

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of)
)
Application for Commission Action,) Docket No. 2015-0009
Petition for Declaratory Order, and/or)
Petition for Rulemaking to Fulfill the)
Requirements of the Commission's Orders)
and Inclinations on the Future of Hawai'i's)
Utilities and Define the Public Interest in)
Hawai'i, as a Prerequisite to Considering)
Any Proposed Acquisition of the HECO)
Companies)
_____)

APPLICATION FOR COMMISSION ACTION, PETITION FOR
DECLARATORY ORDER, AND/OR PETITION FOR RULEMAKING
TO FULFILL THE REQUIREMENTS OF THE COMMISSION'S ORDERS AND
INCLINATIONS ON THE FUTURE OF HAWAII'S ELECTRIC UTILITIES
AND DEFINE THE PUBLIC INTEREST IN HAWAII, AS A PREREQUISITE TO
CONSIDERING ANY PROPOSED ACQUISITION OF THE HECO COMPANIES

EXHIBITS "A"- "B"

VERIFICATION

AND

CERTIFICATE OF SERVICE

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Petition for Declaratory Order, and/or)
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APPLICATION FOR COMMISSION ACTION, PETITION FOR
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TO FULFILL THE REQUIREMENTS OF THE COMMISSION'S ORDERS AND
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I. INTRODUCTION

Pursuant to Haw. Rev. Stat. § 269-6 (2007 & Supp. 2014) and Haw. Admin. R. §§ 6-61-110, -146, and -159, Blue Planet Foundation, Hawai'i PV Coalition, Hawai'i Solar Energy Association, Sierra Club, by its counsel Earthjustice, and The Alliance For Solar Choice (collectively, "Clean Energy Groups")¹ hereby respectfully submit this Application, Petition for Declaratory Order and/or Petition for Rulemaking ("Petition") requesting the Commission to issue a written order declaring that before addressing any proposal to acquire Hawaiian Electric Industries (the "HECO Companies"), the

¹ Exhibit A, attached, hereto, provides information on each of the Clean Energy Groups and descriptions of their interests.

Commission will decide the fundamental matters that are necessary and required to fulfill the Commission's Inclinations on the Future of Hawai'i's Electric Utilities² and numerous related Orders and the Legislature's Acts 37 and 109.³ In short, the Commission must complete this pending work to define electric energy services and markets that best serve customers and the public in Hawai'i before considering whether any particular company or companies can meet these requirements.

As further explained below, the Commission, Legislature, and parties and stakeholders have devoted years of hard work to form a vision of a clean energy future for the people and state of Hawai'i. The Commission's Orders and Inclinations and the Legislature's Acts have brought this movement into its sharpest focus yet, and to a historic juncture. They have mandated the next steps necessary to establish "the vision, business strategies and regulatory policy changes required to align the HECO Companies' business model with customers' interests and the state's public policy goals." Commission's Inclinations at 1. These next steps are pending before the Commission and include:

- The proposed Power Supply Improvement Plans ("PSIPs") in *In re Hawaiian Electric Co.*, Docket No. 2014-0183, which are currently the closest

² *In re Integrated Res. Planning*, Docket No. 2012-0036, Decision & Order No. 32052, Exh. A, filed on April 28, 2014 ("Commission's Inclinations").

³ Act 37, 2013 Haw. Sess. Laws 63 (codified at Haw. Rev. Stat. § 269-6(d) (Supp. 2014)) ("Act 37"); Act 109, 2014 Haw. Sess. Laws 283 (codified at Haw. Rev. Stat. § 269-145.5(b) (Supp. 2014)) ("Act 109"). See Exhibit B, attached hereto, for citations to these Inclinations, Orders, and Acts.

analogue to a system-level Integrated Resource Plan that will chart the future roadmap for the utilities.

- The proposed Distributed Generation Interconnection Plan (“DGIP”) and other issues in *In re Distributed Energy Resource Policies*, Docket No. 2014-0192, which will similarly decide the direction and fate of customer-based solar resources.⁴
- The proposed Integrated Demand Response Portfolio Plan (“IDRPP”) in *In re Demand-Side Management Reports and Requests for Program Modifications*, Docket No. 2007-0341, which will organize a consolidated framework for using customer demand to manage the grid.
- The Commission’s investigation of decoupling and performance incentives in *In re Hawaiian Elec. Co.*, Docket No. 2013-0141, which will determine key issues regarding utility compensation and incentive mechanisms.

In the midst of this process, while these issues and mandates remain unresolved, and before anticipated further directions from the Commission have been received, a proposal for a major private acquisition of the HECO Companies has surfaced. This Petition does not take any position on the merits of this or any other merger proposal, none of which is currently before the Commission. Rather, the Petition seeks to establish, in advance, clear direction for all parties and stakeholders involved and the public as a whole, to the effect that the Commission will proceed first with resolving pending issues and matters critical to the future of Hawai’i’s electric utilities and

⁴ In addition, issues remain pending and work continues, particularly in relation to customer solar interconnections, in the Reliability Standards Working Group (“RSWG”), *In re Hawaiian Elec. Co.*, Docket No. 2011-0206.

markets and the rights and interests of stakeholders, customers, and the public, before considering any specific merger proposal.

This orderly progression preserves the integrity and credibility of the entire process, ensuring that the interests of ratepayers and the public govern the private interests in any proposed merger, and not the other way around. *See infra* Part III.A, B. It also ensures that the Commission's finite resources are focused in line with its public mission. *See infra* Part III.C. This benefits all parties and stakeholders involved -- and above all, consumers and the public -- by setting clear priorities and requirements and reasonable expectations.

