

# EXHIBIT 1

Proposed Final Changes addressing Orders 38479 and 38653

## Exhibit 1

### **Proposed Final Changes Addressing Orders 38479 and 38653**

This Exhibit 1 describes the Hawaiian Electric Companies'<sup>1</sup> proposed final changes to the Stage 3 Request for Proposals for Hawai'i Island ("Stage 3 Hawai'i RFP") and supporting documentation in accordance with Order 38479<sup>2</sup> and Order 38653<sup>3</sup>.

#### **I. Order 38479, Motion for Partial Reconsideration and/or Clarification, and Order 38653**

After a review of the Companies' third draft of the Stage 3 Hawai'i RFP filed on May 31, 2022, the Commission issued Order 38479 on June 30, 2022 approving, with modifications, the Companies' third draft and directed the Companies to file the final Stage 3 Hawai'i RFP within 30 days. Order 38479 also stated the final Stage 3 Hawai'i RFP will be approved for issuance automatically ten days after it is filed, unless the Commission orders otherwise.

On July 11, 2022, the Companies filed a Motion for Partial Reconsideration and/or Clarification of Order No. 38479 filed on July 11, 2022 ("Motion"), requesting partial reconsideration and/or clarification of Order 38479 for reasons set forth in the Motion. Specifically, the Motion sought reconsideration or clarification of Order 38479 regarding: (1) State of Project Development and Schedule Evaluation Criteria; (2) Community Benefits Package; (3) Pro Forma Requirement; (4) Non-Negotiable Sections of the PPA; (5) Hosting Capacity Results; (6) Carbon Emissions Analysis; (7) Previous Performance Scoring Criteria; and (8) Independent Engineer ("IE"). On July 20, 2022, the Companies filed a Motion for Enlargement of Time to File the Final Stage 3 Request for Proposals for Hawai'i Island, requesting to file the Stage 3 Hawai'i RFP fifteen (15) business days after the issuance of an order regarding the Motion. On July 29, 2022, the Commission granted the Companies' request and established the Companies' deadline to file the Stage 3 Hawai'i RFP as fifteen (15) business days from the filing of the Commission's decision on the Motion.

On October 17, 2022, the Commission issued Order 38653, addressing the Motion and clarifying modifications directed to the Companies in Order 38479. This Exhibit 1 identifies the changes that were incorporated into the proposed final Stage 3 Hawai'i RFP consistent with Orders 38479 and 38653.

#### **II. Proposed Final Changes to Stage 3 Hawai'i RFP**

##### **A. State of Project Development and Schedule Evaluation Criteria**

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<sup>1</sup> Hawaiian Electric Company, Inc., ("Hawaiian Electric"), Maui Electric Company, Limited ("Maui Electric"), and Hawai'i Electric Light Company, Inc. ("Hawaii Electric Light") are each referred to as a "Company" and collectively as the "Hawaiian Electric Companies" or "Companies."

<sup>2</sup> 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").

<sup>3</sup> Order No. 38653, Addressing the Hawaiian Electric Companies' Motion for Partial Reconsideration and/or Clarification of Order No. 38479, issued on October 17, 2022 in the subject proceeding ("Order 38653").

In Order 38479, “the Commission direct[ed] the Companies not to deduct points from a proposal based on its interconnection-related costs.” Order 38479 at 17. In the Motion, the Companies sought reconsideration of this direction, noting that the revision would disincentivize proposers to develop accurate cost estimates. The Companies highlighted that accurate cost estimates are important to their evaluation of proposals, and that the Companies have expended significant efforts to improve interconnection information provided to developers in advance of proposal submission. The efforts expended by the Companies included significant revisions to Appendix H, Interconnection Facilities and Cost Information, which provides additional information related to interconnection costs to assist Proposers in including more complete interconnection cost estimates with their proposals. Order 38653 clarified that the Companies may deduct points if a proposal does not include *any* interconnection cost estimates, but may not deduct points if the Companies find the proposed interconnection costs to be inaccurate. Order 38653 at 7. After consulting with the Independent Observer (“IO”) on this issue, the Companies understand the Commission’s directive to permit the Companies to deduct points in the non-price evaluation if proposals fail to account for all of the applicable line items in Appendix H.

