller for any taxes or fees imposed on Seller including, but not limited to, State of Hawaii general excise tax.

2.2 Payment for Electric Energy. Commencing on the Commercial Operations Date, Seller will be paid for electric energy purchased hereunder on a monthly basis as provided in Section 1 (Contract Price) of Attachment J (Energy Purchases by Company), with the Annual Contract Energy being calculated as follows:

(A) First Four Contract Years. For the first four Contract Years of the Agreement, the Annual Contract Energy and

Average Annual Energy will be the Initial Annual Contract Energy.

(B) After the Fourth Contract Year. After the fourth Contract Year, the level of Annual Contract Energy may be subject to downward adjustment during the Initial Term only based on the performance of Seller in meeting its obligations under this Agreement. After the fourth Contract Year and subsequently on each anniversary of the end of the fourth Contract Year during the Initial Term, Company will calculate the Average Annual Energy. Whenever the Average Annual Energy for a given three-year period during the Initial Term is less than 80% of the Annual Contract Energy for that same three-year period, the Annual Contract Energy amount for subsequent Contract Years during the Initial Term will be reduced to equal the Average Annual Energy for the aforesaid three-year period.

(C) Liquidated Damages.

(1) Whenever the Average Annual Energy for a given three-year period during the Initial Term requires a downward adjustment in the level of Annual Contract Energy pursuant to Section 2.2(B) (After the Fourth Contract Year), Seller may, in lieu of accepting such downward adjustment, elect in writing to pay liquidated damages equal to $10/MWh of the shortfall in providing 80% of the Annual Contract Energy over such three-year period; provided, however, that such payment shall be made expeditiously. For example, if the Annual Contract Energy is still the Initial Annual Contract Energy of 148,975 MWh, and the Average Annual Energy is 75% of that amount, on average for a period of three consecutive Contract Years, the amount of the shortfall would be 22,346 MWh (i.e., 5% of 148,975 MWh X 3), and the amount of the liquidated damages that Seller would have to pay Company to avoid the downward adjustment in the level of Annual Contract Energy for the next Contract Year would be $223,460 or 22,346 x $10.

(2) In order to make the election to pay liquidated damages pursuant to this Section 2.2(C) (Liquidated Damages), Seller shall deliver its written election

notice to Company within thirty (30) Days of Company's written notice to Seller of a downward adjustment in Annual Contract Energy pursuant to Section 2.2(B) (After the Fourth Contract Year).

(3) Each Party agrees and acknowledges that (i) the damages that Company would incur if the downward adjustment in Annual Contract Energy is not made as provided in Section 2.2(B) (After the Fourth Contract Year) of this Agreement would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages. Liquidated damages payable under this Section 2.2(C) (Liquidated Damages) may be drawn from the Operating Period Security.

(4) The calculation of Average Annual Energy for a given three-year period pursuant to Section 2.2(B) (After the Fourth Contract Year) of this Agreement shall always be based on the results of the performance of the Seller in meeting its obligations under this Agreement during such three-year period regardless of whether or not Seller previously paid liquidated damages pursuant to this Section 2.2(C) (Liquidated Damages) as a result of its performance during a preceding three-year period. Accordingly, Seller's payment of liquidated damages pursuant to this Section 2.2(C) (Liquidated Damages) in lieu of accepting a downward adjustment in Annual Contract Energy as a result of Average Annual Energy for given three-year period falling below the required threshold shall have no effect on the calculation of Average Annual Energy pursuant to Section 2.2(B) (After the Fourth Contract Year) for any succeeding three-year period.

2.3 Adjustments to Curtailment Priority. If, at any time during the Initial Term subsequent to the end of the fourth Contract Year, the Average Annual Energy for any three (3) consecutive Contract Years is less than sixty (60) percent of the Annual Contract Energy for the Contract Years in question, then the Facility's curtailment priority over other renewable electric energy facilities with later chronological seniority dates (as more fully set forth in

Section 2(e) (Curtailment Methodology) of Attachment B (Facility Owned by Seller)) shall be adjusted as follows:

(A) Curtailment Priority Date. The Curtailment Priority Date shall thereafter be deemed to apply only to that percentage of the Allowed Capacity equal to the ratio of the Average Annual Energy for such period of three (3) consecutive Contract Years divided by the Initial Annual Contract Energy ("Adjusted Allowed Capacity").

(B) No Priority for Subordinate Allowed Capacity. The amount of Allowed Capacity in excess of the Adjusted Allowed Capacity (the "Subordinate Allowed Capacity"), if any, shall thereafter be deemed to have no curtailment priority over any current or future generation resources interconnected to the Company System.

(C) Further Reduction. If any subsequent application(s) of Section 2.3(A) (Curtailment Priority Date) of this Agreement result(s) in further reduction(s) ("Further Reduction") in the percentage of Allowed Capacity to which the Curtailment Priority Date is deemed to apply, such Further Reduction shall thereafter be included in the Subordinate Allowed Capacity and shall have no curtailment priority, pursuant to Section 2.3(B) (No Priority for Subordinate Allowed Capacity) of this Agreement, over any current or future generation resources interconnected to the Company System.

2.4 Determination of Average Annual Energy. For purposes of determining the Average Annual Energy necessary to perform the calculations required under Section 2.2(B) (After the Fourth Contract Year), Section 2.2(C) (Liquidated Damages) and Section 2.3 (Adjustments to Curtailment Priority) of this Agreement, it is first necessary to determine Annual Adjusted Energy. For this purpose, the Curtailed Energy for each Adjustment Event will be determined as provided in Attachment U (Calculation and Reporting of Curtailed Energy). For any Adjustment Event for which Seller believes it is entitled to a determination of Curtailed Energy which continues beyond the end of the Contract Year during which such Adjustment Event began, the end of such Contract Year will, solely for purposes of calculating Annual Adjusted Energy, be considered to be the end of such Adjustment Event, and a new Adjustment Event will be considered to have

commenced with the first Day of the next Contract Year. Any claim of Curtailed Energy that is disputed by Company shall not be included in the calculation of Annual Adjusted Energy for the Contract Year in question until the dispute is resolved, at which time the Annual Adjusted Energy and all related calculations will be recalculated as necessary to reflect the resolution of the dispute, and the appropriate adjustments shall be made to quantities and/or payments previously calculated or made.

2.5 Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, Seller will be paid for electric energy as follows:

(A) Prior to the In-Service Date. For the period prior to the In-Service Date, Company shall not be obligated to accept or pay for any electric energy delivered by Seller, however, any electric energy accepted by Company during this period shall, provided that the Non-appealable PUC Approval Order Date has been attained, be paid for at a rate equivalent to 100% of the Contract Price for Contract Year 1.

(B) After the In-Service Date. For the period following the In-Service Date, provided that the Non-appealable PUC Approval Order Date has been attained:

(1) For the first sixty (60) Days of said period, Company shall be obligated to accept and pay for electric energy, except for those circumstances set forth in Article 8 (Continuity of Service) and Article 9 (Personnel and System Safety) of this Agreement, from each WTGS as it is installed and successfully completes (itself or together with other WTGS) the Control System Acceptance Test(s), up to the Allowed Capacity, and electric energy accepted by Company shall be paid for at a rate equivalent to 100% of the Contract Price for Contract Year 1;

(2) After sixty (60) Days, Company shall be obligated to accept and pay for electric energy, except for those circumstances set forth in Article 8 (Continuity of Service) and Article 9 (Personnel and System Safety) of this Agreement, from each WTGS as it is installed and successfully completes

the Control System Acceptance Test(s), up to the Allowed Capacity, and electric energy accepted by Company shall be paid for at a rate equivalent to 75% of the Contract Price for Contract Year 1 until 100% of the WTGS have been installed and have successfully passed the Control System Acceptance Test(s), at which time Company shall pay for electric energy as provided in this Article 2 (Purchase and Sale of Energy).

2.6 Payment for Compensable Curtailed Energy.

(A) Commencing on the Commercial Operations Date and thereafter during the Initial Term, but not during either the Banked Curtailed Energy Term (if any) or the Extended Term (if any), once the Compensable Curtailed Energy exceeds the percentage of the Annual Contract Energy for the applicable Contract Year ("Compensable Curtailed Energy Threshold") specified in Section 1 (Contract Price) of Attachment J (Energy Purchases by Company) which Company elects in accordance with Section 2.6(B) (Payment for Compensable Curtailed Energy) below, Seller will be paid for Compensable Curtailed Energy as provided in Section 1 (Contract Price) of Attachment J (Energy Purchases by Company), with Compensable Curtailed Energy being established as follows: (i) if the Compensable Curtailed Energy set forth in the Curtailment Report for the month in question is not then subject to a disagreement under Section 5 (Disagreements Concerning Curtailed Energy) of Attachment U (Calculation and Reporting of Curtailed Energy) or dispute resolution under Article 28 (Dispute Resolution) of this Agreement, Seller shall be paid for the Compensable Curtailed Energy set forth in such Curtailment Report as provided in Section 2.8 (Invoices for Compensable Curtailed Energy) of this Agreement; and (ii) if all or a portion of the Compensable Curtailed Energy set forth in the Curtailment Report for the month in question is the subject to a disagreement under Section 5 (Disagreements Concerning Curtailed Energy) of Attachment U (Calculation and Reporting of Curtailed Energy) or dispute resolution under Article 28 (Dispute Resolution) of this Agreement, (aa) Seller shall be paid as set forth in Section 2.8 (Invoices for Compensable Curtailed Energy) of this Agreement for that portion (if any) of the

Compensable Curtailed Energy set forth in such Curtailment Report that is not then subject to such disagreement or dispute and (bb) Seller shall be paid for that portion of such Compensable Curtailed Energy that is then subject to such disagreement or dispute within thirty (30) Days of the resolution of such disagreement or dispute, including interest as provided in Section 2.8(D) (Late Payments). For the avoidance of doubt, the Parties agree that, at the beginning of each Contract Year, the calculation of the Compensable Curtailed Energy Threshold begins again and Seller will not be paid for Compensable Curtailed Energy until the Compensable Curtailed Energy for such Contract Year exceeds the Compensable Curtailed Energy Threshold for such Contract Year.

(B) For the purposes of determining the Contract Price for a Contract Year under this Agreement, the following process shall apply. Not less than six (6) months prior to the start of the calendar year in which the Commercial Operations Date falls, Company will make a Compensable Curtailed Energy Threshold election with respect to Contract Years 1 through 5 of the Initial Term and deliver to Seller a schedule setting forth the applicable Compensable Curtailed Energy Threshold for said Contract Years 1 - 5. Thereafter, Company will make future Contract Year Compensable Curtailed Energy Threshold elections on an annual basis and advise Seller of said election for each Contract Year not less than six (6) months prior to the start of the calendar year in which said Contract Year falls. An illustration of the Company's Compensable Curtailed Energy Threshold election process for the Initial Term is attached as Table J-2 to Attachment J (Energy Purchases by Company).

2.7 Invoices for Electric Energy.

(A) Company's Obligation to Provide Certain Data. By the fifth (5th) Business Day of each calendar month following the commencement of the Company's acceptance of electric energy delivered by Seller, Company shall provide Seller or its designated agent with the appropriate data in electronic form for Seller to compute the amount to be paid for the electric energy

purchased by Company in the preceding calendar month as determined in accordance with this Agreement.

(B) Seller's Preparation of the Monthly Invoice for Electric Energy. By the tenth (10th) Business Day of each calendar month following the commencement of the Company's acceptance of electric energy delivered by Seller, Seller shall submit to Company an invoice that separately states the following for the preceding month: (i) the Actual Output during the preceding month; (ii) the charge for electric energy purchased by Company, as set forth in Attachment J (Energy Purchases by Company) of this Agreement; and (iii) the monthly metering charge as set forth in Article 7 (Seller Payments) of this Agreement.

(C) Payment Procedures for Electric Energy Invoice. By the twentieth (20th) Business Day of each calendar month (but, except as otherwise provided in the following sentence, no later than the last Business Day of that month if there are less than twenty Business Days in that month), Company shall make payment on the electric energy invoice of the preceding month, or provide to Seller an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount. Notwithstanding the foregoing, the Day by which the Company shall make payment to Seller hereunder shall be increased by one (1) Day for each Day that Seller is delinquent in providing to the Company the information required under Section 2.7(B) (Seller's Preparation of the Monthly Invoice for Electric Energy) of this Agreement. However, if Company is not timely in providing data required in Section 2.7(A) (Company's Obligation to Provide Certain Data) and this directly causes Seller to be unable to deliver its invoice in accordance with the time frame set forth in Section 2.7(B) (Seller's Preparation of the Monthly Invoice for Electric Energy), then Company shall still meet the twentieth (20th) Business Day payment date. In such case, an estimated payment, subject to reconciliation with the complete invoice, may be made by Company as an interim provision until a complete invoice can be prepared by Seller and received by Company.

(D) Late Payments. Notwithstanding all or any portion of such invoice in dispute, any payment for electric energy not made to Seller by the twentieth (20th) Business Day of each calendar month (or the last Business Day of that month if there are less than twenty Business Days in that month), or by the due date for such payment if extended pursuant to Section 2.7(C) (Payment Procedures for Electric Energy Invoice), shall accrue interest at the average daily Base Rate plus two percent (2%) for the period until the outstanding interest and invoiced amounts (or amounts due to Seller if determined to be less than the invoiced amounts) are paid in full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.

(E) Company's Billing Records. Seller, after giving reasonable advance written notice to Company, shall have the right to review all billing, metering and related records necessary to verify the accuracy of the data provided by Company pursuant to Section 2.7(A) (Company's Obligation to Provide Certain Data) of this Agreement and payments relating to the Facility during Company's normal working hours on Business Days. Company shall maintain such records for a period of not less than thirty-six (36) months.

2.8 Invoices for Compensable Curtailed Energy.

(A) Company's Obligation to Provide a Reason for a Curtailment Event. Company's typical practice is to provide a reason for a Curtailment Event concurrently with such Curtailment Event. If the reason for a Curtailment Event is not provided to Seller concurrently with such Curtailment Event, Company shall provide Seller or its designated agent, by the fifth (5th) Business Day of each Calendar month, with a written statement identifying the reason for each such Curtailment Event during the preceding month for inclusion in Seller's Curtailment Report for such month. If Company fails to identify a reason for a Curtailment Event, either concurrently with such Curtailment Event or in the aforementioned written statement, Seller shall designate as "N/A" the reason for such Curtailment Event in its Curtailment Report and shall include in the "Total Compensable Curtailed

Energy During Report Period" the Curtailed Energy for any Curtailment Event for which the reason is designated as "N/A". Seller's designation of the reason for a Curtailment Event as "N/A" does not create a presumption that Company in fact failed to previously provide Seller with the reason for such Curtailment Event. Within fifteen (15) Business Days of Company's receipt of any Curtailment Report containing a "N/A" designation for the reason for any Curtailment Event (such 15-Business Day period is referred to below as the "Identification Period"), Company shall provide Seller or its designated agent with a written statement identifying the reason for such Curtailment Event. If, by the end of the Identification Period, Company has in fact failed to identify to Seller a reason for a Curtailment Event, such Curtailment Event shall be deemed to be a Compensable Curtailment Event and the Curtailed Energy for such Curtailment Event shall be appropriately included in the "Total Compensable Curtailed Energy During Report Period" for the Curtailment Report covering the period during which the Curtailment Event in question occurred. If, on the other hand, Company has identified to Seller or its designated agent a reason for a Curtailment Event that does not come within the definition of a Compensable Curtailment Event, any disagreement by Seller with respect to such reason shall be subject to resolution under Section 5 (Disagreements Concerning Curtailed Energy) of Attachment U (Calculation and Reporting of Curtailed Energy).

(B) Monthly Invoice for Compensable Curtailed Energy. By the tenth (10th) Business Day of each calendar month following the Commercial Operations Date and thereafter for the balance of the Initial Term, Seller shall submit to Company, concurrently with the Curtailment Report for the preceding month, an invoice that separately states the following for the preceding month: (i) the Compensable Curtailed Energy during the preceding month; (ii) the total Compensable Curtailed Energy to date for the Contract Year; (iii) total Compensable Curtailed Energy to date for the Contract Year as a percentage of Annual Contract Energy; and (iv) the charge, if any, for any Compensable Curtailed Energy for the preceding month that exceeds the applicable Compensable Curtailed Energy Threshold

(expressed as a percentage of the Annual Contract Energy), as set forth in Attachment J (Energy Purchases by Company).

(C) Payment Procedures for Compensable Curtailed Energy. By the last Business Day of the calendar month following the month during which the invoice for Compensable Curtailed Energy was submitted (i.e., by the last Business Day of the second calendar month following the calendar month covered by the invoice in question), Company shall make payment on such invoice, or provide Seller an itemized statement of its objection to all or any portion of such invoice and pay any undisputed amount.

(D) Late Payments. Notwithstanding whether or not all or any portion of such invoice is in dispute, any payment for Compensable Curtailed Energy not made to Seller within the time period specified in Section 2.8(C) (Payment Procedures for Compensable Curtailed Energy), shall accrue interest at the average daily Base Rate plus two percent (2%) for the period from the date payment of such invoice was due as provided in Section 2.8(C) (Payment Procedures for Compensable Curtailed Energy) until the outstanding interest and invoiced amounts (or amounts due to Seller if determined to be less than the invoiced amounts) are paid in full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.

2.9 Adjustments to Invoices After Payment.

(A) General. In the event adjustments are required to correct inaccuracies in an invoice after payment, the Party requesting adjustment shall include in the Party's request a recomputed invoice showing the principal amount of such adjustment (the "Adjustment Amount") together with the amount of interest on such Adjustment Amount from the date that such invoice was paid (or, if such invoice was not paid or not paid in a timely manner, the date such invoice was payable) until the date that such Adjustment Amount is paid or credited at the average daily Base Rate for the period. The Adjustment Amount, along with the allowable amount of interest, shall either be (i) paid to Seller or set-off by Company, as applicable, in the next invoice

payment to Seller, or (ii) objected to by the Party responsible for such payment within thirty (30) Days following its receipt of such request.

(B) Electric Energy. If the requested adjustment concerns payment for electric energy, and if the Party responsible for such payment objects to the request, then the Parties shall work together in good faith to resolve the objection. If the Parties are unable to resolve the objection, the matter shall be resolved pursuant to Article 28 (Dispute Resolution).

(C) Compensable Curtailed Energy. If the requested adjustment concerns payment for Compensable Curtailed Energy, the provision of Section 5 (Disagreements Concerning Curtailed Energy) of Attachment U (Calculation and Reporting of Curtailed Energy) shall apply.

(D) Limitations Period. All claims for adjustments shall be submitted to the other Party within three years of the end of the calendar month covered by the invoice on which the Adjustment Amount in question was invoiced or should have been invoiced. Claims for adjustments not submitted to the other Party by the end of such three-year period shall be deemed to have been waived.

2.10 Sales of Electric Energy By Company to Seller. Sales of electric energy by Company to Seller shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount adjustment (if any) referred to in Attachment B (Facility Owned by Seller).

2.11 Determination of Initial Annual Contract Energy. Prior to the Execution Date, Seller has provided Company with its proposed Initial Annual Contract Energy, which was accompanied by (1) Seller's explanation of the methodology and underlying information used to derive the Initial Annual Contract Energy, including the preliminary design of the Facility and the typical meteorological year file used, and (2) a written report confirming the reasonableness of Seller's proposed Initial Annual Contract Energy, taking into account the wind resource at the Site, the preliminary design of the Facility, the provisions of this Agreement, and any other relevant factors, which report was prepared by

an independent consultant experienced in utility scale wind energy power generation and retained by Seller at its expense.

ARTICLE 3
FACILITY OWNED AND/OR OPERATED BY SELLER

3.1 The Facility. Seller agrees to furnish, install, operate, and maintain the Facility in accordance with the provisions of this Agreement, including, without limitation, the operating procedures and performance standards as more fully described in Attachment B (Facility Owned by Seller) and Attachment C (Methods and Formulas for Measuring Performance Standards). After the Commercial Operations Date, Seller agrees that no changes or additions to the Facility shall be made without prior written approval by Company and amendment to the Agreement unless such changes or additions to the Facility could not reasonably be expected to have a material effect on the assumptions used in performing the IRS.

3.2 Allowed Capacity. The net instantaneous MW output from Facility may not exceed the Allowed Capacity. Company may take appropriate action to limit the Actual Output pursuant to, but not limited to, Article 8 (Continuity of Service), Article 9 (Personnel and System Safety), Article 25 (Good Engineering and Operating Practices), Attachment B (Facility Owned by Seller), and Attachment J (Energy Purchases by Company) of this Agreement.

3.3 Point of Interconnection. The Point of Interconnection is shown on Attachment E (Single-Line Drawing), as provided in Section 1(a) (Single-Line Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller). The Point of Interconnection will be at a voltage level of 138 kV. If it is necessary to step up the voltage at which Seller's electric energy is delivered to Company System, the Point of Interconnection will be on the high voltage side of the step-up transformer.

3.4 Renewable Portfolio Standards.

(A) Renewable Portfolio Standards. If, as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as "renewable electrical energy," Seller shall, at the request of Company, develop and recommend to Company within a reasonable period of time following Company's request

(which shall include a reasonably detailed description of any changes that Company would like and the reasons why a Facility modification is necessary), but in no event more than 90 Days after Seller's receipt of such request (or such other period of time as Company and Seller may agree in writing) reasonable measures to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" ("Seller's RPS Modifications Proposal").

(B) Seller's RPS Modifications Proposal. Upon receipt of Seller's RPS Modifications Proposal, Company will evaluate Seller's RPS Modifications Proposal. Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request).

(C) RPS Modifications Document. If, following Company's evaluation of Seller's RPS Modifications Proposal, Company desires to consider the implementation by Seller of the changes recommended in Seller's RPS Modifications Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of Seller's RPS Modifications Proposal (or such shorter period as may be specified in the RPS Modifications Proposal, if and to the extent Seller cannot hold prices from its contractors and suppliers for 180 Days), and Company and Seller shall proceed to negotiate in good faith a document setting forth the specific changes to the Agreement that are necessary to implement such RPS Modifications Proposal (the "RPS Modifications Document"). A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's RPS Modifications Proposal, including but not limited to the RPS Modifications and the RPS Pricing Impact. Any adjustment to the Contract Price pursuant to such RPS Modifications Document shall be limited to the RPS Pricing Impact. The time periods set forth in such RPS Modifications Document as to the effective date for the

RPS Modifications shall be measured from the date the PUC Order with respect to such RPS Modifications becomes non-appealable as provided in Section 3.4(E) (PUC RPS Order). Notwithstanding anything herein to the contrary, Seller's obligations under an RPS Modifications Document, whether determined by negotiation and agreement by Company and Seller or through dispute resolution, shall be expressly conditioned on Seller's receipt of (1) all Governmental Approvals necessary to construct, install and operate the RPS Modification, and (2) consent from the Facility Lender(s) to construct, install and operate the RPS Modification if required under the Financing Documents.

(D) Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a RPS Modifications Document within 180 Days of Company's written notice to Seller pursuant to Section 3.4(C) (RPS Modifications Document), Company shall have the option of declaring the failure to reach agreement on and execute such Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 3.4(H) (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a RPS Modifications Document as described in Section 3.4(C) (RPS Modifications Document).

(E) PUC RPS Order. No RPS Modifications Document shall constitute an amendment to the Agreement unless and until a PUC RPS Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such RPS Modifications Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 3.4(E) (PUC RPS Order), such PUC RPS Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawaii or the Supreme Court of the State of Hawaii, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawaii or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court,

of the State of Hawaii, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

(F) Company's Rights. The rights granted to Company under Section 3.4(C) (RPS Modifications Document) and Section 3.4(D) (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a RPS Modifications Document or to initiate dispute resolution under Section 3.4(H) (Dispute), as a result of a failure to agree upon and execute any RPS Modifications Document.

(G) Limited Purpose. This Section 3.4 (Renewable Portfolio Standards) is intended to specifically address the implementation of reasonable measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under any RPS Amendment and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to this Agreement in accordance with the provisions of this Section 3.4 (Renewable Portfolio Standards) are not intended to increase Seller's risk of non-performance or default.

(H) Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a RPS Modifications Document pursuant to Section 3.4(D) (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a RPS Modifications Document. The Independent Evaluator shall be reasonably qualified and an expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. In its

application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application. In the event that the PUC solicits Company's recommendation regarding the appointment of an Independent Evaluator, Company shall consult with Seller prior to responding to the PUC's request and, if requested by Seller, Company shall provide the PUC with a copy of Seller's written statement with respect to such appointment.

(1) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:

(a) The reasonable measures required to be taken by Seller to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question;

(b) How Seller would implement such measures;

(c) Reasonably expected net costs and/or lost revenues associated with such measures so the energy delivered by the Facility complies with such revised definition of "renewable electrical energy under the RPS Amendment in question;

(d) The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and

(e) Contractual consequences for non-performance that are commercially reasonable under the circumstances.

(2) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.

(3) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither

Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

(4) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Seller to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question, the Independent Evaluator shall determine that the Agreement shall not be amended to comply with such changes in RPS (unless the Parties agree otherwise); (ii) if it is technically and operationally feasible for Seller to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under RPS, the Independent Evaluator shall incorporate such required changes into a RPS Modifications Document including (aa) Seller's RPS Modifications, (bb) pricing terms that incorporate the RPS Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to the RPS Modifications. In addition to the RPS Modifications Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

(5) The fees and costs of the Independent Evaluator shall be paid by Company up to the first $30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided,

if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above $30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

ARTICLE 4
COMPANY-OWNED INTERCONNECTION FACILITIES

The terms and conditions related to the Company-Owned Interconnection Facilities are set forth in Attachment G (Company-Owned Interconnection Facilities) of this Agreement. In accordance with Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities), on the Transfer Date, Seller shall convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller by executing a Bill of Sale and Assignment document substantially in the form set forth in Attachment H (Bill of Sale and Assignment). In addition, in accordance with Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) on the Transfer Date, Seller shall deliver to Company any and all executed documents required to assign all leases with respect to the Company-Owned Interconnection Facilities to Company, which documents shall be substantially in the form set forth in Attachment I (Assignment of Lease and Assumption).

ARTICLE 5
SCHEDULING

5.1 Seller's Quarterly Maintenance Schedule: On Friday of the last full week of any calendar quarter (ending March 31, June 30, September 30 and December 31), Seller shall provide to Company in writing a projection of maintenance outages for the next quarter-year period. During any such maintenance outage, Seller will provide an update each Day to Company's operating personnel regarding the status of such maintenance.

5.2 Seller's Annual Maintenance Schedule: In addition, Seller shall submit to Company a written schedule of maintenance outages which will reduce the capacity of the Facility by seven and one-half (7.5) MW or more for the next two-year period, beginning with January of the following year, in

writing to Company each year by June 30. The schedule shall state the proposed dates and durations of scheduled maintenance, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility. Company shall review the maintenance schedule for the two-year period and inform Seller in writing no later than December 1 of the same year of Company's concurrence or requested revisions; provided, however, that Seller shall not be required to agree to any proposed revisions that, in Seller's judgment, will void or violate any warranties of equipment that is part of, or used in connection with, the Facility or violate any long-term service agreement with respect to such equipment, in which case Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question. With respect to such agreed upon revisions, Seller shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate Company's revisions, unless such revisions would not be consistent with Good Engineering and Operating Practices, and make all commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such schedule reasonably requested by Company.

5.3 Seller's Notification Obligations. When Seller learns that any of its equipment will be taken out of service or will be returned to service which may affect its delivery of electric energy to Company, Seller shall notify Company as soon as practicable, and in any event, no later than one (1) Day after Seller learns that such equipment will be taken out of service or returned to service. This requirement to notify shall include, but not be limited to, notice to Company of Seller's intention to start up or shut down any WTGS such as a high wind-speed shut-down. Any WTGS start-up or shut-down shall be coordinated with Company in advance to the extent practicable to allow a reasonable amount of time for Company to make generation adjustments required by the additional energy resulting from a WTGS start-up or the loss of energy from a WTGS shut-down.

5.4 Scheduling of Actual Output. To the extent that scheduling of Actual Output is required now or in the future, (i) Seller will reasonably cooperate with Company with respect to the scheduling of Actual Output, and (ii) each Party

shall designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement, but Company will still be obligated to purchase from Seller all electric energy produced by the Facility and delivered to Company in accordance with Section 2.1 (Purchase and Sale of Electric Energy).

ARTICLE 6
FORECASTING

6.1 Resource Data for Company Forecasts. Seller shall provide to Company the data and site description information for the Facility required by Company in order for Company to produce a real-time forecast for operations as well as a Day-ahead forecast and hourly forecasts for all variable generation facilities on the Company System. See Attachment B (Facility Owned by Seller) for details of the data parameters requirements.

6.2 Facility Resource Monitoring Equipment. Seller shall install and maintain appropriate equipment for the purposes of providing Company with the data required under Section 6.1 (Resource Data for Company Forecasts). Such monitoring equipment shall include field measurement device components to measure renewable resources (e.g., actual WTGS production, wind speed and direction, temperature, and other meteorological conditions (i.e., air density, ambient air temperature, ambient air pressure and other meteorological conditions specified in Section 8 (Data and Forecasting) of Attachment B (Facility Owned By Seller)) by devices placed at approximately "hub height" of the WTG(s) and located at one or more Meteorological Monitoring Towers (MMTs)) and record, store and transfer such data in real-time; provided that no more than one MMT is required for this Project. The foregoing is in addition to the data on the Facility's Actual Output as measured by the revenue meter. Accuracy of each field measurement device component will be specified in data parameter requirements found in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller).

6.3 Calibrations.

(A) Documentation Requirement. Seller shall provide to Company documentation of calibration of the monitoring equipment and schedule and evidence of performance of

routine calibration of each field measurement device component per manufacturer specifications.

(B) Corrective Measures. In the event a pattern of material inconsistencies in the data stream provided by the monitoring equipment is found, Seller shall perform, at Seller's expense, such corrective measures as Company may reasonably request, such as the recalibration of all monitoring equipment.

6.4 Repairs. Seller shall repair any and all monitoring equipment failures within ten (10) Business Days of such failure or within such other reasonable time as agreed to by the Parties.

6.5 Seller Day-Ahead Forecasts of Output.

(A) Forecasts. To support validation of the Company forecasts referenced in Section 6.1 (Resource Data for Company Forecasts), each Day during the Term commencing on the Commercial Operations Date, Seller shall submit to Company Seller's Day-ahead hourly forecasts of the Facility's output, which may, at Seller's option, be produced by a commercially available forecasting service or by the Seller's documented methodology for providing a forecast for the Facility's output (i.e., climatology, persistence forecasting) for the next 24 hour period. Hourly Day-ahead forecasts shall be submitted to Company by 1800 Hawaii Standard Time on each Day immediately preceding a Day on which electric energy from the Facility is to be delivered. Seller shall provide Company with an hourly forecast of deliveries for each hour of the next Day. Seller shall update such forecast and provide unit availability updates any time information becomes available indicating a change of 1 MW or more in the forecast of actual production from the Facility. The forecasts called for by this Agreement shall be substantially in the form reasonably requested by Company.

(B) Accuracy of Forecasts. Company acknowledges that the Seller's Day-ahead forecasts are based on forecast estimates and not guarantees and that Seller shall not be considered not to have performed its obligations or to be in default hereunder because actual results vary from such forecasts. Such limitation notwithstanding,

Seller shall exercise commercially reasonable efforts to provide accurate information for validation purposes and to support Company's forecasts. This includes a detailed description of the methodology used by Seller for forecasting. Seller shall prepare such forecasts and updates by utilizing a wind forecast that is comparable in accuracy to models or services commonly used in the wind energy industry and that reflect equipment availability, and is satisfactory to Company in the exercise of its reasonable discretion.

(C) Company's Forecasting System. Company currently subscribes to a forecasting service. Company uses such forecasting service to set Company's dispatch schedules for all facilities. Seller, may if it chooses, subscribe to Company's forecasting service, at Seller's cost. If Seller so chooses to subscribe to Company's forecasting service and elects to use such service in lieu of creating its own forecast, Seller shall not be required to provide Day-ahead forecasts pursuant to this Section 6.5 (Seller Day-Ahead Forecasts of Output) and instead Company will obtain such forecast through its forecasting service.

6.6 Seller's Historical Annual Data Report. No later than January 15th of each calendar year during the Term following the Commercial Operations Date, Seller shall provide Company with a report setting forth the historical hourly energy (MWh) and power (MW) production data ("Historical Annual Data") of the Facility for the immediately preceding three-year period. The report prepared by Seller shall also identify any uncertainties based on historical operating experience and note any maintenance periods or long term outages of the Facility by time, date, and year during such three-year period.

6.7 Reports, Studies and Assessment. Prior to the Execution Date, Seller has delivered to Company the preliminary design of the Facility and the Typical Meteorological Year ("TMY") file used to derive the Initial Annual Contract Energy as set forth in Section 2.11 (Determination of Initial Annual Contract Energy). Promptly following the start of construction, Seller shall provide to Company an updated version of such report if Seller has updated the report since it was delivered to Company.

ARTICLE 7
SELLER PAYMENTS

Seller shall pay to Company (i) all amounts pursuant to Attachment G (Company-Owned Interconnection Facilities), (ii) all amounts pursuant to Section 10.1 (Meters) and Section 10.2 (Meter Testing), (iii) a monthly metering charge of $25.00 per month, which is in addition to any charges due Company pursuant to the applicable rate schedule pursuant to Section 2.10 (Sales of Electric Energy By Company to Seller) of this Agreement, and (iv) such other costs to be incurred by Company and reimbursed by Seller as set forth in this Agreement.

ARTICLE 8
CONTINUITY OF SERVICE

8.1 General. Company may require Seller to temporarily curtail, interrupt or reduce deliveries of electric energy when necessary in order for Company to construct, install, maintain, repair, replace, remove, investigate, test or inspect any of its equipment or any part of the Company System including, but not limited to, accommodating the installation and/or acceptance test of non-utility owned facilities to Company System; or if Company determines that such curtailment, interruption or reduction is necessary because of a system emergency, Forced Outage, operating conditions on the Company System; or the inability to accept deliveries of electric energy due to Excess Energy Conditions; or if either the Facility does not operate in compliance with Good Engineering and Operating Practices or acceptance of electric energy from Seller by Company would require Company to operate the Company System outside of Good Engineering and Operating Practices, which in this case shall include, but not be limited to, excessive system frequency fluctuations or excessive voltage deviations, and any situation that the Company System Operator determines, at his or her sole discretion using Good Engineering and Operating Practices, could place in jeopardy the reliability of the Company System. In the event that Company initiates a Curtailment Event pursuant to this Section 8.1 (General), Company shall not be obligated to accept or pay for any electric energy from Seller except for such electric energy that Company notifies Seller that it is able to take during the duration of a Curtailment Event. Nothing in this Section 8.1 (General) limits Company's obligation to pay for

Compensable Curtailed Energy as set forth in Section 2.6 (Payment for Compensable Curtailed Energy).

8.2 Negative Avoided Cost. Company shall not be required to purchase electric energy during any period during which, due to operational circumstances, purchases from Seller will result in costs greater than those which Company would incur if it did not make those purchases, but instead generated an equivalent amount of electric energy itself. Company shall provide Seller with at least twenty-four (24) hours advance oral or written notice of the occurrence of any such period to advise Seller to cease the delivery of electric energy to Company. Company and Seller will work to develop a mutually acceptable format for this notice, including, but not limited to, a listing of typical parameters that define anticipated constraints in purchases from Seller. The Company shall not curtail pursuant to this Section 8.2 (Negative Avoided Cost) solely as a consequence of Company's filed avoided energy cost data being lower than the applicable price per MWh paid to Seller under this Agreement. Company and Seller acknowledge that this Section 8.2 (Negative Avoided Cost) shall be construed in accordance with 18 CFR § 292.304(f) of the Regulations under PURPA issued by the Federal Energy Regulatory Commission and § 6-74-24 of the Standards for Small Power Production and Cogeneration issued by the PUC. Nothing in this Section 8.2 (Negative Avoided Cost) limits Company's obligation to pay for Compensable Curtailed Energy as set forth in Section 2.6 (Payment for Compensable Curtailed Energy).

8.3 No Curtailment for Economic Dispatch. This Article 8 (Continuity of Service) of this Agreement does not permit Company to require Seller to curtail, interrupt or reduce deliveries of electric energy based on Company's economic dispatch (for example, as a consequence of Company's filed avoided energy cost data being lower than the applicable price per MWh paid to Seller under this Agreement, or to make purchases of less expensive electric energy from a Qualifying Facility).

8.4 Reasonable Steps. Company shall take all reasonable steps (such as reducing the output of Base Load Units, including its own Base Load Units, and renewable dispatchable projects, during light loading conditions, taking into consideration factors such as the need to maintain the reliability and stability of the Company System under

changing system conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for firm capacity Base Load Units, renewable dispatchable projects or scheduled electric energy, and the normal minimum loading levels of such units) to minimize the number and duration of curtailments, interruptions or reductions affecting Seller, subject to and in accordance with Attachment B (Facility Owned by Seller). Company shall endeavor, to the extent practicable, to avoid conducting any planned maintenance that requires total or partial curtailment of the Facility during periods of high wind conditions suitable for maximizing the output of the Facility.

8.5 Monthly Curtailment Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall calculate Curtailed Energy and prepare and provide to Company a Curtailment Report by the tenth (10th) Business Day of each month in accordance with Attachment U (Calculation and Reporting of Curtailed Energy) of this Agreement. The Parties may also agree from time to time on methods for streamlining or improving the determination and reporting of Curtailed Energy; provided, however, that Seller is limited to proposing revisions to the process of determining and reporting Curtailed Energy under this Agreement to Company, once every two Contract Years. The rights and obligations of the Parties with respect to each Curtailment Report and any disagreements arising out of any Curtailment Report are set forth in Section 2 (Curtailment Report) and Section 5 (Disagreements Concerning Curtailed Energy) of Attachment U (Calculation and Reporting of Curtailed Energy) to this Agreement.

ARTICLE 9
PERSONNEL AND SYSTEM SAFETY

9.1 Notwithstanding any other provisions of this Agreement, if at any time Company reasonably determines that the Facility may endanger Company's personnel, and/or the continued operation of the Facility may endanger the integrity of the Company System or have an adverse effect on Company's customers' electric service, Company shall have the right to curtail or disconnect the Facility from the Company System, as determined in the sole good faith discretion of the Company System Operator, for the period necessary to correct

such condition(s). The Facility shall remain curtailed or disconnected, as the case may be, until such time as Company is satisfied that the condition(s) referred to above have been corrected, and Company shall not be obligated to accept or pay for any electric energy from Seller except for such electric energy as is accepted by Company from Seller during such period. If Company curtails or disconnects the Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify Seller by telephone, and thereafter confirm in writing, the reasons for the curtailment or disconnection. Nothing in this Section 9.1 (Personnel and System Safety) limits Company's obligation to pay for Compensable Curtailed Energy as set forth in Section 2.6 (Payment for Compensable Curtailed Energy).

ARTICLE 10
METERING

10.1 Meters. Company shall purchase, own, install and maintain the Revenue Metering Package suitable for measuring the export of electric energy from the Facility sold to Company in kilowatts and kilowatt-hours on a time-of-day basis and of reactive power flow in kilovars and true root mean square kilovar-hours. The metering point shall be as close as possible to the Point of Interconnection as allowed by Company. Seller shall make available a mutually agreeable location for the Revenue Metering Package. Seller shall install, own and maintain the infrastructure and other related equipment associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), per Company requirements and subject to Company's review and approval, as further described in Section 1(e) (Other Equipment) of Attachment B (Facility Owned by Seller). The Seller shall install this infrastructure such that it meets the requirements set forth in Chapter Six (IPP Metering) of the latest edition of the Company's Electric Service Installation Manual (ESIM) at the time of installation. Company shall test such revenue meters prior to installation and shall test such revenue meters every fifth year. Seller

shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with the Revenue Metering Package.

10.2 Meter Testing. Company shall provide at least twenty-four (24) hours' notice to Seller prior to any test it may perform on the revenue meters or metering equipment. Seller shall have the right to have a representative present during each such test. Seller may request, and Company shall perform, if requested, tests in addition to the every-fifth-year test and Seller shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to the fifth year test and Company shall pay the cost of such tests. If any of the revenue meters or metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this Section 10.2 (Meter Testing), Company shall promptly cause such equipment to be made accurate, and the period of inaccuracy, as well as an estimate for correct meter readings, shall be determined in accordance with Section 10.3 (Corrections).

10.3 Corrections. If any test of revenue meters or metering equipment conducted by Company indicates that the revenue meter readings are in error by one percent (1%) or more, the revenue meters or meter readings shall be corrected as follows: (i) determine the error by testing the revenue meter at approximately ten percent (10%) of the rated current (test amperes) specified for such revenue meter; (ii) determine the error by testing the revenue meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the revenue meter; (iii) the average meter error shall then be computed as the sum of (aa) one-fifth (1/5) of the error determined in the foregoing clause "(i)" and (bb) four-fifths (4/5) of the error determined in the foregoing clause "(ii)". The average meter error shall be used to adjust the invoices in accordance with Section 2.9 (Adjustment to Invoices After Payment) for the amount of electric energy supplied to Company for the previous six (6) months from Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

ARTICLE 11
GOVERNMENT APPROVALS,
LAND RIGHTS AND COMPLIANCE WITH LAWS

11.1 Governmental Approvals for Facility. Seller shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System.

11.2 Land Rights for Facility. Seller shall obtain, at its expense, any and all Land Rights required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Seller shall provide to Company, no later than the Execution Date, copies of the documents, recorded, if required by Company (including but not limited to any agreements with landowners) (i) establishing the right of Seller to construct, own, operate and maintain the Facility on the Site and (ii) any other Land Rights required for such construction, ownership, operation and maintenance of the Facility.

11.3 Company-Owned Interconnection Facilities. Seller shall, prior to commencement of construction of Company-Owned Interconnection Facilities (whether to be built by Seller or by Company), provide the necessary Governmental Approvals and Land Rights for the interconnection of the Facility to the Company System, including the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities. To the extent that Company has informed Seller, as of the Execution Date, that Company has Land Rights sufficient for the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities, Seller shall not be required to obtain additional Land Rights with respect thereto.

11.4 Compliance With Laws. Seller shall at all times comply with all applicable Laws and shall be responsible for all costs and expenses associated therewith except to the extent caused by an act or omission of Company.

ARTICLE 12
TERM OF AGREEMENT AND
COMPANY'S OPTIONS TO PURCHASE FACILITY

12.1 Term. Subject to Section 12.2 (Effectiveness of Obligations) of this Agreement, the initial term of this Agreement shall commence upon the Execution Date of this Agreement and, unless terminated sooner as provided in this Agreement, shall remain in effect for twenty-two (22) Contract Years following the Commercial Operations Date (the "Initial Term"). This Agreement shall automatically terminate upon expiration of the Initial Term, or (if Company has exercised its option under Section 12.10 (Company's Option to Extend Term for Banked Curtailed Energy)) upon the expiration of the Banked Curtailed Energy Term. If the Parties desire, the Parties may negotiate terms and conditions of an extension term ("Extended Term"), including reduced Contract Pricing in light of the circumstances, which terms and conditions (i) shall be submitted to the PUC by Company for approval no later than one (1) year prior to the expiration of the Initial Term and (ii) shall have no effect without PUC approval.

12.2 Effectiveness of Obligations.

(A) Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, only Article 3 (Facility Owned and/or Operated by Seller), Article 12 (Term of Agreement and Company's Option to Purchase Facility), Article 14 (Credit Assurance and Security) as it relates to Development Period Security, Article 17 (Indemnification), Article 19 (Transfers, Assignments, and Facility Debt), Article 22 (Warranties and Representations), Article 24 (Financial Compliance), Article 28 (Dispute Resolution), Article 29 (Miscellaneous), **[NOTE: Add reference to Section 3 of Attachment G as appropriate as part of Interconnection Requirements Amendment.]** and the Definitions of this Agreement shall become effective on the Execution Date. All other portions of this Agreement shall become effective on the Effective Date.

(B) If Seller has met the Permit Application Filing Milestone by the Permit Application Filing Milestone Date, but is unable to obtain, to the extent necessary,

Governmental Approvals for (1) an incidental take permit under Section 10(a)(1)(B) and a final habitat conservation plan pursuant to Section 10(a)(2)(A) of the Endangered Species Act, and (2) an incidental take license as part of the habitat conservation plan under HRS § 195D-4 that will permit the Project to operate at its full capacity as contemplated by this Agreement without material modifications in design or siting or material additional expense, in each case by the Construction Start Milestone Date, and provided such inability to obtain such Governmental Approvals is not due to any material delay, material omission, or material inaction by Seller, in each case to the extent within Seller's reasonable control, then Seller may terminate this Agreement on thirty (30) days written notice to the Company, given within ninety (90) days after such date, and payment of a termination fee of Five Hundred Thousand Dollars ($500,000), without further liability hereunder for either Party following such termination, except as set forth in Section 29.24 (Survival of Obligations). For the avoidance of doubt, if a Governmental Authority with jurisdiction under the Endangered Species Act or Chapter 195D of the HRS establishes regulations, guidelines or other standards for the issuance of either or both of such Permits that Seller reasonably determines that it will be unable to satisfy in a manner that will permit the Project to operate at its full capacity as contemplated by this Agreement without material modifications in design or siting or material additional expense, Seller may, by written notice to the Company, elect to treat the adoption of such regulations, guidelines or other standards as equivalent to the denial of the related Permit and terminate this Agreement in accordance with the terms and conditions of this Section 12.2(B).

12.3 PUC Approval.

(A) This Agreement is subject to approval by the PUC in the form of a satisfactory PUC Approval Order and the Parties' respective obligations hereunder are conditioned upon receipt of such approval, except as specifically provided otherwise herein. Upon the Execution Date of this Agreement, the Parties shall use good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of

Section 29.20(A) (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurances that a PUC Approval will ultimately be obtained. Seller will provide reasonable cooperation to expedite obtaining a PUC Approval Order including timely providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether or not a PUC Approval Order will be issued and each Party hereby assumes any and all risks arising from, or relating in any way to, the inability to obtain a satisfactory PUC Approval Order and hereby releases the other Party from any and all claims relating thereto.

(B) Seller shall seek participation without intervention in the PUC docket for approval of this Agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of this Agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives any right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the arguments offered by Company in support of the application requesting the PUC Approval Order are insufficient to meet Company's burden of justifying that the terms of this Agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of this Agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position

of others with respect to their ability to compete on equal and fair terms.

12.4 Interconnection Requirements Study. This Agreement shall be executed prior to completion of the Interconnection Requirements Study. Following the completion of the IRS:

(A) The Parties shall, no later than the PPA Amendment Deadline, execute a formal amendment to this Agreement substituting new versions of Attachment B (Facility Owned by Seller), Attachment E (Single-Line Drawings), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), Attachment L (Reporting Milestones) and making such other revisions as are expressly noted herein (the "Interconnection Requirements Amendment"), and Attachment N (Acceptance Test General Criteria) to reflect the results of the IRS. If the Interconnection Requirements Amendment is not executed by the PPA Amendment Deadline, either Party may, by written notice delivered to the other Party, declare the Agreement null and void; or

(B) If Seller is dissatisfied with the results of the IRS, Seller shall have the option, by written notice delivered to Company no later than the Termination Deadline, to declare this Agreement null and void. Failure of Seller to declare this Agreement null and void pursuant to the preceding sentence shall not obligate Seller to execute the Interconnection Requirements Amendment.

