DOCKET NO. 03-0372

DIVISION OF CONSUMER ADVOCACY'S ("CA")

RESPONSES TO FINAL INFORMATION REQUESTS FILED BY HREA

HREA-CA-FIR-1 **The CA discusses the following in its FSOP and Appendices:**

1. The "critical oversight role" of the Commission: [second paragraph, page 4; last bullet, page 9; second bullet, page 15; general guideline No. 3 on page 1 of Appendix F-1; Role of the Commission (guidelines Nos. 18 to 21) on pages 4 to 5 of Appendix F-1, and Ratemaking (guidelines Nos. 22 to 25) on page 5 of Appendix F-1], and
2. Related issues: [self-dealing concerns and ratepayer interests on bottom of page 23 to top of page 24; proper safeguards if there is utility participation in RFPs, last bullet, page 30; potential self-dealing in second and third paragraphs on page 35 and continuing to page 36; RFP Design guideline no. 7 (independent advisor) on page 2 of Appendix F-1; RFP Implementation guideline no. 11 (independent entity) on page 2 of Appendix F-1; and RFP Implementation discussion on page 3 of Appendix F-2].

HREA is not as convinced as the CA is that there is broad agreement on how to implement competitive bidding in Hawaii. Specifically, we don't believe there is a consensus on what the "critical oversight role" of the Commission. Thus, we are seeking the following clarifications from the CA as to the "critical oversight role" of the Commission:

1. Does the CA consider the proposed competitive bidding guidelines in Appendix F-1 (pages 4 to 5) to be the definitive "oversight role for the Commission?"

RESPONSE: No. The Commission already has a broad oversight role related to the resource procurement activities of Hawaii's Electric Utility Companies. Its existing responsibilities stem from its statutory authorities, and manifest in various activities including, for example, (1) overseeing ratemaking

practices for (and rates to recover the costs of) new resources procured by utilities, and (2) overseeing implementation of its IRP Framework. Items 18 through 21, as presented in Appendix F-1, are intended to offer a view of the supplemental activities that the Commission would have to engage to ensure that competitive bidding is successful.

Note that, as is often the case when an entity takes on new responsibilities relative to some activity, the Commission will have to establish its role in overseeing competitive bidding activities over time. This will entail an evolutionary process whereby, through experience, the Commission will learn what approaches suit it and Hawaii's market best and are most effective in promoting the efficient, effective oversight of competitive bidding processes in Hawaii. The guidelines advanced by the Consumer Advocate in its Appendix F-1 anticipate the evolutionary process that the Commission will go through.

The guidelines would establish a good point of departure for that evolutionary process. They can enable effective competitive bidding processes to be initiated without further delay. They also can accommodate refinement as the Commission develops a better

understanding of competitive bidding in Hawaii and its preferred approaches.

The Consumer Advocate emphasizes that it is not against the implementation of guidelines or rules to govern competitive bidding by the Electric Utility Companies. The Consumer Advocate recommends a limited set of guidelines for adoption by the Commission in its decision and order in this proceeding (see, e.g., the Consumer Advocate's Initial SOP at 59-60). The Consumer Advocate also has offered a set of recommended competitive bidding guidelines which it maintains should be implemented if the Commission determines that guidelines should be established in through this proceeding (see the Consumer Advocate's Final SOP, Appendix F1). The Consumer Advocate notes that competitive bidding rules have been and continue to be implemented in other jurisdictions.

However, the Consumer Advocate strongly recommends that the Commission implement competitive bidding expeditiously through its decision and order in this proceeding, rather than delay while some set of guidelines (or rules) is being optimized. Here the adage applies that "the perfect should not become the enemy of the good." There is every reason to believe that competitive bidding can

and should now be implemented in a manner that can yield benefits to Hawaii. Conversely, benefits can be lost if resource procurements occur outside of any competitive framework. The risk of lost benefits is particularly acute where the Electric Utility Companies have resource needs, or may determine to acquire new resources outside of any competitive test. Rather than expose consumers to such risks, the Commission should implement competitive bidding immediately and amend its guidelines as the need for such amendments become clear (i.e., as the Commission gains experience with competitive bidding in Hawaii's supply- and demand-side markets).

If, through such process amendments are identified that have the potential to optimize competitive bidding in Hawaii, the Consumer Advocate would support their (later) implementation. However, the established competitive bidding framework should continue to be implemented until modified by the Commission (see, also, the Consumer Advocate's Final SOP at 14).

