

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of) )  
HAWAII ELECTRIC LIGHT COMPANY, INC.) DOCKET NO. 2020-0127  
For Approval to Commit Funds in ) )  
Excess of \$2,500,000 for Item ) )  
HZ.005027, Keahole Battery Energy ) )  
Storage System Project, and to ) )  
Recover Costs through the ) )  
Exceptional Project Recovery ) )  
Mechanism. ) )  
\_\_\_\_\_ ) )

ORDER NO. 38891

(1) UNSUSPENDING THE DOCKET; (2) DENYING HAWAII ELECTRIC LIGHT COMPANY, INC.'S MOTION FOR RECONSIDERATION OF DECISION AND ORDER NO. 38399; AND (3) GRANTING REVIEW OF THE REVISED APPLICATION FOR THE KEAHOLE BATTERY ENERGY STORAGE SYSTEM PROJECT

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By this Order,<sup>1</sup> the Public Utilities Commission ("Commission"): (1) grants HELCO's request to lift the suspension of this docket pursuant to Order No. 38527 and review HELCO's Motion for Reconsideration of Decision and Order No. 38399;<sup>2</sup> (2) denies HELCO's Motion for Reconsideration of Decision and

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<sup>1</sup>The Parties to this proceeding are HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO" or "Company") and the DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 16-601-62(a). No persons moved to intervene or participate in this proceeding.

<sup>2</sup>Order No. 38527, "Suspending the Docket," filed on July 27, 2022 ("Order No. 38527").

Order No. 38399;<sup>3</sup> and (3) grants HELCO's request to review HELCO's revised Application for the Keahole Battery Energy Storage System ("BESS") Project ("Project").<sup>4</sup>

I.

RELEVANT PROCEDURAL BACKGROUND

On August 28, 2020, HELCO filed its original Application, seeking Commission approval to commit funds in excess of \$2,500,000, estimated at \$16,920,000, for its 12 megawatt ("MW")/12 megawatt hour ("MWh") BESS Project, located at the Keahole Generating Station in Kailua-Kona, on Hawaii Island, as well as, among other things, cost recovery through the Major Project Interim Recovery ("MPIR") Mechanism.<sup>5</sup>

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<sup>3</sup>Hawaii Electric Light Company, Inc.'s Motion for Reconsideration of Decision and Order No. 38399; Memorandum in Support of Motion; and Certificate of Service," filed on June 6, 2022 ("Motion for Reconsideration").

<sup>4</sup>Letter From: G. Imamura To: Commission Re: Docket No. 2020-0127 - Hawaii Electric Light Company, Inc. For Approval to Commit Funds for Keahole BESS Project; "Additional Analysis and Proposal," filed on December 21, 2022, at 7 ("Additional Analysis and Proposal" or "Revised Amended Application").

<sup>5</sup>Application of Hawaii Electric Light Company, Inc.; Verification; Exhibits 1-10; and Certificate of Service," filed on August 28, 2020 ("Application").

In response to an Information Request ("IR") from the Commission, issued on March 23, 2021,<sup>6</sup> HELCO indicated that it would be seeking recovery under the Exceptional Project Recovery Mechanism ("EPRM") instead of the MPIR.<sup>7</sup>

On April 6, 2021, the Commission issued Order No. 37712, wherein the Commission granted the Consumer Advocate's Motion for Enlargement of Time, amended the procedural schedule, and also advised HELCO to file a motion to amend its Application to request review under the EPRM, which should include supporting information.<sup>8</sup>

On April 21, 2021, HELCO filed a Motion to Amend Application to Seek Recovery through the EPRM,<sup>9</sup> which the

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<sup>6</sup>Letter From: Commission To: K. Katsura Re: Docket No. 2020-0127, Application for Hawaii Electric Light Company, Inc., for Approval to Commit Funds in Excess of \$2,500,000 for Item HZ.005027 Keahole Battery Energy Storage System Project, and to Recover Costs through the Major Project Interim Recovery Adjustment Mechanism, filed on March 23, 2021.

