

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAUAI ISLAND UTILITY COOPERATIVE)
For Approval of Purchase Power)
Agreement and Interconnection)
Agreement with Green Energy Team)
LLC, and to Include Costs in its)
Energy Rate Adjustment Clause.)

DOCKET NO. 2007-0142

DECISION AND ORDER NO. 23855

Filed NOV. 28, 2007
At 1 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

I.

Background

A.

KIUC and Green Energy Team

KIUC is a Hawaii not-for-profit electric cooperative engaged in the production, transmission, distribution, purchase, and sale of electric energy on the island of Kauai.³

Green Energy Team is a Hawaii limited liability company primarily formed for the purpose of constructing and operating a biomass electric generating facility ("Facility") on the island of Kauai. Green Energy Hawaii LLC, a Hawaii limited liability company, is the sole owner of Green Energy Team's membership interest.

B.

Application

On May 24, 2007, KIUC filed its Application, requesting that the commission: (1) approve a Purchase Power Agreement ("PPA")⁴ dated March 26, 2007 between KIUC and Green Energy Team,⁵ pursuant to HRS § 269-27.2; (2) approve the related

³KIUC has been an operating public utility since November 1, 2002, when it purchased substantially all of the assets and assumed the operations of the Kauai Electric Division of Citizens Communications Company. See In re Citizens Comm. Co., Docket No. 02-0060, Decision and Order No. 19658, filed on September 17, 2002, as amended by Decision and Order No. 19755, filed on October 30, 2002.

⁴See KIUC's Application, Attachment A, as supplemented on June 13, 2007 (pages filed under confidential seal).

⁵See KIUC's Application, Attachment B, filed on June 13, 2007.

Interconnection Agreement dated May 24, 2007; (3) approve the energy payments to be made by KIUC as set forth in the PPA, and find that the energy payments are reasonable; (4) find that the terms and conditions under the PPA, pursuant to which KIUC shall purchase renewable energy from Green Energy Team, are prudent and in the public interest; and (5) approve the inclusion of the purchased energy payments and related revenue taxes that are incurred by KIUC under the PPA, in KIUC's Energy Rate Adjustment Clause ("ERAC"), for the term of the PPA, pursuant to HAR § 6-60-6(2).⁶

As described in the Application, Green Energy Team will develop, design, construct, own, and operate the Facility:

The proposed agricultural waste-to-energy facility will be located in an agricultural area on the island of Kauai in the Hawaiian islands. The plant will utilize Albizia wood chips and other agricultural waste products to produce an estimated [7.4 MW gross (6.4 MW net)] electrical output.

The technology used to produce power will be a multistage condensing steam turbine generator. The steam will be generated by two biomass gasifiers in combination with two 40,000 pounds per hour industrial water tube boilers.

⁶On June 8, 2007, the commission filed Stipulated Protective Order No. 23486. KIUC represents that certain portions of the PPA contain confidential terms, conditions, and financial information that, if disclosed to entities other than the commission and Consumer Advocate, "may infringe upon certain privacy and proprietary rights and/or expose KIUC and/or Green Energy Team to unfair competitive disadvantages and to certain liabilities." KIUC's letter, dated June 13, 2007, at 1. Accordingly, on June 13, 2007, KIUC produced to the commission and Consumer Advocate under confidential seal, the portions of the PPA it designated as confidential, following the commission's issuance of Stipulated Protective Order No. 23486.

Water exists approximately 4,600 feet west of the site at the Koloa Ditch. Water will be brought from the ditch via a gravity fed 8-inch diameter [high-density polyethylene] raw water pipe to an on-site water treatment system.

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A 15,000 square foot Main Energy Plant building will house the gasifiers, boilers, steam turbine and other auxiliary steam equipment. This building will also have the control room, administrative offices, maintenance shop, and storage. A separate 21,000 square foot Feedstock Storage building will store approximately two days of wood chips under cover. The wood chips will be move[d] to the Main Energy Plant via conveyer.

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The site is approximately 5.5 acres in size and was formerly a sugarcane field. It is located adjacent to KIUC's existing overhead transmission lines. Trees or wood chips will be transported to the proposed facility primarily on local cane haul roads

PPA, Exhibit B, at 49; see also KIUC's Application, at 4-5.

1.