Accordingly, the Clean Energy Groups request that the Commission issue a written order making clear that, before considering any proposal to acquire the HECO Companies, the Commission will decide -- by order and/or rulemaking, and under a specified timeframe, as the Commission may deem appropriate -- the currently pending issues and matters directly addressing the Commission's Orders and Inclinations and the Legislature's Acts. These issues and matters include, at minimum:

- The proposed PSIPs (Docket No. 2014-0183);
- The proposed DGIP (Docket No. 2014-0192);
- Outstanding issues regarding customer-based distributed energy resources, including ongoing interconnection delays (Docket Nos. 2014-0192 & 2011-0206);
- The proposed IDRPP (Docket No. 2007-0341);

- Outstanding issues regarding decoupling and performance incentives (Docket No. 2013-0141).

II. SUMMARY BACKGROUND

During the past several years, the Commission, Legislature, parties and stakeholders have increasingly engaged in addressing (1) the rapidly evolving nature of the electric energy market due to “technical, market, and public policy changes that have and will continue to occur in Hawaii,” and (2) the “continuing void in developing a sustainable business model and strategic vision” for the HECO Companies.

Commission’s Inclinations at 1-2. This ongoing work encompasses key, interrelated tasks, which the Commission’s Inclinations organize under three categories: (1) “Creating a 21st Century Generation System”; (2) “Creating Modern Transmission and Distribution Grids”; and (3) “Policy and Regulatory Reforms to Achieve Hawaii’s Clean Energy Future.” *Id.* at 3. The issues under inquiry include more-“traditional” grid management such as retirement of old, inefficient fossil-fuel plants and development of new services and markets to support a modern, clean, and more flexible system. They also include new capabilities and markets, such as the ongoing movement toward customer empowerment via options such as customer-based generation and demand response. Finally, the inquiry includes customer rates and utility compensation: not only how much customers should be paying currently in light of utility performance,

but more fundamentally, how the framework for utility compensation may be reformed to cause the utility to put the interests of customers and the public first.

Having taken a leadership role in expressing and promoting the public interest in utility regulation in Hawai'i, the Commission is well-aware of the time and effort invested by all involved and the importance of the work still pending. Exhibit B summarizes some of the more recent history and the current issues at stake for the Commission and Legislature and the interests of parties, stakeholders, customers, and the state and people of Hawai'i. These include:

- Utility Planning And Strategic Vision: “developing a sustainable business model that explicitly governs the Companies’ capital expenditure plans, major programs, and projects submitted for regulatory review and approval.” Commission’s Inclinations at 29-30.
- Integration of Renewables: aggressively pursuing new clean energy resources and minimizing their curtailment. *See id.* at 2 (“Hawaii has already entered a new paradigm where the best path to lower electricity costs includes an aggressive pursuit of new clean energy sources.”).
- Retirement of Outdated Fossil-Fuel Plants: accelerating the modernization of the generation system and retirements of aging, expensive, and inflexible fossil-fuel power plants. *See, e.g., id.* at 7, 16-19, 23-25.
- Demand Response: developing a unified plan so that “Hawaii would lead the nation in the use of advanced demand response for power system reliability services.” *In re Demand-Side Mgmt.*, Order No. 32054, filed on April 28, 2014, at 11.
- Customer-Based Renewable Energy: prioritizing solutions to avoid ongoing delays in interconnecting customer-based solar, and “enabl[ing] the energy choices that customers will demand and integrate customer-side resources into the broader electric system in an effort to provide

benefits to all system users.” Commission’s Inclinations at 11; *accord* Act 109 § 1 (“[T]he State needs a more transparent and timely process for electricity customers to exercise their options to manage their energy use.”).

- Customer Rates And Utility Compensation: “stabiliz[ing] and lower[ing] customer bills while expanding choices for customers to manage their energy use,” and establishing “new incentive mechanisms that better align utility performance with customers’ interests and public policy.” Commission’s Inclinations at 3, 25; *accord* Act 37 § 1 (“It is therefore imperative that Hawaii’s electric utilities accelerate their efforts to acquire lower cost clean energy resources and reduce existing energy and other utility operating expenses.”).

These ongoing inquiries are not only necessary to define Hawai‘i’s clean energy future and the interests of customers and the public, they are also required under the Commission’s standing orders and the Legislature’s enactments.⁵ Moreover, the Commission has repeatedly emphasized the need and requirement to move on these issues “*expeditiously*.”⁶

Indeed, it must be emphasized that the ongoing work seeks to remedy harms to the interests of customers, stakeholders, and the public. *See* Exh. B (detailing the Commission’s and Legislature’s concerns and actions). Thus, while these issues await

⁵ *See, e.g.*, Exh. B (reviewing the Commission’s and Legislature’s directives); Act 37 § 2, Haw. Rev. Stat. § 269-6(d) (mandating that the Commission “shall consider” implementation of incentive mechanisms for the utility); Act 109 § 1 (calling for “a detailed discussion of technical, economic, environmental, and cultural issues, and a process that will expedite decision-making on near-term, high priority issues”).

⁶ *See, e.g.*, Commission’s Inclinations at 7 (directing the HECO Companies to provide plans “to expeditiously achieve the results” required for generation system modernization); Order No. 32053, filed on April 28, 2014, at 104 (“Order No. 32053”) (requiring PSIPs to focus on “well-reasoned strategies and resulting action plans that can be implemented expeditiously”); *id.* at 56 (requiring the same for the DGIP).

proper resolution, customers, stakeholders, and the public continue to bear undue costs, risks, delays, burdens, and lost opportunities, as the Commission and Legislature have recognized. These include, for example: costs and inefficiencies of the existing fossil fleet, curtailment of renewable energy, delayed or lost clean energy market opportunities, lost clean energy jobs, environmental and climate harms, and higher customer rates due to misaligned utility incentives and spending. This highlights the public interests and values at stake in the pending matters, and the need for resolution without delay or undue distraction.

