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PUBLIC UTILITIES  
COMMISSION

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FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 03-0372  
Instituting a Proceeding to Investigate )  
Competitive Bidding for New Generating )  
Capacity in Hawaii. )

**DIVISION OF CONSUMER ADVOCACY'S**  
**RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S**  
**INFORMATION REQUESTS**

Pursuant to the Regulatory Schedule approved in Order No. 21575, the Division of Consumer Advocacy ("Consumer Advocate") files its **RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S INFORMATION REQUESTS** in the above docketed matter.

DATED: Honolulu, Hawaii, June 9, 2005.

Respectfully submitted,

By   
JOHN E. COLE  
Executive Director

DIVISION OF CONSUMER ADVOCACY

**DOCKET NO. 03-0372**

**DIVISION OF CONSUMER ADVOCACY'S ("CA")**

**RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S ("PUC")  
INFORMATION REQUESTS**

PUC-IR-1

**(Parties urging competitive bidding)**

**Ref: CA SOP at 3; HESS SOP at 1; HREA SOP at 2.**

Please identify, if any, specific examples of efficiencies or innovations foregone in Hawaii as a result of the absence of competitive bidding?

RESPONSE:

Because there currently is no requirement for utilities to use a competitive bidding process to procure new resources, it is not possible to respond to this information request as the information needed to develop a response is not known. The Consumer Advocate offers, however, that in recent proceedings before the Commission, the Consumer Advocate has stated its concerns that Hawaii is forgoing benefits because of a ratemaking construct that places a focus on utility system costs that can be avoided through purchases from a QF rather than prices routinely available through competitive bidding in competitive power markets. For example, in its review of HELCO's proposed power purchase agreement with Apollo Energy Corporation in Docket No. 04-0346, the Consumer Advocate stated in its Statement of Position, at 15, that "while the Apollo project appears to meet the current standard for determining the reasonableness of the price to be paid to the developer, i.e., the utility's avoided costs as currently calculated, successful

competitive bidding would likely produce a lower cost that may not be tied to oil prices.” That observation was echoed in the Consumer Advocate’s Statement of Position (at 14) regarding MECO’s proposed power purchase agreement with Kaheawa Wind Power, L.L.C. in Docket No. 04-0365.

The specific benefits offered by competitive bidding – and thus the benefits potentially foregone in the absence of competitive bidding – are discussed in the response to HECO-CA-IR-38(d).

PUR-IR-2

**(CA) Ref: CA SOP at 17 states:**

[One benefit of competitive bidding is to] “create an opportunity for consumer savings by imposing price competition among resource options...”

a. Has the CA quantified the potential savings that would arise from competitive bidding?

RESPONSE:

No. As indicated in the response to HECO-CA-IR-20, the potential savings will depend on the specific RFPs that may be issued by Hawaii’s electric utilities in coming years in response to emergent needs. At this time, the Consumer Advocate does not have the information necessary to quantify the likely future savings from competitive bidding.

b. Can the CA identify cost-benefit analyses from other jurisdictions that quantify savings to consumers resulting from competitive bidding programs?

RESPONSE:

The Consumer Advocate cannot identify cost-benefit analyses from other jurisdictions that offer a dependable means by which to quantify savings to consumers resulting from competitive bidding programs.

Noting first that focusing on consumer savings sets aside the important non-price benefits that can be achieved through competitive bidding, it is difficult to quantify the savings resulting from competitive bidding programs. To produce truly accurate savings calculations, one would have to study the “actual” costs of resource plans that never occurred – which is, of course, impossible – over extended periods (i.e., 20-plus years) and

compare them to the actual costs of resource plans developed through competitive bidding. Given the impossible nature of this exercise, a second-best approach would be to develop estimates of the costs that might have been under “never implemented” resource plans. However, such analyses are highly subjective in that they must rely heavily on assumptions regarding virtually all major elements of the “never implemented” resource plan.

The Consumer Advocate notes that, taken at an individual level, each RFP evaluation process offers specific insights into the benefits of competitive bidding. The criteria applied in evaluating bids are, by their very nature, tools for evaluating the costs and benefits of competing resource options -- including the utility “self-build” options that would be pursued absent competitive bidding. Prices offered by bidders typically are applied to economic models that translate those prices into some form of comparative cost information (such as life-cycle costs or net present value costs). RFP evaluation criteria also can be expected to be designed to assess the reliability, environmental and other non-price impacts of competing resource options that a utility identifies as important.

Therefore, well-designed and well-implemented RFP evaluation criteria can yield effective measures of the costs and benefits of the full range of options that might compete to meet a

specified resource need. Hawaii would be well-served if competitive bidding were implemented and such analyses routinely were performed.

PUC-IR-3

**(All Parties) Ref: HECO SOP, Exhibit A at 4; HREA-HECO-IR-9.**  
These references address the potential for an increased reliability risk as a result of the implementation of competitive bidding and purchased power. Please elaborate on the solutions to this potential problem, and specifically identify potential mitigating factors that can be incorporated into the competitive bid process.

RESPONSE:

The Consumer Advocate notes at the outset that reliance on utility-owned generation brings its own unique set of risks to consumers. These risks are set aside in responding to this information request.

As explained in the Consumer Advocate's Statement of Position, at page 20, competitive bidding is one of several mechanisms by which an electric utility can acquire from competitive power markets the resources that it needs to provide its customers with a reliable supply of electricity. Because competitive bidding (as the Consumer Advocate defines the term in its Statement of Position, at page 22) has the potential to result in an electric utility depending on third-party, non-utility suppliers to meet a substantial portion of its capacity and energy needs, reliability risks can result (as also are discussed in the Consumer Advocate's Statement of Position at 35).

There are, however, ways to mitigate the reliability risks associated with dependence on third-party power supplies as may be procured through competitive bidding. These might include the following:

- Ensure that bidder qualification requirements and bid evaluation criteria are such that preference is given to bidders with demonstrated experience in power generation, are in solid financial standing, and have a vested interest (i.e., that extends beyond Hawaii's power markets) in preserving their position as a going concern.
- Ensure that the provisions of any power purchase agreement that would result from a competitive bidding process include strong incentives for the third-party supplier to perform necessary maintenance and to achieve high performance standards.
- Diversify power supply portfolios to ensure that an electric utility does not rely excessively on any single supplier for critical generation supplies.

At times, an electric utility might determine that competitive bidding processes which result in excessive reliance on third-party generation suppliers would increase reliability risks to a degree that would be contrary to the public interest. In such instances, the utility should advance such position to the Commission. However, the Commission should accept such presentation from a utility only if it is satisfied that the utility has exhausted every reasonable alternative to mitigating the potential consequences of such procurement.

PUC-IR-6

**(CA) Ref: HECO-CA-IR-31 states:**

Where the utility can demonstrate that reliability would be jeopardized by the utilization of a third-party resource, the Consumer Advocate would support not using a competitive solicitation.

Please identify or describe the information the utility would need to provide to adequately demonstrate that reliability would be jeopardized by the utilization of a third-party resource for a generation requirement.

RESPONSE:

The Consumer Advocate would not constrain the information that a utility might provide to demonstrate that competitive bidding would be contrary to the public interest because of reliability concerns. The factors that might be relevant to such a demonstration likely would be specific to the utility and its particular circumstances. These factors would tend to focus on situations: (1) in which the winning bidder would place the utility in a position in which it was overly-reliant on a third-party; (2) where an existing third-party supplier or bidder with a low bid is in financial distress; and (3) where the specific need is such that the introduction of a third party would overly-complicate the situation for the utility. As a general matter, effective resource planning issues should avoid these outcomes. However, the Consumer Advocate notes that the identification of such circumstances would not be dispositive – the benefits that might be achieved through an increased reliance on third-party generation suppliers also should be included in the calculus (i.e., analysis of the benefits of competitive bidding).

Furthermore, it should be noted that a decision to avoid competitive procurement as a mechanism to acquire needed resources should occur only after a systematic presentation by an electric utility (or any party) that addresses (1) the risks inherent in a purchase from a third-party supplier, given the utility's specific circumstances, and (2) the limitations of the various approaches that could be adopted to mitigate such risks. The Commission's decision ultimately will require reasoned judgment.

PUC-IR-10

**(All Parties)**

If the Commission requires competitive bidding, what would be the disadvantages of requiring independent competitors to limit their participation to turnkey projects, at least initially, so that the utility would have maximum control over the project operations upon construction?

RESPONSE:

Limiting resource acquisition to turnkey construction projects would be problematic as the “default” approach in Hawaii because such approach suffers from two principal deficiencies. First, the approach requires the utility issuing the RFP for turnkey projects to define, fairly precisely, the characteristics of the equipment that it would purchase. As such, the utility would determine more or less exactly how its needs would be met. This precludes innovation by resource providers who might have very different -- and perhaps better -- ideas about how to best address the utility’s specified need.

Second, such an approach anticipates that the electric utility would own and operate the “turnkey” facility. This may be sub-optimal because the state of the art for some types of generating facilities -- and thus their operating requirements -- has changed substantially in recent years. Third-party providers that own and operate large fleets of generating facilities across the country almost certainly have a greater level of expertise (not to mention capability for design innovation and improvement) than would utilities operating several generating facilities. Turnkey projects will tend to limit the opportunity for consumers to benefit

from operating cost savings and design improvements that would otherwise be available through unfettered competitive bidding processes.

