BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of
HAWAII ELECTRIC LIGHT COMPANY, INC.) DOCKET NO. 2018-0432
For Approval of Power Purchase )
Agreement for Renewable )
Dispatchable Generation with Hale )
Kuawehi Solar, LLC. )

DECISION AND ORDER NO. 36234
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Kuawehi Solar LLC. )

DECISION AND ORDER

By this Decision and Order,¹ the commission, subject to conditions: (A) approves the Power Purchase Agreement ("PPA") between HELCO and Hale Kuawehi, dated December 27, 2018, for a 30-megawatt ("MW") photovoltaic ("PV") project coupled with a battery energy storage system ("BESS") to be located near Waimea on the island of Hawaii ("Project"); and (B) approves HELCO's request to include all energy and non-energy payments under the

¹The Parties to this proceeding are HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") and the DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 16-601-62(a).

HALE KUAWEIHI SOLAR LLC ("Hale Kuawehi" or "Seller") and TAWHIRI POWER LLC ("Tawhiri") were granted limited participant status by Order No. 36145, filed February 4, 2019. See Order No. 36145, "(1) Granting Participant Status to Hale Kuawehi Solar LLC and Tawhiri Power LLC; and (2) Amending the Procedural Schedule," filed February 4, 2019 ("Order No. 36145").
PPA, including the Lump Sum Payments (as defined in the PPA) and related revenue taxes, through the Purchased Power Adjustment Clause ("PPAC") and Energy Cost Adjustment Clause ("ECAC") (or equivalent), to the extent such costs are not included in base rates.

I. BACKGROUND

A. Procedural History

On December 31, 2018, HELCO filed its Application requesting approval of, among other things, the subject PPA.3

On January 14, 2019, consistent with its intent to review the PPAs resulting from the Hawaiian Electric Companies'4 Phase 1

2The commission notes that since the filing of HELCO's Application in this docket, the commission approved HELCO's proposed Energy Cost Recovery Clause ("ECRC") tariff in Order No. 36081, filed in Docket No. 2015-0170 on January 15, 2019 ("Order No. 36081"), and stated that HELCO's ECRC "may take effect February 1, 2019." As a result, energy payments from PPAs that were recovered under the ECAC are now recovered through the ECRC. Accordingly, in examining HELCO's request for recovery of its energy charges through the ECAC, the commission will assume HELCO's request to apply to the ECRC, consistent with Order No. 36081.

3"[HELCO's] Application; Exhibit 1-10; Verification; and Certificate of Service," filed on December 31, 2018 ("Application").

4The "Hawaiian Electric Companies" (or "HECO Companies") are Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and HELCO.
competitive procurement on an accelerated timeline, the commission filed Order No. 36069, "(1) Approving [HELCO's] Request to Bifurcate its [PPA]-Related Requests from its Above-ground 69 Kilovolt Line Extension-related Requests; and (2) Adopting a Procedural Order to Govern the PPA-Related Requests" ("Order No. 36069"), which set forth a statement of issues for this proceeding, as follows:

1. Whether HELCO has met its burden of proof in support of its request for approval of the PPA between HELCO and Hale Kuawehi, dated December 27, 2018, for a 30-MW photovoltaic project coupled with a BESS proposed to be located near Waimea, on the island of Hawaii.

   a. Whether HELCO's purchased power arrangements under the PPA, pursuant to which HELCO will dispatch energy on an availability basis from Hale Kuawehi, including the Lump Sum Payments to be paid to Hale Kuawehi, 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.

   b. Whether the purchased energy charges based on the Energy Price to be paid by HELCO pursuant to the PPA are just and reasonable.

2. Whether HELCO has met its burden of proof in support of its request to include all energy and non-energy payments under the PPA, including the Lump Sum Payments (as defined in the PPA), and related revenue taxes, through the [ECRC] (or equivalent) and PPAC, as may be applicable, to the extent such costs are not included in base rates.
3. Whether it is in the public interest for the 69 kV line extension, required to interconnect the Project to HELCO’s system, to be constructed above the surface of the ground pursuant to HRS § 269-27.6(a) & (b).  

Order No. 36069 also bifurcated HELCO’s PPA-related requests (Issues 1 and 2) from its above-ground 69 kilovolt (“KV”) line extension-related requests (Issue 3) and established a procedural schedule governing HELCO’s PPA-related requests.  

On January 22, 2019, Hale Kuawehi filed a Motion to Participate in this proceeding and Tawhiri filed a Motion to Intervene.  

On February 4, 2019, the commission granted both Hale Kuawehi and Tawhiri participant status and amended the procedural schedule for this docket.  

On February 21, 2019, the commission issued Order No. 36172, compelling Hale Kuawehi to respond to certain IRs issued

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5Order No. 36069 at 7-8.  

6Order No. 36069 at 6, 8-9. As mentioned in Order No. 36069, the commission intends to issue a separate procedural order to govern HELCO’s above-ground 69 kV line extension-related requests. Id. at 7.  

"[Hale Kuawehi’s] Motion to Participate; Affidavit of Jean Trudel, Chief Investment Officer; and Certificate of Service,” filed January 22, 2019; “[Tawhiri’s] Motion to Intervene; Verification; Exhibit ‘A’; and Certificate of Service,” filed January 22, 2019 (“Tawhiri’s Motion to Intervene”).  

8See generally Order No. 36145.
by the Consumer Advocate to which Hale Kuawehi had objected as irrelevant.9

On February 25, 2019, Hale Kuawehi submitted a letter request stating that it understood that the Consumer Advocate "has filed or intends to file" a request for extensions to the deadlines for the Consumer Advocate's Statement of Position and HELCO's Reply Statement of Position ("SOPs").10 Hale Kuawehi stated that it believed that its SOP, "to the extent necessary, would be more useful to the Commission if filed after the Consumer Advocate's [Statement of Position]."11 Accordingly, Hale Kuawehi requested that "if changes are made to the procedural schedule, the Commission adjust [the] deadline for [Hale Kuawehi's Statement of Position] to [a] date[] midway between the deadlines for the Consumer Advocate's [SOP] and the deadline[] for [HELCO's Reply SOP]."12

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9Order No. 36172, "Compelling [Hale Kuawehi] to Respond to the Consumer Advocate's [IRs]," filed February 21, 2019 ("Order No. 36172").


11Hale Kuawehi Letter at 1.

12Hale Kuawehi Letter at 1.
On February 26, 2019, the Consumer Advocate submitted a motion for enlargement of time, seeking an extension of time for it and Hale Kuawehi to file their SOPs and for HELCO to file its Reply SOP. In support of its Motion, the Consumer Advocate referenced Order No. 36172 and noted that the deadline by which Hale Kuawehi was required to respond to the Consumer Advocate’s IRs was February 27, 2019, one week before the date the Consumer Advocate’s SOP was due.

On February 28, 2019, the commission issued Order No. 36191, in which the commission denied the Consumer Advocate’s Motion, but amended the procedural schedule to provide Hale Kuawehi until March 8, 2019 to file its SOP. During the discovery period established by the amended procedural schedule, the Parties and Participants exchanged information requests ("IRs"), and the commission also submitted IRs to HELCO and Hale Kuawehi.

On March 6, 2019, the Consumer Advocate and Tawhiri filed their SOPs.

On March 8, 2019, Hale Kuawehi filed its SOP.

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13"Division of Consumer Advocacy’s Motion for Enlargement of Time; and Certificate of Service," filed February 26, 2019 ("CA Motion").

14CA Motion at 2.

15Order No. 36191, "(1) Denying the Division of Consumer Advocacy’s Motion for Enlargement of Time; and (2) Enlarging the Time for Hale Kuawehi Solar LLC to File its Statement of Position," filed February 28, 2019 ("Order No. 36191").
On March 13, 2019, HELCO filed its Reply SOP to the SOPs filed by the Consumer Advocate, Tawhiri, and Hale Kuawehi.

Pursuant to the deadlines set forth in Order No. 36191, no further briefing is contemplated and the PPA-related requests are ready for decision-making.\(^\text{16}\)

B.

Parties to the PPA

HELCO is the provider of electric utility service for the island of Hawaii. Hale Kuawehi is a Limited Liability Company formed in Delaware and registered to do business in Hawaii, and is a wholly-owned subsidiary of Innergex Renewables LLC, a wholly owned subsidiary of Innergex Renewable Energy Inc., which is a publicly-traded corporation on the Toronto Stock Exchange with a market capitalization of about $1.8 billion (CAD) and enterprise value of approximately $5 billion.\(^\text{17}\)

C.

The Project

The Project will be located on Parker Ranch, mauka of Mamalahoa Highway between Saddle Road and the existing West Hawaii

\(^\text{16}\)See Order No. 36191 at 10.

\(^\text{17}\)Application at 13.
Concrete Plant on the island of Hawaii. The land secured for the Project is located in the County Agricultural District A-40, with the overhead 69 kV generator tie-in between the existing L7200 69 kV Transmission line and a new substation to be located in the County Agricultural District A-5 and extend approximately 0.7 miles from the Project. As described by the Application:

The Facility is capable of generating up to 30 MW and will consist of approximately 100,000 high efficiency solar photovoltaic modules mounted on single-axis trackers and eleven (11) 3 MW inverters. Powered by solar energy with additional on-site battery energy storage, the Facility is capable of generating power used by up to 14,600 homes.

The storage component of the Facility will be comprised of a [BESS] that will connect directly to the PV component of the Facility. A four-hour, 30 MW, 120 MWh lithium-ion [BESS] is included. The [BESS] consists of battery modules, inverter systems, and switchgear. The [BESS] will be charged from energy generated by the PV component of the Facility.

According to the PPA, the Guaranteed Commercial Operations Date of the Project is June 30, 2022, but the date "will be revised to reflect the results of [the Interconnection Requirements Study ("IRS").]" Hale Kuawehi "represents

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18 Application at 14.

19 Application at 14.

20 Application at 15.

21 Application, Exhibit 1 at 283. Comparatively, the "Commercial Operations Date" is defined by the PPA as the "date on which [the] Facility first achieves Commercial
and warrants that, as of the Commercial Operations Date ('COD') of the [Project], the [Project] will be a qualified renewable resource under the [Renewable Portfolio Standards ("RPS")][22] in effect as of the effective date of the PPA ('Effective Date'),[23] and that, absent a change in RPS law, all energy delivered by Seller to [HELCO] from or through the [Project] will meet the definition of 'renewable electrical energy' or 'renewable energy' as defined under HRS § 269-91."[24]

Operations." Id. at Exhibit 1, p. 148. "Commercial Operations" is further defined by the PPA as "satisfaction" of certain "conditions," which includes passage of the "Acceptance Test[]." Id. at Exhibit 1, p. 148. The "Acceptance Test" is defined in part as a "test" conducted by Hale Kuawehi and witnessed by HELCO "within thirty (30) Days of completion of all Interconnection Facilities[]." Id., Exhibit 1, at 145.


[23]Application at 14. The "Effective Date" is defined by the PPA as "the last to occur of (i) the Non-appealable PUC Approval Order Date and (ii) the date that the Interconnection Requirements Amendment . . . is executed and delivered as such date is set forth in the Interconnection Requirements Amendment." Id., Exhibit 1 at 152.

D.

Material Terms of the PPA

The salient terms of the PPA are summarized below.25

Term: The subject PPA, dated December 27, 2018, is for a term of twenty-five (25) years following the "Commercial Operations Date,"26 and Hale Kuawehi will build, own, and operate the proposed Project.27 Unless declared null and void or terminated prior to the end of the term period,28 the PPA "shall automatically terminate" upon expiration of the twenty-five year term.29 However, "[i]f the Parties desire, the Parties may negotiate terms and conditions of an extension term ("Extended Term") including reduced Contract Pricing in recognition that Seller will have recovered its capital and financing costs, which terms and conditions (i) shall be submitted to the PUC by Company for

25The terms and conditions of the PPA are also summarized in Exhibit 4 to the Application. In addition, the complete PPA is attached as Exhibit 1 to the Application. Citations to the PPA will be by the Application's "Exhibit 1" numbers, rather than the PPA's internal page numbering.

