

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Requests of

HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAII ELECTRIC LIGHT COMPANY, INC.,  
AND MAUI ELECTRIC COMPANY, LIMITED

To Institute a Proceeding Relating to Competitive  
Procurement of Dispatchable and Renewable  
Generation.

DOCKET NO. 2017-0352

**HAWAIIAN ELECTRIC COMPANIES'**  
**MOTION FOR PARTIAL RECONSIDERATION AND/OR**  
**CLARIFICATION OF ORDER NO. 38479**

**MEMORANDUM IN SUPPORT OF MOTION**

**AND**

**CERTIFICATE OF SERVICE**

MARISSA L.L. OWENS  
Senior Associate General Counsel  
P.O. Box 2750  
Honolulu, Hawai'i 96840-0001

Attorney for  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED

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HAWAIIAN ELECTRIC COMPANY, INC. (“Hawaiian Electric”), HAWAI‘I  
ELECTRIC LIGHT COMPANY, INC. (“Hawai‘i Electric Light”), and MAUI ELECTRIC  
COMPANY, LIMITED (“Maui Electric”) (collectively, the “Hawaiian Electric Companies” or  
the “Companies”) respectfully move the Public Utilities Commission of the State of Hawai‘i (the  
“Commission”) for partial reconsideration and/or clarification of Order No. 38479, *Approving  
the Hawaiian Electric Companies’ Final Stage 3 Request for Proposals for Hawaii Island with  
Modifications and Issuing Guidance on the Proposed Stage 3 Requests for Proposals for Oahu  
and Maui*, issued on June 30, 2022 in the subject proceeding (“Order 38479”).

For reasons more fully set forth in the attached Memorandum in Support of Motion, the  
Companies submit that partial reconsideration and/or clarification is appropriate, as Order 38479  
is unreasonable and/or erroneous on a number of points.

This Motion is made pursuant to the Commission’s Rules of Practice and Procedure, Hawai‘i Administrative Rules (“HAR”) Sections 16-601-41 and 16-601-137,<sup>1</sup> the entire record in Docket No. 2017-0352, and the facts and law set forth in the Memorandum in Support of Motion, which is attached hereto. Because written filings alone may not be the most effective means to allow for full comprehension of the issues raised in this motion, the Companies request a hearing on this Motion, or, in lieu of a formal hearing, the Companies suggest holding a technical conference on the subject matter of Order 38479 in order to be available for discussion and to answer any further questions the Commission may have.

DATED: Honolulu, Hawai‘i, July 11, 2022.

/s/Marissa L.L. Owens  
MARISSA L.L. OWENS

Attorney for  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAI‘I ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED

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<sup>1</sup> HAR § 16-601-137 states that a motion seeking any change in an order of the Commission “shall be filed within ten days after the decision or order is served upon the party . . .” The Commission’s Certificate of Service indicates that Order No. 38479 was served on June 30, 2022, the date it was uploaded to the Commission’s Document Management System. Ten days from June 30, 2022 is July 10, 2022, and pursuant to HAR § 16-601-22, the next calendar day is July 11, 2022. Therefore, this Motion is timely filed.

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**MEMORANDUM IN SUPPORT OF MOTION**

I. INTRODUCTION

The Companies appreciate the Commission’s review and approval, with modifications, of their Final Stage 3 RFP for Hawai‘i Island, and the Commission’s review and guidance regarding the Companies’ Final Stage 3 RFPs for Oahu and Maui. The Companies seek reconsideration and/or clarification on a number of modifications to the Stage 3 RFPs that the Commission directed in Order 38479, as discussed in detail below. The Companies respectfully make these requests for reconsideration and/or clarification in order to avoid unintended consequences and administrative inefficiencies that may occur as a result of the ordered modifications.<sup>2</sup>

II. LEGAL STANDARD

Hawai‘i Administrative Rules Section 16-601-137 states, “[a] motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer

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<sup>2</sup> Order 38479 also directs the Companies to provide further information and clarification on a number of different points. The Companies intend to provide this information with the filing for the Final Stage 3 RFP for Hawaii Island on July 29, 2022.

is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or 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.”

“[T]o succeed on a motion for reconsideration, the movant must demonstrate that the commission’s decision or order was ‘unreasonable, unlawful, or erroneous.’” In re Hawaiian Elec. Co., Docket No. 05-0069, Decision & Order No. 22921, at 6, 2006 WL 3736077 (Oct. 4, 2006). In evaluating a motion for reconsideration, the Commission considers “whether matters have been overlooked or mistakenly conceived.” Id. (citing In re Gray Line Haw., Ltd., Docket No. 96-0217, Decision & Order No. 15380 (Feb. 25, 1997) and In re Kauai Elec. Div. of Citizens Utils. Co., 61 Haw. 166, 195 (1978)).

