

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)

PUBLIC UTILITIES COMMISSION)

Instituting a Proceeding to Investigate)
Competitive Bidding for New Generating)
Capacity in Hawaii.)

Docket No. 03-0372

PUBLIC UTILITIES
COMMISSION

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OPENING BRIEF OF
KAUAI ISLAND UTILITY COOPERATIVE

EXHIBIT "A"

AND

CERTIFICATE OF SERVICE

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KIUC\COMPETITIVE BIDDING\FILINGS\OPENING BRIEF\OPENING BRIEF (FINAL)(6-6-06)

**OPENING BRIEF
OF
KAUAI ISLAND UTILITY COOPERATIVE**

KAUAI ISLAND UTILITY COOPERATIVE (“KIUC”), by and through its attorneys, Morihara Lau & Fong LLP, does hereby submit its Opening Brief in this docket pursuant to Order No. 22249, filed on January 27, 2006 (“Order No. 22249”), as amended.¹

In sum, KIUC respectfully requests that the Hawaii Public Utilities Commission (“Commission”) approve and adopt in its entirety the Proposed Competitive Bidding Framework submitted by HECO, HELCO, MECO, the Consumer Advocate, and KIUC (collectively, referred to as “Stipulating Parties”) on May 22, 2006. As stated in the Stipulating Parties’ Stipulation Regarding Proposed Competitive Bidding Framework (“Stipulation”), the Stipulating Parties are in agreement that their Proposed Competitive Bidding Framework (“Stipulating Parties’ Framework”) attached to the Stipulation as Exhibit “A” is consistent with the public interest and applicable law and it, along with the

¹ As stated in Order No. 22249, the only parties in this docket are Hawaiian Electric Company, Inc. (“HECO”), Hawaii Electric Light Company, Inc. (“HELCO”), Maui Electric Company, Limited (“MECO”), the Division of Consumer Advocacy (the “Consumer Advocate”), KIUC and Hawaii Renewable Energy Alliance (“HREA”) (collectively, referred to as “Parties”). *See also*, Order No. 22366, filed on March 31, 2006; Order No. 22452, filed on May 3, 2006; and Order No. 22459, filed on May 10, 2006.

entire record in this proceeding, have addressed all of the issues stated in Prehearing Order No. 20923, filed on April 23, 2004.

Finally, KIUC recognizes that Order No. 22249, as amended, also requires the Parties' Opening Briefs to address each and every issue identified in the Commission's "Outline of Post-Hearing Questions" dated December 30, 2005 even if the issue is ultimately settled by the Parties. In that connection, Exhibit "A" attached hereto provides KIUC's responses to each of the questions to the extent deemed applicable to KIUC.

However, to ensure that KIUC's analyses, rationale and position on each of the relevant and applicable questions and issues identified in said outline are placed in the appropriate context, KIUC believes that it would be helpful to, as part of Section I, Introduction, below, initially provide the Commission with the following: (1) a brief background of KIUC and its experiences with competitive bidding prior to the initiation of this docket in 2003; (2) a brief summary of the procedural history of this proceeding that led to the submission of the Stipulation and the Stipulating Parties' Framework on May 22, 2006; and (3) a brief discussion of the Stipulation and the Stipulating Parties' Framework, which represents KIUC's current position concerning the type of competitive bidding system or process that should be developed for acquiring or building new generating capacity for the State of Hawaii ("State" or "Hawaii"), particularly on the island of Kauai.

I. INTRODUCTION

A. Brief Background of KIUC and its Experiences with Competitive Bidding

Although KIUC is a public utility under Hawaii Revised Statutes ("HRS") Chapter 269, it is also a Hawaii not-for-profit, member-owned cooperative association

formed pursuant to the provisions of HRS Chapter 421. Specifically, KIUC is an operating public utility engaged in the production, transmission, distribution, purchase and sale of electric energy on the island of Kauai. KIUC has been an operating public utility since November 1, 2002, when it purchased substantially all of the assets and assumed the operations of the Kauai Electric division of Citizens Communications Company (“Citizens”), and in connection therewith, was assigned the legislatively-granted franchise² previously held by Citizens to manufacture, sell, furnish and supply electric light, current, and power on the island of Kauai. Said transaction was approved by the Commission in Decision and Order No. 19658, filed on September 17, 2002, as amended by Decision and Order No. 19755, filed on October 30, 2002, in Docket No. 02-0060.

As stated in its Final Statement of Position, filed on August 11, 2005, KIUC, formerly Kauai Electric (“KE”), has long been a proponent of procuring competitive bids with respect to generation additions. In 1995, KE believes it was the first electric utility in Hawaii to formally complete a competitive bidding process initiated by the utility for its then-planned generation addition (a 26.4 megawatt electric generation facility) that was completed in 2002. This process resulted in a purchase power agreement between KIUC’s predecessor, KE, and Kauai Power Partners (“KPP”). KIUC believes that the competitive bidding process used for that project helped to ensure that the facility would provide both economic and reliability benefits to the utility and its customers. Under that process, KE set forth the specifications for the proposed generation project as well as the evaluation process to be used resulting in a fair and unbiased selection of bidders.

² See, Act 134, Sessions Laws of Hawaii 1961, as amended by Act 165, Session Laws of Hawaii 1967.

KIUC believes that these steps helped to ensure that competitive benefits resulted from the process and the electric utility and its ratepayers at that time were not placed at undue risk. The success of the 1995 competitive bidding process, discussed above, illustrates that Commission involvement or oversight of the process itself is not necessary at every step to ensure that competitive benefits result from the process and that ratepayers are not placed at undue risk.

In addition, as an electric cooperative borrowing money from the Rural Utilities Service ("RUS") in connection with its purchase of Kauai's electric utility in 2002 and its subsequent purchase of the abovementioned 26.4 megawatt KPP facility in 2003,³ KIUC is required by RUS to use competitive procurement to the greatest extent practical. Except under certain circumstances,⁴ KIUC must use competitive procurement for obtaining all goods and services when a RUS loan or loan guarantee is involved. In KIUC's view, the procurement of competitive bids is a natural process that has been successfully implemented in the past, and KIUC intends to continue to implement such process now and in the future, as it fits well within the framework, mission, and objectives of an electric utility cooperative. Notwithstanding the above and as discussed further below, KIUC supports the Commission's establishment of a statewide competitive bidding process in this proceeding through the approval and adoption of the Stipulating Parties' Framework.

³ KIUC's purchase of the 26.4 megawatt KPP facility was approved by Decision and Order No. 20691, filed on November 26, 2003, in Docket No. 03-0223.

⁴ For example, in cases where KIUC engages in a partnership with another entity(ies) in response to unique opportunities to provide integrated solutions to multiple issues, KIUC does not plan on using the competitive bidding system on the project level.

B. Procedural History

On October 21, 2003, the Commission issued Order No. 20583 to examine competitive bidding as a mechanism for acquiring or building new generating capacity in Hawaii. Order No. 20583 also made HECO, MECO, HELCO, KIUC and the Consumer Advocate parties to this docket and allowed interested persons or entities to file motions to intervene or participate without intervention, pursuant to Hawaii Administrative Rules ("HAR") Chapter 6-61, within 20 days of the date of such order.

On November 6, 2003, the following motions were filed: (1) Department of Business, Economic Development and Tourism's ("DBEDT") Motion to Participate without Intervention; (2) County of Kauai's ("CoK") Motion to Participate; and (3) Hawaii Renewable Energy Alliance's ("HREA") Motion to Intervene.

On November 7, 2003, Johnson Controls, Inc. ("JCI") and Pacific Machinery, Inc. ("PMI") (JCI and PMI hereinafter collectively referred to as "Hawaii Energy Services Companies") filed their joint Motion to Intervene.

On November 10, 2003, Hess Microgen, LLC ("Hess"), The Gas Company, LLC ("TGC"), and the County of Maui ("CoM") filed Motions to Intervene.

On March 3, 2004, the Commission issued Order No. 20834 granting the Motions to Intervene filed by HREA, Hawaii Energy Services Companies, CoM, Hess and TGC. Order No. 20834 also granted CoK's and DBEDT's Motions to Participate without Intervention.

On April 2, 2004, the parties and participants in the proceeding submitted their Proposed Stipulated Prehearing Order in accordance with Order No. 20834.

On April 23, 2004, the Commission issued Prehearing Order No. 20923, approving and adopting in part, and modifying in part, the April 2, 2004 Proposed Stipulated Prehearing Order which set forth the regulatory schedule and procedures to govern this proceeding.⁵

On September 22, 2004, the Commission issued Order No. 21357 approving PMI's June 30, 2004 Notice of Withdrawal and DBEDT's September 9, 2004 Notice of Withdrawal.

On December 16, 2004, the Commission issued a letter informing the remaining parties and participants in this proceeding that it intends to implement a panel hearing format substantially similar to the panel hearing format recently implemented in Docket No. 03-0371 (aka, Distributed Generation proceeding), and afforded the remaining parties and participants, jointly or independently, the opportunity to amend Prehearing Order No. 20923 for the Commission's review and approval by January 5, 2005.

On January 5, 2005, the remaining active parties and participants⁶ jointly proposed a modified procedural schedule in response to the Commission's December 16, 2004 letter for the Commission's review and approval.

On January 11, 2005, the Commission issued Order No. 21540 advising the remaining parties and participants that it is currently reviewing the joint proposal

⁵ Prehearing Order No. 20923 was further amended by Order No. 21037 issued on June 9, 2004 to address issues relating to the number of copies to be submitted to the Commission and electronic copies.

⁶ The remaining active parties and participants that submitted the joint proposal include: HECO, MECO, HELCO, KIUC, the Consumer Advocate, TGC, Hess, CoM, CoK and HREA. JCI did not submit a proposal.

submitted on January 5, 2005 and suspending any and all filings in this docket until further order by the Commission.

On January 13, 2005, the Commission issued a letter informing the remaining parties and participants in this proceeding of its alternative proposed regulatory schedule in light of the January 5, 2005 joint proposal and requested comments on the proposed dates and revisions to the issues by January 21, 2005.

On January 21, 2005, the Consumer Advocate filed proposed revisions to the Commission's January 13, 2005 alternative proposed schedule.

On January 28, 2005, the Commission issued Order No. 21575 which, among other things, approved and adopted in its entirety, the Consumer Advocate's January 21, 2005 proposed revisions to the Commission's January 13, 2005 alternative proposed schedule attached to Order No. 21575 as Exhibit "A".

On March 8, 2005, CoK submitted its Preliminary Statement of Position.

On March 14, 2005, Hess, the Consumer Advocate, HREA, KIUC, HECO, HELCO, MECO, and the CoM submitted their respective Preliminary Statements of Position.

From April 4, 2005 to June 13, 2005, the remaining active parties and participants and the Commission, via information requests, commenced their first round of discovery, particularly in connection with their Preliminary Statements of Position.

On June 20, 2005, the Commission issued Order No. 21880 approving TGC's March 14, 2005 Notice of Withdrawal.