PUC-IR-12

**Ref: HECO-HREA-IR-5(b)(2)at 6 states:**

For example, would the failure to meet predicted system availability become a basis for a penalty? We are not aware of case where this has been done elsewhere. Also, if the utility is not going to be subjected to a penalty, which is the current case with our RPS law, why should the windfarm owner/operator?

- b. **(All Parties)** What type of provisions can be reasonably incorporated into as-available contracts to encourage the IPP to improve on system availability and/or reliability?

RESPONSE:

The Consumer Advocate is aware of a range of performance incentives that can be incorporated into power purchase agreements with third-party suppliers that can be tailored to meet the specific needs of individual electric utilities. Examples of performance measures intended to improve system availability and/or reliability are availability factor, equivalent availability factor and capacity factor, all of which can be applied to individual generating facilities and to groups of such facilities. Measures of forced outage rate also can be applied where appropriate. Incentives can take the form of various rewards. Penalties can be tied to performance and include provisions for liquidated damages and other legal remedies which can be assessed when performance falls below agreed-upon levels.

HECO's presentation in its application to the Commission seeking approval of Amendments 5 and 6 to its power purchase agreement with Kalaeloa Partners, presents (at 25-32) a series of specific contractual provisions implemented to achieve specific

reliability objectives. The Consumer Advocate anticipates that, where system reliability issues are identified by electric utilities as they consider competitive bidding mechanisms to address identified resource needs, the utility would give thorough consideration to contract performance provisions that would provide adequate reliability protection before it considers alternatives to competitive bidding. There may even be circumstances in which benefits would result if bidders in an RFP process were allowed to advance innovative approaches to meeting identified reliability concerns.

PUC-IR-18

**(All parties, except HREA) Ref: HECO-HREA-IR-12 at 15 states:**  
[Ratepayers]...will bear the risk related to...failure to obtain appropriate authorizations...

- a. Who should bear the risk and associated costs of a winning bidder's failure to obtain appropriate authorizations within a specified time period - the utility, the winning bidder or ratepayers?

RESPONSE: The response to this information request depends on the specific facts and circumstances of the specific situation. At times the risks and costs associated with a failure to achieve projected project milestones will be of relatively little consequence to a utility and its ratepayers, while at others, the risks and costs may be quite substantial. For example, there may be circumstances in which the adverse consequences of a winning bidder's failure to obtain necessary authorizations may be quite limited (e.g., if a utility simply misses its RPS target). At other times, the costs and reliability risks may be quite significant, as would be the case when substantial supply shortages are looming or when "one time" opportunities for particularly attractive resource acquisitions may be involved.

Ultimately, bidders, utilities and their ratepayers will all be affected by the costs and risks of a bidder's failure to achieve project development milestones. However, concerted efforts should be made to minimize the degree to which the utility and its ratepayers are exposed to inordinate risks and costs of this nature. This means that, when and where appropriate, the electric utility

that issues a solicitation for resources should take every reasonable step, consistent with best practices in RFP design and implementation, to ensure that viable resource providers are identified that are fully capable of delivering on their resource commitments. Such steps might include, to the extent feasible, provisions in both RFPs and resource contracts that shift the risks of non-performance to resource providers. This is typically achieved through milestone schedules linked to financial penalties, or contract termination, where important milestones are missed.

At times it may not be possible to shift all permitting and project development risks and costs to winning bidders. In such cases, and under the assumption that the utility has acted prudently and in keeping with the terms of an RFP that has been approved by the Commission, ratepayers may be exposed to the consequences of non-performance by third-party suppliers. In order to mitigate the impacts of such events, the Consumer Advocate recommends that utilities make reasonable provision to implement advance planning for such contingencies.

The Consumer Advocate notes that "utility-build" alternatives often bring many of the same development risks. However, it is less common for regulated utility investments to be held to strict development milestones with associated penalties when their resources are delayed due to the utility's inability to obtain the

appropriate authorizations. The Consumer Advocate recommends that utilities and developers be held to their commitments to meet development milestone schedules to ensure a “level playing field” in competitive procurement and to minimize adverse risk and cost consequences to consumers.

- b. What mechanisms, if any, are available to guard against the risk of delays arising out of inability to obtain permits or other authorizations?

RESPONSE: As indicated above, a utility can take steps to guard against the risk of delays arising out of the inability of a winning bidder to obtain permits or other authorizations. The Consumer Advocate sees these risks as manifesting in the form of increased costs (e.g., because costs may be incurred to re-attain the same position in a resource acquisition process, or because low-cost opportunities may be lost), or reductions to system reliability (e.g., as a utility attempts to recover from the loss of an anticipated resource).

Some steps to protect the utility and its customers can be implemented through the design of the RFP. For example, the terms of the RFP can include deposits to be posted by the winning bidder in a given solicitation. The terms of a solicitation can also establish legal rights by which the utility has clear standing to act

against a supplier that does not meet identified milestones in a predetermined development schedule.

Other steps to protect the utility and its customers can reside within the contract that the utility might sign with bidders. That contract might, for example, place a focus on a milestone schedule, and may specify both rewards and penalties relative to the bidders performance to that schedule.

It is the Consumer Advocate's position that each utility should be responsible for identifying mechanisms to guard against the risk of delays arising out of inabilities to obtain permits or other authorizations in keeping with its circumstances and specific resource need.

PUR-IR-19

**(All Parties) Ref: CA SOP at 60.**

...an electric utility must be prepared with a "backstop" plan (i.e., the specific resources that the utility would develop and put into rate base if necessary to meet its service obligations. The backstop plan may be satisfied by the utility's resource proposals.

If a utility has a "backstop" plan that can be satisfied by its resource proposal, does this mean that it is always effectively competing with other bidders?

RESPONSE:

The answer depends on the specific facts and circumstances of each situation. Whenever an electric utility issues an RFP to address a near-term need where immediate action (i.e., in the form of resource acquisition) is necessary to preserve system reliability, the utility should identify the resources that it would implement in the event that the RFP fails to yield a desirable alternative (i.e., for whatever reason). In such case, the utility should: (1) identify the best resource (or resources) by which it would respond to its specified needs; and (2) test that resource against what "the market" has to offer through a competitive bidding process. If the utility's proposal is found to better address the identified need (when evaluated using the same criteria as applied to bids received), the utility proposal should be implemented. Here, the utility's plan is (as should be the case) in direct competition with competing resource options.

By contrast, from time to time an electric utility may determine that it should solicit resources well before an immediate need emerges. For instance, a utility may find it appropriate to

conduct routine solicitations for demand-side resources, distributed generation supplies or renewable supplies to ensure a steady progression toward public policy goals. In such case, the failure of a given RFP might not have any serious reliability or cost implications for the utility. Thus, it may not be necessary for the utility to incur the costs associated with specifying in detail the resources that would represent its alternate proposal (i.e., relative to the resources being solicited through the RFP). Rather, some estimate of "avoided costs" (perhaps based on the results of some similar RFP, or evidence of the costs of procuring similar facilities in competitive markets) may be sufficient to establish an RFP ceiling price that would adequately protect ratepayers from high prices that might result from the solicitation. In this later scenario, the utility would not be competing with bidders in any meaningful way.

PUC-IR-23

**(All Parties)**

What measures can and should be taken to avoid self-dealing or an unfair competitive advantage over other bidders (or even the appearance of such)?

RESPONSE:

The Consumer Advocate observes that measures to avoid self-dealing have been a focal point in the design of competitive bidding processes for many years. In its Statement of Position at 59-60, the Consumer Advocate makes specific recommendations regarding how competitive bidding should be conducted when a utility is advancing its own resource proposal. Note that the Georgia Public Service Commission recently released proposed rules in Docket No. 19225-U addressing, among other things, measures to protect against self-dealing. In addition, as indicated in its Statement of Position at 68, the Consumer Advocate observes that the Federal Energy Regulatory Commission recently issued "guidelines" that are, in part, intended to mitigate self-dealing. The FERC states that "the fundamental objective of the solicitation guidelines is that the affiliate should have no undue advantage over non-affiliates in the solicitation process."

PUR-IR-24

**(All Parties)**

What is the desirable outcome of this proceeding -- a specific competitive bidding procedure, a specific change to the IRP process, a specific model RFP, a specific model PPA, or anything else?

RESPONSE:

The Consumer Advocate seeks first and foremost a policy statement from the Commission that would clarify that competitive bidding process should be the presumptive approach to resource acquisition by Hawaii's electric utilities. No specific competitive bidding procedure, specific change to the IRP Framework, specific model RFP, or specific model PPA is necessary to achieve this result.

However, the Consumer Advocate believes that some changes to the regulatory framework can improve the likelihood that maximum benefits will be achieved through competitive bidding. As indicated in its Statement of Position at 3-4, the further actions that the Consumer Advocate recommends the Commission undertake may be summarized as follows:

- The Commission should recognize that competitive bidding belongs as an integral part of its Integrated Resource Planning Framework;
- The Commission should adopt a method for determining avoided costs that is consistent with all-source competitive bidding;
- The Commission should amend its IRP Rules to enhance the benefits of competitive bidding by improving the information available to stakeholders in deciding among alternate procurement strategies;

- The Commission should establish its critical oversight role regarding competitive bidding practices;
- The Commission should avoid being prescriptive regarding how competitive bidding processes are to be conducted, and instead state clearly that utilities must adhere to “best practices;”
- The Commission should define the role of the host utility vis-à-vis its own competitive bidding process; and
- The Commission should identify the Commission’s review processes that would apply to a successful bidder.