26Application, Exhibit 1 at 67.

27Application at 14.

28Application, Exhibit 4 at 3-4.

29Application, Exhibit 1 at 67.
approval no later than one (1) year prior to the expiration of the Initial Term and (ii) shall have no effect without PUC approval.”^{30}

Commission Approval and Associated Termination Rights: HELCO and Hale Kuawehi are required to use "good faith efforts to obtain, as soon as practicable," a satisfactory commission order approving the PPA within twelve (12) months of the execution date of the PPA.^{31} If a satisfactory commission order is not issued within twelve (12) months, or within a longer period as agreed to by HELCO and Hale Kuawehi, either HELCO or Hale Kuawehi may, within one hundred eighty (180) days of such date, issue written notice declaring the PPA null and void.^{32} Similarly, if a commission approval order is issued but is appealed, and a non-appealable commission order approving the PPA is not obtained within twenty four (24) months from the date the Application was filed, either HELCO or Hale Kuawehi may, within ninety (90) days of such date, by written notice declare the PPA null and void.^{33}

HELCO clarifies that "[t]imeframes for [commission] approval were set based on the Project's need to move forward as expeditiously as possible to safe harbor the federal Business

^{30} Application, Exhibit 1 at 67.
^{31} Application, Exhibit 4 at 2-3 (citing Exhibit 1 at § 12.3).
^{32} Application, Exhibit 4 at 3 (citing Exhibit 1 at 3 § 12.6(b)).
^{33} Application, Exhibit 4 at 3 (citing Exhibit 1 at § 12.6(b)).
Energy Investment Tax Credit ('ITC') at 18% for 2019."\(^{34}\) However, HELCO also clarifies that "in the event Seller 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."\(^{35}\)

**Company Right to Declare PPA Null and Void Prior to Effective Date:** HELCO may declare the PPA null and void prior to the Effective Date for the following reasons:

(A) Seller makes a material change to the Project without following the requirements of the PPA;

(B) Seller 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); and

(C) Seller, after making payment for the interconnection facilities, requests in writing that [HELCO] stop or otherwise delay the performance of work for which [HELCO] received such payment.\(^{36}\)

**Pricing - Lump Sum Payment:** As described by the PPA, the "essence" of the PPA is that HELCO will be paying to Hale Kuawehi, on a monthly basis, a "Lump Sum Payment in exchange

\(^{34}\)Application, Exhibit 4 at 3.

\(^{35}\)Application, Exhibit 4 at 3.

\(^{36}\)Application, Exhibit 4 at 3-4 (citing Exhibit 1 at § 12.5).
for [HELCO's] right to dispatch, subject to Renewable Resource Variability, the [Project's] Net Energy Potential. In other words, HELCO states that the PPA will provide HELCO with the "contractual and operational discretion to dispatch the [Project], which includes the PV system and [BESS], in [HELCO's] preferred manner[,]" which will give HELCO flexibility to dispatch the Project as needed, "offset night-time customer demand, and assist in grid stabilization subject to discharge limits." HELCO states that this flexibility is "critically important over the 25-year term of the PPA due to the increasingly dynamic nature of the grid as Hawai`i rapidly progresses toward its goal of reaching 100% renewables by 2045."

Comparatively, HELCO states that its "previous as-available [PPAs] required that the energy produced by the associated facility be accepted by [HELCO] based on the seniority of the project[,]" which not only "limited the contribution that as-available resources could provide in relation to grid

37 Application at 2, & Exhibit 1 at 354. "Renewable Resource Variability" is defined by the PPA in part as the "variations, above and below the Renewable Resource Baseline, of the renewable resource actually available at the Site on a moment-to-moment basis." Id., Exhibit 1 at 171. "Renewable Resource Baseline" is defined in part as the "estimated renewable resource potential of the Site for a typical meteorological year." Id.

38 Application, Exhibit 4 at 9-10.

39 Application, Exhibit 4 at 2.
operations[,]” but also “hindered [HELCO's] ability to plan effectively for future renewable energy opportunities.”

Pursuant to the terms of the PPA, the monthly Lump Sum Payment paid to Hale Kuawehi is derived from multiplying the Unit Price with the Net Energy Potential (“NEP”), and then dividing that result by twelve months. Liquidated damages could reduce the Lump Sum Payment to zero if the Project is “completely unavailable” or if the Project is “available but underperforming in other aspects as measured by the Performance Metrics.”

The Unit Price and NEP. The Unit Price for the subject PPA is fixed at $0.087399188 per kilowatt hour (“kWh”) of NEP for the duration of the PPA. In its RFP, Hale Kuawehi projected that the Project would have a NEP of 87,415 megawatt hours (“MWh”) per year. However, the NEP “is subject to adjustment from time to time” and, “as so adjusted, provides a basis for calculating and adjusting the Lump Sum Payment[].”

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40 Application, Exhibit 4 at 1-2.
41 See Application, Exhibit 1 at 276-82.
42 Application, Exhibit 4 at 4-5.
43 Application at 9, & Exhibit 1 at 177.
44 Application, Exhibit 1 at 355.
45 Application, Exhibit 1 at 354.
Pricing - Other Adjustment: According to HELCO, a "NEP estimate" will be provided to the "financing parties" through an "independent engineer" report ("IE Report") "as part of their standard due diligence prior to financial closing[.]

46 If the NEP estimate in the IE Report is equal to or greater than the NEP estimate provided in Hale Kuawehi's Request for Proposal ("RFP") Response, the Lump Sum Payment specified in the Application will apply for the first fifteen months following the Commercial Operations Date.

47 If the NEP estimate in the IE Report is less than the NEP estimate in Hale Kuawehi's RFP Response, Hale Kuawehi may either declare the PPA null and void or accept the IE Report's NEP estimate. If accepted, the NEP estimate will be used to reduce the Lump Sum Payment during the first fifteen months following the Commercial Operations Date, and Hale Kuawehi will pay a one-time liquidated damage calculated on the basis of $10/MWh of the differential between the two NEP estimates.

Pricing - Liquidated Damages: Again, liquidated damages have the potential to reduce the Lump Sum Payment to zero if the

46 Application, Exhibit 4 at 7.
47 Application, Exhibit 4 at 7.
48 Application, Exhibit 4 at 7-8.
49 Application, Exhibit 1 at 357, & Exhibit 4 at 8.
Project is completely unavailable or if the Project is available but underperforming in other aspects as measured by the Performance Metrics. Although the Project is treated as a single resource, liquidated damages are allocated to the performance of the PV system and BESS separately to assess the availability and performance of each component. As stated in the PPA, to provide HELCO with reasonable assurance that the Project will be available and perform as required, the following metrics are utilized:

1. The Equivalent Availability Factor ("EAF") Performance Metric, which is used to evaluate the availability of the PV System for dispatch by HELCO;

2. The Guaranteed Performance Ratio ("GPR") Performance Metric, which is used to evaluate the efficiency of the PV system;

3. The BESS Capacity Performance Metric, which is used to confirm the capability of the BESS to discharge as required by the terms of the PPA;

4. The BESS EAF Performance Metric, which is used to determine whether the BESS is meeting its expected availability; and

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50Application, Exhibit 4 at 5.
5. The BESS Equivalent Forced Outage Factor ("EFOF") Performance Metric, which is used to evaluate whether the BESS is experiencing excessive unplanned outages.\(^5\)

In the event that Hale Kuawehi fails to achieve one or more of the Performance Metrics, there is a liquidated damage amount that is associated with such failure.\(^6\) Liquidated damages relating to the PV system are calculated on the basis of the full Lump Sum Payment.\(^7\) Liquidated damages relating to the BESS are calculated on the basis of the BESS Allocated Portion of the Lump Sum Payment for an applicable three-month period (which is referred to in the PPA as a "BESS Measurement Period").\(^8\)

In addition to the Lump Sum Payment, the PPA between HELCO and Hale Kuawehi provides that, "at any time prior to Commercial Operations Date, [HELCO] may agree, in its sole discretion, to dispatch energy from the Facility, in all or in part, and [HELCO] shall pay [Hale Kuawehi] for such energy at

\(^{5}\) Application, Exhibit 4 at 5.

\(^{6}\) Application, Exhibit 4 at 5.

\(^{7}\) Application, Exhibit 4 at 5.

\(^{8}\) Application, Exhibit 4 at 5.
a rate of $45/MWh."55 This provision does not apply to HELCO's use of the Project for "test energy."56

**Company's Right of First Negotiation to Purchase the Project:** In the event Hale Kuawehi wishes to assign its interest in the Project or effect a change of control, HELCO has the first right to negotiate for purchase of the Project.57 Additionally, "in the event that [HELCO] is subject to consolidation and capital lease treatment under [Financial Accounting Standards Board Accounting Standards Codification ('FASB ASC')] 810 and 840, respectively, and/or FASB [ASC] 842 . . . with respect to Seller and the [Project], . . . [HELCO and Seller] may effectuate a sale of the [Project] to [HELCO] [(upon commercially reasonable terms at a fair market value)]."58 HELCO clarifies that any such purchase of the Project by HELCO "shall be subject to application to the Commission for approval, and, prior to consummation, formal Commission approval of such purchase."59

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55Application at 24 n.31, & Exhibit 1 at 282.

56Application at 24 n.31, & Exhibit 1 at 282.

57Application, Exhibit 4 at 8 (citing Exhibit 1 at § 19.1; and Attachment P). The PPA also provides for limited instances of "exempt sales" to which HELCO's right of first negotiation does not apply. See Exhibit 1 at Attachment P, § 1(c).

58Application, Exhibit 4 at 8 (citing Exhibit 1 at § 24.5; and Exhibit 1 at Attachment P, § 6).

59Application, Exhibit 4 at 8.
Similarly, at the end of the PPA Term, HELCO has the right of first negotiation to purchase the Project.\textsuperscript{60}

Compliance with Laws and Regulations: Under the PPA, Hale Kuawehi is responsible for:

(A) obtaining any and all necessary permits, governmental approvals, and land rights for the construction and operation of the Project;

(B) installing, operating, and maintaining the Project safely and in compliance with all applicable laws; and

(C) Prior to commencement of construction of the Company-owned Interconnection Facilities, providing the necessary permits, government approvals, and land rights for construction, ownership, operation, and maintenance of the Company-Owned Interconnection Facilities.\textsuperscript{61}

Site Restoration: After termination of the PPA, or if the PPA is declared null and void, Hale Kuawehi will, upon HELCO's request, remove all Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities from the land and restore the land to its condition prior to construction (alternatively, HELCO may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities from the land).

\textsuperscript{60}Application, Exhibit 4 at 10 (citing Exhibit 1 at Attachment P).

\textsuperscript{61}Application, Exhibit 4 at 9 (citing Exhibit 1 at §§ 11.1 - 11.3).
Interconnection Facilities, in which case Hale Kuawehi will reimburse HELCO for the cost of removal). 62

**Company Dispatch:** HELCO will have discretion to dispatch the Project, including the PV system and BESS, in its preferred manner. 63

**Credit Assurances and Security:** Hale Kuawehi is required to post and maintain Development Period Security and Operating Period Security. 64

**Guaranteed Commercial Operations Date, Project Milestones:** Hale Kuawehi must meet agreed upon Guaranteed Project Milestones, including for commercial operations, as set forth in Article 13. "Failure to meet Guaranteed Project Milestones subjects the Seller to daily delay damages and eventual termination for failure to cure." 65

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62 Application, Exhibit 4 at 9 (citing Exhibit 1 at Attachment G, § 7).

63 Application, Exhibit 4 at 9-10 (citing Exhibit 1 at Article 8; and Exhibit 1 at Attachment B, § 9(d)).

64 Application, Exhibit 4 at 10 (citing Exhibit 1 at Article 14).

65 Application, Exhibit 4 at 10 (citing Exhibit 1 at Article 13).
II.

PARTIES' AND PARTICIPANTS' POSITIONS

A.