Additionally, consistent with the Commission’s suggestion in Order 38653, the Companies will continue to engage with Proposers throughout the RFP process “to answer questions related to interconnection cost estimates, review interconnection cost studies conducted by proposers, and prioritize the sharing of information to improve the accuracy of interconnection cost estimates.” Order 38653 at 7. The Companies clarify that currently, Proposers are invited to ask questions of the Company prior to the proposal submittal date regarding interconnection viability via e-mail. The appropriate internal Company experts review the questions and provide responses to be reviewed and sent back by the Energy Contract Manager. For example, one developer requested the Company review their assumptions for interconnection costs they had calculated using the line items and examples in Appendix H for a prospective project at a prospective location. The Company reviewed the estimates they provided, and all the details the developer provided for their prospective project, site and circumstances. The Company responded that their approach to the assumptions seemed reasonable but that their counts for the remote substation elements were different from what was earlier conveyed for the offered line. The Company then reminded the developer the costs provided in Appendix H are only for Company costs and do not include Proposer costs for their responsibilities related to the Company-Owned Interconnection Facilities, as well as noting the Company’s assessment is based solely on the information provided and does not take into account unknown or undisclosed characteristics or factors that may have an effect on such estimates. Currently, the email correspondence with Proposers includes the IO. Going forward, these communications will also include the IE where appropriate. However, even if the Companies communicate to Proposers after bid submittal that their costs do not appear accurate, there is little that can be done at such time to rectify the situation because (1) Proposers are not allowed to change their price after bid submittal and (2) Proposers cannot be docked for not including accurate interconnection costs, even if such costs are clearly set forth in Appendix H. The Companies have concerns that Proposers may advance to selection even though it is clear they have not properly accounted for the cost of interconnection in their proposal. This may result in projects dropping out or asking for a price increase after selection. After consulting with the IO regarding the Companies’ concern over limiting these possible outcomes, in the event that it appears that a Proposer has not provided accurate interconnection costs with their bid submittal, the Companies intend to require an attestation from Proposers confirming that such Proposer understands that (1) it appears they have not accurately followed Appendix H in their bid submittal or that their proposed interconnection

costs otherwise do not appear accurate and (2) should the Proposer continue to proceed with their proposal, and be selected, the Proposer shall be responsible for the final determination of interconnection costs whether or not it is higher than what the Proposer has included in its bid.

B. Community Benefits Package

The Commission recognized the efforts of the Companies to incorporate stakeholder feedback, but found “that capping the minimum commitment of funds for the [Community Benefits Package (“CBP”)] could provide an advantage for larger projects, while potentially reducing the proportionality between community impacts and benefits,” and directed the Companies to remove the cap on the \$200,000 minimum commitment of funds for CBPs. Order 38479 at 16-17. The Companies requested reconsideration of this directive, highlighting that a larger project may not necessarily have a larger footprint and the effects of a project on a host community may differ between technologies. Motion at 4-5. In Order 38653, the Commission denied the Companies’ request for reconsideration. As such, in this filing, the Companies removed the cap on the minimum commitment of funds for the CBPs, and revised the relevant Model Contracts to reflect such removal.

The Commission also directed 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.” Order 38479 at 18-19. However, the Companies clarified in the Motion that the Stage 3 Hawai‘i RFP already includes the broader community in its community outreach and criteria evaluations. Specifically, the community outreach evaluation and use of the CBP and developer resources are not limited to a particular census tract. Allowing for a case-by-case review of CBP components that may stretch beyond the scope of a proposed project’s census tract may have the unintended consequence of creating ineffective subjectivity during the evaluation process for the community outreach criteria. In Order 38653, the Commission clarified that the Companies should “change or remove footnote 41” from the Stage 3 Hawai‘i RFP and exclude it from the Stage 3 RFPs for Maui and Oahu, “which would restrict funds from non-profits to recipients from the same census tract as the project.” Order 38653 at 10. In response to the Commission’s directive, the Companies have removed footnote 41 from the Stage 3 Hawai‘i RFP. The Companies reiterate the concern that the removal of the census tract requirement will create subjectivity in the community outreach evaluation. To mitigate this concern, the Companies have revised Sections 4.4.2 and 5.3 of the Stage 3 Hawai‘i RFP to require that Proposers provide details regarding the intended beneficiaries of the CBP, including recipients and the area(s) in which the funds will be directed.

