

Rule No. 31

Emergency Demand Response Program

Rider: Scheduled Dispatch Program

5. If the non-compliance continues for a duration of 12 months, the Company will automatically terminate the customer, and will seek a repayment of the Incentive Payment amount, prorated from the commencement of noncompliance date. If the Eligible Customer Battery Storage-Operator's repayment of such prorated amount is not promptly made in a single lump sum payment, the Eligible Customer Battery Storage-Operator's repayment of such prorated amount shall be made in 12 equal monthly installments to the Company.

F. TERMINATION

1. Notwithstanding their ten-year commitment under this Rule, the Eligible Customer Battery Storage-Operator may terminate, or a new account holder may assume, their SDP Agreement with written or digital notice provided 60 days prior to date of termination or assumption.
2. If termination occurs prior to the completion of the ten-year commitment, the Eligible Customer Battery Storage-Operator must remove the Battery Storage Facility, including associated solar panels, or transfer the same to an available DER Tariff through an amendment. Such Battery Storage Facility must remain non-operational until such time as it is removed or transferred to an alternative tariff.
3. If termination occurs prior to completion of the ten-year commitment, the Eligible Customer Battery Storage-Operator shall return a prorated portion of the Incentive Payment received. The prorated portion shall be based on the remaining portion of the ten-year commitment, calculated from the date of termination as a fraction of the Eligible Customer Battery Storage-Operator's ten-year commitment.
4. The Company will bill the prorated amount to the Eligible Customer Battery Storage-Operator. If the Eligible Customer Battery Storage-Operator's return of such prorated amount is not promptly made in a single lump sum payment, the Eligible Customer Battery Storage-Operator's return of such prorated amount shall be made in twelve equal monthly installments. The Company will not charge interest on a payment if final payment is made within one year of date of termination. Eligible Customer Battery Storage-Operators that are not direct customers must pay prorated amount in full. If the Eligible Customer Battery Storage-Operator decides to terminate their SDP Agreement during a non-compliance period, the non-compliance charges imposed pursuant to section E.5 and paid by the Eligible Customer Battery Storage-Operator will be applied towards the prorated Incentive Amount required to be returned by the Eligible Customer Battery Storage-Operator.

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G. METERING AND BILLING

1. The Company will supply, install, own, and maintain all necessary meters and associated equipment utilized for billing, energy purchase, and performance auditing. The meters will be tested and read in accordance with the rules of the Commission and the Company.
2. Energy exported to the grid from the Battery Storage Facility will be compensated at applicable Energy Credit Rates for the Eligible Customer Battery Storage-Operator, as specified in the underlying Generating Facility's governing program tariff.
3. All rates, terms, and conditions from the applicable rate schedule will apply, as modified by the applicable program tariff, if applicable.

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1. **Notice and Disclaimer Regarding Future Rate and Tariff Modifications.** This Agreement shall, at all times, be subject to modification by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction. Without limiting the foregoing, Customer Battery Storage-Operator expressly acknowledges the following:
 - The Emergency Demand Response Program and its associated Scheduled Dispatch Program are subject to modification by the Hawaii Public Utilities Commission (“Commission”).
 - **Your Agreement and the Battery Storage Facility shall be subject to any future modifications ordered by the Commission. Such modifications may positively or negatively impact any potential savings in your electricity bill that were calculated by you or presented to you to support your decision to buy or lease a Battery Storage Facility and may otherwise change the value of your Agreement and Battery Storage Facility. You agree to pay for any costs related to such Commission ordered modifications.**

BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE ABOVE NOTICE AND DISCLAIMER. FURTHER, BY SIGNING BELOW, YOU CONFIRM YOUR UNDERSTANDING THAT ANY POTENTIAL SAVINGS IN YOUR ELECTRICITY BILL THAT WERE CALCULATED BY YOU OR PRESENTED TO YOU TO SUPPORT YOUR DECISION TO BUY OR LEASE A BATTERY STORAGE FACILITY MAY CHANGE.

2. **Effectiveness of Agreement.** This Agreement shall not be effective until approved and executed by each Party, i.e., upon the Effective Date. Customer Battery Storage-Operator shall not operate the Battery Storage Facility prior to approval and execution of this Agreement by the Company, except to the extent allowed for by the Underlying Agreement or to the extent necessary to obtain governmental and utility approvals. Until this Agreement is effective, no Party shall have any legal obligations that extend beyond the Underlying Agreement, arising hereunder, express or implied, and any actions taken by a Party in reliance on the terms of this Agreement prior to the Effective Date shall be at that Party’s own risk.