HELCO

According to HELCO, the Project as a whole will "provide grid services and additional capabilities to the [HELCO] system[,]" and the BESS in particular will allow HELCO to "store energy from the PV system during times of the day when demand is lower and shift the delivery of such stored energy to the grid when demand is higher."\(^66\) HELCO states the subject PPA is reasonable and in the public interest because:

The Project was selected as a result of a competitive procurement process that has resulted in a reasonable Lump Sum Payment price for the PPA.

The Project is advantageous due to the ability to dispatch energy from the Project's PV system or BESS as needed rather than only relying on conventional generation units, offset night-time customer demand, assist in grid stabilization subject to discharge limits, and is anticipated to have a substantial positive impact by decreasing HELCO's future dispatch of oil-fueled units.

\(^66\)Application at 3.
HELCO states that the PPA is the result of the Stage 1 RFP process established in Docket No. 2017-0352. Briefly, Docket No. 2017-0352 was established to "receive[] filings, review[] approval requests, and resolv[e] disputes relating to the [HELCO] Companies' plans to acquire new renewable energy generation." HELCO, along with the other HECO Companies, submitted a draft RFP for variable RDG, which was then reviewed and vetted by stakeholders and the commission and ultimately approved by the commission on February 20, 2018. Stage 1 of the RFP required proposals with GCODs no later than December 31, 2022, in order to take advantage of the 2019 ITC, and "represents the largest energy procurement undertaking in Hawai'i's history."

HELCO states that the RFP "was specifically designed to include the following characteristics: technology agnostic, not specifying a maximum size requirement, allowing projects to be sited at developer-defined sites, and allowing for variations within proposals (including the option to pair storage with generation), which provided the benefits of encouraging broader developer participation as well as allowing the market to dictate

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67 Application, Exhibit 2 at 1.
68 See Application, Exhibit 2 at 1-2.
69 Application, Exhibit 2 at 3.
technology and price."  

"In order to maintain a competitive and fair process, the [HECO] Companies followed the Commission’s Framework for Competitive Bidding . . . with only minor modifications."

HELCO first divided the RFP proposals into separate technology "buckets" to ensure that proposals of "like" technology would be evaluated against each other. Proposals within each bucket were evaluated using both price-related and non-price related criteria. The highest-ranking proposals from each bucket were then placed on a "short list" and invited to update their proposals to reach their best and final offer ("BAFO"). The short-listed BAFOs were then evaluated by assessing the proposed costs of the delivered energy and operating characteristics of each proposed project to reach a Final Award Group of eight proposals, which were then allowed to proceed with contract negotiations with the HECO Companies. The subject PPA is one of the results of these negotiations. In addition,

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70 Application, Exhibit 2 at 3.

71 Application, Exhibit 2 at 4. The commission’s Framework for Competitive Bidding was established in Docket No. 03-0372 by Decision and Order 23121, filed December 8, 2006.

72 Application, Exhibit 2 at 5-6.
Bates White LLC served as the commission-appointed Independent Observer ("IO") throughout the entire evaluation process.73

According to HELCO:

A key benefit of the [Project] is that the Company will be able to utilize attributes of the [Project] to best meet the needs of the system. Having the [PV] system paired with a [BESS] adds significant value to the [Project] by allowing the energy produced during the day that cannot be readily accepted by the Company to be stored and dispatched to the Company's system at future times of higher customer demand, which is more beneficial to the Company's system than past projects that required instantaneous use of energy produced. [HELCO] anticipates that it will dispatch the [BESS'] stored energy to [HELCO's] grid to, among other things, help with ramping towards [HELCO's] periods of peak energy demand (rather than ramping up conventional generation), offset night time fossil fuel generation, and assist in grid stabilization subject to discharge limits.74

The Unit Price ($0.087399188 per kWh of NEP), as defined in the PPA, is advantageous because it is fixed for the duration of the PPA and is anticipated to result in lower effective rates for customers.

It is anticipated that the Project will provide bill savings to customers over the Term of the PPA.

73Application, Exhibit 2 at 4.

74Application at 15.
The Project is not expected to increase curtailment of existing as-available renewable resources or impede consideration of additional renewable resources to HELCO's system;


HELCO estimates that the renewable energy supplied by the Project will result in avoiding approximately 497,126 barrels of fuel over the initial term of the PPA. Specifically, HELCO anticipates avoiding 139,187 barrels of diesel fuel, 53,066 barrels of biodiesel, and 312,759 barrels of naphtha fuel, but also experiencing increases of approximately 7,886 barrels of ultra-low sulfur diesel. HELCO also estimates that the Project will avoid approximately 180,500 tons of GHG emissions over the PPA term.

75Application, Exhibit 3, Attachment 3 (confidential).
76Application, Exhibit 3, Attachment 3 (confidential).
77Application at Exhibit 5.
HELCO asserts that these estimated results are consistent with objectives identified in HRS § 226-18(a), including: "(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." 78

Similarly, HELCO maintains that the PPA and Project are relevant to the considerations listed in HRS § 269-6(b), which require the commission to "explicitly consider, quantitatively or qualitatively, 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." 79

HELCO further states that the Project will help to meet Hawaii’s energy policy objectives and Renewable Portfolio Standard ("RPS") goals -- according to HELCO, the Project has the potential to contribute up to 7.4% of HELCO’s RPS in 2022.

78Application at 11 (citing HRS § 226-18(a)).
79Application at 11-12 (citing HRS § 269-6(b)).
The PPA incorporates the recently-developed Renewable Dispatchable Generation contracting mechanism that will improve on HELCO's ability to plan for this and subsequent renewable resources.\textsuperscript{80}

B.

The Consumer Advocate

The Consumer Advocate recommends approving HELCO's PPA-related requests, subject to certain conditions.\textsuperscript{81}

The Consumer Advocate notes the history behind the procurement of the PPA, including the RFP process established and conducted in Docket No. 2017-0352.\textsuperscript{82} While not appearing to object to the process itself, the Consumer Advocate does raise concerns over the fact that "all four developers associated with the seven projects with PPAs currently before the Commission\textsuperscript{83} are represented by the same counsel: Yamamoto Caliboso, a Limited Liability Law Company ('Yamamoto Caliboso')."\textsuperscript{84}

\textsuperscript{80}Application at 3-4, 7-9.

\textsuperscript{81}"[Consumer Advocate's] Statement of Position," filed March 6, 2019 ("Consumer Advocate SOP"), at 1.

\textsuperscript{82}See Consumer Advocate SOP at 11-12, & Attachment 1.


\textsuperscript{84}Consumer Advocate SOP at 12.
The Consumer Advocate notes that the HECO Companies have stated that they "did not discuss concerns [with the IO] during the evaluation and selection process that multiple projects were represented by the same legal counsel[,]" but that the "issue was considered and discussed by the Company and the [IO] during contract negotiations." Additionally, after reviewing the IO's report on the procurement process, the Consumer Advocate observes that the IO "focus[ed] on whether the [HECO] Companies' evaluations were transparent and reasonable and done 'on a fair and consistent basis[,]'" and "do not appear to have raised any issues regarding the process or with the terms that were ultimately negotiated." "As such, the Consumer Advocate notes that there is no evidence of collusion thus far between developers, that developers were required to agree to a 'Certificate of Non-Collusion acknowledgement,' and that the IOs did not identify terms that appeared unreasonable resulting from the PPA negotiations." 

That being said, the Consumer Advocate is still "concerned that having one attorney lead negotiations for all four developers' PPAs gives rise to, at a minimum, the appearance of impropriety[,]" and contends "that this issue should be

85Consumer Advocate SOP at 14-15 (citing HELCO Response to CA/HELCO-IR-25.a, filed March 1, 2019).
86Consumer Advocate SOP at 15.
87Consumer Advocate SOP at 16-17.
addressed in future competitive procurements to mitigate the possibility of similar circumstances."\textsuperscript{88}

However, the Consumer Advocate recommends, subject to certain conditions, (1) approving the PPA between Hale Kuawehi and HELCO, dated December 27, 2018; (2) finding that the purchased power arrangements in the PPA are reasonable; and (3) authorizing HELCO to include all non-energy payments made under the PPA, including the Lump Sum Payments and related revenue taxes, in HELCO’s PPAC to the extent such costs are not included in HELCO’s base rates.\textsuperscript{89}

With regard to price, the Consumer Advocate asserts that, “[n]otwithstanding that the selected projects were the result of an RFP process and that the prices do reflect a downward trend from PPA prices approved in the past,” the information provided by Hale Kuawehi was “inadequate to support a definitive determination as to whether the Lump Sum Payments appear reasonable . . . based on project costs.”\textsuperscript{90} According to the

\textsuperscript{88}Consumer Advocate SOP at 17.

\textsuperscript{89}Consumer Advocate SOP at 1-2 and 28.

\textsuperscript{90}Consumer Advocate SOP at 20-21. The Consumer Advocate notes that, at the time it filed its Statement of Position on March 6, 2019, instead of providing the native excel file of Hale Kuawehi’s pro forma, a PDF copy of the table was provided, which did not allow the Consumer Advocate to view the calculations behind cells. Id. at 19-20.
Consumer Advocate, "it is important to assess whether the selected projects reflect reasonable prices with reasonable returns instead of reflecting 'sticky' prices."\(^{91}\)

However, the Consumer Advocate observes that the "nature of the projects" are such that "there is an upfront cost to build the project and little or no cost associated with the energy and other services to be delivered to the grid[,]" and states that the "fixed pricing" provided for in the PPA "significantly reduces price volatility, which can be detrimental to customers, especially those on a fixed income or with limited means to deal with volatility that . . . has been observed with fossil fuel prices."\(^{92}\) The Consumer Advocate also states that the commission "may still find the PPA pricing reasonable based on other measures such as projected system and bill savings, recent PV plus BESS project pricing, and national or regional cost studies."\(^{93}\)

With regard to the terms and conditions of the PPA, the Consumer Advocate observed that the subject PPA "represents an

\(^{91}\)Consumer Advocate SOP at 20.
\(^{92}\)Consumer Advocate SOP at 22.
\(^{93}\)Consumer Advocate SOP at 21.
evolution from earlier contracts," including those based on "seniority curtailment provisions," and "supports the underlying reasons why the proposed [Renewable Dispatchable Generation ("RDG")]) PPA is being used for these contracts as it eliminates some of the terms and conditions that were not in the best interest of the public." 94

However, the Consumer Advocate observes that the duration of the PPA is "very long[,]" and "during times of declining price trends and improvements in technology," the Consumer Advocate asserts that "such long terms arguably stifle innovation" because, "as technology improves and prices decline, customers are not able to receive the benefits . . . if the utility is locked into long-term contracts for available capacity." 95 The Consumer Advocate also states that the nature of the PPA "represents a significant transference of risk to customers" because, "regardless of whether there is a need for a project's capacity, customers will bear the cost of the project." 96

Nonetheless, the Consumer Advocate states that, in its expedited review of the PPA, there does not appear to be any

94 Consumer Advocate SOP at 22.
95 Consumer Advocate SOP at 23.
96 Consumer Advocate SOP at 23.
The Consumer Advocate recognizes that the PPA will also provide other benefits by contributing to the State’s goals of renewable energy, providing a contribution to the [RPS], as set forth by HRS § 269-92(a), lower fossil fuel usage, reduction in greenhouse gas[] ('GHG') emissions and a hedge to fossil fuel prices[].

The Consumer Advocate recommends the following conditions be included in any approval granted by the commission:

1. HELCO file copies of all invoices relating to the engineering, procurement, construction, and maintenance associated with the proposed PPA no later than sixty days after the Commercial Operations Date, as well as require HELCO to file Hale Kuawehi’s income statements or results of operations related to the PPA;

2. To the extent additional information is necessary in connection with the above condition, the Consumer Advocate "reserves its right" to issue IRs to Hale Kuawehi as a participant in this proceeding;

3. As it relates to future procurement processes, bidders be required to file the pro forma information related to their project in electronic format (i.e., Excel), in addition to copies of any supporting documentation to support its bid price;

97Consumer Advocate SOP at 25.