<sup>7</sup>Letter From: K. Katsura To: Commission Re: Docket No. 2020-0127 - Hawaii Electric Light Company, Inc.; For Approval to Commit Funds for Keahole BESS Project, "Responses to Commission's Information Requests," filed on March 30, 2021.

<sup>8</sup>Order No. 37712, "Granting the Division of Consumer Advocacy's Motion for Enlargement of Time," filed on April 5, 2021. In granting the Motion for Enlargement of Time, the Commission also noted HELCO's indication that it would be seeking relief under the EPRM adjustment mechanism, which may lead to further modifications to the procedural schedule.

<sup>9</sup>"Hawaii Electric Light Company, Inc. Motion to Amend Application to Seek Recovery through the Exceptional Project

Commission thereafter approved, thereby allowing HELCO to pursue cost recovery under the EPRM.<sup>10</sup> Accordingly, on May 27, 2021, HELCO filed its Amended Application, pursuant to Order No. 37766.<sup>11</sup>

On May 25, 2022, the Commission issued D&O No. 38399, wherein the Commission: (1) denied HELCO's request to commit funds in excess of \$2,500,000, at a total current estimated cost of \$16,920,000, pursuant to Paragraph 2.3(g)(2) of the Commission's General Order No. 7, as amended by Decision and Order No. 21002, filed on May 27, 2004, in Docket No. 03-0257 ("G.O. 7"), for its Keahole BESS Project; and (2) denied, as moot, HELCO's related requests to approve its proposed accounting and ratemaking treatment of the Project costs, including the recovery of costs through the EPRM, in accordance with Decision and Order No. 37507, filed on December 23, 2020, in Docket No. 2018-0088, until new rates become effective that provide cost recovery for the Project or as otherwise provided by the Commission; and for approval to

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Recovery Mechanism; Exhibits 'A' - 'D' and Certificate of Service," filed on April 21, 2021.

<sup>10</sup>See Order No. 37766, "Granting Hawaii Electric Light Company, Inc.'s Motion to Amend Application to Seek Recovery Through the Exceptional Project Recovery Mechanism and Instructing the Parties to File a Stipulated Procedural Schedule," filed on May 6, 2021 ("Order No. 37766"). The Application was amended to allow HELCO to seek relief under the EPRM, in lieu of the MPR Mechanism.

<sup>11</sup>"Amended Application of Hawaii Electric Light Company, Inc.; Verification; Exhibits 1-10; and Certificate of Service; Books 1 and 2," filed on May 27, 2021 ("Amended Application").

construct a 69 kilovolt transmission line above the surface of the ground, pursuant to HRS § 269-27.6(a).<sup>12</sup>

Subsequently, on June 6, 2022, HELCO timely filed its Motion for Reconsideration, requesting that the Commission reconsider its decision in D&O No. 38399.<sup>13</sup>

However, thereafter, on June 24, 2022, HELCO filed a letter seeking to supplement its Motion for Reconsideration, wherein HELCO requested that the Commission defer ruling on the Company's Motion for Reconsideration of Decision and Order No. 38399.<sup>14</sup>

As a result, on July 27, 2022, the Commission issued Order No. 38527, which suspended the docket, pending the Company's request to lift the suspension of this docket and either "issue a decision on the pending Motion for Reconsideration, or provide an amended procedural schedule to allow for supplementation of the record and additional briefing to consider the award of federal

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<sup>12</sup>Decision and Order No. 38399, filed on May 25, 2022 ("D&O No. 38399"), at 1-2.

<sup>13</sup>Motion for Reconsideration at 1.