III. DISCUSSION

A. Fundamental Issues Regarding The Future of Hawai'i's Electric Utilities and Markets Must Be Resolved Prior To Considering Any Potential Merger.

As discussed above, the Commission and Legislature have identified specific issues and mandated specific priority next steps necessary to establish “the vision, business strategies and regulatory policy changes required to align the HECO Companies’ business model with customers’ interests and the state’s public policy goals.” Commission’s Inclinations at 1. While these steps are pending and unresolved, a proposed merger has been announced. This proposed transaction must not be allowed to influence or override the pending fundamental inquiries initiated by the Commission’s Orders and Inclinations and the Legislature’s Acts. Rather, the Commission should make clear, by written order, that it will decide the currently

pending issues and matters prior to considering any specific acquisition proposal. The point is systematic and efficient progression; and the purpose is to ensure that the Commission, parties, and stakeholders can first address and resolve critical open issues regarding the future of electric energy services in Hawai'i, then apply those decisions and requirements to properly inform the review of any proposed merger.

Any other order of progression would not comply with the fundamental premise and logic of public utility regulation, the directives in the Commission's Orders and Inclinations and the Legislature's Acts, sound public policy and good government, or common sense. This Petition begins with the legal premise that the utility monopoly is a public franchise granted by the state, which the state, primarily through the Commission, has the authority to regulate in the public interest.⁷ Accordingly, the Hawai'i merger statute, Haw. Rev. Stat. § 269-19 (2007 & Supp. 2014), expressly provides that "no public utility shall . . . merge or consolidate with any other utility without first having secured from the public utilities commission an order authorizing it to do so." Moreover, this Petition recognizes the equally basic principle that the Commission, in its role as a regulator as well as an adjudicator of cases before it, has broad discretion to prioritize and manage proceedings in the public interest.

The Commission should exercise this authority and discretion to set clear priorities as stated above. The contrary course would undermine the Commission's

⁷ See Franchises: Elec. Light & Power, Honolulu, R.L.H. 1925; Haw. Rev. Stat. § 269-6.

mission and the interests of the state and people of Hawai'i in at least two fundamental ways: (1) it would substantively reverse the priorities in the pending critical inquiry regarding electric energy services and markets in Hawai'i, to the detriment of all involved; and (2) it would impose undue procedural burdens on the currently pending matters and harms on parties, stakeholders, customers, and the public.

B. The Commission Must Finish Its Work Defining The Electric Energy Services Models Before Deciding Which Entities Best Fit.

1. Proceeding with a merger proposal before resolving pending fundamental issues is logically and legally backward.

First, conducting the merger proceeding prior to, or in parallel with, the currently pending matters is substantively backward. The proper and logical order is, first, address the foundational issues and requirements under the Commission's Inclinations and Orders and the Legislature's Acts in order to determine the electric energy framework that will best serve the state and people of Hawai'i. Only then can the Commission genuinely assess the qualifications of any certain company or companies to meet these requirements, and also how any specific merger proposal may relate to other alternatives that could be foreclosed. Moreover, while a proposed post-merger entity may be viewed in the abstract as better equipped to perform than the existing utility, that question remains a subjective exercise unless the terms and standards for performance and the best market structures to obtain it are first established under the right frame focused on customers and the public.

In short, the Commission and Legislature, pursuant to their public authorities and responsibilities, have set forth the course direction for electric energy services in Hawai'i. Now the Commission must maintain this public leadership role and ensure that it fulfills the directives in its Inclinations and Orders and the Legislature's Acts, solely on behalf of the interests of customers and the public, and not colored in any way by a specific private acquisition bid.

Likewise, only after the first step above is completed can the potential acquiring company or companies rationally assess and present their qualifications and evaluate the nature and value of their contemplated acquisition. The pending inquiries may fundamentally reshape the traditional structure of Hawai'i's utilities. As just one example, Act 37 points to differential regulation of generation and energy delivery, and the Commission's Inclinations also recognize a distinction between these functions. The Inclinations make clear that "[t]he role of the HECO Companies with respect to ownership of new generation is the critical policy issue with respect to the future generation fleet on each island grid," and contemplate numerous regulatory solutions, including, most directly, "[a] prohibition on developing new generation resources or undertaking major modifications to existing utility generating units by the HECO Companies." *Id.* at 19, 25. Moreover, the Inclinations emphasize "[a] business strategy focused on energy delivery," where "Hawaii should be poised to lead the world in the development of advanced grids," and the "HECO Companies should be prepared to

anticipate and enable the energy choices that customers will demand and integrate customer-side resources.” *Id.* at 21, 10-11. Such issues directly bear on any proposed acquisition of the HECO Companies, determining the scope and substance of what a proposed buyer is purporting and expecting to acquire, including, above all, its responsibilities toward customers and the public.

The order of progression above follows not only the basic premises and logic of public utility regulation, but also the specific legal standard governing the Commission’s review of proposed mergers. As the Commission has articulated, the standard under Haw. Rev. Stat. § 269-19 is (1) whether the acquiring utility is fit, willing and able to perform the service currently offered by the utility to be acquired, and (2) whether the acquisition is reasonable and *in the public interest*. *In re Citizens Commc’ns Co.*, Docket No. 02-0060, Order No. 19658, filed on September 17, 2002, at 15. Without first completing the pending work that will fundamentally define the public interest in Hawai’i, the Commission, parties, and stakeholders lack even the right questions to ask a prospective buyer of the utility. This is tantamount to trying to hire an employee or contractor without a job description and salary structure.