PUC-IR-25

**(All Parties)**

**Ref: HECO SOP at 12; CA-HECO-IR-6; HREA-HECO-IR-14.**

- a. Should the competitive bidding process be of a "framework" nature, i.e. a set of guidelines in the form of an enforceable Commission order (which would involve an evidentiary hearing to test the recommendations of the various parties to the proceeding)?

RESPONSE: No. Competitive bidding processes should be developed by electric utilities, according to best practices, to suit their circumstances and emergent, specific needs. Any effort to prescribe competitive bidding processes runs the risks of: (1) specifying a process that might be inconsistent with a utility's emergent resource needs; and (2) "locking in" a process that may prove sub-optimal as the "state of the art" continues to evolve.

- b. If the answer to (a) is "yes", then if the Commission does decide to initiate a proceeding to develop the competitive bidding "framework", should it hold public hearings, workshops and/or panel format hearings?

RESPONSE: Not applicable.

- c. If the answer to (a) is "no", then should the competitive bidding process be established through a rulemaking proceeding (which would necessitate public hearings and comments)?

RESPONSE: No, please see the responses to PUC-IR-24 and part (a), above.

PUR-IR-27

**(All Parties) HECO SOP, Exhibit A at 34 states:**

... the development of competitive bidding rules and guidelines should be developed from the ground up without superimposing another state's system directly in Hawaii.

Is HECO aware of any state system that could profitably be used as a starting point for developing Hawaii's competitive bidding rules or guidelines, in order to reduce the cost and time required to develop them from the ground up? What aspects of such state's approach are particularly helpful?

RESPONSE:

Although the question posed appears to be directed to HECO, the reference indicates that all parties are to respond to this information request. As a result, the Consumer Advocate provides this response as follows:

The Consumer Advocate observes that many use the term "competitive bidding rules" and "integrated resource planning rules" interchangeably. As such, the competitive bidding rules for some states typically are encompassed by their rules for integrated resource planning. Integrated resource planning rules establish a foundation for the regulatory review of utility activities in the areas of resource planning and procurement. As is the case with Hawaii's IRP Framework, integrated resource planning rules typically make provision for: (1) a discussion of essential principles and how integrated resource planning is to be conducted; (2) filing requirements; (3) public participation and regulatory review; (4) design of an "action plan" and resource procurement; (5) updates to the resource plan; and (6) cost recovery.

Resource procurement is but one of the later steps in the overall IRP process. Some states have been prescriptive, at least to some degree, regarding how procurements are to occur. The Consumer Advocate contends, as discussed in the response to PUC-IR-25, for example, that such a prescriptive approach would not be in the best interests of the ratepayers and utilities in Hawaii.

PUC-IR-29

**(All Parties except HREA)**

**Ref: HREA SOP at 11-12; HREA-HECO-IR-11; HREA-KIUC-IR-1.**

Please comment on the competitive bidding models offered by HREA, where the utility would identify the site, capacity, and (possibly) fuel type, then prepare and submit a “facility bidding baseline” to an independent contractor who would solicit and review bids against the utility’s baseline.

RESPONSE:

The competitive bidding model described is a constrained approach to competitive bidding that may be appropriate from time to time. However, the Consumer Advocate anticipates that, more often than not, HREA’s proposed model would not: (1) be well-suited to a utility’s resource needs (e.g., where the utility’s needs might best be met by load management measures or distributed generation resources that are, in fact, distributed across its system); or (2) yield maximum benefits for consumers (e.g., bidders might have access to sites or generation technologies that might better meet a utility’s specified needs).

The Consumer Advocate recommends that RFPs be designed according to best practices in the industry. Where best practices point toward an RFP in which the utility would identify the site, capacity, and (possibly) fuel type, then prepare and submit a “facility bidding baseline” to an independent contractor who would solicit and review bids against the utility’s baseline, such model should be adopted. Where best practices point to the implementation of other models in competitive bidding, those other

models should be pursued. Also, please see the Consumer Advocate's response to HREA-CA-IR-1.

PUC-IR-31

**(All Parties except KIUC) Ref: HREA-KIUC-IR-1.**

a. Should the competitive bidding process be different for an IOU than for a co-op?

RESPONSE:

Competitive bidding processes should be designed according to best practices in the industry, taking into consideration the unique circumstances of each utility and its specific resource needs. Under such approach, it is possible that the competitive bidding processes of an IOU will differ from those of a co-op. However, the Consumer Advocate anticipates more similarities than differences between IOU and co-op RFPs, given that the objective of those designing competitive solicitations should be to develop effective, efficient processes for acquiring resources from competitive markets. This would be particularly true of entities (i.e., utilities and co-ops) of similar size.

b. Please comment on KIUC's contentions that competitive bidding should be used by it only when KIUC initiates the process and has sole authority for key project decisions.

RESPONSE:

All jurisdictional utilities should be subject to the same regulatory requirements for competitive bidding. It is the Consumer Advocate's position that, where the Commission finds that a utility has a need for additional resources, there should be a rebuttable presumption requiring the implementation of competitive bidding by the utility.

- c. Please comment on KIUC's contentions that its Board of Directors "provides the same oversight and risk mitigation for its members as would an ICA [independent contracting agent] for ratepayers of an investor-owned utility."

RESPONSE: There likely will be circumstances under which the implementation of best practices in competitive bidding will allow a co-op or utility to oversee its own solicitation and serve effectively as "contracting agent" for ratepayers. This may be the case if, for example, an RFP is issued for renewable resources where the utility has no project that it is seeking to advance that meets the specified need.

However, there also may be circumstances in which a utility (including KIUC) would seek to advance its own project, such that it might have an incentive to undermine legitimate project proposals by others in RFP evaluation processes. Moreover, there may be instances in which such adverse incentives are limited, but the perceptions among potential bidders could be otherwise. In such cases, independent evaluators may be necessary to avoid compromising the results of the RFP. The Consumer Advocate recommends that each utility be required to develop and implement solicitations that are consistent with best practices in the industry, its unique circumstances and its specific needs. This would apply to defining how and by whom bids are to be evaluated.

PUC-IR-33

**(HECO and CA) Ref: HECO SOP at 12-13; HECO Exhibit A at 18; CA SOP at 45-49.**

Please explain how the Company's preferred approach to how competitive bidding could be integrated within the current IRP framework is different from that proposed by the CA.

RESPONSE:

The Consumer Advocate understands that the Companies have no preferred approach as to how competitive bidding could be integrated within the current IRP framework. This understanding is based on HECO's response to CA-HECO-IR-7, which was issued by the Consumer Advocate to understand the specific changes that the Company is advancing. HECO's response stated that the Companies' "can support competitive bidding for certain forms of new generation" if done in a manner that yields net benefits. However, the Companies state that a number of questions must be answered regarding "the competitive bidding process to be used." HECO further states that, "until answers to these types of questions are known, the Companies cannot propose specific framework provisions (which is the Companies' preferred approach...)."

Thus, the response to CA-HECO-IR-7 indicates that the Companies are not advancing: (1) recommendations regarding the design of competitive bidding processes that might serve the public interest; and (2) a discussion of how to integrate competitive bidding into the existing regulatory framework to best serve the public interest. The Consumer Advocate's recommendation regarding the design of competitive bidding processes and how to

integrate competitive bidding processes are described in detail in Section III of its Statement of Position.

PUC-IR-38

(CA) Ref: CA SOP at 49.

Does the CA recommend changes to the IRP framework to identify when an independent evaluator is required and the evaluator's role or responsibility?

RESPONSE:

No, the Consumer Advocate recommends that each utility bear the responsibility of designing solicitation processes that are consistent with best practices in the utility industry. As part of the design process, each utility (perhaps with assistance from a consultant with expertise in competitive bidding and RFP design) will have to consider whether some independent party should have a role in evaluating proposals, overseeing or monitoring the auction.

The Commission's role would be to review the design of proposed auctions before they are issued, in an effort to ensure that best practices have been adopted and the solicitation is likely to benefit the public interest. The threshold standard will be whether the utility or a utility affiliate proposal is directly or indirectly participating in the bid process. If real or perceived self-dealing issues are present, mitigation would be needed to have a successful bid process. Use of an independent evaluator is one way to achieve that result.

As discussed in the Consumer Advocate's Statement of Position at 42-44 and in response to PUC-IR-24, the Commission should, as a matter of policy, establish competitive bidding as the presumptive approach to acquiring needed resources. The Commission should also establish that competitive bidding

processes are to be conducted according to best practices in the industry. This will clarify expectations of electric utilities and will facilitate judgments regarding when an independent evaluator may be required.

PUC-IR-39

**(All Parties)**

- a. Should the competitive bidding process be an “open” bidding process, wherein the utility or the commission develops self-scoring criteria and bidders know what the utility is seeking and how the bid will be evaluated?

RESPONSE:

No, it is the Consumer Advocate’s position that each competitive bidding process should be designed on an *ad hoc* basis that reflects best practices in keeping with the utility’s circumstances and to meet its specific, emergent needs. At times open bidding processes, designed as described, may best suit a utility’s specific needs; at other times not. For example, self-scoring criteria can be problematic in solicitations where judgment on the part of the bid evaluator is needed to achieve optimal results (e.g., where important non-price criteria must be evaluated). In such instances, self-scoring criteria can precipitate unnecessary conflict between bidders and the bid evaluator. At times, “closed” bidding processes may better serve both utility and ratepayer interests. However, the method of bid evaluation in all processes should have as much transparency to the bidders as possible (self-scoring systems being just one way to accomplish that).