In Order 38653, “the Commission emphasize[d] that the size of the proposed CBPs should be proportionate to the needs of the communities affected by the project, with considerations, for example, of the share of LMI and underserved populations in these communities.” Order 38653 at 11. However, Order 38653 did not request any change to the Stage 3 Hawai‘i RFP regarding this statement and the language does not appear to be directed towards the Company. Therefore, the Companies interpret this language as a directive to Proposers in drafting their CBPs and Proposals. Additionally, the Companies highlight that this language would require a subjective evaluation of CBPs, which is inconsistent with the RFP’s goal to only include objective evaluation criteria versus subjective criteria that is open to interpretation of the evaluator. The Companies consulted with the IO regarding this language in Order 38653.

In an effort to further address community concerns and to improve community engagement, the Companies introduce a new step in the evaluation process in Section 4.5 of the Stage 3 Hawai‘i RFP with respect to Community Outreach. Specifically, within 30 days of Priority List Notification, which occurs after the Initial Evaluation is complete, the Companies will provide feedback to Proposers advancing to the Priority List regarding their (1) Community Outreach Plan and (2) Cultural Resource Impacts. Proposers are expected to respond to any requests for clarification and resolve potential issues identified by the Companies during this period of feedback. The Companies hope that the opportunity for further feedback regarding community and cultural outreach will improve engagement by the Proposer as specified in the RFP.

C. Net Energy Potential

The Commission ordered the following with respect to proposals’ Net Energy Potential (“NEP”):

The Commission believes that it is reasonable to allow upward adjustments to a project’s NEP and accordingly orders the Companies to allow a one-time adjustment in NEP up to five percent above the RFP NEP prior to COD of the project. The Companies may allow for an increase in lump sum payment pursuant to the updated NEP but will not allow a change in the project's unit price. The IE may assist in verifying the requested increase to the NEP.

Order 38479 at 19. Accordingly, the Companies revised Section 3.10.11 of the Stage 3 Hawai‘i RFP, as well as the Model RDG PPAs, to reflect this directive in Order 38479.

D. Pro Forma Requirement

The Commission “direct[ed] the Companies to remove the pro forma requirement.” Order 38479 at 20. While the Companies continue to believe they should be required, the Companies revised Sections 3.10.3 and 4.4.2(2) of the Stage 3 Hawai‘i RFP to remove the pro forma requirement. Additionally, the Companies revised Sections 2.1, 2.2.3, and 2.3.2.2 of Appendix B to remove the pro forma requirement with a general requirement for high-level cost estimates similarly requested in Stage 1, Stage 2, and CBRE RFPs.

In directing the Companies to remove the pro forma requirement in the Stage 3 Hawai‘i RFP, the Commission suggested instead that the Companies “require that Proposers provide interconnection cost estimates prior to bid submission,” further requiring that those cost estimates be provided directly to the IE prior to a proposal submission. Order 38479 at 20-21, 32-33. However, the Companies sought reconsideration and removal of this requirement, and reiterated that the Stage 3 Hawai‘i RFP already requires an interconnection cost estimate for each proposal. Order 38479’s requirement to provide interconnection cost estimates to the IE prior to proposal submission allows Proposers to circumvent the Companies’ review of such estimates, separating them from the proposal entirely. In Order 38653, the Commission denied the Companies’ request for reconsideration, instead clarifying that “the Companies will instead provide the IE with access to the interconnection cost estimates as a component of each project’s bid package.” Order 38653 at 12. Following this directive, the Companies will provide the IE with access to PowerAdvocate, which

will allow the IE access to each Proposer's entire bid submittal, and will include the IE on all communications with Proposers regarding interconnection cost estimates.

E. Non-Negotiable Sections of the PPA

The Commission directed the Companies "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." Order 38479 at 21.

In Order 38653, the Commission denied the Companies' request to clarify that Performance Standards negotiability shall only apply to types of technologies that are not already represented in any of the model PPAs. In denying the Companies' request for reconsideration, the Commission provided the following explanation:

The Companies should not prohibit developers from discussing Performance Standards and associated liquidated damages, while ensuring a fair risk allocation between developers and customers and a reasonable level of performance from the projects. Nevertheless, the Commission emphasizes that all PPAs must ensure a satisfactory level of performance will be maintained through operations during the term of the PPA, and reiterates that this guidance is not an invitation for developers to attempt to weaken necessary performance standards or improperly shift risks onto customers.

Order 38653 at 14.