98Consumer Advocate SOP at 25.
4. The procurement process should be reviewed to examine and develop guidelines, as necessary, to mitigate concerns about multiple sellers using the same representative(s) in negotiations; and

5. Further considerations and discussions should be made in Phase 2 of the competitive procurement process, as discussed on pages 15 to 17 of Attachment 1 to the Consumer Advocate’s SOP.\textsuperscript{99}

With regard to whether the non-energy payments under the PPA should be included in the PPAC to the extent such costs are not included in base rates, the Consumer Advocate “does not object to the inclusion of the PPA payments in the Company’s PPAC . . . as such costs are not included in another cost recovery mechanism” and it “appears reasonable that the PPAC be utilized to recover the costs associated with capacity payments of the proposed PPA[,] which [i]s its intended purpose.”\textsuperscript{100}

\textsuperscript{99}Consumer Advocate SOP at 26-27.

\textsuperscript{100}Consumer Advocate SOP at 27-28.
C.

Tawhiri

Tawhiri has an existing PPA with HELCO to provide HELCO with energy from its Pakini Nui Wind Farm ("Wind Farm") until April 2027. Tawhiri filed its Motion to Intervene because, among other reasons, Tawhiri contends the Project may increase curtailment of its Wind Farm and, because it has invested "tens of millions of dollars in its Wind Farm and its interconnection to the HELCO system[,]" approval of the PPA "may adversely affect [Tawhiri's] property and financial interest[.]"

The commission, through Order No. 36145, denied Tawhiri's request for intervenor status, but, on its own motion, granted Tawhiri participant status limited to "addressing potential curtailment to its existing units on HELCO's system as a result of the addition of the proposed project, as it relates to the commission's consideration of Issue 1.a (set forth in Order No. 36069)."

In its SOP, Tawhiri contends that the "guiding principle for acquiring new renewable resources need to be do no harm to

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101 Tawhiri's Motion to Intervene at 3.
102 Tawhiri's Motion to Intervene at 3-4.
103 Order No. 36145 at 42.
existing facilities." In other words, Tawhiri "opposes the PPA application because it fears [the Project] will likely result in significant curtailment of it and other as-available wind energy facilities, which will prove to be imprudent and not in the public interest."  

To that end, Tawhiri recommends that the commission either deny the Application, or approve the Application with the condition that HELCO "will commit to refrain from curtailing as-available generation during oversupply conditions."  

In support of its recommendation, Tawhiri contends:

1. HELCO’s claim that the proposed PPA is not expected to increase curtailment of existing renewable resources "is very troublesome";

2. HELCO stated it "did not perform any assessment of potential curtailment using modeling and simulation techniques";

3. Tawhiri has "faced on-peak curtailments because of system over-supply from the large influx of [Distributed Energy

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104"[Tawhiri’s] Statement of Position," filed March 6, 2019 ("Tawhiri SOP") at 3 (emphasis omitted).

105Tawhiri SOP at 13.

106Tawhiri SOP at 13-14.

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Resources ("DER") and without appropriate protections being put in place, looks to be further curtailed during daytime operations;  

4. There is a "high probability of increased incidence of generation oversupply in the HELCO system triggered by the projects . . . and by other expected changes in the demand/supply balance in Hawai‘i County"; and  

5. HELCO has curtailed "Tawhiri's Pakini Nui wind farm early during its operation before these curtailment practices were curbed by the Commission as a consequence of the Reliability Standards Working Group." 107  

D.  

Hale Kuawehi  

The commission, through Order No. 36145, granted Hale Kuawehi's request to participate in this proceeding. In doing so, the commission found that Hale Kuawehi's "first-hand information and knowledge regarding the Project and its history, as well as its community outreach efforts, may assist the commission in the development of a sound record as to Issue No. 1 (including all sub-parts) and Issue No. 3, as described in the Statement of Issues in Order No. 36069." 108  

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107Tawhiri SOP at 4.  

108Order No. 36145 at 19.
In its SOP, Hale Kuawehi recommends that the commission find that the purchased power arrangements under the PPA are prudent and in the public interest. In support thereto, Hale Kuawehi states:

1. The PPA was the result of arms-length negotiations between Hale Kuawehi and HELCO over a three-month period in 2018;

2. The Project was awarded the PPA through a rigorous competitive bidding process with significant oversight by the Commission and the Independent Observer ("IO");

3. The Unit Price of approximately $0.09 per kWh of NEP is fixed for the duration of the PPA, and is not only below the benchmark set by the commission, but also will result in energy savings to HELCO's ratepayers;

4. The PPA ensures that the ratepayers is not paying for services or capacity that it is not receiving through the liquidated damages provisions of the PPA;

5. The Project’s BESS will allow the Project to store energy from the PV system that cannot be readily accepted by HELCO's grid as it is being produced;

\[109^*\] Hale Kuawehi's] Statement of Position; Affidavit of Yves Baribeault; Affidavit of Dean T. Yamamoto; and Certificate of Service," filed March 8, 2019 ("Hale Kuawehi SOP"), at 2. Hale Kuawehi also asserts, "if necessary," that the commission find that the above-ground 69 kV line extension "may be constructed above the surface of the ground." Id. at 14.
6. The Project contributes approximately 7.7% to HELCO's RPS and 0.8% to the Hawaiian Electric Companies' consolidated RPS over the 25-year term of the Project;

7. The Project has made significant development progress; and

8. The Project is well supported by the local community.\textsuperscript{110}

In response to the Consumer Advocate's SOP, Hale Kuawehi states:

> [P]roviding copies of invoices related to the engineering, procurement, construction, and maintenance, and income statements is not conducive to more favorable benefits to ratepayers. The highly competitive nature of this RFP attests to the importance of a robust competitive solicitation with oversight from the PUC and involvement of an Independent Observer. Seller believes that onerous requirements that are not typical in other jurisdictions discourages participation in an RFP process and leads to less competitive results.\textsuperscript{111}

In response to Tawhiri's SOP:

1. Based on HELCO's representation, Hale Kuawehi understands that the "Project will not have any curtailment impact on existing independent power producers given that the Project is

\textsuperscript{110}Hale Kuawehi SOP at 4-9.

\textsuperscript{111}Hale Kuawehi SOP at 12.
fully dispatchable, has no minimum dispatch limit, and does not increase the regulating reserve down requirement";

2. As characterized by Hale Kuawehi, Tawhiri's concern that the "economic incentives associated with the dispatchable PPA model will motivate [HELCO] to breach existing PPA obligations relating to curtailment[,]" amounts to speculation and is a misinterpretation of the nature of the dispatchable PPA. For example, the terms of the PPA provide HELCO with the "flexibility to dispatch the Project consistent with the needs of the system" and, as HELCO stated, "the minimum dispatch limit of the proposed project is zero"; and

3. This proceeding is not the "appropriate forum for Tawhiri to demand a modification to improve the terms of its existing agreement" with HELCO.112

E.

HELCO Reply

In its Reply SOP, HELCO "generally agrees with the . . . recommendations made by the Consumer Advocate in its SOP," "supports the SOP filed by [Hale Kuawehi], to the extent [it] recommends approval of the PPA," and objects to Tawhiri's SOP.113

112Hale Kuawehi SOP at 9-11.

HELCO reiterates its request that the commission approve the PPA, find that it has met its burden of proof with regard to Issues 1 and 2, and find that HELCO's purchased power arrangements under the PPA are prudent and in the public interest.\textsuperscript{114}

With regard to the Consumer Advocate's SOP:

1. Insofar as the commission agrees with the Consumer Advocate's recommended condition of approval by requiring HELCO to provide Hale Kuawehi's income statements or results of operations related to the proposed PPA, HELCO states that Hale Kuawehi should be required to submit such information directly to the Consumer Advocate, inasmuch as Hale Kuawehi maintains the requested information and may thus deem such information confidential;

2. HELCO agrees with the Consumer Advocate's recommendation that, for future procurement processes, bidders be required to file the pro forma information related to their project, in addition to copies of any supporting documentation to support its bid price; and

3. In connection with pages 15 to 17 of Attachment 1 to the Consumer Advocate's SOP, HELCO states it "will further

\textsuperscript{114}HELCO Reply SOP at 11.
consider how different metrics are utilized in the evaluation process" during "Stage 2 of the RFP[.]."\textsuperscript{115}

With regard to Tawhiri's SOP, HELCO asserts:

1. Tawhiri "provides no legal, contractual or technical basis to support the efficacy of its position or its recommendation to the Commission other than its unsupported 'fear' that the proposed project could result in curtailment of its as-available wind energy facility";

2. Tawhiri's position is also erroneous because:

   A. Curtailments of existing as-available renewable resources are made in accordance with the terms of their respective PPAs, and any approved RDG PPA will not affect the existing contractual rights of Tawhiri or any other independent power producer ("IPP");

   B. Historical curtailments have been due to "excess energy conditions," and when such conditions exist, HELCO "follows its Excess Generation Curtailment Procedure[,]" as provided in Docket No. 2018-0368, in connection with its must-take facilities;\textsuperscript{116}

\textsuperscript{115}HELCO Reply SOP at 7-9.

\textsuperscript{116}In re Hawaii Electric Light Co., Inc., Docket No. 2018-0368, 
C. "If further reductions are necessary due to such excess energy conditions, the as-available facilities on [HELCO's] system are then curtailed in reverse chronological order (excluding small generation projects that are allowed to be installed without curtailment controls, e.g., photovoltaic net energy metering projects, certain feed-in tariff projects, etc.)." and

3. Because the Project is fully dispatchable, has no minimum dispatch limit and does not increase the regulating reserve down requirement, HELCO states the Project's output would be reduced in accordance with the present excess energy curtailment provisions for existing must-take, as-available IPP facilities. As such, HELCO states that the Project "would have no impact on the level of excess energy curtailment of existing IPPs." 117

III.
DISCUSSION
A.
Legal Authorities

Generally, the rates agreed upon between HELCO and Hale Kuawehi pursuant to the PPA are subject to review under HRS § 269-27.2(c), which states:

117 HELCO Reply SOP at 9-11.
The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

The commission's determination of the just and reasonable rate shall be accomplished 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.

Additionally, HAR § 6-74-22(a) states that rates for purchases 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 6-74-23.
from qualifying facilities and not less than the minimum purchase rate.

HAR § 6-74-15(b)(1) provides that HAR § 6-74-22 does not prohibit an electric utility or any qualifying facility from agreeing 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 HAR § 6-74-22.

HRS § 269-6(b) further provides:

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 commission shall explicitly consider, quantitatively or qualitatively, 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. The commission 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.

With regard to HELCO's request to include all non-energy payments under the PPA through the PPAC, 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.
Additionally, HRS § 269-16.22 provides:

All power purchase costs, including costs related to capacity, operations and maintenance, and other costs that are incurred by an electric utility company, arising out of power purchase agreements that have been approved by the public utilities commission and are binding obligations on the electric utility company, shall be allowed to be recovered by the utility from the customer base of the electric utility company through one or more adjustable surcharges, which shall be established by the public utilities commission. The costs shall be allowed to be recovered if incurred as a result of such agreements unless, after review by the public utilities commission, any such costs are determined by the commission to have been incurred in bad faith, out of waste, out of an abuse of discretion, or in violation of law. For purposes of this section, an "electric utility company" means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power.

B.