- b. Or should it be a “closed” bidding process, wherein the utility provides general guidance about planning objectives, but does not reveal all of the information about the evaluation process?

RESPONSE:

Please see the response to part (a), above.

PUC-IR-40

**(All Parties) Ref: CA-HECO-IR-7.**

- a. Should competitive bidding be required for all transactions, required but subject to exceptions, or merely encouraged but not required?

RESPONSE:

It is the Consumer Advocate's position that competitive bidding should be required (i.e., the "default" approach) for acquiring needed resources. As indicated in its Statement of Position at 45, alternative approaches should only be used when a utility is able to demonstrate that competitive bidding would not serve the public interest.

- b. If there are to be exceptions to a competitive bidding requirement, what should those exceptions be based on?

RESPONSE:

As stated above, the exception would be when a utility is able to demonstrate that a competitive bidding process is not in the public interest. It is important, however, to not prescribe the factors that might lead to a Commission finding that competitive bidding will not benefit the public interest at this time, as the factors may differ from case to case. Rather, the Commission should be open to a presentation, for whatever reason, that the public interest would not be served by competitive bidding. Section II.C of the Consumer Advocate's Statement of Position discusses a number of factors that might diminish the value of competitive bidding processes in specific circumstances.

PUC-IR-41

**(All Parties) Ref: HECO-HREA-IR-6.**

a. Should there be a “dollar threshold above which competitive bids would be required”?

RESPONSE:

No, although a dollar threshold may offer a reasonable approach for determining whether to implement competitive bidding because such approach could place a focus on major investments that would have the greatest impact on utilities and their ratepayers. However, there likely would be times when exceptions should apply. For instance, it is possible that an electric utility may want to periodically procure smaller quantities of a certain resource type (representing relatively small dollar amounts), or where the frequency of solicitation for similar resources might make competitive bidding desirable. Conversely, there may be times when the acquisition of more costly resources (representing large dollar amounts) by competitive bidding might not serve the public interest (if, for example, a large generation facility with particular fuel type is “needed,” but non-utility ownership is not feasible).

b. How should this dollar threshold be determined, and how often should it be reevaluated?

RESPONSE:

Not applicable, please see the response to part (a), above.

PUC-IR-42

**(All Parties) Ref: CA-HECO-IR-7.**

Should "near-term" needs be exempted from the competitive bidding process? If so, how should "near-term" be defined?

RESPONSE:

Yes, occasionally, as is discussed in the Consumer Advocate's Statement of Position at 35, which states as follows:

Competitive bidding through RFPs can take time to implement and, while one cannot generalize very precisely, the time is months rather than weeks. This means that, for example, the near-term needs for short-term power supplies should be satisfied in other ways; similarly, where power supplies are needed to respond to an unanticipated emergency, competitive bidding will be too cumbersome.

Thus, there will be times when competitive bidding will be infeasible, simply because the timelines necessary to procure needed resources through competitive bidding processes would lead to unacceptable resource deficiencies. For example, it may not be appropriate to implement competitive bidding for a large, central station generating facility with a three-year lead time if the utility has an immediate need for capacity to preserve system reliability.

However, prudent planning by electric utilities will ensure that they are only infrequently "caught by surprise" with unforeseen needs. As a general matter, the Commission should expect that utilities will plan for foreseeable contingencies and initiate procurement processes (including competitive bidding) to ensure that they do not confront near-term needs that cannot be met through mechanisms that will best serve the public interest.

Conducting solicitations for incremental resources only when needs become urgent is an expensive and risky proposition for consumers. It leads to utility “quick fixes” rather than effective long-term solutions selected from the best that markets have to offer.

As such, the Commission should not automatically exempt from competitive bidding processes those needs that fall within any particular “near term” time period. Rather, determining whether competitive bidding reasonably can be implemented given particular lead times would best be determined on a case-by-case basis. This may encourage and enable utilities that have the foresight to conduct contingency analysis and prepare bidding documents to move forward (at least on occasion) with RFPs designed to address emergent, “foreseen” contingencies. Conversely, a utility that is perpetually in the mode of urgent response to near term needs should be actively encouraged to improve its planning.

PUC-IR-44

**(All Parties) Ref: CA-HECO-IR-9; HECO-HREA-IR-11.**

Should the competitive bidding process differ depending on what type of resource is to be acquired (e.g., renewable resources, new technologies, and traditional resources; supply-side and demand-side resources, as-available v. firm capacity resources; and distributed resources)?

RESPONSE:

Yes, in order to be effective, it is very likely that competitive bidding processes will differ depending on the electric utility's specific needs over time, and may precipitate purchases of different types of resources at different times.

PUR-IR-45

**(All Parties)**

Concerning relations between developers and utilities, what are the most likely areas of dispute, and what Commission involvement (e.g., rules upfront, vs. dispute resolution later) is best suited to minimize these disputes?

RESPONSE:

Disputes between developers and utilities can arise in all facets of resource solicitation processes. Disputes can arise before, during or after the bidding process has run its course. They can arise regarding RFP design and evaluation parameters, requirements for bidder qualifications (in terms of financial and other threshold requirements), milestone schedules imposed on bidders, implementation of non-price scoring criteria, bidder selection, events during contract negotiations, etc.

The Commission can act to minimize the likelihood of disputes by ensuring that each electric utility takes its obligation to design effective solicitation processes consistent with best practices in the industry seriously. Clear, effective communications between the utility and bidders (i.e., in RFP documentation and otherwise) during all phases, and fair, transparent processes will serve to minimize the opportunity for misunderstandings that can grow to formal disputes.

The Consumer Advocate believes that "rules" will do little to minimize disputes between parties, if the parties do not engage in solicitation, design and implementation processes in good faith. Similarly, dispute resolution procedures cannot be expected to

diminish the frequency of disputes, although they might accelerate their resolution. Rather, the Commission must be particularly attentive in its role as overseer of RFP design and implementation processes in the initial rounds of competitive bidding. If the Commission is prepared to act swiftly to resolve any potentially problematic issues as they arise, a track record can be established by which resource providers will become familiar with solicitation processes as fair and responsive to their legitimate needs. Such a track record likely will benefit competitive bidding in Hawaii.

PUC-IR-52

**All parties) Ref: CA SOP at 20.**

Competitive bidding is one [mechanism for procurement]. The others include auctions, standard offers and selection through direct negotiations as well as approaches that combine elements of these mechanisms...

- a. Should the Commission consider mechanisms like auctions, standard offers and others identified by the CA as part of this competitive bidding docket?

RESPONSE:

No, the Commission should maintain a focus on competitive bidding in this docket. Where a party demonstrates to the Commission that competitive bidding would not serve the public interest, the affected utility should be expected to propose to the Commission a method of resource acquisition that is appropriate to its specific resource needs.

- b. Identify those situations where other methods such as standard offers or direct negotiations might be appropriate alternatives to competitive bidding.

RESPONSE:

The Consumer Advocate's Statement of Position at 21 discusses the different approaches to procuring resources from competitive wholesale markets, and the circumstances under which such alternative approaches might be beneficial. Where the Commission finds that competitive bidding would not be an appropriate mechanism for acquiring needed resources, it should expect the electric utility to propose an alternate method that is consistent with best practices in the industry, its circumstances and its specific resource need.

PUC-IR-55

**(All Parties) Ref: CA SOP at 56 states.**

The Commission should ensure that a utility's RFP design and bid package materials are developed in a manner that will ensure an appropriate measure of transparency.

- a. **(CA)** Please specify the components of "appropriate measure of transparency."

RESPONSE:

Transparency refers to the degree to which the processes by which bids are evaluated and a winner selected are visible or otherwise discernable to the bidders and other stakeholders. A highly transparent solicitation would be one in which bidders would be free to sit as observers in an open meeting in which bid evaluators evaluated proposals and selected a winner. However, it is often impossible to achieve such a high degree of transparency because resource proposals typically include quantities of confidential data, and because evaluation processes frequently rely on judgment.

Ultimately, the design "components" of RFPs that ensure an appropriate measure of transparency must reflect the specific needs of a given electric utility and expectations regarding the resources to be bid in response to those needs. Importantly, the Commission can expect that a competitive bidding process designed to reflect best practices in the industry will incorporate an appropriate measure of transparency.

The Consumer Advocate notes that the FERC's emphasis on transparency in competitive bidding is presented as a "guideline" that avoids specifics regarding how transparency is to be achieved

(see the Consumer Advocate's Statement of Position at 58, citing 108 FERC ¶ 61,081). The Consumer Advocate contends that FERC's method is the best approach given the variation in resource needs that can be anticipated in Hawaii, and the fact that approaches to injecting transparency into solicitation processes may change with time.

- b. **(All Parties)** What features should be included in the RFP design and bid packages to provide enough information about the selection process so as to maximize participation by the widest possible range of bidders?

RESPONSE: The Consumer Advocate recommends that the Commission avoid prescribing design features that are to be included in the competitive bidding processes, for the reason described above. RFP processes should be designed to solicit resources that will best meet the utility's specific needs. At times, such solicitations will be broad-based. At others, the solicitations can be expected to narrowly target specific sets of suppliers.

PUC-IR-56

**(All Parties)**

a. Should the Commission have an active role in the RFP development process?

