

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAII ELECTRIC LIGHT COMPANY, INC.,)
MAUI ELECTRIC COMPANY, LIMITED and)
)
KAUAI ISLAND UTILITY COOPERATIVE)
)
For Approval to Establish a Rule)
to Implement a Community-Based)
Renewable Energy Program and Tariff)
and Other Related Matters.)
_____)

DOCKET NO. 2015-0389

ORDER NO. 37954

CLARIFYING ORDER NO. 37879

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OF THE STATE OF HAWAII

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HAWAIIAN ELECTRIC COMPANY, INC.,) DOCKET NO. 2015-0389
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MAUI ELECTRIC COMPANY, LIMITED and) ORDER NO. **37954**
)
KAUAI ISLAND UTILITY COOPERATIVE)
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Renewable Energy Program and Tariff)
and Other Related Matters.)
_____)

CLARIFYING ORDER NO. 37879

By this Order, the Public Utilities Commission
("Commission") clarifies Order No. 37879.¹

¹The Parties and Participants to this proceeding are:
(1) HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT
COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED (collectively,
"Hawaiian Electric" or "Companies," individually "Company");
(2) KAUAI ISLAND UTILITY COOPERATIVE; (3) the DIVISION OF
CONSUMER ADVOCACY, an ex officio party; (4) the Intervenor the
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, and TOURISM; and the
Participants: (5) SUNPOWER CORPORATION; (6) HAWAII SOLAR ENERGY
ASSOCIATION; (7) ULUPONO INITIATIVE, LLC; (8) BLUE PLANET
FOUNDATION; (9) HAWAII PV COALITION; and (10) THE ALLIANCE FOR
SOLAR CHOICE.

I.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

On April 9, 2020, the Commission issued Order No. 37070, commencing Phase 2 of the Community Based Renewable Energy ("CBRE") program.²

On May 21, 2021, the Commission issued Order No. 37796, which approved with modifications, Hawaiian Electric's proposed CBRE Phase 2 request for proposals ("RFP") for the island of Lanai.³

On July 27, 2021, the Commission issued Order No. 37879, which approved with modifications, Hawaiian Electric's proposed RFPs and tariffs for the remainder of CBRE Phase 2.⁴

On August 6, 2021, Hawaiian Electric filed its Motion for Clarification of Order No. 37879.⁵

²See Order No. 37796, "Commencing Phase 2 of the Community Based Renewable Energy Program," filed on April 9, 2020 ("Order No. 37070").

³See Order No. 37796, "Approving the Revised Lanai RFP," filed on July 27, 2021 ("Order No. 37796").

⁴See Order No. 37879, "Approving the March 30 CBRE Filings, with Modifications," filed on July 27, 2021 ("Order No. 37879").

⁵See "Hawaiian Electric Companies' Motion for Clarification of Order No. 37879," filed on August 6, 2021 ("Motion for Clarification").

II.

DISCUSSION

Hawaiian Electric seeks clarification in the following seven areas:

(1) that the right of first refusal to extend operations of a CBRE facility at a Company owned site should be conditioned upon and subject to future extension of the CBRE Program term, which is currently set at 20 years;

(2) that the Commission is approving (a) the Companies' removal of certain interconnection costs associated with system upgrades and interconnection costs for company-owned interconnection facilities from the pricing bid by developers in the dedicated Low-and Moderate-Income ("LMI") RFPs only, and (b) the Companies' removal of certain interconnection costs associated with system upgrades from the pricing bid by developers for CBRE projects on Molokai and Lanai (and not all interconnection costs for company-owned interconnection facilities as proposed for the LMI RFPs); and (c) that for the Tranche 1 RFPs for Oahu, Maui and Hawaii Island, that the Subscriber Organization continues to be responsible for all interconnection costs, including certain interconnection costs associated with system upgrades and interconnection costs for company-owned interconnection facilities;

(3) that the Commission understands and is agreeable that the Companies intend to include proxy costs for system upgrades and company-owned interconnection facilities to be paid for by the Companies in their bid evaluation to prevent developers from having an incentive to poorly site facilities;

(4) that the Commission's use of the term "absorb certain interconnection costs" in Order 37879 contemplates the Companies' recovery for such costs separately through mechanisms such as the EPRM,

REIP or other appropriate cost recovery mechanisms outside of the ARA;

(5) that the Commission's intent for Molokai was to allow projects larger than 250 kW up to 2.5 MW and not limited to between 1 MW and 2.5 MW, to be sited in locations other than the Company-owned site; that the restrictions related to projects larger than 250 kW still prohibit projects larger than 250 kW from interconnecting at the distribution level on Molokai, and that for projects larger than 250 kW located on non-Company-owned land, developers should include all costs of any new infrastructure in their proposal price;