2. Would the CA agree that some additional specification in the guidelines might be appropriate assuming the utility or its affiliate is allowed to participate in RFPs? For example, given our *over-arching concerns* about *self-dealing,* we believe:
   a. An independent evaluator *shall* be *required*, as opposed to being *optional*, when a utility affiliate is participating in a solicitation (or if the utility is approved to participate directly), reference our discussion of Model 1 on pages 12 to 15 of our FSOP?

RESPONSE: If the guidelines identified in the Consumer Advocate's Appendix F1 are implemented, additional specifications to those guidelines may become desirable as competitive bidding processes evolve and the Commission gains experience with the practice of competitive bidding in Hawaii.

In response to the example provided, the Consumer Advocate observes that some form of: (1) independent evaluation of bids received; or (2) independent review (or monitoring, if the review is conducted in "real time") of a host Electric Utility Company's actions in evaluating bids may be appropriate in many RFPs in which the utility (or its affiliate) participates as a project proponent. However, the Consumer Advocate would not make this a requirement in all instances, because there may be situations in which the cost of the independent evaluator or reviewer would exceed the economic benefits that might otherwise be achieved through a competitive solicitation process.

The Consumer Advocate accepts, for example, that it may be appropriate for an independent review to be performed where MECO or HELCO seek new generating capacity in excess of even 5 megawatts, or so. This review may be conducted in a manner appropriate to the circumstances by focusing on an audit of a few key decision points in a given resource selection process, with a goal of providing reasonable assurance that the evaluation process was not distorted. By contrast, there may be conditions under which even such an attenuated review would not be justifiable. The Consumer Advocate is not advocating any particular approach, but rather anticipates that the specific circumstances will dictate those situations in which an independent evaluator or reviewer will, and will not yield benefits. The Consumer Advocate thus recommends against any such blanket requirement at this juncture.

b. Do you agree that the PUC should *hire* the independent observer with the role as described on page 14 of our FSOP? If not, why not? For example, we do not see how an independent observer can be viewed as independent, if he is hired by and reports directly to the utility.

RESPONSE: No. See the responses to PUC-CA-IR-56 and PUC-CA-IR-60.

HREA-CA-FIR-2 On page 5, the single paragraph reads: "The above actions will support a fair, competitive bidding system that can ensure that competitive bidding achieves benefits without placing ratepayers at undue risk and can be accomplished through the following five straightforward steps:"

Please define what is meant by "undue risk" which is mentioned only once in the CA's PSOP?" We note that "undue risk" is also mentioned, but only once, in the CA's PSOP (page 61). In both cases, we don't believe "undue risk" is clearly defined, e.g., there is no discussion of potential rate impacts to consumers.

RESPONSE: Competitive bidding is a mechanism by which Electric Utility Companies can procure resources to fulfill their service obligations to their customers. As a general matter, ratepayers are expected to support the prudently incurred costs of a utility's planning and procurement processes, and the costs of the resources that it brings into its resource portfolios. Poor decisions at any point leading up to and including a resource procurement process (whether the result of error or bias on the part of decision makers) have the potential to accrue to the detriment of ratepayers, by imposing on them costs that otherwise could be avoided.

The "undue risks" that the Consumer Advocate refers to on Page 5 of its Final SOP are those associated with the potential for decisions that lead to costs that could be avoided by prudent behavior. There are always risks associated with resource procurement decisions, many of which are unavoidable (at least to some degree, for

example, fuel price run-ups). The "undue" risks are those that could be avoided and lead to unnecessary costs. Such costs can take the form of inefficient resource selection processes or the selection of resources that would fail to meet least-cost criteria. Cost disallowances, as may be implemented in rate recovery proceedings, cannot be expected to fully mitigate these adverse impacts on ratepayers. It is in this context that the Consumer Advocate recommends actions to support a fair, competitive bidding system that can bring benefits without placing ratepayers at undue risk.

HREA-CA-FIR-3 Also on page 5, the CA discusses the utility's IRP briefly, and again on page 8 (fourth bullet). HREA concurs with the CA that bidding is the preferred approach for acquiring new resources as identified in IRP. The question is at what point (s) would the competitive bidding best be applied? For example, would the CA support use of competitive bidding to select the 5-year plan, as we have recommended on page 18 of our FSOP?

RESPONSE: The Consumer Advocate maintains that competitive bidding, as with other mechanisms to secure needed resources, necessarily must be implemented during the final phases of an IRP proceeding, likely after the Commission has approved an Electric Utility Company's need forecast and other essential elements of its integrated resource plan. Unless the Commission has made findings establishing a utility's need for incremental resources, uncertainties in this regard likely will adversely affect any RFP that the utility might issue.