Terms of the PPA

Pursuant to the terms of the PPA:

1. Green Energy Team shall construct and maintain its Facility in accordance with: (A) Good Utility Practices, as defined in Section 1.4 of the PPA; and (B) the Interconnection Agreement.⁷ In addition, Green Energy Team shall operate the Facility in a manner that complies with all applicable national and regional reliability standards, including standards set by

⁷The Interconnection Agreement, in turn, states that Green Energy Team is responsible for constructing and operating its Facility in a manner that minimizes the likelihood of any disturbance that adversely affects or impairs KIUC's system, including the utility's equipment.

the commission and the Federal Energy Regulatory Commission governing the operation of generation facilities interconnected with an electric utility's system.

2. Subject to extension, the Facility shall achieve the Commercial Operation Date and be fully capable of reliably producing the Certified Amount of Renewable Capacity to be provided under the PPA, and delivering such amount to KIUC no later than the Commercial Operation Milestone date specified under confidential seal in Exhibit A, Construction Milestones, of the PPA.⁸

3. KIUC will notify Green Energy Team when the Facility has achieved the Commercial Operation Date. Said notification is contingent upon Green Energy Team providing evidence reasonably acceptable to KIUC of the satisfaction or occurrence of all of the conditions set forth in Section 4.6 of

⁸As defined in Section 1.4 of the PPA:

"Certified Amount of Renewable Capacity" means the amount of capacity Seller certifies can be delivered to the Electric Interconnection Point, after completion of all testing and synchronization of the Facility with the grid on the Commercial Operation Date which amount shall be subject to one further adjustment during the six (6) month period thereafter, but in no event shall be greater than 6.7 MW nor less than 6.0 MW.

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"Commercial Operation Date" or "COD" means . . . the date that KIUC provides notification to Seller, pursuant to Section 4.6, of KIUC's declaration that all of the Conditions specified in Section 4.6 have occurred or otherwise been satisfied.

"Commercial Operation Milestone" means the Construction Milestone for the Commercial Operation Date. The Commercial Operation Milestone is specified in Exhibit A[.]

the PPA, and shall include a declaration by KIUC to this effect. The ten stated conditions include Condition E, which provides that with respect to interconnecting the Facility with KIUC's system:

Seller is both obligated under, and in compliance with, the Interconnection Agreement, and the Interconnection of the Facility to KIUC's System has been completed in accordance with the Interconnection Agreement and has operated at the Facility's full output capacity or at a generation level acceptable to KIUC without experiencing any abnormal or unsafe operating conditions on any interconnected system[.]

PPA, Section 4.6(E), at 13.

In addition, Green Energy Team shall coordinate the production and delivery of Test Energy with KIUC, in order to satisfy Condition A, Section 4.6 of the PPA.⁹

4. KIUC will purchase the Renewable Energy produced by Green Energy Team's Facility and any associated Environmental and Renewable Energy Credits.¹⁰ Specifically, beginning on the

⁹As defined in Section 1.4 of the PPA:

"Test Energy" means that energy which is produced by the Facility, delivered to KIUC at the Point of Delivery, and purchased by KIUC, pursuant to Section 4.7, in order to perform testing of the Facility prior to Commercial Operation, and energy delivered subsequent to a violation of the Interconnection Agreement.

¹⁰As defined in Section 1.4 of the PPA:

"Environmental and Renewable Energy Credits" means any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the Facility's actual energy production or the Facility's energy production capability because of the Facility's environmental or renewable characteristics or attributes.

Commercial Operation Date, Green Energy Team will generate from the Facility, deliver to the Point of Delivery, and sell to KIUC during the Commercial Operation Year, Committed Renewable Energy at the Renewable Energy Payment Rate specified in Section 8.1 (partial confidential seal) and Exhibit F (confidential seal) of the PPA.¹¹ Subsequently, commencing on January 1, 2008 and annually thereafter, the Renewable Energy Payment Rate will likewise be calculated as specified in Section 8.1 (partial confidential seal) and Exhibit F (confidential seal) of the PPA.

5. Committed Renewable Energy represents "the minimum amount of energy to be purchased by KIUC annually."¹² The

. . . .