On July 8, 2005, the Commission issued Order No. 21908 approving CoM's June 13, 2005 Notice of Withdrawal.

On August 10, 2005, the CoK submitted its Final Statement of Position.

On August 11, 2005, Hess, the Consumer Advocate, HECO, MECO, HELCO, KIUC and HREA submitted their respective Final Statements of Position.

From October 18, 2005 to November 22, 2005, the remaining active parties and participants, via information requests, commenced their final round of discovery, particularly in connection with their Final Statements of Position.⁷

On November 2, 2005, the Commission issued Order No. 22090 amending the regulatory schedule, approving Hess' September 19, 2005 Notice of Withdrawal and dismissing JCI as a party to this proceeding.

On November 29, 2005, the Commission held a prehearing conference, pursuant to HAR § 6-61-36, with representatives from HECO, MECO, HELCO, KIUC, HREA, the Consumer Advocate and CoK.

On December 1, 2005, the Commission issued Order No. 22153 setting forth, among other things, its hearing format and procedures scheduled from December 12, 2005 to December 16, 2005.

On December 7, 2005, the Commission issued Order No. 22167 approving CoK's December 6, 2005 Notice of Withdrawal.

From December 12, 2005 to December 16, 2005, the Commission held panel hearings with representatives from HECO, MECO, HELCO, KIUC, HREA, and the Consumer Advocate (aka, "Parties") participating in said hearings.

On December 30, 2005, the Commission issued a letter enclosing its "Outline of Post-Hearing Questions" that the Parties should address in their Stipulation and Post-Hearing Briefs.

⁷ Order No. 22090 issued on November 2, 2005 granted HECO's request on behalf of the remaining parties and participants to amend the regulatory schedule as it pertains to the final round of information requests, the prehearing conference and the panel hearings.

On January 27, 2006, the Commission issued Order No. 22249 amending the regulatory schedule set forth in Exhibit A of Order No. 21575, particularly as it related to the Parties' briefing schedule and oral arguments consistent with the intent of the Parties to submit a joint submission with the Commission by March 31, 2006.

On March 31, 2006, the Commission issued Order No. 22366 granting the Parties' March 24, 2006 request to modify the regulatory schedule to, among other things, extend the deadline for the Parties' Proposed Competitive Bidding Framework from March 31, 2006 to May 1, 2006 and their respective Opening Briefs from April 17, 2006 to May 8, 2006.

On May 3, 2006, the Commission issued Order No. 22452 granting in part and denying in part the Parties' May 1, 2006 request to modify the regulatory schedule.

On May 10, 2006, the Commission issued Order No. 22459 granting the Parties' May 5, 2006 request to modify the regulatory schedule. In sum, the remaining schedule of dates have been revised as follows: (1) May 22, 2006, Parties' Proposed Competitive Bidding Framework; (2) June 6, 2006, Parties' Opening Briefs; (3) June 13, 2006, Parties' Reply Briefs; and (4) June 19, 2006, Oral Arguments.

On May 22, 2006, the Stipulating Parties submitted the Stipulation along with the Stipulating Parties' Framework attached to said Stipulation as Exhibit "A," pursuant to Order No. 22249, as amended.

As discussed further below and in detail in both the Stipulation, the Stipulating Parties' Framework as well as KIUC's responses to each of the Commission's questions to the extent deemed applicable to KIUC attached hereto as Exhibit "A", KIUC believes that all of the outstanding issues pending in this proceeding

have been globally resolved through the Stipulation and the Stipulating Parties' Framework.⁸

II. SETTLEMENT AND STIPULATION RESULTING IN STIPULATING PARTIES' FRAMEWORK

Throughout this proceeding, particularly through its Final Statement of Position, filed on August 11, 2005 and during the panel hearings held the week of December 12, 2005 through December 16, 2005, KIUC expressed various positions and/or comments in connection with the numerous issues and/or concerns raised in this proceeding. Some of these positions may have differed from the remaining Parties' positions in this proceeding. Notwithstanding these differences, KIUC continues to believe, as it stated initially, that the Commission should develop a competitive bidding system for acquiring or building new generation only in those situations where it is appropriate to competitively bid for such new generation. However, KIUC requests that, as the only electric cooperative in the State, it is afforded a certain amount of discretion and flexibility by the Commission to initiate such a process for the island of Kauai. See, KIUC's Final Statement of Position, filed on August 11, 2005 ("Final Statement of Position").

⁸ Specifically, Prehearing Order No. 20923 establishes the following issues in this proceeding:

1. What are the benefits and impacts of competitive bidding?
2. Whether a competitive bidding system should be developed for acquiring or building new generation in Hawaii? If the answer is "yes", then:
 - a. How can a fair competitive bidding system be developed that ensures that competitive benefits result from the system and ratepayers are not placed at undue risk?
 - b. What are the specific competitive bidding guidelines and requirements for prospective bidders, including the evaluation system to be used and the process for evaluation and selection?
 - c. How can a fair competitive bidding system encourage broad participation from a range of prospective bidders?
3. What revisions should be made to the integrated resource planning ("IRP") process?

In connection with the above and as a result of numerous productive settlement conferences with the remaining Parties in this docket, KIUC's present position is that the Stipulating Parties' Framework, filed on May 22, 2006, represents a fair and reasonable competitive bidding system that should be adopted by the Commission in its entirety and without modification. Although KIUC recognizes that compromises were reached during these settlement conferences, it believes that the Stipulating Parties' Framework adequately addresses KIUC's concerns expressed in this proceeding at this juncture while at the same time addressing the majority of the concerns raised by the remaining Parties. Specifically and as reiterated in the Stipulation, the Stipulating Parties are in agreement of the following:

1. Their proposed resolution of all matters encompassed within Issue No. 2 of Prehearing Order No. 20923 is set forth in the Stipulating Parties' Framework;
2. The Stipulating Parties' Framework is consistent with the public interest and applicable law;
3. With respect to Issue No. 1 of Prehearing Order No. 20923, the benefits and impacts of competitive bidding have been addressed in both the written submissions, to date, and oral statements made at the December 2005 panel hearings; and
4. With respect to Issue No. 3 and as discussed below, no specific amendments are necessary to the existing Commission's "A Framework for Integrated Resource Planning" ("IRP Framework").

Stipulating Parties' Stipulation, pages 5 to 6. Consistent with KIUC's Final Statement of Position, Page 11, in response to the Commission's Issue No. 3 and as stated in the

Stipulated Parties' Framework, page 1, Section I.A.2., the competitive bidding process and the existing IRP process are integral parts to each other and specific amendments to the existing IRP Framework are not necessary to achieve this integration.⁹

Specifically, the existing IRP process should be used to initially determine whether a competitive bidding process should be used to acquire a future generation resource or a block of generation resources.¹⁰ If such a determination is made, then competitive bidding would be the preferred mechanism for acquiring such future generation resource subject to certain conditions and/or exceptions, as described in the guidelines set forth on pages 1 through 3 of the Stipulating Parties' Framework. KIUC believes that these guidelines set forth in the Stipulating Parties' Framework afford sufficient flexibility and safeguards to ensure that a cooperative utility like KIUC can meet its needs and obligations, particularly in regards to the safety and reliability of its unique system on the island of Kauai. As stated by the Commission in Order No. 20583, "competitive bidding for new generating capacity is often referred to as a wholesale market model that includes equity and efficiency considerations, encouragement of competitive generation options and new technologies, lower costs through competition, more choices, reliable supplies, and a level playing field on which all generation options could compete." Order No. 20583, page 1. KIUC believes that the Stipulating Parties' Framework promotes and encourages all of these benefits and also contains

⁹ To the extent that KIUC's oral and written submissions (e.g., analyses, rationale and supporting references) submitted to date are consistent with the Stipulating Parties' Stipulation and Framework, KIUC incorporates by reference these submissions. However, to the extent that any of these oral and written submissions including this Opening Brief are inconsistent with the Stipulating Parties' Stipulation and Framework, the Stipulating Parties' Stipulation and Framework prevails and supersedes any conflicting positions.

¹⁰ For purposes of this Opening Brief, any references hereinafter to "future generation resource" means the same as "future generation resource or a block of generation resources".

reasonable mechanisms with sufficient Commission oversight to ensure that the public interest is protected at all times.

III. CONCLUSION

For the foregoing reasons, KIUC respectfully requests that the Commission approve and adopt in its entirety and without modification the Stipulating Parties' Stipulation including the Stipulating Parties' Framework attached to said Stipulation as Exhibit "A" submitted by the Stipulating Parties on May 22, 2006. KIUC believes that the Stipulating Parties' Framework represents a fair and reasonable guide to be utilized by all stakeholders including the public.

DATED: Honolulu, Hawaii, June 6, 2006.



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COOPERATIVE

EXHIBIT "A"

Outline of Post-Hearing Questions (Exhibit "A")

I. Competitive Bidding: Mandatory or Voluntary?

A. Under what circumstances, if any, should the Commission require competitive bidding? Options:

1. Require competitive bidding in all circumstances, without exception

RESPONSE: No, KIUC's position on this matter is reflected within the competitive bidding framework attached to the Stipulation filed by KIUC, HECO and the Consumer Advocate on May 22, 2006 (hereinafter referred to as the "Stipulating Parties' Framework"). Generally, KIUC's position is that competitive bidding should not be required in all circumstances. See in particular Section I.A.3.a through I.A.3.e, Pages 1 to 3 of the Stipulating Parties' Framework (hereinafter all references to "Sections" herein refer to the applicable sections of the Stipulating Parties' Framework), for a discussion of when competitive bidding should be utilized, when it is not expected to be appropriate, as well as under what circumstances competitive bidding and the Stipulating Parties' Framework should not apply.

Specifically, KIUC believes that the ultimate determination as to whether a competitive bidding process should or should not be used to acquire a future generation resource or a block of generation resources should be made in or during the electric utility's integrated resource plan ("IRP") proceeding, in which competitive bidding should be assumed to be the preferred mechanism in such circumstances unless it is shown to be unsuitable as part of the electric utility's IRP. See Sections I.A.2 and I.A.3., Page 1.

2. Require competitive bidding in all circumstances, with the exception of one of the HECO Utilities' three pending projects

RESPONSE: No, this exception is too limited in scope. See the response to Question I.A.1 above for KIUC's position on this matter.

3. Require competitive bidding in all circumstances, with the exception of - -
- a. one or more of the HECO Utilities' three pending projects

RESPONSE:

No, this exception is too limited in scope to provide the only exception from any competitive bidding requirement. See the response to Question I.A.1 above for KIUC's position on this matter.

- b. any project for which the competitive bidding would be impractical, due to
 - (1) size
 - (2) emergency timing
 - (3) lack of developer interest
 - (4) utility expansion or repowering¹
 - (5) other factors

RESPONSE:

No, while the above factors may justify a decision not to implement competitive bidding, this situation is too limited in scope to provide the only exception from competitive bidding. See the response to Question I.A.1 above for KIUC's position as to when competitive bidding should or should not be applied. As noted in that response, the ultimate determination as to whether a competitive bidding process should or should not be used to acquire a future generation resource or a block of generation resources should be made in or during the electric utility's IRP proceeding. In making such a determination, the above factors would be relevant in justifying the electric utility's determination as to whether or not a competitive bidding process should or should not be implemented under the circumstances.