Indeed, the questions currently pending before the Commission reach that level of basic importance for customers and the public, as well as the utilities and any prospective purchaser. These questions have already waited too long, with ongoing harms to customers, stakeholders, and the public. They need resolution now, and

particularly before embarking on a new and ultimately subsidiary inquiry concerning a merger proposal. For example:

- The HECO Companies' proposed PSIPs in Docket No. 2014-0183 are supposed to lead to a clean and modern generation system, as directed by the Commission's Inclinations and Orders. Yet, the Commission's invitation for early public comments resulted in a flood of public opposition and criticism, including from Hawai'i State Energy Office, diverse community stakeholders, and the general public. The proposed plans await further Commission action.
- Similarly, the DGIP and other issues in Docket No. 2014-0192 are supposed to provide further progress in interconnecting customer generation and providing advanced customer options, as directed in the Commission's Inclinations, Order No. 32053, and Act 109. The DGIP, as well, has raised broad public opposition and criticism and awaits further Commission action.
- Issues of interconnection rules and standards in Docket No. 2011-0206 still remain unresolved and lack systematic, priority attention from the HECO Companies, despite the drastic slowdown of interconnection applications dating back to September 2013.
- The Commission has recognized in Docket No. 2013-0141 that the HECO Companies' compensation mechanisms are flawed and do "not result in rates that are just and reasonable," Decision & Order No. 31908, filed on February 7, 2014, at 48, and has conducted a broad inquiry into performance incentives. These include, for example: tying compensation to performance; adopting differentiated regulatory approaches for generation and energy delivery functions as indicated in Act 37; and modifying the Energy Cost Adjustment Clause's 100% pass-through of fuel costs to customers, which the Commission's Inclinations pinpoint as a primary problem in the current regulatory cost-recovery model. *See* Commission's Inclinations at 21-23.

In no way can this work be considered properly completed, and the Commission must not allow it to be further delayed or sidetracked. All of this work directly follows

from its Inclinations and Orders and the Legislature's Acts. All of it is necessary to protect and promote the paramount interests of customers and the public, which are being compromised while these matters remain unresolved.

2. Proceeding with a merger proposal before resolving pending fundamental issues undermines the processes and outcomes of both inquiries.

The consideration of these pending matters together with a proposed acquisition is not only logically and legally backward, but also ends up compromising the processes and outcomes of both inquiries. The prejudice occurs in fact, as well as in appearance, which is just as problematic. The ongoing inquiry regarding the future of the utility, if it continues at all, will be constricted within the narrow perspective of a specific proposed takeover. Instead of, "what do we want in a public utility," the question becomes, "what can this particular company give us?" Under the motivation to finalize approval of the merger transaction, promises or inducements may be offered to appeal to a vague notion of the public interest, but this reverses the priorities. The public interest becomes more of an afterthought and addendum, liable to be forgotten or unenforced once approval is done.

At the same time, the inquiry regarding the proposed acquisition loses objectivity, transparency, and credibility. Without concrete standards that parties, stakeholders, and the public can follow, the review of a proposed merger devolves into an impromptu bargaining process that relates to the public interest coincidentally if at

all. The “a la carte” promises made to satisfy an indefinite public interest adds costs for the buyer -- and ultimately the ratepayers -- and extra layers to the transaction that may prove challenging or prohibitive.⁸

C. The Commission Should Focus Its Finite Resources On Finishing The Work It Started On Behalf Of The Customer And Public Interests.

Moreover, a failure to set a clear order of progression would divide the constrained resources of the Commission and stakeholders and create overall delays and inefficiencies to the detriment of both the currently pending matters, as well as the coming merger proceeding. As all observers can appreciate, the Commission bears huge responsibilities in overseeing the state’s ambitious clean energy agenda, in addition to all its other regulatory functions. With tremendous effort and commitment, the Commission has risen to this task in issuing its numerous Orders and Inclinations and initiating the follow-up dockets. It cannot be expected to slow down or put on hold these already existing responsibilities to accommodate a proposed takeover of the state’s main utility and largest company, which until last month, was not part of the

⁸ See Scott Hempling, *Merger Proceedings II: Do Commissions Make Themselves Marginal?*, <http://www.scotthemplinglaw.com/essays/merger-proceedings2> (explaining how a merger settlement “moves public interest to the margins”: “The transaction shapes the commission’s order rather than the other way around”).

contemplated and structured workflow before the Commission with respect to the HECO Companies.⁹

Moreover, if the Commission were to put on hold the pending matters, such as the HECO Companies' proposed plans, to address the merger application, by the time the Commission returned to these plans and the many time-sensitive issues they cover, the plans will likely have become stale, and the planning effort would need to restart yet again. This would prolong even further the HECO Companies' long-running and debilitating void of planning direction.

Such delays and inefficiencies harm many parties, stakeholders, customers, and the public, who are depending on the timely resolution of the pending matters. Many have been patiently waiting and hoping for the Commission to take the next steps in line with its Inclinations. Meanwhile, the concrete (even quantifiable) costs and harms to customers, stakeholders, and the public continue to mount. As explained above, these include costs and inefficiencies of the existing fossil fleet, curtailment of renewable energy, delayed or lost clean energy market opportunities, lost clean energy industry jobs, environmental and climate harms, and higher customer rates due to misaligned utility incentives and spending. These costs will only multiply (and further complicate

⁹ See Scott Hempling, *Merger Strategy: Make Regulators Marginal* (May 2013), <http://www.scotthemplinglaw.com/essays/merger-strategy> ("Nothing better exemplifies the regulated regulating the regulator than when applicants insist that a commission created to advance the public interest rearrange its schedule and resources to address a proposal created by private interests.").

any proposed merger) if the Commission does not focus on completing the work that it and the Legislature started, and that is pending before it now.