The Companies have not made any further revisions to the RFP or the model PPAs on this point, and believe the Commission is conflating Performance Standards, which have never been negotiable in prior PPAs, with Performance Metrics, which have been negotiated in prior PPAs. Performance Metrics are set forth in Article 2 of the Companies' model PPAs (except for the model Firm PPA, where the Facility's performance guarantees are outlined in Article 3). These performance requirements are in place to insure the availability of the project and that the project is performing as the Proposer promised with respect to certain performance items, including without limitation, forced outages, availability, capacity and round trip efficiency. There are associated liquidated damages if the Proposer does not meet these metrics. Performance Standards are found in Attachment B of the Companies' model PPAs. Performance Standards set the criteria for how the project must operate on the grid to ensure the reliability and safety of the grid, including technical requirements related to droop, frequency response, ramp rate and black-start. There are no liquidated damages associated with the Performance Standards in the model PPAs; instead, a failure to meet Performance Standards triggers the Company's right to require documentation or testing from Seller to verify compliance in addition to requiring Seller to investigate, implement any corrective action, and provide a written report to the Company of the results of such investigation and the corrective action taken.

The Commission referenced Hawaiian Electric's Responses to Consumer Advocate Information Requests CA/HECO-IR-25, Attachment 1, filed in Docket No. 2022-0007 on April 14, 2022 ("Attachment 1") in supporting their assertion that Performance Standards were modified during review of the Stage 1 and Stage 2 PPAs and revised during negotiations with Proposers.

However, Attachment 1 does not at all reference Performance Standards, but instead reflects Performance Metrics that were negotiated during review of the Stage 1 and 2 PPAs. The Companies clarify that Order 38653 quotes a general representation by the Companies that all PPAs were negotiated, but does not specifically address the negotiability of Performance Standards. See Order 38653 at 14 (citing Docket No. 2022-0007, Hawaiian Electric’s Response to CA/HECO-IR-25, filed on April 14, 2022). Second, while Order 38653 instructed the Companies to not prohibit developers from discussing Performance Standards and associated liquidated damages, Performance Metrics are used to measure and assess liquidated damages. Performance Standards are not applied to calculate or assess liquidated damages in the PPAs. Finally, the Companies note that the RFP contains a Performance Standards Threshold Requirement in the evaluation process that is non-negotiable. The RFPs are premised on the basis of the Performance Standards being met. This is what allows the Companies to be able to have an all resource RFP, by specifying what the facilities must be able to do, but not requiring that it be provided by any particular technology. Given that the Commission did not order the removal or modification of the Performance Standards Threshold Requirement, requiring Performance Standards to be negotiable in the PPAs would render the Performance Standards Threshold Requirement useless, the Companies again believe that the Commission intended Performance Metrics and not Performance Standards to be negotiable. Further, both the Stage 1 and Stage 2 RFPs, required that the Performance Standards were non-negotiable. Finally, the Commission’s language in Order 38653 discusses liquidated damages in the context of Performance Standards. However, the liquidated damages in the PPA are associated with failure to meet the Performance Metrics.. Accordingly, the Companies have not made any further revisions to the RFP or model PPAs on this point. However, the Companies confirm that Performance Metrics and other sections of the model PPAs are negotiable , and have been since the first draft Hawai‘i Stage 3 RFP was filed on October 15, 2021.

F. Hosting Capacity Results

The Commission ordered the Companies “to provide the hosting capacity results provided to Proposers who request this information. The Commission will instruct the Companies as to whether it should continue to provide these results directly to the Commission and IO after the IE is instated.” Order 38479 at 25. The Companies noted in response that the IO is already copied on all communications with Proposers.

In Order 38653, the Commission directed the Companies to provide “materials related to the development of the hosting capacity results” to the Commission and IO “at present,” noting that the Commission will provide such results to the IE upon retention. Order 38653 at 15-16. The Companies filed the Injection Study Reports for Hawai‘i Island in the instant docket on November 2, 2022.

G. Grid Needs Assessment

The Commission expressed concern with respect to:

the geographic consideration insofar as it is vague, it is not substantiated by the updated Near-Term GNA, and it inhibits Proposers from submitting optimally-sized and -located projects. Furthermore, the Companies state that the geographic considerations ‘may result in the Companies not selecting the lowest cost project or

portfolio.’ The Commission is concerned that this statement creates an unfair opportunity for the Companies to consider a set of projects that may be higher cost but would satisfy a set of geographic requirements that are not clearly defined.

To address its concerns, the Commission directs the Companies to: (1) clarify the basis for the 60 MW capacity sought on the east side of Hawai‘i Island, including the underlying studies, (2) clarify how the Companies would evaluate a portfolio of bids that are only located on the west side, (3) clarify how the Companies would evaluate a portfolio of bids wherein all of the projects bid on the west side are priced lower than the projects bid on the east side, and (4) including the previous clarifications, provide clearer guidance to Proposers on how the Companies will evaluate a portfolio of bids that respond to the grid needs and minimize costs. The Companies must communicate these evaluation techniques with the intent of signaling grid needs and equipping Proposers with the knowledge to craft optimal bids.