(6) that the requirement to allow uncapped LMI projects for Maui and Hawaii Island does not change any of the other requirements for interconnection, including that the project must interconnect to the distribution system; and

(7) that the Companies may keep their specific language for the definitions of "Commercial Operations" and "Commercial Operations Date" in the standard form contract for small projects, while including the additional language ordered by the Commission and deleting the four Subscriber requirement.⁶

The Commission provides the following clarifications:

(1) Right of First Refusal. Hawaiian Electric is correct that the right of first refusal referenced in Order No. 37879 would apply only if the parties agree to extend their power purchase agreement. The Commission clarifies that the CBRE Framework does not set an end date for the CBRE program. The relevant end date is the 20-year contract term expressed in the

⁶Motion for Clarification at 1-2.

Standard Form Contract or power purchase agreement with the CBRE facility in question. Therefore, the right of first refusal need not be conditioned upon the extension of the CBRE program itself, but instead on an extension of the contract by agreement of the parties to the contract. Hawaiian Electric is correct that the right of first refusal is not intended to grant the Subscriber Organization a unilateral option to continue operating the CBRE facility.

In the event that the parties to the contract are unable to reach an agreement to extend the contract, Hawaiian Electric shall allow the Subscriber Organization a reasonable time to remove its equipment from a Company-owned site. In the event that the Subscriber Organization does not want its equipment, Hawaiian Electric shall have the option to either (1) pay the Subscriber Organization the salvage value of the equipment as determined by an appraiser that the Subscriber Organization and Hawaiian Electric find mutually agreeable; or (2) instruct the Subscriber Organization, at its cost, to remove all equipment from the Company-owned site.

(2) Interconnection Cost Responsibilities. For the dedicated LMI RFPs, the Commission approved Hawaiian Electric's removal of certain interconnection costs, such as remote substation work, reconductoring or recircuiting existing transmission and distribution lines, and re-fusing or

re-programming of protective devices upstream of the Grid Connection Point ("GCP"), and all interconnection costs for company-owned interconnection facilities from the pricing bid by developers. The Commission also confirms Hawaiian Electric's understanding regarding interconnection costs for CBRE projects on Lanai and Molokai. Specifically, for Lanai and Molokai CBRE projects, the Commission approved Hawaiian Electric's proposal to remove certain interconnection costs associated with system upgrades from the pricing bid by developers, such as remote substation work, re-conductoring or recircuiting existing transmission and distribution lines, and re-fusing or re-programming of protective devices upstream of the GCP, but not all interconnection costs for company-owned interconnection facilities. Finally, the Commission confirms that for the non-LMI Tranche 1 RFPs for Oahu, Maui and Hawaii Island, the Subscriber Organization continues to be responsible for all interconnection costs, including certain interconnection costs associated with system upgrades and interconnection costs for Company-owned interconnection facilities.

(3) Interconnection Costs and Proxy Values.

The Commission confirms that it approved Hawaiian Electric's plan to use assumed costs based on typical Company-owned interconnection facilities and system upgrades, provided in Appendix H of the CBRE RFPs. The Commission understands this to

be a reasonable approach to providing a baseline range of interconnection costs to potential bidders. The Commission appreciates Hawaiian Electric's interest in creating an incentive to minimize interconnection costs and believes Hawaiian Electric's planned approach is a reasonable way to begin doing so.

(4) Interconnection Cost Recovery. The Commission confirms that Hawaiian Electric may seek to recover the interconnection costs that it is allowed to absorb, i.e., certain interconnection costs associated with system upgrades and interconnection costs for Company-owned interconnection facilities, as specified above, via an appropriate cost recovery mechanism such as the exceptional project interim recovery mechanism (EPRM) or renewable energy infrastructure program (REIP). The Commission cautions Hawaiian Electric that it will consider any such cost recovery request on its own merits. The Commission does not pre-approve any such cost recovery, and will only allow cost recovery for such costs that it ultimately determines to be reasonable.

(5) Mid-Tier Projects on Molokai, and Small Projects on Molokai and Lanai. The Commission understands that certain grid limitations prevent projects larger than 250 kW from safely connecting to Molokai's distribution system, and therefore approves Hawaiian Electric's proposal to limit mid-tier projects on Molokai to exactly 250 kW. Hawaiian Electric has not,

however sufficiently justified its proposed requirement for small CBRE projects on non-Company owned land to be exactly 250 kW, and the Commission has not approved this requirement. Therefore, consistent with Order No. 37070, Hawaiian Electric must allow bidders to propose small projects, i.e., projects of any size smaller than 250 kW AC, and larger than four kW AC, to connect to the distribution system on Molokai, consistent with the definitions for small projects in the proposed Tariff Rule 29 for Hawaii Island, Maui, and Oahu.⁷ Hawaiian Electric must also allow bidders the option to propose small CBRE projects within those same size limits for distribution circuits on Lanai.