IV. CONCLUSION

In sum, a Commission order making clear at the outset that fundamental issues in pending dockets must be resolved prior to consideration of any merger proposal follows the law and policy of public utility regulation, the Commission's Orders and Inclinations and the Legislature's Acts, and logic and common sense. Such an order will ensure that the interests of ratepayers and the public govern the private interests in a particular merger deal, and not the other way around. Moreover, it will ultimately benefit both the public interest in electric energy services and the private interest in any proposed merger by supporting a methodical and efficient process free from undue pressures or tainted appearances. Finally, it will assist the Commission in enabling it to maintain its leadership role on behalf of the people of Hawai'i, meet its many pressing and competing responsibilities effectively, and provide direction and set reasonable expectations for parties, stakeholders, and the public.

For all the reasons stated above, the Clean Energy Groups respectfully request that the Commission issue a written order making clear that, before considering any proposal to acquire the HECO Companies, the Commission will decide -- by order and/or rulemaking, and under a specified timeframe, as the Commission may deem appropriate -- the currently pending issues and matters directly addressing the

Commission's Orders and Inclinations and the Legislature's Acts. These issues and matters include, at minimum:

- The proposed PSIPs (Docket No. 2014-0183);
- The proposed DGIP (Docket No. 2014-0192);
- Outstanding issues regarding customer-based distributed energy resources, including ongoing interconnection delays (Docket Nos. 2014-0192, 2011-0206);
- The proposed IDRPP (Docket No. 2007-0341);
- Outstanding issues regarding decoupling and performance incentives

(Docket No. 2013-0141).

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DATED: Honolulu, Hawai'i, January 14, 2015.



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EXHIBIT A – Applicants and Petitioners

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Organization:

Blue Planet Foundation is 501(c)(3) public charity incorporated in Hawai‘i as a non-profit corporation.

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Statement of Interest:

As a leading Hawai‘i clean energy advocacy organization, Blue Planet Foundation (“Blue Planet”) has a direct and substantial interest in the instant Application and Petition. Consistent with its mission to “clear the path for clean energy,” Blue Planet is actively engaged in regulatory proceedings, legislative efforts, and public outreach and education concerning renewable energy and energy efficiency. Working on behalf of thousands of “Friends of Blue Planet,” Blue Planet has been instrumental in passing key clean energy legislation in the public interest, promoting clean energy policies, and advancing education and awareness in support of Hawai‘i’s transition to a clean energy economy. The regulatory and policy matters addressed in the attached Application and Petition address a wide range of energy resource planning and business model issues, including numerous issues related to the integration of clean energy. Blue Planet is actively and extensively involved in planning and analytical review related to these issues. For example, since 2008 Blue Planet has served as an intervenor party in numerous proceedings before the State of Hawai‘i Public Utilities Commission (e.g. 2008-0273, 2008-0274, 2009-0098, 2009-0108, 2010-0015, 2010-

0037, 2011-0206, 2012-0036, 2013-0141), addressing a similar range of technical, financial, and policy issues that are central to advancing Hawai'i's clean energy future. During the same time period, Blue Planet has also provided input and expertise via its appointment to energy-focused working groups, including the Reliability Standards Working Group and the Integrated Resource Planning Advisory Group.

Hawaii PV Coalition

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Organization:

Hawaii PV Coalition is a non-profit professional trade association incorporated in the State of Hawaii in 2005, and granted exemption from federal income tax under Section 501 (c)(6) of the Internal Revenue Code.

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Statement of Interest:

The Hawaii PV Coalition was formed in 2005 to support the greater use and more rapid diffusion of solar electric applications across the State of Hawaii. Since that time, working with business owners, homeowners and local and national stakeholders in the PV industry, the Coalition has been heavily involved in energy policymaking on both the legislative and regulatory fronts. Hawaii PV Coalition members have intervened in all Commission proceedings related to renewable energy since the Coalition's inception, including those related to

interconnection, energy efficiency, distributed generation, feed-in-tariffs, reliability standards, energy storage, decoupling, and net energy metering.

Hawaii Solar Energy Association (“HSEA”)

Principal Place of Business:

Honolulu, Hawaii

Organization:

HSEA is a non-profit professional trade association incorporated in the State of Hawaii in 1977, and is granted exemption from federal income tax under Section 501 (c)(6) of the Internal Revenue Code of 1986.

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Statement of Interest:

The impact of the Application and Petition’s requested relief on HSEA’s member companies’ property, financial and economic interests will be direct as they go to the heart of Hawaii’s solar industry’s business model, a model that is centered on delivering distributed grid-tied, solar power generating systems that reduce operating costs for Hawaii’s homes and businesses. HSEA’s member companies design and build a substantial share of PV and solar hot water systems, both residential and commercial, installed in the State. These activities cover systems installed directly for end-users; systems installed under subcontracting relationships for solar integrators based outside the state; and operations and maintenance contracting on systems installed by non-Hawaii based integrators. These principally grid-tied systems form a rapidly growing, and potentially vast share of the HECO Companies’ portfolio of renewable generation, including the huge potential for behind the meter solutions for both grid power and stability. HSEA therefore has a keen interest in the Application and Petition, as it, and any potential acquisition of HECO, will determine the mix

of traditional generation and renewable generation, and solutions on such issues as energy costs, non-traditional sources of ancillary services, and curtailment.

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The Sierra Club is a California non-profit corporation.

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Statement of Interest:

Sierra Club is a national non-profit organization incorporated in the State of California as a Nonprofit Public Benefit Corporation, with approximately 1.4 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club of Hawai'i represents over 10,000 members and supporters who live in the state of Hawai'i.

Sierra Club's goals include energy conservation and rapidly increasing use of renewable energy to reduce climate disruption and displace fossil fuels. The Sierra Club and its members have been in support of clean energy in Hawai'i for years now, including advocating for our state's renewable energy portfolio standards, leading on clean energy financing programs like the GEMS program, and supporting the passage of Hawaii's right to solar law. The Sierra Club and its members have a unique interest in ensuring Hawaii continues on the path

charted by the Legislature and Commission to establish cleaner and more renewable forms of electricity production. The Sierra Club's members would likely be directly impacted by any adverse decision because they're actively trying to incorporate clean energy and energy efficiency in their daily lives.