Once the needs that must be addressed have been established through the IRP process, the Consumer Advocate would agree that competitive bidding should be used to identify resources that would implement the 5-year Action Plan. One or more RFPs could be conducted, depending on the nature of the needs identified. Where the resource need reasonably can be filled immediately by any of a broad range of resources, a single broad-based solicitation for all resources required in the 5-year window

might occur. Under such circumstances, the RFP process effectively would serve to define the 5-year Action Plan.

However, where the identified needs are diverse, separate solicitations may be more effective. Under such circumstances, the IRP process effectively might define (at least to some degree) the types of resources to be procured, potentially through multiple RFPs. For example, one RFP might address an identified need for peaking generation in a particular locale, another might be issued related to the design and implementation of some quantity of demand-side resources, and a third might seek to secure some predetermined quantity of renewable resources. Alternately, the 5-year Action Plan may have an RFP for a certain set of resources issued immediately, with a second RFP issued at a later date, if needed (e.g., if load growth continues at some predetermined rate).

The exception to the above would be the RFP that is initiated outside of the IRP process to address some pressing reliability need (or to test the merits of a potentially attractive resource proposal submitted outside of any formal solicitation by a third-party). In such instance, the need to expeditiously address a substantial reliability problem (or attractive third-party proposal) may require immediate action

that can not be delayed until such need can be addressed in the context of a scheduled IRP proceeding. In such a situation, the RFP procurement likely would occur outside of any 5-year plan.

HREA-CA-FIR-4 The CA appears to support the position that competitive bidding may not be desirable in all some circumstances (see the third bullet on page 8). With regards to the CA's position of the presumption of competitive bidding, would the CA agree exceptions should be only on a "case-by-case" basis, as opposed to establishing a threshold based on capacity (MWs), dollar value, and technical requirements (such as repowering or expansion of existing facilities)? If not, why not?

RESPONSE: The Consumer Advocate agrees that exceptions to the competitive bidding requirement should be considered on a case-by-case basis. But, over time, a presumption might develop (e.g., for needs below 5 megawatts), so that every request for an exception is not a case of first impression.

HREA-CA-FIR-5 Referencing the last bullet on page 8, regarding "guidelines," would the CA agree with the following:

1. "Guidelines" are policies as opposed to detailed "procedures;"

RESPONSE: If "guidelines" are to be implemented, the Consumer Advocate would recommend that they contain a basic level of guidance to the Electric Utility Companies. Depending on the issues that the Commission determines should be addressed, that guidance could occur at both: (1) a broad "policy" or "principle" level; and (2) a more specific level (i.e., indicated what is to be done or how it is to be done). For example, the Consumer Advocate's guidelines in Appendix F1 range from the fairly broad "Competitive bidding is an integral part of the Commission's IRP framework," to the fairly specific "The utility shall summarize solicitation results in a report to the Commission."

2. "Guidelines" could also be considered "principles;"

RESPONSE: Please see the response to Part 1, above.

3. "Best Practices" could consist of both "guidelines" and detailed "procedures;"

RESPONSE: Best practices refers to the specific design and implementation provisions of a given solicitation process. The term "best practices" implies that those specific design

and implementation provisions should be based on the best available information from within the industry on how to structure a competitive bidding process.

The specific design and implementation provisions of a given solicitation process should reflect specific consideration of any guidelines, which again could be either broad or specific in nature. Working with the examples provided in response to Part 1, above: (1) a proposal to implement a competitive bidding procedure as a means to procure resources identified as needed through an IRP process would be a specific manifestation of the first guideline; and (2) a report on the results of an RFP process filed with the Commission would be a specific manifestation of the second.

4. It would be desirable to reach agreement on the "guidelines" for "Best Practices," subsequent to review and approval by the PUC, while the detailed "procedures" should be left to the entity or entities (utility or non-utility) implementing competitive bidding subject to the review and approval of the Commission?

RESPONSE: Best practices in the procurement of supply- and demand-side resources have been evolving, and likely will continue to evolve. As a general matter, the Consumer Advocate would not try to prescribe them. Rather, the

design and implementation plans for an RFP should be left to the utility implementing each competitive bidding process, subject to the review and approval by the Commission (which would be the final arbiter of disagreements on RFP design and implementation issues). That said, the Consumer Advocate acknowledges that any "policy level" guidelines approved by the Commission would be less susceptible to change over time. As such, an initial focus on "policy level" guidelines may be desirable (again, if guidelines are to be implemented).