"Renewable Energy" means all net electric energy generating from fuel qualified as biomass feedstock as defined in Internal Revenue Code Section 45 and otherwise qualifying as a renewable source under Hawai'i regulations and generated exclusively by the Facility including any and all associated Environmental and Renewable Energy Credits and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.2. Renewable Energy shall be of a power quality of 60-cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

¹¹As defined in Section 1.4 of the PPA:

"Commercial Operation Year" means any consecutive twelve (12) month period during the Term of this PPA, commencing with the first of the calendar month following the Commercial Operation Date or any of its anniversaries.

"Committed Renewable Energy" shall have the meaning set forth in Section 7.2.

"Point of Delivery" means the point of interconnection. The Point of Delivery shall be more specifically described in the Interconnection Agreement.

"Renewable Energy Payment Rate" means the rate as defined in Section 8.1 of the PPA.

methodology for calculating the Committed Renewable Energy, set forth in Section 7.2(A) of the PPA (partial confidential seal), "is further reduced by any MWhs of Unavailable Energy and by equivalent energy purchased pursuant to Section 8.2(B)" of the PPA.¹³ "To the extent that KIUC does not purchase the minimum level of Committed Renewable Energy during any calendar year, then KIUC shall be responsible for payment to the Seller for the difference between Committed Renewable Energy and actual energy purchased at the applicable Energy Payment Rate in effect during said calendar year."¹⁴ Moreover:

As a payment levelizing mechanism, KIUC agrees to pay Seller for a minimum number of MWhs each quarter (the "Equalizing Payment"). The minimum number of MWhs for which Seller will be entitled to be paid on the last days of each second, third and fourth quarter shall be calculated in each quarter by subtracting (1) Unavailable Energy (for the cumulative quarterly periods in which such calculation is made), as defined in Section 7.2(b) from . . . Committed Renewable Energy (for such quarterly periods) as defined in 7.2(a) times the appropriate cumulative percent based on the quarter in which the calculation is made, i.e.: twenty (20) percent in the first quarter, forty (40) percent in the second quarter, seventy (70) percent in the third quarter, and 100 . . . percent in the fourth quarter. The amount of the Equalizing Payments shall be calculated by multiplying the

See also references to Calculated Index, Fixed Escalator (confidential seal), Minimum Index (confidential seal), and Variable Energy Price Index, in Section 1.4 of the PPA.

¹²PPA, Section 7.2(A), at 18.

¹³PPA, Section 7.2(B), at 19. "'Unavailable Energy' means [the] net output that would have been sold to KIUC had it not been curtailed or interrupted by Seller. Unavailable Energy shall be subtracted from the Committed Renewable Energy referred to in Section 7.2 to establish an adjusted Committed Renewable Energy[.]" PPA, Section 1.4, at 10.

¹⁴PPA, Section 7.2(B), at 19.

resulting number of minimum MWhs for each quarter by the then current average Energy Payment Rate for such quarter. In the event KIUC has paid for energy in excess of the minimum quarterly MWhs in any quarter no Equalizing Payment shall be due and all previous Equalizing Payments shall be refunded to KIUC, to the extent of such excess. By way of clarification, while the foregoing calculations of Equalizing Payments shall be made at the end of each quarter, Equalizing Payments based on the above method of calculation shall only be actually made at the end of the second, third and fourth quarters of each calendar year.

PPA, Section 7.2(C), at 19.

6. "The Contracting Parties acknowledge that existing and future legislation or regulation may create value in the ownership, use or allocation of Environmental and Renewable Energy Credits. To the full extent allowed by such law or regulation, KIUC shall own or be entitled to claim all Environmental and Renewable Energy Credits to the extent such credits may exist during the Term" of the PPA.¹⁵

7. KIUC has the right to notify Green Energy Team "to curtail the delivery of Renewable Energy to KIUC from the Facility to the Point of Delivery, and Seller shall immediately comply with such notification. KIUC may provide such notification for any reason and in its sole discretion following Good Utility Practices and providing as much notice as possible under the circumstances. No payment shall be due Seller for curtailments of delivery of Renewable Energy, except to the extent allowed by Section 8.2 of this PPA."¹⁶

¹⁵PPA, Section 10, at 22.

¹⁶PPA, Section 7.4, at 19-20.