¹

The exemption here is from competitive bidding to perform the actual expansion or repowering; it is not an exemption from an opportunity to compete to supply the amount of capacity that the utility is seeking to create through the repowering or expansion.

- c. An exemption for impracticality is available only after a Commission finding based on a submission by the utility. A Commission finding of impracticality does not insulate the utility from a Commission finding that such impracticality was a result of utility imprudence.

RESPONSE:

No. A Commission finding of impracticability should not be required as the means by which an electric utility may be exempt from any competitive bidding requirement. See the response to Question I.A.1 above for KIUC's position on this matter. As referenced in that response, KIUC believes that the ultimate determination as to whether a competitive bidding process should or should not be used to acquire a future generation resource or a block of generation resources should be made in or during the electric utility's IRP proceeding. In doing so, in the event the electric utility determines that a competitive bidding process is unsuitable under the circumstances, the basis for this determination should be provided in its IRP. See in particular Sections I.A.2 and I.A.3, Page 1.

- 4. Do not require competitive bidding in any particular case, but
 - a. require utility to file explanation of each decision to use or not to use competitive bidding, and

RESPONSE:

Yes. See the responses to Questions I.A.1 and I.A.3.c above. As noted therein and consistent with the Stipulating Parties' Framework, it is KIUC's position that, when the electric utility determines that a competitive bidding process is unsuitable and thus should not be used to acquire a future generation resource or a block of generation resources, the basis for this determination should be provided in its IRP for review during that electric utility's IRP proceeding.

- b. reserve to the Commission the authority to require competitive bidding in particular cases

RESPONSE:

Yes, to the extent consistent with the guidelines proposed in the Stipulating Parties' Framework.

5. The three pending projects: showing of interest
 - a. Should the Commission require the utility to issue a request for showing of interest (i.e., a document less formal than an RFP)?

RESPONSE: **Because the three pending projects refer to only HECO's projects, KIUC does not have a position on this matter.**

- b. Assume the Commission requires the utility to issue a request for showing of interest. Assume further that one or more apparently viable respondents indicate interest. Should the Commission require an abbreviated competitive process? What elements should the process contain?

RESPONSE: **See the response to Question I.A.5 above.**

6. Leave the determination for competitive bidding of resources to the IRP process.

RESPONSE: **Yes. See the Stipulating Parties' Framework and the responses above.**

B. KIUC Exemption

1. Which of the following actions should the Commission take?

RESPONSE: **As stated in more detail in KIUC's Opening Brief, KIUC has agreed to follow the guidelines established in the Stipulating Parties' Framework at this juncture. As such, KIUC recommends that the Commission adopt the Stipulating Parties' Framework in its entirety and without modification. As stated in the Stipulating Parties' Stipulation, page 4, the Stipulating Parties' Framework "is intended to represent guidelines concerning the competitive bidding process, which guidelines are flexible enough to permit tailoring the process to specific circumstances [(e.g., KIUC's operations and role as a not-for-profit cooperative)], yet specific enough to avoid after-the-fact determinations of fundamental process matters[.]"**

KIUC is not seeking any exemption from competitive bidding requirements at the current time, and instead seeks, together with the HECO Utilities and the Consumer Advocate, to allow the Stipulating Parties' Framework to guide its competitive bidding process and decisions. Part of the reason for agreeing to this is in recognition of the condition placed on KIUC in Decision and Order No. 19658 filed on September 17, 2002 in Docket No. 02-0060, in which KIUC agreed that it would not petition the Commission nor seek or support any legislation that would have the effect of reducing or eliminating any element of existing Commission jurisdiction over KIUC through at least December 31, 2007.

Having said the above, however, it is KIUC's intention to seek some form of deregulation or partial deregulation once this restriction is removed from KIUC. At that time, KIUC would be interested in exploring to what extent, if any, it should remain regulated by this Commission, and may, at that time, seek to either be exempt from any Commission-imposed competitive bidding requirements or at least have the ability to seek partial exemptions or waivers due to its cooperative status.

2. exempt KIUC entirely from competitive bidding requirements

RESPONSE: No, not at this time. See the response to Question I.B.1 above.

3. exempt KIUC from specific features of competitive bidding requirements

RESPONSE: No, not at this time. See the response to Question I.B.1 above.

4. determine KIUC exemptions on a case by case basis

RESPONSE: Yes, to the extent further clarified or expanded in the Stipulating Parties' Framework.

5. grant no exemption to KIUC

RESPONSE: See the responses to Questions I.B.1 and I.B.4 above.

II. Establish the Type and Timing of New Generation

A. How should the Commission integrate competitive bidding with IRP?

RESPONSE: As stated in the Stipulating Parties' Stipulation, Pages 5 to 6, the Stipulating Parties are in agreement that (i) the Stipulating Parties' Framework is intended to complement the Commission's IRP Framework, (ii) in order for competitive bidding to be effectively and efficiently integrated with integrated resource planning, stakeholders must work cooperatively to identify and adhere to appropriate timelines, which may need to be expedited in certain situations, and (iii) they will work together to identify appropriate timelines in the integrated resource planning process.

1. General questions

a. Which of the following options most efficiently integrates competitive bidding and IRP?

- (1) The IRP process first identifies a preliminary preferred resource plan (including capacity, energy, timing, technologies, and other preferred attributes); then the utility or IE conducts a competitive bidding process (with the IRP-determined characteristics described in the RFP); then the selected resources become the final integrated resource plan.
- (2) The IRP determines the need for capacity and the timing of need; the RFP is developed and issued during the IRP cycle; the bids received are evaluated within the IRP process (like any utility option is normally evaluated within the IRP process); the IRP process then selects bids to be part of a preferred plan and a contingency plan; contracts are negotiated with the winning bidders.

RESPONSE: Of the two options noted above, Option No. 2 offers more efficiency benefits. However, having stated the above, KIUC believes that neither of the above two options most efficiently integrates competitive bidding with IRP. KIUC recommends, as an alternative option, that the integration

process set forth in the Stipulating Parties' Framework (Section I, pages 1 to 5) should be adopted as the option that most efficiently integrates competitive bidding with integrated resource planning.

- b. Should the Commission require the utility to establish a separate competitive procurement process for as-available renewable energy generation?

RESPONSE:

No, as stated in the Stipulating Parties' Framework (Section I.B.4, Page 4), because the competitive bidding processes may often vary by resource type, an electric utility should be allowed (rather than required) to establish a separate procurement process (such as a "set aside" or separate RFP process) to acquire as-available and/or firm capacity from renewable generating facilities.

- c. What if a resource not identified in the IRP preferred plan seeks to compete for a slot?

RESPONSE:

The Stipulating Parties' Framework addresses this particular issue as follows: (1) "Competitive bidding may be utilized by a utility outside of the IRP process, if circumstances justify such an action" (Section I.C.4, Page 5); and (2) "An evaluation of bids in a competitive bidding process may reveal desirable projects that differ from those in an approved IRP Plan. These projects may be selected if it can be demonstrated that such action would be expected to benefit the utility and its ratepayers" (i.e., KIUC's members) (Section I.C.5, Page 5).

- d. What specific amendments are necessary to the IRP framework to achieve the integration?

RESPONSE:

Consistent with the Stipulating Parties' Framework, KIUC believes that specific amendments are not necessary to the existing IRP Framework to achieve this integration. In other words, the Stipulating Parties' Framework that was agreed to and developed by the Stipulating Parties is intended to complement the

Commission's existing IRP Framework without the need for any modifications.

2. Self-Build Option
 - a. Does the utility have a legal obligation to prepare a self-build option for each competitive bid?

RESPONSE:

While an electric utility has a legal obligation to have sufficient capacity and to provide safe and reliable service to its customers, the utility does not have a legal obligation to prepare a self-build option for each competitive bid, unless the utility determines that a self-build option or parallel planning may be necessary to ensure the utility's ability to satisfy the above obligations. As stated in the Stipulating Parties' Framework (Section I.E.1, Page 6), "[i]n consideration of the isolated nature of the island utility systems, the utility may use a parallel plan option to mitigate the risk that an independent power producer ('IPP') option may fail. Under this Parallel Plan option, the utility may continue to proceed with its Parallel Plan until it is reasonably certain that the awarded IPP project will reach commercial operation, or until such action can no longer be justified as reasonable." (footnote omitted).

As noted in KIUC's response to HECO/KIUC-FIR-1, KIUC generally would not plan to submit its own bid in response to a solicitation for capacity and/or energy on its system. KIUC is a very small electric utility and does not have the staff or expertise, on its own, to develop and build large capital projects such as new electric generators. As such, it makes much more sense for KIUC to specify generation requirements in an RFP and then allow third parties to provide bids that KIUC will evaluate per established criteria mentioned in the RFP. See also KIUC's Final Statement of Position, Page 4. In connection with the above, KIUC would only plan on submitting or pursuing a self-bid option if it determines it has the ability to construct the project on its own, the self-bid option was in the best interests of its members, and/or it felt that such a self-bid option was

potentially the only mechanism (either as a direct bid or as a backstop or contingent proposal) in which KIUC could ensure or protect its ability to provide sufficient capacity and to provide safe and reliable service to its customers.

- b. Assume the utility has a legal obligation to prepare a self-build option for each competitive bid. What role should the utility's self-build option play in the competitive procurement process?

RESPONSE:

See the response to Question II.A.2.a above. See also the Stipulating Parties' Framework (specifically, Section I.E (Risk Mitigation/Contingency Planning), Pages 6 to 7, Section III.H (Fairness Provisions and Transparency), Pages 23 to 27, and Section V (Participation by the Host Utility), Pages 27 to 29.

- (1) The utility's self-build option competes directly in the competitive bidding process. Under this direct competition option, should the utility's self-build option be - -
- (a) announced in advance, in public, so competitors can try to beat it; or

RESPONSE:

KIUC's position is reflected in Section III.H.8.b, Page 26, of the Stipulating Parties' Framework, which provides that, whenever the utility or its affiliate is seeking to advance a resource proposal, the utility should submit its self-build option to the Commission one day in advance of receipt of other bids. With respect to whether the announcement or filing should be made public or confidential, this decision should be left to the discretion of the utility. However, in KIUC's situation, if an open bid process is utilized, KIUC anticipates making such announcement or filing public. On the other hand, if a closed bid process is instead utilized,

KIUC anticipates keeping such announcement or filing confidential similar to other bids unless it determines there are compelling reasons to make it public.

- (b) submitted one day in advance, in private?

RESPONSE:

See the response to subpart (a) immediately above.

- (2) The utility prepares its self-build option in parallel to the competitive bidding process, as a backstop plan. Under this backstop approach,

- (a) should the backstop plan be described in the RFP?