The Alliance for Solar Choice ("TASC")

Principal Place of Business:

595 Market Street, 29th Floor
San Francisco, CA 94105

Organization:

TASC is a limited liability company organized under the laws of the State of Delaware.

Principal Contact:

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Statement of Interest:

TASC leads advocacy across the country for the rooftop solar industry. Founding members represent the vast majority of the nation's rooftop solar market and include SolarCity, Sunrun, and Solar Universe. These companies and their partners are leading solar service providers in Hawai'i, are responsible for over 10,000 residential, school, government and commercial installations in the State, and collectively employ hundreds of Hawai'i residents. TASC members aspire to continue to expand in Hawai'i, allowing its residents to take advantage of the State's immense solar resources, provide residents jobs and economic development opportunities and offer the State's citizens a viable choice in energy providers.

TASC members' business operations in Hawai'i include planning, developing, installing, selling or leasing, monitoring and maintaining solar and solar-storage energy systems that are interconnected to the Companies' distribution and transmission systems. The vision, business strategies, and

regulatory policy changes required to align the HECO Companies' business model with customers' interests and the state's public policy goals will impact these operations, TASC members' financial and property interests, and the investments TASC members' customers have made in onsite generation. Any proposed acquisition of the HECO Companies will have similar impacts. Thus, TASC, its members and their customers have a direct and substantial financial and property interest in the requested relief in the instant Application and Petition and the related economic, technical and policy issues addressed therein.

Exhibit B – History and Background of Unresolved Issues Before the Commission Regarding the Electric Energy Services Model in Hawai‘i

The ongoing inquiry regarding the future electric energy services model for Hawai‘i encompasses key, interrelated questions going to the heart of the utility’s responsibilities to its customers and the public. Substantial work on these issues has been invested up to this critical juncture and is currently pending before the Commission. This exhibit summarizes some of the more recent history and issues at stake for the Commission and Legislature, the electric utilities and markets, and the interests of parties, stakeholders, customers, and the state and people of Hawai‘i.

Utility Planning And Strategic Vision

Integrated Resource Planning (“IRP”) is a legal requirement for the Hawaiian Electric Companies (“HECO Companies” or “Companies”) that the Commission ordered and established over two decades ago.¹ However, the HECO Companies currently lack a legally accepted and effective plan for the future. In *In re Integrated Res. Planning*, Docket No. 2012-0036, Decision & Order No. 32052, filed on April 28, 2014, the Commission rejected the Companies’ proposed plan as “clearly non-compliant and inconsistent” with the Commission’s mandated IRP Framework. *Id.* at 1, 22. Instead, the HECO Companies’ failure required the Commission to take the unprecedented step

¹ See *In re Framework for Integrated Res. Planning*, Docket No. 2009-0108, Decision & Order, filed March 14, 2011, at 3 (reviewing the background and history of the IRP requirement, which the Commission originally established by order in 1992).

of issuing its Inclinations, outlining its “perspectives on the vision, business strategies and regulatory policy changes required to align the HECO Companies' business model with customers’ interests and the state’s public policy goals.” *Id.* at 78-79; Commission’s Inclinations at 1. The Commission made clear “[i]t is now incumbent on the HECO Companies to utilize this guidance in developing a sustainable business model that explicitly governs the Companies’ capital expenditure plans, major programs, and projects submitted for regulatory review and approval.” Commission’s Inclinations at 29-30.

The Commission ordered the HECO Companies to provide Power Supply Improvement Plans (“PSIPs”) “to identify strategies, action plans and schedules to expeditiously achieve the results contemplated in the guidelines set forth in Section 1 [regarding Creating a 21st Century Generation System].” *Id.* at 7 (citing the various separate orders requiring such a plan for each of the Companies). Soon after the filing of the proposed PSIPs, twenty different organizations submitted petitions to intervene in the docket to review the plans, Docket No. 2014-0183. The Commission invited early public comment, which resulted in a flood of opposition and criticism, including from the state Energy Office, diverse community stakeholders, and the general public. Docket No. 2014-0183 remains pending with no further direction from the Commission yet in response.

Integration of Renewables

The Commission has specifically identified the need to aggressively integrate renewable resources and reduce their curtailment. “Hawaii has already entered a new paradigm where the best path to lower electricity costs includes an aggressive pursuit of new clean energy sources.” Commission’s Inclinations at 2. The curtailment of renewable energy, and the costs it imposes on developers and ultimately utility customers, was a major focus of the Commission-established Reliability Standards Working Group (“RSWG”). See Order No. 32053, Docket No. 2011-0206, filed on April 28, 2014, at 63-82 (“Order No. 32053”).

Based on these concerns, in *In re Maui Elec. Co.*, Docket No. 2011-0092, Order No. 31288 (“Order No. 31288”), the Commission required Maui Electric Company (“MECO”) to provide a System Improvement and Curtailment Reduction Plan to improve operational efficiency and reduce renewable curtailment. *Id.* at 135. In reviewing the submitted plan, the Commission ruled that MECO had not set forth “a clearly defined path forward that addresses integration and curtailment of additional renewables, and that optimizes system operations through all of the tools that are available to MECO.” *In re Maui Elec. Co.*, Docket No. 2011-0092, Order No. 32055, filed on April 28, 2014, at 4. “[W]hat is lacking is the vision of MECO as a ‘utility of the future.’... [W]hile the HECO Companies -- including MECO -- have recently affirmed their commitment to a corporate culture that focuses on providing superior value and

choice to their customers at reasonable rates, there is no specific corporate strategy designed to ultimately achieve that vision.” *Id.* at 4-5.