(6) Uncapped LMI Projects. The Commission is concerned that Hawaiian Electric's proposed requirement that LMI Projects on Maui and Hawaii Island may connect only at the distribution system level would act as a *de facto* cap on their size. The Commission never approved such a size restriction. Therefore, the Commission clarifies that Hawaiian Electric must allow the option for the uncapped LMI projects on Hawaii Island, Maui, and Oahu to interconnect at the transmission level. This will allow the market to propose more options to serve LMI customers. The Commission understands that Hawaiian Electric may need additional time to adjust its Phase 2 filings to accommodate transmission level

⁷See Order No. 37070 at 29.

interconnection for LMI projects. So that Hawaiian Electric may have the necessary time to revise its Phase 2 filings accordingly, and for other reasons related to community engagement discussed further below, the Commission suspends the automatic approval provision set forth in Order No. 37879, Ordering Paragraph Four.⁸

(7) Commercial Operations Language. The Commission confirms that Hawaiian Electric is correct in its planned use of commercial operations language. Accordingly, Hawaiian Electric may keep its specific language for the definitions of "Commercial Operations" and "Commercial Operations Date" in the Standard Form Contract for CBRE small projects, include the additional language ordered by the Commission, and delete the four Subscriber requirements as provided in the Motion for Clarification.⁹

(8) The Independent Observer's Role. The Commission notes that certain language describing the Independent Observer's role in the bid evaluation process is unclear. Order No. 37879 states that "the Commission directs the Independent Observer to participate in and document Hawaiian Electric's non-price criteria evaluation process."¹⁰ The Commission clarifies that it does not

⁸See Order No. 37879 at 71.

⁹See Motion for Clarification at 17-18.

¹⁰Order No. 37879 at 58.

intend for the Independent Observer to evaluate and score bids. Rather, the Commission intends for the Independent Observer to participate in the bid evaluation process as an observer, document any relevant findings, and report those findings to the Commission.

(9) Next Steps.

On September 1, 2021, the Commission received a letter from the West Oahu/Kalaeloa Community Clean Energy Ohana (the "Ohana") requesting that the Commission temporarily suspend the CBRE RFP process to allow Oahu communities "to learn about and to participate in the CBRE RFP design process."¹¹ The Ohana states that temporarily pausing the CBRE RFP process will "allow reasonable and informed community input[,] " which, although it may not create "total agreement on the details," will at least provide "the opportunity for true community input and dialogue to determine each community's path forward."¹²

¹¹"Docket No. 2015-0389 West Oahu/Kalaeloa Community Clean Energy Ohana Comments Regarding Hawaiian Electric's Community Based Renewable Energy (CBRE) Request for Proposals," filed on September 1, 2021 ("Ohana Letter"), at 1.

¹²Ohana Letter at 4.

Community concerns about energy facility siting are serious matters, especially those related to the historically inequitable distribution of health and environmental impacts that some energy facilities cause. The Commission takes these concerns very seriously. Therefore, the Commission will temporarily pause the CBRE RFP process so that it may listen to these concerns and collaborate with stakeholders on potential solutions. The Commission believes that this pause will improve the RFP process, and ultimately yield better CBRE projects. Within the next 45 days, the Commission will schedule and hold a community meeting to address potential concerns with the Oahu RFP. The Commission may hold additional meetings, including separate meetings for both Maui and Hawaii Island, if there is community interest. Community members on these islands may express their interest by submitting written comments to the Commission by October 4, 2021. The Commission will announce the meeting date(s) and time(s) in this docket. The Commission intends for this pause to be temporary, so as not to significantly delay CBRE Phase 2, which has been steadily progressing towards its launch since its inception in April of 2020.

III.