RESPONSE:

The backstop plan and whether it should be described in the RFP should be left to the discretion of the electric utility. For example, if the backstop plan would require the use of multiple resources to accomplish the same objectives but at a materially higher cost, then it may not be practical for the utility to disclose this backstop plan in the RFP. Describing the RFP in the backstop plan in that situation may distract a bidder from the details of the project being sought by the RFP, and may inappropriately focus the bidder's attention on the backstop plan rather than providing the lowest cost and most efficient option for the RFP project.

KIUC notes that the Stipulating Parties' Framework does not contemplate the need for the backstop, or parallel plan to be included as part of the RFP itself. As indicated in footnote 7 of the

Stipulating Parties' Framework, Page 28, a utility's parallel plan option may be entirely different from what was disclosed and proposed in the utility bid.

- (b) if a third party project is selected, at what point should the backstop plan be definitively abandoned?

RESPONSE:

As stated in the Stipulating Parties' Framework (Section I.E.1, Page 6), the utility may continue to proceed with its parallel plan until it is reasonably certain that the awarded IPP project will reach commercial operation, or until such action can no longer be reasonably justified.

- (c) if no third party project is selected, or if a third party project is selected but then fails,
 - i) must the utility proceed with the backstop plan without change,

RESPONSE:

No. See Section V (Participation by the Host Utility), Pages 27 to 29, which contemplates the need for the electric utility to periodically update its backstop plan. Such plans may include identification of certain milestones and possible steps to be taken if the milestones are not met.

- ii) or should the utility be permitted (or required) to refine its backstop plan to take into account changes in circumstances since the backstop plan was formulated?

RESPONSE:

Yes. See the response to subpart (i) immediately above.

3. Parallel planning

- a. Under what circumstances should the Commission require the utility to engage in parallel planning?

RESPONSE: See the Stipulating Parties' Framework (specifically Section I.E (Risk Mitigation/Contingency Planning), Pages 6 to 7, and Section V (Participation by the Host Utility), Pages 27 to 29).

- b. Should parallel planning be required for every selected third-party project?

RESPONSE: No. See the response to Question II.A.3.a above. Specifically, as noted in Section V.A.2.c, Page 28, the electric utility should identify a parallel plan when it deems it necessary.

- c. Should parallel planning be required for every selected utility project?

RESPONSE: No. See the response to Question II.A.3.a and II.A.3.b immediately above.

- d. At what point in the development of a selected project should parallel planning cease?

RESPONSE: It depends on the particular project. See Section V (Participation by the Host Utility), Pages 27 to 29. As stated in the Stipulating Parties' Framework (Section I.E.1, Page 6), the utility may continue to proceed with its parallel plan until it is reasonably certain that the awarded IPP project will reach commercial operation, or until such action can no longer be justified as reasonable.

- e. How should the Commission regulate this parallel planning and the associated cost?

RESPONSE: Because each islands' system is distinct, the need to regulate parallel planning should be on a case-by-case basis using the Stipulating Parties' Framework as a guide to address reliability and

ratemaking/associated cost issues. See Section V (Participation by the Host Utility), Pages 27 to 29, and Section VI (Ratemaking), Pages 30 to 31.

- (1) Should parallel planning activities be reflected in the IRP?

RESPONSE:

Yes, to the extent deemed necessary by the utility. See Section V (Participation by the Host Utility), Pages 27 to 29. Specifically, Section V.A.2, Page 28, states, in relevant part, that if the utility does not seek to advance its project (i.e., over those of other developers), the utility, if necessary, “should identify a Parallel Plan that is capable of being implemented, to the extent feasible, after an appropriate amount of planning, which may or may not be the supply-side resource or resources in the approved IRP Plan.”

- (2) Should parallel planning activities be anticipated in rate cases?

RESPONSE:

Yes. See Section VI (Ratemaking), pages 30 to 31. In particular, Section VI.B states that “costs that an electric utility incurs in taking reasonable and prudent steps to implement Parallel Plans and/or Contingency Plans shall be recoverable through a utility’s rates as part of the cost of providing reliable service to customers.”

- (3) Should the cost of parallel planning activities be deferred for consideration and recovery in subsequent rate cases?

RESPONSE:

See Section VI (Ratemaking), Pages 30-31. Specifically, see Section VI.C, Pages 30-31, concerning issues relating to ratemaking treatment of parallel planning costs.

4. Definitions

- a. Self-build option: the option created by the utility pursuant to its legal obligation to meet load. The

self-build option is submitted in the competitive bidding process.

RESPONSE: See also Section V (Participation by the Host Utility), Pages 27 to 29.

- b. Parallel planning: the development efforts which the utility conducts when an independent bidder has been selected, to protect against the risk that the selected bidder fails to perform.

RESPONSE: See also Section V (Participation by the Host Utility), Pages 27 to 29.

B. Design of Request For Proposals

1. Scope of RFPs

- a. Should the utility use a formal RFP for all of its power needs, or only for those projects exceeding a certain size?

RESPONSE: No. See the response to Question I.A.1 above, setting forth KIUC's position that competitive bidding and a corresponding formal RFP should not be required for all of the utility's power needs. See also Section I.B.1, Page 3, Section II.A.1.b, page 7, Section II.B.2, page 10, Section III.B.2, page 15, and Section III.E.2, page 19.

- b. Should the Commission require the utility to use standard offer contracts?

RESPONSE: As stated in Section III.C, Pages 17 to 18, the RFP documentation "should include proposed forms of PPA and other contracts, with commercially reasonable terms and conditions that properly allocate risks among parties in light of circumstances." See also Stipulating Parties' Framework, Section III (The Request for Proposals Process), Pages 12 to 27.

- c. Should the Commission allow the utility to choose between RFPs that target specific resources, or RFPs with broad-based eligibility requirements? Or should the Commission make this decision on a case-by-

case basis? Or should this decision be made as part of the IRP process?

RESPONSE:

The Commission should allow the utility to choose between RFPs that target specific resources, or RFPs with broad-based eligibility requirements, subject to the Commission's review of the RFP before issued, rather than having the Commission render separate decisions on a case-by-case basis. See Stipulating Parties' Framework, Section I.B.4, Page 4. Moreover, consistent with the Stipulating Parties' Framework, the IRP process is also integral on this matter. See Section I.C, Pages 4 to 5.

- d. Should the utility use a formal RFP for all of its power needs, or only for those above a certain size?

RESPONSE:

See the response to Question II.B.1.a above.

- e. Should the Commission require RFPs to seek proposals for each of the following, or leave the choice to the utility?

- (1) conventional PPA

RESPONSE:

This choice should be left to the electric utility on a case-by-case basis, subject to the Commission's review of the RFP before issued. See Section III (The Request for Proposals Process), Pages 12-27. Specifically, Section III.A.5, Page 14, provides that if an "IPP, turnkey or affiliate proposal is selected as a result of the RFP process, one or more contracts are the expected result of the process. Proposed forms of PPA and other contracts that may result from the RFP (e.g., PPA for firm capacity, PPA for as-available, turnkey contract, etc.) should be included with each RFP."

- (2) tolling agreement

RESPONSE:

See the response to Question II.B.1.e.(1) above.

(3) fuel-sharing arrangement

RESPONSE: See the response to Question II.B.1.e.(1) above.

(4) turnkey

RESPONSE: See the response to Question II.B.1.e.(1) above.

2. Pre-qualification requirements

a. Should the Commission require the utility to impose pre-qualification requirements?

RESPONSE: No, the pre-qualification requirements should not be required, but instead left to the option of the electric utility. See Section III.B, Pages 14 to 17. Specifically, see Section III.B.5 and B.6, Page 16, which states, among other things, that a “pre-qualification process may be incorporated in the design of some bidding processes, depending on the specific circumstances of the utility and its resource needs.”

b. Assume the Commission requires the utility to impose pre-qualification requirements. What pre-qualification requirements are appropriate?

RESPONSE: See the response to Question II.B.2.a above.

(1) mature technology

RESPONSE: See the response to Question II.B.2.a above. Specifically, see Section III.B.6 and 7, Page 16, which discusses threshold criteria developed by the utility.

(2) site control

RESPONSE: See the response to subpart b(1) immediately above.

(3) credit worthiness

RESPONSE: See the response to subpart b(1) immediately above.

(4) entry fee

RESPONSE: See the response to subpart b(1) immediately above.

(5) operational flexibility

RESPONSE: See the response to subpart b(1) immediately above.

3. Process for developing RFP

a. Should the Commission require the utility to develop an RFP for each competitive procurement?

RESPONSE: No. See the response to Questions I.A.1 and 1.B.1 above.

b. Should the Commission approve each RFP before issuance? [Questions relating to involvement of the IE are addressed in Part III.B below.]

RESPONSE: See Section II.B.2, Page 10, and Section III.B.4, Pages 15 to 16, for KIUC's position regarding the Commission's review process of RFPs.

c. What generic features of an RFP should the Commission require the utility to develop, and obtain approval of, prior to a competitive procurement process?

RESPONSE: See Section III.B.2, B.3, B.6, B.7, Pages 15 to 16, Section C.1, Page 17, Section E.9, Page 21 and Section H.6, Page 24, for examples of generic features that should be included in an RFP.

d. Should the Commission require the utility to develop the RFP in consultation with interested parties, or leave this decision to the utility's discretion?

RESPONSE: See Section III.B.4, Pages 15 to 16, for the description of the RFP process that may include steps involving consultation with interested parties.

- e. What procedures should the Commission require to limit appropriately the time required for Commission approval?

RESPONSE: See Section III.B.4, Pages 15 to 16, describing the timing of the RFP review process.

- (1) informal meeting with Commission or staff during the development process

RESPONSE: See the response to Question II.B.3.e above.

- (2) Commission-imposed schedule for submittal of utility drafts, parties' comments, independent entity reports and Commission approval

RESPONSE: See the response to Question II.B.3.e above.

- (3) Other

RESPONSE: See the response to Question II.B.3.e above.

4. Content of RFP

- a. Should the Commission specify any content to be included in the RFP? For example:

RESPONSE: See the response to Question II.B.3.c above.

- (1) characteristics of utility bid option

RESPONSE: See the response to Question II.B.3.e above. See also Section III.H (Fairness Provisions and Transparency), Pages 23 to 27.

- (2) information on relationship between utility and its affiliate

RESPONSE: See the response to Question II.B.3.e above. See also Section III.H (Fairness Provisions and Transparency), Pages 23 to 27.

- (3) method by which utility will weigh cost and non-cost factors and rank bidders

RESPONSE: See the response to Question II.B.3.e above. See also Section III.H (Fairness Provisions and Transparency), Pages 23 to 27 and Section III.E (Evaluation and Selection Criteria), Pages 19 to 21.

5. Definitions

- a. Standard offer contract: A form contract, created in advance by the utility and modified and approved by the Commission, which constitutes a legal offer by the utility to buy from the third party. Acceptance by the third party forms a legally enforceable mutual obligation.
- b. Pre-qualification requirement: a requirement which a bidder must satisfy to be eligible to bid.