HREA-CA-FIR-6 Reference the first bullet on page 10 regarding concerns about "utility self-dealing," including HECO's response to PUC-IR-23. Is the CA concurring that HECO's suggested steps are sufficient to assuage concerns about self-dealing? Specifically:

1. The utility could submit its self-build option to the Public Utility Commission one day in advance of receipt of other bids. The utility could also provide substantially the same information as other bidders. By sending its proposal to the Commission in advance other bidders would be ensure that the utility could not adjust its bid price or project structure after reviewing other proposals. We would agree that this approach could mitigate against the utility's taking advantage of information provided in other proposals. However, we do not consider this step to be persuasive by itself in preventing utility self-dealing. Would the CA agree?

RESPONSE: Yes. The Consumer Advocate agrees that: (1) in some instances, this step could help mitigate self-dealing concerns, and (2) this step likely would not be sufficient to prevent utility self-dealing in and of itself.

2. Utility Provides the same information to all bidders on a web-site at the same time. We see this proposal as a "red herring." First, the utility would have intimate knowledge of the technical, cost and other requirements well in advance of the release date of information on a web-site. Specifically, how else would they be able to prepare the information for the web-site? Thus, this step would provide other bidders with little confidence that the utility is at the same place on the ball field as the rest of the bidders at the time of the release of the information. Would the CA agree, and thus this step does little to reduce the perception of "self-dealing?"

RESPONSE: The Consumer Advocate agrees that, unless a genuine effort is made to segregate utility personnel that would be

involved in developing a response to an RFP from those who design and issue an RFP, actions to formally release "the same information" to all potential bidders "at the same time" would do little to mitigate self-dealing concerns.

3. The utility could use an independent observer or reviewer to review the solicitation process including communications with bidders, bid evaluation and selection, and contract negotiations. Again this is a "red herring," as the utility's position is that they should be the one to hire the independent observer and the observer would report to them. Thus we do not believe the independent observer could truly be considered "independent." Would the CA agree this step does little to reduce the perception of "self-dealing?"

RESPONSE: The Consumer Advocate agrees that if an "independent" observer or reviewer is hired by, and reports to the utility, it may be very difficult to overcome the perception of self-dealing. However, an independent reviewer that is funded by the utility, but which reports to a neutral third-party may be an adequate means by which to reasonably mitigate self-dealing concerns. Moreover, there are times when an independent reviewer could be hired by the utility and also could report to the utility. By way of analogy, the accounting firms that audit a firm's financial statements often operate in this context.

4. The utility could establish a separate project team to undertake the evaluation, with no team member having any involvement in the utility self-build option. This would serve to mitigate any potential bias towards the utility's own self-build option. This suggestion is at least a "pink herring." We believe the only way this step would reduce the perception of "self-dealing" would be to have an Independent Observer to ensure that the:
   a. separate project team would be tasked with *both* the preparation and evaluation of the RFP and would be *totally independent* of the "proposal and implementation" team, and
   b. utility agreed that the Observer would be *totally independent* of the utility (per our proposal for the Observer would hired by the Commission and report to the Commission).

At the moment we don't know what the utility's position would be on item (a). However, we do know they don't support item (b), and we consider this to be the more critical requirement. Thus, would the CA agree this step does little to reduce the perception of "self-dealing?"

RESPONSE: As a general matter, the Consumer Advocate agrees that the establishment of separate project teams within an organization might do little to assuage self-dealing concerns. Section III.H of the Consumer Advocate's Initial SOP contains a number of recommendations that focus on the mitigation measures intended to address self-dealing concerns.

Nonetheless, the Consumer Advocate contends that, under some circumstances, an approach that does not entail an independent reviewer or evaluator may be warranted. For example, in a solicitation involving a smaller utility with limited resources, an independent evaluator may be

undesirable. In such instances it might not be appropriate to overburden small utilities with the costs of independent agents. A reasonable approach to mitigating self-dealing concerns (i.e., without incurring costs that could exceed the potential benefits of a given RFP) could be to have the Electric Utility Company establish separate teams within its organization. One of these "separate" teams would be responsible for evaluating the various non-utility and utility proposals.

Therefore, our assessment is that only step 1 is plausible given the utility's current position and step 1 by itself does very little to reducing the perception of "self-dealing." Does the CA agree?

RESPONSE: No. As discussed above, there are other feasible approaches to mitigating self-dealing concerns.

HREA-CA-FIR-7 In the second paragraph on page 13 and the second paragraph on page 14, the CA's apparent position is that an "extensive set of formal guidelines" is not needed for competitive bidding? Given the CA's existing concerns about the critical oversight role of the Commission, as well as HREA's specific concerns about utility self-dealing, doesn't it really make sense to establish guidelines, as opposed to viewing them as desirable or optional? Is the CA, in part, concerned about the time and effort it might take to develop an "extensive set of guidelines?" Therefore, would the CA support the goal of establishing an appropriate set of guidelines in the instant docket, such as the CA's Appendix F-1 subject to review and comment from the other Parties?