Retirement of Outdated Fossil-Fuel Plants

Related to the previous, the Commission has emphasized the need to modernize the generation system to create a clean, flexible grid. The Commission’s Inclinations, for example, repeatedly refer to accelerated retirements of aging, expensive, and inflexible fossil-fuel power plants. *See, e.g., id.* at 7, 16-19, 23-25.

In *Hawaii Elect. Light Co.*, Docket No. 2012-0212, Order No. 31758, filed on December 20, 2013, the Commission found that Hawaii Electric Light Company’s (“HELCO’s”) “strategy is to continue operation of its steam fossil generation plants even though they are apparently less fuel efficient and more expensive” than third-party generation. *Id.* at 1-2, 109. The Commission warned the utility it “must not accord preferential treatment to utility-owned generation resources” and required it to provide a PSIP to re-examine its generation unit commitment and economic dispatch practices. *Id.* at 110-12.

The Commission also found that, like HELCO, HECO’s system lacks “sufficient quick-start, or flexible cycling generation capacity,” has a “significant amount of must-run generation,” and “may not be sufficiently robust” to enable a large renewable energy portfolio. Order No. 32053 at 86-90. The Commission maintained that “HECO has the responsibility to make major changes” to its system portfolio and operations “in

order to accommodate large amounts of variable renewable energy, reduce power supply costs and to provide significant customer rate relief.” *Id.* at 104. As with the other utilities, the Commission ordered HECO to provide a PSIP focused on “improvement strategies and action plans” to be “implemented expeditiously.” *Id.*

Demand Response

Demand response, or the modification of the amount or timing of customer demand as a resource in managing the grid, will play an instrumental role in the clean, more flexible grid of the future. The Commission, in *In re Demand-Side Mgm’t Reports & Requests for Program Modifications*, Order No. 32054, filed on April 28, 2014, comprehensively reviewed HECO Companies’ existing demand response programs and found “no unified plan,” but rather “fragmented, stand-alone” segments. *Id.* at 86. The Commission thus ordered the Companies to file an Integrated Demand Response Portfolio Plan (“IDRPP”) to consolidate its programs into a “single integrated portfolio.” *Id.* at 85. The Commission invited early public comments on the proposed IDRPP, which resulted in extensive feedback indicating how the plan is only an initial step requiring much more work to comply with the Commission order.² This plan remains pending before the Commission, with no further direction from the Commission yet in response.

² See, e.g., *Public Comments of the Alliance for Solar Choice on the “Integrated Demand Response Portfolio Plan”*, Docket No. 2007-0314, filed on Sept 8, 2014.

Customer-Based Renewable Energy

Problems with interconnecting customer-based distributed energy resources date back at least to the original Feed-In Tariffs Docket, No. 2008-0273, in which the HECO Companies unsuccessfully proposed a moratorium on customer solar installations on the neighbor island grids in 2010. This led to formation of the RSWG, which developed various recommended solutions, but did not prevent the HECO Companies from imposing a de facto moratorium on customer solar installations on Oahu in September 2013 and prolonging the drastic slowdown in the Hawai'i solar market until today.

In Order No. 32053, filed in the RSWG docket, the Commission found the HECO Companies failed to be proactive and “have been quick to identify interconnection technical challenges but slow to offer solutions to these problems.” *Id.* at 33. The Commission emphasized that “the lack of transparency and slow response to provide supporting technical information on reliability concerns foster public distrust about utility management of the distributed generation interconnection challenges.” *Id.* at 34. The Commission ordered the HECO Companies to provide a Distributed Generation Interconnection Plan (“DGIP”) to address “[p]rioritization of proposed mitigation actions to focus on the immediate binding constraints for interconnection of additional distributed generation,” and “focus on formulating well-reasoned technical strategies and resulting action plans that can be implemented expeditiously.” *Id.* at 55-56. As with the proposed PSIPs, the Commission invited early public comments on the

proposed DGIP, which also resulted in a flood of opposition and criticism. The docket to review the proposed DGIP, No. 2014-0192, remains pending with no further direction from the Commission yet in response.

Customer Rates And Utility Compensation

In numerous orders, the Commission has repeatedly emphasized the need to “stabilize and lower customer bills while expanding choices for customers to manage their energy use.” Commission’s Inclinations at 3. The Commission has also repeatedly highlighted how “the current regulatory cost-recovery model for the HECO Companies may be increasingly at odds with major public policy goals to reduce electric rates and increase renewable energy utilization” and “the utilities lack correct incentives to control power supply costs, aggressively pursue long-term contracts with [independent power producers (“IPPs”)] for new renewable projects, and expeditiously retire old, inefficient generation units.” *Id.* 21, 23.

In Order No. 31288, Exh. C, the Commission found that existing rate structures “unduly insulate” the HECO Companies and provide “no motivation to implement strategies and action plans that may be more conducive to serving the public interest.” *Id.* at 2-3. Without a long-term, customer-focused strategy, “it is difficult to ascertain whether HECO Companies' increasing capital investments are strategic investments or simply a series of unrelated capital projects that effectively expand utility rate base and

increase profits but appearing to provide little or limited long-term customer value.” *Id.* at 3.

Likewise, in *In re Hawaiian Elec. Co.*, Docket No. 2013-0141, the Commission opened an investigation on the compensation mechanisms for the HECO Companies, including decoupling and performance incentives. *See* Order No. 31289, filed on May 31, 2013. The Commission observed that under the existing incentives, “appropriate adjustments to budgets and strategic plans are delayed or deferred to the ultimate detriment of the utilities’ customers.” *Id.* at 17. Moreover, utility compensation is not “tied to the achievement of performance metrics or furtherance of State energy policies, such as the acceleration or enhancement of clean energy integration, or improvements in customer service.” *Id.* at 15. In a subsequent ruling in that docket, the Commission expressly found that the current rate base recovery mechanism “does not result in rates that are just and reasonable as it does not incentivize cost control.” Decision & Order No. 31908, filed on February 7, 2014, at 48 (“Decision & Order No. 31908”).