Order 38479 at 22-23.

The Commission directed the Companies to clarify the basis for the capacity sought on the east side of Hawai‘i Island, clarify how the Companies would evaluate a portfolio of bids only located on the west side or where all the west side bids are priced lower than the east side, and provide clearer guidance to Proposers how the Companies will evaluate bids. The first draft of the RFP was guided by the Near-Term Grid Needs Assessment (July 2021), which summarized concerns on the east and south sides of Hawai‘i Island. In particular, “[t]hese voltage concerns should be mitigated prior to any decisions to retire generating units on the east side of the island.”<sup>4</sup> New generation on the east side of Hawai‘i Island would mitigate those needs, and the initial RFP targeted generation on east Hawai‘i only. Subsequent to that filing, Puako Solar, a project on the west side of Hawai‘i Island withdrew, which required a revision of the initial RFP and expanded the interconnection locations for Hawai‘i Island. Nonetheless, the original intent remains, which is to secure resources on the east side of the island which not only supports voltage, but also balances dispatch to the extent possible to manage load flows, reliability, resiliency, etc. The Company set a target of 60 MW based on the impending de-activations of aging units such as Hill 5 (13.7 MW) & 6 (20.5 MW), Puna Steam (15.5 MW), and Pakini Nui Wind (20.5 MW).

The Companies plan to separate proposals on the east side from the west side during the preliminary evaluation, in a similar fashion to how proposals will be separated by technology for that phase of the evaluation. This structure will still offer comparison opportunities among the east side projects separately from the west side ones, in addition to advancing the top scoring proposals for each category to the Detailed Evaluation phase, where portfolios of projects will be assessed to determine which provide the greatest value to the system and customer.

The Companies employ a closed-bidding process for solicitations to mitigate the risk of Proposers gaming the process. With this closed-bidding process, the IO is given full visibility over the entire process and scoring to ensure a fair process is maintained throughout the procurement and

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<sup>4</sup> See Docket No. 2017-0352, Hawai‘i Island Near-Term Grid Needs Assessment Draft Report, filed on July 15, 2021, at p. 64.



among the participants. The IO is consulted with during the RFP development process and maintains complete oversight once the procurement process begins, including meeting with the Companies and going through the Companies' evaluation of each project prior to selection to the priority list and prior to selection of the final award group. Thus, fairness is assured while details on the scoring aspects that might be gamed are avoided.

The Companies clarify in Section 4.4.1 that, as part of the Initial Evaluation (price scoring), the Companies may employ geographic categories depending on the proposals that are received. Section 4.5 further provides that the Companies may elect to optimize the pool of resources by geographic location. Pursuant to the Commission's guidance "to provide clearer guidance to Proposers on how the Companies will evaluate a portfolio of bids that respond to grid needs and minimize costs," the Companies clarified that the computer model that will be used to initially determine the least cost portfolio is RESOLVE, which is the same model that was used to identify the resources that fulfilled grid needs as part of the grid needs assessment, which in turn, was used to inform the targets for this RFP.

#### H. Available Sites

The Commission ordered the Companies to "clarify whether the available sites are recommendations or requirements for interconnection of the project." Order 38479 at 25. The Companies originally intended for the available sites identified in the May 31, 2022 draft of the Stage 3 Hawai'i RFP to be requirements for interconnection of a proposed project. Consistent with the origination of the RFP, the Companies proposed ways to streamline the procurement and interconnection process in its response<sup>5</sup> to the Commission's January 21, 2021 letter to begin development of a Stage 3 RFP for Hawai'i Island. A way to provide Proposers with more upfront information, such as available capacity, remote substation requirements, and other cost items is to identify existing substation sites for interconnection and exclude sites requiring major transmission upgrades. This focused approach provided the Company the ability to execute a capacity analysis of the allowable interconnection locations and provide more timely and detailed information to Proposers than was available in the Stage 1 and Stage 2 RFPs. Further, the known interconnection locations allow the Company to pre-identify remote substation requirements, which is typically identified in the Facility Study phase of the Interconnection Requirements Study. Focusing the interconnection location variables will also streamline the evaluation stage by preventing overly expansive combinations of portfolios, which will require a significant amount of resources to evaluate. In alignment with the intent of the RFP to procure near-term resource needs, the Company drafted the RFP with the intent to allow interconnection to only those locations provided in the RFP.