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3. **Underlying Interconnection Agreement.** Customer Battery Storage-Operator's Battery Storage Facility enrollment and participation under the Scheduled Dispatch Program is contingent upon current enrollment of the underlying Generating Facility in the Company's Net Energy Metering, Customer Self-Supply, Customer Grid-Supply, Customer Grid-Supply Plus, Smart Export, or Standard Interconnection Agreement programs as described in Rule Nos. 18, 22, 23, 24, 25, and execution and non-default of the Underlying Agreement. This Agreement shall supplement the Underlying Agreement which, as may be amended, shall continue in full force and effect notwithstanding the Customer Battery Storage-Operator's participation in the Company's Schedule Dispatch Program pursuant to this Agreement.
4. **SDP Tariff.** Unless otherwise provided herein, the terms and conditions governing Customer Battery Storage-Operator's participation in the Battery Bonus Program shall be as set forth in Company's SDP Tariff.
5. **Enrollment and Operation.** Customer Battery Storage-Operator hereby agrees to commit to the following capacity (kW) of maintained discharge from the Battery Storage Facility ("Committed Capacity") on a preset schedule for a daily duration of two hours.

Customer Battery Storage-Operator's Committed Capacity: _____ kW

The daily two-hour period during which the Committed Capacity will be dispatched ("Dispatch Period") will be specified by the Company at the time of enrollment and may be revised by the Company with reasonable notice.

- a) Within 30 days of commencement of discharge of Committed Capacity, Customer Battery Storage-Operator must provide seven (7) consecutive days of operational performance data in five (5) minute intervals, if possible, or fifteen (15) minute intervals as necessary to verify the operation of the Battery Storage Facility in accordance with this Agreement. The Company shall complete such verification within 10 business days of the receipt of such performance data from Customer Battery Storage-Operator.
- b) If no reasonable requests for additional data or concerns are expressed regarding operation of the Battery Storage Facility as specified in this Agreement are communicated (in written or digital form) to the Customer Battery Storage-Operator by Company within 10 business day verification period, the Customer Battery Storage-Operator will be deemed verified as operating in compliance with this Agreement.
- c) Notwithstanding any other provision specified in the underlying program tariff in which the Customer Battery Storage-Operator participates or in the interconnection agreement to which the Customer Battery Storage-Operator is a party, as applicable, energy exported to the grid from the Battery Storage Facility during the Dispatch Period shall be permitted and, if applicable, compensated in accordance with the Customer Battery Storage-Operator's underlying program tariff.

- i. For the first three (3) years of Battery Bonus Program participation, non-NEM customers will be compensated a fixed monthly export credit.
 - ii. Fixed monthly export credit = (retail rate as of February 2022 rate (\$/kWh) – non-NEM DER tariff export rate (\$/kWh)) x Committed Capacity (kW) x 70% x 2 hours x 30 days.
 - iii. Fixed monthly export credit will be zeroed out at the end of the year.
 - d) Energy discharged during the Dispatch Period from the Battery Storage Facility may either serve onsite load or be exported to the grid. Customer Battery Storage-Operator enrolled in Scheduled Dispatch is required to manage their DER systems to automatically prioritize battery charging during periods of substantial solar panel insolation in order to most reliably serve the two-hour battery discharge commitment as scheduled by the Company.
 - e) Customer Battery Storage-Operator shall use the default ramp rate of equipment for the Committed Capacity during the Dispatch Period. Deviations from the default ramp rate may be required in certain circumstances where the default ramp rate may pose adverse impacts to grid power quality. The Company will notify the Customer Battery Storage-Operator of any such deviation when the Dispatch Period is specified or revised.
6. **Term and Termination.** This Agreement shall continue for ten (10) years from the commencement of the discharge of Committed Capacity for the Dispatch Period in accordance with this Agreement. Customer Battery Storage-Operator may terminate this Agreement at any time with sixty (60) days written notice. If termination occurs prior to completion of its ten-year commitment, Customer Battery Storage-Operator shall return a prorated portion of the compensation received pursuant to the SDR Tariff. The prorated portion of the compensation shall be based on the remaining portion of the ten-year commitment, calculated from the date of termination as a fraction of the Customer Battery Storage-Operator's ten-year commitment. Customer Battery Storage-Operator may either pay such owed amount in full or make other arrangements with the Company prior to termination. The Company will not charge interest on a payment if final payment is made within one year of date of termination. Company may terminate this Agreement at any time if Customer Battery-Storage Operator fails to comply with any term of this Agreement, the Underlying Agreement, or if the Customer Battery-Storage Operator fails to be an Eligible Customer Battery-Storage Operator.
7. **Failure to Perform.** If the Company identifies concerns or issues relating to the Battery Storage Facility's performance, including, without limitation, potential non-compliance with this Rule pertaining to the discharge of Committed Capacity for the Discharge Period, the Company may conduct a performance audit to monitor and document conditions.