In its Inclinations, the Commission similarly identified problems such as the Energy Cost Adjustment Clause (“ECAC”), which provides no incentive to control fuel costs, and the traditional focus on “[c]apital investment (rate base) as the sole driver of utility profits,” which provides no incentive to contract with IPPs or retire outdated utility-owned generation. Commission’s Inclinations at 20-24. Instead, the Commission called for “new incentive mechanisms that better align utility performance with

customers' interests and public policy" and outlined various "potential regulatory solutions." *Id.* at 24-25. These issues regarding the utility compensation and incentive mechanisms are pending in Docket No. 2013-0141.

Legislative Enactments

In addition to these numerous orders by the Commission, the Legislature has recently enacted several laws providing express findings and mandates that parallel and support the Commission's work. These include Act 37, 2013 Haw. Sess. Laws 63 (codified at Haw. Rev. Stat. § 269-6(d) (Supp. 2014)) ("Act 37") and Act 109, 2014 Haw. Sess. Laws 283 (codified at Haw. Rev. Stat. § 269-145.5(b) (Supp. 2014)) ("Act 109").

Act 37 sets forth numerous express findings regarding utility incentives. It is "imperative that Hawaii's electric utilities accelerate their efforts to acquire lower cost clean energy resources and reduce existing energy and other utility operating expenses." *Id.* § 1. Yet, "as the "electric utility business model evolves, existing regulatory cost recovery mechanisms" fail to "provide sufficient economic incentives" to reduce costs. *Id.* Examples include: the ECAC, which does not incentivize the utilities "to aggressively reduce energy costs or seek lower cost alternatives or efficiency gains"; as well as the lack of differentiated regulation and incentives for investments "to modernize the electric grid," as opposed to investments "to preserve old, inefficient fossil generation," which acts as a "financial disincentive" to retiring old generation since its continued operation "preserves existing utility financial returns." *Id.*

The Legislature thus authorized the Commission to establish a policy to implement incentives and cost recovery mechanisms to “induce and accelerate electric utilities’ cost reduction efforts, encourage greater utilization of renewable energy, accelerate the retirement of utility fossil generation, and increase investments to modernize the State’s electrical grids.” *Id.* It mandated that the Commission “shall consider” whether implementation of various such measures “would be in the public interest.” *Id.* § 2; Haw. Rev. Stat. § 269-6(d) (emphasis added). The Commission expressly incorporated this legally mandated inquiry into Docket No. 2013-0141, which is currently pending.

Act 109 also sets forth express findings, specifically regarding the modernization of the grid associated with customer renewable generation. Hawai‘i’s solar industry has produced benefits including energy independence, job creation, and customer options, and “a long-term, sustainable solar industry is in the State’s interest.” *Id.* § 1. Yet, the industry “is significantly impaired by the current interconnection process,” and “the State needs a more transparent and timely process for electricity customers to exercise their options to manage their energy use.” *Id.*

The Legislature thus called for “a detailed discussion of technical, economic, environmental, and cultural issues, and a process that will expedite decision-making on near-term, high priority issues.” *Id.* It established “guiding principles” for grid modernization, such as “[e]xpanding options for customers,” “[m]aximizing

interconnection” pursuant to the law, and “[d]etermining fair compensation for electric grid services and other benefits” of customer generation. *Id.* §§ 1, 2; Haw. Rev. Stat. § 269-145.5(b). These issues are pending before the Commission, along with the HECO Companies’ DGIP, in Docket No. 2014-0192.

VERIFICATION

I am the attorney for Sierra Club in this matter and declare that I am authorized to act on behalf of the Sierra Club in the above-captioned docket. Under Hawai'i Administrative Rules § 6-61-17, I am submitting this verification on behalf of Sierra Club, which is unable to sign. I have read the attached APPLICATION FOR COMMISSION ACTION, PETITION FOR DECLARATORY ORDER, AND/OR PETITION FOR RULEMAKING TO FULFILL THE REQUIREMENTS OF THE COMMISSION'S ORDERS AND INCLINATIONS ON THE FUTURE OF HAWAI'I'S ELECTRIC UTILITIES AND DEFINE THE PUBLIC INTEREST IN HAWAI'I, AS A PREREQUISITE TO CONSIDERING ANY PROPOSED ACQUISITION OF THE HECO COMPANIES, and accompanying exhibits. I am informed and believe, and on that ground verify, that the matters stated in this document are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January 2015, at Honolulu, Hawai'i.



ISAAC H. MORIWAKE

Attorney for:
SIERRA CLUB

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on the following dates a copy of the foregoing document was duly served upon the following individual by placing a copy of same in the United States Mail, postage prepaid, and/or by electronic mail as follows:

Jeffrey T. Ono Executive Director Dept. Of Commerce & Consumer Affairs Division Of Consumer Advocacy P.O. Box 541 Honolulu, HI 96809	January 14, 2015	2 copies via U.S. Mail
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Jim Alberts, Customer Service Senior Vice President Hawaiian Electric Company, Inc. Maui Electric Co., Ltd. Hawaii Electric Light Co., Inc.	January 14, 2015	via Electronic Mail
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Dean Matsuura Director, Regulatory Affairs Hawaiian Electric Company, Inc. Maui Electric Co., Ltd. Hawaii Electric Light Co., Inc. P.O. Box 2750 Honolulu, Hawai'i 96809	January 15, 2015	2 copies via U.S. Mail
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DATED: Honolulu, Hawai'i, January 15, 2015.

/s/ Isaac H. Moriwake _____
ISAAC H. MORIWAKE

Attorney for:
SIERRA CLUB