<sup>14</sup>Motion for Reconsideration; and Letter From: J. Stewart To: Commission Re: Docket No. 2020 0127 - "Supplement to Hawaii Electric Light Company, Inc.'s Motion for Reconsideration of Decision and Order No. 38399 filed herein on June 6, 2022," filed on June 24, 2022.

funds" being sought under the Infrastructure Investment and Jobs Act ("IIJA") and related matters, as appropriate.<sup>15</sup>

On December 21, 2022, the Company filed its Additional Analysis and Proposal, which, as discussed further below, the Commission finds appropriate to consider as a "Revised Amended Application."<sup>16</sup> In its Revised Amended Application, HELCO requests that the Commission: (1) unsuspend the docket; (2) grant the Motion for Reconsideration; (3) allow recovery of capital and operations and maintenance ("O&M") costs based on actual O&M costs reported monthly; (4) approve the revised Project proposal and terms; and (5) issue a Decision and Order approving the Project by June 30, 2023.<sup>17</sup> In support of HELCO's requests, the Revised Amended Application includes updated pricing, including potential tax credits under the Inflation Reduction Act and other credit adders; updated Revenue Requirements and Bill Impacts; removal of the request for a Shared Savings Mechanism and cost cap; a reduced term for the Project from 20 to 10 years; and a revised Project schedule and Guaranteed Commercial Operations Date.<sup>18</sup>

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<sup>15</sup>Order No. 38527 at 4.

<sup>16</sup>See Revised Amended Application.

<sup>17</sup>Revised Amended Application at 7.

<sup>18</sup>Revised Amended Application at 2-6.

II.

DISCUSSION

A.

Legal Standard

Motions for reconsideration are governed by HAR § 16-601-137, which provides as follows:

Motion for reconsideration or rehearing. A motion seeking any change in a decision, order, or requirement of the [C]ommission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or in a combination thereof. The motion shall be filed within ten days after the decision or order is served upon the party, setting forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

B.

Preliminary Procedural Matters

Pursuant to Order No. 38527, the Commission suspended this docket, pending a request to lift such suspension and either issue a decision on the Motion for Reconsideration or allow for review of a supplemental proposal after HELCO pursued federal funds for the Project.<sup>19</sup> While the Company has indicated that it has foregone the pursuit of IIJA funds, it has also indicated that

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<sup>19</sup>Order No. 38527 at 4.



other federal funding may now be available.<sup>20</sup> HELCO now asks that the docket be unsuspended and that "the Application as amended over time now be approved."<sup>21</sup> As HELCO has forgone pursuit of IIJA funds and subsequently requested that the Commission review the Revised Amended Application, the Commission determines that, pursuant to Order No. 38527, the previous suspension of this docket should be lifted.<sup>22</sup>

C.

HELCO's Motion for Reconsideration

HELCO seeks reconsideration of the Commission's decision in D&O No. 38399 not to approve the commitment of funds in excess of \$2,500,000, estimated at \$16,920,000, for its 12 MW/12 MWh BESS Project, located at the Keahole Generating Station in Kailua-Kona, on Hawaii Island.<sup>23</sup> HELCO argues that "D&O No. 38399 is unreasonable and erroneous on a number of points." The Company

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<sup>20</sup>Revised Amended Application at 2.

<sup>21</sup>Revised Amended Application at 1.

<sup>22</sup>While the Commission ordered the docket closed in D&O No. 38399, HELCO's Motion for Reconsideration and requests to suspend the docket related to its pursuit of IIJA funding were subsequently addressed in the docket, and the matter was then suspended pursuant to Order No. 38527. This Order lifts that suspension and resumes this proceeding.

<sup>23</sup>Motion for Reconsideration at 1; see D&O No. 38399.

makes the following arguments in support of its Motion for Reconsideration:

1. The history of this docket establishes that HELCO properly determined the need for fast frequency response ("FFR") with the ultimate concurrence of the Independent Observer and the Commission.<sup>24</sup>

2. There has been no material change in the need for FFR since the Company and the Commission identified the need for FFR as part of the RFP process as the Hawaii Island grid still needs FFR.<sup>25</sup>

3. The Commission's conclusions that the Company did not examine alternatives are not consistent with the record of this proceeding because the Commission established the Competitive Bidding Framework as the preferable procedure for selecting projects and the RFP process establishes the market for such projects; and the Keahole Project was the best selection to meet the need identified by the Company and approved by the Commission.<sup>26</sup>

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<sup>24</sup>Motion for Reconsideration at 7-17.

<sup>25</sup>Motion for Reconsideration at 17-22.

<sup>26</sup>Motion for Reconsideration at 22-28.