- a) The Company shall provide the Customer Battery Storage-Operator written or digital notice at least seven (7) days in advance of any performance audit.
- b) Customer Battery Storage-Operator shall be required to provide five (5) minute interval data, if possible, fifteen (15) minute intervals as necessary to verify operation of the Battery Storage Facility in accordance with this Agreement with five (5) business days of request from Company.

- c) If the Battery Storage Facility fails to perform in compliance with this Rule, the Company will provide to the Customer Battery Storage-Operator a written notice of Failure to Perform, which will include documentation explaining the non-compliance of operation.
 - d) Customer Battery Storage-Operator will have 30 days from the date of such notice of Failure to Perform to cure the non-compliance.
 - e) If the non-compliance persists beyond the 30-day cure period, Customer Battery Storage-Operator (recipient of the one-time Incentive Payment, Monthly Peak Capacity Payment and Monthly fixed export credit (as applicable)) will not receive the monthly payments and may be charged up to \$150 monthly until either the non-compliance is rectified or the Company has recovered the full prorated compensation paid to Customer Battery Storage-Operator pursuant to the SDR Tariff.
8. **Scope of Agreement.** The Parties understand and agree that this Agreement is contingent upon the Underlying Agreement and applies only to the operation of Customer Battery Storage-Operator's Battery Storage Facility as specified by the Scheduled Dispatch Program.
9. **Metering.** Within fifteen (15) days of execution of this Agreement, the Company will supply, own, and maintain all necessary meters and associated equipment utilized for billing and energy purchase. The meters will be tested and read in accordance with the rules of the Commission and the Company. The Customer Battery Storage-Operator at its expense, shall provide, install and maintain all conductors, service switches, fuses, meter sockets, meter instrument transformer housing and mountings, switchboard meter test buses, meter panels and similar devices required for service connection and meter installations on the Customer Battery Storage-Operator's premises in accordance with the Company's Rule 14H.
10. **Compensation.** The terms regarding compensation to the Customer Battery System-Operator for its participation in the Company's Scheduled Dispatch Program shall be as set forth in the SDR Tariff. If the battery system operator and owner of the battery facility are the same and has an account with Hawaiian Electric, that individual or entity must sign the Battery Bonus Program agreement.
11. **Data and Private Information.** Company access to personal data, including information for tax reporting purposes, data related to the Battery Storage Facility performance and usage, electrical utility account information, usage history, and meter data is required for enrollment under the Company's Scheduled Dispatch Program. All data access, use, and sharing is subject to the terms of Hawaiian Electric's Customer Information Privacy Policy (available at <https://www.hawaiianelectric.com/privacy-notice/customer-information-privacy-policy>) and applicable law.
- a) **By executing this Agreement, Customer Battery Storage-Operator approves and consents to provide data required for enrollment under Scheduled Dispatch Program.**
 - b) **Tax Identification Number ("TIN") must be provided to Company via secure transfer prior to the Company executing this Agreement.**

12. **Indemnification.**

- a) The Customer Battery Storage-Operator shall indemnify, defend and hold harmless the Company and its officers, directors, agents and employees, from and against all liabilities, damages, losses, fines, penalties, claims, demands, suits, costs and expenses (including reasonable attorney's fees and expenses) to or by third persons, including the Company's employees or subcontractors, for injury or death, or for injury to property, arising out of the actions or inactions of the Customer Battery Storage-Operator (or those of anyone under its control or on its behalf) with respect to its obligations under this Agreement, and/or arising out of the installation, operation and maintenance of the Battery Storage Facility, except to the extent that such injury, death or damage is attributable to the gross negligence or intentional act or omission of the Company or its officers, directors, agents or employees.

Provided, however, where the Customer Battery Storage-Operator is an agency of the United States, the following Section shall be applicable in place of Paragraph 12(a):

“The United States understands that it may be held liable for loss, damages expense and liability to third persons and injury to or death of persons or injury to property caused by the United States in its engineering design, construction ownership or operations of, or the making of replacements, additions betterment to, or by failure of, any of such party's works or facilities used in connection with this Agreement to the extent allowed by the Federal Tort Claims Act 28 U.S.C. § 2671 et seq. and the Agreement Disputes Act of 1978, 41 U.S.C. §§ 601-613.

Company shall be responsible for damages or injury caused by Company, Company's agents, officers, and employees in the course of their employment to the extent permitted by law.”