RESPONSE: The Consumer Advocate has stated in its Initial SOP (at 55 and 57, respectively, that: (1) the Commission should establish its critical oversight role regarding competitive bidding practices; and (2) the Commission should define the role of the host utility vis-à-vis its own competitive bidding process. In addressing the latter, the Consumer Advocate recommends a set of "guidelines" that should be implemented relative to a utility's participation its own solicitation (Final SOP at 59-60). The Consumer Advocate recommends that these matters be addressed in a Commission order instituting competitive bidding in Hawaii in this docket. While the Consumer Advocate would not be against Commission action at some future date to clarify its role or its position on self-dealing, competitive bidding and the benefits it promises should not be delayed until that time.

The Consumer Advocate maintains that there is no reason to delay the implementation of competitive bidding and the benefits that it offers consumers. Competitive bidding previously has been implemented in Hawaii (and elsewhere) without such guidelines – it should be implemented again to address immediate resources needs in Hawaii. The Consumer Advocate contends that competitive bidding will be successfully implemented in Hawaii if the Electric Utility Companies and Commission are committed to achieving that result – whether or not guidelines are implemented. Therefore, the Consumer Advocate's position is that a more extensive set (i.e., relative to those recommended in the Final SOP at 59-60) of formal "guidelines" is not necessary.

HECO's alleged current need for reserve capacity resources may create an opportunity for the Commission to move forward immediately with competitive bidding to bring benefits to Hawaii. Apparently, HECO is not able to resolve its reliability deficiency "at least until 2009" (HECO IRP-3 Report at 1-2 in Docket 03-0253). It is possible that competitive suppliers (supply- and/or demand-side) could offer cost-effective, near-term solutions if given an opportunity. Moreover, because HECO has demonstrated

that it is not able to identify resources to meet the near-term need (as reflected in its IRP-3 Report), it need not participate in this RFP. Accordingly, the Commission should consider directing HECO to solicit near-term supplies from competitive suppliers. The Commission should establish that it will conduct timely reviews of the design and results of any such solicitation. Because HECO would not be a participant, self-dealing concerns would not arise.

HREA-CA-FIR-8 On pages 28 to 29, the CA discusses two types of circumstances under which a utility might initiate competitive bidding processes, i.e. "reliability-based" and "non-reliability-based."

1. Does the CA define "reliability-based" to mean firm capacity, while "non-reliability-based" is non-firm, e.g., "as-available" or "intermittent?"

RESPONSE: The Consumer Advocate uses the term "reliability based" to refer to a competitive resource procurement process that is motivated by a need to secure additional resources in order to preserve reliability on an electric utility's system. Typically, such RFPs would seek to secure additional capacity. Generating units that are sometimes referred to as "as-available" or "intermittent" may offer capacity to a utility's system (often at some discounted level), and therefore would contribute to system reliability.

"Non-reliability based" is used to refer to solicitations where the focus is not the acquisition of capacity to ensure reliability. An example would be solicitation of projects with the primary objective being to meet renewable energy requirements.

2. Would the CA agree that renewables, such as biomass and geothermal, have already demonstrated firm capacity in Hawaii as defined by the utility?

RESPONSE: Renewable resources can contribute to system reliability.

3. Would the CA agree that intermittent renewables, such as wind and solar, can provide reliability benefits that are currently not being recognized by the utility?

RESPONSE: As indicated in the response to Part 1, above, "intermittent" renewable resources, such as wind and solar resources, can contribute to system reliability. The Consumer Advocate has not determined whether these "intermittent" resources provide reliability benefits that currently are not being recognized by Electric Utility Companies.

4. Would the CA support further investigation and review to determine and apply the appropriate values of capacity to wind and solar that would lead to capacity payments in PURPA-style power purchase agreements (PPAs)?

RESPONSE: The Consumer Advocate has not determined whether further investigation is necessary to reasonably recognize the reliability benefits that might be contributed by different types of renewable resources.

5. Given the above (i.e., some renewables can provide firm capacity or can provide reliability benefits, and some DSM measures can off-set capacity requirements), would the CA agree that perhaps a better set of circumstances would be all-sources, supply-side (capacity and energy), renewables, and demand-side?

RESPONSE: The Consumer Advocate maintains that all resources should have opportunity to compete to fill a need identified by an

Electric Utility Company, unless there is some compelling reason to limit the solicitation. This applies where a utility needs capacity of specific types to ensure system reliability. The Consumer Advocate expects that the negotiated contract would reflect the reliability commitments represented by the bidders and would include the appropriate penalty provisions in the event the expected reliability is not achieved.