C. Design of Purchased Power Agreement

- 1. Should the Commission require each RFP to include model agreements (modified as necessary to reflect the particular resource desired for each of the following, or should the Commission leave this choice with the utility?

RESPONSE: The Commission should not require each RFP to include model agreements. Such choice should be left to the discretion of the utility consistent with the Stipulating Parties' Framework. However, see Section III.C, Pages 17 to 18.

- a. conventional PPA

RESPONSE: See the response to Question II.C.1 above.

- b. tolling agreement

RESPONSE: See the response to Question II.C.1 above.

c. fuel-sharing arrangement

RESPONSE: See the response to Question II.C.1 above.

d. turnkey agreement

RESPONSE: See the response to Question II.C.1 above.

2. Process for developing PPA

a. Should the Commission require the utility to develop a PPA for each competitive procurement?

RESPONSE: No. See Section III.C, Pages 17 to 18.

b. Should the Commission require the utility to submit, for Commission approval, a subset of PPA provisions that can serve as model provisions?

RESPONSE: No. See Section III.C, Pages 17 to 18.

c. Assume the Commission requires the utility to submit, for Commission approval, a set of PPA provisions that can serve as model provisions. What are the PPA provisions appropriate for this treatment?

RESPONSE: See Section III.C, Pages 17 to 18.

d. Should the Commission approve each PPA before issuance? [Questions relating to involvement of the IE are addressed in Part III.B below.]

RESPONSE: See Section II.B.4, Page 10, which states, in relevant part, that the "Commission shall review and approve the contracts that result from the competitive bidding processes conducted pursuant to this [Stipulating Parties'] Framework." See also Section III.B.1.f, Page 15.

- e. Should the Commission require the utility to develop the PPA in consultation with interested parties, or leave this decision to the utility's discretion?

RESPONSE:

It should be left to the utility's discretion to develop the PPA consistent with the provisions of the Stipulating Parties' Framework. For example, see Section III.C.4, Page 18, stating, in relevant part, that to the extent permitted by the RFP, "bidders may request exceptions to the proposed contracts as part of their bids."

- f. Should the Commission review nonstandard PPA terms prior to the utility including the PPA in the RFP?

RESPONSE:

The Commission should review nonstandard PPA terms as part of its RFP review process. See Section III.C.1, Page 17, explaining that the RFP documents should include proposed forms of PPA with terms and conditions to the extent practical including provisions that may be subject to negotiation. See also Section II.B, Page 10 and Section III.B.4, Pages 15 to 16, concerning the Commission's role in reviewing the RFP.

- g. What procedures should the Commission require to limit appropriately the time required for Commission approval?

RESPONSE:

See Section III.B.4, Page 15 to 16.

- (1) informal meeting with Commission or staff during the development process

RESPONSE:

See the response to Question II.C.2.f above.

- (2) Commission-imposed schedule for submittal of utility drafts, parties' comments, IE reports and Commission approval

RESPONSE:

See the response to Question II.C.2.f above.

- (3) Other?

RESPONSE:

See the response to Question II.C.2.f above.

3. Content of PPA

What generic features of a PPA should the Commission require the utility to develop, and obtain approval of, prior to a competitive procurement process?

RESPONSE: See Section III.C (Form of Contracts), Pages 17 to 18, and Section V (Participation by the Host Utility), Pages 27 to 29.

- a. Definitions
- b. Pricing and payment schedule
- c. Quantity
- d. Duration
- e. Conditions precedent
- f. Milestones
- g. Interconnection process
- h. Force Majeure
- i. Credit, security and insurance
- j. Construction approval and dispatch rights
- k. Regulatory out
- l. Dispute resolution
- m. Defaults
 - (1) developer inability to execute PPA after selection
 - (2) development delays
 - (3) generator nonperformance
 - (4) other

- n. Remedies
 - (1) forfeiture of security deposit
 - (2) liquidated damages
 - (3) utility ownership rights
 - (4) Other

RESPONSE: See the response to Question II.C.3 above.

4. Negotiations and dispute resolution

- a. Should the Commission require the RFP to state that a bid binds the bidder if accepted by the utility?

RESPONSE: See Section II.B, Page 10, and Section IV, Page 27 for the process to be implemented if such an issue occurs.

- b. In responding to an RFP, should bidders have an opportunity to propose amendments to a model PPA?

RESPONSE: See Section III.B.4, Pages 15 to 16, for a process for interested parties or potential bidders to provide input to the draft RFP submitted to the Commission, including proposed forms of a PPA included in such draft RFP. See also, Section II.C.4, Page 18, allowing bidders to request exceptions to the proposed contracts as part of their bids.

- c. Should the Commission require the RFP to state that post-selection negotiations are permissible, but if not concluded within 60 days after selection will be resolved by the Commission based on written submissions only, pursuant to expedited procedures determined by the Commission at that time?

RESPONSE: See the response to Question II.C.4.a above.

- d. Should the Commission require competitive negotiations among short-listed bidders, subject to dispute resolution?

RESPONSE: See the response to Question II.C.4.a above.

- e. Concerning negotiations between the winning bidder and the utility, what forms of dispute resolution should the Commission allow or require?

RESPONSE: See the response to Question II.C.4.a above and Section IV (Dispute Resolution), Page 27.

D. Selection Process

- 1. Regarding the choice between “open” and “closed” bidding, should the Commission - -
 - a. prohibit “open” bidding and require “closed” bidding?

RESPONSE: See the response to Question II.D.1.c below.

- b. Require “open” bidding and prohibit “closed” bidding?

RESPONSE: See the response to Question II.D.1.c below.

- c. Leave the choice with the utility?

RESPONSE: Yes. However, as noted in the Stipulating Parties’ Framework, it is generally anticipated that a closed bidding process will be used. See Section II.H.3, Page 23.

E. What Time Frame Should Apply to the Competitive Bid Process?

- 1. Should competitive bidding rules or framework include deadlines for the completion of each stage in the process?

RESPONSE: As stated in Section III.A.3, Page 13, “[c]ompetitive bidding should be structured and implemented in a flexible and efficient manner that promotes electric utility system reliability by facilitating the timely acquisition of needed resources and allowing the utility to adjust to changes in circumstances.” In any event, under Section II.B.4, Page 10, the Commission is allowed to “establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.”

2. Should these deadlines apply to Commission approvals as well as to utility and bidder actions?

RESPONSE: See the response to Question II.E.1 above. See also Section III.B, Pages 14 to 17, which sets forth certain timeframes.

3. What would be reasonable deadlines for each step in the competitive bidding process?

RESPONSE: See the response to Question II.E.1 above. See also Section III.B, Pages 14 to 17, which sets forth certain timeframes.

III. Assure Even-Handed Competition Between Utility and Independent Generators

A. Utility Participation as Generation Competitor

1. Does the utility's service obligation require it to - -
 - a. determine the need for new resources

RESPONSE: Yes. See Section I (Context for Competitive Bidding), Pages 1 to 3, Section II.A (Role of Electric Utility), Pages 7 to 9, and Section III (The Request for Proposals Process), Pages 12 to 27. In general, an electric utility has a legal obligation to have sufficient capacity and to provide safe and reliable service to its customers, and in that connection, similarly has the obligation to take those steps deemed reasonably necessary and/or prudent to ensure that it complies with this legal obligation.

- b. validate each bidder's ability to serve

RESPONSE: Yes. See the response to Question III.A.1.a above.

- c. determine the operating flexibility necessary for a generating unit to fit reliably and economically into the utility's generation portfolio

RESPONSE: Yes. See the response to Question III.A.1.a above.

- d. determine the maintenance scheduling necessary for a generating unit to fit reliably and economically into the utility's generation portfolio

RESPONSE: **Yes. See the response to Question III.A.1.a above.**

- e. determine the interconnection facilities and transmission upgrades necessary to accommodate new generation

RESPONSE: **Yes. See the response to Question III.A.1.a above.**

- f. offer a self-build option in any competitive bid process

RESPONSE: **No. See the response to Question II.A.2.a above. See also Section V (Participation by the Host Utility), Pages 27 to 29.**

- g. manage the RFP process, including

RESPONSE: **Yes, to the extent reasonably necessary for the electric utility to ensure that the RFP process will assist or at least not be a detriment to its ability to satisfy its legal obligation to have sufficient capacity and to provide safe and reliable services to its customers.**

- (1) designing the RFP documents, including the PPA's;

RESPONSE: **See the response to Question III.A.1.g above.**

- (2) establishing evaluation criteria;

RESPONSE: **See the response to Question III.A.1.g above.**

- (3) communicating with bidders;

RESPONSE: **See the response to Question III.A.1.g above.**

- (4) evaluating the bids and selecting the winners;

RESPONSE:

See the response to Question III.A.1.g above.

- (5) negotiating PPAs

RESPONSE:

See the response to Question III.A.1.g above. See also the response to Question III.A.1.a above.

2. Utility self-build option

- a. For each resource need, should the Commission require the utility to present a self-build option?

RESPONSE:

No. See Section V (Participation by the Host Utility), Pages 27 to 29. See also the response to Question II.A.2.a above regarding KIUC's limited size and resources that would make presenting a self-build options difficult or impractical in many circumstances.

- b. Assume that for each resource need, the Commission will require the utility to present a self-build option. Which of the following choices are appropriate role for the self-build option?

RESPONSE:

All of the choices noted below.

- (1) a bid to be evaluated like any other bid, submitted confidentially one day ahead of deadline

RESPONSE:

See Section III.H.8.b, Page 26, stating, in relevant part, that the "utility should submit its self-build option to the Commission one day in advance of receipt of other bids, and provide substantially the same information in its proposal as other bidders[.]" See also Section III.H.10, Page 27 and the response to Question II.A.2.b.(1)(a) above.

- (2) a backstop proposal, to be utilized only if a winning project fails, regardless of whether the

winning project's cost exceeds the backstop's cost

RESPONSE:

See Section V.C, Pages 28 to 29.

- (3) a benchmark proposal, announced and described in detail at the time of the RFP, such that a non-utility bid must better the utility's benchmark to be considered

RESPONSE:

See Section III.B.2, Page 15, stating, in relevant part, that the "RFP should identify any unique system requirements and provide information regarding the requirements of the utility, important resource attributes, and criteria used for the evaluation."

- (4) other

RESPONSE:

See the response to Question III.A.2 above.

- c. Are there any circumstances under which the Commission should exempt the utility from identifying a self-build option?

RESPONSE:

Yes. KIUC believes that the Commission should not require a utility to identify a self-build option, especially in KIUC's situation. Instead, the decision as to whether to identify a self-build option should be made by the electric utility on a case-by-case basis. As stated in the response to Question II.A.2.a above, KIUC generally does not plan to submit its own bid in response to a solicitation for capacity and/or energy on its system. KIUC is a very small electric utility and does not have the staff or expertise, on its own, to develop and build large capital projects such as new electric generators. As such, it makes much more sense for KIUC to specify generation requirements in an RFP and then allow third parties to provide bids that KIUC will evaluate per established criteria mentioned in the RFP. See also KIUC's Final Statement of Position, Page 4. In connection with the above, KIUC would only plan on submitting or pursuing a self-bid option if

it determines it has the ability to construct the project on its own, the self-bid option was in the best interests of its members, and/or it felt that such a self-bid option was potentially the only mechanism (either as a direct bid or as a backstop or contingent proposal) in which KIUC could ensure or protect its ability to provide sufficient capacity and to provide safe and reliable service to its customers.

d. Structural separation issues

- (1) Assume that (a) the Commission will mandate that the utility offer a self-build option; (b) the Commission will require the self-build option to come from the utility rather than a utility affiliate; and (c) an independent observer will monitor, and certify the appropriateness of, each stage in the competitive bidding process.