8. If the delivery of Renewable Energy is curtailed by KIUC pursuant to Section 7.4 of the PPA, to less than seventy percent but no more than zero percent of the Certified Amount of Renewable Capacity generated by the Facility:

A. The Contracting Parties shall use their reasonable efforts to determine the amount of Renewable Energy that would have been produced by the Facility and delivered to the Point of Delivery, had its generation not been so curtailed (the "Curtailment Energy"); and

B. KIUC shall pay to Green Energy Team for such Curtailment Energy all amounts that Green Energy Team would have received from KIUC under the PPA had production not been so curtailed, and said Curtailment Energy shall reduce the Committed Renewable Energy KIUC is otherwise required to purchase under the terms of this PPA; provided that no payments shall be due to Green Team Energy "for curtailments of delivery of Renewable Energy resulting from[:]

(1) an Emergency[,]

(2) any action properly taken by . . . KIUC under the Interconnection Agreement,

(3) any notification from KIUC, pursuant to Section 7.4, requiring Seller to curtail deliveries of Renewable Energy if Seller has failed to maintain in full force and effect any permit, consent, license, approval, or authorization from any Governmental Authority required by law to construct and/or operate the Facility."

See PPA, Section 8.2, at 20-21.

9. "KIUC shall have the option of purchasing the remainder of the PPA if, during any consecutive twelve (12) month

period, the average Renewable Energy Payment Rate as set forth in Section 8.1 exceeds KIUC's Average Avoided Cost by thirty percent (30%) or more, provided, however, that . . . Seller may elect to irrevocably lower its Renewable Energy Payment Rate for the remaining term of the PPA to the Schedule Q Modified Rate filed by KIUC with the [commission] on a monthly basis (previously defined as 'Average Avoided Cost.')." ¹⁷

10. KIUC shall also have the option to purchase the Facility in the event of a Facility Performance Failure, as that phrase is referenced in Section 12.1(C) of the PPA.

11. Under both options to purchase, KIUC shall pay Green Energy Team: (A) pre-payment penalties incurred by Green Energy Team resulting from the exercise of the purchase option; plus (B) the greater of the net depreciated book value of the Facility's assets, or the discounted net present value of future net cash flows. ¹⁸ In addition, the options to purchase, if exercised by KIUC, are subject to the commission's approval, to the extent necessary. ¹⁹

12. Upon the occurrence of an Event of Default which has not been cured within the cure period, to the extent applicable, the non-defaulting Contracting Party shall have the

¹⁷PPA, Section 11.1(A), at 22. As defined in Section 1.4 of the PPA:

"Average Avoided Cost" means the Schedule 'Q' Modified rate filed with the [commission] for the month (or a substantially equivalent calculation if the Schedule 'Q' Modified filing is changed or eliminated).

¹⁸PPA, Sections 11.1(C) and 11.2(C), at 22-24.

¹⁹PPA, Sections 11.1(B) and 11.2(B), at 22-23.

right to declare a date upon which the PPA shall terminate. Other remedies may also apply, including actual damages, specific performance, and the "duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the PPA."²⁰

13. In general, Green Energy Team must maintain insurance coverage in the types and amounts as specified in Exhibit D, Insurance Coverage/Specification of Insurance Coverage, of the PPA, with KIUC named as an additional insured (except for workers' compensation coverage).²¹ All insurance policies shall: (A) be written on a per occurrence basis (except for insurance that is commercially available only on a claims-made basis); and (B) contain an endorsement that Green Energy Team's policy shall be primary in all instances regardless of similar coverage, if any, carried by KIUC. Moreover, Green Energy Team's liability to KIUC under the PPA is not limited to the amount of insurance coverage required.

Cross-indemnification and hold harmless provisions are also included in the PPA.

14. The PPA is subject to certain conditions, including the option of either Contracting Party declaring the PPA null and void if a Non-Appealable Order, satisfactory to the

²⁰PPA, Section 12.2, at 31.

²¹The mandatory insurance coverage includes: (1) commercial general liability coverage of a combined single limit of \$5,000,000 (annual aggregate); and (2) commercial umbrella insurance.

Contracting Parties, is not issued by the commission within twelve months from the date of the execution of the PPA, i.e., by March 26, 2008.

15. The PPA shall take effect as of March 26, 2007, the date of its execution by the Contracting Parties, and shall continue in effect thereafter until terminated by either KIUC or Green Energy Team as provided for in the PPA.²²

2.