4. The Company submitted sufficient information to satisfy any reasonable "Business Case" and to satisfy the EPRM recovery standards.<sup>27</sup>

5. The Commission's expressed concerns about cost increases and supply chain issues are both inconsistent with the identified need and ignore the Commission's role in the process.<sup>28</sup>

6. The Commission's conclusions regarding the charging of standalone storage from only renewable resources is unworkable and would substantially impair the intended usefulness of the Project.<sup>29</sup>

7. The Commission's determinations that previously-identified needs are currently not needed will likely have negative consequences, noting that the Commission's focus on the Project's current need conflicts with prior Commission directives that the Company should be proactive; and the lack of FFR could contribute to grid instability, which is outside of HELCO's control and, therefore, cannot be the basis of any performance metric that results in penalties to the Company.<sup>30</sup>

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<sup>27</sup>Motion for Reconsideration at 29-36.

<sup>28</sup>Motion for Reconsideration at 36-37.

<sup>29</sup>Motion for Reconsideration at 38-39.

<sup>30</sup>Motion for Reconsideration at 39-42.

D.

Reconsideration of D&O No. 38399

The Commission finds that the Company's Motion for Reconsideration stems from the Commission's denial of the Amended Application,<sup>31</sup> which is currently no longer feasible and/or is largely unsuitable for review, to the extent that HELCO has made a request that the Commission review and approve revised terms, pricing, and other project details (i.e., the Revised Amended Application).<sup>32</sup> To that end, the Commission's review of the Motion for Reconsideration, with respect to the Amended Application and the Project terms, pricing, and specifications relevant at the time D&O No. 38399 was filed, are effectively moot (i.e., the Amended Application contains terms and specifications that the Company is no longer able to or interested in pursuing).

While the practical reality is that the Company has determined not to pursue the Amended Application, as it relates to the Commission's disposition of the Company's Motion for Reconsideration, the Company has not demonstrated that D&O No. 38399 was unreasonable, unlawful, or erroneous - rather, it has chosen to further revise its Application and is now requesting

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<sup>31</sup>See Amended Application.

<sup>32</sup>See generally Revised Amended Application.

that the Commission move on to reviewing the latest revisions.<sup>33</sup> Therefore, the Commission denies the Motion for Reconsideration. At the same time, however, as discussed further below, the Commission, grants HELCO's request for review of its revised proposal (i.e., its Revised Amended Application), which the Commission shall review and render a decision on after proper examination and evaluation by the Consumer Advocate and the Commission.<sup>34</sup>

E.

Review of the Revised Amended Application

1.

Supplemental Information

As stated above, the Commission grants HELCO's request for review of the Revised Amended Application. The Commission

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<sup>33</sup>See Revised Amended Application at 7.

<sup>34</sup>While the Project was originally selected under a competitive bidding process, such selection was a prerequisite to the Commission's review of the Application, under G.O. 7. As the current Project terms have changed from the original and Amended Applications, the Commission determines that, during such unprecedented times as have occurred since the Project's selection, it does not behoove the Commission or the Company to pursue or be required to continue projects that are no longer prudent and reasonable. However, analogous to amendments to executed power purchase agreements that were competitively bid in other dockets, the Commission shall consider revisions in the Revised Amended Application, under the appropriate standard of review, as a G.O. 7 application.

advises that it will evaluate and analyze the Revised Amended Application, in conjunction with the applicable unchanged terms and provisions from the Amended Application, in the same manner as its review of the Amended Application. Therefore, the Commission's concerns with the Amended Application in D&O No. 38399 that are still applicable to the Revised Amended Application will need to be addressed. Although the Commission's prior decision not to approve the Project was based on the totality of many factors, the Commission provides the following guidance on what information HELCO can provide to assist in the Commission's review of the Project as proposed in the Revised Amended Application. The Commission believes that such information, if provided, may help mitigate concerns previously raised in D&O No. 38399.