Clarification and modification is proper where “[i]t was not the commission’s intent” to cause or bring about a result or consequence through the language of an existing order (see In re Hawaiian Elec. Co., Inc., Docket No. 03-0036, Order No. 21463 (Nov. 17, 2004)), or where it is necessary to correct “implications” or to ensure “consistency” with existing law (see In re Hawaiian Elec. Co., Inc., Docket No. 05-0276, Order No. 22858 (Sept. 15, 2006)), or where a particular finding or statement constitutes an “inadvertent error” (see In re Laie Water Co., Inc., Docket No. 00-0017, Order No. 18479 (Apr. 11, 2001)), or where “there may be some confusion regarding” the applicability of an order (see In re Waikoloa Water Co., Inc., Waikoloa Sanitary Sewer Co., Inc., Waikoloa Resort Utilities, Inc., & Hawaii Water Serv. Co., Inc., Docket No. 2008-0018 (Mar. 12, 2009)).

A motion for clarification should be granted, and the language of an order appropriately modified, where it is reasonable to do so. In re Hawaiian Elec. Co., Inc., Docket No. 05-0276,

Order No. 22858 (Sept. 15, 2006) (“Accordingly, the commission finds it reasonable to grant [Hawaiian Electric’s] Motion for Clarification and amend ordering paragraph no. 1[.]”); In re Polynesian Adventure Tours, LLC, Roberts Tours & Transp., Inc., & Carry-All, Inc., Docket No. 2016-0160, Order No. 34101 (Nov. 9, 2016) (“the commission finds the requests for clarification, reconsideration, and/or modification . . . to be reasonable, and therefore orders the following . . .”).

### III. DISCUSSION

#### a. State of Project Development and Schedule Evaluation Criteria

The Companies request reconsideration and removal of Order 38479’s modification that directs the Companies not to deduct points from a proposal based on its interconnection-related cost estimates.<sup>3</sup> This modification would have the effect of limiting developers’ incentive to develop accurate cost estimates, which could harm the Companies and their customers if future interconnection issues arise. If developers are not required to provide accurate interconnection costs with their bids and the Companies may not evaluate proposals based on such information, projects could be selected that ultimately drop out once interconnection costs are considered post-selection. This could result in a lost opportunity to select proposals that are based on accurate interconnection cost estimates.

Accurate cost estimates are important to the Companies’ evaluation of bids.

Understanding and evaluating whether developers actually evaluated all RFP requirements, used the standards provided, accurately used the cost information provided, and accurately examined their own project and costs while accounting for project schedules needed to reach their

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<sup>3</sup> Order 38479 at 16.

Guaranteed Commercial Operations Date will help the Companies mitigate many issues experienced with respect to the Stage 1 and Stage 2 projects.

Further, in Stage 3, the Companies have also expended significant effort to improve interconnection information provided to developers in advance of proposal submission. The Companies submit that Appendix H to the RFP clearly and adequately sets forth detailed cost information as far as what is required for each type of project interconnection. The Companies have even included an example of how to calculate such costs in Appendix H and have noted in the RFP that what the Companies will be evaluating in terms of interconnection costs is if the developers have carefully reviewed Appendix H and have calculated their interconnection costs based on the information provided in Appendix H, not outside information that developers would not have access to. It is imperative that developers go through the exercise of reviewing Appendix H and developing an interconnection-related cost estimate to ensure they understand what is involved with interconnection costs, which have been clearly set out in the revised Appendix H, prior to bidding into an RFP. The Companies should be allowed to deduct points from a proposal if a developer does not do this, as it could be indicative that the developer is not accurately capturing costs, which could result in future issues with interconnection of the project.

b. Community Benefits Package

The Companies request reconsideration and removal of Order 38479's modification that directs the Companies to remove the cap on the minimum commitment of funds for Community Benefits Packages ("CBPs").<sup>4</sup> While the Commission is concerned the cap on annual CBP commitment could provide an advantage for larger projects, it is not necessarily true that all technologies have the same footprint, nor that a project with more MW will have a larger

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<sup>4</sup> Order 38479 at 18.

footprint or impact than a project with less MW. For instance, one larger MW project could have a smaller footprint than multiple smaller MW projects, but imposing a much higher burden of CBPs on the larger project could make it too expensive, resulting in multiple smaller projects which would impact multiple communities and have other cascading and compounding effects. Further, developers will price in higher costs of CBPs into the price of their projects, meaning that benefits to customers in a given community could be offset by higher electricity costs.