Procurement of the PPA

1. The PPA filed in this docket is the result of Phase 1 of the Hawaiian Electric Companies' competitive procurement process to acquire new, dispatchable and renewable energy resources for Oahu, Maui, and Hawaii Island, which is the
subject of Docket No. 2017-0352.\textsuperscript{118} The commission stated its intent to ensure that each competitive bidding process is fair in its design and implementation so that selection is based on the merits; that projects selected through a competitive bidding process are consistent with the utility's PSIPs; that the utility's actions represent prudent practices; and that throughout the process, the utility's interests are aligned with the public interest. . . \textsuperscript{119}

2. Moreover, the commission stated it "believes the overall RFP timeline should be accelerated to enable finalized PPAs to be submitted to the commission for approval by the end of 2018[,]" and this "accelerated timeline will allow the commission to review and approve PPAs in early 2019, providing the maximum amount of time for developers to safe harbor materials and receive available tax credits."\textsuperscript{120}

3. Notwithstanding the foregoing, the commission also said that, "[w]hile the existence of a competitive bidding process

\textsuperscript{118}\textit{See generally In re Hawaiian Elec. Co., Inc., Docket No. 2017-0352.}


helps to provide assurances that a bid is selected 'fairly,' this does not act as a substitute for the commission's, or the Consumer Advocate's, independent review of the evidence in determining whether to approve, or recommend approval of, a proposed PPA."\textsuperscript{121}  

4. In this proceeding, the Consumer Advocate expressed its concern "that all four developers associated with the seven projects with PPAs currently before the [c]ommission are represented by the same counsel: Yamamoto Caliboso, a Limited Liability Law Company."\textsuperscript{122} The Consumer Advocate is "concerned that having one attorney lead negotiations for all four developers' PPAs gives rise to, at a minimum, the appearance of impropriety[,]," and "raises the question, 'Would the terms have been more favorable to consumers (rather than developers) if information regarding utility concessions had not been shared?'"\textsuperscript{123}  

5. However, the Consumer Advocate notes there "is no evidence of collusion thus far between developers, that developers were required to agree to a 'Certificate of Non-Collusion acknowledgment,'[] and that the [Independent Observers ("IOs")]] did not identify terms that appeared unreasonable resulting from

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{121}] Order No. 36172 at 10.
\item[\textsuperscript{122}] Consumer Advocate SOP at 11.
\item[\textsuperscript{123}] Consumer Advocate SOP at 16.
\end{enumerate}
\end{footnotesize}
the PPA negotiations."^24 The Consumer Advocate also states it "will not object to the proposed PPA on the basis of the possible appearance of impropriety" due to the "potential savings from the proposed PPA" that "could yield benefits to consumers and further certain State goals[.]"^25 The Consumer Advocate adds that this issue "should be addressed in future competitive procurements to mitigate the possibility of similar circumstances."^26

6. In response to the Consumer Advocate’s concerns, Hale Kuawehi, as attested to by Yves Baribeault,^27 states in part:

Seller selected its outside counsel based on consultant recommendations, research, its experience in energy dockets, interviews and other factors. During the bidding process, Seller was unaware of any proposal made by other developers, including which law firm the other developers were using, if any, during the RFP process. During the PPA negotiations, Seller relied primarily on its own in-house counsel and staff to address the PPA issues and its in-house counsel was actively involved in the review and mark-up of the PPA during the entire negotiation process. Much of the original content of the PPA were not considered financeable by Seller. Seller’s in-house attorney and staff from Canada flew to several of the negotiations meetings and vigorously participated in the HELCO negotiations, a fact that HELCO can attest.

^24Consumer Advocate SOP at 16.


^26Consumer Advocate SOP at 17.

^27Yves Baribeault is the Vice President, Legal Affairs, Operations & Projects of Hale Kuawehi. Hale Kuawehi SOP at Affidavit of Yves Baribeault.
Moreover, the entire PPA had to be approved by Seller’s parent company and investment team. Throughout the PPA negotiations process, Seller was not aware nor has been made aware of the issues the other developers were addressing.

During negotiations, HELCO repeatedly requested revisions for consistency across the PPAs. The fact that some of the PPA language is similar should not imply collusion or a perception of collusion. Additionally, since all developers were facing the same financing issues and other issues imposed by the draft model PPA, Innergex can only assume that the other developers, with their experience, have raised similar issues, but Seller cannot confirm it. Seller is not aware of any instance where concessions gained by a developer in another negotiation was used to obtain a concession from HELCO during its negotiation.¹²⁸

7. Hale Kuawehi’s outside counsel, as attested to by Dean T. Yamamoto,¹²⁹ states in part that "Yamamoto Caliboso did not share any developer-specific information with any other developer during the negotiations process," and "Yamamoto Caliboso’s involvement with Seller’s initial response to the RFP was limited to providing comments on the legal terms and risks contained in the publicly filed Model RDG PPA and did not include any comments related to pricing."¹³⁰ Hale Kuawehi’s outside counsel further states:

¹²⁸Hale Kuawehi SOP at 11-12.

¹²⁹Dean T. Yamamoto is the Managing Member of Yamamoto Caliboso, a Limited Liability Law Company, which represents Hale Kuawehi. Hale Kuawehi SOP at Affidavit of Dean T. Yamamoto.

¹³⁰Hale Kuawehi SOP at 13.
To the extent any developers received similar guidance from Yamamoto Caliboso related to the Model RDG PPA in preparing their initial responses to the RFP, such guidance was (1) not the result of information sharing among developers but rather the result of Yamamoto Caliboso's expertise and years of experience in the field of energy law, and (2) of the kind that should be expected by any developer seeking legal advice from a law firm with similar expertise and experience in the field of energy law.\textsuperscript{131}

8. HELCO states that, together with the IO, they "considered and discussed" the "issue" that "multiple projects were represented by the same legal counsel" "during contract negotiations."\textsuperscript{132}

9. However, in its Reply SOP, HELCO states it "takes no position" as to Hale Kuawehi's "other positions and arguments" (e.g., Hale Kuawehi's response to the Consumer Advocate's suggestion of a possible appearance of impropriety), and states in response to the Consumer Advocate's suggested recommendation that the procurement process should be reviewed to examine and develop guidelines, as necessary, to mitigate concerns about sellers using the same representative(s) in negotiations:

The Consumer Advocate does not contend that the stated concerns actually affected the integrity of this current procurement process. As such, this appears to be a recommendation for prospective action and not any basis to deny approval of the present Application. Nevertheless, the Company

\textsuperscript{131}Hale Kuawehi SOP at 13.

\textsuperscript{132}HELCO's Response to CA/HELCO-IR-25.a, filed March 1, 2019.
agrees with the recommendation to consider process improvements and intends to specifically address these concerns in Stage 2 of the RFPs.\textsuperscript{133}

10. The commission appreciates the Consumer Advocate’s concern and acknowledges the accelerated procedural timeline established for this proceeding. For purposes of Phase 1 of the competitive procurement process and in light of the accelerated timeline established for this proceeding, the commission finds the statements made by Hale Kuawehi in its SOP, which were attested to by Yves Baribeault, and Hale Kuawehi’s outside counsel, which were attested to by Dean T. Yamamoto, through their signed affidavits attached to Hale Kuawehi’s SOP, provides assurance to the commission that the subject PPA was negotiated in good faith and without collusion.

11. Moreover, based on this record as reflected by the discussion below, the commission finds it does not appear that Hale Kuawehi’s choice of outside counsel had any adverse impact on the pricing terms of the PPA.

12. However, to the extent necessary, the commission may address issues relating to the appearance of impropriety during Phase 2 of the competitive procurement process in Docket No. 2017-0352.

\textsuperscript{133}HELCO Reply SOP at 3, 8-9.
C. Approving the PPA

1. Material PPA Terms and Conditions


1. Lump Sum Payment. As described above, the Lump Sum Payment is payable to Hale Kuawehi on a monthly basis and calculated by multiplying the Unit Price by the NEP and then dividing that result by twelve months, which is then offset by liquidated damages, if applicable. The commission has recently reviewed and approved several power purchase agreements for PV paired with BESS systems and notices a declining trend in contract pricing. In Docket No. 2017-0018, the commission approved a PV plus BESS power purchase agreement between Kauai Island Utility Cooperative ("KIUC") and AES Kekaha Solar, LLC with a contract price of $0.10850/kWh. The commission observes that,

134See In re Kauai Island Util. Coop., Docket No. 2017-0443, Decision and Order No. 35538, filed June 20, 2018 (approving contract price of $0.10850/kWh); In re Kauai Island Util. Coop., Docket No. 2017-0018, Decision and Order No. 34723, filed July 28, 2017 (approving contract price of $0.1108/kWh); and In re Kauai Island Util. Coop., Docket No. 2015-0331, Decision and Order No. 33557, filed February 26, 2016 (approving contract price of $0.145/kWh).

135See Decision and Order No. 35538 at 9. The commission recognizes that the material terms of the PPA in this proceeding are not identical to those in Docket No. 2017-0443, or any of the
at approximately $0.09/kWh, the Unit Price is below the commission's most recent PV plus BESS PPA, and continues the declining trend in procurement of utility-scale renewable generation.

2. **Unit Price.** The Unit Price is fixed over the entire term at $0.087399188 per kWh of NEP, or approximately $0.09 per kWh of NEP.\(^{136}\)

3. The commission finds that a fixed Unit Price throughout the PPA term is reasonable and in the public interest because the fixed price provides more certainty and comparatively less price volatility to fossil fuel prices.\(^{137}\)

4. **NEP.** The NEP is defined by the PPA as:

   "The estimated single number with a P-Value of 95 for the annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a ten-year period ... The Net Energy Potential is subject to adjustment ..., but in no circumstances shall the Net Energy Potential exceed the NEP RFP Projection."\(^{138}\)

other identified KIUC dockets. Nevertheless, the contract pricing in those dockets is demonstrative of the declining costs of utility-scale PV plus BESS technology and provides general market context for the PPA's Unit Price of $0.09/kWh.

\(^{136}\)Application at 9, & Exhibit 1 at 177.

\(^{137}\)See HRS § 269-6(b); HELCO's Response to PUC-HELCO-IR-11.a, filed March 7, 2019 (describing the fluctuations in diesel fuel prices over the past ten years).

\(^{138}\)Application, Exhibit 1 at 164 (emphasis added). "Net Energy" is further defined as the "total quantity of electric energy (measured in kilowatt hours) produced by the Facility over
5. In its RFP, Hale Kuawehi projected that the Project would have a NEP of 87,415 MWh per year.\textsuperscript{139}

6. Based on the above, the commission finds that, although the NEP will be adjusted at certain intervals specified by the PPA, the NEP is reasonable and in the public interest because the PPA caps the NEP at the amount specified by the Hale Kuawehi RFP, or at 87,415 MWh per year, and thus provides a cap to the NEP portion of the Lump Sum Payment.\textsuperscript{140}

7. As such, based on the publicly-available information in the Application, the commission finds that the maximum Lump Sum Payment under the PPA is $7,640,000 per year, or $636,666 per month.\textsuperscript{141}

8. Together with the fixed Unit Price, the commission further finds that the Lump Sum Payment is reasonable and in the public interest, in part, because placing a maximum amount payable

\textsuperscript{139}Application, Exhibit 1 at 355.

\textsuperscript{140}See HRS § 269-6(b).

\textsuperscript{141}Expressed as a mathematical equation: ($0.087399188 \text{ per kWh of NEP} \times 1,000) \times 87,415 \text{ MWh per year} = $7,640,000 \text{ per year.}$

$7,640,000 \text{ per year/12 months} = $636,666 \text{ per month.}$
on the Lump Sum Payment provides more certainty and comparatively less price volatility to fossil fuel prices.¹⁴²

9. Moreover, it is anticipated that a HELCO ratepayer using 500 kWh per month will save as a result of the Project an estimated $6.20 on electricity payments in 2022, $2.61 in 2031, and $9.58 in 2046,¹⁴³ and, according to HELCO, the net present value of the savings for the Project is $106,245,837.¹⁴⁴

10. According to Hale Kuawehi, the monthly Lump Sum Payment “allowed for certainty of payment that was not present in HELCO’s or its affiliates’ prior PPA forms[,]” and thus allowed the Project to be “eligible for preferred underwriting criteria from financiers which, in turn, allows Innergex [Renewable Energy Inc.] to offer lower prices than would otherwise be possible under one of the prior contract forms.”¹⁴⁵

11. Liquidated damages. As stated above, liquidated damages have the potential to reduce the Lump Sum Payment to zero if the Project is completely unavailable or if the Project is available but underperforming in other aspects as measured by the Performance Metrics.