12.5 Prior to Effective Date. Company may, by written notice delivered prior to the Effective Date, declare the Agreement null and void if any one or more of the following conditions applies:

(A) Seller makes material changes in the type of, or performance specifications of, the equipment for the Facility such that (i) the then-current IRS no longer accurately describes (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, or (b) the Performance Standards of the Facility, or (ii) the project schedule for interconnection of the Facility is materially and adversely affected.

(B) Seller is in breach of (i) the provisions of Section 22.2(C) (By Seller) and Section 22.2(D) (By Seller) requiring Seller to have obtained certain Land Rights (as described in Section 22.2(C) (By Seller) and Section 22.2(D) (By Seller)) or (ii) the provisions of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of specified amounts within specified time periods.

(C) Seller, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment, unless such delay is requested as the result of a Force Majeure, a change in applicable Laws, or a delay or failure by Company in the performance of its obligations.

12.6 Time Periods for PUC Submittal Date and PUC Approval.

(A) Time Period for PUC Submittal Date. If the PUC Submittal Date has not occurred on or before (i) thirty (30) Days from the date of the Parties' execution of this Agreement, or (ii) thirty (30) Days from the date of the Parties' execution of the Interconnection Requirements Amendment, or such other date as Company and Seller may agree to by written agreement, Seller may, by written notice delivered within thirty (30) Days following such date, declare the Agreement null and void; provided, however, that Company shall not be required to submit to the PUC an application for a satisfactory PUC Approval Order if Seller fails to provide in a timely manner, information reasonably requested by Company to support such application.

(B) Time Period for PUC Approval.

If the Commission issues an Unfavorable PUC Order or if a satisfactory PUC Approval Order is not obtained within twelve (12) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a written agreement ("PUC Approval Time Period"), and if Company and Seller are unable to agree, after good faith negotiations, on revisions to

this Agreement that would resolve the reasons for the Unfavorable PUC Order, Company or Seller may, by written notice delivered within one hundred and eighty (180) Days of the Unfavorable PUC Order or the expiration of the PUC Approval Time Period, as applicable, declare this Agreement null and void; provided that neither Company nor Seller shall be required to amend this Agreement because of any conditions contained in an Unfavorable PUC Order. In the event the PUC Approval Order is obtained within the PUC Approval Time Period but that Order is appealed, and a Non-appealable PUC Approval Order is not obtained within the PUC Approval Time Period, or within such longer period as Company and Seller may agree to by a subsequent written agreement, Company or Seller may, by written notice delivered within ninety (90) Days of the expiration of the PUC Approval Time Period, declare this Agreement null and void.

12.7 Agreement Null and Void. If the Agreement is declared null and void pursuant to Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), the Parties hereto shall thereafter be free of all obligations hereunder except as set forth in this Section 12.7(Agreement Null and Void) and Section 14.3 (Return of Development Period Security), and shall pursue no further remedies against one another; provided, however, that if in response to Seller's request and Seller's offer of adequate assurance of reimbursement, Company agrees in writing to incur costs associated with Company-Owned Interconnection Facilities prior to the Non-appealable PUC Approval Order Date or completion of the IRS, Seller shall pay Company the actual costs and cost obligations incurred by Company as of the date the Agreement is declared null and void for Company-Owned Interconnection Facilities and any necessary costs reasonably incurred thereafter. A declaration that this Agreement is null and void pursuant to Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), shall not affect the following provisions, which shall remain in full force and effect: Section 12.2 (Effectiveness of Obligations), this Section 12.7 (Agreement Null and Void), Article 17 (Indemnification), Section 22.1 (By the Parties) Article 28 (Dispute Resolution), Section 29.3 (Notices), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.14 (Settlement of Disputes), Section 29.19

(Computation of Time), Section 29.22 (No Third Party Beneficiaries) Section 29.23 (Hawaii General Excise Tax), and Section 7 (Land Restoration) of Attachment G.

12.8 Termination Rights. Notwithstanding any of the foregoing, Company and Seller, as applicable, shall have the termination rights set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract).

12.9 Right of First Negotiation. Company shall have the right of first negotiation to purchase the Facility as provided in Attachment P (Sale of Facility by Seller) to this Agreement.

12.10 Company's Option to Extend Term for Banked Curtailed Energy.

(A) Banked Curtailed Energy and Term Extension. Compensable Curtailed Energy for which Company has paid Seller pursuant to Section 2.6 (Payment for Compensable Curtailed Energy) and Section 2.8 (Invoices for Compensable Curtailed Energy) shall be "banked" ("Banked Curtailed Energy") and Company shall have the option to extend the Term of this Agreement for a period determined on the basis of the amount of Banked Curtailed Energy, as set forth in this Section 12.10 (Company's Option to Extend Term for Banked Curtailed Energy).

(B) Company's Option to Extend Term.

(1) If there is Banked Curtailed Energy following the close of the 21st Contract Year, Company shall have the option to extend the Term of this Agreement for the period (the "Banked Curtailed Energy Term") commencing on the Day following the last Day of the Initial Term and ending on the first to occur of (i) the last Day of the calendar month during which the last Banked Curtailed Energy is delivered to Company or (ii) the fifth anniversary of the end of the Initial Term.

(2) The price for the electric energy sold by Seller during the Banked Curtailed Energy Term shall be as set forth in Section 1 (b) (Banked Curtailed Energy Term) of Attachment J (Energy Purchases by Company).

(3) In order to exercise its option to extend the Term of this Agreement by the Banked Curtailed Energy Term, Company must provide Seller with written notice to that effect no later than 180 Days prior to the end of the Initial Term. Such notice of extension will be irrevocable once given.

(C) Seller's Option to "Opt Out" of Banked Curtailed Energy Term.

Upon issuance of Company's notice to extend the Term of this Agreement by the Banked Curtailed Energy Term, Seller shall have the option to "opt out" of the Banked Curtailed Energy Term by (i) transferring to Company, for the duration of the Banked Curtailed Energy Term, the use of the Facility and all Land Rights and other contract rights necessary for the operation of the Facility during the Banked Curtailed Energy Term and (ii) forfeit to Company the Operating Period Security. In order to exercise this "opt out," Seller must provide company with written notice to that effect within 30 Days of the issuance of Company's notice extending the Term of this Agreement as aforesaid. If Seller issues the "opt out" notice within the aforesaid 30-Day period, Company shall have the right, commencing on the Day following the expiration of the Initial Term, to operate the Facility with no payment to Seller for the duration of the Banked Curtailed Energy Term, and Seller shall take all reasonable steps to facilitate Company's exercise of such right. Following the end of the Banked Curtailed Energy Term, Company shall relinquish control of the Facility to Seller and shall quit claim to Seller Company's interest (if any) in all Land Rights and contract rights necessary to the operation of the Facility.

(D) Company's Purchase Option During Banked Curtailed Energy Term.

If Seller does not exercise its option to "opt out" of the Banked Curtailed Energy Term under Section 12.10(C) (Seller's Option to "Opt Out" of Banked Curtailed Energy Term), and if for any rolling 12-month period during the Banked Curtailed Energy Term, the Calculated Output falls below seventy percent (70%) of the average of the monthly Calculated Output for the last three

years of the Initial Term, Company shall have the option to purchase the Facility from Seller as set forth in Section 4 (Company's Option to Purchase Pursuant to Section 12.10(D) of Attachment P (Sale of Facility by Seller), and Seller shall if requested by Company, take commercially reasonable steps to effectuate a sale of the Facility to Company as provided in said Section 4.

ARTICLE 13
GUARANTEED PROJECT MILESTONES INCLUDING COMMERCIAL OPERATIONS

13.1 Time is of the Essence. Time is of the essence of this Agreement, and Seller's ability to achieve the Guaranteed Project Milestones is critically important.

13.2 Failure to Meet Certain Reporting Milestones. If Seller does not meet any of the Permit Application Filing Date Milestone, the Construction Financing Milestone or the Construction Start Date Milestone, in each case as set forth in Attachment L (Reporting Milestones), Seller shall submit to Company, within ten (10) Business Days of any such missed Reporting Milestone, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve (i) the missed Reporting Milestone date and (ii) all subsequent Construction Milestones in a manner that provides for achieving Commercial Operations by the Guaranteed Commercial Operations Date, provided that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent Construction Milestones.

13.3 Guaranteed Project Milestone Dates. Seller shall achieve each Guaranteed Project Milestone Date, subject (to the extent applicable) to the following grace periods:

(A) if the failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date is the result of the PUC Approval Order Date occurring later than the date specified in Section 12.6(B) (Time Period for PUC Approval) and Seller has not elected to declare this Agreement null and void, Seller shall be entitled to an extension of the Guaranteed Commercial Operations Date equal to the number of Days that elapse between the date specified in Section 12.6(B) (Time Period for PUC Approval) and the PUC Approval Order Date;

(B) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of Force Majeure (which, for purposes of this Section 13.3(B) excludes any delay in obtaining the PUC Approval Order because that contingency is addressed in Section 13.3(A) above), and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, Seller shall be entitled to an extension of such Guaranteed Project Milestone Date and all subsequent Guaranteed Project Milestones Dates equal to the lesser of three hundred sixty-five (365) Days or the duration of the Force Majeure; or

(C) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of any failure by Company in the timely performance of its obligations under this Agreement, such Guaranteed Project Milestone Date shall be extended by a period equal to the duration of the period of delay directly caused by such failure in Company's timely performance. Such grace period on the terms described above shall be Seller's sole remedy for any such failure by Company. For purposes of this Section 13.3(C), Company's performance will be deemed to be "timely" if it is accomplished within the time period specified in this Agreement with respect to such performance or, if no time period is specified, within a reasonable period of time. If the performance in question is Company's review of plans, the determination of what is a "reasonable period of time" will take into account Company's past practices in reviewing and commenting on plans for similar facilities.

13.4 Damages and Termination.

(A) Daily Delay Damages.

(1) If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date as extended as provided in Section 13.3 (Guaranteed Project Milestone Dates), Company shall collect and Seller shall pay liquidated damages in the amount of $13,000 for each Day

("Daily Delay Damages") following the applicable Guaranteed Project Milestone Date or (if applicable) the expiration of such extended period that Seller fails to achieve the applicable Guaranteed Project Milestone; provided, however, that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for a failure to achieve a Guaranteed Project Milestone Date shall not exceed one hundred eighty (180) Days for each such missed Guaranteed Project Milestone Date (the "Construction Delay LD Period"), and Daily Delay Damages shall not exceed $13,000 per Day, regardless of how many Guaranteed Project Milestone Dates may have been missed, and provided further, that if Seller achieves the Commercial Operations Date by the Guaranteed Commercial Operations Date, Company shall promptly refund to Seller fifty percent (50%) of the total Daily Delay Damages previously collected by Company.

(2) If the Commercial Operations Date has not been achieved by the Guaranteed Commercial Operations Date as extended as provided in Section 13.3 (Guaranteed Project Milestone Dates), and in addition to any Daily Delay Damages collected pursuant to Section 13.4(A)(1), Company shall collect and Seller shall pay Daily Delay Damages following the Guaranteed Commercial Operations Date or (if applicable) the expiration of such extended period that Seller fails to achieve the Commercial Operations Date, provided that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages shall not exceed one hundred eighty (180) Days (the "COD Delay LD Period").

(B) Termination and Termination Damages for Failure to Achieve a Guaranteed Project Milestone Date. If, upon the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable, Seller has not achieved the Guaranteed Project Milestone Date, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller

designating the Day such termination is to be effective, provided that Company shall issue such notice no later than thirty (30) Days following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Seller, and not earlier than the later to occur of the Day such notice is deemed to be received by Seller or the Day following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. Without limiting the generality of the preceding sentence, the earliest Day upon which a termination of this Agreement can be effective as a result of a failure to achieve Guaranteed Project Milestone would be the Day following expiration of the COD Delay LD Period. If the Agreement is terminated by Company pursuant to this Section 13.4 (Damages and Termination), Company shall have the right to collect liquidated damages ("Termination Damages"), which shall be calculated in accordance with Article 16 (Damages in the Event of Termination By Company) of this Agreement.

13.5 Payment of Daily Delay Damages. Company shall have the right to either draw upon the Development Period Security on a monthly basis for payment of the total Daily Delay Damages incurred by Seller during the preceding calendar month, or invoice Seller and, if Seller fails to make payment within ten (10) Business Days after receipt of the invoice, draw upon the Development Period Security for such amounts. If the Development Period Security is at any time insufficient to pay the amount of the draw to which Company is then entitled, Seller shall pay any such deficiency to Company promptly upon demand.

13.6 Liquidated Damages Appropriate. Seller's inability to achieve a Guaranteed Project Milestone Date by the Guaranteed Project Milestone Date and/or Commercial Operations by the Guaranteed Commercial Operations Date may cause Company to not meet applicable RPS requirements and require Company to devote substantial additional resources for administration and oversight activities. As such, Company may incur financial consequences for failure to meet such requirements. Consequently, each Party agrees and acknowledges that (i) the damages that Company would incur due to delay in a Guaranteed Project Milestone by the

Guaranteed Project Milestone Date and/or achieving Commercial Operations by the Guaranteed Commercial Operations Date (as extended as provided in Section 13.3 (Guaranteed Project Milestone Dates)) would be difficult or impossible to calculate with certainty, (ii) the Daily Delay Damages set forth in Section 13.4 (Damages and Termination) are an appropriate approximation of such damages and (iii) the Daily Delay Damages are the sole and exclusive remedies for Seller's failure to achieve a Guaranteed Project Milestone Date by the Guaranteed Project Milestone Date and/or the Commercial Operations by the Guaranteed Commercial Operations Date.

13.7 Monthly Progress Reports. Commencing upon the Execution Date of this Agreement, Seller shall submit to Company, on the first Day of each calendar month until the Commercial Operations Date is achieved, progress reports in a form set forth on Attachment S (Form of Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Company of the current status of each Construction Milestone. Seller shall include in such report a summary of material interactions including applications, filings with any applicable Governmental Approvals sent to or received from any Governmental Authority and shall provide any such documents relating thereto as may be reasonably requested by Company. In addition, Seller shall advise Company as soon as reasonably practicable of any problems or issues of which it is aware which would be reasonably be expected to materially impact its ability to meet the Construction Milestones. Seller shall provide Company with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from Company. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of Section 21.4 (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this Section 13.7 (Monthly Progress Reports).

ARTICLE 14
CREDIT ASSURANCE AND SECURITY

14.1 General. Seller is required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 14 (Credit Assurance and Security).

14.2 Development Period Security. To guarantee undertaking the performance of Seller's obligations under the Agreement for the period prior to the Commercial Operations Date (including but not limited to Seller's obligation to meet the Guaranteed Commercial Operations Date), Seller shall provide Development Period Security to Company within thirty (30) Days of the Effective Date of the Agreement.

14.3 Return of Development Period Security. In the event (i) this Agreement is declared null and void pursuant to Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), (ii) the PUC issues an order denying approval for an application for a PUC Approval Order, (iii) the PUC issues an order that is not a complete approval and which is not satisfactory to Company or Seller, or (iv) following Company's receipt of the Operating Period Security, unless the Development Period Security is converted to Operating Period Security pursuant to Section 14.4 (Operating Period Security) of this Agreement, the Development Period Security shall be returned to Seller, subject to Company's right to draw from the Development Period Security as set forth in Section 14.7 (Company's Right to Draw from Security Funds).

14.4 Operating Period Security. To guarantee the performance of Seller's obligations under the Agreement for the period starting from the Commercial Operations Date to the expiration or termination of this Agreement, Seller shall provide operating period security to Company in the amount of $75/kW based on the Contract Capacity (the "Operating Period Security"). When the Commercial Operations Date has been achieved, the Development Period Security minus an amount that is due and owing to Company but not previously paid by Seller (including but not limited to Daily Delay Damages), shall be converted to Operating Period Security unless the Parties otherwise agree. Any additional amount necessary to fully fund the Operating Period Security shall be due within five (5) Days of the Commercial Operations Date.

14.5 Form of Security. Seller shall supply the Development Period and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement (other than Company's certification set forth in Attachment M (Form of Irrevocable Letter of Credit)) substantially in the form attached to

this Agreement as Attachment M (Form of Irrevocable Letter of Credit) from a bank or other financial institution located in the United States with a credit rating of "A-" or better by Standard & Poor's or Fitch or "A3" or better by Moody's. If the bank or financial institution issuing the standby letter of credit ceases to not have a credit rating of "A-" or better by Standard & Poor's or Fitch or "A3" or better by Moody's, Company may require Seller to replace the standby letter of credit with a standby letter of credit from another bank or financial institution located in the United States with a credit rating of "A-" or better by Standard & Poor's or Fitch or "A3" or better by Moody's. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days advance notice to Company of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller.

14.6 Security Funds. The Development Period Security and Operating Period Security (collectively referred to as the "Security Funds") established, funded, and maintained by Seller pursuant to the provisions of this Article 14 (Credit Assurance and Security) shall provide security for the performance of Seller's obligations under this Agreement and shall be available to be drawn on by Company as provided in Section 14.7 (Company's Right to Draw from Security Funds). Seller shall maintain the Security Funds at the contractually-required level throughout the Term of this Agreement. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Company or any reduction in the value of Security Funds below the required level for any other reason. Notwithstanding the foregoing, Seller's obligation to replenish the Development Period Security shall not exceed in total three (3) times the original amount of the Development Period Security required under Section 14.2 (Development Period Security), and Seller's

obligation to replenish the Operating Period Security shall not exceed in total three (3) times the amount of the Operating Period Security required under Section 14.4 (Operating Period Security).

14.7 Company's Right to Draw from Security Funds. In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. Company may, in its sole discretion, draw all or any part of such amounts due Company from any of the Security Funds to the extent available pursuant to this Article 14 (Credit Assurance and Security), and from all such forms, and in any sequence Company may select. Any failure to draw upon the Security Funds or other security for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

14.8 Failure to Renew or Extend Letter of Credit. If the letter of credit is not renewed or extended at least thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "L/C Proceeds"), at Seller's cost, in an escrow account in accordance with Section 14.9 (L/C Proceeds Escrow), until and unless Seller provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).

14.9 L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 14.8 (Failure to Renew or Extend Letter of Credit), Company shall, in order to avoid comingling the L/C Proceeds, have the right but not the obligation to place the L/C Proceeds in an escrow account as provided in this Section 14.9 (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Company ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the L/C Proceeds as necessary to recover amounts

Company is owed pursuant to this Agreement or the IRS Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. To that end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Seller shall not be a party to such documentation and shall have no rights to the L/C proceeds. Upon full satisfaction of Seller's obligations under this Agreement, including recovery by Company of amounts owed to it under this Agreement, Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. If there is more than one escrow account with L/C Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the L/C Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

14.10 Release of Security Funds. Promptly following the end of the Term, and the complete performance of all of Seller's obligations under this Agreement, including but not limited to the obligation to pay any and all amounts owed by Seller to Company under this Agreement, Company shall release the Security Funds to Seller.

ARTICLE 15
EVENTS OF DEFAULT

15.1 Events of Default by Seller. The occurrence of any of the following shall constitute an Event of Default by Seller:

(A) if at any time during the Term, Seller delivers or attempts to deliver to the Point of Interconnection for sale under this Agreement electric energy that was not generated by the Facility;

(B) if at any time during the Initial Term subsequent to the Commercial Operations Date, Seller fails to provide electric energy to Company for a period of three hundred sixty-five (365) or more consecutive Days, unless such failure is caused by the inability or

failure of Company to accept such electric energy or Company's curtailment of the Facility pursuant to this Agreement;

(C) if at any time during the Banked Curtailed Energy Term, Seller fails to provide electric energy to Company for a period of ninety (90) or more consecutive Days, unless (i) such failure is caused by the inability or failure of Company to accept such electric energy or Company's curtailment of the Facility pursuant to this Agreement, or (ii) if (a) the cure for Seller's failure to provide electrical energy reasonably requires more than ninety (90) Days to complete, (b) Seller commences such cure within the above 90-Day period and diligently pursues such cure to completion, and (c) delivery of electric energy is restored within three hundred sixty-five (365) Days of Seller's initial failure to provide electrical energy;

(D) if at any time during the Term, Seller fails to satisfy the Credit Assurance and Security requirements agreed to pursuant to Article 14 (Credit Assurance and Security) of this Agreement, and such failure is not cured within five (5) Business Days after written notice of such failure from Company; or

(E) [RESERVED]

(F) [RESERVED]

(G) if at any time subsequent to the Commercial Operations Date, Seller fails to install, operate, maintain, or repair the Facility in accordance with Good Engineering and Operating Practices if such failure has or could reasonably be expected to have a material adverse effect on Seller's performance hereunder, on the Company System, or on Company's ability to accept energy delivered by Seller, and if such failure is not cured within thirty (30) Days after written notice of such failure from Company, unless such failure cannot be cured within said thirty (30) Day period and Seller is making commercially reasonable efforts to cure such failure, in which case Seller shall have a cure period of one hundred eighty (180) Days after Company's written notice of such failure.

15.2 Events of Default by a Party. The occurrence of any of the following during the Term of the Agreement shall constitute an Event of Default by the Party responsible for the failure, action or breach in question:

(A) The failure to make any payment required pursuant to this Agreement when due if such failure is not cured within ten (10) Business Days after written notice is received by the Party failing to make such payment;

(B) Any representation or warranty made by such Party herein is false and misleading in any material respect when made;

(C) Such Party (i) becomes insolvent, (ii) makes a general assignment for the benefit of creditors, (iii) fails generally to pay its debts as they become due, (iv) shall have an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it which is not dismissed within 90 days, (v) shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, (vi) shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statue, law or regulation, (vii) shall file any answer admitting the material allegations of any petition filed against it in such proceeding, (viii) seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets which is not vacated or terminated within 90 days, or (ix) takes action seeking its dissolution or liquidation;

(D) Such Party engages in or is the subject of a transaction requiring the prior written consent of the other Party under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company) (as applicable) without having obtained such consent;

(E) Such Party fails to comply with either (i) a decision under Article 28 (Dispute Resolution), or (ii) an Independent Evaluator's decision under Article 23 (Process for Addressing Revisions to Performance

Standards), in either case within thirty (30) Days after such decision becomes binding on the Parties in accordance with Article 28 (Dispute Resolution) or within thirty (30) Days of the issuance of such decision under Article 23 (Process for Addressing Revisions to Performance Standards), as applicable, or, if such decision cannot be complied with within thirty (30) Days, such Party fails to have commenced commercially reasonable efforts designed to achieve compliance within such thirty (30) Days and diligently continue such commercially reasonable efforts until compliance is attained; or

(F) A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Agreement, other than the provisions specified in Section 15.1 (Events of Default by Seller) and Section 15.2(A) (Events of Default by Party) through Section 15.2(E) (Events of Default by Party), if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from the other Party; provided, however, that if it is not reasonably possible to cure the breach or default in question within said thirty (30) Day period (i.e., if the breach or default in question is one that could not be cured within said thirty (30) Day period by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure within said thirty (30) Day period), then, for so long as the Non-performing Party is making the same effort to cure such breach or default as would be expected of an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure, the Non-performing Party shall have a cure period equal to the shorter of (i) the duration of the period within which a cure could reasonably be expected to be achieved by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure or (ii) a period of three hundred sixty five (365) Days beginning on the date of written notice of such breach or default.

15.3 Cure/Grace Periods. Before becoming an Event of Default, the occurrences set forth in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) are subject to the following cure/grace periods:

(A) If the occurrence is not the result of Force Majeure, the Non-performing Party shall be entitled to a cure period to the limited extent expressly set forth in the applicable provision of Section 15.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party); or

(B) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, the Non-performing Party shall be entitled to a grace period as provided in Section 21.6 (Events of Default), and such occurrence will not be an Event of Default if it is remedied within the applicable grace period provided in Section 21.6 (Events of Default). Any such occurrence that is not remedied within the applicable grace period provided in Section 21.6 (Events of Default) may thereafter become an Event of Default.

15.4 Rights of the Non-defaulting Party; Forward Contract. If an Event of Default shall have occurred and be continuing, the Party who is not the Defaulting Party ("Non-defaulting Party") shall have the right (i) to terminate this Agreement by sending written notice to the Defaulting Party as provided in this Section 15.4 (Rights of the Non-defaulting Party); (ii) to withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement. A notice terminating this Agreement pursuant to this Section 15.4 (Rights of the Non-defaulting Party) shall designate the Day such termination is to be effective which Day shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Day such notice is deemed to be received by the Defaulting Party or the Day following the expiration of any period afforded the Defaulting Party under Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) to cure the default in question. If the Agreement is

terminated by Company because of one or more of the Events of Default by Seller, Company shall have the right, in addition to the rights set forth above in this Section 15.4 (Rights of the Non-defaulting Party), to collect liquidated damages ("Termination Damages"), in accordance with Article 16 (Damages in the Event of Termination by Company). Without limitation to the generality of the foregoing provisions of this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. § 362(b)(6), this Agreement is a "forward contract" and the Company is a "forward contract merchant".

15.5 Force Majeure. To the extent a Non-performing Party is entitled to defer certain liabilities pursuant to Article 21 (Force Majeure) of the Agreement, the permitted period of deferral shall be governed by Section 21.6 (Events of Default) in lieu of this Article 15 (Events of Default).

15.6 Guaranteed Project Milestones and Guaranteed Commercial Operations Date. Notwithstanding any other provision of this Article 15 (Events of Default) to the contrary, any failure of Seller to achieve any of the Guaranteed Project Milestones shall be governed by Article 13 (Guaranteed Project Milestones Including Commercial Operations) in lieu of this Article 15 (Events of Default).

15.7 Equitable Remedies. Seller acknowledges that Company is a public utility and is relying upon Seller's performance of its obligations under this Agreement, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Seller to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract). Accordingly, the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall not limit or otherwise affect Company's right to seek specific performance injunctions or other available equitable remedies for Seller's failure to perform any of its obligations under this Agreement, irrespective of whether such failure constitutes an Event of Default.

ARTICLE 16
DAMAGES IN THE EVENT OF TERMINATION BY COMPANY

16.1 Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Company pursuant to Section 13.4 (Damages and Termination), Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by $50/kW, less the total amount of Daily Delay Damages actually paid by Seller to Company under Section 13.4 (Damages and Termination), if any.

16.2 Termination Due to an Event of Default. If the Agreement is terminated by Company in accordance with this Agreement after the Commercial Operations Date due to an Event of Default where Seller is the Defaulting Party, Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by $75/kW.

16.3 Liquidated Damages Appropriate. Each Party agrees and acknowledges that (i) the damages that Company would incur due to early termination of the Agreement pursuant to either Section 13.4 (Damages and Termination) or Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) would be difficult or impossible to calculate with certainty, (ii) the Termination Damages are an appropriate approximation of such damages, and (iii) payment of Termination Damages does not relieve Seller of liability for costs and balances incurred prior to the effective date of such termination. The Termination Damages are the sole and exclusive remedy for Company's losses arising out of the termination of this Agreement. The Termination Damages are not intended to limit Company's rights or remedies, or Seller's liabilities or duties, with respect to losses arising independent of the termination of this Agreement, including, without limitation, Company's right to recover under Section 17.1 (Indemnification of Company).

16.4 Consequential Damages. Neither Party shall be liable for damages incurred by the other Party for any loss of profit or revenues, loss of product, loss of use of products or services or associated equipment, interruption of business, cost of capital, downtime costs, increased operating costs, or for any special, consequential, incidental, indirect or punitive damages; provided, however, that nothing in this Section 16.4 (Consequential Damages) shall limit any of (i)

the indemnification obligations of either Party under Article 17 (Indemnification) of this Agreement with respect to third party Claims, (ii) the liability of either Party for liquidated damages as set forth in this Agreement, or (iii) the liability of either Party for fraud or intentional misconduct.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnification of Company.

(A) Indemnification Against Third Party Claims. Seller shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Company Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company relating to (i) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Facility or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party, except as and to the extent that such Loss is attributable to the gross negligence or willful misconduct of an Indemnified Company Party.

(B) Compliance with Laws. Any Losses incurred by an Indemnified Seller Party for noncompliance by Seller or an Indemnified Seller Party with applicable Laws shall not be reimbursed by Company but shall be the sole responsibility of Seller. Seller shall indemnify, defend and hold harmless each Indemnified Company Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Seller to comply with any Laws.

(C) Notice. If Seller shall obtain knowledge of any Claim subject to Section 17.1(A) (Indemnification Against Third Party Claims), Section 17.1(B) (Compliance with Laws) or otherwise under this Agreement, Seller shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Seller.

(D) Indemnification Procedures.

(1) In case any Claim subject to Section 17.1(A) (Indemnification Against Third Party Claims) or Section 17.1(B) (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Seller of the commencement thereof and, provided that Seller has acknowledged in writing to Company its obligation to an Indemnified Company Party under this Section 17.1 (Indemnification of Company), Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Seller desires, to assume and control the defense thereof; provided, however, that Seller shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld.

(2) Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 17.1(A) (Indemnification Against Third Party Claims), Section 17.1(B) (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a conflict of interest between an Indemnified Company Party and Seller, in which case Company shall be entitled, at its own expense, acting through counsel acceptable to Seller to participate in any Claim, the defense of which has been assumed by Seller. Company shall supply Seller with such information and documents requested by Seller as are necessary or advisable for Seller to possess in connection with its participation in any Claim to

the extent permitted by this Section 17.1(D)(2) (Indemnification Procedures). An Indemnified Company Party shall not enter into any settlement or other compromise with respect to any Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

(3) Upon payment of any Losses by Seller, pursuant to this Section 17.1 (Indemnification of Company) or other similar indemnity provisions contained herein, to or on behalf of Company, Seller, without any further action, shall be subrogated to any and all claims that an Indemnified Company Party may have relating thereto.

(4) Company shall fully cooperate and cause all Company Indemnified Parties to fully cooperate, in the defense of or response to, any Claim subject to Section 17.1 (Indemnification of Company).

17.2 Indemnification of Seller.

(A) Indemnification Against Third Party Claims. Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party due to any Claim by a third party not controlled by or under common ownership and/or control with Seller (whether or not well founded, meritorious or unmeritorious) relating to any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the gross negligence or willful misconduct of an Indemnified Seller Party.

(B) Notice. If Company shall obtain knowledge of any Claim subject to Section 17.2(A) (Indemnification Against Third Party Claims) or otherwise under this Agreement,

Company shall give prompt notice thereof to Seller, and if Seller shall obtain any such knowledge, Seller shall give prompt notice thereof to Company.

(C) Indemnification Procedures.

(1) In case any action, suit or proceeding subject to Section 17.2(A) (Indemnification Against Third Party Claims), or otherwise under this Agreement, shall be brought against an Indemnified Seller Party, Seller shall notify Company of the commencement thereof and, provided that Company has acknowledged in writing to Seller its obligation to an Indemnified Seller Party under this Section 17.2 (Indemnification of Seller), Company shall be entitled, at its own expense, acting through counsel acceptable to Seller, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Seller Party without the prior written consent of Seller which consent shall not be unreasonably withheld.

(2) Company shall not be entitled to assume and control the defense of any such Claim subject to Section 17.2(A) (Indemnification Against Third Party Claims), or otherwise under this Agreement, if and to the extent that, in the opinion of Seller, such Claim involves the potential imposition of criminal liability on an Indemnified Seller Party or a conflict of interest between an Indemnified Seller Party and Company, in which case Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in any Claim the defense of which has been assumed by Company. An Indemnified Seller Party shall supply Company with such information and documents requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this Section 17.2(C)(2) (Indemnification Procedures). An Indemnified Seller Party shall not enter into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.

(3) Upon payment of any Losses by Company pursuant to this Section 17.2 (Indemnification of Seller) or other similar indemnity provisions contained herein to or on behalf of Seller, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Seller Party may have relating thereto.

(4) Seller shall fully cooperate and cause all Seller Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to Section 17.2 (Indemnification of Seller).

ARTICLE 18
INSURANCE

18.1 Required Coverage. Seller, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in Attachment R (Required Insurance), or such higher amounts as the Seller and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements. Any deductible shall be the responsibility of Seller.

18.2 Waiver of Subrogation. Seller, and anyone acting under its direction or control or on its behalf, shall cause its insurers to waive all rights of subrogation which Seller or its insurers may have against Company, Company's agents, or Company's employees.

18.3 Additional Insureds. The insurance policies specified in Section 2 (General Liability Insurance), including any separate policy covering environmental liability, and Section 3 (Automobile Liability Insurance) of Attachment R (Required Insurance) shall name Company as an additional insured, as its interests may appear, with respect to any and all third party bodily injury and/or property damage claims, including completed operations, arising from Seller's performance of this Agreement, and Seller shall submit to Company a copy of such additional insured

endorsement with evidence of insurance as required herein. Seller shall immediately provide written notice to Company should any of the insurance policies required under this Agreement be cancelled, materially modified, or not renewed upon expiration. Company acknowledges that the Facility Lender shall be entitled to receive and distribute any and all loss proceeds as stipulated by any Financing Documents related to any policy described in this Article 18 (Insurance) and Attachment R (Required Insurance).

18.4 Evidence of Policies Provided to Company. Evidence of insurance for the coverage specified in this Article 18 (Insurance) shall be provided to Company within thirty (30) Days after the Effective Date, except that the Builder's All Risk Insurance described in Section 4 (Builders All Risk Insurance) of Attachment R (Required Insurance) need only be provided prior to the start of construction, and the All Risk Property/Comprehensive Boiler and Machinery Insurance described in Section 5 of Attachment R (Required Insurance) need only be provided prior to the Commercial Operations Date. Within 30 Days of any change of any policy and upon renewal of any policy, Seller shall provide certificates of insurance to Company. During the Term, Seller, upon Company's reasonable request, shall make available to Company for its inspection at Seller's designated location, certified copies of the insurance policies described in this Article 18 (Insurance) and Attachment R (Required Insurance).

18.5 Deductibles. Company acknowledges that any policy required herein may contain reasonable deductibles or self-insured retentions.

18.6 Application of Proceeds From All Risk Property Insurance. Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property Insurance to be applied to repair of the Facility.

18.7 Periodic Review by Company. The coverage limits may be reviewed periodically (but not more than once every three (3) years) by Company and if, in Company's reasonable discretion, Company determines that the coverage limits are below market levels and should be increased, Company shall so notify Seller. The amount of any increase of the coverage limits, when considered as a percentage of the then

existing coverage limits, shall not exceed the amount of increase in the Consumer Price Index occurring after the coverage limits herein were last set. Seller shall, so long as such notice from Company is received not less than sixty (60) days before the next renewal date of the insurance policy in question, increase the coverage as directed in such notice as of such next renewal date (or the next succeeding renewal date if the notice is received less than sixty (60) days before the first renewal date), and the costs of such increased coverage limits shall be borne by Seller.

18.8 No Representation of Coverage Adequacy. By requiring insurance herein, Company does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a limitation on Seller's liability under the indemnities granted to Company in this Agreement.

18.9 General Insurance Requirements.

(A) Each policy and certificate of insurance shall also specifically provide the following: "This policy shall be considered to be primary liability insurance which shall apply to any loss or claim before any contribution by any insurance which Hawaiian Electric Company, Inc., its employees and agents may have in force."

(B) Each policy is to be written by an insurer with a rating by A.M. Best Company, Inc. of "A-VII" (or an equivalent rating from another nationally recognized rating agency reasonably acceptable to Company) or better.

(C) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Seller shall immediately, at its own expense, purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required herein.

ARTICLE 19
TRANSFERS, ASSIGNMENTS, AND FACILITY DEBT

19.1 Sale of the Facility. Seller shall comply with the requirements of Attachment P (Sale of Facility by Seller) before (i) Seller's right, title or interest in the Facility, in whole or in part, may be disposed of, through a transaction that is not an Exempt Sale (as defined in Attachment P (Sale of Facility By Seller)) or (ii) there occurs any change in ownership interest in Seller requiring compliance with Attachment P (Sale of Facility by Seller). Any attempt by Seller to make any such disposition or change in control that is not an Exempt Sale without fulfilling the requirements of Attachment P (Sale of Facility by Seller) shall be deemed null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

19.2 Assignment by Seller. Seller may not assign, pledge, mortgage, grant a security interest in or collaterally assign this Agreement, the Facility or any interest in the Facility without the prior consent of Company (such consent not to be unreasonably withheld, conditioned or delayed), provided that Seller shall have the right, without the consent of Company: (i) to assign its interest in this Agreement and the Facility to a wholly-owned subsidiary of, or to an affiliated company under common control with Eurus Energy America LLC, provided that such assignment does not impair the ability of Seller to perform its obligations under this Agreement; and (ii) as collateral security for purposes of arranging or rearranging debt and/or equity financing for the Facility, or for sale-leaseback financing, to assign all or any part of its rights or benefits, but not its obligations, to any lender providing debt financing for the Facility. Seller shall promptly provide written notice to Company of any assignment of all or part of this Agreement and Seller shall provide to Company information about the assignee and the assignee's operational experience reasonably requested by Company. Company shall not be required to incur any duty or obligation as a result of, or in connection with, such assignment made without its consent beyond those duties and obligations set forth in this Agreement, unless otherwise agreed to by Company in writing.

19.3 Company's Acknowledgment. In connection with any assignment relating to the Facility Debt to which Company consents pursuant to Section 19.2 (Assignment by Seller), Company

shall, if requested by Seller and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Seller: (i) execute such Hawaii-law-governed documents as may be reasonably requested by the Facility Lender to acknowledge such assignment and/or pledge/mortgage and the right of the Facility Lender to (aa) receive copies of notices of Events of Default where the Seller is the Defaulting Party, (bb) have reasonable opportunity to cure such Events of Default and to exercise remedies to assume Seller's obligations under this Agreement, and (cc) have such other customary rights and protections as are consistent with the market and to which Company and the Financing Parties mutually and reasonably agree; and (ii) provide a legal opinion as to the due authorization of such Company acknowledgment. In the event the Financing Documents are structured as a lease financing, tax equity financing or similar arrangement that is not a loan, Company shall, if requested by Seller and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Seller, also execute such additional documents and agreements, including without limitation, a consent to the transfer (including collateral assignment) of this Agreement to a lessor or other Financing Party including customary terms regarding notices, cure rights and similar matters reasonably acceptable to Company.

19.4 Financing Document Requirements. In connection with any Facility Debt to which Company consents pursuant to Section 19.2 (Assignment by Seller), Seller shall use commercially reasonable efforts to obtain Financing Documents which contain the following provisions for Company's benefit:

(A) Each Facility Lender (or a collateral agent on behalf of the Facility Lender) shall make a binding commitment to Company, in a manner legally enforceable by Company, that, if such Facility Lender or collateral agent acquires title to the Facility by foreclosure or other exercise of remedies under the Financing Documents, so long as this Agreement is in effect and there shall not exist and remain continuing any Event of Default by Company, such Facility Lender or collateral agent will recognize the Company's rights under this Agreement, including without limitation its rights to delivery of energy from the Facility, and will acquire the Facility subject to this Agreement.

(B) Each Facility Lender shall agree that as a condition to the Facility Lender, or any purchaser, successor, assignee and/or designee of the Facility Lender ("Subsequent Owner") succeeding to ownership or possession of the Facility as a result of the exercise of remedies under the Financing Documents, and thereafter operating the Facility to generate electric energy, such Facility Lender or Subsequent Owner shall, prior to operating the Facility for such purpose, have assumed all of Seller's rights and obligations under this Agreement (in the case of a Facility Lender, for so long as it owns the Facility).

19.5 [RESERVED]

19.6 Reimbursement of Company Costs. Seller shall reimburse Company for its out-of-pocket costs and expenses incurred by Company (including reasonable attorneys' fees of outside counsel) in responding to Facility Lender's requests or as a result of any event of default by Seller under the Financing Documents, including but not limited to any assumption of Seller's obligations under Section 19.4(B) (Financing Document Requirements).

19.7 Assignment By Company. This Agreement shall not be assigned by Company without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Company shall have the right, without the consent of Seller, to assign its interest in this Agreement to any affiliated company owned in whole or in part by HEI which is at least as creditworthy as the Company and that has assumed all of Company's obligations hereunder, and such assignee is a public utility regulated by the PUC; provided, further, that such assignment does not impair the ability of Seller to continue to receive the payments it is entitled to under this Agreement.

19.8 Consequences for Failure to Comply. Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company)(as applicable), without fulfilling the requirements of this Article 19 (Transfers, Assignments, and Facility Debt) shall be null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

ARTICLE 20
SALE OF ENERGY TO THIRD PARTIES

Seller shall not sell energy from the Facility to any Third Party during the Term of this Agreement.

ARTICLE 21
FORCE MAJEURE

21.1 Definition of Force Majeure. The term "Force Majeure", as used in this Agreement, means any occurrence that:

(A) In whole or in part delays or prevents a Party's performance under this Agreement;

(B) Is not the direct or indirect result of the fault or negligence of that Party;

(C) Is not within the control of that Party notwithstanding such Party having taken all reasonable precautions and measures in order to prevent or avoid such event; and

(D) The Party has been unable to overcome by the exercise of due diligence.

21.2 Events That Could Qualify as Force Majeure. Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(A) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(B) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(C) except as set forth in Section 21.3(J) (Exclusions from Force Majeure), strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

21.3 Exclusions From Force Majeure. Force Majeure does not include:

(A) any acts or omissions of any Third Party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure;

(B) any full or partial reduction in the electric output of Facility that is caused by or arises from (i) a mechanical or equipment breakdown or (ii) other mishap or events or conditions attributable to normal wear and tear or defects, unless such mishap is caused by Force Majeure;

(C) changes in market conditions that affect the cost of Seller's or Company's supplies, or that affect demand or price for any of Seller's or Company's products, or that otherwise render this Agreement uneconomic or unprofitable for Seller or Company;

(D) Seller's inability to obtain Governmental Approvals or Land Rights for the construction, ownership, operation and maintenance of Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or Land Rights once obtained;

(E) the lack of wind, sun or any other resource of an inherently intermittent nature;

(F) Seller's inability to obtain sufficient fuel, power or materials to operate its Facility, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;

(G) Seller's or Company's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company pursuant to this Agreement;

(H) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;

(I) litigation or administrative or judicial action pertaining to the Agreement, the Site, the Facility,

the Land Rights, the acquisition, maintenance or renewal of financing or any Governmental Approvals, or the design, construction, ownership, operation or maintenance of the Facility, the Company-Owned Interconnection Facilities or the Company System;

(J) a strike, work stoppage or labor dispute limited only to any one or more of the Indemnified Seller Parties or Company or any other third party employed by Seller or Company to work on the Project; or

(K) any full or partial reduction in the delivery of the Actual Output of Seller or of the ability of Company to accept Actual Output from Seller which is caused by any Third Party including, without limitation, any vendor or supplier of Seller or Company, except to the extent due to Force Majeure.

21.4 Satisfaction of Certain Conditions. Section 21.5 (Guaranteed Project Milestone Dates and Guaranteed Commercial Operations Date), Section 21.6 (Events of Default) and Section 21.7 (Effect of Force Majeure)defer or limit certain liabilities of a Party for delay and/or failure in performance to the extent such delay or failure is the result of conditions or events of Force Majeure; provided, however, that a Non-performing Party is only entitled to such limitations or deferrals of liabilities as and to the extent the following conditions are satisfied:

(A) the Non-performing Party gives the other Party, within 48 hours after the Non-performing Party becomes aware or reasonably should have become aware (but in any event no later than 30 Days after the Force Majeure condition or event begins) of such Force Majeure condition or event, written notice stating that the Non-performing Party considers such condition or event to constitute Force Majeure and describing the particulars of such Force Majeure condition or event;

(B) the Non-performing Party gives the other Party, within 14 Days after the notice provided in Section 21.4(A) was or should have been issued, a written explanation of the Force Majeure condition or event and its effect on the Non-performing Party's performance, which explanation shall include evidence reasonably

sufficient to establish that the occurrence constitutes Force Majeure;

(C) the suspension of performance is of no greater scope and of no longer duration than is required by the condition or event of Force Majeure;

(D) the Non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(E) when the condition or event of Force Majeure ends and the Non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

21.5 Guaranteed Project Milestone Dates and Guaranteed Commercial Operations Date. A condition or event of Force Majeure affecting the achievement of a Guaranteed Project Milestone Date or the Guaranteed Commercial Operations Date shall not relieve Seller from liability for either any applicable Daily Delay Damages under Section 13.4 (Damages and Termination) or Termination Damages for early termination under Section 16.1 (Termination Due to Failure to Meet a Guaranteed Project Milestone Date), although such a condition or event of Force Majeure shall, if and for so long as the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied, have the effect of extending the date on which such liabilities begin to the extent of the applicable periods (if any) provided in Section 13.3 (Guaranteed Project Milestone Dates).

21.6 Events of Default. If an occurrence that would constitute an Event of Default under Article 15 (Events of Default) is the result of a condition or event of Force Majeure, no Event of Default shall occur if and for so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, as long as the condition or event that would otherwise be an Event of Default is cured within the lesser of (i) the duration of the Force Majeure plus any additional time reasonably necessary to remedy the effects of the Force Majeure or (ii) three hundred sixty-five (365) Days from the occurrence or

inception of the Force Majeure, as noticed pursuant to Section 21.4(A)(Satisfaction of Certain Conditions).

21.7 Effect of Force Majeure. Other than as provided in Section 21.5 (Guaranteed Project Milestone Dates and Guaranteed Commercial Operations Dates) and Section 21.6 (Events of Default), neither Party shall be responsible or liable for any delays or failures in its performance under this Agreement as and to the extent (i) such delays or failures are substantially caused by conditions or events of Force Majeure, and (ii) the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied.

21.8 No Relief of Other Obligations. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

21.9 No Extension of the Term. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

ARTICLE 22
WARRANTIES AND REPRESENTATIONS

22.1 By the Parties. Both Company and Seller represent, warrant, and covenant, as of the Execution Date and for the extent of the Term, respectively, that:

(A) Each respective Party has all necessary right, power and authority to execute, deliver and perform this Agreement.

(B) The execution, delivery and performance of this Agreement by each respective Party will not result in a violation of any Laws, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such Party is also a party or by which it is bound. No consent of any person or entity not a Party to this Agreement, including any Governmental Authority (other than the PUC and other agencies whose approval is necessary for construction of Company-Owned Interconnection Facilities), is

required for such execution, delivery and performance by either Party.

22.2 By Seller. Seller represents, warrants and covenants, as of the Execution Date and, except where a specific date is referenced, for the extent of the Term, that:

(A) It is an entity in good standing with the Hawaii Department of Commerce and Consumer Affairs and shall provide Company with a certified copy of a certificate of good standing by the Execution Date.

(B) [RESERVED]

(C) As of the Execution Date, Seller has obtained all Land Rights necessary for the construction, ownership, operation and maintenance of the Facility during the Initial Term, and Seller shall maintain such Land Rights in effect throughout the Term.

(D) As of the commencement of construction of the Facility or the Company-Owned Interconnection Facilities, as applicable, Seller shall, have obtained (i) all Land Rights and Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities and (ii) all Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility, except for ministerial Governmental Approvals that are ordinarily and customarily issued after construction has commenced, such as certificates of occupancy.

(E) As of the Commercial Operations Date, the Facility will be a qualified renewable resource under RPS in effect as of the Effective Date.