However, in Order 38479, the Commission stated that it "does not find it reasonable to restrict interconnection to certain substations or transmission lines if the option exists for a proposer to include the cost of transmission network upgrades into their proposal." Order 38479 at 24. Other potential Proposers have also commented and submitted requests expressing a desire to pursue interconnection at other non-offered locations on the Company's transmission system. The Companies therefore clarify that it is making the offered transmission lines and transmission substations identified in Section 2.2.1 of this Stage 3 Hawai'i RFP filing as recommendations, not requirements, for interconnection.

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<sup>5</sup> See Docket No. 2017-0352, Letter re: Development of Stage 3 RFP for Hawai'i Island, filed on February 25, 2021.

Consistent with Order 38479, the Companies will provide Proposers the opportunity to propose interconnecting at non-offered locations. This process will undoubtedly be onerous and Proposers should be prepared for major transmission infrastructure expansions/upgrades, as the offered list was developed based on a preliminary assessment of feasible interconnections. With these transmission upgrades, Proposers will provide cost estimates based on unit pricing provided in Appendix H, which may or may not be accurate in the evaluation phase. Within the evaluation phase, determining a best value portfolio will be complex to evaluate with major transmission upgrades given the uncertainty of such estimates. The Companies do not disagree with the Commission's position on this point, as outlined in Orders 38479 and 38653; however, the Commission should expect the RFP process to take longer than anticipated due to such added complexities.

I. Carbon Emissions Analysis

In Order 38479, the Commission directed the Companies to not only consider modifications to this criterion regarding carbon emissions estimates to mitigate underestimation and but also provide further clarity on how the Companies intended to evaluate the carbon emissions analysis in the Stage 3 Hawai'i RFP. Order 38479 at 26-27. However, and as noted in the Motion, the Companies sought reconsideration or clarification of this portion of Order 38479 because the proposed criteria in the Stage 3 Hawai'i RFP does not require an estimate of carbon emissions. This requirement was removed in the previous draft of the Stage 3 Hawai'i RFP. Instead, the Companies will utilize indicative information obtained from Proposers through the Carbon Emissions Questionnaire in Section 2.15 of Appendix B to assess a project's carbon impacts relative to other proposed projects. Furthermore, the Companies sought clarification or reconsideration of the direction that the Companies "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 a minimum, propose a plan and...changes in assumptions or underestimation of preliminary figures submitted in the bid's Carbon Emissions Questionnaire" in light of the fact that there is no requirement for an estimate of carbon emissions in the Stage 3 Hawai'i RFP.

Order 38653 clarified that the Commission's guidance is intended to inform developers that the responses to Section 2.15 of Appendix B, Carbon Emissions Questionnaire may be compared with the assumptions used in the Companies' GHG analysis of the project. Order 38653 at 16-18. To address the Commission's concerns with potential underestimation of the factors in the Carbon Emissions Questionnaire (i.e., concerns that Proposers provide responses to questions that are optimistic or would result in a better score for the Carbon Criteria questions), the Companies revised and clarified Section 2.15 of Appendix B to the Stage 3 Hawai'i RFP, Carbon Emissions Questionnaire, to improve questions and include explicit guidance to Proposers for providing conservative answers.

J. Previous Performance Scoring Criteria

The Commission found the inclusion of the Previous Performance scoring criteria helpful to ensure Proposers are "equipped and motivated to deliver on proposal commitments." Order 38479 at 28. The Commission directed the Companies to revise the Stage 3 Hawai'i RFP with respect to

the Previous Performance scoring criteria consistent with the following:

First, the Companies should notify bidders of any potential deductions and provide them with the opportunity to respond with a written explanation within 5 business days. Second, the Companies, in consultation with the IO, will review and consider these written responses in determining instances that were outside of the Proposer's control or otherwise excusable. Third, the Companies will finalize deductions with the express objective of determining the risk of future under- or non-performance based on past performance. The Companies, with IO confirmation, shall avoid penalizing bidders for past under- or non-performance that was beyond the Proposer's reasonable control. Throughout the process, the IO will ensure that any subjective judgments are conducted reasonably and are applied fairly, transparently, and consistently across proposals. In addition, the IO will review each determination with the Companies and ensure that the Companies inform Proposers of specific infractions and provide an adequate opportunity to respond.