¹⁴²See HRS § 269-6(b).
¹⁴³Consumer Advocate SOP at Attachment 2, p. 5.
¹⁴⁴Application, Exhibit 3 at 4, & Attachment 2.
¹⁴⁵Hale Kuawehi SOP at 4-5.
12. These Performance Metrics include (a) the EAF Performance Metric, which is used to evaluate the availability of the PV System for dispatch by HELCO, (b) the GPR Performance Metric, which is used to evaluate the efficiency of the PV system, (c) the BESS Capacity Performance Metric, which is used to confirm the capability of the BESS to discharge as required by the terms of the PPA, (d) the BESS EAF Performance Metric, which is used to determine whether the BESS is meeting its expected availability, and (e) the BESS EFOF Performance Metric, which is used to evaluate whether the BESS is experiencing excessive unplanned outages.\(^{146}\)

The commission finds that the liquidated damages provision appears to be reasonable in that it will ensure that the Project will deliver the value it purports to deliver to ratepayers.

13. **Purchased energy charges prior to Commercial Operations Date not including test energy.** Again, in addition to the Lump Sum Payment, the PPA between HELCO and Hale Kuawehi provides that, "at any time prior to Commercial Operations Date, [HELCO] may agree, in its sole discretion, to dispatch energy from the Facility, in all or in part, and [HELCO] shall pay

\(^{146}\)Application, Exhibit 4 at 5.
[Hale Kuawehi] for such energy at a rate of $45/MWh."\textsuperscript{147} This provision does not apply to HELCO's use of the Project for "test energy."\textsuperscript{148}

14. The commission finds that the PPA's provision for purchased energy charges prior to the Commercial Operations Date to be reasonable and in the public interest because:

A. At $0.045 per kWh ($45 per MWh divided by 1,000), the rate paid by HELCO is approximately half that of the Unit Price, or $0.087399188 per kWh of NEP; and

B. Similar to the Unit Price, the purchased energy rate of $0.045 per kWh is fixed pursuant to the terms of the PPA, thereby provides more certainty and comparatively less price volatility to fossil fuel prices.\textsuperscript{149} The commission acknowledges that this purchased energy rate applies only to the period of time prior to the Commercial Operations Date and does not apply to HELCO's use of the Project for "test energy."\textsuperscript{150}

\textsuperscript{147}Application at 24 n.31, & Exhibit 1 at 282.

\textsuperscript{148}Application at 24 n.31, & Exhibit 1 at 282.

\textsuperscript{149}See HRS § 269-6(b).

\textsuperscript{150}Application at 24 n.31, & Exhibit 1 at 282.
b.

Nature of the PPA.

1. Again, pursuant to the terms of the PPA, HELCO is agreeing to pay Hale Kuawehi a monthly Lump Sum Payment in exchange for "the right to dispatch, subject to Renewable Resource Variability, the [Project's NEP]."151

2. The Project is fully dispatchable and does not have a minimum dispatch limit.152

3. As such, although subject to Force Majeure adjustments153 and offset by liquidated damages, the monthly Lump Sum Payment must be paid to Hale Kuawehi regardless if the Project is dispatched at all or in part due to excess capacity.154

4. However, the commission finds that having additional capacity is beneficial because the additional capacity increases HELCO's system reliability and grid stability in the event, for example, of an unforeseen shutdown of one or more other units on HELCO's system.

151Application at 2, & Exhibit 1 at 354 (emphasis added).


153Force Majeure is provided in Article 21 of the PPA, which begins at Application, Exhibit 1 at 105.

154See Application at 2 & Exhibit 1, p. 354; HELCO Response to Tawhiri/HELCO-IR-1.A, filed February 20, 2019.
5. Nonetheless, the commission agrees with the Consumer Advocate that the nature of the PPA places risk on HELCO's ratepayers because HELCO's ratepayers may be paying for unused capacity during periods of time throughout the PPA's term. To that end, the commission agrees with the Consumer Advocate's suggestion that HELCO should be "ready to show that resources are being used to maximize the customers' benefit and not result in adverse impacts including, but not limited to, underutilized or excess capacity resources."\(^\text{155}\)

6. As such, although the commission finds that the nature of the PPA is reasonable and in the public interest when balanced against other pricing terms of the PPA, as discussed above, and considerations of grid stability and increased system reliability, the commission finds it reasonable and in the public interest to require HELCO to report on Project operations for purposes of accountability, to inform other projects, and to inform related dockets.\(^\text{156}\) The reporting requirements are as follows:

(a) Monthly reporting. Beginning with the first full calendar month following the in-service date of the Project,
HELCO shall file hourly commitment, dispatch, and curtailment data for the Project and all other HELCO and IPP units on the system.

(b) The above-described monthly report shall be filed in Docket No. 2011-0206, and may be consolidated with other curtailment reports therein.\(^{157}\)

7. The commission finds that the above-reporting requirements represent a step toward increasing transparency in the use of HELCO's renewable resources for the benefit of its customers. Additional reporting requirements may be required in other dockets to the extent the commission finds them to be reasonable and in the public interest.

c. **PPA Duration**

1. Again, the subject PPA is for a duration of twenty-five (25) years following the "Commercial Operations Date."\(^{158}\)

2. The Consumer Advocate notes that the PPA is for a "very long term[]" and, "during times of declining price trends and improvements in technology, such long terms arguably stifle

\(^{157}\)HELCO shall work with commission staff to ensure the content of the monthly reports is consistent with this Decision and Order and adequately provides the transparency required herein.

\(^{158}\)Application, Exhibit 1 at 67.
innovation” because, if HELCO’s system capacity is already met with “long-term contracts,” HELCO’s ratepayers will not be able to receive the benefits of “such market improvements[.]”¹⁵⁹

3. However, as the Consumer Advocate also notes, the IOs in Docket No. 2017-0352 concluded that the non-price terms of the PPA are “reasonable” and the negotiation of the PPAs was “performed on a fair and consistent basis among the Finalists.”¹⁶⁰

4. Moreover, the PPA duration should not be viewed in isolation from the rest of the terms of the PPA. For example, as discussed above, the Lump Sum Payment is capped pursuant to the terms of the PPA, the Performance Metrics could offset the amount of the Lump Sum Payment, a HELCO ratepayer using 500 kWh per month is projected to save money on electric bills over the Project’s duration, and the net present value of the savings resulting from the Project is positive.

5. The commission thus finds that the subject PPA overall represents a significant step not only towards Hawaii’s renewable energy goals consistent with HRS §§ 269-6 and 269-92 (RPS), but also towards lower energy prices.


¹⁶⁰Consumer Advocate SOP at 24.
6. As such, subject to the reporting requirements set forth above, in Section III.C.1.b, the commission finds that the term of the PPA is reasonable and in the public interest.

d.

Curtailment

1. In response to Tawhiri's IRs, HELCO states that curtailment of existing as-available renewable resources are made in accordance with the terms of their respective PPAs. The majority of historical curtailments were made due to excess energy conditions, and others were made due to locational or project-specific conditions that require reduction of the specific facility and are not dependent on other resources.\(^1\)

2. HELCO further states that the Project will not have any impact on the "level of excess energy curtailment of existing [IPPs]" because the Project is "fully dispatchable, has no minimum dispatch limit and does not increase the regulating reserve down requirement."\(^2\) As such, the Project's "output would be reduced in accordance with the present excess energy curtailment

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\(^1\)HELCO Response to Tawhiri/HELCO-IR-1.A, filed February 20, 2019.

\(^2\)HELCO Response to Tawhiri/HELCO-IR-1.A, filed February 20, 2019.
provisions for existing must-take, as-available [IPP] facilities."

3. To that end, HELCO's Application states that the Project is not expected to increase curtailment of existing as-available renewable resources or impede consideration of additional renewable resources on HELCO's system.

4. HELCO states that, to the extent that an excess energy condition exists, the "inability of [HELCO] to dispatch [Hale Kuawehi's] facility . . . would not 'count against' [Hale Kuawehi] for purposes of calculating the project's PV system availability."^165

5. However, HELCO states that there "could conceivably be circumstances that would require acceptance of energy" from the Project that might require curtailment of must-take-as-available generation. For example, HELCO states there might be a need to operate the Project "near maximum output for purposes of testing, during which time the Tawhiri project may need to be curtailed to accept the generation from Hale Kuawehi."^166 HELCO states that


^164Application at 3.


this action would be in accordance with its agreement with Tawhiri.  

6. In Docket No. 04-0346, the commission recognized that the PPA between Tawhiri and HELCO allowed HELCO to curtail Tawhiri's wind farm because of, among other reasons, seniority curtailment; or, "to the extent possible in reverse chronological order of the chronological seniority dates determined by [HELCO] for the [applicable power purchase] contracts, with deliveries under the contract with the most recent chronological seniority date being the first curtailed, and deliveries under the contract with the earliest chronological seniority date being the last curtailed."  

7. The Consumer Advocate supports the subject PPA because the PPA "represents an evolution from earlier contracts[.]" For example, the Consumer Advocate states that "seniority curtailment, which offered developers some certainty about where their project stood in the likely dispatch queue only


168In re Hawaii Elec. Light Co., Inc., Docket No. 04-0346, Decision and Order No. 21693, filed March 10, 2005, at 11. By letter filed July 24, 2006, in Docket No. 04-0346, the commission was informed that Tawhiri, as a wholly-owned subsidiary of Apollo Energy Corporation, was assigned the rights, interests, and obligations under the PPA between HELCO and Apollo Energy Corporation.
served to place ever increasing curtailment risk to new projects[,]" and that "increasing risk ostensibly served to stifle innovation and new projects even while there was [sic] declining price trends and improvements in renewable energy technology since developers would be hesitant to enter into a contract with uncertainty surrounding the amount of energy that would be purchased on a regular basis."169

8. HELCO similarly states that its "previous as-available [PPAs] required that the energy produced by the associated facility be accepted by [HELCO] based on the seniority of the project[,]" which not only "limited the contribution that as-available resources could provide in relation to grid operations[,]" but also "hindered [HELCO's] ability to plan effectively for future renewable energy opportunities."170

9. Although the commission appreciates Tawhiri's concern about Wind Farm curtailment due to the subject PPA, the commission finds, based on this record, that the subject PPA between HELCO and Hale Kuawehi will not result in curtailment that is inconsistent with HELCO's obligation under its existing PPAs with these must-take, as-available facilities.

169Consumer Advocate SOP at 22.

170Application, Exhibit 4 at 1-2.
10. However, in Decision and Order No. 30088, filed in Docket No. 2011-0040 on December 30, 2011, the commission stated with regard to the Puna Geothermal Venture ("PGV") plant that it "expects HELCO to make every effort to ensure that the PGV Expansion Project, which is firm, dispatchable renewable power, will offset fossil fuel generation as opposed to any renewable facilities."\(^{171}\) The commission further stated that it "expects that any contractual commitment by HELCO to purchase an annual minimum quantity of on-peak energy from the Expansion Project . . . would be fulfilled by displacing fossil generation, not existing renewable energy."\(^{172}\)

11. HELCO's Application filed in this docket similarly states:

A. "The Project will help [HELCO] meet the State's energy policy goals by reducing [HELCO's] reliance on fossil fuels and implementing renewable energy resources."\(^{173}\)

B. "Accordingly, [c]ommission approval of the PPA for the Project: . . . (3) advances the need to reduce the State's

\(^{171}\text{In re Hawaii Elec. Light Co., Inc., Docket No. 2011-0040, Decision and Order No. 30088, filed December 30, 2011 ("Decision and Order No. 30088"), at 41-42.}\)

\(^{172}\text{Decision and Order No. 30088 at 42.}\)

\(^{173}\text{Application at 10.}\)
reliance on fossil fuels and the reduction of GHG emissions as articulated in HRS § 269-6(b)[.]”174

C. HELCO anticipates it will dispatch the BESS of the Project to, among other things, “offset night-time fossil fuel generation[.]”175

D. “The projects sought through this RFP will assist the Company in continuing to transform the Companies’ power supply portfolio from fossil fuel-based generation to renewable-based generation with lower costs for customers.”176

E. “Reducing generation dependent on fossil fuels is one way to buffer customers from the volatility of fuel prices.”177

12. The Consumer Advocate similarly recognized that one of the Project’s benefits will be “lower fossil fuel usage[.]”178

13. Hale Kuawehi states that the Project “will help contribute to a cleaner environment for the island” because “the use of solar energy will offset the use of polluting fossil fuels which will result in improved air and water quality.”179

175Application at 15.
176Application, Exhibit 2 at 2-3.
177Application, Exhibit 3 at 4.
178Consumer Advocate SOP at 25.
179Hale Kuawehi SOP at 6.
14. As such, based on this record, Decision and Order No. 30088, and HRS § 269-6(b), to the extent curtailment occurs due to, for example, HELCO's need to operate the Project near maximum output for purposes of testing:

A. The commission continues to expect that HELCO's curtailment of fossil fuel generation will occur before curtailment of must-take, as-available renewable resources, including Tawhiri's Wind Farm, to the extent possible;\(^\text{180}\) and

B. The commission finds that the reporting requirement described above, in Section III.C.1.b, provides the commission and the must-take, as-available renewable resource facilities (including Tawhiri) with assurances by providing transparency and accountability for HELCO's dispatch decisions. If the commission determines that renewable facilities are experiencing significant curtailments as a result of the Project, the commission may investigate this issue as warranted.