HREA-CA-FIR-9 On page 29, the CA discusses a solicitation to acquire reliability-based resources.

1. Why does the CA feel it necessary for the utility to identify a "self-build" project?

RESPONSE: Each Electric Utility Company has service obligations to its customers. These include an obligation to ensure the reliability of electricity supplies. If a utility has a reliability-based need, the issuance of an RFP to meet that need does not absolve it of this obligation. Competitive bidding processes, for a number of reasons, have the potential to fail to produce viable projects (or may produce only very expensive projects). These failures cannot always be predicted in advance. It is the Consumer Advocate's position that prudent planning requires that the potential for such failures be recognized by each Electric Utility Company, and that each utility should take reasonable steps to identify the project that it would implement to "backstop" competitive bidding processes where system reliability is at stake. Such self-build proposals should be the utility's best response to an identified need (i.e., in terms of foreseeable costs and other characteristics).

2. Isn't it sufficient to identify a resource need in IRP, and then build a set of requirements for a solicitation?

RESPONSE: Please see the response to Part 1, above.

3. If a utility is seeking to advance its project, i.e., submit its proposal in a competitive bidding solicitation, why should it anticipate rate base treatment of its costs to prepare a proposal and, if successful, to construct and operate its proposed power plant?

RESPONSE: The Electric Utility Companies traditionally have received rate base treatment of their power supply investments, in a cost-of-service context. The Consumer Advocate recommends continuation of the *status quo* for the ratemaking treatment of utility supply investments.

4. Referencing also the last sentence of the first paragraph on page 37, does the CA consider the ratebasing of utility costs to be fair and equitable, while Independent Power Producers (IPPs) must fund their proposal costs, finance their projects if successful and recover their costs from revenues obtained in their PPA?

RESPONSE: As indicated above, the Consumer Advocate views competitive bidding as a tool to bring low cost, high value projects to Hawaii's consumers. If independent power producers are not able to advance projects that are superior to those that can be advanced by the Electric Utility Companies within a framework that provides necessary consumer protections, ratepayers will benefit if a utility's proposal is pursued. However, care must be taken to ensure that what ostensibly may be viewed as consumer protections do not instead serve to give utilities an undue

competitive advantage over non-utility suppliers, to consumers' detriment.

5. Does not this approach (ratebasing utility projects) require the consumer to assume more "risk?"

RESPONSE: No. The Consumer Advocate views its recommendations as consistent with the current approach for utility projects in Hawaii. Until more experience is gained with competitive bidding in Hawaii, the Consumer Advocate likely will view "market based" rates as more onerous than other foreseeable risks (which may include increases in project development costs in a cost-of-service regime).

Moreover, the Consumer Advocate is recommending that a utility proposal be held to the same operational and performance standards that it seeks of bidders in its RFP. Not only will this ensure a measure of fairness in comparative analyses, it will improve ratepayers' position relative to the status quo.

6. Does not this approach, at some point, place "undue risk" on the consumer? Please explain your response.

RESPONSE: The Consumer Advocate recommends an approach that it expects will minimize risks to consumers while maximizing the potential benefits of competition. The Consumer

Advocate is not aware of any "risk free" approach to the procurement of necessary supply- and demand-side resources.

HREA-CA-FIR-10 The last bullet on page 29 reads: "A utility affiliate may participate in any competitive solicitation, provided that proper safeguards are in place to ensure the 'arms's length' evaluation of such solicitation. This may require that a third party either administer or closely monitor the solicitation process.

1. Who would make the decision about whether a third party is required?

RESPONSE: The Consumer Advocate views resource procurement as an integral part of IRP processes. As a general matter, it anticipates that such questions may be resolved in either: (1) the collaborative processes that precede an Electric Utility Company's IRP filing, during the review of its IRP filing, or (2) in related proceedings to establish resource procurement mechanisms (i.e., proposed RFPs). The Commission ultimately would be responsible for approving a proposed solicitation process.

2. On the other hand, why not require a third party (Independent Observer hired by the PUC) in all cases where a utility affiliate is participating, as HREA has recommended in our proposed Model 1 (pages 12 to 15 in our FSOP)?

RESPONSE: Please see the response to HREA-CA-FIR-1.2.b.

HREA-CA-FIR-11 On page 33, the first sentence of the first paragraph reads: "Where a competitive bidding process is not reliability-based, the situation is quite different." As a follow-up to HREA-CA-FIR-8, the CA appears to place a higher priority on a "reliability-based" resource compared to renewable resources needed to meet the utility's RPS. Please explain:

1. Why the situation would be quite different? For example, the utility is charged not only with meeting customer demand, but also to meet the state's RPS, and

RESPONSE: The Consumer Advocate would encourage Hawaii's Electric Utility Companies to take very seriously both charges.