Order 38479 at 29-30. The Companies revised Section 4.4.2 of the Stage 3 Hawai'i RFP to reflect the ordered modifications.

In addition, the Commission directed the Companies to add the following infractions to the Previous Performance scoring criteria that were evaluated as eligibility requirements in Section 4.3 of the previous draft of the Stage 3 Hawai'i RFP:

- (1) The Proposer, its parent company, or an affiliate has defaulted on a current contract with the Company, unless such default was cured by the contracting Proposer, parent company, or affiliate in an expeditious manner to the satisfaction of the Company;
- (2) The Proposer, its parent company, or an affiliate had a contract terminated by the Company, which was not reinstated or otherwise superseded by a subsequent contract; and
- (3) Any pending litigation in which the Proposer, parent company, or any affiliate has made claims against the Company, which is not subject of a settlement agreement that is currently in effect.

See Order 38479 at 28. Further, the Commission “direct[ed] the Companies to add new infractions for these three circumstances and detract two points each from a Proposer’s non-price score for these infractions” and “remove the first eligibility requirement which considers these three circumstances.” Order 38479 at 29. The Companies revised Section 4.4.2 of the RFP consistent with Order 38479 with respect to situations where (1) the Proposer its parent company, or an affiliate has defaulted on a current contract with the Company, unless such default was cured by the contracting Proposer, parent company, or affiliate in an expeditious manner to the satisfaction of the Company; and (2) the Proposer, its parent company, or an affiliate had a contract terminated by the Company, which was not reinstated or otherwise superseded by a subsequent contract.

In the Motion, the Companies sought reconsideration of the two-point deduction with respect to the removal of the eligibility requirement as it relates to a Proposer, its parent company, or affiliate that has pending claims against the Companies. In Order 38653, the Commission denied the Companies’ request to reconsider removal of the eligibility requirement related to pending

litigation against the Companies, but permitted the Companies to determine an appropriate point deduction to account for the magnitude of detriment a Proposer could cause if it is in pending litigation with the Companies. Order 38653 at 19. As such, and after consultation with the IO, the Companies determined that a separate ten (10) point deduction is appropriate and proportionate to the magnitude of detriment to the Companies that would result from a Proposal whose Proposer, parent company, or any affiliate is involved in pending litigation with the Companies. Such involvement includes claims made by a Proposer, parent company, or any affiliate against the Companies and any claims made by the Companies against a Proposer, parent company, or any affiliate. To further address the significance of accepting a proposal whose Proposer, parent company, or any affiliate is in pending litigation with the Companies, the ten-point deduction is not subject to the maximum of ten (10) points that may be deducted for other Previous Performance scoring criteria. As such, a total of twenty (20) points may be deducted from a Proposal's non-price score for infractions of Previous Performance scoring criteria.

K. Community Engagement Website

The Commission found it reasonable that the Companies “provide five business days after notification of selection to the Final Award Group for the Proposer to launch the project website, and the Companies to modify the RFP as such.” Order 38479 at 31. In line with this direction, the Companies revised Section 5.3 of the RFP to state that by the “fifth (5th) business day after the Company notifies a Proposer they were selected, each Proposer shall provide the Company with links to their Project website, which the Company will then post on the Company’s website. Each Proposer will launch a Project website that will go-live by that fifth (5th) business day after notification of Final Award Group selection.”

L. Independent Engineer

The Commission indicated in Order 38479 that it intends to retain an IE “to assist in matters related to interconnection for the Stage 3 RFP process on Hawai‘i Island, Oahu and Maui” and that it “will issue an RFP concurrently with this Order to seek an IE with technical experience to perform numerous functions.” Order 38479 at 31. While the Companies appreciate the inclusion of an IE in the RFP process, they are concerned with the scope of the IE’s duties and work as encapsulated by Order 38479 and sought reconsideration of several requirements.

First, Order 38479 required the IE’s presence for “all discussions between the Companies and Proposers in technical matters related to interconnection and project design.” The Companies sought reconsideration of this requirement, as it places an undue burden not only on the parties involved, but also on the evaluation process itself. The Commission granted the Companies’ request for reconsideration of this requirement, acknowledging the difficulty of including the IE in all discussions between the Companies and developers. Order 38653 at 21-22. Consistent with the Commission’s further clarification, the Companies will endeavor to include the IE in as many discussions as possible without creating unreasonable delay in coordination with developers, and will invite the IE to participate in all technical discussions and correspondence with developers regarding technical matters.