RESPONSE:

No, the Commission should defer to the electric utility and not have an active role in RFP development processes for the same reason that the Commission should not have an active role in the processes by which an electric utility might design a new substation or transmission line. Such action would introduce inefficiencies and other problems by inserting the regulatory authority into basic utility functions.

Rather, the Commission should review RFP designs to ensure that time and resources (i.e., the utility's, bidders' and ultimately ratepayers' and the Commission's) are not wasted on RFPs that contain fundamental design flaws. The Consumer Advocate observes that such approach is fully consistent with Commission oversight of other basic utility functions. In addition, the Commission should expect that each electric utility will act capably to fulfill its service obligations.

b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the drafting of the RFP? If so, who should fund the cost of the independent consultant?

RESPONSE:

It appears that the question posed seeks an opinion as to whether an independent consultant should be retained to provide input and recommendations to **both** the utility and Commission. If this

understanding is accurate, the Consumer Advocate responds in the negative. The Consumer Advocate's recommendation is that a consultant should not be responsible to **both** the utility **and** the Commission.

The electric utilities should be expected to take reasonable and prudent steps to ensure that their RFPs are appropriate to their circumstances and specific needs. At times, such consideration may require that the electric utility hire an outside consultant. On other occasions, the utility may determine that reliance on internal resources is adequate. When a utility determines that an outside consultant would improve an RFP and is able to justify the costs of retaining the consultant, the utility would be responsible for paying for the consultant's services. This approach is consistent with the approach to funding consultants hired to assist with other basic utility functions.

If parties other than the utility contend that an outside consultant is needed to improve the RFP, they should make recommendation to the Commission. Based on the support provided by the party, the Commission would then decide if there is merit to the recommendation.

The Consumer Advocate recommends against the Commission hiring independent consultants to actively participate in any resource procurement proceeding. In Hawaii, the

Commission is a judicatory body that is tasked with making decisions based upon a record of evidence that all parties are able to explore through established discovery procedures. Accordingly, where the services of an independent consultant are needed, it would be appropriate for the Consumer Advocate to hire the consultant to provide support for its presentation to the Commission. The costs to retain a consultant would be funded by the Consumer Advocate, perhaps with support from the affected utility.

- c. Should the utility independently develop the RFP (subject to approval by the Commission prior to its issuance)?

RESPONSE: Yes, the Consumer Advocate recommends that the utility develop its RFP independently and submit it to the Commission (and other IRP participants) for review. Unnecessary regulatory process may be avoided if the Commission's approval is "automatic" after some amount of time has passed. During the review period, the Commission could open a proceeding on its own motion or that of a party where problems in the design of an RFP are apparent. As discussed in the response to part (b) above, such problems may require the services of an outside consultant to improve the RFP.

- d. Should the utility hold a workshop with potential bidders and other interested parties prior to the release of the RFP, and potentially incorporate comments and suggestions into the final RFP?

RESPONSE: A "workshop" with potential bidders and other interested parties likely would benefit some competitive bidding processes, but not all. A workshop may not be necessary if, for example, a utility is preparing to issue its fifth, identical RFP for DG supplies in five years.

PUC-IR-57

**(All Parties) Ref: HREA SOP at 13; HECO-HREA-IR-11; CA SOP at 3; HECO-CA-IR-3.**

- a. Should different types of resources (e.g., renewable resources, new technologies, and traditional resources; supply-side and demand-side resources, as-available v. firm capacity resources; and distributed resources) compete through the same RFP? or

RESPONSE: The answer depends on the specific facts supporting each utility's identified need for resources. Thus, each utility should design its RFPs to suit its circumstances and specific needs. The particular resource types pursued through competitive bidding processes should be a function of a utility's needs, rather than the reverse. In some instances, different types of resources might have the potential to be successful in a particular RFP; in such case they might "compete" through the same RFP. For instance, some utilities have issued single RFPs soliciting supply- and demand-side resources. ISO New England's recent "Gap RFP" provides one such example. The basic objective was to secure resources to meet Connecticut's needs, rather than to solicit any particular type of resources.

At times, RFPs that are highly focused on specific resources might best serve the public interest. For example, a utility may have a need for additional renewable resources. In such case, a highly specific RFP that would exclude certain resource types may be issued.

- b. Should there be separate RFPs issued for different types of resources, which would all be issued simultaneously, to address a particular need? or

RESPONSE: As stated in response to part (a) above, the answer depends on the specific facts of each situation. On occasion, it may be appropriate for an electric utility to simultaneously issue separate RFPs for different types of resources to address a particular need. This approach might, for example, be adopted for a utility that has a significant need for incremental generating capacity, but where genuine questions exist regarding the degree to which needs might be met (at least in part) through cost-effective DSM measures.

- c. Should a solicitation be targeted to a particular resource for a particular need, such that there will only be one RFP issued at one time

RESPONSE: As stated in response to part (a) above, the answer depends on the specific facts of each situation. On occasion it may be appropriate to target a particular resource for a particular need.

- d. Where different types of resources compete through the same RFP, what criteria should be used to evaluate the different benefits of different resources?

RESPONSE: As indicated in the response to part (a), above, RFPs should be designed to meet the circumstances and specific needs of each utility. The review criteria should also be designed to ensure that the resource(s) selected through bid evaluation processes best

meet the utility's needs. It is the Consumer Advocate's position that evaluation criteria should be developed according to best practices in the industry. The Consumer Advocate recommends against establishing a set of criteria to evaluate the different benefits of different resources, since the evaluation criteria will depend on the specific facts supporting the identified need for resources.

- e. Discuss the benefits and drawbacks of issuing one RFP for different types of resources versus targeted solicitations that seek a particular resource?

RESPONSE: The advantages and disadvantages of different approaches to the design of competitive bidding processes can be determined only in light of the circumstances and specific needs of a given electric utility. At this juncture it is not clear that "issuing one RFP" would offer benefits over "targeted solicitations" in response to any particular resource need, unless circumstances are such that a necessary level of cost savings can be achieved.

PUC-IR-59

**(All Parties)**

- a. Who should determine what the required qualifications for bidders (e.g. creditworthiness, reputation, experience) should be?

RESPONSE:

Each electric utility should be responsible for developing its competitive bidding processes, perhaps with expert consulting assistance. This applies to bidder qualifications, as well. The utility should consider best practices in the industry in determining what the required qualifications for bidders. As with other aspects of a proposed competitive bidding process, the Commission should review the utility's proposal (e.g., to ensure that a utility that is resisting competitive options does not introduce onerous bidder qualification terms). Application of bidder qualifications should be overseen by the Commission, as would be the case for all other aspects of implementation of a Commission-approved RFP.

- b. Should the required qualifications of potential bidders be clearly outlined in the RFP?

RESPONSE:

Yes.

- c. Should a pre-qualification process be conducted on bidders before accepting bids?

RESPONSE:

A pre-qualification round may be appropriate to some competitive bidding processes, depending on the circumstances of the utility and its specific needs. However, at times pre-qualification rounds may be unnecessary (e.g., when a utility is issuing the fifth in a

series of identical solicitations in a relatively short period of time, and understands that the “same” group of bidders has indicated an interest).

d. If yes, who should pre-qualify the bidders?

RESPONSE: An electric utility should be responsible for the administration of its RFP processes. At times, best practices may dictate that an independent evaluator should be used in the pre-qualification round. However, as with other aspects of bid evaluation processes, bidder pre-qualification processes should be subject to Commission oversight.

PUC-IR-60

**(All Parties)**

- a. Should the Commission have an active role in the development of the bid evaluation criteria?

RESPONSE:

As indicated in the response to PUC-IR-56, the Commission should expect that each electric utility will act capably to fulfill its service obligations. Thus, the Commission should not have an active role in the development of bid evaluation criteria for the same reason the Commission should not have an active role in the processes by which an electric utility might establish the criteria by which to evaluate design proposals for a new substation or transmission line. Such action would introduce inefficiencies by injecting the regulatory authority into basic utility functions.

It is the Consumer Advocate's position that the Commission should review RFP designs – including proposed evaluation criteria – to ensure that time and resources (i.e., the utility's, bidders' and ultimately ratepayers' and the Commission's) are not wasted on RFPs that contain fundamental design flaws. If there is disagreement between the utility and other interested parties, the Commission could then open a proceeding to address the discussion. In such a situation, the Commission would decide on the appropriate action to take based on the merits of each party's position. Such action is fully consistent with Commission oversight of other basic utility functions.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the bid evaluation criteria? If so, who should fund the cost of the independent consultant?

RESPONSE: It appears that the question posed seeks an opinion as to whether an independent consultant should be retained to provide input and recommendations to **both** the utility and Commission. If this understanding is accurate, the Consumer Advocate responds in the negative. The Consumer Advocate's recommendation is that a consultant should not be responsible to **both** the utility **and** the Commission.

The electric utilities should be expected to take reasonable and prudent steps to ensure that their bid evaluation criteria are appropriate to their circumstances and specific needs. At times, such consideration may require that the electric utilities hire an outside consultant. On other occasions, the utility may determine that reliance on internal resources is adequate. When a utility determines that an outside consultant would improve its bid evaluation criteria and is able to justify the costs of retaining the consultant, the utility would be responsible for paying for the consultant's services. This approach is consistent with the approach to funding consultants hired to assist with other basic utility functions. If parties other than the utility contend that an outside consultant is needed to develop the bid evaluation criteria, they should make recommendation to the Commission. Based on

the support provided by the party, the Commission would then decide if there is merit to the recommendation.