As previously stated in D&O No. 38399, the Commission acknowledges that the need for some FFR exists; however, the extent to which it is needed and the form by which it may be provided, as well as the reasonableness of the Project costs and what, if any, additional benefits the BESS may provide, will continue to be key factors in the Commission's decision. Therefore, the Commission requests that the Company provide updated information to further support the current Project need, including but not limited to any updated information and data on all underfrequency load shed ("UFLS") events that have occurred on Hawaii Island since the filing of the original Application and any

trends or concerns with recurring and/or increasing UFLS events, in particular.

The Commission recognizes that the past few years have represented unprecedented and challenging circumstances that the Company and the Commission have sought to carefully navigate. The Commission appreciates the Company's efforts and actions during this time. While it is unknown if and when circumstances will improve, this does not mean the Commission or the Company should act impulsively, but instead underscores the need for prudent exploration of all available options to address reliability concerns on Hawaii Island that will most benefit the residents and the Company's ability to provide reliable service. Therefore, because the Commission is considering this Revised Amended Application anew, the Commission requests that the Company provide information on any currently-available alternatives to the Keahole BESS, as proposed, including the potential costs and additional benefits, if any, for such alternatives that may provide similar functionality.

Moreover, the Commission also requests information on whether the prospective Stage 3 RFP proposals for Hawaii Island<sup>35</sup>

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<sup>35</sup>See Docket No. 2017-0352, "Hawaiian Electric Companies' Proposed Final Stage 3 Request for Proposals for Hawaii Island; Books 1 through 4; Filed November 7, 2022," filed on November 7, 2022.

may potentially provide the same or similar functionality to that of the Project to address reliability concerns, and, if not, why this is not feasible.

Finally, the Commission also seeks clarifying information on the impact of the reduced term of the Project on the total Project cost, as well as specific calculations demonstrating such impact of the potential cost savings, including from federal and state tax credits, adders, or any other possible savings. The Commission notes that information related to Project costs was submitted as confidential; however, as the Commission has now agreed to review the Revised Amended Application, the Company should file unredacted versions of such information for the record.<sup>36</sup>

The Commission also advises HELCO that, as part of its review, the Commission (and the Consumer Advocate) may have additional questions regarding the manner by which the revenue requirements and bill impact have been calculated in light of the reduced BESS lifecycle, among other things, which may be addressed during the additional discovery and briefing period, as yet to be scheduled.

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<sup>36</sup>See Revised Amended Application at 2.



2.

Stipulated Proposed Procedural Schedule

In addition to the foregoing, the Commission shall require the Parties to submit a proposed stipulated procedural schedule, by March 8, 2023.<sup>37</sup> The proposed stipulated procedural schedule shall contemplate submission of the Supplemental Information to the Revised Amended Application, as described in Section II.E.1 above, and may also allow the Consumer Advocate the opportunity to issue information requests ("IRs"), supplemental IRs, or rolling IRs, as appropriate, and a statement of position ("SOP") on the Revised Amended Application, as well as the opportunity for HELCO to submit a Reply SOP, as needed.

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<sup>37</sup>The Commission notes that the Company has requested a Decision and Order on its Revised Amended Application by June 2023. While the Commission will take the necessary time to properly consider the Revised Amended Application and is not necessarily bound by such request, it also advises the Parties to keep such requested deadline in mind when establishing their proposed procedural schedule to help facilitate the Commission's potential decision by such date, if feasible and appropriate.

III.