ARTICLE 23
PROCESS FOR ADDRESSING
REVISIONS TO PERFORMANCE STANDARDS

23.1 Revisions to Performance Standards. The Parties acknowledge that, during the Term, certain Performance Standards may be revised or added to facilitate necessary improvements in integrating intermittent renewable energy resources into the Company System and operations. In particular, the following Performance Standards in Attachment B (Facility Owned by

Seller) to this Agreement may be revised: Section 3(c) (Ramp Rates); Section 3(d) (Power Fluctuation Rate); and, Section 3(m) (Frequency Response). Such revisions or additions may be attributable to, without limitation, the following: changes in penetration levels of intermittent renewable resources on the Company System, changes to the state of commercially available technology, changes to Company-owned generation resources, changes in customer electrical usage (such as changes in average hourly load profiles), and changes in Laws (e.g., new environmental constraints), which may limit Company's ability to start/stop its generators in response to integration of intermittent generation, or constraints impacting the power quality standards for the Company System, such as constraints imposed by HERA or by the PUC under the HERA Law).

23.2 Performance Standards Information Request. If Company concludes that a Performance Standards Revision is necessary or important for the operation of the Company System and is capable of being complied with by Seller, Company shall have the right to issue to Seller a Performance Standards Information Request with respect to such Performance Standards Revision. The Performance Standards Information Request shall include a reasonably detailed description of the proposed Performance Standards Revision and the reasons why such Performance Standards Revision is necessary or important for operation of the Company System. Seller shall, within a reasonable period of time following Seller's receipt of such Performance Standards Information Request, but in no event more than 90 Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company a Performance Standards Proposal responsive to the Performance Standards Revision proposed in such Performance Standards Information Request.

23.3 Performance Standards Proposal. Upon receipt of a Performance Standards Proposal submitted in response to a Performance Standards Information Request, Company will evaluate such Performance Standards Proposal and Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request). Company

shall have no obligation to evaluate a Performance Standards Proposal submitted at Seller's own initiative.

23.4 Performance Standards Revision Document. If, following Company's evaluation of a Performance Standards Proposal, Company desires to consider implementing the Performance Standards Revision addressed in such Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of the Performance Standards Proposal (or such shorter period as specified in the Performance Standards Proposal, if and to the extent Seller cannot hold prices from its contractors and suppliers for 180 Days), and Company and Seller shall proceed to negotiate in good faith a Performance Standards Revision Document setting forth the specific changes to the Agreement that are necessary to implement such Performance Standards Revision. A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's Performance Standards Proposal for the Performance Standards Revision in question, including but not limited to the Performance Standards Modifications and the Performance Standards Pricing Impact. Any adjustment to the Contract Price pursuant to such Performance Standards Revision Document shall be limited to the Performance Standards Pricing Impact (other than with respect to the financial consequences of non-performance as to a Performance Standards Revision). The time periods set forth in such Performance Standards Revision Document as to the effective date for the Performance Standards Revision shall be measured from the date the PUC Performance Standards Revision Order becomes non-appealable as provided in Section 23.6 (PUC Performance Standards Revision Order). Notwithstanding anything herein to the contrary, Seller's obligations under a Performance Standards Revision Document, whether determined by negotiation and agreement by Company and Seller or through dispute resolution, shall be expressly conditioned on Seller's receipt of (1) all Governmental Approvals necessary to construct, install and operate the Performance Standards Revision, and (2) consent from the Facility Lenders to construct, install and operate the Performance Standards Revision if required under the Financing Documents.

23.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Performance Standards

Revision Document within 180 Days of Company's written notice to Seller pursuant to Section 23.4 (Performance Standards Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such Performance Standards Revision Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 23.10 (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a Performance Standards Revision Document as described in Section 23.4 (Performance Standards Revision Document).

23.6 PUC Performance Standards Revision Order. No Performance Standards Revision Document shall constitute an amendment to the Agreement unless and until a PUC Performance Standards Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Performance Standards Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 23.6 (PUC Performance Standards Revision Order), such PUC Performance Standards Revision Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawaii or the Supreme Court of the State of Hawaii, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawaii or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawaii, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

23.7 Company's Rights. The rights granted to Company under Section 23.4 (Performance Standards Revision Document)and Section 23.5 (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under Section

23.10 (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.

23.8 Seller's Obligation. Notwithstanding any provision of this Article 23 (Process for Addressing Revisions to Performance Standards) to the contrary, Seller shall have no obligation to respond to more than one Performance Standards Information Request during any 12-month period.

23.9 Limited Purpose. This Article 23 (Process for Addressing Revisions to Performance Standards) is intended to specifically address necessary revisions to the Performance Standards to enhance integration of intermittent resources onto Company System, or to comply with future Laws which may be driven in part by higher integration of intermittent resources, and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to the Performance Standards in accordance with the provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are not intended to materially increase Seller's risk of non-performance or default.

23.10 Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a Performance Standards Revision Document pursuant to Section 23.5 (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a Performance Standards Revision Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application. In the event that the PUC solicits Company's recommendation regarding the appointment of an Independent Evaluator, Company shall consult with Seller prior to responding to the PUC's request and, if requested by Seller, Company shall provide the PUC with a copy of Seller's written statement with respect to such appointment.

(A) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:

(1) The Performance Standard Revision(s);

(2) The technical feasibility of complying with the Performance Standard Revision(s)and likelihood of compliance;

(3) How Seller would comply with the Performance Standard Revision(s);

(4) Reasonably expected net costs and/or lost revenues associated with the Performance Standards Revision(s);

(5) The appropriate level, if any, of Performance Standards Pricing Impact in light of the foregoing; and

(6) Contractual consequences for non-performance that are commercially reasonable under the circumstances.

(B) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.

(C) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

(D) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible

for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Performance Standard Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall incorporate such Performance Standard Revision into a Performance Standards Revision Document including (aa) Seller's Performance Standards Modifications, (bb) pricing terms that incorporate the Performance Standards Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to Performance Standards Revision(s). In addition to the Performance Standards Revision Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

(E) The fees and costs of the Independent Evaluator shall be paid by Company up to the first $30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above $30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

23.11 HERA Law. The provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are without limitation to the obligations of the Parties under the HERA Law and the reliability standards and interconnection requirements developed and adopted by the PUC pursuant to the HERA Law.

ARTICLE 24
FINANCIAL COMPLIANCE

24.1 Financial Compliance. Seller shall provide or cause to be provided to Company on a timely basis, as reasonably

determined by Company, all information, including but not limited to information that may be obtained in any audit referred to below (the "Information"), reasonably requested by Company for purposes of permitting Company and its parent company, HEI, to comply with the requirements (initial and on-going) of (i) the accounting principles of Financial Accounting Standards Board ("FASB") Accounting Standards Codification 810, Consolidation ("FASB ASC 810"), (ii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), (iii) FASB ASC 840 Leases ("FASB ASC 810"), and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404 and FASB ASC 840, issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities. In addition, if required by Company in order to meet its compliance obligations, Seller shall allow Company or its independent auditor to audit, to the extent reasonably required, Seller's financial records, including its system of internal controls over financial reporting; provided, however, that Company shall be responsible for all costs associated with the foregoing, including but not limited to Seller's reasonable internal costs. Company shall limit access to such Information to persons involved with such compliance matters and restrict persons involved in Company's monitoring, dispatch or scheduling of Seller and/or Facility, or the administration of this Agreement, from having access to such Information (unless approved in writing in advance by Seller).

24.2 Confidentiality. Company shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Article 24 (Financial Compliance). Company may share the Information on a confidential basis with HEI and the independent auditors and attorneys for HEI. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this Article 24 (Financial Compliance) as "Recipient".) If either Company or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to Seller and/or this Agreement is necessary, Company and HEI each shall have the right to disclose such of the Information as Company or HEI, as applicable, reasonably determines is necessary to satisfy applicable disclosure and reporting or other requirements and give Seller prompt written notice thereof (in advance to the

extent practicable under the circumstances). If Company or HEI disclose Information pursuant to the preceding sentence, Company and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Information to the PUC and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii ("Consumer Advocate") in connection with the PUC's rate making activities for Company and other HEI affiliated entities, provided that, if the scope or content of the Information to be disclosed to the PUC exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Information will not be disclosed until the PUC first issues a protective order to protect the confidentiality of such Information. Neither Company nor HEI shall use the Information for any purpose other than as permitted under this Article 24 (Financial Compliance).

24.3 Required Disclosure. In circumstances other than those addressed in Section 24.2 (Confidentiality), if any Recipient becomes legally compelled under applicable Laws or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the Information, such Recipient shall undertake reasonable efforts to provide Seller with prompt notice of such legal requirement prior to disclosure so that Seller may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Article 24 (Financial Compliance). If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions at this Article 24 (Financial Compliance), Recipient shall furnish only that portion of the Information which it is legally required to so furnish and to use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.

24.4 Exclusions from Confidentiality. The obligation of nondisclosure and restricted use imposed on each Recipient under this Article 24 (Financial Compliance) shall not extend to any portion(s) of the Information which (i) was known to such Recipient prior to receipt, or (ii) without the fault of such Recipient is available or becomes available to the general public, or (iii) is received by such Recipient from a Third Party not bound by an obligation or duty of confidentiality.

24.5 Consolidation and Capital Lease. Company does not want to be subject to consolidation and capital lease treatment as set forth in FASB ASC 810 and 840, respectively, as issued and amended from time to time by FASB. Company also does not want to be subject to lease treatment as set forth in FASB Accounting Standards Codification 842, Leases, effective January 1, 2019 ("FASB ASC 842").

(A) Consolidation. Company represents that, as of the Execution Date, it is not required to consolidate Seller into its financial statements in accordance with FASB ASC 810. If for any reason, at any time during the Term, Company determines, in its sole but good faith discretion, that it is required to consolidate Seller into its financial statements in accordance with FASB ASC 810, then Seller shall immediately provide audited financial statements (including footnotes) in accordance with U.S. generally accepted accounting principles (and as of the reporting periods Company is required to report thereafter) in order for Company to consolidate and file its financial statements within the reporting deadlines of the Securities and Exchange Commission; provided, however, that if Seller does not normally prepare audited financial statements for the periods requested, Company shall reimburse Seller for fifty percent (50%) of the reasonable costs of having the necessary audits performed and preparation of the audited financial statements; provided, further that the foregoing reimbursement shall only apply if Seller normally prepares financial statements on an annual basis. Notwithstanding the foregoing requirement that Seller provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties, or, if the Parties are unable to eliminate the consolidation treatment by other means, effectuating a sale of the Facility to Company at (i) if the sale occurs before the end of the thirteenth (13th) Contract Year, the greater of the Make Whole Amount determined pursuant to Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller) or the fair market value determined pursuant to Section 5 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller),

or (ii) if the sale occurs on or after the beginning of the fourteenth (14th) Contract Year, the fair market value determined pursuant to Section 5 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), but not less than the Financial Termination Costs determined pursuant to Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in Section 6 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller).

(B) Capital Lease. Company represents that, as of the Execution Date, it is not required to treat this Agreement as a capital lease, including under FASB ASC 840 if it was currently applicable. If there is a change in circumstances during the Term that would trigger capital lease treatment under FASB ASC 840, and such capital lease treatment is not attributable to Company's fault, then the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the capital lease treatment, while preserving the economic "benefit of the bargain" to both Parties, or, if the Parties are unable to eliminate the capital lease treatment by other means, effectuating a sale of the Facility to Company at (i) if the sale occurs before the end of the thirteenth (13th) Contract Year, the greater of the Make Whole Amount determined pursuant to Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller) or the fair market value determined pursuant to Section 5 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller) or (ii) if the sale occurs on or after the beginning of the fourteenth (14th) Contract Year, the fair market value determined pursuant to Section 5 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), but not less than the Financing Termination Costs determined pursuant to Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in Section 6 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller).

(C) Lease. Under FASB ASC 842, finance and operating leases will be reflected on the Company's balance sheet. If there is a change in circumstances during the Term that would trigger lease treatment, and such lease treatment is not attributable to Company's fault, then the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the lease treatment, while preserving the economic "benefit of the bargain" to both Parties, or, if the Parties are unable to eliminate the lease treatment by other means, effectuating a sale of the Facility to Company at (i) if the sale occurs before the end of the thirteenth (13th) Contract Year, the greater of the Make Whole Amount determined pursuant to Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller) or the fair market value determined pursuant to Section 5 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller) or (ii) if the sale occurs on or after the beginning of the fourteenth (14th) Contract Year, the fair market value determined pursuant to Section 5 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), but not less than the Financing Termination Costs determined pursuant to Section 3 (Make Whole Amount) of Attachment P (Sale of Facility by Seller), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in Section 6 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller).

ARTICLE 25
GOOD ENGINEERING AND OPERATING PRACTICES

25.1 General. Each Party agrees to install, operate and maintain its respective equipment and facility and to perform all obligations required to be performed by such Party under this Agreement in accordance with Good Engineering and Operating Practices and applicable Laws. Company and Seller acknowledge that, during the Banked Curtailed Energy Term, Seller shall not be required to, and Good Engineering and Operating Practices shall not be deemed to require Seller to, invest in repairing or replacing equipment to the extent that the investment would not reasonably be expected to be recovered (including a reasonable return on investment) within the Banked Curtailed Energy Term, provided, however,

that regardless of whether Seller invests in repairing or replacing equipment, Company shall maintain its option to purchase the Facility as set forth in Section 12.10(D) (Company's Purchase Option During Banked Curtailed Energy Term).

25.2 Specifications, Determinations and Approvals. Wherever in this Agreement Company has the right to give specifications, determinations or approvals, such specifications, determinations or approvals shall be given in accordance with Company's standard practices, policies and procedures and shall not be unreasonably withheld.

25.3 No Endorsement, Warranty or Waiver. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of Company.

25.4 Consultants List. Prior to the In-Service Date, the Parties shall agree on a list of names of engineering firms to be attached as Attachment D (Consultants List) in accordance with Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned By Seller).

ARTICLE 26
EQUAL EMPLOYMENT OPPORTUNITY

26.1 Equal Employment Opportunity. (Applicable to all contracts of $10,000 or more in the whole or aggregate (41 CFR 60-1.4 and 41 CFR 60-741.5).) Seller is aware of and is fully informed of Seller's responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the applicable provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.

26.2 Equal Opportunity For Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans. (Applicable to (i) contracts of $25,000 or more entered into before December 31, 2003 (41 CFR 60-250.4) or (ii) each federal government contract of $100,000 or more, entered into or modified on or after December 31, 2003 (41 CFR 60-300.4) for the purchase, sale or use of personal property or nonpersonal services (including construction).) If applicable to Seller under this Agreement, Seller agrees

that it is, and shall remain, in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, including the requirements of 41 CFC 60-250.5(a) (for orders/contracts entered into before December 31, 2003) and 41 CFR 60-300.5(a) (for orders/contracts entered into or modified on or after December 31, 2003) which are incorporated into this Agreement by reference.

ARTICLE 27
SET OFF

Company shall have the right to set off any undisputed payment due and owing by Seller, including but not limited to any undisputed payment under this Agreement and any payment due under any award made under Article 28 (Dispute Resolution), against Company's payments of subsequent monthly invoices as necessary.

ARTICLE 28
DISPUTE RESOLUTION

28.1 Good Faith Negotiations. Except as otherwise expressly set forth in this Agreement, before submitting any claims, controversies or disputes ("Dispute(s)") under this Agreement to the Dispute Resolution Procedures set forth in Section 28.2 (Dispute Resolution Procedures), the presidents, vice presidents, or authorized delegates from both Seller and Company having full authority to settle the Dispute(s), shall personally meet in Hawaii and attempt in good faith to resolve the Dispute(s) (the "Management Meeting"). In addition, if only part of a payment or claim is disputed, Company or Seller, as applicable, shall pay the other Party the undisputed amount of the payment or claim prior to invoking the Dispute resolution process under this Article 28 (Dispute Resolution).

28.2 Dispute Resolutions Procedures, Mediation. Except as otherwise expressly set forth in this Agreement and subject to Section 28.1 (Good Faith Negotiations), any and all Dispute(s) arising out of or relating to this Agreement, (i) which remain unresolved for a period of 20 Days after the Management Meeting takes place or (ii) for which the Parties fail to hold a Management Meeting within 60 Days of the date that a Management Meeting was requested by a Party, may upon the agreement of the Parties, first be submitted to

confidential mediation in Honolulu, Hawaii pursuant to the administration by, and in accordance with the Mediation Rules, Procedures and Protocols of, Dispute Prevention & Resolution, Inc. (or its successor) or, in their absence, the American Arbitration Association ("DPR") then in effect. If the Parties agree to submit the dispute to confidential mediation, the parties shall each pay 50% of the cost of the mediation (i.e., the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own mediation costs and attorneys' fees. If settlement of the Dispute(s) is not reached within 60 Days after commencement of the mediation, either Party may initiate legal proceedings in a court of competent jurisdiction in the State of Hawaii.

28.3 Exclusion. The provisions of this Article 28 (Dispute Resolution) shall not apply to any disputes within the authority of an Independent Evaluator under Article 23 (Process for Addressing Revisions to Performance Standards).

ARTICLE 29
MISCELLANEOUS

29.1 Amendments. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed via manual signature by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via manual signature by the Party against whom waiver is asserted. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Seller in writing, such as changes to settings shown in Attachment E (Single-Line Drawing) and Attachment F (Relay List and Trip Scheme) and changes to numerical values of Performance Standards in Section 3 (Performance Standards) of Attachment B (Facility Owned by Company) shall not be considered amendments to this Agreement requiring PUC approval.

29.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.

29.3 Notices.

(A) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by

electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail addresses set forth below (or to such other addresses and E-mail addresses as a Party may designate by notice to the other Party):

Company:

By Mail:
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawaii 96840
Attn: Manager, Energy Procurement

Delivered By Hand or Overnight Delivery:
Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, Suite 2100
Honolulu, Hawaii 96813
Attn: Manager, Energy Contract Management

By facsimile:
Hawaiian Electric Company, Inc.
Attn: Manager, Energy Procurement
Email: PPAnotices@hawaiianelectric.com

With a copy to:

By Mail:
Hawaiian Electric Company, Inc.
Legal Department
P.O. Box 2750
Honolulu, Hawaii 96840

By E-mail:
Hawaiian Electric Company, Inc.
Legal Department
Email: legalnotices@hawaiianelectric.com

Seller: The contact information listed in Attachment A (Description of Generation and Conversion Facility) hereto.

(B) Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth Day after the date of mailing, whichever is earlier. Any Party hereto may change its address for written notice by giving written notice of such change to the other Party hereto.

(C) Any notice delivered by E-mail shall request a receipt thereof confirmed by E-mail or in writing by the recipient and followed by personal or mail delivery of such correspondence any attachments as may be requested by the recipient, and the effective date of receipt, provided such receipt has been confirmed by the recipient.

(D) The Parties may agree in writing upon additional means of providing notices, consents and waivers under this Agreement in order to adapt to changing technology and commercial practices.

29.4 Effect of Section and Attachment Headings. The Table of Contents and paragraph headings of the various sections and attachments have been inserted in this Agreement as a matter of convenience for reference only and shall not modify, define or limit any of the terms or provisions hereof and shall not be used in the interpretation of any term or provision of this Agreement.

29.5 Non-Waiver. Except as otherwise provided in this Agreement, no delay or forbearance of Company or Seller in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.

29.6 Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties. Seller does not hereby dedicate any part of Facility to serve Company, Company's customers or the public.

29.7 Entire Agreement. This Agreement (together with any confidentiality or non-disclosure agreements entered into by the Parties during the process of negotiating this Agreement and/or discussing the specifications of the Facility) constitutes the entire agreement between the Parties

relating to the subject matter hereof, superseding all prior agreements, understandings or undertakings, oral or written. Each of the Parties confirms that in entering into this Agreement, it has not relied on any statement, warranty or other representations (other than those set out in this Agreement) made or information supplied by or on behalf of the other Party.

29.8 Governing Law, Jurisdiction and Venue. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Hawaii, other than the laws thereof that would require reference to the laws of any other jurisdiction. By entering into this Agreement, Seller submits itself to the personal jurisdiction of the courts of the State of Hawaii and agrees that the proper venue for any civil action arising out of or relating to this Agreement shall be Honolulu, Hawaii.

29.9 Limitations. Nothing in this Agreement shall limit Company's ability to exercise its rights as specified in Company's tariffs as filed with the PUC, or as specified in General Order No. 7 of the PUC's Standards for Electric Utility Service in the State of Hawaii, as either may be amended from time to time.

29.10 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

29.11 Electronic Signatures and Counterparts. The Parties agree that this Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as ADOBE PDF or other formats mutually agreeable between the Parties which preserve the final terms of this Agreement or such writing. A Party's signature transmitted by E-mail or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same

instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

29.12 Definitions. Capitalized terms used in this Agreement and not otherwise defined in the context in which they first appear are defined in the Definitions Section.

29.13 Severability. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the Parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both Parties notwithstanding any such aforesaid invalidity or unenforceability.

29.14 Settlement of Disputes. Except as otherwise expressly provided, any dispute or difference arising out of this Agreement or concerning the performance or the non-performance by either Party of its obligations under this Agreement shall be determined in accordance with the dispute resolution procedures set forth in Article 28 (Dispute Resolution) of this Agreement.

29.15 Environmental Credits and RPS. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the electric energy purchased hereunder to meet RPS and any Environmental Credit shall be the property of Company; provided, however, that such Environmental Credits shall be to the benefit of Company's ratepayers in that the value must be credited "above the line". Seller shall use all commercially reasonable efforts to ensure such Environmental Credits are vested in Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation; provided, however, that Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.

29.16 Attachments. Each Attachment constitutes an essential and necessary part of this Agreement.

29.17 Proprietary Rights. Seller agrees that in fulfilling its responsibilities under this Agreement, it will not use any process, program, design, device or material that infringes on any United States patent, trademark, copyright or trade secret ("Proprietary Rights"). Seller agrees to indemnify, defend and hold harmless the Indemnified Company Party from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Indemnified Company Party for infringement of Third Party Proprietary Rights arising out of Seller's performance under this Agreement, including but not limited to patent infringement due to the use of technical features of the Facility to meet the Performance Standards specified in the Agreement.

29.18 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

29.19 Computation of Time. In computing any period of time prescribed or allowed under this Agreement, the Day of the act, event or default from which the designated period of time begins to run shall not be included. If the last Day of the period so computed is not a Business Day, then the period shall run until the end of the next Day which is a Business Day.

29.20 PUC Approval.

(A) PUC Approval Order. The term "PUC Approval Order" means an order from the PUC that does not contain terms and conditions deemed to be unacceptable by Company, and is in a form deemed to be reasonable by Company, in its sole, but nonarbitrary, discretion, ordering that:

(1) this Agreement is approved;

(2) Company is authorized to include the purchased energy costs and payments for Compensable Curtailed Energy (and related revenue taxes) that Company

incurs under this Agreement in Company's Energy Cost Adjustment Clause, or Purchased Power Adjustment Clause, to the extent such costs are not included in base rates for the Term;

(3) the purchased energy costs and payments for Compensable Curtailed Energy to be incurred by Company as a result of this Agreement are reasonable; and

(4) Company's purchased power arrangements under this Agreement, pursuant to which Company will purchase energy on an As-Available Energy basis from Seller, and pay Seller for Compensable Curtailed Energy, are prudent and in the public interest.

(B) Non-appealable PUC Approval Order. The term "Non-appealable PUC Approval Order" means a PUC Approval Order (i) that is not subject to appeal to any Circuit Court of the State of Hawaii, Intermediate Court of Appeals of the State of Hawaii, or the Supreme Court of the State of Hawaii, because the period permitted for such an appeal (the "Appeal Period") has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawaii, Intermediate Court of Appeals of the State of Hawaii, or the Supreme Court of the State of Hawaii, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.

(C) Company's Written Statement. Not later than thirty (30) Days after the issuance of a PUC order approving this Agreement, Company shall provide Seller with a copy of such order together with a written statement as to whether the conditions set forth in Section 29.20(A) (PUC Approval Order) have been met and the order constitutes a PUC Approval Order. If Company's written statement declares that the conditions set forth in Section 29.20(A) (PUC Approval Order) have been

satisfied, the date of the issuance of the PUC Approval Order shall be the "PUC Approval Order Date".

(D) Non-appealable PUC Approval Order Date. If Company provides the written statement referred to in Section 29.20(C) (Company's Written Statement) to the effect that the conditions referred to in Section 29.20(A) (PUC Approval Order) have been satisfied, the "Non-appealable PUC Approval Order Date" shall be defined as follows:

(1) If a PUC Approval Order is issued and is not made subject to a motion for reconsideration filed with the PUC or an appeal, the Non-appealable PUC Approval Order Date shall be the date one Day after the expiration of Appeal Period following the issuance of the PUC Approval Order;

(2) If the PUC Approval Order became subject to a motion for reconsideration, and the motion for reconsideration is denied or the PUC Approval Order is affirmed after reconsideration, and such order is not made subject to an appeal, the Non-appealable PUC Approval Order Date shall be deemed to be the date one Day after the expiration of the Appeal Period following the order denying reconsideration of or affirming the PUC Approval Order; or

(3) If the PUC Approval Order, or an order denying reconsideration of the PUC Approval Order or affirming approval of the PUC Approval Order after reconsideration, becomes subject to an appeal, then the Non-appealable PUC Approval Order Date shall be the date upon which the PUC Approval Order becomes a non-appealable order within the meaning of the definition of a Non-Appealable PUC Approval Order in Section 29.20(B) (Non-appealable PUC Approval Order).

(E) Unfavorable PUC Order. The term "Unfavorable PUC Order" means an order from the PUC concerning this Agreement that: (i) dismisses Company's application; (ii) denies Company's application; or (iii) approves Company's application but contains terms and conditions deemed unacceptable by Company in its sole, but non-

arbitrary discretion and therefore does not meet the definition of a PUC Approval Order as set forth in Section 29.20(a) (PUC Approval Order).

29.21 Change in Standard System or Organization.

(A) Consistent With Original Intent. If, during the Term, any standard, system or organization referenced in this Agreement should be modified or replaced in the normal course of events, such modification or replacement shall from that point in time be used in this Agreement in place of the original standard, system or organization, but only to the extent such modification or replacement is generally consistent with the original spirit and intent of this Agreement.

(B) Eliminated or Inconsistent With Original Intent. If, during the Term, any standard, system or organization referenced in this Agreement should be eliminated or cease to exist, or is modified or replaced and such modification or replacement is inconsistent with the original spirit and intent of this Agreement, then in such event the Parties will negotiate in good faith to amend this Agreement to a standard, system or organization that would be consistent with the original spirit and intent of this Agreement.

29.22 No Third Party Beneficiaries. Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.

29.23 Hawaii General Excise Tax. Seller shall, when making payments to Company under this Agreement, pay such additional amount as may be necessary to reimburse Company for the Hawaii general excise tax on gross income and all other similar taxes imposed on Company by any Governmental Authority with respect to payments in the nature of gross receipts tax, sales tax, privilege tax or the like (including receipt of any payment made under this Section 29.23 (Hawaii General Excise Tax)), but excluding federal or state net income taxes. By way of example and not

limitation, as of the Execution Date, all payments subject to the 4.5% Hawaii general excise tax on Oahu would include an additional 4.712% so that the underlying payment will be net of such tax liability.

29.24 Survival of Obligations. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or Company's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

(A) The obligation to pay Daily Delay Damages under Section 13.4 (Damages and Termination);

(B) The obligation to pay Termination Damages under Article 16 (Damages in the Event of Termination by Company), and/or the termination fee described in Section 12.2 (Effectiveness of Obligations);

(C) The indemnity obligations under Article 17 (Indemnification) and Section 29.17 (Proprietary Rights);

(D) The dispute resolution provisions of Article 28 (Dispute Resolution);

(E) Section 29.3 (Notices), Section 29.5 (Non-Waiver), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.9 (Limitations), Section 29.13 (Severability), Section 29.14 (Settlement of Disputes), Section 29.15 (Environmental Credits and RPS), Section 29.17 (Proprietary Rights), Section 29.19 (Computation of Time), Section 29.22 (No Third Party Beneficiaries), Section 29.23 (Hawaii General Excise Tax), Section 29.24 (Survival of Obligations), and Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities); and

(F) Seller's obligations under Section 3 of Attachment G (Company-Owned Interconnection Facilities) to pay interconnection costs and Section 4 of Attachment G (Company-Owned Interconnection Facilities) to pay

operation and maintenance costs incurred up to the date of termination of the Agreement.

29.25 Certain Rules of Construction. For purposes of this Agreement:

(A) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations.

(B) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.

(C) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.

(D) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.

(E) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

(F) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.

(G) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

(H) Any reference to a document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement, as amended, amended and restated, modified and

supplemented from time to time and in effect at any given time.

29.26 Community Outreach.

(A) The Parties acknowledge that, prior to the Execution Date, Seller hosted a public meeting with community and neighborhood groups in and around the vicinity of the Facility that provided the public with: (i) reasonable notice of said public meeting; (ii) a reasonable opportunity to learn about the proposed Project; (iii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; and (iv) information concerning the process and/or intent for the public's input and engagement, including advising attendees that they will have thirty (30) calendar days from the date of said public meeting to submit written comments to Company for inclusion in the Company's submission to the PUC of its application for a satisfactory PUC Approval Order. Seller agrees that Company may submit any and all public comments from Seller's public meeting as part of its PUC application for this Project.

(B) Seller acknowledges and agrees that subsequent to submission of the application for a satisfactory PUC Approval Order and prior to the date when the parties' statements of position are to be filed in said docketed PUC proceeding, Company will solicit public comments concerning the Project a second time, and will submit such public comments to the PUC as part of the docketed PUC proceeding. Seller understands and agrees that Company may submit any and all public comments from any future community meetings held by Seller regarding the Project as part of the docketed PUC proceeding for this Project.

(C) The Parties acknowledge and agree that Seller is responsible for community outreach and engagement for the project, and that the public meeting and comment solicitation process described in this section do not represent the only community engagement and outreach activities that can or should be performed by Seller. Seller will determine and implement additional means to share information with and involve the community and

neighborhood groups in and around the vicinity of the Facility during the project planning and development process through COD, and shall timely inform Company of its plans and activities in this regard.

29.27 Agreement Not a Design or Construction Contract. This Agreement is not a design or construction contract. This Agreement is a development agreement between the Parties. The Parties acknowledge and agree that Seller will finance and develop the Facility for Seller to own and operate. Seller is not a design professional or a contractor. Seller is not hereby undertaking to perform and is not holding itself out or offering to perform any work for which a professional or contractor's license may be required under the laws of the State of Hawaii. Notwithstanding anything herein to the contrary, all work related to the design, engineering and construction of the Facility shall be performed by design professionals and contractors who hold the appropriate licenses issued by the State of Hawaii and intend to develop the Facility in full compliance with all state laws. For the avoidance of doubt, in all instances where this Agreement refers to Seller performing the acts of constructing, building or installing, said language shall be interpreted to mean that such work will be performed by duly licensed contractors properly retained by Seller in accordance with laws of the State of Hawaii.

[Signatures for PPA for Renewable As-Available Energy appear on the following page]

IN WITNESS WHEREOF, Company and Seller have executed this Agreement as of the day and year first above written.

HAWAIIAN ELECTRIC COMPANY, INC.

By_____
Name: Alan M. Oshima
Its: President & Chief Executive Officer

By_____
Name: Shelee M. T. Kimura
Its: Senior Vice President, Business Development & Strategic Planning

("Company")

EE EWA LLC

By_____
Name: Satoshi Takahata
Its: President

("Seller")

IN WITNESS WHEREOF, Company and Seller have executed this Agreement as of the day and year first above written.

HAWAIIAN ELECTRIC COMPANY, INC.

By_____
Name: Alan M. Oshima
Its: President & Chief Executive Officer

By_____
Name: Shelee M. T. Kimura
Its: Senior Vice President, Business Development & Strategic Planning

("Company")

EE EWA LLC

By_____
Name: Satoshi Takahata
Its: President

("Seller")

ATTACHMENT A
DESCRIPTION OF GENERATION AND CONVERSION FACILITY

1. Name of Facility: EE Ewa LLC

   (a) Location: Kapolei, Oahu, HI, TMK No. [1] 92003091 [2] 92003041 [3] 92003088

   (b) Telephone number (for system emergencies):

   (858) 638-7115

   (c) E-mail Address: EE.Ewa.LLC@eurusenergy.com

   (d) Contact Information for notices pursuant to Section 29.3 (Notices) of the Agreement:

   Mailing Address: 9255 Towne Centre Drive, Suite 840, San Diego, CA 92121

   Address for Delivery by Hand or Overnight Delivery:

   9255 Towne Centre Drive, Suite 840, San Diego, CA 92121

   E-mail Address: EE.Ewa.LLC@eurusenergy.com

2. Owner (If different from Seller): NA

   If Seller is not the owner, Seller shall provide Company with a certified copy of a certificate warranting that the owner is a corporation, partnership or limited liability company in good standing with the Hawaii Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).

3. Operator: EE Ewa LLC

4. Name of person to whom payments are to be made:

   EE Ewa LLC

   (a) Mailing address: 9255 Towne Centre Drive, Suite 840, San Diego, CA 92121

(b) Hawaii General Excise Tax License number: GE-081-510-5024-01

5. Equipment:

(a) Type of facility and conversion equipment:

Wind power generation facility designated as a Qualifying Facility that produces electric energy.

(b) Design and capacity

Total Facility Capacity ("Contract Capacity"): 46,800 kW

Total Number of Generators:

13

Description of Equipment:

13 Vestas V3.6-136m wind turbine generators installed at a hub height of 82m.

Individual Unit:

	kW	kVAR Consumed	kVAR Produced
Full load	3600	1420	1804
Startup			

Generator:

Type/Manufacturer	Wind turbine generator (Vestas)
Rated Power	3,600 kW
Voltage	650 V, 3 phase
Frequency	60 Hz
Class of Protection	NA
Number of Poles	NA

Rated Speed (rpm)	NA
Rated Current	3550 Arms
Rated Power Factor	+0.913 to -0.93

(c) The "Allowed Capacity" of this Agreement shall be the lower of (i) Contract Capacity or (ii) the net nameplate capacity (net for export) of the Facility installed by the later of (a) the Commercial Operations Date or (b) the In-Service Date.

(d) Seller may propose revisions to this Section 5 (Equipment) of Attachment A (Description of Generation and Conversion Facility) ("Section 5") for Company's approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 5 shall change the type of Facility or conversion equipment deployed at the Facility from a wind energy conversion facility using wind turbines; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS. Any revision to this Section 5 complying with items (i) through (iii) above shall be subject to Company's prior approval, which approval shall not be unreasonably withheld. If Seller's proposed revision(s) to this Section 5 otherwise satisfies items (i) and (ii) above but not item (iii) such that Company, in its reasonable discretion, determines that a re-study or revision to all or any part of the IRS is required to accommodate Seller's proposed revision(s), Company may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study or revision to the IRS and Seller's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the IRS and any modifications to the Facility and/or the Company-Owned Interconnection Facilities based on the results of the re-studies or revisions to the IRS.

Any changes made to this Attachment A (Description of Generation and Conversion Facility) or the Agreement as a result of this Section 5(d) of Attachment A (Description of Generation and Conversion Facility) shall be reflected in a written amendment to the Agreement.

Seller understands and acknowledges that Company's review and approval of Seller's proposed revisions to this Section 5 and any necessary re-studies or revisions to the IRS shall be subject to Company's then-existing time and personnel constraints. Company agrees to use commercially reasonable efforts, under such time and personnel constraints, to complete any necessary reviews, approvals and/or re-studies or revisions to the IRS.

Any delay in completing, or failure by Seller to meet, any subsequent Seller milestones under Article 13 (Guaranteed Project Milestones Including Commercial Operations), shall be borne entirely by Seller and Company shall not be responsible or liable for any delay or failure to meet any such milestones by Seller or Company.

6. Insurance carrier(s): Sompo Japan Insurance Company

7. If Seller is not the operator, Seller shall provide a copy of the agreement between Seller and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Seller and the operator with respect to the sale of electric energy from Facility no later than the In-Service Date; provided that any pricing may be redacted. In addition, Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawaii Department of Commerce and Consumer Affairs (and in addition, if Seller is a foreign entity, a certificate of good standing from the state of organization) no later than the In-Service Date.

8. Seller shall provide a certified copy of a certificate warranting that Seller is a corporation, partnership or limited liability company in good standing with the Hawaii

Department of Commerce and Consumer Affairs (and in addition, if Seller is a foreign entity, a certificate of good standing from the state of organization) which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).

9. Seller, owner and operator shall provide Company a certificate and/or description of their ownership structures which shall be attached hereto as Exhibit A-2 (Ownership Structure of Seller, Owner and/or Operator).

10. In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within 30 Days thereof, a certified copy of a new certificate and a revised ownership structure.

EXHIBIT A-1
GOOD STANDING CERTIFICATES

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "EE EWA LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "EE EWA LLC" WAS FORMED ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2013.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

Jeffrey W. Bullock, Secretary of State

5293952 8300

SR# 20187009437

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203559536

Date: 10-05-18

EXECUTION VERSION

Department of Commerce and Consumer Affairs

CERTIFICATE OF GOOD STANDING

I, the undersigned Director of Commerce and Consumer Affairs of the State of Hawaii, do hereby certify that

EE EWA LLC

organized under the laws of Delaware

was duly registered to do business in Hawaii as a foreign limited liability company on 02/28/2013 , and that, as far as the records of this Department reveal, has complied with all of the provisions of Chapter 428, Hawaii Revised Statutes, regulating foreign limited liability companies.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Commerce and Consumer Affairs, at Honolulu, Hawaii.

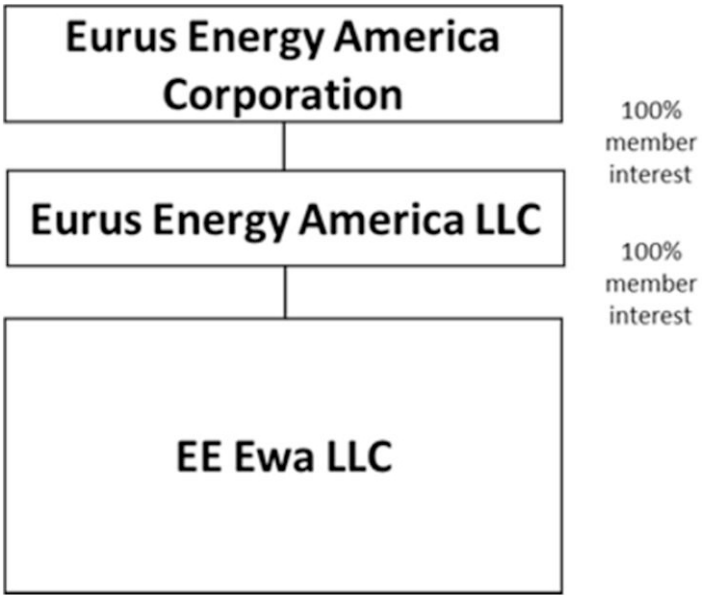
Dated: October 05, 2018

Director of Commerce and Consumer Affairs

To check the authenticity of this certificate, please visit: http://hbe.ehawaii.gov/documents/authenticate.html
Authentication Code: 314921-COGS_PDF-103580C6

EXECUTION VERSION

EXHIBIT A-2
OWNERSHIP STRUCTURE



[ATTACHMENT B WILL BE REVISED TO REFLECT THE RESULTS OF THE IRS]

ATTACHMENT B
FACILITY OWNED BY SELLER

1. The Facility.

(a) Single-Line Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line diagram, relay list, relay settings, and trip scheme of the Facility shall, after Seller has obtained prior written consent from Company, be attached to this Agreement on the PPA Amendment Deadline as Attachment E (Single-Line Drawing) and Attachment F (Relay List and Trip Scheme). A final single-line drawing, relay list and trip scheme of the Facility shall, after having obtained prior written consent from Company, be labeled "Final" Single-Line Drawing and "Final" Relay List and Trip Scheme and shall supersede Attachment E (Single-Line Drawing) and Attachment F (Relay List and Trip Scheme) to this Agreement and shall be made a part hereof on the Commercial Operations Date. After the Commercial Operations Date, no changes shall be made to the "Final" Single-Line Drawing and the "Final" Relay List and Trip Scheme without the prior written consent of Seller and Company. The single-line diagrams shall expressly identify the Point of Interconnection of Facility to Company System. Seller agrees that no material changes or additions to Facility as reflected in the final single-line diagram, relay list and trip scheme shall be made without Seller first having obtained prior written consent from Company. If any changes in or additions to the Facility, records and operating procedures are required by Company, Company shall specify such changes or additions to Seller in writing, and, except in the case of an emergency, Seller shall have the opportunity to review and comment upon any such changes or additions in advance.

(b) Certain Specifications for the Facility.

(i) Seller shall furnish, install, operate and maintain the Facility including breakers, relays, switches, synchronizing equipment, monitoring equipment and control and protective devices approved by Company as suitable for parallel operation of the Facility with Company System. The Facility shall be accessible at all times to authorized Company personnel.

(ii) The Facility shall include: **[LIST OF FACILITY EQUIPMENT] [EXAMPLES MAY INCLUDED BUT ARE NOT LIMTIED TO:**

A. SELLER-OWNED INTERCONNECTION FACILITIES

B. SUBSTATION

C. CONTROL AND MONITORING FACILITIES

D. TRANSFORMERS

E. GENERATORS (AS DESCRIBED IN ATTACHMENT A)

F. "LOCKABLE" CABINETS OR HOUSINGS SUITABLE FOR THE INSTALLATION OF THE COMPANY-OWNED INTERCONNECTION FACILITIES LOCATED ON THE SITE

G. RELAYS AND OTHER PROTECTIVE DEVICES

H. LEASED TELEPHONE LINE AND/OR EQUIPMENT TO FACILITIATE MICROWAVE COMMUNICATION]

(iii) The Facility will comply with the following: **[Drafting note: The following includes excerpts of language that may be requested by Company, this is not an exhaustive list.]**

A. Seller will install a 138 kV disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection will be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker will be fitted with bushing style current transformers for

metering and relaying. Downstream of the high-voltage circuit breaker, a structure will be provided for metering transformers. From the high-voltage circuit breaker, another bus connection will be made to another pole mounted disconnect switch, with surge protection.

B. Seller will provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller will provide all conduits, structures and accessories necessary for Company to install the Revenue Metering Package. Seller will also provide within such area, space for Company to install its communications, supervisory control and data acquisition ("SCADA"), remote terminal unit ("RTU") and certain relaying if necessary for interconnection. Seller will also provide AC and DC source lines as specified later by Company. Seller will provide telephone line for Company-owned meters. Seller will work with Company to determine an acceptable location and size of the fenced-in area. Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.

C. Seller shall ensure that the Seller-Owned Interconnection Facilities has a lockable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At a minimum the relaying equipment will provide over and under frequency (81) negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip. Seller shall install protective relays that operate a lockout

relay, which in turn will trip the main circuit breaker.

D. The relay protection system will be configured to provide overpower protection to enable Facility to comply with the Allowed Capacity limitation.

E. Seller's equipment also shall provide at a minimum:

(i) Interface with Company's RTU to provide telemetry of electrical quantities such as total Facility net MW, MVar, and power factor, voltages, currents, and other quantities as identified by the Company;

(ii) Interface with Company's RTU to provide status for circuit breakers, reactive devices, switches, and other equipment as identified by the Company;

(iii) Interface with Company's RTU to provide control to adjust the voltage target at the point of regulation for the automatic voltage regulation control. The voltage target adjustment control shall have a resolution of 0.01 kV. If Company's RTU is unavailable, due to loss of communication link, RTU failure, or other event resulting in loss of the remote control by Company, provision must be made for Seller to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such change in voltage regulation target as

directed by the Company System Operator;

(iv) Interface with Company's RTU to provide curtailment controls to limit (curtail) Actual Output from the Facility and to remove the limit (curtail) of the Actual Output of the Facility. The curtailment controls shall have a resolution of 0.01; and

(v) Interface with Company's RTU to provide telemetry of the meteorological and production data required under Section 8 (Data and Forecasting) of this Attachment B (Facility Owned by Seller) and the Facility's and calculated available power based on WTGS availability.

F. If Seller adds, deletes and/or changes any of its equipment, or changes its design in a manner that would change the characteristics of the equipment and specifications used in the IRS, Seller will be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller will be responsible for the cost of revising those parts of the IRS, and modifying and paying for the cost of the modifications to the Facility and/or the Company-Owned Interconnection Facilities based on the revisions to the IRS

G. Seller shall submit cyber-security documentation describing the approach, methodology and design to protect data, controls and remote system access.

(i) The design shall meet industry standards and best practices, including applicable NIST guidelines. Although the State

of Hawaii is not currently under NERC jurisdiction and Company understands Seller cannot acknowledge the project to be CIP compliant, the system shall be designed with the criteria to meet applicable NERC CIP compliance requirements and identify areas that are not NERC CIP compliant. The cyber-security documentation shall include a block diagram of the control system with all external connections clearly described.

(ii) Seller shall meet all current cyber and physical security compliance requirements in order to identify potential security risks associated with Seller's implementation of cyber and physical security system, Seller shall provide such additional information as Company may reasonably request as part of a security assessment.

(iii) Seller shall provide a mitigation plan which describes how Seller's equipment will be protected from an internal or external AURORA event as described in the NERC Alert dated October 13, 2010. Furthermore, Seller shall be responsible for maintaining compliance with all future Federal or State regulations and Industry standards.

(iv) Company shall be notified in advance when changes are

required that will impact security.

(c) Design Drawings, Bill of Materials, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings, fuse selection, and AC/DC Schematic Trip Scheme (part of design drawings) for the Facility to Company at least sixty (60) Days prior to the Acceptance Test. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.

(d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.

(e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and duct lines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and

approval. **[COMPANY TO REVISE THIS SECTION 1(E) FOLLOWING COMPLETION OF THE IRS.]**

(f) Maintenance Plan. Seller shall develop a maintenance plan to maintain the Seller-Owned Interconnection Facilities. The plan shall be submitted to Company for review and comment, and shall be finalized prior to energizing any of the Seller-Owned Interconnection Facilities. The plan shall include, at a minimum, the **[138 kV substation, the 138 kV distribution system, the control system and the protective relay system]**. Seller shall furnish to Company a copy of the records documenting such maintenance within thirty (30) Days of completing such maintenance work. Seller may modify the maintenance plan from time to time consistent with Good Engineering and Operating Practices and shall submit any material modifications to the Company for review and comment prior to implementing them.

(g) Curtailment Control Interface.

(i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the "Curtailment Control Interface") necessary to interface the Facility curtailment controls with the Company System operations control center for real power control of the Facility by the Company System Operator. The Curtailment Control Interface will be used to control the maximum level of the Actual Output from the Facility when required under this Attachment B (Facility Owned by Seller). The implementation of the Curtailment Control Interface will allow Company System Operator to initiate the curtailment, vary the level of curtailment, and remove the curtailment remotely from Company System Operations Control Center through control signals from Company's SCADA and EMS systems. Regardless of the technical capabilities of the Curtailment Control Interface, Company shall notify Seller of the reasons for curtailments as

provided in Section 2.8(A) (Company's Obligation to Provide Reasons for a Curtailment Event) of the Agreement.

(ii) Company shall review and provide prior written approval of the design for the Curtailment Control Interface to ensure compatibility with Company's SCADA and EMS systems. If Seller materially changes the approved design, such changes will also require Company's review and prior written approval.

(iii) The Curtailment Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's RTU, located in Company's portion of the Facility switching station which shall provide the control signals to the Facility and send feedback statuses to the Company System Operations Control Center. The control type shall be analog output (set point) controls.

(iv) The Curtailment Control Interface shall also include provision for a feedback point from the Facility indicating when curtailment is in effect and the analog value of the curtailment MW limit. The Facility shall provide the feedback to the Company SCADA system within [2 seconds] of receiving the respective control signal from the Company.

(v) Seller shall provide an analog input to the RTU for the MW output of the individual generating units, and an analog signal for the total MW output at the Point of Interconnection.