The Consumer Advocate recommends against the Commission hiring independent consultants to actively participate in the course of any resource procurement proceeding. In Hawaii, the Commission is a judicatory body that is tasked with making decisions based upon the record of evidence that all parties are able to explore through established discovery procedures. Accordingly, where the services of an independent consultant are needed, it would be appropriate for the Consumer Advocate to hire the consultant to provide it support for its presentation to the Commission. The costs to retain the consultant would be funded by the Consumer Advocate, perhaps with support from the affected utility.

- c. Should the utility independently establish the bid evaluation criteria (subject to approval by the Commission prior to its issuance)?

RESPONSE: Yes, as a general matter, the Consumer Advocate recommends this approach. The bid evaluation criteria should tie closely to the objectives that the utility identified for its resource plan, and any necessary resource acquisitions. As with all facets of a proposed competitive bidding process, the bid evaluation criteria would be subject to review by the Commission. Approval of such proposals

should occur with a minimum of additional regulatory process, unless the Commission determines that a more extensive investigation of the utility's RFP design is necessary. For example, if interested parties other than the utility contend that the bid evaluation criteria requires modification, the parties would make recommendation to the Commission who will then decide on the merits of such recommendation.

- d. Should the utility hold a workshop with interested parties prior to the release of the RFP, to discuss the bid evaluation criteria so that bidders clearly understand how their bids will be evaluated?

RESPONSE: A "workshop" with potential bidders and other interested parties likely would be a beneficial feature of some competitive bidding processes, but not all. A workshop may not be necessary if, for example, a utility is preparing to issue its fifth, identical RFP for distributed generation supplies in five years.

PUC-IR-61

**(All Parties) Ref: HECO-CA-IR-12(b)states.**

Some of the important factors may include, but are not limited to, generation system reliability and capacity requirements, opportunities to secure low-cost energy, renewables requirements, emissions impacts, location, risk exposure and rate impacts.

The above response identifies certain factors that should be considered in the review of competitive bid responses. Please identify any other factors that should be considered during the review of the competitive bids.

RESPONSE:

It is the Consumer Advocate's position that the factors that should be considered in the review of competitive bid responses should not be prescribed. Rather, they should be selected in keeping with best practices in the industry and a given utility's circumstances and specific resource needs.

PUR-IR-62

**(All Parties) HECO SOP, Exhibit A, at 30 states:**

To ensure that all reasonable options are effectively considered, there should be no unreasonable restrictions on sizes and types of projects. It is generally preferable that all types of eligible projects (e.g. supply-side options) have a fair opportunity to compete. (emphasis in original)

And HECO SOP, Exhibit A, at 32 states:

4. Price-related evaluation criteria are the predominant selection criteria. Non-price criteria are used to ensure the project or portfolio is viable and feasible but price is usually the ultimate determinant.

What mechanisms, if any, are appropriate to account for the non-monetary costs or benefits of different types of resources?

RESPONSE:

Acquiring supply- and demand-side resources that will be effective in addressing Hawaii's complex future needs will require the application of non-price criteria in bid evaluation processes. Such criteria might reasonably be expected to include various quantitative and qualitative measures of sustainability, land use impacts, air emissions impacts, fuel supply diversification, generation technology type diversification, rate impacts (including rate stability impacts), bill impacts, and others.

Where selection criteria are amenable to quantification, more objective measures can be factored into bid evaluation systems. However, there likely will be some factors where bid evaluation systems will necessarily rely on subjective evaluation criteria. Determining which factors and mechanisms should be used to assess the proposals in a given evaluation process will require an assessment of the utility's circumstances and specific needs, and

consideration of the best practices in evaluation system design for such conditions.

PUC-IR-64

**(All Parties)**

a. Who should hire the Independent Consultant – the utility or the Commission?

RESPONSE: Utilities and occasionally the Consumer Advocate, rather than the Commission, should hire consultants to assist with the design and implementation of competitive bidding processes, for reasons discussed in the response to PUC-IR-56, part (b).

b. Should the Independent Consultant develop bid evaluation criteria and make a recommendation for the project award without input by the utility? [Ref. HREA Response to HECO-IR-9 at 11] Or can the input be from all parties?

RESPONSE: It appears that the question posed seeks an opinion as to whether an independent consultant should be retained to provide input and recommendations to **both** the utility and Commission. If this understanding is accurate, the Consumer Advocate responds in the negative. The Consumer Advocate's recommendation is that a consultant should not be responsible to **both** the utility **and** the Commission.

As a general matter, the Consumer Advocate anticipates that a utility would be responsible for all phases of the administration of its competitive bidding processes. In some circumstances, it may be appropriate to have the Commission approve (based on record evidence or a recommendation from some other non-utility party, such as an IRP Advisory Group) the selection of an independent consultant that might make a

recommendation for the award of a project without direct input by the utility. Specifically, an independent party should be able to evaluate proposals and recommend a winner where best practices indicate that such approach is appropriate to the circumstances of the utility and its specific needs. Such approach may be necessary where a large quantity of incremental generating capacity is needed to meet an electric company's reliability objectives, but the utility is actively advancing its own resource proposal and cannot reasonably be expected to achieve an unbiased assessment of proposals.

However, it is the Consumer Advocate's position that any party, including the utility, should have opportunity to respond to the recommendation by such independent consultant in open proceedings before the Commission.

- c. Is an Independent Consultant required for all competitive bids – or only those where a utility affiliate does not compete?

RESPONSE: An independent evaluator of proposals may be necessary when a utility (or its affiliate) is advancing its own proposal in a given RFP process. Otherwise, it is possible to envision circumstances under which a utility might be relied upon to evaluate proposals in an unbiased and effective manner. Where the utility's interest is that of a "pure buyer," it should be able to evaluate bids without bias.

PUC-IR-65

**(CA) Ref: HECO-CA-IR-61.**

- a. Please identify the Consumer Advocate's positions with respect to whether to require utility participation via an affiliate for distributed generation and for the competitive bid process. If the positions differ, describe the factors that account for, or contribute to the difference(s).

RESPONSE:

Where an electric utility has a need that must be addressed in order to ensure system reliability, the utility must put forth a proposal to meet that need, in keeping with its obligation to serve. This applies to distributed generation resources and otherwise. As a general matter, any non-utility supplier, including a utility's affiliate, should be free to participate in a competitive bidding process.

- b. Identify the potential benefits and adverse impacts of requiring utility participation via an affiliate for both distributed generation and the competitive bid process.

RESPONSE:

The benefits derive from the fact that the affiliate would likely facilitate separation of (1) those persons within the utility who may have responsibilities for the design and implementation of RFP processes from (2) those who may be actively engaged in advancing proposals in the RFP. Such approach also can facilitate the transformation of electric utilities to "wires" companies whose responsibilities lie in resource portfolio management and electricity delivery functions, but with reduced responsibilities in the generation and demand-side services functions, where well-established third-party providers offer a full range of resource options.

The downside of requiring utilities to participate through an affiliate lies in the fact that, because the affiliate (presumably) would not be subject to cost of service regulation, all new resources (from the utility's affiliate or other providers) would be acquired at market-based rates. This could be problematic if there are factors that could limit the competitiveness of new resource selections. Costs to ratepayers under "competitive bidding" could increase dramatically if, for example, the utility's affiliate controls most or all sites for new generating supplies. Absent cost-based regulation, the affiliate might price its generation supply offering at levels far above those that reflect its costs without exceeding the bid prices of competitors who must make major investments to acquire rights to sites that might support generating facilities.

The approach also gives rise to questions regarding the obligation to serve. Where a fully-developed, competitive wholesale power market exists (i.e., including liquid spot markets for power transactions), it may be reasonable to assume that needed generation supplies can be drawn from that market. This would allow a relaxation of requirements regarding a utility's obligation to provide generation service to its customers. However, absent such market as in Hawaii, it is not clear that any entity other than the utility could or should sustain an obligation to provide a generation supply to customers. In particular, it seems unlikely that

either the Commission or the utility could impose this obligation on a utility's affiliate.

PUC-IR-66

**(All Parties) Ref: CA SOP at 59; HECO-CA-IR-64.**

- a. If the Commission adopts the guidelines recommended by the Consumer Advocate, and implements these concepts, are these sufficient to ensure that a utility's participation in the competitive bid process is fair?

RESPONSE:

Generally yes, but not in all circumstances. The guidelines recommended by the Consumer Advocate are, however, sufficient to: (1) ensure that the process is reasonably competitive; and (2) are intended to strike a balance between the steps to ensure that competitive bid processes are fair and the cost of ensuring such fairness. Because the steps are limited by cost considerations, they do not guarantee fairness in bidding processes. Consider, for example, a competitive bidding framework in which, for each RFP process, the utility were expected to support the costs of a fully independent entity (e.g., selected by the Commission) whose responsibilities would include the design and implementation of the RFP, including selection and negotiation with winning bidders. Given that the utility's only involvement in the RFP process would be identifying its needs and "accepting" the results of the solicitation, it would be hard to imagine that a case could be made that the RFP was not "fair" (at least not where the utility's involvement is concerned).

However, such approach may be excessively and unnecessarily costly. Consider, for example, the cost implications of such approach for an RFP seeking to fill a need for one

megawatt of load management services, in which the utility has no “real” project at stake, but for some future combustion turbine that the utility indicates it would prefer to defer, but will build if load growth cannot be mitigated.