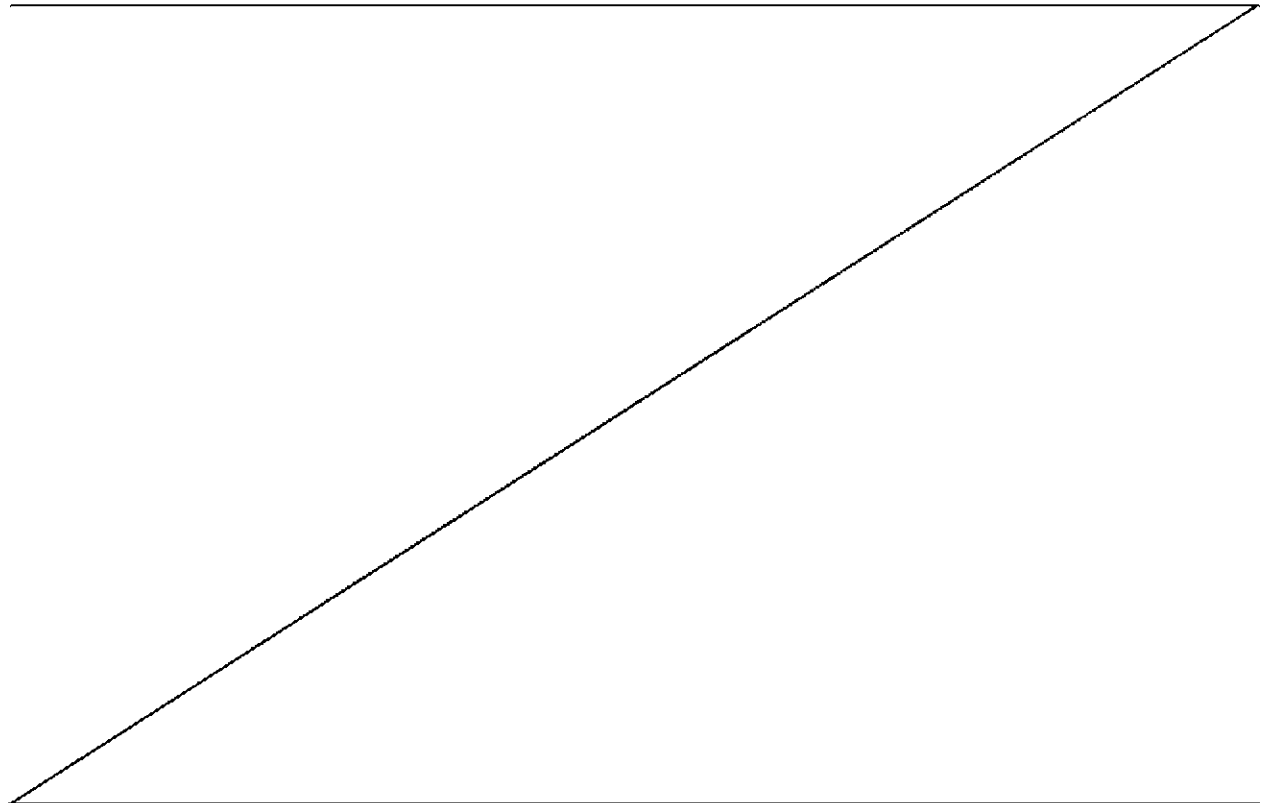
ORDERS

THE COMMISSION ORDERS:

1. Suspension of the docket that was previously ordered pursuant to Order No. 38527 is lifted to address HELCO's Motion for Reconsideration and HELCO's request for Commission review of the Revised Amended Application.

2. HELCO's Motion for Reconsideration of D&O No. 38399 is hereby denied.

3. HELCO's request for the Commission to review and consider the Company's Revised Amended Application for approval is hereby granted.

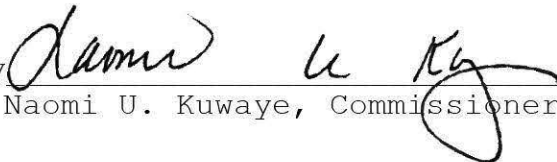


4. The Parties shall submit a proposed stipulated procedural schedule for the Commission's consideration by March 8, 2023, or, in the event the Parties are unable to reach agreement on a stipulated procedural schedule, each Party shall separately file its proposed procedural schedule by the above-referenced deadline date.

DONE at Honolulu, Hawaii FEBRUARY 22, 2023 .

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Leodoloff R. Asuncion, Jr., Chair

By   
Naomi U. Kuwaye, Commissioner

APPROVED AS TO FORM:

  
Keira Y. Kamiya  
Commission Counsel

By   
Colin A. Yost, Commissioner

2020-0127:mt

CERTIFICATE OF SERVICE

The foregoing Order was served on the date it was uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's electronic Distribution List.

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PUBLIC UTILITIES  
COMMISSION

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