\(^\text{e.}\)

**Land Use**

1. According to HELCO, the Project will be located on land in the County Agricultural District A-40, with the overhead 69 kV generator tie-in between the existing L7200 69 kV

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\(^{180}\text{See HRS § 269-6(b); Decision and Order No. 30088 at 42.}\)
Transmission line and a new substation to be located in the County Agricultural District A-5 and extend approximately 0.7 miles from the Project.  

2. Hale Kuawehi states that a special use permit is not required for the Project pursuant to HRS §§ 205-2(d)(6), 205-4.5(a)(20), or 205-4.5(a)(21); in other words, Hale Kuawehi states the Project "is a permitted use under HRS § 205-2(d)(6), and HRS § 205-4.5(a) is not applicable, because the facilities will not be physically located on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A, B, or C."  

3. Although Hale Kuawehi has not yet obtained any permits or approvals, the commission is encouraged by Hale Kuawehi's efforts in identifying those government permits or approvals it needs to construct the Project, and the timeline of when it expects these permits or approvals to be completed, which are all expected to be obtained prior to construction in the third quarter of 2021.  

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181 Application at 14.


4. However, Hale Kuawehi states that, if it is "unable to procure the required permit in the anticipated timeline," this may affect Hale Kuawehi's ability to meet certain Guaranteed Project Milestones under the PPA.\(^\text{184}\)

5. Indeed, the PPA requires Hale Kuawehi to "obtain all Governmental Approvals for the construction, ownership, operation and maintenance of the Facility and interconnection to [HELCO's] system."\(^\text{185}\)

6. Pursuant to the PPA, Hale Kuawehi will be required to pay "Daily Delay Damages" to HELCO if a Guaranteed Project Milestone has not been timely achieved by Hale Kuawehi.\(^\text{186}\)

7. If Hale Kuawehi is unable to achieve the Commercial Operations Date Milestone by the Guaranteed Commercial Operations Date as may be extended pursuant to the PPA, Hale Kuawehi is "required to pay daily delay damages in the amount of $8,333.33 for each day beyond the tenth day after the Guaranteed Commercial Operations Date . . . that such milestone has not been completed."\(^\text{187}\)

\(^{184}\)Hale Kuawehi's response to PUC-Hale Kuawehi-IR-04.

\(^{185}\)Hale Kuawehi's response to PUC-Hale Kuawehi-IR-04.

\(^{186}\)Application, Exhibit 1 at 74-75; Hale Kuawehi's response to PUC-Hale Kuawehi-IR-04.

\(^{187}\)Hale Kuawehi's response to PUC-Hale Kuawehi-IR-04. HELCO states that, in Stage 1 of its competitive procurement 2018-0432
8. As such, the commission finds that the PPA contemplates situations where "Daily Delay Damages" will be paid from Hale Kuawehi to HELCO prior to the Commercial Operations Date.\textsuperscript{188}

9. According to the PPA, the Lump Sum Payment commences on the Commercial Operations Date.\textsuperscript{189}

10. Based on the PPA and Hale Kuawehi's response to PUC-Hale Kuawehi-IR-04, filed February 26, 2019, the commission finds that "Daily Delay Damages" could be paid from Hale Kuawehi to HELCO prior to the commencement of the Lump Sum Payment.\textsuperscript{190}

11. Because the Lump Sum Payment will not be made prior to the Commercial Operations Date, the commission further finds that the "Daily Delay Damages" would not be offset by HELCO's Lump Sum Payment to Hale Kuawehi prior to the Commercial Operations Date.\textsuperscript{191}

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process, "Proposals were required to have Guaranteed Commercial Operations Dates no later than December 31, 2022, with the intent that selected Projects would take advantage of the 2019 Investment Tax Credit[.]" Application, Exhibit 2 at 3.

\textsuperscript{188}See Application, Exhibit 1 at 74-75; Hale Kuawehi’s response to PUC-Hale Kuawehi-IR-04.

\textsuperscript{189}Application, Exhibit 1 at 5.

\textsuperscript{190}See Application, Exhibit 1 at 74-75; Hale Kuawehi’s response to PUC-Hale Kuawehi-IR-04.

\textsuperscript{191}See Application, Exhibit 1 at 74-75; Hale Kuawehi’s response to PUC-Hale Kuawehi-IR-04.
12. According to the PPA, "Daily Delay Damages" are payable on a monthly basis from the "Development Period Security." If the "Development Period Security" is at any time insufficient to pay the amount of "Daily Delay Damages" owed, then Hale Kuawehi is required to "pay any such deficiency to [HELCO] promptly upon demand."\(^{192}\)

13. The "Development Period Security" is intended to "guarantee undertaking the performance of [Hale Kuawehi's] obligations under the [PPA] for the period prior to the Commercial Operations Date (including but not limited to [Hale Kuawehi's] obligation to meet the Guaranteed Commercial Operations Date)[]."\(^{193}\)

14. As such, to the extent that "Daily Delay Damages" are paid to HELCO prior to commencement of the Lump Sum Payment, HELCO shall credit the amount of the "Daily Delay Damages" received to its ratepayers through the PPAC.

2. Community Outreach

1. Pursuant to the community outreach requirements in the RFP, Hale Kuawehi was required to conduct a public meeting in

\(^{192}\)Application, Exhibit 1 at 76.

\(^{193}\)Application, Exhibit 1 at 79.
the community where the Project is to be located, with the intent of the meeting to gather stakeholders and other interested parties to inform the community about the Project and to allow for community concerns and questions to be raised.\textsuperscript{194} Exhibit 8 of the Application contains a summary of Hale Kuawehi's community outreach efforts and public comments it received as of the time the Application was filed.\textsuperscript{195}

2. In response to PUC-Hale Kuawehi-IR-03, filed February 19, 2019, Hale Kuawehi stated that, since it filed the Application, it has performed "outreach efforts" at the Waimea Community Association and Waimea Native Homesteader's Association. Hale Kuawehi further stated that it has planned future outreach efforts with the Waimea Native Homesteader's Association and Waimea Community Association, will "continue to use a variety of methods to engage the public and stakeholders on the Project[,]" and will continue to update its website, respond to questions, send update emails to the local communities, and meet one-on-one, with small groups, and at regularly scheduled community association meetings.

\textsuperscript{194}Application at 18.

\textsuperscript{195}Application at 18 & Exhibit 8.
3. \textbf{Conditions to Approval}

1. To reiterate, the commission finds it reasonable and in the public interest to require HELCO to report on Project operations for purposes of accountability, to inform other projects, and to inform related dockets.\footnote{See In re Hawaiian Elec. Co., Inc., Docket No. 2017-0213, Decision and Order No. 35556, filed June 27, 2018, at 63-64.} The reporting requirements are as follows:

   (a) **Monthly reporting.** Beginning with the first full calendar month following the in-service date of the Project, HELCO shall file hourly commitment, dispatch, and curtailment data for the Project and all other HELCO and IPP units on the system.

   (b) The above-described monthly report shall be filed in Docket No. 2011-0206, and may be consolidated with other curtailment reports therein.

2. The commission continues to expect that HELCO's curtailment of fossil fuel generation will occur before curtailment of must-take, as-available renewable resources.\footnote{See HRS § 269-6(b); Decision and Order No. 30088 at 42.}

3. Regarding the Consumer Advocate's proposed conditions, the commission finds as follows:

   Requiring HELCO to file invoices related to the Project and Hale Kuawehi's income statements or results of operations...
related to the PPA. The Consumer Advocate has proposed a similar condition in prior proceedings involving renewable PPAs.\textsuperscript{198} In support of its proposal in this proceeding, the Consumer Advocate states that it will allow the Consumer Advocate "to evaluate the comparability of the Project's actual results to the pro forma information consistent with prior Commission decision and orders (e.g., Decision and Order No. 33541, filed on February 19, 2016, in Docket No. 2015-0224)."\textsuperscript{199}

While recognizing the Consumer Advocate's concerns, the commission also observes that the circumstances present in this, and the other related RDG PPA proceedings, are distinguishable from Docket No. 2015-0224 and similar dockets. First, in Docket No. 2015-0224, in support of its recommended condition, the Consumer Advocate referenced its concerns regarding the PPA's potential curtailment of renewable resources, such as the seniority curtailment provision.\textsuperscript{200} To the extent this underlies the Consumer Advocate's proposal in this docket, the commission notes that the new RDG PPA model does not contain

\begin{footnotesize}

\textsuperscript{199}Consumer Advocate SOP at 28.

\end{footnotesize}
a curtailment seniority provision, nor is it expected to impact curtailment of existing renewable IPPs.\textsuperscript{201}

Second, to the extent the Consumer Advocate desires such information to retroactively evaluate the reasonableness of Hale Kuawehi's pro forma estimates, the commission observes that the nature of this procurement process has provided a number of safeguards that were not present in prior renewable PPA proceedings. For example, unlike Docket No. 2015-0224, in which a single IPP, Kuia Solar, LLC, negotiated a PPA with Maui Electric Company, Limited in isolation, the PPA with Hale Kuawehi is the result of the RFP process. The RFP process itself was the subject of Docket No. 2017-0352, and was carefully reviewed and vetted by the commission and stakeholders. Additionally, unlike prior PPA negotiations that occurred in isolation, the RFP process evaluated multiple bidders concurrently, which added a competitive element to the process, providing further reassurance as to the reasonableness of bid amounts. Furthermore, the RFP process was

\textsuperscript{201}In this regard, the Consumer Advocate has acknowledged that this RDG PPA "represents an evolution from earlier contracts, such as those that contained seniority curtailment provisions, evergreen terms, and RAP pricing, . . . [and] supports the underlying reasons why the proposed RDG PPA is being used for these contracts as it eliminates some of the terms and conditions that were not in the best interest of the public. Consumer Advocate SOP at 23.
overseen by an IO, which concluded that there was no evidence of collusion and that the PPA terms appeared reasonable.\textsuperscript{202}

Finally, the Project’s costs are not the only consideration in evaluating the reasonableness of the PPA. As discussed above, the Project is expected to provide numerous benefits to HELCO’s customers, including monthly bill savings, less fossil fuel consumption, reduced GHG emissions, and grid stabilizing services. Upon considering the record as a whole, the commission is not persuaded that the disclosure of the Project invoices and Hale Kuawehi’s income statements, which Hale Kuawehi has characterized as highly confidential and sensitive information,\textsuperscript{203} is warranted under these circumstances and, therefore, declines to adopt the Consumer Advocate’s proposed condition.