The Consumer Advocate recommends that the provisions adopted in a given competitive bidding process in which a utility or its affiliate would have projects under consideration should follow the recommended guidelines so as to strike a reasonable balance among the goals of: (1) ensuring fairness; (2) enabling a utility to act, if necessary to meet its service obligations; and (3) allowing a utility’s affiliate to participate much like any bidder.

b. What are the advantages and disadvantages of adopting these guidelines?

RESPONSE: The Consumer Advocate’s recommendations are important because they will encourage robust responses to utility RFPs that otherwise might suffer from low response rates if potential bidders even perceive that their proposals will not be fairly considered. The Consumer Advocate does not see any “disadvantage” in requiring that measures be taken to ensure that RFPs issued by Hawaii’s utilities will be fair. See also the response to part (a) above.

c. What other safeguards should be adopted?

RESPONSE: The Consumer Advocate has no further recommendations in this regard.

PUC-IR-67

**(All Parties) Ref: HECO-CA-IR-48 states:**

The Consumer Advocate recommends that each electric utility should be expected to design bid evaluation processes that are specific to the circumstances of each competitive solicitation, and in keeping with “best practices” in the industry.

To the extent that this approach could potentially allow a utility to tailor specific bid evaluations to favor certain bidders, what safeguards can be implemented to prevent this?

RESPONSE:

To be effective, competitive bidding processes must be tailored to each utility’s circumstances and specific needs. An RFP issued by a utility that needs to acquire additional demand-side resources to meet cost-effectiveness or policy objectives, will be different from an RFP for a utility that needs to respond to a renewable portfolios standard. Similarly, an RFP for a utility with small, localized needs that might best be met through distributed generation resources necessarily might look very different from an RFP for a large, central station generating facility.

However, various safeguards can be implemented to ensure that necessary flexibility in RFP design is not exploited to unduly favor certain resources or bidders. A “best practices” requirement can serve as one such safeguard. The Consumer Advocate anticipates that there might be various ways in which a utility might demonstrate that best practices have been achieved, that would show the Commission and affected parties that the design of an RFP is without bias. For example, a small utility with limited needs and limited (internal) resources might demonstrate that its RFP

reflects the results of a rigorous survey of RFPs issued by utility's with similar needs; that is, it could show how its proposed RFP adopts design features that are largely the same as several other RFPs that it observes to have been effective in soliciting needed resources. By contrast, a larger utility with a substantial need for incremental resources might present expert consultants with experience in RFP design and implementation in other jurisdictions to explain the essential features of a given proposal.

Encouraging IRP stakeholder groups to directly engage in resource acquisition design and implementation issues offers another mechanism to safeguard the content of RFPs. Similarly, when the Commission reviews RFPs that have been presented, in advance of issuance by a utility, the Commission should ensure that affected parties have reasonable opportunity to comment on RFP design features. The Consumer Advocate does not advocate lengthy proceedings before the Commission before an approval may be granted. However, the Commission should allow affected parties an opportunity to identify issues that may rise to the level of requiring more extensive proceedings and possibly RFP redesigns. The Commission should require more extensive proceedings if – but only if – it finds cause to believe that RFP redesign may be warranted.

PUC-IR-68

**(All Parties) Ref: HECO-CA-IR-68.**

The Consumer Advocate suggests a generic policy intended to balance the needs for “transparency” and confidentiality during the bid review process. Please provide specific suggestions on how this balance can be met.

RESPONSE:

The balance between transparency and confidentiality can and should vary from one RFP to the next depending on each utility’s circumstances and specific needs (note that this is not to say that RFPs to address certain types of needs will not become fairly standardized in time). Examples of strategies to balance transparency and confidentiality include: (1) the use of an independent monitor whose role is to oversee the utility in bid evaluation processes and publish a report to the Commission addressing bid selection (see Appendix 3 to the Consumer Advocate’s Statement of Position); (2) accommodation of Commission review proceedings to address specific allegations of problems (e.g., conducted pursuant to signed confidentiality agreements); and (3) the publication of proposals, perhaps with redactions of certain particularly sensitive information.

The Consumer Advocate has not conducted a survey of the full range of measures to balance transparency and confidentiality that could be applied in different types of solicitations. As noted in the response to PUC-IR-23, the Georgia commission recently promulgated rules to address self-dealing. However, in keeping with the FERC’s position on the matter, the Consumer Advocate

recommends against prescribing measures to balance transparency and confidentiality, as the best practices in this regard may evolve over time.

PUC-IR-69

**(All Parties) HECO-CA-IR-10.**

- a. Should bidders' track record on past projects be a factor in selection and if so, how significantly should it be weighted? What elements of the track record should be considered?

RESPONSE:

It may be appropriate to consider a bidder's track record on past projects as among either the qualification criteria or bid evaluation criteria. Aspects of a bidder's track record that may be relevant include: (1) a history of strong performance in bringing projects to fruition in a timely manner; (2) a history of poor performance in bringing projects to fruition in a timely manner; and (3) factors, such as a significant change in a bidder's circumstances, that may suggest that past performance may not be a good indicator of future performance. Making a determination regarding how to assess past performance likely will require a highly subjective decision process, because the factors that can impinge upon past and future performance are varied and complex.

Nonetheless, there may be times when consideration of bidder track records is an important part of the evaluation process. For example, if a utility has a pressing need for incremental capacity resources selecting a project with a developer that exhibits a questionable history may place system reliability at risk. Conversely, there may be times when a utility might be able to "take a chance" on a bidder that cannot establish its track record as entirely solid (such as in an RFP for new renewable or demand-side resources). A utility without a pressing reliability need

seeking to obtain renewable resources in anticipation of meeting a distant renewable portfolio standard, might decide to contract with a “new to the market” provider offering a unique approach.

The Consumer Advocate recommends that each utility consider the merits of emphasizing bidder track records in evaluating proposals, and incorporate such provisions according to its circumstances and its specific resource needs.

- b. Will according significant weight to a track record cause newer generators without track records or smaller independent companies to lose out to more established utility affiliates or large independents? Should the Commission be concerned about this impact?

**RESPONSE:** It is likely that affording significant weight to a bidder’s track record may place smaller, independent developers and those who are new to the market at a disadvantage. However, as is suggested in the response to part (a), above, at times this result may be acceptable and at others, it may not be acceptable. Whether or not to consider bidder track records and the weight to afford such criterion should be determined on a case-by-case basis.

PUC-IR-71

**(All Parties)**

a. Should the Commission have an active role in the development of the purchase agreement?

RESPONSE:

It would be unnecessary, and probably inefficient, for the Commission to play an active role in developing the purchase agreements that result from competitive bidding processes. There may also be a potential conflict since the Commission will ultimately have to approve the purchase power agreement that is negotiated. The Consumer Advocate recommends that the Commission's current approach of reviewing and approving contracts between electric utilities and PURPA Qualifying Facilities be adopted for the review of contracts that result from competitive bidding processes. Such process allows interested parties an opportunity to address the merits of individual contracts, and for the Commission to effect remedies where problems are identified.

Moreover, to the extent that best practices dictate that a "standard form" contract be developed and circulated as part of an RFP documentation package, the Commission should have an opportunity to review and receive comments on the standard form contract when it reviews the overall design of the RFP. This "pre-solicitation" review represents an opportunity to address potential problems in contract language before the RFP is issued.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the drafting of the purchase agreement? If so, who should fund the cost of the independent consultant?

RESPONSE: It appears that the question posed seeks an opinion as to whether an independent consultant should be retained to provide input and recommendations to **both** the utility and Commission. If this understanding is accurate, the Consumer Advocate responds in the negative. The Consumer Advocate's recommendation is that a consultant should not be responsible to **both** the utility **and** the Commission.

The electric utilities should be expected to take reasonable and prudent steps to ensure that purchase agreements are appropriate to their circumstances and specific needs. At times, however, such consideration may require the services of an outside consultant. In such circumstances the electric utilities would hire the outside consultant. On other occasions, the utility may determine that reliance on internal resources is adequate. When a utility determines that an outside consultant would improve the terms of a purchase agreement and is able to justify the costs of retaining the consultant, the utility would be responsible for paying for the consultant's services. This approach is consistent with the approach to funding consultants hired to assist with other basic utility functions. If parties other than the utility contend that an outside consultant is needed to improve the terms of a purchase

power agreement, they should make recommendation to the Commission. Based on the support provided by the party, the Commission would then decide if there is merit to the recommendation.

The Consumer Advocate recommends against the Commission hiring outside consultants to actively participate in the course of any resource procurement proceeding. In Hawaii, the Commission is a judicatory body that is tasked with making decisions based upon the record of evidence that all parties are able to explore through established discovery procedures. Accordingly, where the services of an independent consultant are needed, it would be appropriate for the Consumer Advocate to hire the consultant to provide it support for its presentation to the Commission. The costs would be funded by the Consumer Advocate, perhaps with support from the affected utility.

- c. Should the utility and the winning bidder independently develop the purchase agreement (subject to approval by the Commission prior to its issuance)?

RESPONSE: A utility and winning bidders in a solicitation must be free to negotiate contractual terms, in order to ensure optimal results in competitive bidding processes. Certainly some competitive bidding processes could be successfully completed using prescribed, immutable contracts. However, if the Commission acts to preclude

a utility and winning bidder from “independently developing” a purchase agreement in all cases, it is highly likely that unanticipated constraints will arise that the parties would not be able to resolve through negotiations, thus precluding compromise solutions that would benefit the public interest.