RESPONSE:

See the responses below.

- (2) Should the Commission require an arms-length relationship between (a) the utility staff running the competitive bid process and (b) the utility staff preparing the self-build option?

RESPONSE:

Yes. However, the utility should have the discretion to decide on a case-by-case basis what steps are necessary and prudent to avoid self-dealing in both fact and perception. See, Section III.H.8, Page 25, which provides that, where the electric utility is responding to its own RFP, “the utility will take additional steps to avoid self-dealing in both fact and perception.” Examples of steps that the electric utility may take are set forth in Section III.H.8.c, Page 27, which states, in relevant part, that “the utility may establish internally a separate project team to undertake the evaluation, with no team member having any involvement with the utility self-build option,” and Section III.H.8.a, Page 26, which provides that the utility should develop and follow a procedures manual

that describes, among other things, the protocols for communications with bidders, the self-build team and others. See also generally Section III.H (Fairness and Transparency), Pages 23 to 27.

(3) Assume the Commission will require an arms-length relationship between (a) the utility staff running the competitive bid process and (b) the utility staff preparing the self-build option. What structural measures are necessary to create this arms-length relationship? Consider all of the following, plus other appropriate measures:

(a) There must be a written code of conduct signed by all employees involved, which code assures that there is no special treatment or advantage granted to the self-build project.

RESPONSE:

See the response to Question III.A.2.d.(2) above. Section III.H.8.b.(ii), Page 26, states that “the utility should develop and follow a Code of Conduct, and may implement appropriate confidentiality agreements prior to issuance of the RFP to guide the roles and responsibilities of utility personnel[.]”

(b) The self-build bid team and RFP evaluation team must be in different buildings, with neither having access to the others building

RESPONSE:

See the response to Question III.A.2.d.(2) above. Having said the above, however, the above protection may not be practical in many situations, especially given KIUC’s smaller size, essentially single location and employee base.

- (c) There is a prohibition on any oral or written contacts during the RFP/bid evaluation process between the utility's employees preparing the self-build option and the utility's employees on the bid evaluation team, other than contacts authorized by the Code of Conduct and the RFP.

RESPONSE:

See the response to Question III.A.2.d.(2) above. Section III.H.8.a.(iii), Page 26, states, in relevant part, that "the utility should develop and follow a Procedures Manual, which describes (1) the protocols for communicating with bidders, the self-build team, and others[.]"

- (d) All bid information must be maintained on a separate computer system to which no employee of the self-build team has access

RESPONSE:

See the response to Question III.A.2.d.(2) above.

- (e) Any requests for clarification of the RFP be in writing, with the request and the utility's response immediately posted to the RFP website and served by email on every other party that has indicated an interest in responding to the RFP.

RESPONSE:

See the response to Question III.A.2.d.(2) above. For example, Section III.H.8.a.(ii), Page 26, states, in relevant part, that "the utility should establish a website for disseminating information to all bidders at the same time[.]"

- (f) A company officer must have explicit, written authority and obligation to enforce the code of conduct. Such

officer shall certify, by affidavit, Code compliance by all employees.

RESPONSE: **See the response to Question III.A.2.d.(2) above**

3. Utility affiliate participation

- a. Assume the Commission will not require the utility to use an affiliate for the utility's self-build obligation. These questions explore the extent to which a utility affiliate may participate in the bidding as a third-party competitor.

RESPONSE: **See the responses below.**

- b. What are the limits, if any, on the Commission's authority to permit, prohibit or condition a utility affiliate's participation in a competitive bid?

RESPONSE: **The extent of the Commission's authority is governed and established by HRS Chapter 269 including, but not limited to, HRS § 269-7.**

- c. Assume the Commission has legal authority to permit, prohibit or condition a utility affiliate's participation.

RESPONSE: **See the response below in part d.**

- d. Should the Commission permit a utility affiliate to bid?

RESPONSE: **Yes, particularly since a utility affiliate is not a regulated entity subject to the jurisdiction of the Commission under HRS Chapter 269.**

- e. Assume the Commission will permit a utility affiliate to bid, provided there is a code of conduct. What elements should the code contain?

RESPONSE: **See the response to Question III.A.2.d.(2) above.**

- f. What changes are necessary, in the relationship between the affiliate and the HECO utilities, to make the relationship arm's-length?

RESPONSE: Not applicable for purposes of KIUC, and KIUC has no position on this matter.

- 4. Access to generating sites
 - a. Where the Commission has determined that a particular site has unique attributes that are competitively significant, such that denial of bidder access will impede effective competition, should the Commission require the utility to make its undeveloped generation sites available to bidders?

RESPONSE: No, the utility, as the owner of the site, should have the option to decide whether it will make available a particular site to bidders, after weighing many factors such as other possible and future uses of the site as well as safety, privacy, security, reliability and liability considerations. See Section II.A.3 and 4, Pages 8 to 9, which states, among other things, that the “utility may choose to offer one or several utility-owned and/or controlled sites to bidders in a competitive bidding process.” As stated in Section II.A.4.c, Page 9, examples of why it may be beneficial for the utility to maintain site control may include, but not limited to, the following: (i) to ensure power generation resources can be constructed to meet system reliability requirements, (ii) to retain flexibility for the utility to perform crucial parallel planning for a utility owned option to backup the unfulfilled commitments, if any, of third-party generation developers, and (iii) to retain the flexibility for the utility to acquire the unique efficiency gains of combined-cycle conversions and repowering projects of existing utility simple-cycle combustion turbines and steam fired generating facilities, respectively.

- b. Assume the Commission requires the utility to make its undeveloped generation sites available to bidders.
 - (1) Should the price be book cost or market value?

RESPONSE: The price should be market value.

- (2) If market value, assume the Commission finds that negotiations between the utility and the bidder will not be productive due to the utility's control of a competitively significant site. What will be the most efficient process for determining the price?

RESPONSE:

See Section IV (Dispute Resolution Process), Page 27.

- (3) If market value, what should be done with the gain if market value exceeds book?

RESPONSE:

In the case of KIUC, a member-owned electric cooperative, any gain on the sale would effectively be allocated to KIUC's members through any net margins and the associated impacts it would have on the members' respective patronage capital accounts and credits.

- (4) What actions should the Commission take to minimize or eliminate the following problems?

RESPONSE:

See the responses below.

- (a) reduction in the utility's ability to carry out parallel planning

RESPONSE:

The Stipulating Parties' Framework provides a sufficient means to protect against a reduction in the utility's ability to carry out parallel planning. See Section IV.B, Page 30, which states that the costs "an electric utility incurs in taking reasonable and prudent steps to implement Parallel Plans and/or Contingency Plans shall be recoverable through a utility's rates as part of the cost of providing reliable service to customers."

- (b) risk that the utility would incur liability risk associated with the bidder's option

RESPONSE:

In order to allow the utility to protect itself from liability risks associated with a bidder's option, the Commission should not place any undue restrictions on the utility's ability or decision to pursue either parallel or contingency planning. An example of an undue restriction would be limiting the utility's ability to recover reasonable and prudent costs associated with its parallel or contingency planning efforts. See also the response to Question III.A.4.b.(4)(a) above.

(c) other

RESPONSE:

See the responses to Question III.A.4.b.(4)(a) and (b) above.

(5) Should competitive bidding of utility sites be limited to turnkey projects?

RESPONSE:

No. See Section I.A.3, page 1. See also Section I.B.2, page 3, which states that competitive bidding "should enable the comparison of a wide range of supply-side options, including power purchase arrangements, utility self-build options and turnkey arrangements (i.e., build and transfer options)."

5. Access to transmission

a. Should the Commission require a written policy on procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders, and between independent bidders and the utility's self-build option?

RESPONSE:

KIUC believes that this issue has been already addressed and resolved in Docket No. 03-0371 (aka, Distributed Generation Docket). Specifically, Decision and Order No. 22248, filed on January 27, 2006, in Docket No. 03-0371, requires each utility to establish a non-

discriminatory interconnection policy, by proposed tariff for approval by the Commission, that entitles distributed generation to interconnect when it can be done safely, reliably, and economically. This includes developing a standardized interconnection agreement, by proposed tariff for approval by the Commission, to streamline the distributed generation application review process and eliminate long lead times that may lead to cancellation of a beneficial project.

- b. Assume the Commission will require a written policy on procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders, and between independent bidders and the utility's self-build option. What elements should the policy contain? Consider:

RESPONSE:

See the response to Question III.A.5.a above.

- (1) advance identification of zones reflecting different levels of interconnection cost and transmission upgrade cost

RESPONSE:

See the response to Question III.A.5.a above.

- (2) a formal queuing process that ensures nondiscriminatory treatment of all requests for interconnection, upgrades and studies there of

RESPONSE:

See the response to Question III.A.5.a above.

- (3) a means of minimizing the cost of studies by bundling different requests into a single study

RESPONSE:

See the response to Question III.A.5.a above.

- (4) information about capacity, operations, maintenance and expansion plans relating to the transmission and distribution system?

RESPONSE: See the response to Question III.A.5.a above.

(5) Other

RESPONSE: See the response to Question III.A.5.a above.

c. What form should the Commission's requirement take? Consider:

RESPONSE: See the response to Question III.A.5.a above.

(1) Commission-issued rules

RESPONSE: See the response to Question III.A.5.a above.

(2) utility tariff

RESPONSE: See the response to Question III.A.5.a above.

(3) Commission-issued framework

RESPONSE: See the response to Question III.A.5.a above.

(4) other

RESPONSE: See the response to Question III.A.5.a above.

d. Should interconnection costs (costs necessary to interconnect the generator with the utility's transmission system) be assigned directly to the generator, and therefore not affect cost comparisons among the bids?

RESPONSE: Yes. This is consistent with Hawaii Administrative Rules Chapter 6-74.

e. What treatment should the Commission require for transmission upgrade costs? Consider these possibilities:

RESPONSE:

Consistent with the response to Question III.A.5.d above, transmission upgrade costs should be generally borne by the cost causer. In other words, if the generator that interconnects with the utility's transmission system directly causes the utility to upgrade its transmission system, such costs should be paid by said generator. However, if the upgrades caused by the generator's interconnection also provides cost or reliability benefits to the utility's customers, then a different ratemaking treatment should be considered to ensure that the costs of such upgrades are allocated fairly between the cost causer and other beneficiaries of the upgrades (i.e., the ratepayers). See generally Section VI (Ratemaking), Pages 30 to 31. As it pertains specifically to KIUC, determining such ratemaking treatment may be premature until the overall ratemaking process for electric cooperatives like KIUC can be determined. See the response to Question I.B.1

- (1) the upgrade would never have been built for utility system purposes, and - -
 - (a) provides no cost or reliability benefit to the utility's customers

RESPONSE:

See the response to Question III.A.5.e above.