(vi) The Curtailment Control Interface shall provide for remote control of the real-power output of the Facility by the Company at all times. If the Curtailment Control Interface is unavailable or disabled, the Facility shall not export electric energy to Company,

unless the Company, in its sole discretion, agrees to accept electric energy and Seller and Company agree on an alternate means of curtailment. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporary or throughout the Term) and fails to discontinue exporting electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to curtail the entire Facility during those periods that such control features are not provided.

(vii) The rate at which the Facility reduces Actual Output shall not exceed the ramp rate specified in Section 3(c) of Attachment B (Facility Owned by Seller). The Facility's Curtailment Control Interface will control the rate at which electric energy is reduced to achieve the curtailment limit. The Facility will respond to the curtailment request immediately and within minimum rate response of [0.5 MW/min]. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**

(viii) The Curtailment Control Interface shall accept the following curtailment control signal(s) from the Company SCADA and EMS systems:

Curtailment Setpoint: The Facility is not allowed to exceed this setting under any circumstances. The frequency response control specified in Section 3(m) (Frequency Response) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility Actual Output above this limit. When the Curtailment Setpoint is set to zero, the Facility's wind turbines must be shutdown.

Power Reference Limit: The Facility is not allowed to exceed this setting when system

frequency is at 60 Hz. When system frequency is not 60 Hz, the Facility Actual Output is allowed to exceed this setting when commanded by the frequency response control specified in Section 3(m) (Frequency Response) of Attachment B (Facility Owned by Seller).

(ix) Seller shall not override Company's curtailment control signals without first obtaining specific approval to do so from the Company System Operator.

(x) The requirements of the Curtailment Control Interface may be modified as mutually agreed upon in writing by the Parties.

(h) Control System Acceptance Test Procedures.

(i) Conditions Precedent. The following conditions precedent must be satisfied prior to the conduct of the Control System Acceptance Test:

- Successful Completion of the Acceptance Test.
- Facility has been successfully energized.
- All of the Facility's wind turbines have been fully commissioned.
- All ancillary devices (e.g., capacitors/inductors, energy storage device, statcom, etc.) required for Commercial Operations shall have been commissioned and be available for Commercial Operations, and the control system computer is programmed for normal operation.
- Facility controls and Facility wind turbine controls are fully configured and tested for Commercial Operations and is operating within normal parameters.
- The Facility and all Facility Equipment is available and ready for Commercial Operations.

(ii) Facility Wind Turbines. Unless all of the Facility's wind turbines are available for the duration of the Control System Acceptance Test,

the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company that the test results attained with less than all of the Facility's wind turbines are consistent with the results that would have been attained if all of the Facility's wind turbines had been available for the duration of the test.

(iii) Procedures. No later than thirty (30) Days prior to conducting the Control System Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Control System Acceptance Test. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. The Control Systems Acceptance Test cannot be conducted between December 10 and January 6. Company shall not be liable for any delays for failure to conduct the Control Systems Acceptance Test during such period. Within fifteen (15) Business Days of completion of the Control System Acceptance Test, Company shall notify Seller in writing whether the Control System Acceptance Test has been passed and, if so, the date upon which such Control System Acceptance Test was passed. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with Section 5(f) of Attachment A (Description of Generation and Conversion Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.

(i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.

2. Operating Procedures. **[NOTE: NUMERICAL SPECIFICATIONS IN THIS SECTION MAY VARY DEPENDING ON THE SPECIFIC PROJECT AND RESULTS OF THE IRS.]**

(a) Reviews of the Facility. Company may require periodic reviews of the Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement changes Company reasonably deems necessary in accordance with Good Engineering and Operating Practices for parallel operation or to protect the Company System from damages resulting from the parallel operation of the Facility with the Company System.

(b) Separation. Seller must separate from Company System whenever requested to do so by the Company System Operator pursuant to Article 8 (Continuity of Service) and Article 9 (Personnel and System Safety) of the Agreement.

(c) Seller Logs. Logs shall be kept by Seller for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain such records for a period of not less than thirty-six (36) months.

(d) Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first

obtaining specific approval to do so from the Company System Operator.

(e) Curtailment Methodology.

(i) Pursuant to Article 8 (Continuity of Service), and Article 9 (Personnel and System Safety), and subject to Section 2.8(A) (Company's Obligation to Provide a Reason for a Curtailment Event) of the Agreement, Company may at times have limited ability to integrate energy produced by Seller into the Company System for engineering and/or operating reasons and may be required to curtail energy deliveries by Seller. When a curtailment control signal is received by the Facility through the Curtailment Control Interface, the corresponding action (e.g., decrease in the Facility's output) shall be initiated without delay. Further curtailment may be implemented if conditions warrant and the Company System Operator deems it necessary. As conditions warrant, Company shall end or reduce the curtailment when Company reasonably determines that the reason for the curtailment is no longer in existence. The Company System Operator shall end or reduce the curtailment through the Curtailment Control Interface. Seller may request that the Facility be restored no sooner than one hour after Company has curtailed the Facility.

(ii) When Company determines that curtailment of energy becomes necessary for reasons other than those directly attributable to the Facility, curtailments shall be made to the extent possible in reverse chronological order of the chronological seniority dates determined by Company for the power purchase agreements, with deliveries under the power purchase agreements with the most recent chronological seniority date being the first curtailed, and deliveries under the power purchase agreement with the earliest

chronological seniority date being the last curtailed. The chronological seniority date for this Agreement shall be the Effective Date, unless Seller does not achieve a Commercial Operations Date on or before the Guaranteed Commercial Operations Date, in which case the Chronological seniority date for curtailment will be adjusted by adding one Day for each Day the Commercial Operations Date is later than the Guaranteed Commercial Operations Date. Small generation projects (such as photovoltaic net energy metering projects, feed-in tariff projects, etc.) that are allowed to be installed without curtailment controls will not be curtailed before the Facility. When Company determines that curtailment of energy becomes necessary for engineering and/or operating reasons that are directly attributable to the Facility, reverse chronological curtailment order may not apply.

(iii) If the Curtailment Control Interface is unavailable, due to loss of communication link, RTU failure, or other event resulting in the loss of the remote control by Company, provision must be made for Seller to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such raising and lowering of curtailment limits as directed by the Company System Operator.

(iv) If all local and remote curtailment controls become unavailable or fail, the Facility shall immediately disconnect from the Company's System.

(v) If the direct transfer trip is unavailable, due to loss of communication link, RTU failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to trip the main circuit breaker.

(f) Curtailment Responsibilities. In the event that Company initiates a Curtailment Event pursuant to this Agreement, Company shall not be obligated to accept any electric energy from Seller except for such electric energy that Company notifies Seller that it is able to take during the duration of a Curtailment Event. Company shall not be liable to Seller for any curtailments unless such curtailment was in violation of the Agreement. Seller shall not override Company's curtailment. Company shall pay for Compensable Curtailed Energy as provided in Section 2.6 (Payment for Compensable Curtailed Energy).

(g) Cyber-Security. Seller shall comply with the cyber-security requirements set forth in Section 1(b)(iii)H of this Attachment B.

(h) Allowed Operations. Facility shall be allowed to export energy to the Company System only when either or both of the 138 kV circuit served by breakers [___] and [___] at Company's Kahe Substation and the 138 kV circuit served by breakers [___] at Company's Waiau Substation are in normal operating configuration. **[TBD BASED ON THE RESULTS OF THE IRS]**

3. Performance Standards.

(a) Reactive Power Control. Seller shall control its reactive power by automatic voltage regulation control. Seller shall automatically regulate voltage at a point, the point of regulation, between the Seller's generator terminal and the Point of Interconnection to be specified by Company, to within 0.5% of a voltage specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(b) (Reactive Amount) of this Attachment B (Facility Owned by Seller).

(b) Reactive Amount. **[THESE REQUIREMENTS MAY BE CHANGED BASED ON THE RESULTS OF THE IRS]**

(i) Each 3.6 kVA wind turbine online at the Facility shall have the ability to deliver or receive, at its terminal, reactive power as illustrated in the [generator capability] curve[s] attached to

this Agreement as Exhibit B-2 [generator capability curve(s)]. **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

(ii) Company will not be obligated to purchase reactive power from Seller.

(iii) The Facility shall contain equipment able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation response speed at the point of regulation shall be such that at least 90% of the initial voltage correction needed to reach the voltage control target will be achieved within 1 second following a voltage step change.

(iv) If the Facility does not operate in accordance with Section 3(b)(i) of this Attachment B (Facility Owned by Seller), Company may disconnect all or a part of Facility from Company System until Seller corrects its operation (such as by installing capacitors at Seller's expense).

(c) Ramp Rates.

Seller shall ensure that the ramp rate of the Facility is less than the following limits for all conditions including start up, normal operations, Seller adjusting the Facility Actual Output, changes in the wind resource, and shut down (including high wind speed shut down in the case of wind facilities) for the following periods as calculated in accordance with Attachment C (Methods and Formulas for Measuring Performance Standards).

- Maximum Ramp Rate Upward of 2 MW/minute for all periods.

- Maximum Ramp Rate Downward of 2 MW/minute for all periods other than periods of rapid loss of wind resource.

The Facility is allowed to exceed the maximum ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) when Facility output is changed by the frequency response control described in Section 3(m) of this Attachment B (Facility Owned by Seller).

(d) RESERVED.

(e) Undervoltage Ride-Through.

The Facility, as a whole, will meet the following undervoltage ride-through requirements during low voltage affecting one or more of the three voltage phases ("V" is the voltage of any three voltage phases at the Point of Interconnection).

0.88 pu ≤ V ≤ 1.10 pu	The Facility remains connected to the Company System.
0.70 pu ≤ V < 0.88 pu	The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 20 seconds.
0.50 pu ≤ V < 0.70 pu	The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 10 seconds.
0.00 pu ≤ V < 0.50 pu	The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 600 milliseconds.

Seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through the following sequences or combinations thereof.

- Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 pu. level for the 30 cycles between the initial clearing time and the reclosing time.

- Normally cleared 46kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 pu. level for the 23 cycles between the initial clearing time and the reclosing time.

(f) Over Voltage Ride-Through.

The overvoltage protection equipment at the Facility shall be set so that the Facility will meet the following overvoltage ride-through requirements during high voltage affecting one or more of the three voltage phases (as described below) ("V" is the voltage of any of the three voltage phases at the Point of Interconnection):

0.88 pu ≤ V ≤ 1.10 pu	The Facility remains connected to the Company System.
1.10 pu < V ≤ 1.20 pu	The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 0.92 second.
V > 1.2 pu	The Facility may initiate disconnection from the Company System immediately.

(g) [Reserved]

(h) Fault Ride Through.

For fault-related voltage dips at the Point of Interconnection that stay within the limits of the under voltage ride-through requirements in Section 3(e) (Undervoltage Ride-Through) of this Attachment B (Facility Owned by Seller), upon clearing of the fault, Seller shall within 1 second of restoration, provide at least 90% of the real power output at the Point of Interconnection immediately before the fault without regard to the ramp rate requirements of Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) to the extent allowed by the availability of the wind resource. The fault ride through requirement does not apply if the Facility is operating at less than 5% of the Facility's nameplate capacity.

(i) Underfrequency ride-through.

The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):

$f \geq 57.0$ Hz	The Facility remains connected to the Company System.
$56.0 \text{ Hz} \leq f < 57.0$ Hz	The Facility may initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.
$f < 56.0$ Hz	The Facility may initiate disconnection from the Company System immediately.

(j) Overfrequency ride-through.

The Facility will behave as specified below for overfrequency conditions ("f" is the Company System frequency at the Point of Interconnection):

$f \leq 63.0$ Hz	The Facility remains connected to the Company System.

63.0 Hz < f ≤ 63.6 Hz	The Facility will initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.
f > 63.6 Hz	The Facility will initiate disconnection from the Company System immediately.

(k) Voltage Flicker.

Any voltage flicker on the Company System caused by the Facility shall not exceed the limits stated in IEEE Standard 1453-2011, or latest version "Recommended Practice - Adoption of IEC 6100-4-15:2010, Electromagnetic compatibility (EMC) - Testing and measurement techniques - Flickermeter - Functional and design specifications".

(l) Harmonics.

Harmonic distortion at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-1992, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems". Seller shall be responsible for the installation of any necessary (controls or hardware to limit the voltage and current harmonics generated from the Facility to defined levels.

(m) Frequency Response.

Seller's Facility shall provide a primary frequency response with a frequency droop characteristic reacting to system frequency fluctuations at the Point of Interconnection in both the overfrequency and underfrequency directions to the extent allowed by the availability of the wind resource.

(i) The Facility frequency response control shall adjust, without intentional delay and regards to the ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller), the Facility Actual Output when system frequency

is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.

(ii) The Facility frequency response control is allowed to increase the Actual Output above the Power Reference Limit or further decrease the Actual Output from the Power Reference Limit in its operations.

(iii) The frequency deadband shall be settable in the range from +/-0.01 Hz to +/- 0.10 Hz and the frequency droop shall be settable in the range of 0.1% to 10%.

(iv) The Facility frequency response control shall be in continuous operation when the Facility is exporting energy to the Company unless directed otherwise by the Company.

4. Maintenance of Seller-Owned Interconnection Facilities.

(a) Seller must address any Disconnection (as defined below) according to the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller). For this purpose, a Disconnection is a disconnection from Company System of at least **[__]** MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** from the Facility over a "rolling 120-second period", if such disconnection is due to a defect in or a failure of Seller-Owned Interconnection Facilities. A "rolling 120-second period" means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period.

(b) For every disconnection from the Company System of at least 7.3 MW from Facility over a rolling 120-second period ("Disconnection Event"), Seller shall investigate the cause of the Disconnection Event, and determine if it is a Disconnection as defined in Section 4(a) of this Attachment B (Facility Owned by Seller). Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report

that summarizes the sequence of events and probable cause of the Disconnection Event, and states whether the Seller believes the Disconnection Event is a Disconnection.

(c) Within forty-five (45) Days of a Disconnection, Seller shall provide, in writing to Company, Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection ("Proposed Actions"). Company may assist Seller in determining the causes of and recommendations to remedy or prevent a Disconnection ("Company's Recommendations"). Seller shall implement such Proposed Actions (as modified to incorporate the Company's Recommendations, if any) and Company's Recommendations (if any) in accordance with the time period agreed to by the Parties.

(d) In the event Seller and Company disagree as to (i) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the Disconnection Event, (iii) whether the Disconnection Event is a Disconnection, (iv) the Proposed Actions, (v) Company's Recommendations, and/or (vi) the time period to implement the Proposed Actions and/or Company's Recommendations, then the Parties shall follow the procedure set forth in Section 5 (Expedited Dispute Resolution) of this Attachment B (Facility Owned by Seller).

(e) Upon the fourth (4th) Disconnection (and each subsequent Disconnection) within any Contract Year, the Parties shall follow the procedures set forth in Section 4(a) and Section 4(d) of Attachment B (Facility Owned by Seller), to the extent applicable. If after following the procedures set forth in this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller), Seller and Company continue to have a disagreement as to (1) the probable cause of the Disconnection, (2) the Proposed Actions, (3) the Company's Recommendations, and/or (4) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the Parties shall commission a study to be performed by a qualified independent Third-Party consultant ("Qualified Consultant") chosen from the Qualified Independent

Third-Party Consultants List ("Consultants List") attached to the Agreement as Attachment D (Consultants List). Such study shall review the design of, review the operating and maintenance procedures dealing with, recommend modifications to, and determine the type of maintenance that should be performed on Seller-Owned Interconnection Facilities ("Study"). Seller and Company shall each pay for one-half of the total cost of the Study. The Study shall be completed within ninety (90) Days from such fourth Disconnection (and each subsequent Disconnection) within any Contract Year, unless otherwise agreed to in writing by Seller and Company. The Qualified Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall change the design of, change the operating and maintenance procedures dealing with, implement modifications to, and/or perform the maintenance on Seller-Owned Interconnection Facilities recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless otherwise agreed to in writing by Company. In the event the time requirement for the (i) commissioning of the Study, (ii) completion of the Study, or (iii) completion of the design change, operating and maintenance procedure change, modifications, and/or maintenance recommended by the Study is not achieved, Company may limit the total Allowed Capacity to a level to that maintains reliable operations in accordance with Good Engineering and Operating Practices for the period that such requirement has not been achieved. Nothing in this provision shall affect Company's right to curtail the Facility as provided for in this Agreement.

(f) The Consultants List attached hereto as Attachment D (Consultants List) contains the names of engineering firms which both Parties agree are fully qualified to perform the Study. At any time, except when a Study is being conducted, either Party may remove a particular consultant from the Consultants List by giving written notice of such removal to the other Party. However, neither Party may remove a name or names from the

Consultants List without approval of the other Party if such removal would leave the list without any names. Intended deletions shall be effective upon receipt of notice by the other Party, provided that such deletions do not leave the Consultants List without any names. Proposed additions to the Consultants List shall automatically become effective thirty (30) Days after notice is received by the other Party unless written objection is made by such other Party within said thirty (30) Day period. By mutual agreement between the Parties, a new name or names may be added to the Consultants List at any time.

5. Expedited Dispute Resolution.

If there is a disagreement between Company and Seller regarding (i) Seller's compliance with the standards set forth in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and/or (ii) Section 4 (Maintenance of Seller-Owned Interconnection Facilities)of this Attachment B (Facility Owned by Seller) such as (aa) whether a Disconnection Event occurred, (bb) the sequence of events and/or probable cause of the Disconnection Event, (cc) whether the Disconnection Event is a Disconnection, (dd) the Proposed Actions, (ee) the Company's Recommendations, and (ff) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawaii (or by telephone conference) and attempt in good faith to settle the disagreement. Unless otherwise agreed in writing by the Parties, the Parties shall devote no more than five (5) Business Days to settle the disagreement in good faith. In the event the Parties are unable to settle the disagreement after the expiration of the time period, then either Party may pursue the dispute resolution procedure set forth in Article 28 (Dispute Resolution) of this Agreement.

6. Modeling.

(a) Seller's Obligation to Provide Models. Within 30 Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the

modeling of the wind turbines and any other equipment within the Facility identified in the IRS which utilizes Source Code (such as energy storage system, STATCOM or DVAR equipment) including, but not limited to, integrated and validated power flow and transient stability models (such as PSS/E models), a short circuit model (such as an ASPEN model), and an electro-magnetic transient model (such as a PSCAD model) of the wind turbines and any additional equipment identified in the IRS as set forth above, applied assumptions, and pertinent data sets (each a "Required Model" and collectively, the "Required Models"). Thereafter, during the Term, Seller shall provide working updates of any Required Model within 30 Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner.

(b) Escrow Establishment. If, pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), the Required Models are provided to the Company in a form other than Source Code, Seller shall arrange for and ensure that the Source Code for the relevant Required Model is deposited into the Source Code Escrow as set forth below in Section 6(b)(i) (Source Code Escrow) no later than the Source Code Escrow Deadline for the initial Source Code deposit and thereafter, during the Term, Seller shall provide working updates of any Required Model within 30 Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner.

(i) Source Code Escrow. If the Required Models are not provided to the Company in the form of Source Code pursuant to Section 6(a) of this Attachment B (Facility Owned by Seller), Seller shall: (a) arrange for and ensure the deposit of a copy of the current version of the Source Code and relevant documentation for all Required Models with Iron Mountain or another similar escrow agent approved by Company (the "Source Code Escrow Agent") under a three party escrow agreement naming Company as beneficiary thereunder, which agreement shall be acceptable in form and substance to Company (the "Source Code Escrow Agreement"), and (b) arrange for and ensure the update of deposited Source Code and relevant documentation for Major Releases and Minor Releases

of the Required Models as soon as reasonably possible after they are made generally available.

(ii) Release Conditions. Company shall have the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models, under the following conditions upon Company's request:

(A) A receiver, trustee, or similar officer is appointed, pursuant to federal, state or applicable foreign law, for the Source Code Owner;

(B) Any voluntary or involuntary petition or proceeding is instituted, under (i) U.S. bankruptcy laws or (ii) any other bankruptcy, insolvency or similar proceeding outside of the United States, by or against the Source Code Owner;

(C) Failure of the Source Code Owner to function as a going concern or operate in the ordinary course; or

(D) Seller and the Source Code Owner fail to provide to Company the Required Models or updated Required Models within the time periods set forth in Section 6(b) (Escrow Establishment) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller and the Source Code Owner, and Seller and the Source Code Owner fail to remedy such breach within five (5) Days following receipt of such notice.

(iii) Remedies. If Company has the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models pursuant to Section 6(b)(ii) (Release Conditions) of Attachment B (Facility Owned by Seller), and Company finds that Seller failed to arrange for and ensure the update of the Source Code Escrow with the modified and/or updated Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as provided in Section 6(b)(i) (Source Code Escrow) of Attachment B (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of $500 per day for each day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major

Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of Section 6(b)(i) (Source Code Escrow) of Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(F) (Events of Default by a Party) under the Agreement.

(iv) Certification. The Source Code Escrow Agent shall release the Source Code of the Required Models to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

> The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric"), and (ii) Hawaiian Electric is entitled to a copy of the Source Code of the Required Models Pursuant to Section 6(b)(ii) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of _____, 2018, between EE Ewa LLC and Hawaiian Electric.

(v) Authorized Use. If Company becomes entitled to a release of the Source Code of the Required Models from escrow, Company may thereafter correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned By Seller) (the "Source Code Authorized Use").

(vi) Confidentiality Obligations. Company shall keep the Source Code of the Required Models confidential pursuant to the confidentiality obligations of the Source Code Escrow Agreement. Company shall restrict access to the Source Code of the Required Models to those employees, independent contractors and consultants of Company who have agreed in writing to be bound by confidentiality and use obligations consistent with those specified in the Escrow Agreement, and who have a need to access the Source Code of

the Required Models on behalf of Company to carry out their duties for the Source Code Authorized Use. Promptly upon Seller's request, Company shall provide Seller with the names and contact information of all individuals who have accessed the Source Code of the Required Models, and shall take all reasonable actions required to recover any such Source Code in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

(vii) Supplementary Agreement. The parties stipulate and agree that the source code escrow provisions in this Attachment B (Facility Owned By Seller), Section 6(b) (Escrow Establishment) and the Escrow Agreement are a "supplementary agreement" as contemplated in Section 365(n)(1)(B) of the U.S. Bankruptcy Code (the "Code"). In any voluntary or involuntary bankruptcy proceeding involving Seller, failure by Company to assert its rights to "retain its rights" to the intellectual property encompassed by the Source Code, pursuant to Section 365(n)(1)(B) of the Code, under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election to terminate the contract by Company under Section 365(n)(1)(A) of the Code.

(viii) Source Code Escrow Deadline Damages and Termination.

(A) Source Code Escrow Deadline Damages. If the Source Code Escrow Deadline has not occurred within thirty days (30) Days after the Guaranteed Commercial Operations Date, Company shall collect and Seller shall pay liquidated damages in the amount of $1,000 for each Day ("Source Code Escrow Deadline Damages") following and the Guaranteed Commercial Operations Date (with such Source Code Escrow Deadline Damages to be calculated retroactively to the Guaranteed Commercial Operations Date), provided that the number of Days for which Company shall collect and Seller shall pay Source Code Escrow Deadline Damages shall not exceed one hundred eighty (180) Days.

(B) Termination and Termination Damages for Failure to Achieve Source Code Escrow Deadline. If, upon expiration of the aforesaid 180-Day period (the "Source Code Escrow Delay LD Period"), Seller has not achieved the Source Code Escrow Deadline, Company shall have the right, notwithstanding any other provision of this Agreement to the

contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination is to be effective. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Seller, and not earlier than the first to occur of the Day such notice is deemed to be received by Seller or the Day following the expiration of the Source Code Escrow Deadline Delay LD Period. Without limiting the generality of the preceding sentence, the earliest Day upon which a termination of this Agreement can be effective as a result of a failure to achieve the Source Code Escrow Deadline thirty (30) Days after the Guaranteed Commercial Operations Date would be the Day following expiration of the Source Code Escrow Deadline Delay LD Period. If the Agreement is terminated by Company pursuant to this Section 6(b)(viii)(B) (Termination and Termination Damages for Failure to Achieve Source Code Escrow Deadline) of Attachment B (Facility Owned by Seller), Company shall have the right to collect liquidated damages ("Source Code Escrow Deadline Termination Damages"), which shall be calculated in accordance with Article 16 (Damages in the Event of Termination By Company) of this Agreement.

7. Testing Requirements. If Seller replaces and/or changes the configuration of the Facility controls, wind turbine controls, and/or ancillary device controls from when the Control System Acceptance Test was successfully passed, the relevant test(s) of the Control System Acceptance Test shall be redone, to the extent such retesting is normally required by Good Engineering and Operating Practices, and, if redone, shall have successfully passed before the replacement or altered equipment is allowed to be placed in normal operations. If equipment required for normal Facility operation is not available, the Facility shall not be allowed to continue commercial operations. Curtailment of the Facility necessary to conduct and pass such Control System Acceptance Test shall not be compensable curtailment.

8. Data and Forecasting.

Seller shall provide Site, meteorological and production data in accordance with the terms of Article 6 (Forecasting) of this Agreement and the following requirements:

(a) Wind Generation Facility.

(i) Physical Site Data: Seller shall provide Company with an accurate description of the physical Site including but not limited to:

A. Location Facility map showing the layout of the Facility (coverage area or footprint), coordinates (latitude and longitude), and height above ground of each wind turbine hub.

B. Location (latitude and longitude) of each MMT and elevation (above ground) of each field measurement device for, e.g., air density, ambient air pressure and ambient air temperature, locate at each MMT.

C. Average horizontal spacing between wind turbines within the Facility.

D. Average vertical elevation difference between wind turbine bases within the Facility.

(ii) Meteorological and Production Data:

A. Seller shall install and maintain at least two (2) multi-level MMT on the prevailing, upstream side of the Facility to elevate the field measurement devices for the "other meteorological conditions" identified in Section 6.2 (Facility Resource Monitoring Equipment) of this Agreement. At a minimum, such measuring devices shall be placed at approximately "hub height" of the wind turbines, typically using a boom extension off the MMT. Typically, additional measuring devices for such "other meteorological conditions" shall be placed on boom extensions off the MMT at appropriate heights above and below "hub height" as such "appropriate heights" are agreed to between Company and Seller.

B. The Seller shall provide (i) the wind speed and Actual WTGS Production at each WTGS within the Facility and (ii) the data on the "other

meteorological conditions" (e.g., air density, ambient air pressure and ambient air temperature) at approximately "hub height" at each MMT.

C. Seller shall provide to Company, via SCADA communication and protocol acceptable to Company to support operations and forecasting needs at a continuous scan, all meteorological and production data required under this Agreement updated every 2 seconds.

D. Seller shall arrange for a dedicated 12 kV line to provide separate service from Company, or for such other independent, backup power source as approved by Company in writing, to temporarily store and record the meteorological data from both the nacelle anemometers at the WTGS(s) and the field measuring devices at the MMTs. Any such backup power source must be capable of providing power for the field measurement devices for a reasonable period of time until primary power is restored. The same backup power source can serve multiple MMTs as needed by the Facility.

(iii) Units and Accuracy:

A. Units and accuracy of measured parameters to be provided to Company in real time shall be as shown in the table below. These represent the minimum required accuracies.

Parameter	Data Source	Unit	Range	Accuracy
Wind speed at nacelle of each WTGS	Cup or sonic anemometer	m/s	0 to 60 m/s	+/-1 ms
Wind direction at nacelle of each WTGS	Vane, sonic device or equivalent	Degrees (from True North)	360°	+/-5°
Wind speed at MMT	Cup or sonic anemometer	mps	0 to 60 mps	+/-1 mps
Wind	Vane, sonic device	Degrees	360°	+/-5°

direction at MMT	or equivalent	(from True North)		
Ambient air temperature at MMT (hub height)*	Temperature probe	°C	-20 to +50 °C	+/-1 °C
Ambient air pressure at MMT (hub height)*	Piezoresistive transducer, barometer or equivalent	kPa	15 to 115 kPa	+/-6 kPa (0 to +55°C)
Power production for each WTGS	Measured at WTGS	MW	Up to WTGS name plate	+/-0.1 MW
Set point for each WTGS	Reported by Seller	MW	0 to WTGS name plate	Not applicable
Power production of Facility	Measured at Facility's analog tranducers on Seller's side of POI	MW	Up to Allowed Capacity	Per communication / telemetry requirements or 2% of measurement
Facility power production ratio	Ratio of Facility's power production (MW)/Allowed Capacity (MW)	%	0 to 100%	+/-0.1%

9. Technology Specific Requirements.

(a) Inverter Systems.

(i) Direct current generators and non-power (i.e., other than 60 Hertz) alternating current generators can only be installed in parallel with the Company System using a non-islanding synchronous inverter. The design shall comply with the requirements of IEEE Std 1547-2003 (or latest version), except as described in

* Plus such other "appropriate heights" as provided in Section 8(ii)(A) of this Attachment B (Facility Owned by Seller).

Section 3 (Performance Standards) of Attachment B.

(ii) Self-commutated inverters of the Company-interactive type shall synchronize to the Company System. Line-commutated, thyristor-based inverters are not recommended and will require additional technical study to determine harmonic and reactive power requirements. All interconnected inverter systems shall comply with the harmonic current limits of IEEE Std 519-1992 (or latest version).

ATTACHMENT C
METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS

1. Performance Standards as defined below shall be used, in part, to govern actions by Company to curtail the Actual Output of the Facility for purposes of maintaining power quality on Company System. The Performance Standards will take into account the duration of a Curtailment Event and the adverse impact (or lack thereof) on the Company System. Specific standards are defined for:

   - Ramp Rate (RR)

2. Formulas for measuring the performance standards are presented below, and assume that the power fluctuations will be monitored on the Company's SCADA and EMS systems. These formulas are based on the periodicity at which analog data is retrieved from the RTU. This periodicity is called the "scan rate". Company presently uses a two-second analog scan rate. The formulas below are based on the two-second scans. The transducer used to obtain the instantaneous power (MW) output from a wind farm is accurate to +/- 0.1%. The two-second scan rate, characteristics of transducers and RTU reporting, and SCADA method of calculation, were considered and included in the proposed values for the performance standards.

3. Ramp Rate Calculation:

$$RR = MW_s - MW_{s-30}$$

Where:

RR = Ramp Rate, may be calculated once every scan

MW_{s-30} = The instantaneous MW analog value 30 scans (60 seconds) prior the present scan

MW_s = The instantaneous MW analog value for the present scan

ATTACHMENT D
CONSULTANTS LIST

AWS Truepower (acquired by and now UL)
DNV GL
Electranix Corporation
Electric Power Systems, Inc.
Leidos, Inc.
Quanta Technology, LLC.
Vestas
Electrical Consultants, Inc.
ICF
Black & Veatch

ATTACHMENT E
SINGLE-LINE DRAWING

(See attached. To be updated as per Section 1(a) of Attachment B. Point of Interconnection to be a tap on 138 kV Kahe-Waiau transmission line.)

ATTACHMENT F
RELAY LIST AND TRIP SCHEME

(See attached. To be prepared as per Section 1(a) of Attachment B after the IRS.)

[ATTACHMENT G SHALL BE REVISED TO REFLECT THE DESIGN OF THE INTERCONNECTION FACILITIES AND THE RESULTS OF THE IRS]

ATTACHMENT G
COMPANY-OWNED INTERCONNECTION FACILITIES

1. Description of Company-Owned Interconnection Facilities.

(a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at 138,000 volts, up to the Point of Interconnection (collectively, the "Company-Owned Interconnection Facilities").

(b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240VAC and 48VDC) are required, Seller shall provide such sources, at no expense to Company.

(c) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreement, and the results have been incorporated in Attachment B (Facility Owned by Seller) and this Attachment G (Company-Owned Interconnection Facilities) as appropriate.

(d) Seller's Payment Obligations. Company-Owned Interconnection Facilities, for which Seller has agreed to pay, whether designed, engineered and constructed by Seller or Company, include the following: **[ADD LIST OF COMPANY-OWNED INTERCONNECTION FACILITIES THAT ARE REQUIRED PURSUANT TO THE RESULTS OF THE IRS. THE FOLLOWING IS AN EXAMPLE OF THESE TYPES OF FACILITIES THAT COULD BE LISTED]:**

(i) [Line extension];

(ii) A manually operated, lockable, group operated switch located on a pole prior to the Facility switching station. Company will install a 138 kV drop into Seller-provided deadend structure.

(iii) Substation additions and/or modifications of Company's existing structures as necessary. This would include but not be limited to protective relaying and setting changes, [_____].

(iv) Supervisory control and communications equipment including but not limited to:

A. SCADA/RTU.

B. Microwave, satellite, dedicated phone line(s) and/or any other acceptable communications means (determined by Company), fiber optics, copper cabling, installation of batteries and charger system, etc.).

C. Direct Transfer Trip ("DTT") equipment at the Facility and associated DTT equipment at the Company-owned substation.

D. Company communications multiplexer and/or router (including communications cards).

E. High voltage isolation equipment ("GPR Cabinet") at Company-owned substation.

F. Communication circuit additions and upgrades.

(v) Revenue Metering Package as provided in Section 10.1 (Metering) of the Agreement;

(vi) Any additional Interconnection Facilities needed to be installed as a result of final determination of Facility switching station site, final design of Facility to enable Company to complete the Interconnection Facilities and be compatible with Good Engineering and Operating Practices.

(vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.

(e) Revisions to Costs. The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this Attachment G (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves a power purchase agreement for another non-Company owned electric generating facility ("Second NUG Contract") to supply electric energy to Company using the same line to which Facility is to be connected or (ii) the line to which Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Agreement and a Second NUG Contract, determines that Seller should pay for all or part of the cost of such upgrade and/or replacement.

(f) Review of the Listing and Costs. If the Commercial Operations Date is not achieved by the Guaranteed Commercial Operations Date, the listing of the Company-Owned Interconnection Facilities required in this Agreement and the cost-estimates for such Company-Owned Interconnection Facilities are subject to review and revision. Such revision may include, but not be limited to, such items as reconductoring an existing transmission or distribution line, construction of a new line, increase transformer capacity, and alternative relay specifications. In addition, such review and revision may require that the Company re-perform or update the IRS at the Seller's expense.

(g) Responsibility of Seller and Company. The general responsibilities of Seller and Company for the design, procurement, installation, programming/testing, and maintenance/ownership of equipment at the Facility and the Company-Owned Interconnection Facilities is specified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS].**

2. Construction and Support Services By Seller.

(a) Construction and Support Services By Seller.

(i) Unless otherwise agreed to by the Parties, Seller (and/or its third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Seller's expense and to Company's standards and specifications:

A. The items identified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities) as being the responsibility of Seller to construct; and

B. **[ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER. NOTE: SUBPARTS "A" AND "B" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE.]**

(ii) Seller shall provide the necessary support for the Company's 138 kV overhead line extension work, which may include, but not limited to:

A. Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.

B. Staking of Company proposed poles and anchors by surveyor.

C. Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.

D. Graded level pads to provide vehicle working areas around all Company poles and anchors.

E. Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.

F. Grubbing and clearing of vegetation within Company's easement area or as required.

G. Acquire all necessary permits, easements, and right of entry to access such Company-Owned Interconnection Facilities.

H. Acquire all necessary geotechnical data.

(b) Coordination of Construction. Prior to Seller engaging the Contractors, Seller shall obtain Company's written approval, which approval shall not be unreasonably withheld. Prior to Seller and/or its Contractors first starting to work on the construction plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors), such as the civil, structural, and construction drawings, specifications to vendors, vendor approved final drawings and materials lists (collectively, the "Plans"), Seller and/or its Contractors shall meet with Company to discuss the construction of such Company-Owned Interconnection Facilities, including but not limited to subjects concerning coordination of construction milestone dates, agreement on areas of interface design, and Company's design/drawing layout and symbols standards, equipment specifications and construction specifications and standards. Company will provide the design and specifications information so Seller can incorporate such information in its bid documents.

(c) Plans. No later than sixty (60) Days before Seller and/or its Contractors first start to order materials and equipment for Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors, Seller shall provide Company with the Plans. The Plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) shall comply with (i) all applicable Laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and design and construction specifications and standards; and (iii)

Good Engineering and Operating Practices (collectively, the "Standards"). Seller shall submit design drawings in Microstation format per Company standards.

(d) Company's Review of the Plans. Unless otherwise agreed to by the Parties, Company shall have thirty (30) Days following receipt of the Plans for it to review and comment on the Plans, and verify in writing to Seller that the Plans comply with the Standards, which verification shall not be unreasonably withheld. If Company reasonably determines that the Plans are not in accordance with the Standards, then it may request in writing a response from Seller to its comments and Seller shall respond in writing within thirty (30) Days of such request by providing (i) its justification for why its Plans conform to the Standards or (ii) changes in the Plans responsive to Company's comments and in accordance with the Standards.

(e) Company Inspection. Construction work will be subject to Company inspections to ensure that construction is done in accordance with the Standards. Company inspectors will be allowed access to the construction sites for inspections and to monitor construction work. The inspector shall have the authority to work with the appropriate construction supervisor to stop any work that does not meet the Standards. All equipment and materials used in Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors shall meet the Standards.

(f) Acceptance Test Procedures.

(i) Seller shall provide Company with at least fourteen (14) Days advance written notice of the Acceptance Test, which shall be scheduled during normal business hours on a Business Day. No electric energy will be delivered from Seller to Company during this Acceptance Test. No later than thirty (30) Days prior to conducting the Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the

written protocol for the Acceptance Test. Within fifteen (15) Business Days of successful completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

(ii) Company will be present when the Acceptance Test is conducted, and Seller shall timely correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If Company (i) does not make any inspection or test, (ii) does not discover defective workmanship, materials or equipment, or (iii) accepts Company-Owned Interconnection Facilities (that were constructed by Seller and or its Contractors), such action or inaction shall not relieve Seller from its obligation to do and complete the work in accordance with the Plans approved by Company.

(g) As-Built Drawings. Within thirty (30) Days of the completion of construction of the Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) and the acceptance of same by Company, Seller shall provide for Company review a set of the proposed as-built drawings. Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall provide Seller with either (i) its comments on the proposed as-built drawings or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Seller shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Seller's receipt of Company's comments.

3. Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility.

(a) Seller Payment to Company.

(i) Seller shall pay the Total Estimated Interconnection Cost which is comprised of the estimated costs of (aa) acquiring, constructing and installing the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company, (bb) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with (i) the application process for the PUC Approval Order, (ii) developing such Company-Owned Interconnection Facilities and (iii) reviewing and specifying those portions of Facility which allow interconnected operations as such are described in Attachment B(Facility Owned by Seller) (collectively, the "Engineering and Design Work"), and (cc) conducting the Acceptance Test and Control System Acceptance Test. The Total Actual Interconnection Cost (the actual cost of items (aa) through (cc)) are the "Total Interconnection Cost".

(ii) Summary List of Company-Owned Interconnection Facilities and related services to be designed, engineered, and constructed by Company:

A. [THIS LIST SHOULD GENERALLY INCORPORATE A SUBSET OF THE LIST IN ATTACHMENT G, SECTION 1(d), PLUS TESTING.]

(iii) The following summarizes the Total Estimated Interconnection Cost of Company's work and related services for the Company-Owned Interconnection Facilities: **[TBD – This list should include estimated costs for the items listed in Attachment G, Section 3(a)(iii).]**

1		
2		

3		
4		
5		
7		

The Total Estimated Interconnection Cost is $[_____].

(b) Total Estimated Interconnection Costs. The Total Estimated Interconnection Cost, which, except as otherwise provided herein, is non-refundable, shall be paid in accordance with the following schedule: **[Number of payments, time for payments, and amounts subject to results of IRS and Cost and Schedule Estimates to be prepared by Company following the IRS].**

(i) Initial Payments: Prior to the execution of the Interconnection Requirements Amendment, Seller shall pay One Hundred Fifty Thousand Dollars ($150,000) to Company.

(ii) Company-Owned Interconnection Facilities Prepayment: No later than [_____] ("Company-Owned Interconnection Facilities Prepayment Date"), [_____] Dollars ($[_____]), a portion of the Company-Owned Interconnection Facilities Prepayment Amount, shall be due and payable by Seller to Company.

A. Company shall not be obligated to perform any Engineering and Design Work or procure and construct Company-Owned Interconnection Facilities until Seller pays the amount in Section 3(b)(ii) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute

Seller's irrevocable authorization to Company to perform such work.

(iii) Company Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment: A second payment of the Company-Owned Interconnection Facilities Prepayment Amount to cover the costs of the **[Company Substation Work]** in the amount of **[_____]** Dollars ($**[_____]**) shall be due and payable by Seller to Company no later than 15 Days following Company's written notice requesting such payment.

A. Once Company has expended the funds received pursuant to Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), Company shall not be obligated to perform any further work, including Engineering and Design Work or procure and construct the Company Substation Work, until Seller pays the amount set forth in this Section 3(b)(iii) (Company Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such further work.

B. Seller shall not be obligated to make the payment required under this Section 3(b)(iii) (Company Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) prior to **[_____]**. However, Company shall issue its written notice requesting such payment when Company reasonably determines that the unexpended balance of the monies received pursuant to Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities) is insufficient to allow Company to

prosecute the work without interruption for more than 30 Days. If Company issues such notice prior to **[_____]** (i.e., more than 15 Days prior to **[_____]**), and if Seller chooses not to make payment until **[_____]**, then (i) Company shall stop work when the monies received pursuant to Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities) have been expended (taking into account a reserve for any demobilization costs that Company reasonably anticipates incurring as a result of such work stoppage), (ii) Company shall resume work only after it has received the payment required under this Section 3(b)(iii) (Company Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment), and (iii) Seller shall be responsible for all demobilization and remobilization costs incurred by Company as a result of such work stoppage.

(iv) Balance of Company-Owned Interconnection Facilities Prepayment: The third payment of the Company-Owned Interconnection Facilities Prepayment Amount to cover **[Company's support services in connection with Seller's construction of the Company-Owned Interconnection Facilities]** in the amount of **[_____]** Dollars ($**[_____]**) shall be due and payable by Seller to Company **[no later than sixty (60) Days prior to Seller's commencement of construction]** and shall be accompanied by a written notice to Company informing Company that Seller intends to commence construction in sixty (60) Days.

A. Once Company has expended the funds received pursuant to Section 3(b)(iii) (Company Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), Company shall not be obligated to perform any further work, including Engineering and Design Work,

procurement and construction of the Company Substation Work, or provide support services in connection with Seller's construction of the Company-Owned Interconnection Facilities, until Seller pays the amount set forth in this Section 3(b)(iv) (Balance of Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to proceed with such further work.

(c) True-Up. The final accounting shall take place within one hundred twenty (120) Days of the first to occur of (i) the Commercial Operations Date, (ii) the date this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval Date), or (iii) the date this Agreement is terminated, whichever occurs first. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Seller's delay or failure to respond to any Company request for information needed to complete the final accounting or take any action necessary for Company to complete the final accounting. Upon completion of the final accounting, Company shall deliver to Seller an invoice for payment of the amount, if any, of the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. Payment of such invoice shall be made within thirty (30) Days of receipt of such invoice from Company. If the Total Actual Interconnection Cost is less than the payments received by Company as the Total Estimated Interconnection Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

(d) Audit Rights. Seller shall have the right for a period of one (1) year following receipt of the invoice: (i) upon reasonable prior notice, to audit the books and records of Company to the limited extent reasonably necessary to verify the basis of the Total Actual Interconnection Cost, and (ii) to dispute the portion of

the Total Actual Interconnection Cost which (if any) exceeds the Total Estimated Interconnection Cost. Seller shall not have the right to audit any other financial records of Company. Company shall make such information available during normal business hours at its offices in Hawaii. Seller shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overhead.

(e) Ownership. All Company-Owned Interconnection Facilities including those portions, if any, provided, or provided and constructed, by Seller shall be the property of Company.

(f) Company-Owned Interconnection Facilities to be Constructed by Seller. The following summarizes the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Seller:

1	
2	
3	

Ownership of all work identified in the table above shall be transferred to Company per Section 8 below. Seller shall provide Company with the actual cost of such work no later than 30 Days prior to the Transfer Date.

4. Ongoing Operation and Maintenance Charges.

(a) Prior to the Transfer Date. Seller shall operate and maintain, at its sole cost and expense, Company-Owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date.

(b) On or After the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain Company-Owned Interconnection Facilities.

(c) Monthly Bill. Company shall bill Seller monthly for any costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after the billing date, reimburse Company for such monthly billed operation and maintenance charges.

5. Relocation of Company-Owned Interconnection Facilities.

(a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.

(b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs. To ensure payment by Seller of all costs and expenses incurred by Company (i) in excess of the Total Estimated Interconnection Cost paid in connection with the Company-Owned Interconnection Facilities to be provided and/or constructed by Company described in Section 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of this Attachment G (Company-Owned Interconnection Facilities), and (ii) if applicable, in excess of the Total Estimated Relocation Costs paid in connection with the relocation of the Company-Owned Interconnection Facilities as provided in Section 5 (Relocation of Company-Owned Interconnection Facilities), the Development Period Security shall remain available as provided in Section 14.7 (Company's Rights to Draw from Security Funds) and Company may draw upon the Development Period Security to pay such costs and expenses as needed.

7. Land Restoration.

(a) Definition of "Land". For the purposes of this Attachment G (Company-Owned Interconnection Facilities), "Land" means any portion of the Site and any other real property where any Company-Owned Interconnection Facilities are located.

(b) Removal of Interconnection Facilities. After termination of this Agreement or in the event this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), if requested by Company, Seller shall, at its sole cost and expense, remove (i) the Company-Owned Interconnection Facilities from the Land and (ii) to extent required by the landowner, the Seller-Owned Interconnection Facilities from the Land; provided, however, that, Company may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities from the Land because of operational concerns over the removal of such Interconnection Facilities, in which case Seller shall reimburse Company for its reasonable costs to remove such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities. To the extent Seller is obligated to remove Company-Owned

Interconnection Facilities and/or Seller-Owned Interconnection Facilities, Seller shall complete such removal within one hundred eighty (180) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or as otherwise agreed to by both Parties in writing.

(c) Restoration of the Land. After the termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval)) and removal of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as the case may be, Seller shall, at its sole cost and expense, (i) restore the Land formerly occupied by the Company-Owned Interconnection Facilities to its condition prior to construction of such Company-Owned Interconnection Facilities and, (ii) to the extent required by the landowner, restore the Land formerly occupied by the Seller-Owned Interconnection Facilities. Land restoration shall be completed within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval)), or as otherwise agreed to by both Parties in writing.

8. Transfer of Ownership/Title.

(a) Transfer of Ownership and Title. On the Transfer Date, Seller shall transfer to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent such facilities were designed and constructed by Seller and/or its Contractors together with (i) all applicable manufacturers' or Contractors' warranties which are assignable and (ii) all Land Rights necessary to operate and maintain Company-Owned Interconnection Facilities on and after the Transfer Date. Seller shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of

such warranties no later than thirty (30) Days before the Transfer Date.

(b) No Liens or Encumbrances. Company's title to and ownership of Company-Owned Interconnection Facilities that were designed and constructed by Seller and/or its Contractors shall be free and clear of liens and encumbrances except liens or encumbrances resulting from acts or omissions of Company.

(c) Form of Documents. The transfers to be made to Company pursuant to this Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) shall not require any further payment by Company. The form of the document to be used to convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller shall be substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). The form of the document(s) to be used to assign leases shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Assignment of Lease and Assumption) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities Constructed by Seller.

Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. If applicable, Company shall provide Seller a detailed design submission package containing reasonably sufficient information to apply for Government Approvals within ***[number of days to be confirmed after the IRS is completed]*** Days after Seller completes and provides Company its 60% design drawings pertaining to the Company-Owned Interconnection Facilities for improvements to be constructed by Seller, including but not limited to grading, elevation and interconnection plans and drawings, in order to allow Seller to submit applications for Government Approvals. For Company-Owned Interconnection Facilities to

be constructed by Company, Seller shall provide all Governmental Approvals necessary to the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities or that such Governmental Approvals have otherwise have been closed with the issuing Governmental Authority.

10. Land Rights.

Except as provided in Section 11.3 (Company-Owned Interconnection Facilities) of the Agreement, Seller shall obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. To the extent that Land already owned or controlled by Company is not being used for the Company-Owned Interconnection Facilities, Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to sell electric energy to Company, Seller shall pay for any rents and other payments

due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities.

For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply: (i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, including the commercial terms.

[MATRIX G-1 and G-2 appear on the following pages] [To be inserted as part of IRS Amendment]

ATTACHMENT H
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale"), made as of the ____ day of _____, 20___, by _____ ("Transferor") and _____("Transferee").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Power Purchase Agreement for Renewable Dispatchable Generation between Transferor and Transferee dated _____, 20__ ("PPA") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) attached hereto and incorporated herein), that constitutes what is referred to as the "Company-Owned Interconnection Facilities to be installed by or on behalf of Seller" (or words to similar effect) as set forth in Attachment G (Company-Owned Interconnection Facilities) to the PPA between **[Transferor and Transferee]** and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Schedule H-2 (Description of Intangible Personal Property)attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures)and Schedule H-2 (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawaii.

[Signatures for Bill of Sale and Assignment Appear on the Following Page]

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

_____,
a _____

By_____
Its_____

"Transferor"

_____,
a Hawaii corporation

By_____
Its

By_____
Its

"Transferee"

SCHEDULE H-1

**DESCRIPTION OF
TANGIBLE PERSONAL PROPERTY AND FIXTURES**

(To be provided by Seller before COD)

SCHEDULE H-2

DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

(To be provided by Seller before COD)

LAND COURT SYSTEM | REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Tax Map Key Nos.: Total pages: _____

ATTACHMENT I
ASSIGNMENT OF LEASE AND ASSUMPTION

THIS ASSIGNMENT is made as of this _____ day of _____, 20___, by _____, a _____, whose principal place of business and post office address is _____, hereinafter called the "Assignor," and _____, a Hawaii corporation, whose principal place of business and post office address is _____, Honolulu, HI 968___, hereinafter called the "Assignee",

W I T N E S S E T H:

THAT the Assignor, for and in consideration of the sum of TEN DOLLARS ($10.00) and other good and valuable consideration to it paid by the Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, delegate, transfer, set over and deliver unto the Assignee, and its successors and

assigns, all of Assignor's right, title and interest in and to the lease described in Schedule 1 (the "Lease"); together with all interests thereto appertaining, and together with the personal property located on the land thereby demised.

And all of the estate, right, title and interest of the Assignor in and to the land thereby demised, and all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or used, occupied and enjoyed in connection with said Lease and the land thereby demised.

TO HAVE AND TO HOLD the same unto Assignee and its successors and assigns, for and during the respective unexpired term of said Lease, and as to said personal property (if any) absolutely and forever.

AND, in consideration of the premises, the Assignor does hereby covenant with the Assignee that the Assignor is the lawful owner of the herein described real property; that said Lease is in full force and effect and is not in default; that said real property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid; that the Assignor is the lawful owner of said personal property (if any) and that Assignor's title thereto is free and clear of and from all liens and encumbrances, that the Assignor has good right to sell and assign said real property and personal property (if any) as aforesaid; and, that the Assignor will WARRANT AND DEFEND the same unto the Assignee against the lawful claims and demands of all persons, except as aforesaid.

AND, in consideration of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with said Lessor, that the Assignee will, effective as of and from the date of the execution and delivery of this instrument and during the residue of the term of said Lease, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said Lease, and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which from and after the date hereof are or ought to be observed and performed by the lessee therein named, and will at all times hereafter indemnify and save harmless the Assignor from and against the nonpayment of said rent and the nonobservance or nonperformance of said covenants and conditions and each of them.

The terms "Assignor" and "Assignee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context hereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein. The term "Lease", as and when used herein, means the lease or sublease demising the leasehold estate described in Schedule 1, together with all recorded amendments thereof, if any, whether or not listed in Schedule 1. The term "rent", as and when used herein, means and includes all rents, taxes, assessments and any other sums charged pursuant to the Lease.

This instrument may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument binding on all the Parties hereto, notwithstanding that all the Parties are not signatory to the original or the same counterpart.

[Signatures for Assignment of Lease and Assumption are on following page.]

IN WITNESS WHEREOF, Company and Assignor have executed this instrument as of the date first above written.

_____

By_____
Name:
Title:

By_____
Name:
Title:

"**Assignor**"

_____

By_____
Name:
Title:

By_____
Name:
Title:

"**Assignee**"

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 200__, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal)

Signature: _____
Print Name: _____
Notary Public, State of Hawaii

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____
_____
_____

Doc. Date _____ No. of Pages: ___

Jurisdiction: _____ Circuit
(in which notarial act is performed

_____
Signature of Notary Date of Notarization and Certification Statement

(Official Stamp or Seal)

_____
Printed Name of Notary

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 200__, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal)

Signature: _____
Print Name: _____
Notary Public, State of Hawaii

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____
_____
_____

Doc. Date _____ No. of Pages: ___

Jurisdiction: _____ Circuit
(in which notarial act is performed

_____ (Official Stamp or Seal)
Signature of Notary Date of Notarization and Certification Statement

_____
Printed Name of Notary

SCHEDULE 1

- Description of Lease
- To Be Attached

ATTACHMENT J
ENERGY PURCHASES BY COMPANY

1. Contract Price.

(a) Initial Term.

Commencing on the Commercial Operations Date and thereafter for the balance of the Initial Term, the rates set forth in Table J-1 (Contract Rate for Each Contract Year) below corresponding to the Compensable Curtailed Energy Threshold that the Company has elected for the applicable Contract Year are the rates at which Company shall, subject to the provisions of this Agreement, (i) accept and pay for electric energy and (ii) pay for Compensable Curtailed Energy that exceeds the applicable Compensable Curtailed Energy Threshold (expressed as a percentage of the Annual Contract Energy) for such Contract Year; provided, however, that in any Contract Year, if the sum of the Actual Output and the Compensable Curtailed Energy exceeds 110% (the "Threshold") of the Annual Contract Energy for such Contract Year (as determined pursuant to Section 2.2 (Payment for Electric Energy) of the Agreement), the price paid for the sum of the electric energy and Compensable Curtailed Energy in excess of such Threshold shall be equal to 50% of the otherwise applicable rate set forth in Table J-1 (Contract Rate for Each Contract Year).

(b) Banked Curtailed Energy Term.

During the Banked Curtailed Energy Term (if any), Company shall, subject to the provisions of this Agreement, accept and pay for electric energy at the rate of $55/MWh. During the Banked Curtailed Energy Term (if any), Company shall not pay for Compensable Curtailed Energy.

(c) Extended Term.

During the Extended Term (if any), Company shall, subject to the provisions of this Agreement, accept and pay for electric energy at the rate agreed to by the

Parties pursuant to Section 12.1 (Term); provided, however, that in any Contract Year during the Extended Term, if the Actual Output for such Contract Year is in excess of 120% of the Annual Contract Energy for such Contract Year (as determined pursuant to Section 2.2 (Payment for Electric Energy) of the Agreement), the price paid for electric energy in excess of 120% of such Annual Contract Energy shall be 75% of the otherwise applicable Contract Price for such electric energy. During the Extended Term (if any), Company shall not pay for Compensable Curtailed Energy.

2. Test Energy. Company shall use reasonable efforts to accept test energy that is delivered as part of the normal testing for generators (such as energy delivered to Company during the Control System Acceptance Test but not during the Acceptance Test), provided Seller shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. Company shall compensate Seller for test energy as provided in Section 2.5 (Payments Prior to Commercial Operations Date) of the Agreement.

3. Tax Credit Pass Through.

(a) Because the Hawaii tax treatment that will apply to renewable energy technologies on the Commercial Operations Date is uncertain, Table J-1 (Contract Rate for Each Contract Year) sets forth the Contract Rate independently of Seller's eligibility for any Hawaii Renewable Energy Tax Credit. The intent of this Section 3 (Tax Credit Pass Through) is to rebate to Company a portion of the Hawaii Renewable Energy Tax Credit which Seller is eligible for with respect to the Facility and receives during the Term, as more fully set forth in this Section 3 (Tax Credit Pass Through).

(b) If, as of the Commercial Operations Date, or, if not available at the Commercial Operations Date, at any subsequent time during the Term, a Refundable Tax Credit is reasonably available to Seller or its Affiliates with respect to the Facility, the following shall apply:

(i) Seller or an Affiliate of Seller will apply for such Refundable Tax Credit, it being understood

and agreed that if Seller applies for a Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Refundable Tax Credit;

(ii) Seller shall make a payment to Company in an amount equal to ninety percent (90%) of the Net Amount of such Refundable Tax Credit within thirty (30) days after funds are received from the Hawaii Department of Taxation.

(iii) Upon the application for the Refundable Tax Credit, an officer of Seller will deliver to Company a notice (A) describing Seller's efforts to apply for and obtain the Refundable Tax Credit, (B) confirming that Seller has applied for the Refundable Tax Credit, and (C) certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawaii Refundable Tax Credits as provided in this Attachment J (Energy Purchases by Company).

(iv) Upon receipt of any funds from the Hawaii Department of Taxation, an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company certifying the amount of funds received and the payment that will be made to Company. Once Seller is satisfied that the applicable statute of limitations has expired for the Hawaii Department of Taxation to reduce or reject Seller's claim for the Refundable Tax Credit regarding the application submitted by Seller, if the Hawaii Department of Taxation has not theretofore filed a notice, claim or other proceeding or taken other action to reduce or reject Seller's claim, Seller shall promptly deliver a notice to the Company advising that: (i) the applicable statute of limitations has expired for the application; and (ii) that the Hawaii Department of Taxation has not taken action to reduce or reject Seller’s claim for the Refundable Tax Credit as set forth in the application.

(v) If Seller's claim for Hawaii Refundable Tax Credits is reduced or rejected by the Hawaii Department of Taxation at any time after Seller has made the payments described above, Seller shall provide Company with written notice that Seller's claim has been reduced or rejected. Within sixty (60) Days of Company's receipt of Seller's notice, Company will refund to Seller its pro rata share of any amounts that Seller or its investors are required to repay to the Hawaii Department of Taxation as a result of such reduction or rejection, provided, however that Company's requirement to refund such pro rata share shall terminate if the Hawaii Department of Taxation has not taken action to reduce or reject Seller's claim (whether by commencing an audit, delivering a notice to Seller or Company, or otherwise) during the applicable statute of limitations for the Hawaii Department of Taxation to reduce or reject Seller's claim for Hawaii Refundable Tax Credits (without, however, giving effect to any extension of the statute of limitations that is due to the substantial omission of an item in its application for the Refundable Tax Credit).

(c) If, as of the Commercial Operations Date, a Refundable Tax Credit is unavailable, but a Non-Refundable Tax Credit is reasonably available to Seller or its Affiliates with respect to the Facility, or at any subsequent time during the Term, a Non-Refundable Tax Credit becomes reasonably available to Seller or its Affiliates with respect to the Facility, notwithstanding that Seller may have applied for a Refundable Tax Credit, and in either case Seller can utilize, or enable its investors to utilize, such Non-Refundable Tax Credits without changing its organization, structure, governance or financing or its reasonable commercial expectations and can also obtain all necessary consents and approvals, the following shall apply:

(i) Seller or an Affiliate of Seller will apply for any available Non-Refundable Tax Credit, it being understood and agreed that if Seller applies for a

Non-Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Non-Refundable Tax Credit;

(ii) Seller shall make a payment to Company in an amount equal to ninety percent (90%) of the Net Amount of such Non-Refundable Tax Credit that Seller can utilize in the tax year in question within sixty (60) days after the filing date of the applicable tax return for the tax year in which such Non-Refundable Tax Credit is utilized.

(iii) Upon the filing of the applicable tax return(s), an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company (A) describing Seller's efforts to apply for and obtain the Non-Refundable Tax Credit, (B) confirming that Seller has applied for the Non-Refundable Tax Credit, and (C) certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawaii Non-Refundable Tax Credits as provided in this Attachment J (Energy Purchases by Company). Once Seller is satisfied that the applicable statute of limitations has expired for the Hawaii Department of Taxation to reduce or reject Seller’s claim for the Non-Refundable Tax Credit regarding the application submitted by Seller, if the Hawaii Department of Taxation has not theretofore filed a notice, claim or other proceeding or taken other action to reduce or reject Seller's claim, Seller shall promptly deliver a notice to the Company advising that: (i) the applicable statute of limitations has expired for the application; and (ii) that the Hawaii Department of Taxation has not taken action to reduce or reject Seller’s claim for the Non-Refundable Tax Credit as set forth in the application.

(iv) If Seller's claim for Hawaii Non-Refundable Tax Credits is reduced or rejected by the Hawaii Department of Taxation at any time after Seller

has made the payment described above, Seller shall provide Company with written notice that Seller's claim has been reduced or rejected. Within sixty (60) Days of Company's receipt of Seller's notice, Company will refund to Seller its pro rata share of any amounts that Seller or its investors are required to repay to the Hawaii Department of Taxation as a result of such reduction or rejection, provided, however, that Company's requirement to refund such pro rata share shall terminate if the Hawaii Department of Taxation has not taken action to reduce or reject Seller's claim (whether by commencing an audit, delivering a notice to Seller or Company, or otherwise) during the applicable statute of limitations for the Hawaii Department of Taxation to reduce or reject Seller's claim for Hawaii Non-Refundable Tax Credits (without, however, giving effect to any extension of the statute of limitations that is due to the substantial omission of an item in its application for the Non-Refundable Tax Credit).

(d) Seller shall use commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawaii Refundable and/or Non-Refundable Tax Credits as provided in this Attachment J (Energy Purchases by Company). If Seller fails to apply for and to use commercially reasonable efforts to obtain such Hawaii Renewable Energy Tax Credits as described above, then Company shall be entitled to liquidated damages in an amount equal to Four Million One Hundred and Forty Thousand Dollars ($4,140,000). Seller and Company agree and acknowledge that (i) the failure to use commercially reasonable efforts as provided in the preceding sentence would result in damages to Company in the form of reduction or loss of a benefit for Company's customers that would be difficult or impossible to calculate with certainty and (ii) Four Million One Hundred and Forty Thousand Dollars ($4,140,000) is an appropriate approximation of such damages. Company's right to collect liquidated damages as described in this Section 3(d) shall constitute Company's exclusive remedy and fulfillment of all Seller's liability with respect to

its obligations to maximize the amount of Hawaii Renewable Energy Tax Credits. Such liquidated damages shall be provided to Company in the form of an energy price credit against any amounts due by Company to Seller for energy purchases under this Agreement.

(e) If, prior to the application in Section 3(b) or filing in Section 3(c) of this Attachment J (Energy Purchases by Company), as applicable, a change in tax law occurs to introduce a Hawaii Production Tax Credit, Seller will use commercially reasonable efforts to determine which tax strategy is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits. If, based on such efforts, Seller determines that either Section 3(b) or Section 3(c) would result in a larger Net Amount of usable tax credits, an officer of Seller will deliver a notice to Company certifying that Seller has reasonably determined that the selected form of Hawaii Investment Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits and explaining the rationale for such determination. If, however, Seller reasonably determines that such Hawaii Production Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits and that it reasonably can obtain such Hawaii Production Tax Credit without changing its organization, structure, governance or financing or its reasonable commercial expectations and can also obtain all necessary consents and approvals, Seller shall promptly notify Company in writing and explain the rationale for such determination, and Seller and Company shall negotiate in good faith and use commercially reasonable efforts to agree upon lump sum payments and/or credits or adjustments to the Contract Price and other terms of this Agreement as may be required to best benefit Company's customers with 90% of the Net Amount of such tax benefits and preserve the intended economic benefits to the Parties arising from this Agreement.

(f) Any dispute arising under this Attachment J (Energy Purchases by Company) shall constitute a "Dispute" within the meaning of Article 28 (Dispute Resolution) of

this Agreement and shall be resolved as provided in said Article 28 (Dispute Resolution) except that, in lieu of the "experience, knowledge or expertise" specified in Section 28.2(D)(1) (Single Arbitrator), the Parties shall attempt to agree on a single arbitrator who holds at least a bachelor's degree in accounting with substantial experience, knowledge or expertise with respect to project finance for utility-scale electric generating facilities and with respect to Hawaii Renewable Energy Tax Credits.

(g) For purposes of this Attachment J, an Affiliate of Seller is a company that directly or indirectly controls, is controlled by, or is under common control with Seller, and Seller may perform its obligations under this Attachment J directly or through one or more Affiliates.

Table J-1
CONTRACT RATE FOR EACH CONTRACT YEAR

The contract rates are set forth in the table below for each level of the Compensable Curtailed Energy Threshold that Company may elect for each Contract Year during the Initial Term pursuant to Section 2.6(B) (Payment for Compensable Curtailed Energy). The base Contract Price is $109.75/MWh and adjusts upward based on the following adjusted price formula: ($109.75/MWh)/((100%-X)/100), where X is the elected Compensable Curtailed Energy Threshold, provided that X may not exceed 5%. For example, if Company elects a Compensable Curtailed Energy Threshold of 5% for a given Contract Year, Seller will be paid for any Compensable Curtailed Energy that exceeds 5% of the Annual Contract Energy for that Contract Year ("Compensable Curtailed Energy Threshold") at a rate of $115.53/MWh, but will not be paid for any Compensable Curtailed Energy up to the 5% threshold.

COMPENSABLE CURTAILED ENERGY THRESHOLD	CONTRACT PRICE ($/MWh)
0%	109.75
0.5%	110.30
1%	110.86
1.5%	111.42
2%	111.99
2.5%	112.56
3%	113.14
3.5%	113.73
4%	114.32
4.5%	114.92
5%	115.53

Table J-2
ILLUSTRATION OF COMPENSABLE CURTAILED ENERGY THRESHOLD ELECTION PROCESS FOR EACH CONTRACT YEAR OF THE INITIAL TERM

If COD was September 2022

12-month period	Contract Year	Compensable Curtailed Energy Threshold (%)	Note
Sept 2022 – Aug 2023	1	X_1	June 2021, Company makes election for Contract Years 1 - 5 (X_1, X_2, X_3, X_4, X_5)
Sept 2023 – Aug 2024	2	X_2	
Sept 2024 – Aug 2025	3	X_3	
Sept 2025 – Aug 2026	4	X_4	June 2026, Company makes election for Contract Year 6(Y)
Sept 2026 – Aug 2027	5	X_5	June 2027, Company makes election for Contract Year 7(Z)
Sept 2027 – Aug 2028	6	Y	. . .
Sept 2028 – Aug 2029	7	Z	
Sept 2029 – Aug 2030	8	. . .	
Sept 2030 – Aug 2031	9		
Sept 2031 – Aug 2032	10		
. . .	. . .		

If COD was February 2022

12-month period	Contract Year	Compensable Curtailed Energy Threshold (%)	Note
Feb 2022 – Jan 2023	1	X_1	June 2021, Company makes election for Contract Years 1 – 5 (X_1, X_2, X_3, X_4, X_5)
Feb 2023 – Jan 2024	2	X_2	
Feb 2024 – Jan 2025	3	X_3	
Feb 2025 – Jan 2026	4	X_4	
Feb 2026 – Jan 2027	5	X_5	June 2026, Company makes election for Contract Year 6 (Y)
Feb 2027 – Jan 2028	6	Y	June 2027, Company makes election for Contract Year 7 (Z)
Feb 2028 – Jan 2029	7	Z	. . .
Feb 2029 – Jan 2030	8	. . .	
Feb 2030 – Jan 2031	9		
Feb 2031 – Jan 2032	10		
. . .	. . .		

[ATTACHMENT K WILL BE REVISED TO REFLEFCT THE RESULTS OF THE IRS AND DEVELOPED CONSTRUCTION SCHEDULE]

ATTACHMENT K
GUARANTEED PROJECT MILESTONES

[Note: Dates are subject to revision after IRS is completed except where specified as "no earlier than" or "no later than".]

Guaranteed Project Milestone Date	**Description of Each Guaranteed Project Milestone**
_____ ("Procurement Payment Milestone Date")	Procurement Payment Milestone: Seller shall make payment to Company of the amount required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities). [Second Payment Milestone: Seller shall make payment to Company of the amount required under Section 3(b)(iii) (Company Substation Construction Portion of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities.] [Third Payment Milestone: Seller shall make payment to Company of the amount required under Section 3(b)(iv) (Balance of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities).]
_____ ("Permit Application Filing Milestone Date")	Permit Application Filing Milestone: Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the construction of the Facility and Company-Owned Interconnection Facilities:

	- CUP Major - If necessary, incidental take permit under Section 10(a)(1)(B) and a final habitat conservation plan pursuant to Section 10(a)(2)(A) of the Endangered Species Act - If necessary, incidental take license as part of the habitat conservation plan under HRS § 195D-4
_____ ("Construction Financing Milestone Date")	Construction Financing Milestone: Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility or (ii) the financial capability to construct the Facility ("Construction Financing Milestone").
_____ ("Construction Start Milestone Date")	Construction Start Date Milestone: Provide Company with documentation reasonably satisfactory to Company evidencing that grading of the Site has commenced ("Construction Start Date Milestone").
December 10, 2022	Guaranteed Commercial Operations Date

[ATTACHMENT L WILL BE REVISED TO REFLECT THE RESULTS OF THE IRS AND DEVELOPED CONSTRUCTION SCHEDULE]

ATTACHMENT L
REPORTING MILESTONES

[Note: Dates are subject to revision after the IRS is completed]

Reporting Milestone Date	**Description of Each Reporting Milestone**
_____	Permit Application Filing Date for the following Governmental Approvals required for the construction of the Facility: - CUP Major - If necessary, incidental take permit under Section 10(a)(1)(B) and a final habitat conservation plan pursuant to Section 10(a)(2)(A) of the Endangered Species Act - If necessary, incidental take license as part of the habitat conservation plan under HRS § 195D-4
_____	Seller shall provide Company with copies of executed purchase orders/contracts or term sheets for purchase and delivery of the following major Facility components: wind turbine generators and the step-up main power transformer(s).
_____	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
_____	The turbines shall have been mechanically installed at the Site.
_____	The step-up main power transformer(s) shall have been installed at the Site.

_____ Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.

ATTACHMENT M
FORM OF IRREVOCABLE LETTER OF CREDIT

[Bank Letterhead]

[Date]

Beneficiary: [Hawaiian Electric Company]
[Address]

[Bank's Name]
[Bank's Address]

Re: **[Irrevocable Standby Letter of Credit Number]**

Ladies and Gentlemen:

We hereby establish, in your favor, our standby Letter of Credit Number _____ (this "Letter of Credit") for the account of **[Applicant's Name]** and **[Applicant's Address]** in the initial amount of $_____ **[dollar value]** and authorize you, Hawaiian Electric Company ("Beneficiary"), to draw at sight on **[Bank's Name]**.

Subject to the terms and conditions hereof, this Letter of Credit secures **[Project Entity Name]**'s certain obligations to Beneficiary under the Power Purchase Agreement dated as of _____ between **[Project Entity Name]** and Beneficiary.

This Letter of Credit is issued with respect to the following obligations:_____.

This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request.

Partial draws of this Letter of Credit are permitted. This Letter of Credit is not transferable. Drafts on us at sight shall be accompanied by a Beneficiary's signed statement signed by a representative of Beneficiary substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, and [(ii) the amount of the draft

accompanying this certification is due and owing to Hawaiian Electric Company under the terms of the Power Purchase Agreement dated as of _____, **between** _____, **and Hawaiian Electric Company**] or [(ii) the Letter of Credit will expire in less than thirty (30) days, it has not been replaced or extended and collateral is still required under Section ____ of the Power Purchase Agreement[1]].

Such drafts must bear the clause "Drawn under **[Bank's Name and Letter of Credit Number _____ and date of Letter of Credit.]"**

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Bank Fax Number]** or other such number as specified from time to time by the bank, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[Bank Phone Number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

This letter of credit shall expire one year from the date hereof. Notwithstanding the foregoing, however, this letter of credit shall be automatically extended (without amendment of any other term and without the need for any action on the part of the undersigned or Beneficiary) for one year from the initial expiration date and each future expiration date unless we notify you in writing at least thirty (30) days prior to any such expiration date that this letter of credit will not be so extended. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Director, Renewable Acquisition Division
Hawaiian Electric Company, Inc.
220 South King Street, 21st Floor
Honolulu, Hawaii 96813

and to

SVP & Chief Financial Officer

[1] For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Power Purchase Agreement.

Hawaiian Electric Company, Inc.
900 Richards Street, 4th Floor
Honolulu, Hawaii 96813

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of Hawaii are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

[Bank's Name]:

By:_____
[Authorized Signature]

[THIS ATTACHMENT WILL NEED TO BE MODIFIFED BASED ON THE TYPE AND DESIGN OF THE FACILITY]

ATTACHMENT N
ACCEPTANCE TEST GENERAL CRITERIA

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test may include the following:

1. Interconnection:

   (a) Based on manufacturer's specification, test the local operation of the Facility's 138 kV breakers, which connect the Facility to Company System - must open and close locally using the local controls. Test and ensure that the status shown on the Energy Management System ("EMS") is the same as the actual physical status in the field.

   (b) Remotely test the operation of the Facility's 138 kV breakers which connect the Facility to Company System - must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.

   (c) Relay test engineers to connect equipment and simulate certain inputs to test and ensure that the protection schemes such as any under/over frequency and under/over voltage protection or the Direct Transfer Trip operate as designed. (For example, a fault condition may be simulated to confirm that the breaker opens to sufficiently clear the fault. Additional scenarios may be tested and would be outlined in the final test criteria and procedures.) Seller to also test the synchronizing mechanisms to which the Facility would be synchronizing and closing into the Company System to ensure correct operation. Other relaying also to be tested as specified in the protection review of the IRS and on the single line diagram, Attachment E (Single-Line Diagram) for the Facility.

(d) All 138 kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).

(e) Switching Station inspections - The Switching Station may be inspected to test and ensure that the equipment that Seller has installed is installed and operating correctly based upon agreed-to design. Wiring may be field verified on a sample basis against the wiring diagrams to ensure that the installed equipment is wired properly. The grounding mat at the Switching Station may be tested to make sure there is adequate grounding of equipment.

(f) Communication testing - Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed by Company and Seller to reflect installed systems and communication paths to tie the Facility to Company's communications system.

(g) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's 138 kV breakers open as they are designed to open. (Back up relay testing)

2. Witness of Facility protection scheme testing:

(a) Company may have someone on-site when Seller performs any testing dealing with Seller's protection schemes such as any under/over voltage or under/over frequency protection schemes to ensure they meet the performance requirements of this Agreement and the IRS.

3. Telephone Communication:

(a) Test to confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.

(b) Test to confirm that the Facility operators can sufficiently reach Company System Operator.

ATTACHMENT O
CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Control System Acceptance Test ("CSAT") in accordance with Good Engineering and Operating Practices and with the terms of this Agreement.

The Control System Acceptance Test is comprised of two parts, a set of onsite (at Facility) specific tests and a monitoring performance test. These tests may include the following:

On-site Tests:

1. SCADA Test to verify the status and analog telemetry, and the remote controls between the Company's EMS and the Facility are working properly end-to-end.

2. Curtailment Test to verify the Facility curtailment controls and the Curtailment Control Interface with the Company's EMS are working properly. Test is generally conducted by setting different curtailment setpoints and observing the proper curtailment and uncurtailment of the Facility's real power output.

3. Voltage Regulation Control Test to verify the Facility can properly perform automatic voltage regulation as defined in this Agreement. Test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint.

4. Frequency Response Control Test to verify the Facility provides a frequency droop response as defined in this Agreement. Test is generally conducted by making adjustments of the frequency reference setting and verifying by observation that the Facility responds per the droop and deadband settings.

5. Loss-of-Communication Test to verify the Facility will properly shutdown upon the failure of the direct-transfer-

trip communication system. Test is generally conducted by simulating a communications failure and observing the proper shutdown of the Facility.

Monitoring Test:

a) The monitoring test requires the Facility to operate as it would in normal operations.

b) To ensure useful and valid test data is collected, the monitoring test shall end when one of the following criteria is met:

   i. The Facility's power production is greater than 85% of its Allowed Capacity, (i.e., 39.78 MW, which is 85% of the Allowed Capacity of 46.8 MW), for at least four (4) hours in any continuous 24-hour Monitoring Test period.

   ii. The recorded wind speed at the Facility is above 9 m/s for at least eight (8) hours in any continuous 48-hour Monitoring Test period.

   iii. 14 continuous days from the start of the Monitoring Test.

c) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the test.

d) The performance of the Facility is evaluated for this evaluation period, e.g., examining voltage regulation, frequency response, and ramp rate performance to verify the performance meets the requirements of this Agreement. The Facility is considered to have complied with a requirement if the Facility was compliant with the requirement at least 99.0% of the time during the evaluation period and the Facility does not grossly violate the requirement when the Facility was in violation. The Parties understand and agree that these compliance conditions are limited only to determining whether the Facility successfully completes the Monitoring Test and are not for use in determining compliance during Commercial Operations, shall not be considered a waiver of any of the performance standards required in this Agreement, all of which are hereby reserved, and shall not alleviate Seller from any of its obligations under this Agreement.

ATTACHMENT P
SALE OF FACILITY BY SELLER

1. Company's Rights as to Proposed Sale of Facility.

(a) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Seller desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, other than through an "Exempt Sale" (as defined below) (such sale, transfer or disposal is sometimes called a "Sale"):

(i) Seller shall first offer to sell such interest to Company by providing Company with written notice of the same (the "Offer Notice"), which notice shall identify the proposed minimum purchase price for the Facility (including a description of any consideration other than cash that will be accepted) (the "Minimum Price") and any other material terms of the intended transaction, and Company may, but shall not be obligated to, purchase such interest at a price equal or greater than the Minimum Price and upon the other material terms and conditions specified in the Offer Notice, and in accordance with the terms and conditions of this Attachment P ("Right of First Negotiation"). The date on which Seller sends the Offer Notice is referred to hereinafter as the "Notice Date."

(ii) If Company desires to purchase such interest, Company shall indicate so by delivering to Seller a binding, irrevocable written offer to purchase the Facility at a price equal to or greater than the Minimum Price set forth in the Offer Notice and on the terms and conditions specified in the Offer Notice within fourteen (14) Days of the Notice Date (an "Acceptance Notice"). In the event Company timely delivers an Acceptance Notice, Seller shall sell and transfer to Company the Facility substantially on the terms and conditions contained in the Offer Notice and in accordance with the definitive documentation to be entered into between Seller and Company.

(iii) In the event that (A) Company fails to timely deliver an Acceptance Notice, or (B) the Parties are not able to execute a binding written commitment for the purchase and sale of the interest within forty-five (45) Days of the Company's notice, then unless otherwise agreed to in writing by the Parties, Seller may for a period of two hundred seventy (270) days following the Notice Date, commence solicitation of offers and negotiations from and with other parties for the Sale of such interest on terms and conditions that in the aggregate are not less favorable to Seller in all material respects than those specified in the Offer Notice. If the Facility is not transferred to a purchaser or purchasers for any reason within the two hundred seventy (270) day period following the Notice Date, the Facility may only be transferred by again complying with the procedures set forth in this Section 1(a) of Attachment P; provided, however, if Seller and purchaser have entered into definitive agreements for the sale of the Facility that was reasonably expected to close within such two hundred seventy (270) day period and such agreement(s) remain in full force and effect between Seller and such purchaser and are subject to conditions precedent that are expected to be satisfied within a reasonable period, the two hundred seventy (270) day period shall be extended as to such agreement(s) and such purchaser for up to ninety (90) additional days or, if sooner, until such date that such agreement(s) have been terminated, cancelled or otherwise become no longer in full force and effect.

(iv) After expiration of the Right of First Negotiation, Company will not be precluded from providing offers or proposals to Seller along with other prospective purchasers in accordance with any offer or bid procedures established by Seller in its discretion.

(b) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation and, Seller and Company conclude a purchase and sale agreement, such agreement shall contain

commercially reasonable terms and conditions, and shall be subject to PUC approval as provided in Section 2 of this Attachment P.

(c) Exempt Sales. Exempt Sales shall not trigger a Right of First Negotiation and shall not require the consent of Company. As used herein, "Exempt Sales" means: (i) a change in ownership of the Facility or equity interests in Seller resulting from the direct or indirect transfer by or of Seller in connection with financing or refinancing of the Facility ("Financing Purposes"), including, without limitation, any exercise of rights or remedies (including foreclosure) with respect to Seller's right, title, or interest in the Facility or equity interests in Seller undertaken by any financing party in accordance with applicable financing documents, and including, without limitation, (x) a sale and leaseback of the Facility, (y) an inverted lease, (z) a sale or transfer of equity in Seller to facilitate a tax credit financing (including any partnership "flip" transaction), (ii) a disposition of equipment in the ordinary course of operating and maintaining the Facility, and/or (iii) a sale or transfer of any interest in Seller or the Facility to one or more companies directly or indirectly controlling, controlled by or under common control with Seller ("Affiliates").

(d) Change in Ownership of Seller. The Right of First Negotiation shall be triggered by a transfer or sale of an ownership interest in Seller (whether in a single transaction or a series of related or unrelated transactions) following which Eurus Energy America LLC or an entity controlled by Eurus Energy America LLC is no longer a direct or indirect owner of at least fifty-one percent (51%) of the equity interest or voting control of Seller, other than for Financing Purposes. For the avoidance of doubt, any transaction that results in fifty-one percent (51%) or more of the equity interest or voting control of Seller being owned directly or indirectly by Eurus Energy America LLC shall be considered an Exempt Sale and shall not be subject to the right of First Negotiation or require the consent of Company.

(e) Seller's Transfer of Facility. The provisions of this Section 1(e) (Seller's Transfer of Facility) shall apply

(i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company, at any time from and after the Commercial Operations Date, does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this Attachment P. In such circumstances, Seller shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to transfer or sell the Facility to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement; provided, however, Company consent shall not be required for any sale or transfer of the Facility or any interest in the Facility to any entity (or a direct or indirect subsidiary of any entity) that(x) has a tangible net worth of $100,000,000 or more or a credit rating of "BBB-" from S&P or Fitch or "Baa3" from Moody's, or better; (y) has experience in the ownership of power generation facilities; and (z) has (or has contracted for operation and maintenance services with any entity or entities that have) at least five (5) years of experience in the operation of power generation facilities similar to the Facility. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

2. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties for a sale to Company is subject to approval by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

(a) Company shall prepare an application for (at its sole cost) and submit the purchase and sale agreement to the PUC for approval no later than ten (10) Days after execution by both Parties. Seller will provide reasonable cooperation to expedite obtaining an Approval Order (as such term is defined below) from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. In order to constitute an "Approval Order" from the PUC under this Section 2 of this Attachment P, the

order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.

(b) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing. The term "Final Non-appealable Order from the PUC" means an Approval Order from the PUC (i) that is considered to be final by Company, in its sole discretion, because Company is satisfied that no party to the subject PUC proceeding intends to seek a change in such PUC Approval Order through motion or appeal, or (ii) that is not subject to appeal to any Circuit Court of the State of Hawaii, Intermediate Court of Appeals of the State of Hawaii, or the Supreme Court of the State of Hawaii, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (iii) that was affirmed on appeal to any Circuit Court of the State of Hawaii, Intermediate Court of Appeals of the State of Hawaii, or the Supreme Court of the State of Hawaii, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.

(c) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 2(b) of this Attachment P, then Seller may give written notice to Company that it does not wish to proceed further with a sale of the Facility to Company, in which case (i) Seller shall be permitted to sell the Facility to any person or entity notwithstanding any other provision herein to the contrary, and (ii) Company shall have been deemed to have waived its Right of First Negotiation for the four (4) year period following the date on which Seller gives written notice to Company

that it does not wish to proceed further with a sale of the Facility to Company.

(d) If the Final Non-appealable Order from the PUC does not satisfy the conditions for an Approval Order set forth in Section 2(a) of this Attachment P (Sale of Facility by Seller), Seller may (i) opt to renegotiate and cooperate with Company to submit a revised purchase and sale agreement to the PUC, or (ii) give written notice to Company that it does not wish to proceed further with a sale of the Facility to Company, in which case (x) Seller shall be permitted to sell the Facility to any person of entity notwithstanding any other provision herein to the contrary, and (y) Company shall have been deemed to have waived its Right of First Negotiation for the four (4) year period following the date on which Seller gives written notice to Company that it does not wish to proceed further with a sale of the Facility to Company.

(e) Unless otherwise agreed by the Parties, the purchase of the Facility by Company shall close within thirty (30) Days of the date the Approval Order becomes a Final Non-appealable Order from the PUC as provided in Section 2(b) of this Attachment P (Sale of Facility by Seller).

3. Make Whole Amount. For purposes of Section 24.5 (Consolidation and Capital Lease), the "Make Whole Amount" shall be equal to the sum of the following: (a) Seller's book value (including depreciation on a twenty-five (25) year straight line basis) of all actual verifiable costs of studies, design, engineering, and construction of the Facility and all Interconnection Facilities (including any Company-Owned Interconnection Facilities paid for by Seller), including cancellation charges and other costs of unwinding construction and demobilization if the determination is made prior to the Commercial Operation Date, (b) Seller's book value of all actual verifiable costs and expenses of acquiring real estate rights for the Facility and Interconnection Facilities, (c) Seller's book value of all actual verifiable costs and expenses incurred in obtaining Governmental Approvals, (d) Seller's book value of all actual verifiable costs of financing the Facility and the Interconnection Facility, including the fees and expenses of bankers, consultants and counsel, and any discounts or

premiums paid in connection with any financing, (e) any actual verifiable costs of repaying any financing in connection with a sale, including prepayment penalties or premiums, make whole payments, minimum interest payments, breakage fees, payments on account of taxes, duties and other costs, and other costs of unwinding swaps or other hedges, (f) other breakage, make whole or indemnity payments arising as the result of Company's purchase of the Facility, (g) tax costs, including recapture of federal or state tax credits and payment of transfer taxes, and (h) interest on the foregoing amounts at an annual rate equal to the Base Rate plus two percent (2%) as in effect from time to time from the date incurred through the date of payment, with all such costs being demonstrated by Seller with support and verified by Company. The items described in clauses (e), (f) and (g) (and clause (h) to the extent applicable to clauses (e), (f) and/or (g)) are referred to as the "Financial Termination Costs".

4. Company's Option to Purchase Pursuant to Section 12.10(D). Once Company has given Seller notice of Company's preliminary interest in purchasing the Facility pursuant to Section 12.10(D) (Company's Purchase Option During Banked Curtailed Energy Term), Seller and Company shall, for a period not to exceed three (3) months, negotiate in good faith the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. Any such agreement shall be subject to PUC approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller). If, at the conclusion of the aforesaid three (3) month period (as the same may be extended as aforesaid), the Parties have not reached an agreement on the sale of the Facility to Company because the Parties cannot agree on the fair market value of the Facility, the fair market value of the Facility shall be determined in accordance with Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller). The price paid by Company for the Facility at closing shall be equal to the fair market value of the Facility less the net present value of the then remaining Banked Curtailed Energy, the net present value of which shall be determined using the price set forth in Section 1(b)

(Banked Curtailed Energy Term) of Attachment J (Energy Purchase by Company) to the Agreement.

5. Procedure to Determine Fair Market Value of the Facility.

(a) If, at the conclusion of the three (3) month period provided in Section 4 (Company's Option to Purchase Pursuant to Section 12.10(D)), the Parties have not reached an agreement on the sale of the Facility to Company because the Parties cannot agree on the fair market value of the Facility, or if the Parties have agreed to effectuate a sale of the Facility pursuant to Sections 24.5(A) (Consolidation) or Section 24.5(B) (Capital Lease) and are unable to agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising power generation assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in form reasonably acceptable to Seller, Seller shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and costs of both appraisers, subject to Section 5(c) of this Attachment P (Sale of Facility by Seller). Each of Company and Seller shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Seller to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.

(b) Company and Seller shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.

(c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by DPR upon application of either Party. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka "baseball" arbitration), and (ii) to complete his or her work within one month following his or her retention. If the third appraiser selects the appraisal originally generated by Seller's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Seller shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Seller's original appraiser.

6. Purchase and Sale Agreement. The purchase and sale agreement concluded by the Parties pursuant to Section 4 (Company's Option to Purchase Pursuant to Section 12.10(D)), Section 24.5(A) (Consolidation), or Section 24.5(B) (Capital Lease) shall contain, among other provisions, the following, unless otherwise agreed to by the Parties:

(a) Seller shall, as of the closing of the sale, convey good and marketable title to the Facility, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except (i) as approved by Company in writing, (ii) non-monetary liens, encumbrances or rights which do not have a material adverse effect on the operation of the Facility, and (iii) by or arising under or through Company;

(b) Subject to any consent requirements and other restrictions therein, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;

(c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey good and marketable title to the Facility free from all liens, claims, encumbrances, or rights of others, except as permitted under subsection (a);

(d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;

(e) [RESERVED]

(f) Except as provided in subsection (g), Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;

(g) Company shall assume and indemnify Seller from all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;

(h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company;

(i) Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;

(j) Seller shall warrant that, except as disclosed to and approved by Company in writing, the Facility has been operated by Seller in conformity with all Laws;

(k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 5 (Procedure to Determine Fair Market Value of the Facility); and

(l) Seller shall maintain the Facility in its existing condition, normal wear and tear excepted, between appraisal and the closing date.

ATTACHMENT Q
[RESERVED]

ATTACHMENT R
REQUIRED INSURANCE

(See also Article 18 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable Hawaii state or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident -	$1,000,000 each Accident
Bodily Injury by Disease -	$1,000,000 each Employee
Bodily Injury by Disease -	$1,000,000 policy limit

2. General Liability Insurance.

(i) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

(a) Premises, operations, and mobile equipment,

(b) Products and completed operations,

(c) Claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is available at a commercially reasonable cost, provided, however, such coverage may be provided under a stand-alone policy, and the limits of liability for such coverage, however provided, shall be $5,000,000 per occurrence and annually in the aggregate.

(d) Contractual liability under the Agreement,

(e) Broad form property damage (including completed operations),

(f) Explosion, collapse and underground hazard, and

(g) Personal injury liability, and

(h) Failure to supply liability, and the limits of liability for such coverage shall be $3,000,000 per occurrence.

(ii) Limits of liability for such coverage, which may be provided with umbrella and/or excess insurance coverage, shall be:

Bodily Injury & Property Damage	$10,000,000 combined single limit per occurrence and;
	$20,000,000 aggregate annually

(iii) If coverage for claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions or hazardous materials is provided under a separate policy, the limits of liability for such coverage shall be $5,000,000 per occurrence and annually in the aggregate.

(iv) If coverage is written on a claims-made basis, the Seller warrants that any retroactive date applicable to coverage under the policy precedes the Execution Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of Term.

3. Automobile Liability Insurance. This insurance shall include coverage for owned, leased and non-owned automobiles. The minimum limits of liability shall be a combined single limit for bodily injury and property damage of Two Million Dollars ($2,000,000) for each occurrence and in the aggregate annually.

4. Builders All Risk Insurance. This insurance shall include but not be limited to coverage for wind including named windstorm, earthquake, flood, perils, property intransit (excluding ocean transit), off-site storage - property in temporary storage or assembly away from the project site, testing, covering all materials, equipment, machinery and

supplies of any nature whatsoever, the property of the Seller or of others for which the Seller may have assumed responsibility, used or to be used in or incidental to the site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, including temporary works (all scaffolding, formworks, fences, shoring, hoarding, false work and temporary buildings and all incidental to the project) from the start of construction through the earlier of the Commercial Operations Date or the effective date of the policy coverage set forth in Section 5 (All Risk Property Insurance (Upon Completion of Construction)). The amount of coverage shall be purchased on a full replacement cost basis, except for earthquake, wind (including windstorm) and flood perils which shall be no less than Twenty-Five Million Dollars ($25,000,000), if such insurance amounts are appropriate and available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits for transit and for incidental offsite storage. Coverage shall be extended to include testing. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least sixty (60) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

5. All Risk Property Insurance (Upon Completion of Construction). This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) Coverage against damage to the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake, wind (including windstorm) and flood perils which shall be no less than Twenty-Five Million Dollars ($25,000,000), if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Such policies shall be endorsed to require that the coverage afforded shall not be canceled

(except for nonpayment of premiums) or reduced without at least sixty (60) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

6. Business Interruption Insurance (Upon Completion of Construction). This insurance shall provide coverage for all of Seller's costs to the extent that they would not be eliminated or reduced by the failure of the Facility to operate for a period of at least twelve (12) months following a covered physical damage loss deductible period or reasonable dollar deductible.

7. Project Liability Errors and Omissions. Seller shall obtain adequate protection (not to exceed $1,000,000 of insurance coverage, subject to reasonable deductibles, unless Seller otherwise agrees) against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors and subcontractors involved in the design and/or construction of the Facility. This protection may be provided through any one or more of the following mechanisms: (i) construction contract(s) or other agreements with the above parties who have sufficient financial creditworthiness to cover project liability errors and omissions or that provide a bond or errors and omissions insurance; (ii) other agreement(s) with the above parties; or (iii) reserve account(s) which may be used to correct material deficiencies associated with the Facility as a result of negligent actions or inactions of the above parties.

8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.

ATTACHMENT S
FORM OF MONTHLY PROGRESS REPORT

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement for Renewable As-Available Energy by and between _____, a **[Delaware limited liability company]** ("Seller"), and Hawaiian Electric Company, Inc., a Hawaii corporation, dated _____, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Government Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Construction Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are

necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, "EPC Contractor" means the contractor responsible for engineering, procurement and construction of the Facility, including Seller if acting as contractor, and including all subcontractors.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

2.1.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**

2.1.2 Financing

2.1.3 Governmental Approvals for Development

2.1.4 Site Control

2.1.5 Land Rights for Company-Owned Interconnection Facilities

2.1.6 Design and Engineering

2.1.7 Major Equipment Procurement

2.1.8 Construction

2.1.9 Interconnection

2.1.10 Startup Testing and Commissioning

2.2. Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

2.2.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]

2.2.2 Financing

2.2.3 Development Permits

2.2.4 Site Control

2.2.5 Land Rights for Company-Owned Interconnection Facilities

2.2.6 Design and Engineering

2.2.7 Major Equipment Procurement

2.2.8 Construction

2.2.9 Interconnection

2.2.10 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

2.3.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]

2.3.2 Financing

2.3.3 Governmental Approvals for Development

2.3.4 Site Control

2.3.5 Land Rights for Company-Owned Interconnection Facilities

2.3.6 Design and Engineering

2.3.7 Major Equipment procurement

2.3.8 Construction

2.3.9 Interconnection

2.3.10 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

2.4.1 Construction Milestones

2.4.2 Financing

2.4.3 Governmental Approvals

2.4.4 Site Control

2.4.5 Land Rights for Company-Owned Interconnection Facilities

2.4.6 Design and Engineering

2.4.7 Major Equipment procurement

2.4.8 Construction

2.4.9 Interconnection

2.4.10 Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones specified in Attachment K and Attachment L and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	**Status** (e.g., on schedule, delayed due to [*specify reason*]; current expected completion date)

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller's course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

3.2.1 Identify Missed Construction Milestone

3.2.2 Explain plans to achieve missed Construction Milestone

3.2.3 Explain plans to achieve subsequent Construction Milestones

3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain $xx for *yy* stage from *zz*)	**Completion Date**
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals for Development, design and engineering, procurement, construction, interconnection and testing.

6. Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Facility. Indicate whether dates are expected or actual.

Agency

Date of application/submission	__/__/____ (expected / actual)
Date application/submission deemed complete by agency	__/__/____ (expected / actual)
Date of initial study (if applicable)	__/__/____ (expected / actual)
Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)	

Date of Notice of Preparation	__/__/____ (expected / actual)
Date of Draft ND/MND/EIR	__/__/____ (expected / actual)
Date Notice of Determination filed at OPR or County Clerk	__/__/____ (expected / actual)

Governmental Approvals
Please describe each of the Governmental Approvals to be obtained by Seller and the status of each:

Agency / Approval	**Status Summary** e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the

previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Company-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Company-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Land for the Company-Owned Interconnection Facilities (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	**Manufacturer**	**Delivery Date** (indicate whether expected or actual)	**Installation Date** (indicate whether expected or actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)

Equipment Description	**No. Ordered**	**No. Made**	**No. On-Site**	**No. Installed**	**No. Tested**

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Facility schedule.

15. Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By:_____

Name:_____

Title:_____

Date:_____

ATTACHMENT T
[RESERVED]

ATTACHMENT U
CALCULATION AND REPORTING OF CURTAILED ENERGY

1. Background. Since the generation of a data set representing the amount of electric energy the Facility is unable to deliver due to Curtailment Events may be useful and at times necessary (e.g., for the determination of Curtailed Excess Energy), to the administration of the Agreement and for fulfilling various regulatory reporting requirements, Curtailed Energy (including Curtailed Excess Energy) shall be calculated and reported by Seller in accordance with the procedures set forth in this Attachment U (Calculation and Reporting of Curtailed Energy), as the same may be modified or supplemented as provided in Section 7 (Periodic Review of Curtailed Energy Calculation) and Section 8 (Future Changes in Reporting Requirements) of this Attachment U (Calculation and Reporting of Curtailed Energy).

2. Curtailment Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall provide to Company a Curtailment Report consisting of items specified in Section 4 (Format of Curtailment Report) of this Attachment U (Reporting and Calculation of Curtailed Energy) for the calendar month in question. Seller shall deliver such Curtailment Report to Company by the tenth (10th) Business Day following the close of the calendar month in question. Seller shall deliver the Curtailment Report electronically to the address provided by Company. Company shall have the right to verify all data set forth in the Curtailment Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Seller shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Curtailment Report.

3. Calculation of Calculated Output. Seller shall calculate the Calculated Output of the Facility for all Curtailment Events that occur during the Term of this Agreement.

   (a) Log of Curtailment Events. Seller shall maintain a log of Curtailment Events that records the date, start time, and end time of all Curtailment Events. The start time shall be logged as the time the Facility receives the curtailment signal from the Company System Operator. The

end time shall be logged as the time the Facility receives the curtailment control signal from the Company System Operator to end or modify the curtailment set point. Time shall be recorded to the nearest minute. Curtailment Events in which the Company System Operator modifies the curtailment set point shall be reported as separate Curtailment Events, using the time at which the curtailment set point was modified as the end time of the first Curtailment Event and the start time of the subsequent Curtailment Event.

(b) Calculation Guidelines. The method of calculating the Calculated Output of the Facility during a Curtailment Event must follow the guidelines below:

(i) Seller and Company will agree on a meteorological tower representative location for Facility Output Model ("FOM") data. This Facility Output Model Tower ("FOMT") will be placed where there is no wake effect from prevailing wind directions and have minimal impact from other directions.

(ii) A database keeping wind speed, wind direction, average air density, temperature, and pressure will be permanently stored using data solely from the FOMT. Wind speed shall be binned by 0.5-mps increments. Wind direction shall be binned in 10-degree sectors. Recording frequency shall be the average of every 10 minutes. Each record should have the actual POI facility production for that 10 minute period in kWh, and the 10 minute average power in kW. This database should also record each turbine's operational status per period including out of service or curtailed conditions.

(iii) In the first and second Contract Years, the FOM shall use theoretical production in a look up table calculated by a mutually agreed wind energy consultant. This table will use wind speed, wind direction, and average air density. Since the Project is a complex site, the look up table will be built using mesoscale model to estimate. For the first and second Contract Years, curtailment events shall be paid at 90% of the estimated value. The

balance shall be reconciled and paid after the second Contract Year database and FOM has been built.

(iv) During the first and second Contract Year database formation, FOMT data shall be evaluated on a monthly basis to review data accuracy and consistency. Unless otherwise mutually agreed to by the Parties, data validation will be performed by an Independent Curtailment Evaluator selected from the list in Attachment W (Independent Curtailment Evaluator).

(v) At the end of the first two full Contract Years, twenty four (24) months of data from the first and second Contract Years of operation will be used for the FOM calculation. The data from the first two Contract Years shall be used to perform a reconciliation and true up with prior estimated energy losses during curtailment.

(vi) The second Contract Year of data developed for the FOM calculation will be used for the next three Contract Years.

(vii) Periodic Review of the FOM will occur, at the Seller's sole cost and expense (up to the first $25,000 incurred to perform each said periodic review, whereupon any amounts incurred then exceeding $25,000 shall then be shared equally between Seller and Company), once per three Contract Years following the first two Contract Years. The Company shall review the most recent Contract Year of FOM records from the Seller, and if the review produces a difference of less than 5% between the current Contract Year and the previous Contract Year FOM, then the existing FOM calculations can be used. If the review produces a difference of more than 5%, then beginning from the next Contract Year, a new FOM calculation using the most recent Contract Year of FOM data will be used for the next three Contract Years. An illustration of this reconciliation process is attached as Table U-1 to this Attachment U (CALCULATION AND REPORTING OF CURTAILED ENERGY).

(viii) Wind speed shall be interpolated linearly in-between 0.5 mps increments. Wind direction will not

be interpolated and will use the 10-degree sector where it belongs.

(ix) The Calculated Output of the wind project during a Curtailment Event or an Adjustment Event is equal to the kilowatt hours which could be generated during such Curtailment Event or Adjustment Event, calculated by the FOM, as a function of the availability of the WTGSs and of wind speed, ambient air pressure, air density, and ambient temperature and pressure measured at the FOMT for the Facility over the course of the Curtailment Event or Adjustment Event, with the same resolution and accuracy requirements defined in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller). Calculated Output shall take into account actual operating conditions during such period (for example, self-curtailed units, and derated units or units that are otherwise unavailable to produce electric energy), and adjusted for any electric energy consumed by the Facility and electric energy losses from the wind turbines to the POI.

4. Format of Curtailment Report. Seller shall provide Curtailment Report to the Company in the following format:

IPP MONTHLY CURTAILMENT REPORT

NAME OF IPP FACILITY: [Facility Name]
REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

CURTAILMENT EVENTS REPORTED DURING REPORT PERIOD

Event No.	Event Date	Start Time	End Time	Facility Output at Start of Event (MW)	Facility Availability (MW)	Calculated Output (kWh)	Actual Output (kWh)	Curtailed Energy (kWh)	Curtailment Signal Set Point (MW)	Reason for Curtailment	Compensable Curtailment Event (Yes/No)

TOTAL CURTAILED ENERGY DURING REPORT PERIOD: _____ kWh

TOTAL CURTAILED ENERGY DURING ADJUSTMENT EVENTS*
DURING REPORT PERIOD (FOR PURPOSES OF PPA § 2.4): _____ kWh

TOTAL COMPENSABLE CURTAILED ENERGY DURING REPORT PERIOD:_____ kWh**

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* Note: The PPA defines "Adjustment Events" as follows: Collectively, (i) events or conditions of Force Majeure for so long as Seller is in compliance with the requirements of Section 21.4 (Satisfaction of Certain Conditions), (ii) Curtailment Events (including Compensable Curtailment Events) exclusive of curtailments by Company because Facility was not operating in compliance with Good Engineering and Operating Practices or other requirements set forth in this Agreement, and (iii) outages on the Company System or the inability of Company to accept energy from Seller unless such outages or inability were caused by Seller's actions or inactions that were not in compliance with this Agreement.

** Note: "Compensable Curtailed Energy" is the Curtailed Energy that results from a Compensable Curtailment Event. The PPA defines "Compensable Curtailment Event " as follows: Any Curtailment Event other than a Curtailment Event due to (a) an Emergency, (b) a Forced Outage, (c) the Facility not operating in compliance with Good Engineering and Operating Practices such that curtailment is necessary to protect the Company System or because Company cannot accept the energy as delivered, as determined by the Company System Operator reasonable discretion, (d) the Company's construction, installation, maintenance, repair, replacement, removal, investigation, testing or inspection of any of its equipment or any part of the Company System, including, but only to the extent reasonably necessary to accommodate the installation and/or acceptance test of non-utility owned facilities to Company System, or (e) Force Majeure. Curtailment pursuant to Section 8.2 (Negative Avoided Cost) or due to Excess Energy Conditions shall be Compensable Curtailment Events. For avoidance of doubt, a loss of curtailment priority for Subordinate Allowed Capacity under Section 2.3 (Adjustment of Curtailment Priority) of this Agreement does not constitute a Compensable Curtailment Event and the electric energy that is not purchased by the Company due to such loss of curtailment priority does not constitute Compensable Curtailed Energy.

TOTAL COMPENSABLE CURTAILED ENERGY YEAR TO DATE FOR CONTRACT YEAR _____ kWh

ANNUAL CONTRACT ENERGY FOR CURRENT CONTRACT YEAR _____

TOTAL COMPENSABLE CURTAILED ENERGY FOR CONTRACT YEAR AS A PERCENTAGE OF ANNUAL CONTRACT ENERGY _____%

TOTAL COMPENSABLE CURTAILED ENERGY DURING REPORT PERIOD ABOVE [__]% OF ANNUAL CONTRACT ENERGY _____kWh

5. Disagreements Concerning Curtailed Energy.

(a) Data "Gaps". The Parties acknowledge that certain of the data points required to calculate Curtailed Energy are dependent upon the continuous proper functioning of various devices and systems to record, transmit and store such data. Any "gaps" in such data that occur because of malfunctions in such devices or systems are referred to herein below as "Data Gaps". To help protect against Data Gaps, a traditional data logger shall be installed at the FOMT, which will record data independently of the SCADA system.

(b) Notice of Disagreement. Company shall provide written notice to Seller within ninety (90) Days after Company's receipt of a Curtailment Report if Company disagrees with any of the following (collectively, "Curtailment Disagreement"): (i) the identification of the "reason" for a Curtailment Event, (ii) any data point set forth in a Curtailment Report, (iii) Seller's proposed estimate for any data "missing" because of Data Gaps, (iv) any calculation of Curtailed Energy set forth in a Curtailment Report or (v) any other matter concerning the Curtailment Report; provided, however, that if Company has not provided Seller with a reason for a Curtailment Event where the reason has been designated "N/A" on the Curtailment Report within the Identification Period (as defined in Section 2.8(A) of the Agreement), Company may not thereafter challenge the "reason" for such Curtailment Event or claim that it was not a Compensable Curtailment Event. Together with any such notice of disagreement, the Company shall include its own calculations, proposed estimates for any data "missing" because of Data Gaps and other support for its position.

(c) Submission of Disagreement to Independent Curtailment Evaluator. Upon issuance of a notice of disagreement, the Parties shall review the contents of the Curtailment Report(s) and the notice of disagreement and attempt to resolve such Curtailment Disagreement. If the Parties are unable to resolve such Curtailment Disagreement within ninety (90) Days after Company's issuance of such notice of disagreement, and if the resolution of such Curtailment Disagreement becomes material to this Agreement for any reason (including the calculation of Curtailed Excess Energy), the unresolved Curtailment Disagreement shall be submitted to an Independent Curtailment Evaluator for an advisory opinion; provided, however, that no Curtailment Disagreement that might result in an Adjustment Amount under Section 2.9(A) (General) of the Agreement shall be submitted to an Independent Curtailment Evaluator or to dispute resolution under Article 28 (Dispute Resolution) of the Agreement if the claims for such Adjustment Amount is barred under Section 2.9(D) (Limitations Period) of the Agreement.

(d) Appointment of Independent Curtailment Output Evaluator. If, following expiration of the 90-Day period referenced in Section 5(c) (Submission of Disagreement to Independent Curtailment Evaluator) of this Attachment U (Calculation and Reporting of Curtailed Energy), either Party decides to submit a Curtailment Disagreement to an Independent Curtailment Evaluator, it shall provide written notice to that effect to the other Party. Within twenty (20) days of delivery of such notice, Seller and Company shall agree upon a person who is reasonably qualified and expert in utility-scale wind energy power generation and power purchase agreements to act as an Independent Curtailment Evaluator to provide an advisory opinion with respect to such Curtailment Disagreement. Unless otherwise mutually agreed by the Parties, the Independent Curtailment Evaluator shall be selected from the individuals listed in Attachment W (Independent Curtailment Evaluator) to this Agreement. If the Parties are unable to agree upon an Independent Curtailment Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Curtailment Evaluator. In its application, Company shall ask the PUC to appoint an Independent Curtailment Evaluator within thirty (30) Days of the application.

(e) Participation of Parties. The Parties shall assist the Independent Curtailment Evaluator throughout the process of preparing his advisory opinion, including making key personnel and records available to the Independent Curtailment Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party. However, the Independent Curtailment Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the process to explore means of resolving the Curtailment Disagreement on mutually acceptable terms.

(f) Limitations and Burdens. For Curtailment Disagreements submitted to an Independent Curtailment Evaluator:

(i) the existence of Data Gaps shall not create a presumption for or against either Party in terms of what the "missing" data would have established; and

(ii) Seller will have no right to claim for any month any Curtailment Event that was not identified in the original Curtailment Report for that month.

(g) Submissions by Parties to the Curtailment Evaluator. Promptly upon appointment pursuant to Section 5(d) (Appointment of Independent Curtailment Evaluator) of this Attachment U (Calculation and Reporting of Curtailed Energy), the Independent Curtailment Evaluator shall request the Parties to address, within the next thirty (30) Days, the following matters to the extent they are in dispute with respect to any Curtailment Report:

(i) the reasonable estimate of any data "missing" because of Data Gaps;

(ii) the details of the method by which the calculations in question (including the calculation of the FOM) were made;

(iii) whether Seller's method of calculating Curtailed Energy was reasonable, consistent with this Attachment U (Calculation and Reporting of Curtailed Energy), and adequately accounted for the appropriate factors;

(iv) the "reason" for the Curtailment Event; and

(v) the amount of Curtailed Energy.

(h) Advisory Opinion by Independent Curtailment Evaluator. Within ninety (90) Days of appointment, the Independent Curtailment Evaluator shall render his advisory opinion unless the Independent Curtailment Evaluator determines that he needs to have additional time, not to exceed forty-five (45) Days, to render his advisory opinion. The Independent Curtailment Evaluator shall render an advisory opinion that sets forth the positions of the Parties and Independent Curtailment Evaluator's rationale for his conclusions on disputed issues. Without limitation to the generality of the foregoing, the advisory opinion of the Independent Curtailment Evaluator shall specifically state the following if such issues were in dispute:

(i) the amount of Curtailed Energy; and

(ii) the "reason" for a Curtailment Event.

(i) Fees and Expenses of Independent Curtailment Evaluator. The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Independent Curtailment Evaluator.

(j) Independent Curtailment Evaluator as a Condition to Dispute Resolution. A Curtailment Disagreement shall constitute a "Dispute" under Article 28 (Dispute Resolution) of the Agreement, and shall, subject to the limitations set forth in Section 5(l) (Limitations and Burdens in Dispute Resolution) of Attachment U (Calculation and Reporting of Curtailed Energy), be resolved under said Article 28 (Dispute Resolution) upon satisfaction of either of the following two conditions: (i) the Independent Curtailment Evaluator fails to issue his advisory opinion with respect to such Curtailment Disagreement within the 90-Day period provided in Section 5(h) (Advisory Opinion by Independent Curtailment Evaluator) of this Attachment U (Calculation and Reporting of Curtailed Energy), as said 90-Day period may be extended for a maximum of an additional 45 Days by the Independent Curtailment Evaluator as provided in said Section 5(h); or (ii) if either Party fails to accept and

implement the advisory opinion of the Independent Curtailment Evaluator.

(k) Circumstances in Which Advisory Opinion is Presumptively Correct. In order to provide an incentive to the Parties to resolve each Curtailment Disagreement by accepting in its entirety the advisory opinion of the Independent Curtailment Evaluator issued in connection with such Curtailment Disagreement, a Party who accepts and is prepared to implement such advisory opinion in its entirety shall, in any dispute resolution under Article 28 (Dispute Resolution) of this Agreement concerning such Curtailment Disagreement, be entitled to a presumption that such Curtailment Disagreement was correctly resolved in such advisory opinion. For purposes of the preceding sentence, a submission by a Party to the arbitrator(s) advocating for any determination that is inconsistent with any of the conclusions of the Independent Curtailment Evaluator shall cause such Party to forfeit the presumption that the advisory opinion in question correctly resolved the Curtailment Disagreement in question. If, because of the failure of the Independent Curtailment Evaluator to issue his advisory opinion within the time period provided in Section 5(h) of this Attachment U (Calculation and Reporting of Curtailed Energy), an advisory opinion is issued by the Independent Curtailment Evaluator after the commencement of dispute resolution under Article 28 (Dispute Resolution) of this Agreement, a Party that notifies the arbitrator(s) in writing of such Party's willingness to accept and implement such advisory opinion in its entirety, and that makes no subsequent submissions to the arbitrator(s) advocating for any determination that is inconsistent with any of the conclusions of the Independent Curtailment Evaluator, shall be entitled to a presumption that such Curtailment Disagreement was correctly resolved in such advisory opinion.

(l) Limitations and Burdens in Dispute Resolution. The resolution of a Curtailment Disagreement as a "Dispute" under Article 28 (Dispute Resolution) of the Agreement shall be subject to the following limitations:

(i) if one of the Parties is entitled to the presumption that the Curtailment Disagreement in question was

correctly resolved by an advisory opinion, the other Party shall have the burden of persuading the arbitrator(s) by a preponderance of the evidence that the calculations, data and analysis proffered by such Party are, to the extent such calculations, data and analysis are at variance with those of the Independent Curtailment Evaluator, correct.

(ii) if neither Party is entitled to the presumption that the Curtailment Disagreement in question was correctly resolved by an advisory opinion:

(aa) then such opinion shall no longer be presumptively correct and the arbitrator(s) shall afford such opinion such weight (if any) that they consider to be appropriate; and

(bb) the existence of "Data Gaps" shall not create a presumption for or against either Party in terms of what the "missing" data would have established.

(iii) if there is no advisory opinion by the Independent Curtailment Evaluator with respect to the Curtailment Disagreement in question, or if Seller is not entitled to the presumption that the advisory opinion in question correctly resolved such Curtailment Dispute, Seller will have no right to claim for any month, any Curtailment Event that was not identified in the original Curtailment Report for that month or within thirty (30) Days after the end of that month.

6. Assignment of Curtailed Energy Estimate to an Independent Consultant. The Parties may by written agreement elect to have the estimate of Curtailed Energy (including Curtailed Excess Energy) prepared by an independent consultant.

7. Periodic Review of Curtailed Energy Calculation. At least once every three years following the first two Contract Years, Company may at its option review, at Seller’s sole cost and expense (up to the first $25,000 incurred to perform each said periodic review, whereupon any amounts incurred then exceeding $25,000 shall then be shared equally between Seller and Company), the Seller's Calculated Output calculation method to

determine if other variables measured at the FOMT for the Facility pursuant to Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller) of this Agreement should be incorporated into the Calculated Output calculation.

8. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Curtailment Report to include additional data that may be necessary from time to time to enable Company to comply with any new Curtailed Energy reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

Table U-1

ILLUSTRATION OF FACILITY OUTPUT MODEL RECONCILIATION PROCESS

Below is an example of how the Facility Output Model may work:

- Prior to COD, Consultant prepares an "Estimated Look up Table" with wind speed and wind direction as search criteria and produces estimated 10 minute POI energy production. Air density in the look up table is considered at the Site's average of 1.14.

- After two Contract Years, the Project uses an "Actual Energy Look up Table" with POI actual data for every wind speed and wind direction from Contract Year 2.

First Two Contract Years of Operation

For the first two Contract Years, there is only one curtailment event that lasts 10 minutes. This happens in the 6th month of operation. During the curtailment period, the wind speed is 8 mps at hub height and a wind direction of 70 degrees.

1. The Parties use the "Estimated Look up Table" using 8 mps and 70 degrees as inputs. The table estimates 46 MW of production at the POI during the 10 minutes of the event, or 46 MW x 10/60 hours = 7.66 MWh of energy.

2. Company pays Seller a Compensable Curtailed Energy payment of 7.66 MWh x $109.75 x 80% = $672.55 (the $109.75 rate assumes that Company elected 0% from Table J-1 (Contract Rate for Contract Year)); 7.66 MWh will be banked per Attachment J, Section 1(b) (Banked Curtailed Energy Term); the 80% is a partial payment only during the first two Contract Years, and the remaining 20% will be reconciled/paid at end of the second Contract Year using actual data.

After Two Contract Years of Operation

1. The Parties have established the "Actual Energy Look up Table"; the Parties reconcile the 6th month curtailment transaction and look up: 8 mps at 70 degrees. According to the Actual Energy Look up Table, 45 MW for 10 minutes = 45 MW x 10/60hours = 7.5 MWh of energy.

2. The amount payable to Seller would be: 7.5 MWh x $109.75 = $823.13; Since Company already paid $672.55, the balance would be $150.58.

ATTACHMENT V
[RESERVED]

ATTACHMENT W
INDEPENDENT CURTAILMENT EVALUATOR

Seller and Company agree that the following are acceptable Independent Curtailment Evaluators for purposes of Section 5(d) (Appointment of Independent Curtailment Output Evaluator) of Attachment U (Calculation and Reporting of Curtailed Energy):

DNV GL

AWS Truepower (acquired by and now UL)

Black & Veatch

Leidos

ICF

Vbar (acquired by and now ArcVera Renewables)

Mott MacDonald

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EXHIBIT 2

Ownership Structure Chart of Eurus

EXHIBIT 2

OWNERSHIP STRUCTURE CHART

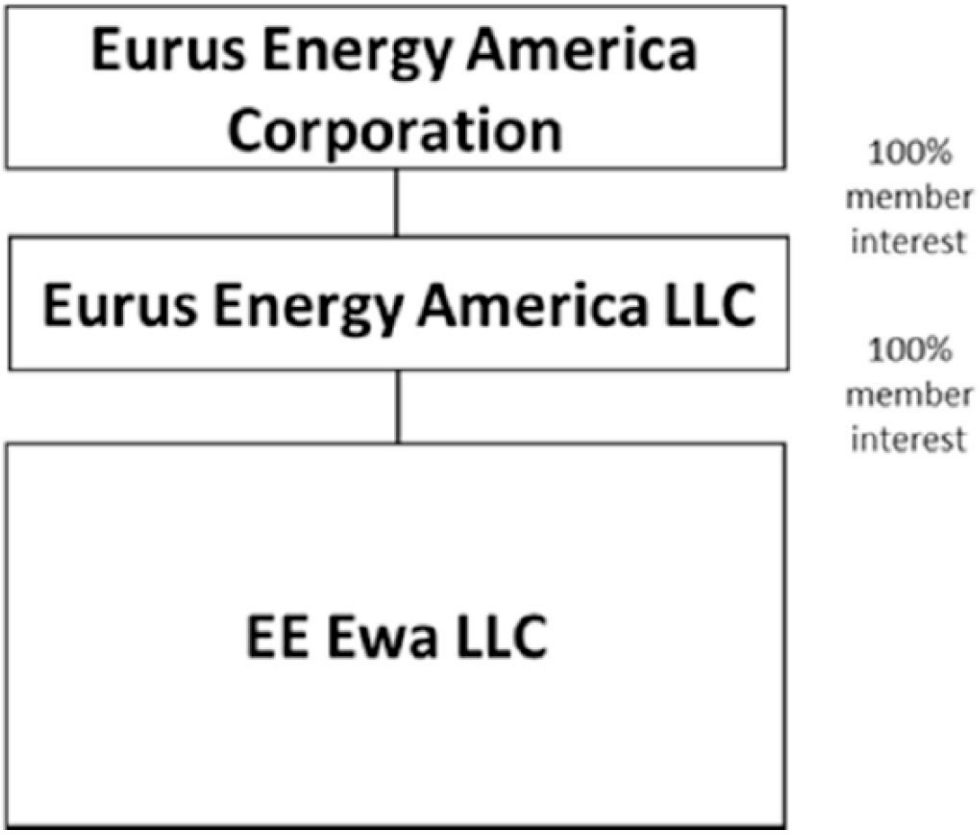

EXHIBIT 3

Hawaiian Electric Request for Expressions of Interest For Potential Onshore Wind Renewable Energy Development – Island of O‘ahu dated January 5, 2017

Hawaiian Electric

REQUEST FOR EXPRESSIONS OF INTEREST

FOR

POTENTIAL ONSHORE WIND

RENEWABLE ENERGY DEVELOPMENT

ISLAND OF O‘AHU

January 5, 2017

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2) **PURPOSE**

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5) **SUMMARY OF KEY DATES**

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ATTACHMENT 1: **INTERCONNECTION COST INFORMATION**

1) INTRODUCTION

Hawaiian Electric Company, Inc. ("Hawaiian Electric") is requesting Expressions of Interest ("EOI") from independent power producers that are capable of developing utility scale onshore wind projects that are eligible to capture the federal Investment Tax Credit ("ITC") for Large Wind on the island of Oʻahu. Hawaiian Electric has identified utility scale onshore wind projects as a component of our future energy generation portfolio.

Hawaiian Electric is committed to achieving 100 percent renewable energy by 2045 while keeping electric rates as low as possible. The ITC available for eligible Large Wind projects is currently scheduled to incrementally "step down" through December 31, 2019. Large Wind projects that begin construction in 2016, 2017, 2018 and 2019 may be eligible to receive an ITC of 30%, 24%, 18% and 12% respectively. These figures represent an ITC that "steps down" by 20 percent each year.

The table below states the value of the available ITC for Large Wind projects as well as the ITC for other available technologies that possess longer availability in years and larger credit amounts. These federal ITC expiration dates are based on when construction begins on a project.

Technology	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22	Future Years
Large Wind	24%	18%	12%	N/A	N/A	N/A	N/A
PV, Solar Water Heating, Solar Space Heating/Cooling, Solar Process Heat	30%	30%	30%	26%	22%	10%	10%

Additionally, responses to this request will help validate the results of a National Renewable Energy Laboratory ("NREL") resource potential study issued in recent Power Supply Improvement Plan ("PSIP") efforts. Hawaiian Electric commissioned NREL to conduct a study to assess utility-scale onshore wind and PV resource potentials on the islands of Oʻahu, Maui, and Hawaiʻi for its April 2016 PSIP Update Report. The report concluded that additional resources such as offshore wind or renewable resources through interisland transmission may be necessary for Oʻahu, however Maui and Hawaiʻi Island have ample renewable energy resources to attain 100% renewable energy. In July 2016, stakeholder input requested that additional land areas be included in the PSIP to better assess the total onshore renewable energy resource potential on Oʻahu and as such, was included in the December 2016 PSIP

Update.[1] To identify near term onshore wind projects and determine if the capacity for wind on O'ahu is as limited as provided for in the NREL report, Hawaiian Electric is proactively seeking information regarding onshore wind projects that are able to take advantage of the federal ITC, with the objective of obtaining projects that will lower costs for customers and help Hawai'i achieve its goal of reaching a 100% renewable energy future. If the capacity for onshore wind on O'ahu is in fact limited, then it is important to identify projects able to take advantage of the federal ITC, as the scarcity of available project sites and no federal ITC infers that the price for onshore wind projects on O'ahu in the future may be higher. This EOI is intended to identify potential onshore wind projects on O'ahu that have the ability to reduce customer rates and can be developed in near term in order to be able to pass along the financial benefits associated with capturing the federal ITC that would otherwise be lost due to the scheduled expiration of the federal ITC for Large Wind projects.

Independent power producers are encouraged to submit comprehensive responses to this request. The information obtained from responses may assist in the development and issuance of a Request for Proposals under the Framework for Competitive Bidding [2]or the issuance of an alternative means of procurement, subject to approval by the Hawai'i Public Utilities Commission. However, there is no assurance or certainty that Hawaiian Electric will issue an RFP or an alternative means of procurement, and the decision to do so shall be in the sole discretion of Hawaiian Electric. While Hawaiian Electric may collectively summarize the results of the EOI, individual responses will be held in confidence and will not be published, including in any future request for proposals ("RFP") issued by the Companies without first receiving prior permission to do so from the respondent.

2) PURPOSE

The objectives of this EOI are to:

- Identify interested parties who are able to develop near term, cost competitive, onshore wind projects on the island of O'ahu.
- Validate the results of the NREL resource potential study issued in the December 23, 2016 PSIP Update Report.
- Identify onshore wind projects that are able to reduce customer rates and capture federal ITC for Large Wind.

---

[1] See discussion of the NREL study in the December 2016 PSIP Update, "Hawaiian Electric Companies' PSIPs Update Report, Filed December 23, 2016" in Docket No. 2014-0183 at p. 2-14. NREL's estimated utility-scale onshore wind and PV potential for O'ahu is limited to 183 MW and 2,970 MW, respectively, as compared to 840 MW of onshore wind and 783 MW of PV for Maui and 3,532 MW of onshore wind and 30,484 MW of PV for Hawai'i Island. Id. at F-2.The results of the NREL study represent technical potentials and do not represent the actual developable land, as some of this land might be privately held and not for sale or require zoning changes or special permitting. Of particular note is that Oahu's utility-scale onshore wind potential is significantly lower in comparison to Maui and Hawai'i.

[2] Decision and Order No. 23121 in Docket No. 03-0372, issued on December 8, 2006, "Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawaii."

3) RELATIONSHIP OF THIS EOI TO HAWAIIAN ELECTRIC'S POWER SUPPLY IMPROVEMENT PLANS

Hawaiian Electric's Power Supply Improvement Plan is being reviewed by the Commission in Docket No. 2014-0183. The most recent update of the PSIP was submitted to the Hawai'i Public Utilities Commission ("Commission") on December 23, 2016 and can be found at https://www.hawaiianelectric.com/about-us/our-vision. Hawaiian Electric intends to issue solicitations for procurement of renewable energy from a variety of renewable energy resources, in accordance with the PSIP and updates thereof.

4) RESPONSES

Interested parties are encouraged to provide the following information in the form provided no later than January 31, 2017.

Project Criteria:

To take advantage of potential savings on behalf of its customers, Hawaiian Electric wishes to explore the feasibility of pursuing one or more onshore wind projects on O'ahu that qualify for the federal ITC and meet the following criteria:

- Proposed projects must have a nameplate capacity greater than five megawatts from a new onshore wind renewable source that qualifies under the Hawai'i Renewable Portfolio Standard ("RPS").
- The pricing (fixed monthly payment and energy payment) should provide an attractive reduction in cost for Hawaiian Electric's customers. Pricing must be calculated with and without the use of

Hawai'i State tax incentives. In Appendix A, please provide indicative pricing for the proposed project. [3]

- Proposed projects should be able to provide historical meteorological wind resource data for one year or longer, specific to the project's site location.
- Developers must have experience in the development and execution of at least one generation project similar in size and technology to the project being proposed.
- Developers should provide proof of site control for the 22 year duration of a power purchase agreement ("PPA"), plus preliminary archeological and environmental assessments and an associated permitting plan.
- Developers should submit evidence of plans for, and any actual, community relations outreach in connection with the proposed project during development and throughout the term of a PPA.
- Proposed projects should demonstrate that they can reasonably attain a commercial operation date no later than the end of 2022.
- Developers should factor into their indicative pricing their own assumptions of interconnection costs and must assume any risk for higher actual costs. To assist developers in pricing their indicative interconnection costs, per unit cost figures are provided in Attachment 1 of this announcement to be used to provide an approximate estimated cost for interconnecting, including substation, communications, and transmission or distribution line cost to the existing Hawaiian Electric system.
- Please submit a separate questionnaire for each individual project.

[3] The Hawaiian Electric Companies are currently working on the design of a new contracting structure for all new projects to replace the "as-available" energy contracts compensated on an "energy basis" only. A report prepared by the Smart Electric Power Alliance ("SEPA") regarding the Companies' current investigation into alternate contracting mechanisms was filed in Docket Nos. 2015-0224 and 2015-0225 on December 22, 2016. There is a desire to de-link renewable energy projects from the "avoided cost" methodology and the need to move away from "must-take" energy contracts and the reverse chronological curtailment methodology. In order to maximize operational flexibility in the context of the 100% renewable energy future state, Hawaiian Electric is considering an approach that provides compensation through fixed payments not related to energy production. Not only would this be beneficial to system operations, a fixed payment unrelated to production would enable developers to more readily obtain project financing and potentially reduce costs compared to contract structures based solely on energy sales, since they would no longer need to quantify and price in the unknown risk regarding how the project will be dispatched. This new proposed contracting method will require a means to ensure that project owners design, install, and maintain the facility to provide the anticipated energy and profile. Under this model, project payments would be tied strictly to the performance and availability of the facility, and not subject to unknown variation in resource levels or how the facility is ultimately dispatched by the system operator. Hawaiian Electric expects such a change in contracting to result in lower pricing reflected in the indicative prices indicated in Appendix A.

Email (preferred): With pdf file attachment(s) to windeoi@hawaiianelectric.com

U.S. Mail*: Director, Energy Procurement (mail code CP21 IU)
Renewable Acquisition
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawaii 96840-0001

Fax: (808) 564-6633

a) Due Date. Please submit all information **by January 31, 2017**.

*If sent by mail, package should be **postmarked by January 31, 2017**.

b) Confidentiality. Clearly and specifically mark any information that Respondent requests be treated as confidential and not be disclosed outside of Hawaiian Electric and its employees, consultants, and representatives involved with the review of information received in response to this EOI. Hawaiian Electric shall have the right to disclose Information submitted as part of the EOI process or other related regulated process to the State of Hawai'i Public Utilities Commission ("Commission") and the Division of Consumer Advocacy ("Consumer Advocate") and their respective staffs and consultants, including information designated as confidential by the Respondent, provided that such disclosure is made under a protective order entered in the docket or proceeding with respect to which the disclosure will be made or any general protective order entered by the Commission. Any statement of condition in any information that attempts to restrict Hawaiian Electric's rights under this section shall be void.

c) Not a Request for Proposals. The EOI information is being solicited to identify future onshore wind projects for renewable energy projects on the Island of O'ahu. The EOI is not an RFP for proposals related to a specific project or solicitation of development for a single project proposal. Neither this EOI nor the disclosure of the confidential information shall result in any obligation on the part of either Hawaiian Electric or respondents to this EOI to enter into any further agreement with the other with respect to the subject matter hereof, to purchase any products or services from the other, or to require Hawaiian Electric to disclose any particular information to the respondents. Nothing in this EOI shall imply any partnership or joint venture between Hawaiian Electric and any respondent or be construed as making either the agent of the other.

d) Questions from Interested Parties. If an Interested Party needs additional information or clarification regarding any part of the EOI document, or the EOI process outlined in this document, it may submit questions in writing to windeoi@hawaiianelectric.com.

5) SUMARY OF KEY DATES

- January 5 , 2017 Hawaiian Electric issues EOI via website
- January 31, 2017 Onshore Wind Questionnaire due from Respondents

Hawaiian Electric looks forward to receiving Respondents' responses.

APPENDIX A

Project Questionnaire

Request for Information: Utility Scale Onshore Wind Projects

Project Description

Island: O'ahu

Tax Map Key(s): 39T

State Land Use Designation: 39T County Zoning: Enter the County Zoning code

Encumbrances:

Enter information regarding lease, lease term, easements, special conditions, availability, etc. Enter information regarding lease, lease term, easements, special conditions, availability, etc. Must show evidence of site control for the entire 22 year term of the power purchase agreement ("PPA")

Project Size (MW and MWH/year):

Project capacity (MW) and annual energy (MWH/year)

Indicative Pricing (fixed monthly ($/month) and energy ($/MWH)):

The indicative pricing proposed shall assume a 22-year PPA term.

Timing constraints:

Please identify any timing constraints (alternative plans) with developing a utility scale renewable energy project on the site. Please also identify ability to develop project by 2022 and ability to capture the ITC for Large Wind Projects.

Special terms:

Enter any special terms that may be required for a future utility scale renewable energy project (including any decommissioning/restoration requirements, insurance requirements, or if on Agricultural land, conditionals)

Meteorological Data:

Provide (in a separate attachment) historical meteorological wind resource data for one year or longer, specific to the project's site location. Enter any additional information here

Community outreach efforts:

Describe any community outreach efforts for a utility scale renewable energy project on the site that have been performed to date

Project development activities:

Describe any project development activities that have been performed to date (permitting, site access, design, resource measurement)

Photos of the Property or Topographical Maps: Please attach

Known environmental hazards:

If there are any known (disclosed) environmental hazards on the site and documented at either the Department of Health or EPA, please enter a description of the hazard and any relevant documentation

Project development experience:

Describe experience in the development and execution of at least one generation project similar in size and technology to the project being proposed

Financial Viability

Describe financial viability of Developer and provide proof of developer's financial capability to see a project through development and commercial operations.

Other Benefits:

Provide any information regarding additional environmental benefits of the proposed project.

Contact information:

Enter available contact information (Name, Phone, Email, Fax, and Mailing Address)

Notes:

Enter any other relevant information for the proposed project

TABLE 1 - ATTACHMENTS

Attachment	*Description*
Attachment 1	**Interconnection Cost Information**

Please send completed forms and any available photos of the property or topographical maps to one of the following by January 31, 2017:

Email (preferred):	With pdf file attachment(s) to windeoi@hawaiianelectric.com
U.S. Mail*:	Director, Energy Procurement (mail code CP 21 IU)
	Renewable Acquisition
	Hawaiian Electric Company, Inc.
	P.O. Box 2750
	Honolulu, Hawaii 96840-0001
Fax:	(808) 564-6633

EXHIBIT 4

Hawaiian Electric Letter Dated September 8, 2017
Re: Eurus Energy America's Proposal for the
Palehua Project

Rodney Chong
Manager,
Renewable Acquisition

September 8, 2017

Via Email and US Mail

Eurus Energy America Corporation
9255 Towne Centre Dr., Suite 840
San Diego, CA 92121
Attn: Nick Henriksen
nhenriksen@eurusenergy.com

Re: Eurus Energy America's Proposal for the Palehua Wind Project

Dear Mr. Henriksen,

As set forth in our April 3, 2017 letter and in the *Wind Expression of Interest* ("EOI") announced January 5, 2017, Hawaiian Electric Company, Inc. ("Hawaiian Electric") seeks to lower the cost of electricity for its customers in the near term with renewable energy projects that can be quickly placed into service. As discussed, Eurus Energy America Corporation's ("Eurus") proposal for the Palehua Wind Project ("Project") meets the criteria of the EOI and has subsequently been under further evaluation by Hawaiian Electric.

This letter supersedes our April 3, 2017 letter which conveyed Hawaiian Electric's requirements for pursuing a request of a waiver for the Project. We understand Eurus was unwilling to commit to all of the conditions set forth in the April 3 letter, namely the community engagement and use of the Renewable Dispatchable Generation ("RDG") power purchase agreement ("PPA"). While Hawaiian Electric still believes such conditions are beneficial not only to Hawaiian Electric's customers, but also to Eurus, Hawaiian Electric is willing to compromise with Eurus as set forth in this letter.

As shared in the April 3, 2017 letter and previous discussions with Eurus, Hawaiian Electric has recently received strong feedback from communities regarding the EOI. In particular, a community leaders' group representing the West O'ahu area has expressed its objection to prior and possible future proposals to develop a wind farm in the same area as the Project based on the group's limited public knowledge of the EOI. The communities' feedback to Hawaiian Electric's recent EOI outreach has sought firm commitment from Hawaiian Electric and future developers to improve transparency and community engagement from the start of the energy procurement process. In addition, Hawaiian Electric had previously proposed a wind project in the location of the proposed Project. Negative public reaction to that project led to the City and County of Honolulu refusing to issue permits for the proposed project. Finally, the community has had negative feedback with regards to Eurus's Waianae Solar project. For these reasons,

Hawaiian Electric continues to believe that early community engagement is critical for the success of all energy projects in Hawai'i, especially for this Project.

With regards to the use of the RDG PPA, if the requirements of this letter are agreed upon, Hawaiian Electric is willing to waive its requirement set forth in the EOI requiring use of such PPA. In place of the RDG PPA, Hawaiian Electric is willing to negotiate a modified risk adjusted payment ("RAP") PPA, where Eurus would be compensated for curtailment above a percentage level to be determined prior to PPA execution.

However, as a condition precedent to moving forward with PPA negotiations and taking into consideration the above compromises, prior to preparing and submitting any application for a waiver from the Competitive Bidding Framework, Hawaiian Electric would like to confirm that Eurus is willing to proceed with the Project and enter into negotiations for a PPA with Hawaiian Electric based on the following conditions, which will form the basis of a potential waiver request:

1. The parties' intent to use Hawaiian Electric's modified RAP PPA as the basis for PPA negotiations, which Hawaiian Electric will provide to Eurus in draft form. Hawaiian Electric makes no assurance and Eurus acknowledges and agrees that the parties may not be able to reach final agreement on the terms of a PPA for the Project.

2. Eurus's proposed payment rate will not be increased or subject to adjustment and shall be based on the assumption that the Project will safe harbor the federal Business Energy Investment Tax Credit ("ITC") at 18%.

3. Eurus agrees that it will host a public meeting to solicit public comments prior to executing a PPA with Hawaiian Electric.[1] Eurus agrees to hold the meeting in the community where Eurus' proposed project is located, provide adequate public notice of the meeting, and inform Hawaiian Electric of the meeting. The objective of the meeting would be for Eurus to provide the community an opportunity to learn about Eurus' proposed Project, engage in a dialogue about concerns, mitigation measures and potential community benefits, and inform the community of the process and/or intent for input and engagement. Eurus understands that the public will be allowed 30 days from the date of the public meeting to submit comments to Hawaiian Electric. Hawaiian Electric will submit such public comments as part of the docketed PUC proceeding for approval of the waiver from competitive bidding and PPA.

4. Eurus understands that Hawaiian Electric will also solicit public comments a second time after the filing of the PPA, leading up to the Statement of Positions by the parties.

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[1] For sake of clarity, this public meeting is a separate requirement from the new city ordinance 17-46, Section 3. Chapter 21, Section 21-5.700.

Hawaiian Electric will submit such public comments as part of the docketed PUC proceeding for approval of the waiver from competitive bidding and PPA.

5. The parties agree that Eurus is responsible for community outreach and engagement for the Project and recognize that the public meeting and comment solicitations described above do not represent the only community engagement and outreach activities that can or should be done by Eurus. Eurus will determine and implement additional means to share information with and involve the community throughout the project planning and development process, and will inform Hawaiian Electric of its plans and activities.

6. Eurus will provide Hawaiian Electric with complete access to all Project financial information, including a financial pro forma, and other Project information necessary for Hawaiian Electric to prepare and justify a waiver request for the Project, and will provide such information prior to Hawaiian Electric filing the waiver application. Upon Hawaiian Electric's determination that such justification exists, Hawaiian Electric will submit to the PUC, an application for a waiver, but does not extend any assurances that the PUC will ultimately approve the request. Eurus acknowledges and agrees that Hawaiian Electric does not have control over whether or not the PUC will approve the waiver request, and Eurus hereby assumes any and all risks arising from, or relating in any way to, the PUC's potential denial of Hawaiian Electric's waiver request, and hereby releases Hawaiian Electric from any and all claims relating thereto. For the avoidance of doubt, Hawaiian Electric has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order.

7. Eurus must seek participation without intervention in the PUC docket for the waiver pursuant to applicable rules and orders of the PUC. The scope of Eurus' participation shall be determined by the PUC. However, Eurus expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the waiver request. Eurus will provide the PUC and Hawai'i Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") with complete access to all Project financial information, including a financial pro forma, and other Project information necessary for the PUC and Consumer Advocate's review of Hawaiian Electric's waiver application, subject to a protective order in the docket.

8. The Project will attain a commercial operation date no later than the end of 2022.

9. The Project must complete an Interconnection Requirements Study ("IRS"). Eurus shall promptly provide materials and information required for the IRS to enable timely completion of the IRS.

10. Eurus' proposed energy payment rate includes an assumption of $12M of interconnection costs and Eurus understands that it will be responsible for paying the

actual cost of interconnection regardless of whether actual costs are higher than Eurus' assumed or estimated interconnection costs (and no adjustment to the energy payment rate will be permitted based on changes in interconnection costs).

The Project will comply with the performance requirements that will be included in the PPA and any modified or new performance requirements determined as part of the IRS (and no adjustment to the energy payment rate will be permitted based on complying with such interconnection requirements).

Please confirm Eurus' agreement with the foregoing by counter-signing this letter and returning an electronic copy of the letter to Hawaiian Electric by 9:00 AM Hawaii Standard Time on September 12, 2017 via email to rosella.motoki@hawaiianelectric.com. Please also send a hard copy of this letter via US mail to my attention at PO Box 2750, Honolulu, Hawaii 96840 postmarked by September 12, 2017.