PUC-IR-72

**(All Parties)**

Should a copy of the proposed purchase agreement be included as part of the issuance of the RFP?

RESPONSE:

As a general matter, the Consumer Advocate believes that a copy of the proposed purchase agreement should be included as part of each RFP package. The actual contract that is executed must be negotiated once the winning bid is identified, as the terms of the contract may need to be revised to consider circumstances that are specific to the resource being procured.

PUC-IR-73

**(All Parties) Ref: HREA SOP at 10-11; HREA-HECO-IR-11.**

Should there be a standard model purchase agreement to be used for all purchases (with possible minor modifications), or should the purchase agreement for each new transaction be separately drafted?

RESPONSE:

The commercial terms of contracts between utilities and developers of various types of resources (e.g., demand-side measures, conventional generation supplies, wind power facilities, etc.) are becoming increasingly standardized with time. The Consumer Advocate anticipates that Hawaii's utilities will be able to find and use established contracts to serve as templates from which to develop contracts for use in competitive bidding processes. As indicated in the response to PUC-IR-71, the Commission must allow some freedom for utilities and winning bidders to negotiate specific contract terms as necessary to optimize the results of competitive bidding processes.

PUC-IR-74

**(All Parties) Ref: HECO-CA-IR-17.**

- a. To what extent should the price and non-price terms of a purchase agreement be subject to subsequent negotiation with the utility and amendment, if the changes are beneficial to both parties and the ratepayers?

RESPONSE:

While there may be times when it is appropriate to require bidders to accept a standard contract, in many solicitations (particularly those where the utility's needs are complex and the optimal result difficult to anticipate) the ability to negotiate contract terms may be essential to maximizing benefits achieved through competitive bidding. The extent to which negotiations should be permitted to result in contracts terms that vary from those in a "standard form" contract circulated with an RFP package must be determined on a case-by-case basis (in keeping with best practices, a utility's circumstance and its specific needs).

- b. What should be the conditions placed on further negotiation?

RESPONSE:

Please see the response to part (a), above.

- c. If the utility affiliate is the winning bidder, do your answers to (a) or (b) change, or are there safeguards that would allow for further negotiation with the utility?

RESPONSE:

Negotiations between a utility and an affiliate should be treated with great concern, because they cannot be expected to occur at arms length. Best practices would dictate that the opportunity for negotiations between a utility and its affiliate be minimized, and

where they do occur that a heavy burden be placed upon the utility to demonstrate that any modifications to a standard contract are in the public interest.

PUC-IR-75

**(All Parties) Ref: CA SOP at 61 states:**

...the Commission should make explicit that costs would be recoverable through rates on a "pass-through" basis if incurred through an approved contract that results from an RFP issued in response to approved competitive bidding process.

Are there any circumstances where the Commission might disallow costs resulting from an approved contract that results from an RFP and if so, what are they?

RESPONSE: It is the Consumer Advocate's position that, as a general matter, if a Commission-approved RFP resulted in a Commission-approved contract with a third-party resource provider, the terms of the contract between the utility and the provider would establish the terms of cost recovery. That is, the contract would determine that which is payable (and not payable, possibly including performance penalties and damages provisions) by the utility under the contract, which in turn would be recoverable (or not) through rates.

It is possible that a utility could be shown to have deliberately withheld important information in obtaining contract approvals, or to have otherwise acted deceitfully or imprudently in obtaining Commission approvals. In such case, cost disallowances related to a related resource acquisition contract may be possible. However, the Consumer Advocate observes that such disallowances have been rare in the history of competitive bidding to date – indeed, recovery of "stranded costs" in restructured electricity markets typically has included the full amount of contract

payment obligations. Accordingly, the Consumer Advocate anticipates that such disallowances would be rare in Hawaii.

PUC-IR-76

**(All Parties) Ref: HECO-CA-IR-19(b).**

- a. In the future, how should we evaluate to what extent the competitive bid process has been "successful" - what are the specific factors that can and should be recorded and evaluated?

RESPONSE:

Developing a meaningful, future assessment of the degree to which competitive bidding has been successful will be challenging. The reason is because assessing benefits and costs will likely require consideration of a range of quantitative **and** qualitative factors that are specific to Hawaii. The costs of procuring resources through competitive bidding processes (including regulatory review costs) may be difficult to segregate from those that would have otherwise been incurred.

As is discussed in the response to PUC-IR-2, part (b), it is difficult to conduct meaningful assessments of the degree to which consumer savings have been achieved through competitive bidding processes, because such analysis requires comparing the costs of an actual resource plan against hypothetical alternatives. Moreover, the qualitative factors that would require consideration in any effective evaluation of the "success" of competitive bidding in Hawaii are equally evasive, and may change as public policy objectives evolve. Such qualitative factors might include, for example, the degree to which competitive bidding is judged to have expanded opportunities to acquire environmentally attractive resources, and the degree to which better resource procurement

decisions are made (as may be reflected in reduced controversy regarding utility resource investments in rate proceedings). There likely would be other important factors, which would best be established at the time that the assessment is to be made.

The Consumer Advocate recommends, at least initially, that the matter be addressed at a more fundamental level. The Consumer Advocate would consider as successful those competitive bidding processes where third-party resources are identified that: (1) can be judged superior (i.e., through bid evaluation processes) to a utility's self-build" alternative, when considering all price and non-price factors that the utility identifies as relevant to such comparison; or (2) met specific public policy objectives to a degree that the utility could not have directly achieved by itself.

In short, if competitive bidding processes are well-designed and well-implemented, benefits will be achieved – by definition – whenever a third-party resource developer is identified as a winning bidder. However, even in the event that a fair competitive bid results in selection of the utility proposal, the benefit of a direct market test of the utility option will have been obtained. Stakeholders will know that there are not better opportunities available.

- b. Should we set target values for these factors, such that continuation or amendment of the competitive bid process may be contingent on meeting these target values?

RESPONSE: No, for reasons discussed above, it would likely be infeasible to set target values for determining the success of competitive bidding processes. Rather, the criteria by which individual solicitations are decided will depend on the criteria by which one determines whether Hawaii's needs are being addressed in an optimal manner. Competitive bidding processes should continue to the extent that individual solicitations are occasionally successful in cost-effectively identifying resource options that are judged superior (i.e., based on bid evaluation criteria) to utility self-build options.

- c. What is the appropriate process and time frame for review of the success of the competitive bid process?

RESPONSE: It is difficult to prescribe a process and time frame for assessing the success of competitive bidding in Hawaii. Not only are certain key factors difficult to assess, but the definition of success may change as public policy objectives continue to evolve. In keeping with the response to parts (a) and (b), above, the Consumer Advocate recommends that, at least at the outset, consideration of the results of individual competitive solicitations will offer the best view of the success of competitive bidding. If utilities fail to identify solicitation processes that represent best practices, and/or failing to identify solicitation processes that are suitable to their circumstances and

specific needs, such deficiencies should be exposed through IRP public participation processes and RFP package reviews before the Commission. Similarly, if competitive bidding fails to yield resource options that are superior to those of the utility, this will be evident in the results of the RFPs. As such, the competitive bidding processes will establish both the process for and frequency with which they can be reviewed.

PUC-IR-77

**(All Parties) Ref: CA SOP at 56 states:**

If a utility can demonstrate that it is doing a particularly good job in resource procurement, the Commission should consider an increase to its allowed return. Conversely, poor performance will require the consideration of a reduction.

- a. What criteria should be applied to determine whether a utility is doing a "good job" in competitive resource procurement?

RESPONSE:

The response depends on the specific facts of each circumstance and there are no standards that can be applied to all situations. The merits of an appropriate rate of return which considers adjustments to reward particularly good resource procurement, or penalties for poor performance will be addressed in the specific proceedings in which the utility seeks to establish a rate of return (e.g., a rate application.) Any attempt to contemplate reasons supporting a particular reward or penalty at this time would be speculative and may be misconstrued as being the basis for advancing such argument without considering all of the necessary facts that need consideration in determining a reasonable rate of return for a specific utility. Some very general examples of a utility "doing a good job" in resource procurement are as follows:

- The utility's specific needs are clearly articulated (i.e., relative to its planning objectives and existing resource portfolio) with sufficient lead time so as to preclude "emergency" resource acquisitions;
- The utility is effective in engaging stakeholders in IRP proceedings to enable them to understand its needs and actively participate in framing resource procurement processes;

- The utility's RFP designs are consistent with its circumstances and specific needs, and reflect best practices in the industry;
  - The utility is conducting its RFP processes in a reasonable manner (e.g., RFPs occur according to established schedules and the disputes that arise because of unreasonable actions by the utility are kept to a minimum);
  - Etc.
- b. What factors, such as savings or added efficiencies, would a utility have to demonstrate to qualify for an added rate of return?

RESPONSE: As with the criteria for determining when to increase or decrease the allowed rate of return, the factors that must be considered here likely will be specific to the circumstances of each utility. As the Commission is aware, there is no one rate of return that is applicable to all utilities. Thus, the Commission must use its judgment and its observations from its role in overseeing utility competitive bidding processes to determine when it is appropriate to reward a utility for its efforts to bring benefits to Hawaii.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S INFORMATION REQUESTS** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

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