Second, the Commission ordered that the IE “will assist in determining whether project re-designs necessitate re-studies.” Order 38479 at 31-32. The Companies sought clarification of this

requirement, as 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. In Order 38653, the Commission found that the Companies' concerns are "justified and reasonable," but did not otherwise address the Companies' request for reconsideration. Order 38653 at 22-23. Therefore, the Companies did not include this directive in the Stage 3 Hawai'i RFP.

Third, the Commission ordered that the IE verify "system information including hosting capacity results shared with Proposers to ensure that these results are accurate." Order 38479 at 32. The Companies sought clarification as to the timing of when the Commission intends to have the IE verify system information. At this juncture, it is unclear whether this requirement will impact the ability to provide hosting capacities to prospective bidders and potentially delay the RFP process. The Commission found the Companies' concerns with respect to the timing of when the Commission intends to have the IE verify system information "justified and reasonable." Order 38653 at 22-23. The Commission also noted that "[it] will ensure the Companies are promptly apprised of when the IE has been engaged." Order 38653 at 23-24. On October 25, 2022, representatives of the Companies were introduced to PA Consulting, the IE for the Stage 3 Hawai'i RFP.

Finally, Order 38479 gave the IE the power to "verify that any required transmission system upgrades attributed to a project are justified and reasonable." Order 38479 at 32. The Companies sought reconsideration and removal of this requirement, asserting that the expansion of the IE's authority to this scope is unreasonable because it gives the IE, who the Companies have no role in vetting or selecting, the authority to override the Companies' decisions about the operation, reliability, and safety of their own grids. In the alternative, the Companies requested clarification that, should the IE order or not allow action against the Companies' decisions, liability for any resulting issues shall also lie with the IE and not the Companies. In denying this request for reconsideration, the Commission clarified that "the role of the IE is to assist the Companies" in verifying that any required transmission system upgrades attributed to a project are justified and reasonable. Order 38653 at 23. Similarly, the Commission clarified that "the IE will not have authority to overrule the Companies' decisions" and that "the IE's duty is to assist the Commission in overseeing the Companies' conduct during the RFPs, including decisions made pertaining to the operation, reliability, and safety of the grid." Order 38653 at 23. The Companies appreciate that the Commission further clarified the scope of the IE's role in the RFP process.

M. GCOD Evaluation

The Commission acknowledged the removal of the non-price scoring criteria for GCOD but still directed the Companies to "to highlight that GCODs are no longer a non-price criteria." Consistent with such direction, the Companies added a footnote in Section 1.8.3 of the RFP that states, "[d]iffering from the Stage 2 RFPs, GCOD is no longer a non-price criteria, though all GCODs must be no later than December 1, 2030 to meet the threshold requirement."

N. Access to Utility Sites

The Company considered whether it could offer any of the two utility-owned or controlled sites it offered to Proposers from the Stage 2 Hawai'i RFP in this Stage 3 Hawai'i RFP. In Stage 2,

the Company offered limited space at its Puna Generating Station and Keahole Generating Station for standalone storage projects. After its review, the Company is not able to make any sites under its control, including the Puna and Keahole sites, available for this RFP. Based on the scope of the RFP, the sites considered for use do not lend themselves to third-party development due to various complications and issues related to, among other factors, suitability of those sites to this RFP's capacity and energy targets sought, security, ease of access, future use of the site(s), and contingency planning.

O. Material Changes to Model Contracts

The Companies have made a number of changes to the Model Contracts in order to align the PPAs with the changes made to the RFP (e.g., allowing a one-time adjustment to raise the NEP RFP Projection no more than 5% in the Model RDG PPAs, and changes to provisions regarding community outreach requirements). Changes have also been made to the Model Contracts to correct and clarify certain commercial and technical terms (e.g., commercial terms relating to the provision of a substitute letter of credit, subcontractor insurance requirements, and requests for additional interconnection cost payments; and technical terms relating to Ramp Rate requirements), and to make the Model Contracts consistent where appropriate (e.g., incorporating into the ESPA tax credit pass through provisions similar to those in the other Model Contracts). Additional material revisions include adding a termination right for Company if Seller fails to demonstrate satisfaction of the BESS EFOF Performance Metric at the expiration of the applicable cure period, and adding an exception to the force majeure exclusion regarding Seller's inability to obtain government approvals.

**III. Next Steps**

The Companies look forward to working with the Commission, the Consumer Advocate, the Independent Observer, and the Independent Engineer to launch and execute a competitive and successful procurement.