With respect to Order 38479’s modification that directs the Companies to “add flexibility to the census tract requirement to allow for case-by-case review of CBP components that may fall outside of, or stretch beyond, the census tract of the proposed project[.]”<sup>5</sup> the Companies clarify that the Stage 3 RFP already includes the broader community in its community outreach criteria and evaluations. While the census tract of the community hosting a potential project is considered in the RFP evaluation, the community outreach evaluation and use of the CBP and resources by the developer is not limited to a particular census tract. It is also unclear who would make such evaluation for purposes of community benefits and when and how such a determination would be made without extensive subjectivity. Further, while Order 38479 directs the Companies to “revise the non-price criteria to clarify that any proposed CBP will be measured relative to such community impacts and evaluated accordingly[.]”<sup>6</sup> the Companies believe that the revision is unnecessary and would lead to the inadvertent consequence of creating ineffective subjectivity during the evaluation process for this non-price criterion. The Companies therefore submit that these modifications directed by Order 38479 are not necessary.

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<sup>5</sup> Order 38479 at 18-19.

<sup>6</sup> Order 38479 at 18

c. Pro Forma Requirement

While the Companies continue to believe they should be required, the Companies are not seeking reconsideration of Order 38479's direction to remove the pro forma requirement.<sup>7</sup> However, the Companies seek reconsideration and removal of Order 38479's modification that Proposers must provide interconnection cost estimates directly to the Independent Engineer ("IE") prior to bid submission.<sup>8</sup> The Companies note that the Stage 3 RFP already requires interconnection cost estimates to be submitted as part of the bids for each project. Order 38479's modification separates the interconnection cost estimate from the bid entirely and allows developers to circumvent the Companies' review. For the reasons discussed in section III.a. above, the Companies must be able to evaluate interconnection cost estimates in conjunction with bids in order to aptly evaluate and select projects.

d. Non-Negotiable Sections of PPA

The Companies seek clarification regarding Order 38479's direction to "make the Performance Standards negotiable by allowing proposed revisions related to technological specifications that may vary among projects while maintaining fairness and equality in terms of the incentives to provide sufficient commitment of services."<sup>9</sup> The Companies have created and offer model PPAs for four specific types of technologies including wind plus storage, solar plus storage, firm generation and standalone battery storage, that include performance standards that provide the minimum requirements necessary for the technology being proposed to operate as intended within the system while also reflecting differences in capabilities arising from the physical differences in these varying technologies. Having these standard PPA terms and

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<sup>7</sup> Order 38479 at 20.

<sup>8</sup> Order 38479 at 20-21, 32-33.

<sup>9</sup> Order 38479 at 21.

requirements for these different technologies provides ensured operability of a project in manners complimentary and beneficial to the system, incentivizes a certain level of performance from a project, allows customers a guaranteed level of performance, and encourages fairness and equality among competing technology proposals. Allowing the Performance Standards to be negotiable in terms of technological specifications could effectively erase this requirement, and also makes it extremely challenging for the Companies to compare projects. The Companies therefore request clarification of this order to state that Performance Standards negotiability shall only apply to types of technologies that are not already represented in any of the model PPAs offered in this RFP; further, such negotiability shall be related to the details of the specific type of technology as a category, and not any specific equipment chosen by a developer that simply cannot meet the Companies' minimum requirements.

e. Hosting Capacity Results

Order 38479 orders the Companies to provide the hosting capacity results to the Commission and the Independent Observer ("IO") for review and documentation prior to the hiring of the IE.<sup>10</sup> Noting that the IO is already copied on all communications with bidders, the Companies herein seek clarification as to whether there is anything additional and/or specific that they need to provide to the IO.

f. Carbon Emissions Analysis

The Companies seek reconsideration and/or clarification of Order 38479's statement that the Commission "will scrutinize the high-level carbon emissions estimates in comparison with results of the full GHG analyses to determine the validity of these preliminary estimates and whether there are indications that they were artificially low."<sup>11</sup> The Companies clarify that the

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<sup>10</sup> Order 38479 at 25.