Sincerely,

Rodney S. Chong

ACKNOWLEDGED AND AGREED TO:

By: _____
Name: SATOSHI TAKAHATA
Title: President
Date: September 8, 2017

EXHIBIT 5

Site Map of Seller's Facility

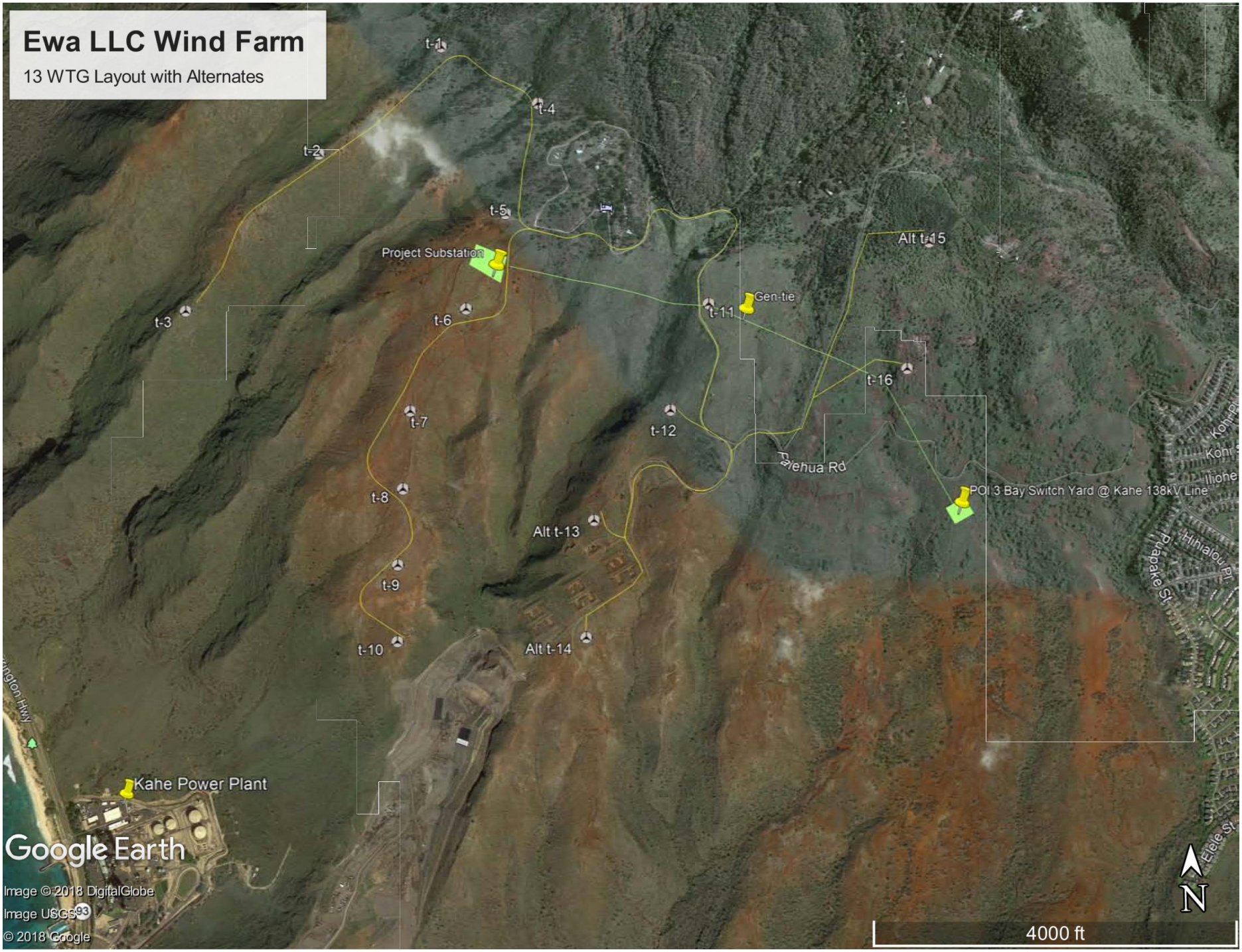


EXHIBIT 5
PAGE 1 OF 1

EXHIBIT 6

Seller's Price Justification and Pro Forma

Exhibit 6

This exhibit was prepared and provided by Eurus.

Palehua Price Justification and Pro Forma

As described in the PUC's 2014 "Commission's Inclinations on the Future of Hawaii's Electric Utilities", "There is clear evidence that pursuing a diverse portfolio of renewable energy resources provides the best long-term strategy to maximize the use of renewables to achieve public policy goals". It is clear that in order for the State of Hawai'i to deliver clean, cost-effective and reliable renewable energy to achieve the 100% renewable targets by 2045, it is imperative to diversify the energy resources to achieve these goals while maintaining grid stability.

The Palehua project represents a unique opportunity to contribute to renewable targets given that it is likely one of the last commercial on-shore wind projects on O'ahu. As described in the Power Supply Improvement Plan (PSIP) Update Revised Analytical Approach and Work Plan submitted by Hawaiian Electric on September 7, 2016,[1] the potential for additional onshore wind development on O'ahu is vastly limited – varying between as low as 16MW to a maximum of 154MW of additional capacity potential.

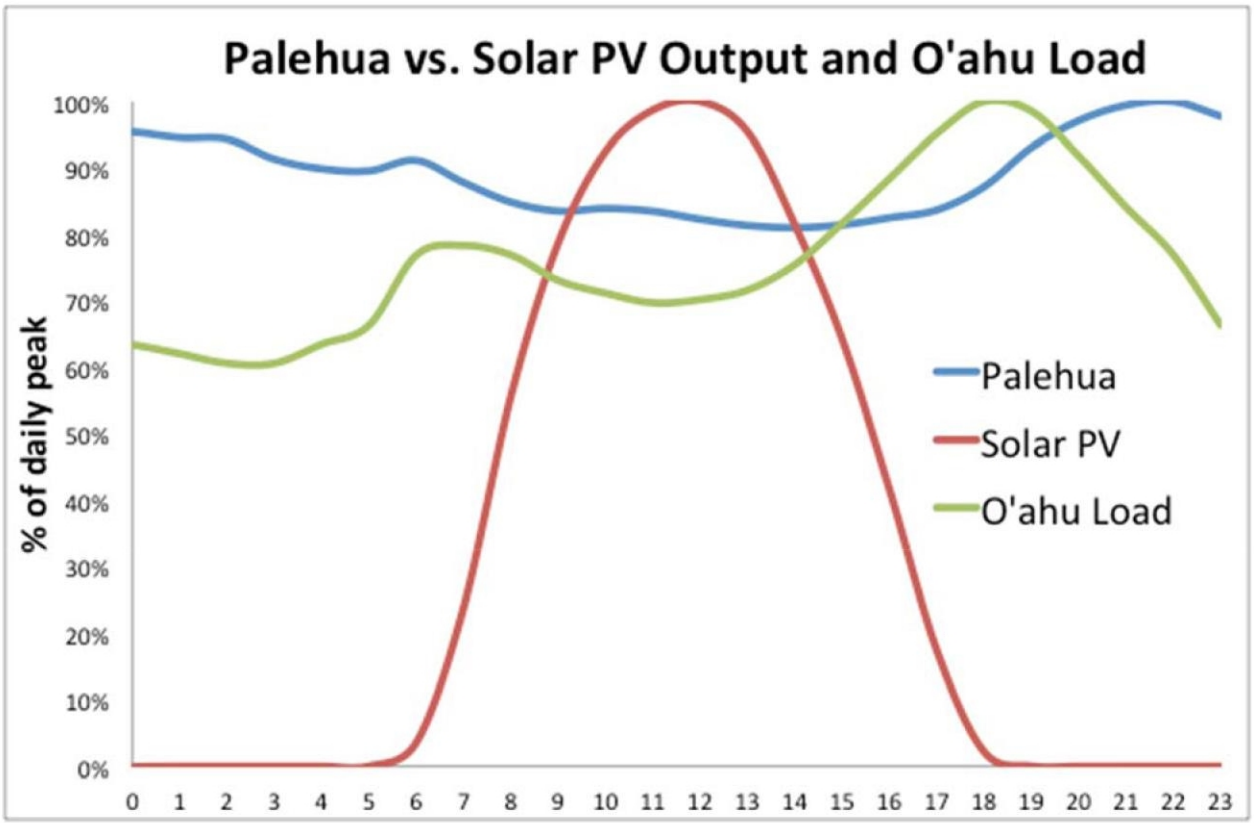
In order to confirm this potential capacity, on January 5, 2017, Hawaiian Electric released a "Request for Expressions of Interest for Potential Onshore Wind Renewable Energy Development" (EOI) in order to identify any commercially-viable utility-scale wind farms currently in development on O'ahu eligible to utilize the Federal Investment Tax Credit prior to its devaluation/expiration. Since 2012, Eurus has been developing Palehua as a wind project aimed at providing a reliable source of clean energy. Currently, Palehua can be uniquely characterized as the only unbuilt wind farm on O'ahu reasonably capable of qualifying for economically-beneficial valuation levels of the Federal Investment Tax Credit. With this in mind, Eurus provided a formal response to Hawaiian Electric's EOI on January 31, 2017. Hawaiian Electric subsequently issued a response on April 3, 2017, outlining its preconditions to initiate a bilateral negotiation on a specific form of PPA with fixed energy pricing. Notably, Palehua was the only viable wind project that successfully responded to the EOI, indicating the unique nature of the project and its ability to address Hawaiian Electric's clean-energy needs.

As a utility with a 100% Renewable Portfolio Standards (RPS)[2] target but no physical interconnection to any other electrical system, Hawaiian Electric will need to utilize all available sources of renewable generation while also balancing these resources in order to ensure reliable system operations and prevent interruptions to electrical service to customers. While the PSIP highlights PV solar generation additions (in conjunction with energy storage) as primary for Hawaiian Electric's ongoing future compliance with RPS requirements, Palehua, by virtue of it being a wind generation project, provides Hawaiian Electric with an opportunity to further satisfy its renewable generation obligations while also increasing the overall diversity of

[1] Filed on September 7, 2016 in Docket No. 2014-0183.
[2] See Hawaii Revised Statutes § 269-92.

generation sources operating on its system. This generation diversity will subsequently benefit overall grid operations by positively impacting Hawaiian Electric's ongoing energy efficiency, demand response, and energy storage initiatives.

In addition to the benefit offered by the unique nature of Palehua's wind resource, the power generated by Palehua's wind turbines also comes lower than Hawaiian Electric's avoided costs, thus providing a direct benefit to Hawaiian Electric's customers in terms of lower generation costs fixed for the next 22-years. For these reasons, and by virtue of Palehua being one of the few viable onshore wind projects on O'ahu, it is clearly beneficial for Palehua to be built before the expiration of the Federal Investment Tax Credit is still available to support wind energy and subsidize the ultimate costs to Hawaiian Electric's customers.



*O'ahu Average Net Load from the Hawaiian Electric Companies' PSIP Update Report, filed on December 23, 2016, in Docket No. 2014-0183, at Book 4, page P-173. Additional data is from onsite measurements of wind and solar resource data for representational purposes.

Recent operational experience has illustrated that for regions characterized by a relatively high proportion of interconnected solar PV (e.g., Hawai'i and the California-ISO), the overall benefit of incremental additions of solar PV generation declines due to the increasingly limited ability of the electrical system to absorb greater levels of midday generation without investments in corresponding energy storage installations to offset this surplus generation. By comparison, as seen the in the representative chart above, Eurus believes that wind generation offered by Palehua represents the most viable and cost-effective means by which Hawaiian Electric can satisfy critical peak load hours in early-evening when PV generation is not available.

Eurus believes that for the Hawaiian Electric system to function without major impacts to operational stability, particularly as the system nears levels of renewable penetration set forth in the 100% RPS legislation, every additional MW of solar PV generation (whether utility-scale or rooftop) will need to be associated with a corresponding amount of mid-duration (3-6 hour or longer) energy storage in order to address intermittency issues, avoid regular midday curtailments due to over-generation, and also provide energy to match actual electric demand. While this solar-to-storage pairing is a theoretically effective means to address the energy imbalance that results from PV solar generation taking a larger position within Hawaii's generation mix, it comes with four additional factors to consider: cost, land use, reliability, and resiliency.

Cost: While energy storage costs have consistently declined as the technology has become more widespread, in order to fully shift midday generation to more closely match load, each additional MW of solar PV interconnected will require 3-6 MWh of additional energy storage. As a function of the basic chemistry of the most widely used energy storage battery technology (lithium ion) the capabilities of the energy storage to provide the same level of energy will consistently degrade with each cycling (presumed to occur on a daily basis).

Land Use: The additional land area necessary to accommodate energy storage installations is substantial, unavoidable, and represents a major challenge for high-levels of utilization on islands like O'ahu. In contrast to wind projects, which typically provide large amounts of unused land between individual wind turbines, land utilized for solar PV projects is typically fully-utilized and does not have additional area for any secondary use, unlike land that will be available within Palehua for potential secondary uses.

Reliability: With typically a limited number of (daytime) hours available for storing energy, the ability of a solar PV plus storage project to generate reliably will be necessarily constrained during periods of time when the solar resource is lower than expected due to weather (or other factors) and there is not enough energy available to fully charge the storage system. During these days, wind generated electricity, like the sort provided by Palehua, has particular value to the system, as it typically is inversely correlated to solar PV generation. That is to say, for periods of time in which solar resource is low and energy storage less able to address the overall electrical demand, wind generation is an ideal replacement. For context, consider a grid powered 100% by solar PV plus energy storage projects. In order to maintain system reliability during a (cloudy) period with 10% of the predicted average solar resource, the electrical system would require ***ten times*** more generation than what is actually installed, just to meet average electrical demand. For reference, during most days (those with typical levels of solar resource insolation), 90% of PV production would need to be curtailed and would be effectively useless. This "reliability-driven overbuild" would further impact the considerations of land use and cost referenced above.

Resiliency: As with other renewable energy resources, in addition to enhanced system reliability during normal operations on a daily basis, the wind energy generated by Palehua has clear benefits for crisis situations in which system resiliency becomes important. By virtue of its

location at a higher elevation, Palehua's ability to generate and provide electricity to the system during natural disasters can reasonably be foreseen to be less impacted by tsunami, storm surge, or other factors that may cause damage to other generation assets in the area (inside the projected inundation zone) and force them offline for extended periods.

Overall, to reach the level of renewables outlined in the RPS and ensure overall system reliability, Hawaiian Electric must necessarily utilize all economically-viable sources of clean energy available on O'ahu. The generation offered via Palehua represents by far the least expensive wind energy on O'ahu and offers benefits to the Hawaiian Electric system and customers alike.

Banked Curtailed Energy Term

Industry expectations on overall lifetime for wind projects has evolved from when turbine technology was relatively new and manufacturing/installation was not performed on an industrial scale on like it is today. Currently, project participants can reasonably anticipate an operational lifetime of 25 years, with an ability to extend operations substantially into the future (even up to 40 years) provided overhaul/repairs at the conclusion of the original operational term.

Illustrating the long-term reliability of wind turbine technology, currently some of the earliest turbines installed in the United States, remain operational. Public data maintained by the United States Geological Survey in the United States Wind Turbine Database (USWTDB) indicates that as of early 2018, approximately 5,000 wind turbines operational in the United States were commissioned in 1998 or earlier (thus, are least 20 years old). Of these, more than 4,000 were 30+ years old and some of the oldest were commissioned in as early as 1981.

It is generally accepted that wind project O&M costs increase over the lifetime of a project. Compared to a PV project, which has fewer (if any) moving parts, wind projects can present more instances of mechanical wear-and-tear. In addition, the primary costs that typically arise in later years for both PV and wind projects are the failure of major components. The difference between the two technologies is that for a wind project, these major components include blades, generators, or gearboxes that often require expensive cranes and other equipment to replace. For PV projects, the major component are typically inverters, which are comparably easier to replace and typically do not have significant lead-times or impacts to the overall facility. Given that Palehua is a wind project, most parties would anticipate larger fixed O&M costs after year 22 of the contract and the start of the Banked Curtailed Energy Term.

With the extended lifetime expectation anticipated for wind generation beyond the PPA term and given that pricing for the Banked Curtailed Energy Term 50% of the Contract Price, Hawaiian Electric customers will benefit from substantially discounted energy during this period, during which the project can be expected to operate as designed and have more than sufficient funds to continue generation.

Renewable Energy Variable PPA

Facility Pro Forma Cash Flow

Inputs: Project Assumptions. Enter values in cells with white backgrounds. Please enter "0" if field is not applicable.

YR 1 CF: [redacted]

Plant Design	
Renewable Resource	Wind
Prime Mover Technology	Wind Turbine
Fill in if Other	0
Plant Capacity, MWe (AC)	46.80
Plant Capacity, MWp (DC)- PV Only	0.00
Coupled With Energy Storage	
Energy Storage Capacity, MWh	0.00
Energy Storage Capacity, MW	0.00
Hours of Storage	#DIV/0!
Net Energy Production in Yr 1, MWh	148,975
Annual Production Degradation (if any)	0.00%
Plant Life, Years	22
PPA Price	
Lump Sum Payment, $/year	$0
Energy Payment Price, $/MWh	$109.75
Energy Payment Escalator	
PPA Term, Years	22

Engineer/Procure/Construction Costs	$	$/We
Renewable Energy Major Equipment	[redacted]	
Energy Storage Equipment (if any)		nc
Balance of Systems (BOS)		
Install Labor/ Site Work		nc
Engineering and Management		nc
Miscellaneous*		
Excise Tax		nc
Gen-Tie (Bidder Own)		
EPC Margin		
Total EPC		

*Items included in Miscellaneous

[redacted]

Land Purchase and Sale (if Applicable)	
Land Purchase Price, $	[redacted]
Land Sale Price, $	
Year of Sale (As project year, not calendar yr)	

Soft Costs		
Permitting	[redacted]	
Interconnection Reliability Study (IRS)		
Developer to Install Company Interconnection		
Interconnection Costs (Company Own, Bidder Paid)		
Legal Fees		
Financing Fees		See Note #4
Development Fees		See Note #2
Allowance for Funds Used During Construction (AFUDC)		nc
Other Owner's Costs		nc
Total Soft Costs		
Total Installation Cost (TIC)	[redacted]	
In-Basis Cost	[redacted]	
Out-of-Basis Costs		

Taxes and Incentives	
Federal Income Tax and Incentives	[redacted]
Federal Income Tax Rate	
"Commence Construction" Year	
Federal Investment Tax Credit (ITC) Rate	
Federal ITC Amount ($)	
Federal Production Tax Credit (PTC) ($/MWh)	
Federal PTC term (years)	
Federal PTC escalation	
State Taxes and Incentives	[redacted]
Hawaii Income Tax Rate	
Hawaii General Excise Tax Refund	
Hawaii Investment Tax Credit (ITC) Rate	
Hawaii Calaculated ITC Amount ($)	
Hawaii Allowable ITC Amount ($)	
Hawaii Alternative Solar Refund ($)	

Depreciation Schedule	
Depreciation and Amortization (applies to federal and state taxes)	
Depreciation Basis Reduction, % of Fed. ITC	[redacted]
Adjusted Depreciation Basis	
"Placed in Service" Year	
Bonus Depreciation (if Applicable)	
MACRS Depreciation Schedules	Percent of In-Basis Cost
Percent 5-year MACRS	[redacted]
Percent 7-year MACRS	
Percent 10-year MACRS	
Percent 15-year MACRS	
Percent 20-year MACRS	
Amortization of Out-of-basis Costs, Yrs	

Operating Expenses (OPEX)		Annual Escalation/(-Decline)
O&M	[redacted]	
Fixed O&M Year 1 Amount, $/kWe-yr		
Must include major equipment replacement reserves		
Variable O&M Year 1 Amount, $/MWh		
Annual Property Tax	[redacted]	
Insurance - Year 1		
Initial Land Lease - Year 1		
General & Administration (G&A) Cost		
Other expenses**		

**Items included in Other Expenses

[redacted]

Post-PPA and Residual Value, Removal Costs		Note #3
First Year Post-PPA Revenue	[redacted]	
Post-PPA Revenue Escalation		
Removal Cost ($)		
Salvage Value ($)		

Results: Project Cash Flows. Do not change any values.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
ENERGY PRODUCTION AND REVENUE																															
Net Annual Energy Production (MWh)		148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	148,975	-	-	-	-	-	-	-	-
Annual Lump Sum Payment ($)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Energy Payment Price ($/MWh)		109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	109.75	-	-	-	-	-	-	-	-
Post-PPA Revenue		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Revenue from PPA Energy Sales		16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	16,350,006	-	-	-	-	-	-	-	-
EXPENSES																															
Fixed O&M	[redacted]																														
Variable O&M																															
Property Taxes																															
Insurance																															
Site Lease																															
G&A																															
Other Expenses																															
Total Expenses																															
TAX DEPRECIATION AND AMORTIZATION																															
5 year MACRS Depreciation	[redacted]																														
7 year MACRS Depreciation																															
10 year MACRS Depreciation																															
15 year MACRS Depreciation																															
20 year MACRS Depreciation																															
checked																															
Amortization of Out of Basis Costs																															
Total Hawaii Depreciation																															
Bonus Depreciation																															
MACRS Depreciation Schedule (Half Year Convention)																															
Depreciation Basis, after Bonus Depreciation (if applicable)																															
5 year MACRS Depreciation																															
7 year MACRS Depreciation																															
10 year MACRS Depreciation																															
15 year MACRS Depreciation																															
20 year MACRS Depreciation																															
checked																															
Amortization of Out of Basis Costs																															
Total Federal Depreciation																															
Net Income																															
Operating Income, EBITDA	[redacted]																														
Margin = Operating Income ÷ Revenue																															
HI Taxable Income, EBIT																															
HI Income Tax Liability before Tax Credit																															
HI Credit Against Tax Liability																															
HI Alternative Solar Refund																															
HI Income Tax Liability after Refundable Tax Credits																															
Federal Taxable Income, EBIT																															
Federal Tax Credits																															
Federal Income Tax: Benefit (Liability)																															
Net Income																															
ADDITIONAL PROJECT BENEFITS																															
HI General Excise Tax Refund	[redacted]																														
Salvage Value																															
Land Value																															
PROJECT COSTS																															
Land Procurement	[redacted]																														
Removal Cost																															
Total Installation Cost																															

EXHIBIT 7

Pricing Evaluation

Exhibit 7

Pricing Evaluation

I. Introduction

Implementation of the Palehua Wind Project ("Palehua" or "Project") will result in benefits to Hawaiian Electric's customers. Benefits include lower fuel consumption tied to the increase in renewable energy production, increased contribution toward meeting Renewable Portfolio Standards ("RPS"), increased energy security, and lower energy costs to Hawaiian Electric's customers.

II. Methodology

The analysis sets as a baseline, or "base case", Hawaiian Electric's E3 Plan with Generation Modernization and Near Term Action Plan Resources as reported in the Hawaiian Electric Companies[1] December 23, 2016 Power Supply Improvement Plan ("PSIP") Update.[2] An "alternate case", where the Project is implemented and substitutes for the 30 MW Grid-Scale Wind in O'ahu's Near Term Resource Plan, is also modeled to compare the differences between the plans to quantify the benefits of the Project. The 22-year planning period covers 2022 to 2043 incorporate the term of the Power Purchase Agreement ("PPA").

A production simulation computer program called PLEXOS is used to simulate how the system will operate in both the base and alternate cases, i.e., without the Project, and with the Project. The key inputs to the computer program are described in Section III.B, below. The key outputs from the computer simulation include energy produced and fuel consumed by each generating unit for both utility and non-utility units, energy taken from each variable generation unit, hourly energy output from each generating unit, and cost of fuel consumed.

III. Pricing Evaluation

A. Long-Run Avoided Cost Analysis

Long-run avoided energy cost serves as a benchmark against new project pricing to evaluate and assess the reasonableness of the proposed pricing. Because the planning environment has become increasingly uncertain, the determination of the utility's "true" avoided costs has become increasingly complex. For example, the key determinants of avoided costs include, but are not limited to: the forecast of future fossil fuel and biofuel prices; the forecast of sales and peak demand; the size, type and characteristics of future energy storage; the size, type and characteristics of future firm capacity resources installed; the size, type and characteristics of future variable renewable generation resources installed; the amount of distributed generation capacity installed; and the amount of regulating reserve needed to maintain system stability. The

[1] The Hawaiian Electric Companies are Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawai'i Electric Light Company, Inc.
[2] Refer to Chapter 4 of the Hawaiian Electric Companies' Power Supply Improvement Plan Update, submitted on December 23, 2016, in Docket No. 2014-0183 ("PSIP Update Report").

assumptions for the production simulation model analysis herein are based on the E3 Plan with Generation Modernization and Near Term Action Plan Resources from the PSIP Update Report with certain adjustments that are described below.

- Base Case: Hawaiian Electric's E3 Plan with Generation Modernization and Near Term Action Plan Resources (which has, among other things, 30 MW of grid-scale wind in 2020).

- Alternate Case: Add Palehua in 2023 and replace the grid-scale wind in 2020.

The results of the analysis will indicate the value of the Project. It will show the avoided fuel displaced by adding the Project in the alternate case, and the anticipated impacts to Hawaiian Electric's customers.

B. Key Inputs to the Long-Run Avoided Cost Analysis

In general, the inputs used in this analysis are the same as those used in the PSIP Update Report, and briefly described below. Any differences from the PSIP Update Report assumptions are noted.

1. Sales Forecast

The sales forecast is provided in Appendix J of the PSIP Update Report.

2. Fuel Price Forecast

The forecast of fuel prices is provided in Appendix J of the PSIP Update Report.

3. Demand Response ("DR") Impact and Cost Forecast

The forecast of DR impacts is provided in Appendix J of the PSIP Update Report.

4. Resource Plan and Resource Costs

The resource plans used in the analyses are provided in Attachment 1. The resource costs used for the purpose of this analysis are based on the PSIP Update Report cost assumptions.

5. Discount Rate

An after-tax discount rate of 7.044% was used to determine the present value of future expenditures. The after-tax discount rate was derived from Hawaiian Electric's composite incremental cost of capital on an after-tax basis.

6. Costs for the Project

The Project costs are calculated based on terms of the PPA, including the contract rate for energy purchased for each MWh.

7. Regulating Reserve

The regulating reserves for the analysis are consistent with the methods described in the PSIP Update Report.[3] The quantity of regulating reserves varies between the base case and alternate case to accommodate the addition of the Project in the alternate case. The regulating reserve formula for O'ahu used for the purposes of this analysis is:

Required regulating reserve amount equals the sum of:
Approximately 1 MW regulating reserve for each 1 MW of delivered wind and PV generation up to 18% of nameplate capacity of wind and PV during daytime the hours of 7 AM to 6 PM; plus

1 MW regulating reserve for each 1 MW of delivered wind and PV generation up to 23% of nameplate capacity during the hours of 6 PM to 7 AM

IV. Results

A. Project Costs

The calculation of the net present value ("NPV") of the Project costs includes the payments over the 22-year PPA term. The total accumulated annual payments over the term are then discounted using the discount rate to determine the NPV in 2023 dollars. Refer to Attachment 2 for additional details on project costs. Attachment 2 also calculates the estimated levelized cost of energy of the Project based on the production simulation results of the energy purchased.

B. Avoided Fuel Consumption

Energy from the Project will reduce fuel consumption in Hawaiian Electric's and in disptachable independent power producer generating units. The production simulation results provide an estimate of the amount of fuel consumption that could be avoided on O'ahu with the Project in service. The approximate avoided fuel consumption total over the life of the PPA is shown below:

- Low Sulfur Fuel Oil: 970,586 barrels
- Diesel Fuel: 5,340 barrels
- Ultra-Low Sulfur Diesel: 1,544,514 barrels
- Biodiesel: 3,342 barrels

Tables showing further breakdown of avoided fuel consumption are provided in Attachment 3.

In addition to the benefits discussed above, a non-cost benefit of the Project is that the reduction in fuel consumption will reduce customer exposure to the volatility in fuel prices,

[3] See PSIP Update Report, Appendix J, page J-7. Required Regulating Reserve.

particularly since fuel consumption will be displaced by renewable energy generation, which is fixed in price. Historically, fuel prices have been volatile. Reducing generation dependent on fossil fuels is one way to buffer customers from the volatility of fuel prices.

C. Customer Bill Impact

The results of the analysis indicate that the Project will provide direct energy cost savings to customers. The Project is anticipated to reduce customer bills over the 22-year term. Attachment 4 shows estimations of impacts to a typical residential customer bill.

Bill impacts are highly dependent on the particular production simulation modeling assumptions used for each particular year analyzed, and will be different than estimated herein over the project term as actual conditions deviate from the assumed conditions.

V. Risks and Uncertainties

There are certain costs and potential risks to Hawaiian Electric's customers that could result from the Project. Examples are described in the following sections.

A. Higher Incremental Additions of Projects May Raise Opportunity Costs

As the amount of available headroom to accept variable renewable generation decreases and as the amount of variable renewable generation integrated onto the electrical grid increases, particularly during mid-day, there may be opportunity costs. The continued, integration of distributed photovoltaic systems ("DG-PV") are already resulting in opportunity costs as more expensive DG-PV energy must be taken at the expense of less expensive grid scale wind and solar energy, which, at times, may need to be curtailed to accept DG-PV energy.

The Project provides an opportunity to secure renewable energy in the very near future. Future projects and actual in-service timeframes are speculative at best at this time.

B. Excess Energy Conditions

The addition of the Project is not anticipated to impact existing renewable resources.

VI. Conclusions

The Project will increase renewable energy on the system, lower fuel consumption, and increase energy security by reducing dependency on imported oil. Taking all these factors together, Hawaiian Electric believes it is in its customers' best interests to integrate the proposed Project onto the system to help achieve renewable energy policy goals and long term price stability.

ATTACHMENTS TO EXHIBIT 7

Attachment 1	E3 Plan with Generation Modernization and Near Term Action Plan Resources
Attachment 2	Estimated Levelized Cost of Energy
Attachment 3	O‘ahu System Fuel Consumption
Attachment 4	Typical Residential Bill Impact

ATTACHMENT 1

E3 Plan with Generation Modernization and Near Term Action Plan Resources

Year	Base Case
2020	Install 180 MW Grid-Scale PV Install 100 MW 1-hour Regulation Battery **Install 30 MW Grid-Scale Wind**
2021	
2022	Install 426 MW 4-hour Load-Shift Battery Install 40 MW of Grid-Scale PV
	AES deactivated, 9/2022 Install 100 MW JBPHH Plant
2023	Waiau 3 & Waiau 4 Removal From Service Install 54 MW KMCBH Plant
2024	
2025	Install 200 MW of Grid-Scale PV Install 29 MW 4-hour Load-Shift Battery Install 200 MW of Offshore Wind
2026	Install 151 MW CC Waiau 5 & 6 Removal From Service
2028	Install 151 MW CC Kahe 5 & 6 Removal From Service
2030	Install 165 MW 4-hour Load-Shift Battery
2031	Waiau 7 & 8 Removal From Service
2032	Install 302 MW CC (2 x 151 MW)
2035	Install 168 MW 4-hour Load-Shift Battery Kahe 1 & 2 Removal From Service
2039	Kahe 3 & 4 Removal From Service
2040	Install 280 MW of Grid-Scale PV Install 420 MW 4-hour Load-Shift Battery

Year	Alternate Case
2020	Install 180 MW Grid-Scale PV Install 100 MW 1-hour Regulation Battery
2021	
2022	Install 426 MW 4-hour Load-Shift Battery Install 40 MW of Grid-Scale PV
	AES deactivated, 9/2022 Install 100 MW JBPHH Plant
2023	Waiau 3 & Waiau 4 Removal From Service Install 54 MW KMCBH Plant *Install 46.8 MW Palehua Wind Project*
2024	
2025	Install 200 MW of Grid-Scale PV Install 29 MW 4-hour Load-Shift Battery Install 200 MW of Offshore Wind
2026	Install 151 MW CC Waiau 5 & 6 Removal From Service
2028	Install 151 MW CC Kahe 5 & 6 Removal From Service
2030	Install 165 MW 4-hour Load-Shift Battery
2031	Waiau 7 & 8 Removal From Service
2032	Install 302 MW CC (2 x 151 MW)
2035	Install 168 MW 4-hour Load-Shift Battery Kahe 1 & 2 Removal From Service
2039	Kahe 3 & 4 Removal From Service
2040	Install 280 MW of Grid-Scale PV Install 420 MW 4-hour Load-Shift Battery

ATTACHMENT 2

Estimated Levelized Cost of Energy

	Palehua Generation	Energy Price	Total Payments
	(MWh)	($/MWh)	($)
Year	a	b	c = a * b
2023	148,968	109.75	16,349,235
2024	148,976	109.75	16,350,104
2025	148,975	109.75	16,349,983
2026	148,975	109.75	16,349,994
2027	148,975	109.75	16,350,001
2028	148,975	109.75	16,349,993
2029	148,974	109.75	16,349,943
2030	148,976	109.75	16,350,069
2031	148,975	109.75	16,349,983
2032	148,975	109.75	16,349,980
2033	148,974	109.75	16,349,944
2034	148,968	109.75	16,349,213
2035	148,961	109.75	16,348,517
2036	148,975	109.75	16,349,970
2037	148,970	109.75	16,349,491
2038	148,975	109.75	16,350,001
2039	148,938	109.75	16,345,988
2040	148,947	109.75	16,346,917
2041	148,867	109.75	16,338,157
2042	148,835	109.75	16,334,692
2043	148,859	109.75	16,337,300
2044	148,721	109.75	16,322,120
NPV (2023)	1,757,305	-	192,864,254

d = NPV of a	Total Generation Accumulated Net Present Value (MWh)	1,757,305
e = NPV of b	Total Payments Accumulated Net Present Value ($)	192,864,254
f = e / d	Estimated Levelized Cost of Energy ($/MWh)	109.75

*Totals may not match exactly due to rounding.

Confidential Information Deleted
Pursuant to Protective Order No. _____.

ATTACHMENT 3

O'ahu System Fuel Consumption

Year	LSFO Avoided Fuel Consumption (Barrels)	Diesel Avoided Fuel Consumption (Barrels)	ULSD Avoided Fuel Consumption (Barrels)	Biodiesel Avoided Fuel Consumption (Barrels)
2023	[redacted]			
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				
2036				
2037				
2038				
2039				
2040				
2041				
2042				
2043				
2044				
Total				

Confidential Information Deleted
Pursuant to Protective Order No. _____.

ATTACHMENT 4

Typical Residential Bill Impact

Palehua Typical Residential Bill Impact

Line	Description	2023	2024	2025	2026	2027	2028	2029	2034	2039	2044
a	Palehua Total Revenue Requirement (Current Year $)	[redacted]									
b	Hawaiian Electric Total Avoided Revenue Requirement (Current Year $)	[redacted]									
c = a - b	Incremental Revenues Required (Current Year $)	[redacted]									
d	Estimated Hawaiian Electric Sales (MWh)	6,363,000	6,325,000	6,247,000	6,194,000	6,140,000	6,103,000	6,007,000	6,011,000	6,192,000	6,397,000
e = (c/d)/10	Estimated Rate Impact (cents/kWh in Current Year $)	[redacted]									
f = (500 * e)/100	Est Impact on Typ Residential Bill of 500 kWh (Current Year $)	(0.45)	(0.49)	(0.65)	(0.70)	(0.77)	(0.70)	(0.81)	(0.76)	(0.85)	(0.62)

EXHIBIT 8

Key PPA Terms and Conditions

EXHIBIT 8

Key PPA Terms and Conditions

The specific terms and conditions of the PPA were negotiated by the Parties at arms-length, over a period of several months. The PPA contains pricing, indemnification, insurance, and other customary provisions, including provisions pertaining to the Term, Eurus's delivery of as-available renewable energy from the Facility, and Eurus's compliance with laws, which will serve to protect Hawaiian Electric and its customers from certain risks associated with interconnecting the Facility. Moreover, the terms and conditions of the PPA will not affect Hawaiian Electric's ability to provide electric service to its customers. Hawaiian Electric contends that, for these reasons, the purchased power arrangements (i.e., terms and conditions) under the PPA, pursuant to which Hawaiian Electric purchases energy from Eurus are reasonable and prudent, and in the public interest. A summary of some of the key terms and conditions of the PPA is provided below.

1. Term

a. Initial Term, Banked Curtailed Energy Term and Extended Term

The PPA, which is subject to approval by the Commission, commences upon the Execution Date and remains in effect for an Initial Term of twenty-two (22) years following the Commercial Operations Date. Upon expiration of the Initial Term or Banked Curtailed Energy Term (as defined below) (if the Company has exercised its option to extend the Term for Banked Curtailed Energy), the PPA automatically terminates. If the Parties desire, the Parties may negotiate terms and conditions of an extension term as provided for in the PPA (the "Extended Term"), including reduced Contract Pricing in light of the circumstances, subject to the

Commission's approval of any new or amended PPA.[1]

Subsequent to the Initial Term, pursuant to Section 12.10 of the PPA, the Company may extend the Term of the PPA for a period (the "Banked Curtailed Energy Term"), not to exceed five (5) years, that is necessary for all Banked Curtailed Energy to be delivered to the Company. This option is designed to provide the Company's customers with a benefit for the Compensable Curtailed Energy that, under the RAP Pricing (as defined below), will have been paid for but not delivered during the Initial Term. The Contract Price for energy delivered during the Banked Curtailed Energy Term will be approximately one-half of the Contract Price for the Initial Term.[2] The Banked Curtailed Energy Term is discussed in more detail in sub-section 2 a ("RAP" Pricing) of this of this Exhibit 8 (Key PPA Terms and Conditions).

b. <u>Commission Approval and Associated Termination Rights.</u>

Upon the Execution Date, the Parties are required to use good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of Section 29.20(A) (PUC Approval Order) in the PPA.[3] If a satisfactory PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date[4] or within a longer period agreed to by the Parties, Hawaiian Electric or Eurus may, by written notice delivered within

[1] See PPA § 12.1. The Company notes that prior iterations of this provision in other PPAs have provided for the contract to automatically continue in effect after the expiration of the Initial Term, or the Banked Curtailed Energy Term (if exercised by the Company). However, in view of the concerns raised by the Consumer Advocate regarding this "ever green" concept, the Parties agreed to modify the provision to address the Consumer Advocate's concerns.

[2] See Section 1(b) of Attachment J (Energy Purchases by Company) of the PPA. The Contract Price during the Banked Curtailed Energy term is $55/MWh, which is 50% lower than the fixed base Contract Price ($109.75/MWh).

[3] See PPA § 12.3

[4] The date of the submittal of Company's complete application or motion for a satisfactory PUC Approval Order pursuant to Section 12.3 (PUC Approval) of the PPA.

one hundred eighty (180) days of such date, declare the PPA null and void.[5]

Additionally, if a PUC Approval Order is obtained within twelve (12) months of the PUC Submittal Date but that order is appealed, and a Non-appealable PUC Approval Order is not obtained within twelve (12) months of the PUC Submittal Date, or within a longer period agreed to by the Parties, Hawaiian Electric or Eurus may, by written notice delivered within ninety (90) days of such date, declare the PPA null and void.[6]

Timeframes for PUC approval were set based on the Project's need to move forward as expeditiously as possible to safe harbor the federal Business Energy Investment Tax Credit ("ITC") at 18% for 2019. However, in the event Eurus is unable to safe harbor the ITC and the PPA is not declared null and void pursuant to the terms of the PPA, the contract price negotiated in the PPA will not be increased or subject to adjustment.

c. Company Right to Declare PPA Null and Void Prior to Effective Date

Pursuant to Section 12.5 (Prior to Effective Date) of the PPA, Hawaiian Electric has the right to declare the PPA null and void prior to the Effective Date for the following reasons:

- Eurus makes material changes in the type of, or performance specifications of the equipment that affects the results of the IRS or project schedule.
- Eurus is in breach of Section 22.2(C) and 22.2(D) requiring Seller to have obtained certain Land Rights and Governmental Approvals, or the provisions of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Eurus to Hawaiian Electric of certain specified amounts for interconnection facilities.
- Eurus, after making payment for the interconnection facilities, requests in

[5] See PPA §12.6(B)
[6] See id.

writing that Hawaiian Electric stop or otherwise delay the performance of work for which Hawaiian Electric received such payment.

d. Termination Rights

The Parties have agreed to certain conditions that would trigger termination rights. Section 12.2 (Effectiveness of Obligations), Section 12.8 (Termination Rights) and Section 13.4 (Damages and Termination) of the PPA provide the termination rights in the PPA. Notwithstanding any of the foregoing, the PPA may be terminated in accordance with the terms of Article15 (Events of Default) of the PPA.

Section 12.2(B) of the PPA provides an additional right to terminate the PPA. At the request of Seller,[7] the Parties agreed to a narrowly tailored option for Seller to terminate the PPA if it is unable to obtain, to the extent necessary: (i) an incidental take permit under Section 10(a)(1)(B) and a final habitat conservation plan pursuant to Section 10(a)(2)(A) of the Endangered Species Act; and (ii) an incidental take license as part of the habitat conservation plan under Haw. Rev. Stat. § 195D-4, that will permit the Project to operate at its full capacity as contemplated by the PPA without material modifications in design or siting or material additional expense. Under the terms of the PPA, if the Seller exercises this option to terminate the PPA, it shall pay Hawaiian Electric a termination fee of five hundred thousand dollars ($500,000), and be released from further liability under the PPA, subject to the surviving contractual obligations of the PPA as enumerated in PPA Section 29.24.[8]

[7] Seller noted the issues and difficulties other wind projects have experienced in seeking approval for an incidental take permits and incidental take license, and sought an early termination right to mitigate its development risk.
[8] See PPA at § 12.2(B).

2. Energy Pricing

a. "Risk-Adjusted Pricing"

The PPA is a modified "Risk-Adjusted Pricing" ("RAP") energy PPA, under which Hawaiian Electric will purchase the energy made available to the Company in accordance with the terms and conditions of the PPA, subject to Hawaiian Electric's rights in the PPA to curtail, interrupt or reduce deliveries of electric energy for certain enumerated purposes or causes, including a system emergency, Forced Outage, the inability to accept deliveries of electric energy due to light loading conditions, or if accepting energy from Eurus would require Hawaiian Electric to operate the Company System outside of Good Engineering and Operating Practices.[9]

Similar to other RAP PPAs previously entered into by Hawaiian Electric and approved by the Commission, this PPA requires Hawaiian Electric to pay for certain curtailed energy ("Compensable Curtailed Energy"), primarily energy curtailed for excess energy conditions as specifically set forth in the PPA. However, as noted below in Section 2.b. in more detail, the Parties agreed to a new PPA rate structure that allocates some curtailment risk to Eurus, while seeking to avoid a higher fixed long-term price associated with a peak curtailment threshold. Eurus was willing to accept curtailment risk of up to five percent (5%) of the Annual Contract Energy for each Contract Year, with adjusted pricing.

Essentially, Hawaiian Electric will pay at the same contract rate for both electric energy delivered pursuant to the PPA and for Compensable Curtailed Energy, which is defined as Curtailed Energy that results from a Compensable Curtailment Event.[10] This pricing structure

[9] See PPA §8.1 (General).
[10] See PPA "Definitions" at 6.

for electric energy is sometimes referred to as "RAP Pricing" herein. This concept was approved by the Commission in Hawaiian Electric's PPAs with Waianae Solar, Waipio PV, Kawailoa Solar, and Lanikuhana Solar.

A Compensable Curtailment Event is defined in relevant part as:

> "Compensable Curtailment Event": Any Curtailment Event other than a Curtailment Event due to (a) an Emergency, (b) a Forced Outage, (c) the Facility not operating in compliance with Good Engineering and Operating Practices such that curtailment is necessary to protect the Company System or because Company cannot accept the energy as delivered, as determined by the Company System Operator at his or her reasonable discretion, (d) the Company's construction, installation, maintenance, repair, replacement, removal, investigation, testing or inspection of any of its equipment or any part of the Company System, including, but only to extent reasonably necessary to accommodate the installation and/or acceptance test of non-utility owned facilities to Company System, or (e) Force Majeure. . . .

See PPA "Definitions" at 6.

An Emergency is defined as:

> "Emergency": Shall mean, as determined by the Company in its reasonable discretion, a condition or situation, unless caused by Excess Energy Conditions, requiring immediate action (a) to maintain the integrity of the Company System; (b) to prevent or limit the loss of load or generation; (c) to maintain public safety or the safety of Company's personnel; or (d) to protect Company, customer, or third-party tangible personal property.

See PPA "Definitions" at 10.

A Forced Outage is defined as:

> "Forced Outage": An unplanned unit shutdown caused by factors such as automatic or programmed protective trips and operator-initiated trips due to equipment malfunction, and which terminates when Company determines according to Good Engineering and Operating Practices that it is safe to bring the Facility back onto the Company System.

See PPA "Definitions" at 12.

The procedures for the calculation and reporting of Curtailed Energy are set forth in PPA Attachment U (Calculation and Reporting of Curtailed Energy). By the tenth Business Day of each calendar month following the Commercial Operations Date, Eurus is required to deliver a Curtailment Report in a specified format.[11] Eurus is also obligated to provide Hawaiian Electric with any additional data or supporting documentation necessary for Company to audit and verify the Curtailment Report.[12]

The amount of "Curtailed Energy" during any Curtailment Event is the positive difference between the Calculated Output and Actual Output over the duration of such Curtailment Event.[13] "Calculated Output" is calculated using the Facility Output Model taking into account actual operating conditions (for example, wind speed measured at the Facility, self-curtailed units, and derated units or units that are otherwise unavailable to produce electric energy), pursuant to criteria set forth in the PPA.[14] The Facility Output Model utilizes supervisory control and data acquisition ("SCADA") measured wind speed, wind direction, and average air density to calculate the power (kW) and energy (kWh) output of the Facility consistent with the resolution and accuracy requirements set forth in Section 6 (Forecasting) of Attachment B (Facility Owned by Seller) of the PPA.

In the event of any dispute as to the amount of Curtailed Energy or whether the Curtailment Event in question constituted a Compensable Curtailment Event, the dispute will first be submitted to an Independent Curtailment Evaluator for an advisory opinion. If either or

[11] See PPA, Attachment U (Calculation and Reporting of Curtailed Energy) at §§ 2, 4.
[12] See id.
[13] See PPA "Definitions" at 8.
[14] See PPA "Definitions" at 4; PPA, Attachment U (Calculating and Reporting of Curtailed Energy).

both of the Parties are unwilling to accept such advisory opinion, either Party may submit the dispute to formal dispute resolution (e.g., arbitration) under PPA Article 28 (Dispute Resolution), but in formal dispute resolution, the Party that is unwilling to accept the advisory opinion will have the burden of proving it to be incorrect.[15]

Article 2 of the PPA (Purchase and Sale of Energy; Rate for Purchase and Sale; Payment for Compensable Curtailed Energy; Billing and Payment) sets forth the procedures for invoicing and paying for Compensable Curtailed Energy. Electric energy purchased by Hawaiian Electric and Compensable Curtailed Energy will be invoiced separately. Provisions related to the invoicing and payment for electric energy is set forth in Section 2.7 (Invoices for Electric Energy). The obligation to pay for Compensable Curtailed Energy is set forth in Section 2.6 (Payment for Compensable Curtailed Energy) as more fully described in Section 2 a. of this exhibit below, with the procedures for invoicing and payment for Compensable Curtailed Energy are set forth in Section 2.8 (Invoices for Compensable Curtailed Energy). Once the payment is made for either electric energy or for Compensable Curtailed Energy, the PPA includes in Section 2.9 (Adjustment to Invoice After Payment), a three-year limitation period for adjusting an invoice and recouping payment or paying any deficiency if the invoice in question is found to be inaccurate.

The Compensable Curtailed Energy paid for by Hawaiian Electric will be "banked" and, at the end of the Initial Term, Hawaiian Electric will have the option of extending the Term of the PPA for a Banked Curtailed Energy Term, which will expire on the first to occur of (i) the last Day of the calendar month during which the last of the Banked Curtailed Energy

[15] See PPA, Attachment U (Calculation and Reporting of Curtailed Energy) at § 5.

is delivered to Hawaiian Electric or (ii) the fifth anniversary of the end of the Initial Term.[16] The contract rate for energy delivered during the Banked Curtailed Energy Term is $55/MWh, approximately fifty percent (50%) less than the contract rate during the Initial Term, and Seller will not be paid for Compensable Curtailed Energy during the Banked Curtailed Energy Term.[17] The rationale for the lower contract rate during the Banked Curtailed Energy Term is that Hawaiian Electric has already paid for the Banked Curtailed Energy and payments to Seller during the Banked Curtailed Energy Term should be for purposes of covering operating and maintenance costs. Further justification for the Banked Curtailed Energy rate is provided in Exhibit 6 (Seller's Price Justification and Pro Forma).

If Eurus does not want to operate the Facility during the Banked Curtailed Energy Term, it can "opt out" of the Banked Curtailed Energy Term, forfeit the Operating Period Security to Hawaiian Electric, and allow Hawaiian Electric to operate the Facility during that period.[18] As discussed in Section 3 of this exhibit (Company's Right of First Negotiation to Purchase Facility and Other Purchase Rights), if performance of the Facility during any 12-month period during the Banked Curtailed Energy Term falls below the threshold established based on the average of the monthly output for the last three years of the Initial Term, Hawaiian Electric has the option to purchase the Facility.[19] The rationale for this purchase option is to give Eurus an incentive to maintain the Facility during the Banked Curtailed Energy Term notwithstanding the reduction in the contract rate for energy delivered during that period.