- (b) does provide cost or reliability benefit to the utility's customers

RESPONSE:

See the response to Question III.A.5.e

- (2) upgrade would have been built for utility system purposes, five years later than the IPP in-service date; and, during the five-year wait - -
 - (a) provides no cost or reliability benefit to the utility's customers

RESPONSE:

See the response to Question III.A.5.e above. The future need of the upgrade by the utility other than for

this generator is one of the factors that should be considered in determining whether and what allocation of costs should be applied between the generator and the utility.

- (b) does provide cost or reliability benefit to the utility's customers

RESPONSE:

See the response to Question III.A.5.e above. The future need of the upgrade by the utility other than for this generator is one of the factors that should be considered in determining whether and what allocation of costs should be applied between the generator and the utility.

- f. What measures should the Commission employ to ensure that the utility does not discriminate against IPPs in carrying out transmission studies and allocating transmission upgrade costs?

RESPONSE:

See the response to Question III.A.5.a above. See also Section III.H (Fairness Provisions and Transparency), Pages 23 to 27, and Section IV (Dispute Resolution Process), Page 27, for measures in place to ensure that the competitive bidding process be "fair and equitable to all bidders."

- (1) Should the interconnection and transmission studies involving IPPs be - -

RESPONSE:

The utility should have the discretion in determining who performs interconnection and transmission studies involving IPPs. The determination of who performs this study should be included in the draft RFP that is submitted to the Commission for its review. As indicated throughout the *Stipulating Parties' Framework*, the Commission should adopt guidelines that are flexible enough to permit tailoring the process to specific circumstances, yet specific enough to avoid after-the-fact

determinations of fundamental process matters. See Stipulating Parties' Stipulation, Page 4.

(a) performed by an independent entity and

RESPONSE: **See the response to Question III.A.5.f.(1) above.**

(b) be approved by the Commission?

RESPONSE: **See the response to Question III.A.5.f.(1) above.**

(2) If the utility does the study, should the study be - -

(a) evaluated by an independent entity and

RESPONSE: **See the response to Question III.A.5.f.(1) above.**

(b) approved by the Commission?

RESPONSE: **See the response to Question III.A.5.f.(1) above.**

B. Independent Entity Roles

1. When is an independent entity necessary?

RESPONSE: **Within the Stipulating Parties' Framework, the term "independent observer" has been used to embody the concept of an independent entity. As stated in the Stipulating Parties' Framework, an independent observer may be necessary in certain situations. See Section II.C (Independent Observer), Pages 11 to 12, which states, in relevant part, that whenever "the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, an independent observer will monitor its competitive bidding process and will report on progress and results to the Commission." See also Section III.H.7, Pages 24 to 25.**

- a. when the utility presents a self-build option?

RESPONSE: See the response to Question III.B.1 above.

Question: when, if ever, would the utility not present a self-build option?

RESPONSE: See the response to Question II.A.2.a above.

- b. when a utility affiliate is bidding?

RESPONSE: See the response to Question III.B.1 above.

- 2. What roles should the independent entity have? Consider:

RESPONSE: See the response to Question III.B.1 above. As noted in Section III.H.7, pages 24 to 25, the specific tasks to be performed by the independent observer must be identified by the utility in its proposed RFP, which is submitted for Commission review.

- c. administrative roles

- (1) manage the correspondence between the utility and bidders

RESPONSE: See the responses to Question III.B.1 and 2 above.

- (2) other

RESPONSE: See the response to Question III.B.1 and 2 above.

- d. advisory roles

- (1) certify to the Commission that each of the following utility proposals was based on a fair process and will promote fair decision making:

RESPONSE: See the responses to Question III.B.1 and 2 above. Specifically, the Stipulating Parties' Framework includes guidelines and a reporting process for an independent observer. These guidelines do not include

any decision-making or other certification by the independent observer.

(a) pre-qualification criteria

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(b) IRP

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(c) RFP

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(d) Model PPA to be attached to the RFP

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(e) Code of conduct

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(f) Self-build bid to be included with the RFP

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(g) Selection criteria

RESPONSE:

See the responses to Question III.B.1 and 2 above.

(h) Final decision to purchase power or proceed with self-build option

RESPONSE:

See the responses to Question III.B.1 and 2. above.

- (i) other

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (2) advise the utility on the fairness of utility decision making during, and with respect to, each of the utility actions listed in the preceding question

RESPONSE: **See the responses to Question III.B.1 and 2 above. Specifically, see Section III.H.7, Pages 24 to 25, which discusses the role of the independent observer to advise the utility if there are any fairness issues.**

- (3) advise the Commission on the fairness of utility decision making during, and with respect to, each of the utility actions listed in the second preceding question

RESPONSE: **See the responses to Question III.B.1 and 2 and the response to part (2) above.**

- (4) resolve disputes that arise during - -
 - (a) the procurement process

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (b) post-selection negotiations

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (5) report violations of any procurement rules

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (6) after the procurement decision, provide the Commission with - -
 - (a) an overall assessment of whether the goals of the RFP were achieved,

including solicitation of sufficient competitive bids were received and the results of the RFP were unbiased; and

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (b) recommendations for improving future competitive bidding processes

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (7) **Question:** Is an independent entity certification a certification of fairness only, or is it also a certification of prudence?

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

c. decision making roles

- (1) disqualify bidders

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (2) require rebidding where there are flaws in the procurement process

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (3) amend a particular stage of the procurement process to cure flaws

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

- (4) determine bid evaluation criteria

RESPONSE: **See the responses to Question III.B.1 and 2 above.**

(5) decide disputes

RESPONSE: See the responses to Question III.B.1 and 2 above.

3. Who should select the independent entity, and by what process? Consider:

RESPONSE: See the responses to Question III.B.1 and 2 above. Specifically, Section III.H.7, Pages 24 to 25, provides, in relevant part, that if the “proposed utility self-build facilities or other utility-owned facilities (e.g., tunkey facilities), or facilities owned by an affiliate of the host utility, are to be compared against IPP proposals obtained through the RFP process, the electric utility should retain an independent observer to monitor the utility’s conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process.”

a. Commission approves list of candidates, utility selects from the list

RESPONSE: See the response to Question III.B.1 above. Specifically, Section II.C.3, Page 12, provides that if “an independent observer is to be used, the utility may (a) identify qualified candidates for the role of independent observer (and also may consider qualified candidates identified by the Commission), (b) seek Commission approval of its final list of qualified candidates, and (c) select an independent observer from among qualified candidates.”

b. Utility presents approves list of candidates, Commission selects from the list

RESPONSE: See the response to Question III.B.1 and the response to part a above.

c. Utility and Commission jointly create list of candidates (list created by each proposing a list from which the other may delete names); then - -

(1) utility selects from the list

RESPONSE: See the response to Question III.B.1 and the response to part a above.

- (2) Commission selects from the list, or

RESPONSE: See the response to Question III.B.1 and the response to part a above.

- (3) Both utility and Commission approve selection

RESPONSE: See the response to Question III.B.1 and the response to part a above.

- 4. To whom should the independent entity be contractually accountable - - Commission, utility, or both?

RESPONSE: See the response to Question III.B.1 above. Consistent with this response, the independent observer should be contractually responsible to the entity (i.e., the utility) that retains the independent observer.

- a. Commission

RESPONSE: See the response to part a above.

- b. utility

RESPONSE: See the response to part a above.

- c. both

RESPONSE: See the response to part a above.

- 5. Who should pay the costs of the independent entity?
Consider:

RESPONSE: The costs of the independent observer should be recoverable through rates as part of the electric utility's reasonable and prudently incurred costs in designing and administering its respective competitive bidding process. See Section VI (Ratemaking), Pages 30 to 31.

- a. Commission, with costs recovered from the utility who then recovers costs from ratepayers

RESPONSE: See the response to Question III.B.5 above.

b. Utility, who then recovers costs from ratepayers

RESPONSE: See the response to Question III.B.5 above.

c. Other

RESPONSE: See the response to Question III.B.5 above.

C. Commission Roles

1. Which if any of the following roles should the Commission play?

RESPONSE: See Section II.B (Hawaii Public Utilities Commission), Pages 10 to 11, and Section IV (Dispute Resolution Process), Page 27.

a. approve utility proposals on - -

(1) pre-qualification criteria

RESPONSE: As noted in Section III.B.5, Page 16, the utility may include such pre-qualification criteria in the design of its respective RFP depending on the specific circumstances of the utility and resource needs. The Commission has the ability to comment on this criteria during its review of the draft RFP pursuant to Section III.B.4, Page 16. See also the response to Question III.C above.

(2) IRP

RESPONSE: See the response to Question III.C above and the Commission's IRP Framework revised and adopted on May 22, 1992 in Docket No. 6617, as further amended by Decision and Order No. 22490, filed on May 26, 2006, in Docket No. 05-0075

(3) RFP

RESPONSE: See the response to Question III.C above. Specifically, Section II.B, Page 10, states, in

relevant part, that the "Commission will review each proposed RFP before it is issued, including the documentation that would accompany the RFP."

(4) model PPA to be attached to RFP

RESPONSE: See the response to Question III.C and the response to part (3) above.

(5) code of conduct

RESPONSE: See the response to Question III.C and the response to part (3) above.

(6) self-build bid to be included with the RFP

RESPONSE: See the response to Question III.C and the response to part (3) above.

(7) selection criteria

RESPONSE: See the response to Question III.C and the response to part (3) above.

(8) final decision to purchase power from a specific seller or proceed with self-build option

RESPONSE: See the response to Question III.C. and the response to part (3) above. Specifically, Section II.B.4, Page 10, states, in relevant part, that the "Commission shall review and approve the contracts that result from the competitive bidding processes conducted pursuant to this [Stipulating Parties'] Framework." In addition, Section II.B.5, Page 10, states that if "the electric utility's self-build or turnkey project is identified as superior to bid proposals, the utility would seek Commission approval in keeping with established capital project application review procedures."

b. resolve disputes that arise during - -

(1) the procurement process

RESPONSE: See the response to Question III.C above.

(2) post-selection negotiations

RESPONSE: See the response to Question III.C above.

c. other

RESPONSE: See the response to Question III.C above.

2. Assume that the Commission should issue an order determining whether the utility has complied with the competitive procurement procedures. When should such an order be issued? Consider:
 - a. in the proceeding to approve the PPA, pursuant to the terms of the PPA, HRS § 269-27.2, HAR ch. 6-74, and HAR § 6-60-6(2), to the extent applicable?
 - b. in a general rate case, pursuant to HRS § 269-16?
 - c. in an energy cost adjustment clause case, pursuant to HAR § 6-60-6(2) and HRS § 269-16(b)?
 - d. in a proceeding separate from each of the preceding three options?