ORDERS

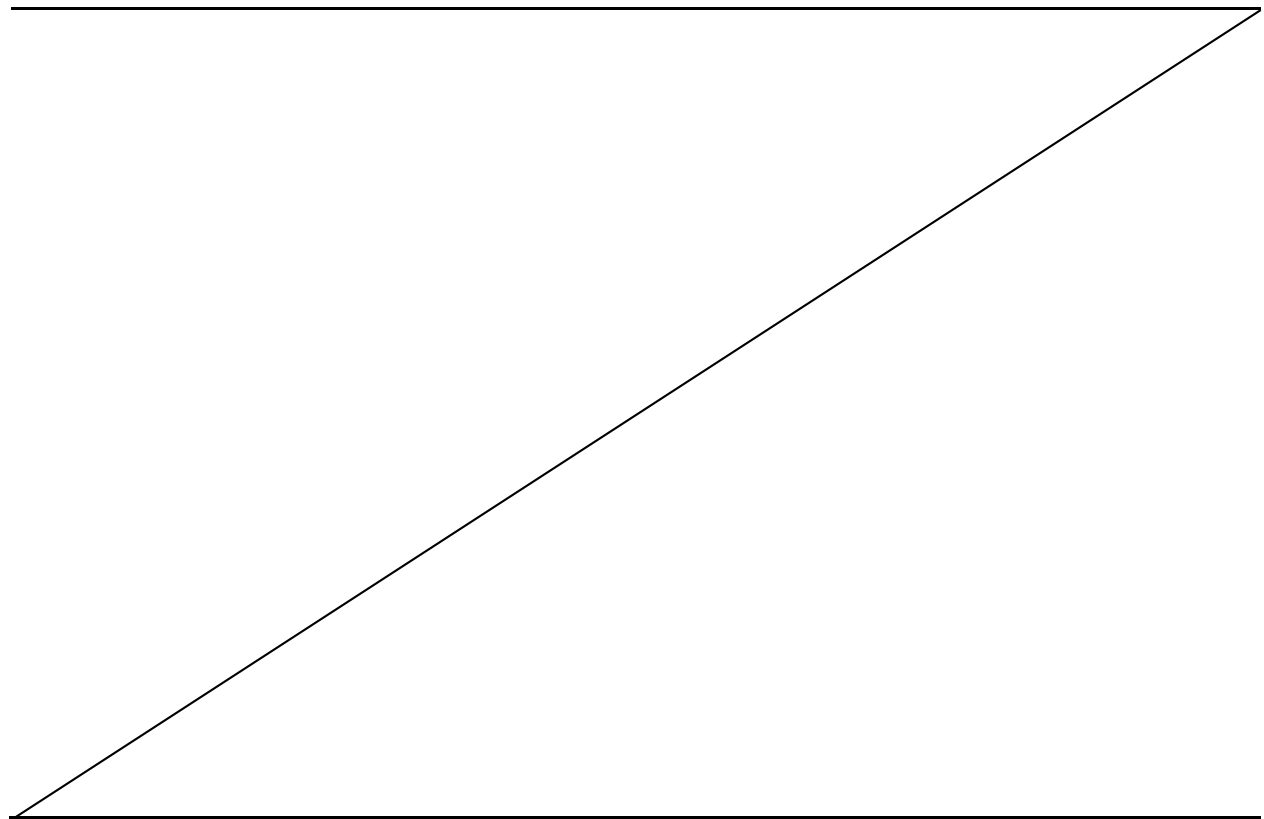
THE COMMISSION ORDERS:

1. Order No. 37879 is clarified as set forth in this Order.

2. The automatic approval provision set forth in Order No. 37879, Ordering Paragraph No. 4, is suspended.

3. In all other respects, Order No. 37879 remains unchanged.

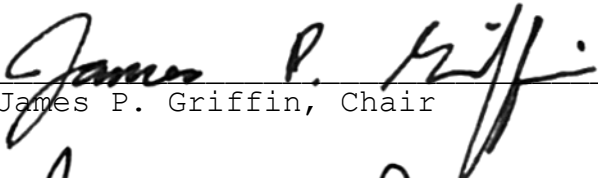
4. Within the next 45 days, the Commission will schedule and hold a community meeting to address potential concerns with the Oahu CBRE RFP.

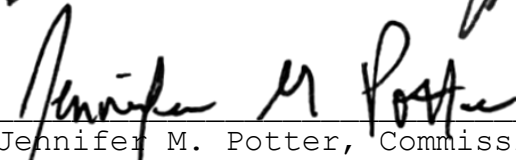



5. Community members on Maui and Hawaii Island may express their interest in a community meeting to discuss CBRE Phase 2 RFP siting concerns by submitting written comments to the Commission by October 4, 2021.

DONE at Honolulu, Hawaii SEPTEMBER 3, 2021.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By  _____
James P. Griffin, Chair

By  _____
Jennifer M. Potter, Commissioner

By  _____
Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:

 _____
Mike S. Wallerstein
Commission Counsel

2015-0389.ljk

CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing Order was served on the date it was uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's electronic Distribution List.

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