[16] See PPA at §12.10 (Company's Option to Extend Term for Banked Curtailed Energy).
[17] See PPA, Attachment J (Energy Purchases by Company) at § 1(b).
[18] See PPA at § 12.10(C).
[19] See PPA at § 12.10(D).

The PPA reflects a new method of developing a Facility Output Model ("FOM"),[20] used to calculate the Calculated Output of the Facility during a Curtailment Event in order to calculate payment for curtailment, as reflected in Attachment U of the PPA. The Parties agreed to a concept wherein performance data from the first two Contract Years is utilized to develop the FOM calculation for determining the required Compensable Curtailed Energy payment for a curtailment event.[21] The Parties also agreed to allow periodic reviews of the FOM every three years following the first two Contract Years at Seller's sole cost and expense (up to the first $25,000 incurred), to perform each said periodic review.[22] For clarity, the PPA, at Table U-1 of Attachment U, provides an illustration of the Facility Output Model calculation and reconciliation process occurring during the first two Contract Years of operation, then after the first two Contract Years.

b. <u>Sliding Scale Pricing to Address Curtailment Risk</u>

As discussed above, energy payments by Hawaiian Electric to Eurus are based on a pricing structure and pricing level determined through a series of proposals and arms-length negotiations between the Parties.

As part of these negotiations, the Parties agreed to a new PPA rate structure that allocates some curtailment risk to Eurus, while seeking to avoid a higher fixed long-term price associated with a peak curtailment threshold. Eurus was willing to accept curtailment risk of up to five percent (5%) of the Annual Contract Energy for each Contract Year, with adjusted

[20] "The Facility Output Model calculates the power (kW) and energy (kWh) output of the Facility at the Point of Interconnection for a given period of time using data from the supervisory control and data acquisition (SCADA) and the methodology described in Attachment U." PPA, "Definitions" at 11.

[21] <u>See</u> PPA, Attachment U at § 3(b). In the first two Contract Years of the PPA, the Facility Output Model is based on theoretical Facility performance data prepared by a mutually agreed-upon wind energy consultant.

[22] <u>See</u> <u>id.</u>; PPA, Attachment U at § 7.

pricing.

The Parties agreed to sliding scale pricing to address risk associated with the potential for excess energy curtailment to fluctuate annually over the 22-year PPA Term, with Hawaiian Electric making an initial Compensable Curtailed Energy Threshold election for the first five (5) Contract Years, with the option to update its election on an annual basis for the remaining Contract Years for the Initial Term.[23] The initial five (5) Contract Year election shall be made by Hawaiian Electric not less than six (6) months prior to the start of the calendar year in which the Commercial Operations date falls. Instead of setting a fixed five percent (5%) threshold at a higher risk adjusted price, the sliding scale allows the Company to elect lower levels of excess energy curtailment at a reduced price in years when curtailment is forecast to be lower. Seller, in turn, gets compensated for excess energy curtailment (Compensable Curtailed Energy) above Hawaiian Electric's elected Compensable Curtailed Energy Threshold, based on the sliding scale pricing:

COMPENSABLE CURTAILED ENERGY THRESHOLD	CONTRACT PRICE ($/MWh)
0%	109.75
0.50%	110.30
1%	110.86
1.5%	111.42
2%	111.99
2.5%	112.56
3%	113.14
3.5%	113.73
4%	114.32
4.5%	114.92
5%	115.53

For example, if Company elects a Compensable Curtailed Energy Threshold of 5% for a given Contract Year, Seller will be paid for any Compensable Curtailed Energy that exceeds 5% of the Annual Contract Energy for that Contract Year (Compensable Curtailed Energy Threshold) at a rate

[23] See PPA at § 2.6(B); PPA, Attachment J at Table J-2.

of $115.53/MWh, but will not be paid for any Compensable Curtailed Energy up to the 5% threshold.

The pricing terms for the Project are covered in Attachment J of the PPA (Energy Purchases by Company), and specifically, Table J-1 of Attachment J (Contract Rate for Each Contract Year) sets forth the contract rates for each level of the Compensable Curtailed Energy Threshold that Company may elect for each Contract Year during the Initial Term pursuant to Section 2.6(B) of the PPA. The base Contract Price is set at $109.75/MWh and adjusts upward based on the following adjusted price formula: ($109.75/MWh)/((100%-X)/100), where X is the elected Compensable Curtailed Energy Threshold, and also that X does not exceed five percent (5%).[24]

c. Hawai'i Renewable Energy State Tax Credit Pass Through

Under the PPA, Eurus is required to pass through to the Company for the benefit of the Company's customers, either in the form of a lump sum payment or a credit against amounts due on invoices from Eurus, ninety percent (90%) of the Net Amount of the Hawai'i Renewable Energy Technologies Income Tax Credit realized by Seller.

Generally, if a Refundable Tax Credit is available, Seller or an affiliate of Seller will apply for the Refundable Tax Credit and Seller shall make a payment to the Company in an amount equal to ninety percent (90%) of the Net Amount of such Refundable Tax Credit within 30 days after funds are received from the Hawai'i Department of Taxation.[25]

To validate the application for and receipt of such Refundable Tax Credit, an officer of Seller will deliver to Hawaiian Electric a notice describing Seller's efforts to apply for and obtain the maximum reasonably available Refundable Tax Credit, and certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably

[24] See PPA at § 2.6(B); PPA, Attachment J at § 1; PPA, Attachment J at Table J-1.
[25] See PPA, Attachment J at § 3(b)(ii).

available Refundable Tax Credits. Upon receipt of any funds from the Hawai'i Department of Taxation, an officer of Seller (or an affiliate of Seller, if applicable) will deliver a notice to Hawaiian Electric certifying the amount of funds received and the payment that will be made to the Company. The PPA further provides that if Seller's claim for Refundable Tax Credits is reduced or rejected by the Hawai'i Department of Taxation after Seller has passed on the credits to Hawaiian Electric, Seller will provide Hawaiian Electric with written notice of same, and within 60 days of Hawaiian Electric's receipt of the notice, Hawaiian Electric will refund to Seller its pro rata share of any amounts that Seller or its investors are required to repay to the Hawai'i Department of Taxation. The PPA further provides that the Company's requirement to refund such pro rata share terminates if the Hawai'i Department of Taxation has not taken action to reduce or reject Seller's claim (whether by commencing an audit, delivering a notice to Seller or Company, or otherwise) during the applicable statute of limitations for the Hawai'i Department of Taxation to reduce or reject Seller's claim for Hawai'i Refundable Tax Credits.[26]

Under the PPA, if the Refundable Tax Credit is unavailable, but a Non-Refundable Tax Credit is available, Seller (or an affiliate of Seller) will apply for any available Non-Refundable Tax Credit, provided Seller can do so without changing its organization, structure, governance or financing or its reasonable commercial expectations. Seller shall make a payment to the Company in an amount equal to ninety percent (90%) of the Net Amount of such Non-Refundable Tax Credit within 60 days after the filing date of the applicable tax return for the tax year in which such Non-Refundable Tax Credit is

[26] See PPA, Attachment J at § 3(b)(v).

utilized.[27]

Again, validation of Seller's efforts will be confirmed by an officer of Seller (or an affiliate of Seller, if applicable), via notice to Hawaiian Electric certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Non-Refundable Tax Credits.[28] Similar to the Refundable Tax Credit, if Seller's claim for Non- Refundable Tax Credits is reduced or rejected by the Hawai'i Department of Taxation after Seller has passed on the credits to Hawaiian Electric, Hawaiian Electric will refund its pro rata share of any amounts that Seller or its investors are required to repay the Hawai'i Department of Taxation.[29]

If Seller does not use commercially reasonable efforts to obtain the maximum reasonably available Hawai'i Refundable and/or Non-Refundable Tax Credits, then Hawaiian Electric shall be entitled to liquidated damages in an amount equal to $4,140,000 for the benefit of its customers.[30]

If a change in tax law occurs to introduce a Hawai'i Production Tax Credit, Seller will use commercially reasonable efforts to determine which tax strategy is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits. If Seller determines that the Refundable Tax Credit or the Non-Refundable Tax Credit would result in a larger Net Amount of usable tax credits, an officer of Seller will deliver a notice to Company certifying that Seller has reasonably determined that the selected form of Hawai'i Investment Tax Credit is likely to result in the larger Net Amount of usable tax credits

[27] See PPA, Attachment J at § 3(c)(ii).
[28] See PPA, Attachment J at § 3(c)(iii).
[29] See PPA, Attachment J at § 3(c)(iv).
[30] See PPA, Attachment J at § 4(d).

and explaining the rationale for such determination. If, however, Seller reasonably determines that the Hawai'i Production Tax Credit is likely to result in the larger Net Amount of usable tax credits and that it reasonably can obtain such Hawai'i Production Tax Credit without changing its organization, structure, governance or financing or its reasonable commercial expectations and can also obtain all necessary consents and approvals, Seller shall promptly notify the Company in writing and explain the rationale for such determination. Seller and Hawaiian Electric would then negotiate in good faith and use commercially reasonable efforts to agree upon lump sum payments and/or credits or adjustments to the Contract Price and other terms of the PPA as may be required to best benefit Company's customers with 90% of the Net Amount of such tax benefits and preserve the intended economic benefits to the Parties arising from the PPA.[31]

d. Other Adjustments to Energy Pricing

As discussed above, Hawaiian Electric is required to accept and pay for electric energy at the rates set forth in Table J-1 (Contract Rate); provided, however, pursuant to Section 1 of Attachment J (Energy Purchases by Company) of the PPA, in any Contract Year, if the sum of the Actual Output plus Compensable Curtailed Energy for such Contract Year is in excess of 110% of the Annual Contract Energy for such Contract Year (as determined pursuant to Section 2.2 (Payments for Electric Energy) of the PPA), then the price paid for such energy in excess of 110% will be 50% of the otherwise applicable Contract Price for such electric energy.

During the Banked Curtailed Energy Term, Hawaiian Electric will pay for electric

[31] See PPA, Attachment J at § 3(e).

energy delivered during such term at the reduced rate of $55/MWh. Further, during the Banked Curtailed Energy Term, Hawaiian Electric shall not be responsible for the payment of any Compensable Curtailed Energy.[32]

The PPA also requires Hawaiian Electric to accept test energy that is delivered as part of the normal testing for the Facility. Hawaiian Electric will compensate Seller for test energy, as provided in Section 2.5 (Payments Prior to Commercial Operations Date) of the PPA.

3. Company's Right of First Negotiation to Purchase Facility and Other Purchase Rights

Under certain conditions in which Eurus wishes to assign its interest in the Facility or effect a change in control of Seller, Hawaiian Electric shall have a right of first negotiation to purchase the Facility from Eurus.[33] Further, in the event that Hawaiian Electric is subject to consolidation and capital lease treatment under FASB ASC 810 and 840, respectively, and/or FASB Accounting Standards Codification 842, Leases, effective January 1, 2019, with respect to Eurus and the Facility, in addition to such other efforts that may be taken by the Parties to eliminate such accounting treatment, the Parties may effectuate a sale of the Facility to the Company.[34] Such sale shall be on commercially reasonable terms at a fair market value taking into consideration any amounts still due by Eurus to its Facility Lenders.

Finally, as explained above, during the Banked Curtailed Energy Term, Hawaiian Electric has an option to purchase the Facility in the event that, for any 12-month period during the Banked Curtailed Energy Term, the Calculated Output of the Facility for such

[32] See PPA, Attachment J at § 1(b).
[33] See PPA at § 19.1; PPA Attachment P (Sale of Facility by Seller).
[34] See PPA at § 24.5; PPA Attachment P at § 6.

period falls below 75% of the average of the monthly Calculated Output for the last three years of the Initial Term. Upon such occurrence, Eurus shall, if requested by Company, take commercially reasonable steps to effectuate a sale of the Facility to Hawaiian Electric.[35]

Any purchase of the Facility by Hawaiian Electric shall be subject to application to the Commission for approval, and, prior to consummation, formal Commission approval of such purchase.

4. Modeling and Source Code Escrow

Pursuant to Section 6 (Modeling) of Attachment B (Facility Owned by Seller) of the PPA, Eurus shall provide detailed data regarding the design and location of the Facility to permit the modeling of the various systems of the Facility (each a "Required Model" and collectively, the "Required Models"). If the Required Models are not provided in the form of "Source Code" (as defined in the "Definitions" section of the PPA), Eurus shall be responsible for causing the relevant Source Code for the Required Models to be deposited into a Source Code escrow account under an agreement which shall specify the specific conditions upon which such Source Code may be released to Hawaiian Electric. Generally, such Source Code will be made available to Hawaiian Electric under circumstances where Required Models need to be re-built or updated and the Required Model or relevant Source Code is unavailable due to the unavailability of the applicable equipment manufacturer and/or Source Code developer.

5. Meters

Pursuant to Section 10.1 (Meters) of the PPA, Hawaiian Electric will purchase, own, install and maintain a Revenue Metering Package suitable for measuring the export of electric

[35] See PPA at § 12.10(D); PPA Attachment P at § 4.

energy from the Facility sold to the Company. The metering point will be as close as possible to the Point of Interconnection as allowed by the Company. Eurus must make available a mutually agreeable location for the Revenue Metering Package, and must install, own and maintain the infrastructure associated with the Revenue Metering Package.

Section 10.1 of the PPA also provides that Company shall test such revenue meter prior to installation and shall test such revenue meter every fifth year.[36] Eurus shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance and testing work associated with the Revenue Metering Package. The Company submits that the five-year term for meter testing in this PPA is reasonable, and should be approved.

6. Compliance With Laws and Regulations

Eurus is responsible for obtaining, at its expense, any and all necessary permits, government approvals and land rights for the construction and operation of the Facility, including but not limited to rights-of-way, easements or leases. Eurus shall also install, operate and maintain the Facility safely and in compliance with all applicable Laws. Prior to commencement of construction of the Company-Owned Interconnection Facilities, Eurus shall provide the necessary permits, government approvals and land rights for construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities.[37]

7. Site Restoration

After termination of the PPA, or if the PPA is declared null and void, upon Hawaiian Electric's request, Eurus will, at its expense, remove all (1) Company-Owned Interconnection

[36] Hawaiian Electric notes that in Docket No. 2014-0354 approving the Company's PPA with Eurus' subsidiary affiliate EE Waianae Solar Project LLC, the Commission approved the five-year term for meter testing in the PPA (departing from prior decisions requiring annual meter testing) in view of the Company's move from mechanical meters to electric meters, cost reasons, and the improved operational efficiencies realized from said move.

[37] See PPA at §§ 11.1-11.3

Facilities and Seller-Owned Interconnection Facilities from the Land, and (2) restore the Land to its condition prior to construction. Hawaiian Electric may elect to remove all or part of the designated Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities itself because of operational concerns, in which case Eurus will reimburse Hawaiian Electric for the cost of removal.[38]

[38] See PPA, Attachment G at § 7.

EXHIBIT 9

Community Outreach Summary and Public Comments

Eurus Energy America LLC
9255 Towne Centre Drive
Suite 840
San Diego, CA 92121

TEL: 858-638-7115
FAX: 858-638-7125

Eurus Energy

EXHIBIT 9
COMMUNITY OUTREACH SUMMARY
AND PUBLIC COMMENTS

August 24, 2018

Ms. Rebecca Dayhuff Matsushima, Manager
Renewable Acquisition Department
Hawaiian Electric Company, Inc.
PO Box 2750
Honolulu, Hawai'i 96840

Dear Becca,

I am pleased to provide this letter summarizing our community outreach for the Pālehua wind energy project ("the Project") being developed by Eurus Energy America ("Eurus") to be included with the Power Purchase Agreement ("PPA") you are submitting for review and approval by the Public Utilities Commission of the State of Hawai'i ("PUC"). This letter is intended to provide a history of the community outreach to date and to outline plans going forward.

Eurus obtained land rights for renewable energy development in 2013 via an agreement with the Edmund C. Olson Trust and Gill 'Ewa Lands. In the years following, Eurus focused initially on development and construction of a 27.6 MW (AC) PV project located in Wai'anae. Once this project was nearing completion and in order to support the successful achievement of goals outlined in the 100% RPS mandate in Hawai'i, Eurus accelerated development activities on the Pālehua project in late 2015.

Since that time, Eurus has put community relations at the forefront of the Project's development plan. In order to validate our approach, Eurus began consultations with local officials as early as mid-2016. The intent of these initial meetings was not to obtain outright approval for the project but to obtain feedback prior to the creation of a more formalized community relations effort. The message received from of each of these meetings emphasized that early project communication should focus on local stakeholders and the community at large.

With that approach in mind, Eurus constituted an O'ahu-based community relations team, consisting of two local consultants (Dean Masuno, as primary project representative and a Hawaiian cultural expert) as well as Honolulu-based communications firm iQ360. Following the creation of this team, regular meetings and visits with key local stakeholders (detailed below) were conducted primarily to introduce the project conceptually and inform of the intent to continue development of the project.

In the process of developing the Project's community engagement efforts, the team believed it would be critical to also formulate guiding principles and values capturing an overarching intent to develop Pālehua responsibly. These include:

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- No'ono'o: as a team, we must reflect the spirit and interests of the community even though community members may have different perspectives
- Pono: as a team, we must reflect project information accurately and with good intentions
- Ho'omau: engagement must be part of the development of a long-term relationship between the community, our landowners, energy partners, and others

In line with these values, for the last eight months Eurus consultant Dean Masuno met with teachers, politicians, community groups, high school students and various other West O'ahu community leaders while also regularly consulting with our cultural expert. Our cultural expert provided insight into the area's significance to native Hawaiians. He visited the Project site and confirmed that in order for the site to accommodate a wind energy project that would respect the culture, beliefs and practices of native Hawaiians, further consultation with community and cultural experts is required. To that end, a full-time cultural expert will be added to the team to ensure cultural consideration is at the forefront of each step of development.

Separately, Dean discussed the Project with multiple community groups and leaders. These groups and leaders include the following:

- Blue Planet Energy Foundation
- Honokai Hale/Nanakai Gardens Comm. Assn. president, Lorraine Martinez
- Kapolei High School Student Association
- Kapolei Sunset Rotary Club
- Kupu
- Makakilo Neighborhood Board
- Nānākuli Hawaiian Homestead Community Association (leadership only)
- Rotary Club of Kapolei
- Wai'anae Economic Development Board

As a result of these consultations, Dean Masuno identified specific community concerns including: the creation of a community benefits package, potential disturbance to wildlife, influence on viewsheds, and the impact on culturally significant sites in the Pālehua area. Eurus takes these concerns seriously and has taken significant steps to mitigate the impact of the wind farm on the community as the project is developed. Details on how Eurus intends to address these concerns can be seen below.

Community Benefits Package: Eurus Energy is committed to contributing to the local community and will continue to financially support a variety of local initiatives. Eurus has been providing donations to several West O'ahu nonprofit organizations over the past year, and will continue to do so throughout the development period of the project. Additionally, Eurus will

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develop a comprehensive community package to ensure that the community will not only enjoy clean renewable electricity but benefit financially through means that will be determined through community feedback on what would be maximally valuable.

Disturbance to Wildlife: Eurus Energy is committed to minimizing potential impact to wildlife, which is why the Project is working closely with local environmental firms and agencies to ensure minimal ecological impacts. The Project has also initiated a comprehensive environmental assessment to help outline site-specific mitigation measures that will be developed in coordination with environmental agencies to ensure that the Project provides a net benefit to the local ecology.

Impact to Viewshed: Following initial feedback, the overall project layout has been altered to minimize visual impact. The wind turbines currently intended for use at the Project are anticipated to be less than 500 feet tall and individual turbines originally sited on the outer project ridges have been relocated to alternative potential locations in order to be as minimally intrusive from a visual perspective as possible. In addition, the potential project design has been revised to incorporate wind turbines with larger internal generators in order to minimize the total number of units. Notably, the current project design anticipates a planned total of 13 turbines, which is substantially less than previous designs that assumed 30 or more individual turbines.

Culturally Significant Sites: Eurus Energy has a deep respect for the people and places of Hawai'i, and has developed a strong connection to the Island as members of the local community with our Wai'anae project. We understand the land has historical and cultural significance and have sought the guidance of Native Hawaiian cultural experts in this project's design. We will make every effort to ensure that these sites are not disturbed by our project, including undergoing a cultural impact assessment and seeking the community's input. Additionally, we will seek to preserve these sites even further and provide opportunities for keiki to visit and learn about these sites.

On April 4th, 2018, Eurus first publicly presented the Project at community meeting at Kapolei High School to obtain feedback from the local community and where possible, to incorporate this feedback into the design of the Project (as indicated above).

In order to ensure public awareness, in advance of the event, Eurus publicized the meeting by:

- Placing advertisements announcing the community meeting in Midweek's West O'ahu Voice and Westside Stories.
- Online listing on The Voice of Kapolei website.
- Sharing printed fliers at a number of community meetings in West O'ahu.
- Posting a notification on the www.RenewPalehua.com website.

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Approximately 50 attendees participated in the meeting and Eurus provided a verbal presentation and large format informational boards that outlined the Project's details, benefits to the local community and the overall State of Hawai'i. The boards also featured visual simulations to outline the potential appearance of the project from different locations in the surrounding area.

The meeting was also filmed and can be viewed in its entirety at:
https://www.dropbox.com/s/d1pyg1eki8oduqp/EURUS_180404MEETING_R1_V1.mp4?dl=0

Our community outreach plan will continue to be a critical feature of the overall development process. In accordance with this, the plan will necessarily adapt as the Project progresses due to feedback that we anticipate receiving on an ongoing basis. Overall the intent to promote an environmentally sustainable project that holds significant benefit to the State of Hawai'i, the Island of O'ahu, and especially the local community.

The next planned actions of our community relations plan are anticipated to include:

1. Use the Midweek's West O'ahu Voice to announce major milestones.
2. Update the Project website as new information becomes available.
3. Solicit comments from the community, including any concerns related to the Project, on our website, or via e-mail. Eurus will review all comments provided and, to the extent possible, take the feedback into consideration in the development of the Project.
4. Continue to keep the community informed about our project through community meetings, neighborhood board presentations and small group meetings.
5. Monitor or attend key community meetings where this Project is involved.

We greatly appreciate the opportunity to continue working with Hawaiian Electric and look forward to deepening our connection to O'ahu through the successful completion of the Pālehua project.

Sincerely,

Satoshi Takahata
President

Attachment:
1. Summary of Meeting on April 4th
2. Project brochure

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Attachment 1

April 4, 2018 Community Meeting Summary

On April 4th, 2018, Eurus Energy America organized a community meeting in West O'ahu at Kapolei High School. Approximately 50 people attended. Renderings and information about the project were displayed through display boards and a brochure.

This meeting was advertised in Westside Stories, Midweek's West O'ahu Voice, and was listed on The Voice of Kapolei's calendar. A flier was also distributed to the West O'ahu community at neighborhood board meetings.

Dean Masuno introduced himself, asked people to sign in at the entrance and requested that they write their questions or comments down on the provided comment forms. Dean also directed the attendees to visit the Project website at www.RenewPalehua.com, where they could send comments/questions to the Project team and sign up for updates via email.

Dean introduced the Eurus Energy America team - Ramsay Taum (cultural advisor for the Project) and Nick Henriksen, VP of development.

Dean shared the current state of the Project site, which is currently at risk of irreversible damage from non-native species, erosion and brushfires. He also explained that approximately 1,600 acres of land would benefit from restoration efforts supported in part by the Project's profits.

Nick described Eurus' existing solar project on O'ahu and shared the company's history and values with the audience. He noted that Eurus intend to keep the community informed of the Project progress and that the community would have a number of opportunities for public comment throughout the process.

Dean described the area of the proposed Project and explained that it was identified as one of the top locations on O'ahu for a wind energy project. He further explained that for Hawai'i to reach its renewable energy goal, the state needs to diversify its renewable energy portfolio. Dean explained the process of the Project and that Eurus was in the initial stages of kicking off its comprehensive study process.

Ramsay Taum described the guiding principles of the project as currently constituting:

1. No turbines on the ridgeline
2. Respect the environment
3. Respect areas of cultural significance

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Dean then pointed out the project team and asked that questions be directed to them. Two attendees requested that the questions be asked as a group. Sarah Plucinski, project manager, introduced herself and explained that the goal of this format was to ensure that the comments were submitted in writing so that they could be submitted to the PUC. She also mentioned that the environmental studies have not been completed and that many of the questions may not have answers. The same two attendees voiced that the meeting was premature and that there wasn't enough information on the Project. Attendees asked questions about endangered species habitats nearby the Project site and the height of the turbines.

Sarah shared that Eurus had recently started an avian bird study and has been meeting with the U.S. Fish and Wildlife Service. She also stated that the turbines would be under 500 feet tall.

Attendee Cynthia Rezentes shared that there were many reasons that the previous project didn't succeed and that Eurus should review those concerns. Another attendee, Maeda Timson, shared that there are many undesirable projects in West O'ahu and that residents did not want any more undesirable projects in their community.

Dean responded that the team was securing the comments and concerns of the previously proposed wind energy project in the area. He also explained that the reason that Eurus was coming to the community at that time was to identify concerns that the company can consider as it begins its studies.

Demont Conner, another attendee, explained that the community needs to create a plan to move towards independent energy. He acknowledged that there may be native birds on the mountain, but the Project will not impact the entire bird population.

An attendee asked if the only reason that Eurus is committed to placing the turbines off the ridgeline is to protect the view planes of Ko Olina, Aulani, and other properties. She asked if Eurus was then going to build lower in sacred areas.

Dean responded that the Eurus had selected 16 turbine sites based on wind studies. He explained that the environmental studies had not been completed and that Eurus still needed to look at archeological and other studies before proceeding.

Another attendee asked what conservation milestones had been established and how the conservation project would be managed. He also asked if the Project would give a percentage of the revenue to the conservation efforts.

Dean explained that part of the profit would be dedicated to the conservation effort. He shared that Tony Gill, of Gill 'Ewa Lands, had shared his conservation vision with the Project team. The

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Eurus team explained that they don't know what model the conservation fund would have and that they were still exploring options.

Dean thanked the attendees and invited them to continue the conversation in one on one discussions at the end of the formal presentation.

WHY WIND?

- Wind is an infinite source of energy that reduces the need to deplete fossil fuels
- Wind turbines have a very small footprint—the impact to the land at the base is minimal, allowing for the surrounding land to be used for other purposes
- Wind is clean, emitting none of the pollutants released from traditional fossil fuels that harm humans and ecosystems
- Wind energy does not contaminate water and has one of the lowest water consumption footprints of any energy source

PROJECT BENEFITS

Renew Pālehua will provide significant long-term economic benefits, both for local communities and for the State of Hawai'i, by creating short and long-term jobs and taking advantage of local resources whenever possible. The project will also provide increased energy security for the State of Hawai'i by reducing the need for imported fossil fuels, all while getting the state closer to its stated 100% renewable energy goal.

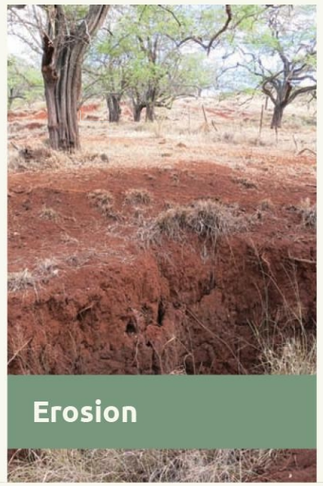
The Renew Pālehua Wind Energy Project could potentially include up to 16 turbines, each less than 500 feet tall. When completed, the project could generate up to 165,000MWh of energy annually, enough to power approximately 27,000 homes.

The project also has the potential to displace up to 115,000 metric tons of carbon dioxide annually, the equivalent of taking 24,000 cars off the road or growing 70 million trees over 10 years.

Please submit comments or sign up to receive news and updates at www.RenewPalehua.com.

RENEW PĀLEHUA

Renew Pālehua is a wind energy project and a new model for environmental stewardship. Our project supports restoration of the damaged ecosystem in the Pālehua area of West O'ahu.



Without restoration, Pālehua faces the threat of irreversible damage from:

- Brushfires that leave the forest barren and threaten nearby homes.
- Erosion that destroys the ridge and affects water quality.
- Non-native species that prevent native flora and fauna from thriving.

OUR RESTORATION GOALS

Renew Pālehua is committed to partnering with landowners to provide support via project revenues and donations to advance the restoration efforts spearheaded by Gill Ewa lands.

Gill Ewa Lands restoration efforts will prioritize:

- Reforestation with native species. This mitigates the damage from erosion, protects the watershed, and restores animal habitats.
- Removal of invasive grasses to reduce fire risk and enable native species to thrive.
- Land management and maintenance to preserve cultural sites.

OUR PARTNERSHIP

Renew Pālehua brings together leaders in environmental stewardship and conservation:

Eurus Energy is a leading global renewable energy company that has been an active developer, owner, and operator in the U.S.A. since 1987. Eurus developed and continues to operate Hawai'i's largest solar farm, located in Wai'anae, which powers approximately 4,000 O'ahu homes.

Gill Ewa Lands is owned by the Gill Family. For three generations, the Gills have demonstrated their commitment to caring for Hawai'i's lands as passionate advocates for the environment. They have pledged to keep 1,600 acres of land on the Wai'anae Range in agriculture and conservation.

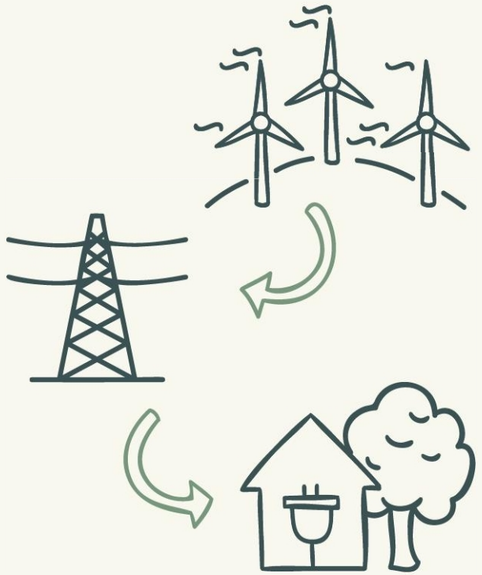
Working together, we will preserve the beauty and cultural significance of Pālehua while contributing to a more sustainable and independent future for Hawai'i.

HOW IT WILL WORK

Renew Pālehua will generate electricity from wind power, which is a free and infinite source of energy.

Renew Pālehua will sell the power it generates to Hawaiian Electric via a long-term power purchase agreement, making it a stable and reliable funding source for restoration.

The electricity produced by the turbines will be delivered to local homes and businesses on the grid.



Name: Fleanu & Julie Ramos

Comment: Thank you for having this informational meeting. I think this is a good start in developing a conversation with the community. I dont know of these "concerned ladies" even live in this community but we do! We should all welcome ideas on how we can preserve our natural resources and find alternative renewable energy. We have to start some where Thank you! [illegible]

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone:

Mailing Address: [redacted]
Kapolei, HI 96707

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Larry Gearing

Comment: I think I am in favor of this project. I would like to be kept up to date on developments.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Sandra Manley

Comment: I am so pro wind power!!

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone:

Mailing Address: [redacted]
Waianae, HI 96792

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Tawnya Horton

Comment: Your proposal sounds very interesting. Please keep me informed on the program development. Thank you
Also - if you come up with aesthetic solutions.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone:

Mailing Address: [redacted]
Kapolei HI 96707

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Christie Samson, Rotary Club of Kapolei Sunset

Comment: Very enthusiastic about Hawaii's 2045 vision for 100% renewable energy + Renew Palehua's initiatives for W. Oahu! I have worked in renewable energy for 5+ years (SolarCity / Tesla & Sunrun.)

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: _____

Mailing Address: _____

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Mckenzie Tynanes

Comment: I am against this proposed project due to multiple reasons. One reason simply being that this is Hawai'i. I believe that one day there will be a better solution that won't affect the aina (sorry I'm also against the Rail project) I do understand we're running out of energy, but there must be an even better way.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: _____

Mailing Address: [redacted]

☐ I would like to receive a response to my comment/question from the project team. No, thank you. I ask more than enough questions.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Alina Ramos

Comment: I love the idea. This is eco friendly & Will be put to much better use than housing

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail:

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Kamaile Maeda

Comment: I think this proposal can be very beneficial to our environment and community. I'm not bothered by the sight of it because I know it would be helping a lot of people. The only concern is how truthful and reliable the company will be in telling people where money is going and if prices of utilities will go down equally to all people.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail:

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

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Name: Mikaila Domingo

Comment: Renewable Resources are a great way to improve our environment. I do believe that the wind mill will be a great source of energy, but ~~I do ha~~ I would like to know how much we would be saving (a real & confident number) when and if we would switch.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Summer Eskano

Comment: In a way, I believe that this windmill project could possibly be good for our community/island. But in a way, I think that some people may not want this. To the people who wouldn't want it, you should reach out to them the most and explain to them how it works and the benefits

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Elsa Escalona

Comment: There is no argument strong enough that ~~no~~ can compete with bettering our future and community. I see no problem with anything that can can benefit the environment / community.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: _____

Phone: _____

Mailing Address: _____

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Isabella Olaes

Comment: I think that having renewable energy is a good idea for the future of Hawaii as long as the budgeting and planning is done well. However, I am worried about the environment it is being built at. Will Malama Learning Center and the people at Camp Palehua be affected?

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: _____

Mailing Address: _____

☑ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Alexis Valentine

Comment: I think that it's a great project that will be worth it in the future. I definitely stand behind the idea that we must provide as many solutions as possible & taking action before it is to late.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: _____

Phone: _____

Mailing Address: _____

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Geraldine Arerion

Comment: I support this project & the purpose of this project because I know that in the end, it will benefit everything around me. I honestly don't care if I can see it, because most windmills are tourist attractions anyway. I'm just worried about the wildlife, & how the birds will be affected, even after implications. 'cuz @ the end of the day, it will affect the overall ecosystem. But all in all, if this project does go further into its implications, I hope that it lives up to its promises & goals. *please lower the electricity costs in people who live in that ~~area~~ area where the windmills will be built.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: [redacted]

☑ I would like to receive a response to my comment/question from the project team.

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Name: Gaze Acain

Comment: Hawai'i does need to become more sustainable. We live in the middle of the Pacific Ocean. We need to be weary on what we do here. Windmills are a viable source of energy. We have an abundance of wind day and night.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: _____

Phone: _____

Mailing Address: _____

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Name: Noah Echert

Comment: Construction and maintenance needs to be local. There is also a concern about possible birdlife that may be up there. Lightning is also a concern as it would be the tallest thing on the west side so adequate grounding would be a concern.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: _____

Mailing Address: _____

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Name: Scott Stensrud

Comment: My concerns are about the impact on native birds & our native bat. In addition I'd like to know how much of the lease rent the Gill family will commit to preservation on Palehua
Also what are the community benefits from this project

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: _____

Mailing Address: [redacted]
Kapolei, HI

☒ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: DeMONT Conner

Comment: RENEWABLE ENERGY IS FAR BETTER THAN FOSSIL FUEL ENERGY SOURCES. IF WE DON'T BEGIN TO END OUR RELIANCE ON FOSSIL FUELS, WHICH IS DESTRUCTIVE TO OUR ENVIRONMENT, THEN GENERATIONS FROM NOW, OUR MO'OPUNA WILL STILL BE SLAVES TO HECO & THE FOSSIL FUEL BARONS.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: [redacted]
Waianae, Hawaii 96792

☑ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Debra Pratt

Comment: An odd, premature, session. Needed to have more info. to share!

Good principle not to build on the ridgeline.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail:

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

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Name: Shirley Swinney

Comment: Thank you for the hospitality-like the food and marketing material. Perhaps more thought on approach would have been beneficial.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail:

Phone:

Mailing Address:

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: JAKE SCHAFER

Comment: I am encouraged by this project. A major driver for Hawaii's energy independence is for disaster preparedness reasons. I would like to know the wind rating of the turbines (hurricane cat 1-5?) and repair/restoration time following wind damage? How long will it take to get up and running after a severe storm?

★ As a resident of Kapolei/Makakilo, I support Eurus in moving forward with its planning

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: [redacted]
KAPOLEI, HI 96707
[redacted]

☒ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Mark Suiso

Comment: How much Energy will this Project Produce on avg. (not capacity)
- What about other sources of power.
- How does this compare with North Shore and Maui?
- What will the cost per kilowatt be? (range)
- Will the wind study results be available.
- What was learned from the earlier exploration by HECO on wind power many years ago.

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: _____

☑ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: _____

Comment: _____

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: [redacted]
Hon, HI 96813

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Cynthia K L Rezentes

Comment: _____

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: [redacted]
Waianae - 96792

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Name: Hanokai Hale / Nanakai Gardens

Comment: In full support of your project!

Please share your contact information if you'd like to be added to our contact list. This section is optional.

E-mail: [redacted]

Phone: [redacted]

Mailing Address: [redacted]
Kaupo Hi 96707

☐ I would like to receive a response to my comment/question from the project team.

For more information, or to sign up online to receive updates, please visit our website at www.RenewPalehua.com.

Subject: Form Submission - Contact Form - Renew Palehua
Date: Tuesday, May 1, 2018 at 4:10:39 PM Hawaii-Aleutian Standard Time
From: Squarespace
To: renewpalehua@gmail.com

Name: Alyssa Kahalewai

Email Address: [redacted]

Subject: Renew Palehua

Message: To Whom It May Concern:

I'm writing to express my support for further discussion of the Renew Palehua wind project. As a resident of Waianae, I believe that this project may be beneficial to our community for the following reasons:

- Renew Palehua will bring jobs to West Oahu and grow our local economy. I work in Kapolei and I truly believe that we need to diversify our economy.
- Our state needs more sources of clean, renewable energy that lowers our dependence on imported oil, reduces pollution, and stabilizes our costs for energy.
-The mountain has been devastated by invasive species and cattle which have caused erosion and left it susceptible to brushfires. This project may create a significant revenue stream for maintenance of the land, which is in need of restoration.

If designed correctly, Renew Palehua can provide clean power, create jobs, and provide restoration and resources that maximizes the benefits to our community. This project deserves consideration and I hope that the community doesn't write it off, but weighs the pros and cons carefully and engages in meaningful dialogue.

Sincerely,
Alyssa Kahalewai

Area of Residence: Waianae

(Sent via *Renew Palehua*)

Name: robert nemoto

Email Address: [redacted]

Subject: Palehua project

Message: As a resident of Kapolei, I would be grateful for any additional information that may become available in the future. While the intent is noble, there should be volumes of case histories which either supports or refutes the project claims.

(Sent via *Renew Palehua*)

EXHIBIT 10

Projected Avoided Greenhouse Gas Emission

EXHIBIT 10

Projected Avoided Greenhouse Gas Emissions

Year	Emissions Change (Short Tons)
2023	-69,012
2024	-74,546
2025	-65,761
2026	-63,061
2027	-60,577
2028	-54,477
2029	-58,071
2030	-56,806
2031	-56,063
2032	-57,489
2033	-51,025
2034	-53,270
2035	-55,260
2036	-54,902
2037	-53,566
2038	-51,834
2039	-51,769
2040	-45,867
2041	-47,323
2042	-47,509
2043	-42,978
2044	-46,315

EXHIBIT 11

Palehua's Projected RPS Impact

Exhibit 11

Palehua's Projected RPS Impact

Table 1 – Palehua's Projected Impact on Hawaiian Electric's RPS

	Palehua Generation (GWh) [A]	Hawaiian Electric Sales (GWh) [B]	Palehua's Impact on Hawaiian Electric's RPS (%) [C] = [A] / [B]
2023	148.97	6,316	2.4%
2024	148.98	6,214	2.4%
2025	148.97	6,082	2.4%
2026	148.97	5,972	2.5%
2027	148.97	5,862	2.5%
2028	148.97	5,765	2.6%
2029	148.97	5,620	2.7%
2030	148.98	5,504	2.7%
2031	148.97	5,432	2.7%
2032	148.97	5,428	2.7%
2033	148.97	5,394	2.8%
2034	148.97	5,379	2.8%
2035	148.96	5,364	2.8%
2036	148.97	5,367	2.8%
2037	148.97	5,342	2.8%
2038	148.97	5,337	2.8%
2039	148.94	5,327	2.8%
2040	148.95	5,328	2.8%
2041	148.87	5,301	2.8%
2042	148.84	5,293	2.8%
2043	148.86	5,281	2.8%
2044	148.72	5,280	2.8%
		Average RPS Impact	2.7%

Table 2 – Palehua's Projected Impact on Consolidated RPS

	Palehua Generation (GWh) [A]	Consolidated Sales (GWh) [B]	Palehua's Impact on Consolidated RPS (%) [C] = [A] / [B]
2023	148.97	8,432	1.8%
2024	148.98	8,309	1.8%
2025	148.97	8,147	1.8%
2026	148.97	8,008	1.9%
2027	148.97	7,856	1.9%
2028	148.97	7,712	1.9%
2029	148.97	7,503	2.0%
2030	148.98	7,326	2.0%
2031	148.97	7,215	2.1%
2032	148.97	7,186	2.1%
2033	148.97	7,147	2.1%
2034	148.97	7,136	2.1%
2035	148.96	7,122	2.1%
2036	148.97	7,128	2.1%
2037	148.97	7,107	2.1%
2038	148.97	7,104	2.1%
2039	148.94	7,098	2.1%
2040	148.95	7,095	2.1%
2041	148.87	7,068	2.1%
2042	148.84	7,061	2.1%
2043	148.86	7,051	2.1%
2044	148.72	7,052	2.1%
		Average RPS Impact	2.0%

EXHIBIT 12

Confidentiality Justification Table

Hawaiian Electric Company, Inc. ("Hawaiian Electric") hereby identifies redacted confidential and/or proprietary financial information that is being submitted confidentially until the issuance of a Protective Order in this docket ("Protective Order"). The following (1) identifies, in reasonable detail, the confidential information's source, character, and location; (2) states clearly the basis for the claim of confidentiality; and (3) describes, with particularity, the cognizable harm to Eurus ("Eurus") and/or Hawaiian Electric from any misuse or unpermitted disclosure of the information.

Reference	Identification of Item	Basis of Confidentiality	Harm
Exhibit 6 to Application	Redacted portions of Facility Pro Forma Cash Flow, detailed financial model for the Palehua Wind project including revenue, capital and development costs, and operating expenses over the PPA term.	Confidential commercial, financial and pricing information which falls under the frustration of legitimate government function exception of the Uniform Information Practices Act ("UIPA")	Public disclosure of Eurus's confidential commercial and financial information, provided confidentially to Hawaiian Electric, as contained in the Facility Pro Forma Cash Flow model, would cause substantial competitive harm to Eurus by providing competitors with direct access to nonpublic financial modeling information obtained through Eurus' efforts that competitors could use to adjust their own pricing, cost structure and financial models to benefit from such non-public information. Such disclosure may also harm Eurus in its ability to negotiate with its suppliers, vendors, contractors, property owners and other entities who could adjust their pricing and commercial terms on the basis of non-public information about the project's revenue and cost structure. Public disclosure of Eurus's confidential commercial financing, pricing, lease and vendor information including in its pro forma cash model would place Eurus at a competitive disadvantage and could adversely affect its relationship with its suppliers, vendors, contractors, property owners and other contracting parties. Accordingly, disclosure would harm Hawaiian Electric's relationship with Eurus and other independent power producers. Additionally, such disclosure would discourage developers from fully-disclosing or making the most complete and reliable information available to Hawaiian Electric, impairing the Commission's ability to obtain comprehensive details in a reliable and timely manner in the future. Further, misuse or unpermitted disclosure by any intervenors or participants in the proceeding would cause substantial competitive harm by placing Eurus at a disadvantage with respect to its competitors, vendors and other contracting parties. Such disclosure may discourage developers from fully-disclosing or making the most complete and reliable information available to the Commission. Accordingly, disclosure of such highly sensitive Confidential and Restricted information must be strictly limited to the Commission and the Consumer Advocate.

Reference	Identification of Item	Basis of Confidentiality	Harm
Exhibit 7 to Application	Pricing evaluation	Confidential financial and cost information which falls under the frustration of legitimate government function exception of the Uniform Information Practices Act ("UIPA")	Exhibit 7 (Pricing Evaluation) shows the detailed pricing analysis and associated methodology for the Palehua Wind project. The exhibit shows the revenue requirement, avoided revenue requirement, and avoided fuel consumption of the project over the PPA term. Public disclosure of the subject information could harm the Company by placing it at a competitive disadvantage, and may jeopardize Company's current or future contract negotiations. Company believes that if the subject information is disclosed to third parties, such information could be used to derive pricing proposals for potential projects and third parties would receive an unfair business advantage resulting in prejudice to the Company and its customers. Company maintains that the subject information falls under the frustration of legitimate government function exception of the UIPA as disclosure of the subject information would impair the Commission's ability to obtain necessary information to properly perform its review of this regulatory proceeding (as the Company would not have submitted the confidential information in this docket but for: (1) the governmental function of reviewing the Company's request for approval of the PPA; and (2) the Company's belief and reliance that the information would not be publicly disclosed). The confidential information: (1) has not been previously disclosed or otherwise publicly disseminated; (2) is not of the kind of information that the Company would customarily disclose to the public; and (3) is of a nature that its disclosure could (a) impair the Commission's ability to obtain necessary information from similarly situated parties in the future, and (b) cause substantial harm to the Company and/or its customers as previously described above.

Reference	Identification of Item	Basis of Confidentiality	Harm
Exhibit 9 to Application	Community Outreach Summary and Public Comments	Confidential personal information which falls under the frustration of legitimate government function exception of the Uniform Information Practices Act ("UIPA")	As part of Eurus' community outreach efforts, members of the public provided Eurus with comments, including personal contact information such as email addresses, street addresses, and telephone numbers. This information has been redacted due to privacy concerns. In addition, public disclosure of this information may inhibit participation in future community outreach efforts.

VERIFICATION

STATE OF HAWAI'I)
) ss.
CITY AND COUNTY OF HONOLULU)

DUKE T. OISHI, being first duly sworn, deposes and says: That he is Senior Associate General Counsel for Hawaiian Electric Company, Inc., Applicant in the above proceeding; that he makes this verification for and on behalf of Hawaiian Electric Company, Inc. and is authorized so to do; that he has read the foregoing Application, and knows the contents thereof; and that the same are true of his own knowledge except as to matters stated on information or belief, and that as to those matters he believes them to be true.

Duke T. Oishi

DEBORAH ICHISHITA NOTARY 04-409 PUBLIC STATE OF HAWAII

Subscribed and sworn to before me this 21st day of November, 2018.

Deborah Ichishita
Notary Public, First Circuit,
State of Hawai'i

My Commission expires July 18, 2020

Doc. Date: 11/21/2018 # Pages: 409
Name: DEBORAH ICHISHITA First Circuit
Doc. Description Application, Exhibits 1-12, Verification
========
Deborah Ichishita 11/21/18
Signature Date
NOTARY CERTIFICATION

DEBORAH ICHISHITA NOTARY 04-409 PUBLIC STATE OF HAWAII

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC. For Waiver of the Palehua Wind Project from the Framework for Competitive Bidding, and Approval of the Power Purchase Agreement for Renewable As-Available Energy with EE Ewa LLC	Docket No.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served two copies of the foregoing Application, together with this Certificate of Service, by making personal service to the following and at the following address:

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

DATED: Honolulu, Hawai'i, November 21, 2018

HAWAIIAN ELECTRIC COMPANY, INC.

Lani Wong

Lani Wong