RESPONSE: **An order determining whether a utility complied with the competitive procurement procedures should not be required in every circumstance, as that would place an undue administrative burden on the Commission, parties and other stakeholders involved. Instead, a utility should be presumed to have fully complied with the competitive procurement procedures. As such, a Commission order should only be required when a dispute has arisen alleging non-compliance with these procedures.**

D. Utility Cost Recovery of Wholesale Purchase Costs and Utility Self-Build Costs

1. Does Commission approval of a PPA preclude the Commission from making later disallowances due to - -

- a. imprudent negotiation of the PPA

RESPONSE:

Generally, in order to have cost recovery, the utility must demonstrate that its costs were for a useful purpose and were prudently incurred. To the extent the utility fails to demonstrate this, adjustments may be appropriate at the time of the next rate case proceeding so long as it is consistent with both applicable statutory and case law.

- b. imprudent management of the PPA

RESPONSE:

See the response to Question III.D.1.a above.

- c. failure to enforce certain rights under the PPA?

RESPONSE:

See the response to Question III.D.1.a above.

2. Recovery of utility parallel planning costs

- a. Who should pay for the utility's parallel planning costs? Consider:

- (1) utility ratepayers

RESPONSE:

See Section VI (Ratemaking), Pages 30 to 31. Specifically, Section VI.B, Page 30, provides that the "costs that an electric utility incurs in taking reasonable and prudent steps to implement Parallel Plans and/or Contingency Plans shall be recoverable through a utility's rates as part of the cost of providing reliable service to customers."

- (2) all bidders

RESPONSE:

See the response to Question III.D.2.a.(1) above.

- (3) winning bidders

RESPONSE:

See the response to Question III.D.2.a.(1) above.

(4) some combination of the foregoing

RESPONSE: See the response to Question III.D.2.a.(1) above.

b. By what mechanism should cost recovery occur?

RESPONSE: See the response to Question III.D.2.a.(1) above. Specifically, Section VI.C, Page 30, provides the cost recovery mechanism.

3. Competitive effects of different cost recovery treatments

a. Where the utility selects its self-build option in a competitive bidding scenario: Should the Commission require the utility to absorb the risk that its actual cost will exceed the price associated with its self-build option?

RESPONSE: No. See the response to Question III.D.2.a.(1) and the response to part 2.b above.

b. Assume the answer is yes. What are the mechanics, in terms of bid submission and later ratemaking, necessary to achieve this result?

RESPONSE: In the case of KIUC, KIUC is not aware of any mechanics that could achieve this result due to KIUC's member-owned cooperative structure. See also the response to Question III.D.2.a.(1) and the response to part 2.b above.

c. Should there be any exceptions to this rule?

RESPONSE: Yes, particularly under KIUC's cooperative ratemaking structure.

IV. Assure Proper Comparisons of Competing Bids

A. Debt Equivalency Treatment of Long-Term PPAs

1. When is debt equivalency triggered?

RESPONSE: The following sets forth KIUC's understanding of this issue: A PPA can either be characterized as an executory contract or a lease. Historically, it is KIUC's

understanding that PPAs were considered executory contracts when payments were dependent on performance. However, recent accounting guidance has rejected this notion on the basis that such a condition is inherent in ALL leases. It is our understanding that recent accounting guidance has focused on the significance of fixed payments required under the PPA in proportion to the fair value of the power plant and the term of the PPA, in relation to the economic life of the plant. Therefore, the higher the payment obligation, the more the payments are treated as debt.

Under the FAS (Financial Accounting Standards) requirements, a PPA in Hawaii will usually be treated as an operating lease or a capital lease, but not a service contract. This is because IPPs in Hawaii will generally provide all of its produced energy to a single utility. Some of the FAS criteria used in determining whether a PPA is a lease vs. a service contract include: (1) virtually all reasonably expected plant output is sold to the customer for a specified period; (2) the present value of fixed guaranteed payments is equal to or greater than the fair value of the plant; (3) the PPA specifies the generating facility that will make power available (or the PPA allows for the identification of a specific facility that will be utilized to provide the power); (4) a PPA can be adjusted for changes in terms; (5) the purchaser guarantees, directly or indirectly, project debt and/or equity; and (6) where the purchaser of the power bears significant risk related to the construction of the facility and the price of power is dependent in part on the ultimate cost of constructing the plant.

- a. To what extent does debt equivalency depend on contract terms?

RESPONSE: See the response to Question IV.A.1 above for KIUC's understanding of this issue.

- (1) contract shifts operating risks to the IPP

RESPONSE: See the response to Question IV.A.1 above.

- (2) contract shifts fuel risks to the IPP

RESPONSE: See the response to Question IV.A.1 above.

- (3) contract gives utility right to own project on default

RESPONSE: See the response to Question IV.A.1 above.

- (4) other terms

RESPONSE: See the response to Question IV.A.1 above.

- b. To what extent does debt equivalency depend on - -

- (1) the size of a specific contract?

RESPONSE: See the response to Question IV.A.1 above.

- (2) the utility's total PPA obligations?

RESPONSE: See the response to Question IV.A.1 above.

- (3) the length of the contract?

RESPONSE: See the response to Question IV.A.1 above.

2. Comparability between PPA and self-build

- a. What are the specific differences between the debt equivalency effects of a PPA and the utility's self-build option, given that the utility finances its self-build option with debt in part?

RESPONSE: See the response to Question IV.A.1 above. Under an operating or capital lease treatment of a PPA, it is KIUC's understanding that all payments due under the PPA are essentially treated for accounting purposes as debt. In comparison, in a utility self-build option, only that portion of the cost that is financed is treated as debt.

- b. When comparing a proposed PPA with the utility's self-build option, how should the utility take into account the similarities and differences between the capital structure effects of each?

RESPONSE: See the response to Question IV.A.1 above. Any imputed or direct debt issues must be addressed

in the development of the RFP process and an equity adjustment should be included in the evaluation of the bids received and as compared to the utility's self-build option.

3. What technical methods should the Commission require for translating applying debt equivalency analysis to specific IPP offers and utility self-build options? Consider:
 - a. Commission-specified percentage debt figures (e.g., 10%)
 - b. Commission-specified sliding scale with pre-defined minimum and maximum figures
 - c. utility internal analysis followed by Commission review

RESPONSE:

See the response to Question IV.A.2.b above, which states that any imputed or direct debt issues must be addressed in the development of the RFP process and an equity adjustment should be included in the evaluation of the bids received and as compared to the utility's self-build option.

4. In HECO's pending case, the company and the CA differed by about \$20 million on the return on equity issue, but ultimately settled this issue. Hypothetically speaking, under what circumstances would a PPA's cost-of-equity effect be sufficiently small to "get lost in the noise"?

RESPONSE:

This question is not applicable to KIUC.

B. Other Considerations

1. What requirements should the Commission establish concerning evaluation of each of the following considerations?

RESPONSE:

See Section III.B (Design of the Competitive Bidding Solicitation Process), Pages 14 to 17 and Section III.E (Bid Evaluation/Selection Criteria), Pages 19 to 21. Consistent with the previously stated sections, the utility should have the discretion to determine the bid evaluation and selection criteria depending on the scope of the RFP and specific needs of the utility. Consistent with Section III.E.3, Page 19, these criteria

may include, without limitation, provisions intended to ensure generating unit and electric system reliability, appropriate risk allocations, counter-party creditworthiness, and bidder qualification.

a. Reliability considerations

(1) Credit rating: Should the Commission establish credit rating cutoffs, whereby IPPs or developers with lower ratings are precluded from bidding at all?

(2) Track record

(a) Should the Commission establish experience prerequisites, whereby developers with insufficient experience are precluded from bidding at all?

(b) If the utility creates a new affiliate for purposes of bidding, will the new affiliate have zero experience for purposes of applying an experience screen?

(3) Development feasibility

(a) Siting status

(b) Ability to finance

(c) Environmental permitting status

(d) Commercial operation date certainty

(e) Engineering design

(f) Fuel supply status

(g) Bidder experience

(h) Reliability of the technology

- (4) Operational viability
 - (a) Operation and maintenance plan
 - (b) Financial strength
 - (c) Environmental compliance
 - (d) Environmental impact
- (5) Effects of total amounts of firm and as-available purchase power on utility's system

RESPONSE: See the response to Question IV.B.1 above.

- b. Operational flexibility
 - (1) Dispatchability
 - (2) Flexibility of maintenance schedules
 - (3) Ramp rates
 - (4) Quick start capability
 - (5) Coordination of planned maintenance

RESPONSE: See the response to Question IV.B.1 above.

- c. Contract flexibility
 - (1) In-service date flexibility
 - (2) Expansion capability
 - (3) Contract term
 - (4) Stability of the price proposal

RESPONSE: See the response to Question IV.B.1 above.

- d. Cost Considerations
 - (1) Pricing path
 - (2) Post-contract benefits

- (3) Willingness and ability of seller to accept financial risk

RESPONSE: See the response to Question IV.B.1 above.

- e. Other public interest considerations
 - (1) Net impact on the number of jobs created or lost
 - (2) Net impact on the state's economy (increase or decrease in state gross product)
 - (3) Net impact to the ratepayer (increase or decrease in rates and net bills)
 - (4) Level of fossil emissions introduced or avoided to our atmosphere
 - (5) Increase or reduction in the amount of imported fossil energy
 - (6) Reduction in the exposure to fuel price volatility and supply

RESPONSE: See the response to Question IV.B.1 above.

2. Methods of evaluating non-price and price factors
 - a. Should the Commission require one or more methods for applying price and nonprice criteria? Consider:

RESPONSE: See the response to Question IV.B.1 above. Specifically, Section III.E.9, Page 21, states, in relevant part, that the "type and form of non-price threshold criteria should be identified in the RFP documentation." Furthermore, Section III.E.10, Page 21, further states that the "weights for each non-price criterion may not be fully specified in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each criterion given system needs and circumstances in the context of a particular RFP."

- (1) Nonprice criteria are threshold requirements, followed by evaluation on price only

RESPONSE: —

See the response to Question IV.B.1 and the response to part 2.a above.

- (2) Price only evaluation, w/nonprice as tie breaker

RESPONSE:

See the response to Question IV.B.1 and the response to part 2.a above.

- (3) Actual scoring of each nonprice factor, combined with scoring of price factors

RESPONSE:

See the response to Question IV.B.1 and the response to part 2.a above.

- b. If the Commission should not require one or more methods for applying price and nonprice criteria, who should develop these methods, and subject to what level of Commission review?

RESPONSE:

See the response to Question IV.B.1 and the response to part 2.a above.

- c. If turnkey proposals compete with non-turnkey proposals, how should the utility and the Commission value the additional benefits of the turnkey offering?

RESPONSE:

See the response to Question IV.B.1 and the response to part 2.a above.

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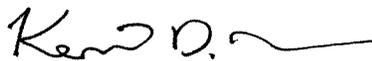
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