Provided, however, where the Customer Battery Storage-Operator is an agency of the State of Hawaii (the “State”), the following Section shall be applicable in place of Paragraph 12(a):

“The State shall be responsible for damages or injury caused by the State’s agents, officers, and employees in the course of their employment to the extent that the State’s liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damage and injury to the extent permitted by law. The State shall use reasonable good faith efforts to pursue any approvals from the Legislature and the Governor that may be required to obtain the funding necessary to enable the State to perform its obligations or cover its liabilities hereunder. The State shall not request Company to indemnify the State for, or hold the State harmless from, any claims for such damages or injury.

Company shall be responsible for damages or injury caused by Company, Company's agents, officers, and employees in the course of their employment to the extent that Company's liability for such damage or injury has been determined by a court or otherwise agreed to by Company, and Company shall pay for such damage and injury to the extent permitted by law. Company shall not request the State to indemnify Company for, or hold Company harmless from, any claims for such damages or injury.”

- b) The Company shall indemnify, defend and hold harmless the Customer Battery Storage-Operator, and its officers, directors, agents and employees, from and against all liabilities, damages, losses, fines, penalties, claims, demands, suits, costs and expenses (including reasonable attorney’s fees and expenses) to or by third persons, including the Customer Battery Storage-Operator’s employees or subcontractors, for injury or death, or for injury to property, arising out of the actions or inactions of the Company (or those of anyone under its control or on its behalf) with respect to its obligations under this Agreement, except to the extent that such injury, death or damage is attributable to the gross negligence or intentional act or omission of the Customer Battery Storage-Operator or its officers, directors, agents or employees.
- c) Nothing in this Agreement shall create any duty to, any standard of care with reference to, or any liability to any person not a party to it.

13. **Limitation of Liability.** Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, express or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Customer Battery Storage-Operator, including without limitation the Battery Storage Facility and any structures, equipment, wires, appliances or devices appurtenant thereto.
14. **Force Majeure.** For purposes of this Agreement, “Force Majeure Event” means any event: (a) that is beyond the reasonable control of the affected Party; and (b) that the affected Party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: (a) acts of war, public disorder, insurrection or rebellion; floods, hurricanes, earthquakes, lighting, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will promptly notify the other Parties in writing and will keep the other Parties informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible.
15. **Additional Information.** By signing this Agreement, the Customer Battery Storage-Operator expressly agrees and authorizes Company to (1) request and obtain additional information from Customer Battery Storage-Operator relating to the Battery Storage Facility, and/or (2) make modifications to the Customer Battery Storage-Operator’s Battery Storage Facility, at no cost to the Company, where reasonably necessary, to serve the Customer Battery Storage-Operator under this Agreement or to ensure reliability, safety of operation, and power quality of the Company’s system.
16. **Notices.** Any notice required under this Agreement shall be in writing and mailed at any United States Post Office with postage prepaid and addressed to the Party, or personally delivered to the Party at the address identified on the last page of the Agreement. Changes in such designation may be made by notice similarly given. Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth day after the date of mailing, whichever is earlier.

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17. **Miscellaneous.**

- a) **Governing Law and Regulatory Authority.** This Agreement was executed in the State of Hawaii and must in all respects be interpreted, governed, and construed under the laws of the State of Hawaii. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.
- b) **Amendment, Modifications, or Waiver.** This Agreement may not be altered or modified by any of the Parties, except by an instrument in writing executed by each of them. None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. This Agreement contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.
- c) **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Parties. Such consent shall not be unreasonably withheld.
- d) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.
- e) **Relationship of Parties.** Nothing in this Agreement shall be deemed to constitute any Party hereto as partner, agent or representative of the other Parties or to create any fiduciary relationship between the Parties.
- f) **Limitations.** Nothing in this Agreement shall limit the Company's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to the Company's tariffs as filed with the Commission, or the Commission's Standards for Electric Utility Service in the State of Hawaii, which currently are included in the Commission's General Order Number 7, as either may be amended from time to time.

- g) **Execution of Agreement; Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. Signatures may be provided in original (“wet”) form or by other means intended to preserve the original graphic and pictorial appearance of the signature, such as a photocopy. A copy of a Party’s signature shall be considered an “original” signature for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the date first set forth above.

CUSTOMER BATTERY STORAGE-OPERATOR

By: _____
Signature Date

Name (Print): _____

Company Name
(if applicable): _____

Title (if applicable): _____

MAUI ELECTRIC COMPANY

By: _____ To be completed by Company _____
Signature Date

Name (Print): _____ To be completed by Company _____

Title (if applicable): _____ To be completed by Company _____

MAILING ADDRESS

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Customer Energy Resources Division
P.O. Box 2750 (AT10-SE)
Honolulu, HI 96840
HAWAIIAN ELECTRIC COMPANY, INC.
Order No.