2. Why wouldn't a utility backstop proposal be just important for both resource needs?

RESPONSE: Both resource needs are important. The example provided in the Consumer Advocate's Final SOP (at 29) may be misleading. There might be solicitations for renewable resources that occur: (1) outside of any reliability need; and (2) sufficiently in advance of any RFP threshold date; thus neither need is pressing. In such instance, the lack of a "backstop" would not be problematic. However, the Consumer Advocate also anticipates that it may be appropriate for a utility to develop a "backstop" proposal if its obligations vis-à-vis statutory requirements otherwise might be in jeopardy.

HREA-CA-FIR-12 In the footnote on page 34, the CA discusses briefly circumstances relating to an IPP failure (see also HECO's response to PUC-IR-33). HREA agrees that there is the possibility that an IPP selected in a competitive bidding process could fail. Has the CA considered the consequences to consumers if a utility project fails (e.g., the utility could not complete the permitting process) or a selected utility project is late?

RESPONSE: Yes. A substantial delay in, or failure of, a utility or IPP project being implemented to address a reliability-based need could be highly problematic. Reliability problems and excessive costs are among the significant risks. Note that these risks are resident in the current approach to resource procurement in Hawaii because the Commission has not to-date required a utility to identify a back-stop proposal to either a utility project or an IPP project.

HREA-CA-FIR-13 On pages 35 to 36, the CA discusses potential problems with utility participation. HREA agrees that a utility could have an advantage if it has access to a site for a new power plant, e.g., HREA understands that HECO has acquired a site in the Campbell Industrial Park for its planned next conventional generator (a 100 MW class combustion turbine). Given that and the general lack of such sites in the islands, would it not make sense for the PUC to require the utility to offer such sites to other bidders in a competitive process? By offer, we mean that the utility could offer to sell or lease the site, if it owns the site, or, if the utility does not own the site, to facilitate a sale or lease with the site owner.

RESPONSE: Benefits could be maximized in some circumstances if an Electric Utility Company were to offer a site (or sites) to the bidders in a competitive process. The Consumer Advocate has not determined whether the Commission has authority require such action of a utility. The Consumer Advocate likely would support action by a utility, or the Commission to ensure that sites are offered to bidders, if such action promises benefits to consumers.

HREA-CA-FIR-14 On pages 40 to 41, the CA discusses all-source solicitations, as well as possible specific solicitations to acquire DSM resources. The CA also notes HECO arguments that previous all-source solicitations "using the same evaluation criteria proved to be flawed." Would the CA agree with the following?

1. DSM resources can offset capacity requirements, thus contributing to reliability,

RESPONSE: The Consumer Advocate agrees that demand-side resources can offset capacity requirements and thus contribute to reliability.

2. Would the CA agree with HECO's claim that all-source solicitations "using the same evaluation criteria proved to be flawed," and

RESPONSE: The Consumer Advocate has not conducted a review of all-source solicitations in which supply-and demand-side resources were evaluated in a single RFP process using "the same" evaluation criteria.

The Consumer Advocate's position is (whether or not HECO sees flaws in past efforts to evaluate demand-side and supply-side resources using the same evaluation criteria) that where a resource need is identified, demand-side resources should be given a fair opportunity to compete against supply-side resources to fill that need. Clearly, evaluation criteria would have to be developed that would promote a fair competition between various resource types. Absent specifics regarding a utility's circumstances

and needs, the Consumer Advocate has no position regarding the details of the RFPs or evaluation processes that might achieve this objective.

3. Would the CA support the development of a solicitation methodology to provide the equitable treatment of demand-side and supply-side resources. For example, one possible methodology would be to compare demand-side and supply-side resources based on *avoided* or *delivered* capacity *and* energy. Specifically, Offerors would be required to bid prices for delivered or avoided electricity in cents/kWh (i.e., there would be not fixed capacity payments). Note: this would require the anticipated capacity payments (as applicable) to be converted to energy payments, and the utility would be required to specify when firm capacity is desired (e.g., the utility could provide an average daily load profile for each month of the year or in some other format as applicable).

RESPONSE: The Consumer Advocate recommends against prescribing a "solicitation methodology to provide the equitable treatment of demand-side and supply-side resources." The best long-term results are likely to be achieved through approaches that match the emergent specific circumstances and resource needs of each Electric Utility Company. The "one possible methodology" described in the question may not work well for dispatchable resources, which would not receive "capacity" revenues when not dispatched, even if they are fully available and thus contributing to reliability.