Requiring bidders to file pro forma information in future procurement processes. Hale Kuawehi does not appear to oppose this condition and HELCO agrees that such information would “be[] beneficial to the [procurement] process and allow[] for a more informed evaluation of developers’ proposed projects.”\textsuperscript{204}

\begin{itemize}
  \item \textsuperscript{202}See Consumer Advocate SOP at 16-17.
  \item \textsuperscript{203}Hale Kuawehi SOP at 12.
  \item \textsuperscript{204}HELCO Reply SOP at 6.
\end{itemize}
The commission observes that this proposal is prospective in nature and does not pertain to the Consumer Advocate's finding of overall reasonableness regarding the subject PPA. Accordingly, the commission declines to adopt this as a specific condition of approval to the PPA. However, to the extent the Consumer Advocate wishes to raise this issue further in Phase 2 of the RFP docket, the Consumer Advocate may do so in Docket No. 2017-0352.

Relatedly, on the issue of submitting pro forma information, the commission notes that in this proceeding, Hale Kuawehi was reluctant to provide its pro forma information when requested by the Consumer Advocate and required an order to compel from the commission to produce this information to the Consumer Advocate.\textsuperscript{205} Furthermore, even after being compelled to produce this information, Hale Kuawehi provided it in an inaccessible, \texttt{.pdf} format, which limited the Consumer Advocate's ability to utilize this information.\textsuperscript{206} While the reasons for Hale Kuawehi's conduct are unknown, they appear inconsistent with Hale Kuawehi's earlier representations that it would provide "specialized, historical knowledge of the Project,"

\textsuperscript{205}See Order No. 36168.

\textsuperscript{206}See Consumer Advocate SOP at 19-20.
and "not broaden the issues or delay the proceeding."\textsuperscript{207} Going forward, the commission emphasizes that such information should be timely provided so as to avoid the need for commission intervention and delays in proceedings.

Development of guidelines for the procurement process to mitigate concerns related to potential unaffiliated sellers using the same representative(s) in negotiations. HELCO agrees with this proposal and Hale Kuawehi does not raise any objection. The commission observes that this appears to be a generalized proposal to improve the procurement process, rather than a specific proposed condition. The commission is open to suggestions to improve the procurement process and agrees, in principle, to review this issue in Phase 2 of the RFP docket.

The Consumer Advocate's conditions proposed in pages 15 and 17 of Attachment 1 to its Statement of Position. With regard to the Consumer Advocate's suggested condition on pages 15 through 17 of Attachment 1 to its Statement of Position, the commission observes that HELCO does not object to the condition, instead stating: "In Stage 2 of the RFPs, the Company will further consider how different metrics are utilized in the evaluation process."\textsuperscript{208} Likewise, Hale Kuawehi does not lodge any objections. As stated

\textsuperscript{207}Hale Kuawehi Motion at 5-6.

\textsuperscript{208}HELCO Reply SOP at 7.
above, the commission is supportive of efforts to improve the procurement process and will be open to suggestions in Phase 2 of the RFP docket.

D.

Recovery of PPA-Related Energy and Non-Energy Payments Through the PPAC and ECRC

1. Given the commission's overall approval of the PPA, the commission likewise approves HELCO’s request to recover the energy and non-energy payments under the PPA, including the Lump Sum Payments (as defined in the PPA) and related revenue taxes, in its ECRC (or equivalent) and PPAC, as may be applicable, to the extent such costs are not included in base rates. Such decision is consistent with HAR § 6-60-6(2), which authorizes the pass through of purchased energy charges through an electric utility's ECRC and PPAC; and with HRS § 269-16.22, which states that a utility "shall be allowed" to "recover[] . . . from its customer base" and "through one or more adjustable surcharges . . . established by the . . . commission[,]" "[a]ll power purchase costs . . arising out of [PPAs] that have been approved by the . . . commission and are binding obligations on the electric utility company."²⁰⁹

²⁰⁹The PPAC was approved by the commission in Decision and Order No. 30168, filed in Docket No. 2009-0164 on February 8, 2012.
2. However, the commission conditions approval of recovery of the non-energy payments under the PPA through the PPAC, as follows:

A. As discussed above, in Section III.C.1.e, to the extent "Daily Delay Damages," "Termination Damages," or other revenues or benefits are paid to HELCO, such revenues or benefits paid to HELCO shall be returned to HELCO's ratepayers through the PPAC; and

B. Recovery of the Lump Sum Payment through the PPAC shall be limited to the Lump Sum Payment net of Force Majeure adjustments or any offset due to liquidated damages.

E.

Hawaii's Energy Policy Statutes

1. The State of Hawaii has expressed several energy policies requiring and/or encouraging reduction in the utilization of fossil fuels in statutes that directly pertain to the regulation of public utilities. These statutes include standards requiring minimum reductions in electric energy consumption through energy efficiency measures by specific dates; \(^ {210} \) standards requiring minimum percentages of renewable energy generation by specific

\(^ {210} \)See, e.g., HRS § 269-96.
dates; provisions requiring preference for utility utilization and dispatch of renewable generation resources; provisions requiring consideration of factors related to impacts of fossil fuel use in the regulation of public utilities; and provisions that require consideration of specific resources and/or regulatory mechanisms.

2. In particular, HRS § 269-6(b) provides, in relevant part:

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 commission shall explicitly consider, quantitatively or qualitatively, 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.

3. As discussed above, the subject PPA is the result of Phase 1 of the Hawaiian Electric Companies' competitive procurement process to acquire new, dispatchable and renewable

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211See, e.g., HRS §§ 269-91 to -95.
212See, e.g., HRS § 269-27.2.
213See, e.g., HRS § 269-6(b).
214See, e.g., HRS §§ 269-16.1 269-146, 269-147, 269-148, & 269-149.
energy resources for Oahu, Maui, and Hawaii Island. According to HELCO and as discussed above in Section III.C.1.a, the Project will provide a hedge against fossil fuel price volatility, which has fluctuated in the past ten years from $58 per barrel of diesel fuel to approximately $161 per barrel of diesel fuel, inasmuch as "the fixed pricing structure attributable to the Project ... isolates customers from being impacted by future fuel price fluctuations."\(^{215}\)

4. HELCO further states that, with regard to export of funds for fuel imports, as described in HRS § 269-6(b), "the quantity of fuel consumed is forecasted to be lower with the addition of the Project."\(^{216}\) As such, the amount of funds that would have been spent on fuel imports will correspondingly decrease,\(^{217}\) and fuel supply reliability risk will be reduced due to the "likely decline" of overall fuel supply requirements as a result of the "transition to a 100% renewable future."\(^{218}\)

5. More specifically, HELCO anticipates that, over the course of the Project's term of twenty-five years, the Project will result in a total avoided fuel consumption of 497,126 barrels

\(^{215}\)HELCO Response to PUC-HELCO-IR-11.a, filed March 7, 2019.

\(^{216}\)HELCO Response to PUC-HELCO-IR-11.b, filed March 7, 2019.

\(^{217}\)HELCO Response to PUC-HELCO-IR-11.b, filed March 7, 2019.

\(^{218}\)HELCO Response to PUC-HELCO-IR-11.c, filed March 7, 2019.
of diesel, ultra-low sulfur diesel, biodiesel, and Naptha,\textsuperscript{219} as well as a reduction of a total 180,500 short tons of greenhouse gas emissions.\textsuperscript{220}

6. Moreover, HELCO states that the Project has the potential to contribute up to 7.9% of HELCO's RPS in 2022, with an average RPS impact of 7.7% between 2022 and 2045.\textsuperscript{221}

7. No Party or Participant disputes HELCO's statements about the Project's impact on fuel price volatility, fuel supply reliability risk, export of funds for fuel imports, and reducing greenhouse gas emissions.\textsuperscript{222}

8. In reviewing the record on these matters, including the portions of the record designated confidential or restricted, the commission finds that, although the Project is anticipated to result in HELCO's forecasted avoided fuel consumption and reduction in greenhouse gas emissions over the twenty-five year term of the Project, HELCO may be able to improve upon the forecasted avoided fuel consumption and reduction in greenhouse gas emissions over the course of the Project's term. The commission intends to explore these matters further in other

\textsuperscript{219}Application, Exhibit 3 at 3-4.

\textsuperscript{220}Application, Exhibit 5.

\textsuperscript{221}Application, Exhibit 6 at 1; see HRS § 269-92.

\textsuperscript{222}See Consumer Advocate SOP at 25 & Attachment 2.
dockets (i.e., Docket No. 2018-0165 (Integrated Grid Planning) or a future HELCO rate case).

9. As such, upon explicit consideration of the specified criteria in HRS § 269-6(b) (price volatility, fuel supply reliability risk, export of funds for fuel imports, and greenhouse gas emissions), the commission finds HELCO's PPA to be reasonable and in the public interest because the PPA overall advances Hawaii's goal of reducing reliance on fossil fuels through energy efficiency and increased renewable energy generation, reduces greenhouse gas emissions, and does so at a price that is estimated to result in savings for HELCO's ratepayers between 2022 and 2046.  

F.

Remainder of the Proceeding

As noted above, HELCO requested that the commission issue two separate decisions and orders in this docket: (1) the first decision approving requests relating to the PPA, which is the subject of the commission's discussion, above, and (2) the second decision approving requests related to the proposed above-ground 69 kV line extension.  

223See HRS § 269-6(b); Consumer Advocate SOP, Attachment 2, at 5.

224See Application at 4-5.
No. 36069, the commission bifurcated HELCO’s PPA-related requests from its above-ground 69 kV line extension-related requests.\textsuperscript{225}

Regarding its above-ground 69 kV line extension-related requests, HELCO explained that the Application was filed prior to completion of the IRS to “take advantage of favorable pricing under the PPA\[.\]”\textsuperscript{226} HELCO has stated that it will file an amendment to the PPA following the completion of the IRS (including the completion by HELCO of the Total Estimated Interconnection Costs and the project schedule).\textsuperscript{227}

As such, upon HELCO’s filing of an amendment to the PPA based on the IRS results, the commission will issue a procedural schedule in this docket to govern its review of HELCO’s above-ground 69 kV line extension-related requests (Issue 3).\textsuperscript{228}

IV.
SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the foregoing, subject to the conditions set forth in Sections III.C.3 and III.D, the commission finds:

\textsuperscript{225}Order No. 36069 at 5-6, 15.
\textsuperscript{226}Application at 16.
\textsuperscript{227}Application at 16.
\textsuperscript{228}See Order No. 36069 at 8 n.14 (stating that the commission intends to issue a separate procedural order to govern HELCO’s above-ground 69 kV line extension-related requests).
1. HELCO has met its burden of proof in support of its request for approval of the PPA between HELCO and Hale Kuawehi, dated December 27, 2018. In finding as such, the commission further finds:

A. The purchased power arrangements under the PPA, pursuant to which HELCO will dispatch energy on an availability basis from Hale Kuawehi, including the Lump Sum Payment to be paid to Hale Kuawehi, are prudent and in the public interest; and

B. The purchased energy charges based on the Energy Price to be paid by HELCO pursuant to the PPA are just and reasonable.

2. HELCO has met its burden of proof in support of its request to include all energy and non-energy payments under the PPA, including the Lump Sum Payment and related revenue taxes, through the ECRC (or equivalent) and PPAC, as may be applicable, to the extent such costs are not included in base rates.

V.

ORDERS

THE COMMISSION ORDERS:

1. Subject to the conditions set forth in Sections III.C.3 and III.D, the commission approves:

A. The PPA between HELCO and Hale Kuawehi, dated December 27, 2018; and
B. HELCO’s request to include all energy and non-energy payments under the PPA, including the Lump Sum Payments (as defined in the PPA) and related revenue taxes, through the PPAC and ECRC (or equivalent), as may be applicable, to the extent such costs are not included in base rates.

2. Upon HELCO’s filing of an amendment to the PPA based on the IRS results, the commission will issue a procedural schedule in this docket to govern its review of HELCO’s above-ground 69 kV line extension-related requests (Issue 3).

DONE at Honolulu, Hawaii

MAR 25 2019

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By

James P. Griffin, Chair

Jennifer M. Potter, Commissioner

APPROVED AS TO FORM:

Brandon H. Ito
Commission Counsel

2018-0432.mho
CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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