<sup>11</sup> Order 38479 at 26.

proposed criteria in the most recent draft of the Stage 3 RFP for Hawai‘i Island does not require an estimate of carbon emissions. This requirement was removed from the previous draft of the RFP, as it was determined that project proposers likely do not have enough information to produce a meaningful quantitative estimate at the time of proposal submission. Rather, the Companies will utilize indicative information obtained from proposers through questionnaires to assess how projects’ carbon impacts compare to each other. Therefore, the Companies request reconsideration and modification of this statement as the Commission will not have “high-level carbon emissions estimates” to perform the comparison specified in Order 38479. The Companies also in turn seek reconsideration and/or clarification of Order 38479’s direction to the Companies to consider modifications to this non-price criterion to mitigate underestimation of high-level emissions analyses, and that the Companies may consider a modification that would require Proposers to consider design changes or, at minimum, propose a plan and changes in assumptions or underestimation of preliminary figures submitted in the bid’s Carbon Emissions Questionnaire<sup>12</sup> in light of the fact that there is no requirement for an estimate of carbon emission amounts in the Stage 3 RFP for Hawai‘i Island.

g. Previous Performance Scoring Criteria

The Companies seek reconsideration of Order 38479’s removal of the eligibility requirement that a proposer is not eligible to participate in the RFP if the proposer, its parent company, or an affiliate has any pending litigation in which the Proposer, parent company, or affiliate has made claims against the Companies, which is not the subject of a settlement agreement that is current in effect.<sup>13</sup> While Order 38479 effectively turns this eligibility requirement into an infraction where the Companies may detract two points from a Proposer’s

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<sup>12</sup> Order 38479 at 27.

<sup>13</sup> See Order 38479 at 27-30.

non-price score, the Companies submit that a two-point deduction does not reasonably or appropriately account for the magnitude of detriment a proposer could cause if it is in pending litigation with one of the Hawaiian Electric Companies.

Having to select and negotiate a PPA with such a proposer creates the significant risk of clouding negotiations and could jeopardize the entire RFP process. For example, the City and County of Honolulu Division of Purchasing's General Instructions to Offerors contain certain bases for bid exclusion, including that a bid offeror (i) has uncompleted work on contracts in force, (ii) a record of unsatisfactory work performance or delays on completed contracts or on contracts in force which, in the judgment of the City, might hinder or prevent the prompt completion of additional work if awarded, and (iii) has had a previous contract terminated for default by the City. *See* City and County of Honolulu Division of Purchasing's General Instructions to Offerors, section 6.8. The Companies submit that pending litigation with a Proposer presents more even risk to the Companies and their customers than the exclusions enumerated above. For instance, the Proposer could gain information during the course of PPA negotiations that it could use to the Company's detriment in the pending litigation. The Proposer could also allege that it is not getting certain agreements or concessions from the Companies in its PPA negotiations because the pending litigation is influencing the Companies' position. It is unreasonable for the Companies to only be able to evaluate the pending litigation of a Proposer in the limited way of an infraction given the risks the Proposer would bring, compounded by the Proposer's contentious history with the Companies and demonstrated inability to deliver on past commitments. The Companies therefore request reconsideration of the removal of this eligibility requirement.

h. Independent Engineer

The Companies appreciate the addition of an Independent Engineer (“IE”) to the Stage 3 RFPs. As the Companies have noted in previous filings, they believe this will be a helpful addition to the RFP process. However, the Companies have some concern with the scope of the IE’s work as it may actually hinder the RFP process by adding significant time to the process or confusion as to final grid requirements. Therefore, the Companies are seeking reconsideration on a few issues related to the scope of the IE’s duties and authority. The Companies seek reconsideration of Order 38479’s requirement that the IE “be present for all discussions between the Companies and Proposers in technical matters related to interconnection and project design.”<sup>14</sup> The Companies submit that requiring the presence of the IE at every technical discussion between the Companies and Proposers is unreasonable, not practical or feasible and will delay the overall RFP process. For example, discussions to clarify or troubleshoot models will require the coordination of parties with differing schedules and time zones, including but not limited to, a Proposer and its consultants, Company personnel, and the IE. Furthermore, the same coordination is necessary to conduct System Impact Studies, Facility Studies, engineering design and reviews, PPA negotiations, and other general technical discussion with Proposers, which are all in process simultaneously. Considering that the Companies intend to award numerous projects through the O‘ahu, Maui, and Hawai‘i Island Stage 3 RFPs, requiring the presence of the IE in all technical discussions is not practicable without delays to the evaluation, RFP, and interconnection and design processes. The added delay caused by requiring the presence of the IE is particularly unreasonable given the IRS Performance Incentive Mechanism recently approved by the Commission which penalizes the Companies if they do not timely

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<sup>14</sup> Order 38479 at 31.

complete the interconnection process.<sup>15</sup> Any negotiations regarding PPA technical terms that may be required will also create a substantial time burden, as such matters have historically required an extensive time commitment to resolve. Accordingly, while the Companies are amenable to inviting the IE to participate in all the discussions as their schedule allows, the Companies request that the Commission reconsider its direction that the IE must be present for all discussions between the Companies and Proposers related to technical matters.