HREA-CA-FIR-15 In paragraph 6 on page 2 of Appendix F-1, the CA indicates that "a proposed contract should be included with each RFP."

1. What does the CA mean by "proposed contract,"

RESPONSE: Please see the response to HECO/CA FIR-5.

2. Would a winning bidder be able to sign such a contract without making any changes, e.g., just provide in the "blanks" with information about the bidder's company and its proposed facility, and the utility would be obligated to sign the completed proposed contract?

RESPONSE: The Consumer Advocate anticipates that, as a general matter, any "proposed" contract that is circulated with an RFP would be an illustration of the final contract to be signed – it should be, in essence, a contract that the utility would be willing to sign. As such, in concept the winning bidder should expect to "be able to sign such a contract without making any changes." However, the degree to which changes (i.e., as introduced by a winning bidder) to a proposed contract would be entertained should be addressed in the RFP itself, in keeping with the nature of the solicitation.

Where the objective of the RFP process is to identify the winner with which a contract would be signed, only small changes to contract terms may be permitted. Generally speaking, fundamental changes to contract rights and

obligations would not be entertained. By contrast, where the objective of the RFP process is to identify a "short list" or "award group" with which negotiations would occur (e.g., focused on optimizing a proposal relative to the requirements of a utility's system) before a final "winner" is selected, somewhat broader modifications to the proposed contract may be entertained.

3. Would the winning bidder have the right to propose modifications to the contract subject to agreement by the utility and approved by the PUC?

RESPONSE: Yes, but only if such proposed modifications are allowed, and only to the degree necessary or allowed under the terms of the RFP.

4. Would the winning bidder have the right to agree or disagree with any proposed changes to the "proposed contract" by the utility?

RESPONSE: Yes. A utility cannot impose previously undisclosed contract terms on RFP participants.

HREA-CA-FIR-16 Referencing paragraph 11 on page 2 of Appendix F-1, does the CA still believe that an independent entity can truly be "independent" if is hired by the utility and reports to the utility?

RESPONSE: It is possible that an entity that is hired by and reports to the utility would be allowed to act, and would in fact act independently of the utility. However, even under these circumstances the perception of a lack of independence could persist, which could adversely affect the results of a competitive bidding process. That said, the Consumer Advocate would not introduce a blanket restriction against such approach. It is conceivable that in some special circumstances, this approach may be desirable. Also, see the response to HREA-CA-FIR-6.3, above.

The Consumer Advocate observes that a reasonable approach may be to establish a rebuttable presumption for the use of an independent reviewer that would be hired by and report to the Electric Utility Company. Where a party can demonstrate that an independent reviewer would not be appropriate, the Commission could make such finding. Where a party can demonstrate that an independent evaluator is needed, the Commission can require such approach. Where a party can demonstrate that the independent reviewer or evaluator should report to some

entity other than the utility, the Commission also could establish this as a requirement.

HREA-CA-FIR-17 Referring to paragraph 14.a on page 3 of Appendix F-1, if the CA supports competitive bidding as a "rebuttable presumption", why would the utility need to "demonstrate that there is reason to believe that relying on the market to provide the needed resource is prudent?"

RESPONSE: The Consumer Advocate recommends that absent a showing that a competitive bidding process (i.e., as a mechanism by which to procure resources to meet a specified resource need) would not serve the public interest, a competitive solicitation should be used. Also, absent a showing that the competitive solicitation process could be expected to yield needed resources (i.e., to some reasonable degree of certainty), the Electric Utility Company would be expected to advance a backstop proposal. This combination of requirements will ensure, as a general matter, that: (1) competitive bidding processes will occur; and (2) the utility will submit a backstop proposal. Consequently, competitive markets will be tapped for resources, while minimizing the risk that RFPs do not produce needed resources (thereby exposing customers to substandard reliability levels).

HREA-CA-FIR-18 Referring to paragraph 17 on page 4 of Appendix F-1, does the CA still believe "This *may* (as opposed to *shall*) require that a third party either administer or closely monitor the solicitation process?"

RESPONSE: The Consumer Advocate continues to recommend the approach stated in Paragraph 17 on Page 4 of Appendix F-1, because there may be circumstances under which engaging a third party would not be desirable. This may be the case, for example, if the costs of engaging a third party would exceed the potential benefits to be gained through competitive bidding.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S RESPONSES TO HAWAIIAN ELECTRIC COMPANY, INC'S AND HAWAII RENEWABLE ENERGY ALLIANCE'S INFORMATION REQUESTS TO THE CONSUMER ADVOCATE ON ITS FINAL STATEMENT OF POSITION** 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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