The Companies also seek clarification of the scope of the IE's duties, specifically, that the IE "will assist in determining whether project re-designs necessitate re-studies."<sup>16</sup> A partial restudy is typically conducted upon a project to ensure there are no impacts to the Companies' grid. Depending on the changes proposed by the Proposer, the scope of a restudy can vary greatly, and can include as little as a model check and brief stability analysis to ensure model functionality, or could entail a complete restudy of a project.

As written, Order 38479 implies that the Companies will remain responsible for any issues arising out of restudy determinations made by the IE. However, the Companies must retain the ability to determine when a restudy is necessary in order to properly maintain the Companies' grid and provide the accurate modeling information to execute future studies. Furthermore, it is imperative to accurately study the impacts of new generation resources, where inaccurately depicting these resources will likely cause unreliable study results – increasing the risk of future reliability issues. Therefore, the Companies respectfully request that the Commission clarify the extent to which the IE will assist in determining the necessity of restudies and further clarify that the Companies retain the ability to determine when a restudy is necessary; or in the alternative, clarify that should the IE order or not allow something against

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<sup>15</sup> See Decision and Order No. 38429 issued on June 17, 2022 in Docket No. 2018-0088 at 28-30.

<sup>16</sup> Order 38479 at 32.

the Companies' decisions with respect to the necessity of restudies, liability for any resulting issues shall also lie with the IE and not with the Companies.

The Companies also seek clarification of the IE's duty to "verify system information including hosting capacity results shared with Proposers to ensure that these results are accurate[.]"<sup>17</sup> The Companies have already begun responding to bidders with the available hosting capacities so they may prepare their proposals in anticipation of the upcoming filing of the Stage 3 RFP. As the IE has not yet been retained by the Commission, the Companies seek clarification as to the timing of when the Commission intends to have the IE verify system information, as it is not clear whether this requirement will impact the ability to provide hosting capacities to prospective bidders and potentially delay the RFP process.

Further, the Companies seek reconsideration and removal the IE's duty to "verify that any required transmission system upgrades attributed to a project are justified and reasonable."<sup>18</sup> The Companies are concerned and submit that this authority of the IE is unreasonable because it gives the IE, who the Companies have no role in selecting or vetting, the authority to override the Companies' decisions about the operation, reliability, and safety of their own grids. This presents significant safety and liability concerns if the IE does not allow something the Companies feel is necessary for the safe and reliable operation of their grids. The Companies accordingly request that this authority of the IE be reconsidered and removed, or in the alternative, clarified that should the IE order or not allow something against the Companies' decisions, liability for any resulting issues shall also lie with the IE and not with the Companies.

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<sup>17</sup> Id.

<sup>18</sup> Id.

IV. CONCLUSION

Based on the foregoing, the Companies respectfully submit that partial reconsideration and/or clarification of Order 38479 on the points raised and discussed herein is appropriate.

DATED: Honolulu, Hawai‘i, July 11, 2022.

/s/ Marissa L.L. Owens \_\_\_\_\_  
MARISSA L.L. OWENS

Attorney for  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAI‘I ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED

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DOCKET NO. 2017-0352

CERTIFICATE OF SERVICE

I hereby certify that I have on this date copies of the foregoing *Motion for Partial Reconsideration and/or Clarification of Order No. 38479 and Memorandum in Support of Motion*, together with this Certificate of Service, upon the following, by causing a copy hereof to be served by electronic mail, as set forth below:

DEAN NISHINA  
Executive Director  
Department of Commerce and Consumer Affairs  
Division of Consumer Advocacy  
335 Merchant Street, Room 326  
Honolulu, Hawai'i 96813  
[Dean.K.Nishina@dcca.hawaii.gov](mailto:Dean.K.Nishina@dcca.hawaii.gov)  
[consumeradvocate@dcca.hawaii.gov](mailto:consumeradvocate@dcca.hawaii.gov)

1 Copy  
Electronic Transmission

DATED: Honolulu, Hawai'i, July 11, 2022.

HAWAIIAN ELECTRIC COMPANY, INC.

/s/Marisa Chun  
Marisa Chun

## Chun, Marisa

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**From:** puc@hawaii.gov  
**Sent:** Monday, July 11, 2022 3:55 PM  
**To:** Chun, Marisa  
**Subject:** Hawaii PUC eFiling Confirmation of Filing

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