Terms of the Interconnection Agreement

The Interconnection Agreement sets forth the terms and conditions under which Green Energy Team's Facility will interconnect with, and operate in parallel with, KIUC's system, consistent with the PPA. Attachment 3 of the Interconnection Agreement consists of a schematic diagram that depicts Green Energy Team's Facility, the Interconnection Facilities, and the Point of Interconnection with KIUC's system.²³

²²The duration of the PPA, including the end date, is filed under confidential seal. See PPA, Section 2.1, at 10 (partial confidential seal).

²³As defined in Attachment 1 of the Interconnection Agreement:

Interconnection Facilities - Interconnection Facilities shall consist of all facilities and equipment between the Small Generating Facility and [KIUC's] Transmission and Distribution System (including, without limitation, the [Remote Telemetering Unit], the Substation, and all of the elements thereof). Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

. . . .

With respect to the Interconnection Facilities, Attachment 2 of the Interconnection Agreement provides in relevant part:

1. Green Energy [Team] shall be responsible for all cost[s] and work associated with the engineering, procurement and construction of the Interconnection Facilities.
2. Green Energy [Team] shall be responsible for all cost[s] associated with [the] engineering, procurement and construction of modifications to KIUC['s] existing system to tie into [the] interconnection facilities.
.....
4. Upon final acceptance by [KIUC] of the Interconnection Facilities per Item 6, all costs going forward for operation and maintenance of the Interconnection Facilities up to the point of Interconnection shall be born[e] by [KIUC].
.....
6. Upon final acceptance by [KIUC] of the Interconnection Facilities, title to the Interconnection Facilities['] equipment up to the point of Interconnection shall transfer to [KIUC] along with responsibilities of ownership, including without limitation taxes and insurance.

Interconnection Agreement, Attachment 2, at 4.

Each of the Contracting Parties shall be responsible for the facilities it owns, including the installation and maintenance of their respective lines and appurtenances on their

Point of Interconnection - the point as reflected in Attachment 3 of this [Interconnection] Agreement.

See also KIUC's response to PUC-IR-109 (describing the interconnecting equipment and facilities, including the point of interconnection, and submitting a color copy of Attachment 3).

respective sides of the Point of Interconnection. Moreover, similar to the PPA, the Interconnection Agreement includes termination, curtailment, cross-indemnification, hold harmless, default, and insurance provisions.²⁴

The Interconnection Agreement will remain in effect for the period of time concurrent with the PPA.

3.

KIUC's Arguments in Support of its Application

In support of its Application, KIUC states:

1. With respect to the PPA and Interconnection Agreement:

. . . . the[] energy payments are just and reasonable, and are consistent with HRS § 269-27.2 and the applicable provisions of HAR Chapter 6-74. Furthermore, the specific terms and conditions of the PPA have been negotiated and the Interconnection Agreement [has been] negotiated by the Parties at arms-length and contain indemnification, insurance and other provisions which will serve to protect KIUC and its members from certain risks associated with interconnecting the Green Energy Team's Facility. Moreover, the terms and conditions of the PPA and the Interconnection Agreement will not affect KIUC's ability to provide electric service to its members

²⁴Section 7.1 of the Interconnection Agreement, governing insurance, states:

[KIUC] agrees to maintain general liability insurance or self-insurance consistent with [KIUC's] commercial practice. Such insurance or self-insurance shall not exclude coverage for [KIUC's] liabilities undertaken pursuant to this Agreement. The Interconnection Customer agrees to maintain appropriate general liability insurance consistent with [KIUC's] commercial practice on the Interconnection Facilities which it constructs prior to transfer of title to [KIUC] pursuant to this Agreement.

and is not discriminatory to other small power producers. For these reasons, KIUC requests Commission approval of the PPA and the related Interconnection Agreement[.]

KIUC's Application, at 14.

2. With respect to the Integrated Resource Planning ("IRP") process, the deadline for KIUC to file its third Integrated Resource Plan ("3rd IRP") is December 20, 2007, in In re Public Util. Comm'n, Docket No. 2006-0165. In this regard, KIUC explains:

KIUC will not specifically incorporate the purchased power pursuant to the PPA with Green Energy Team in its preferred 3rd IRP because the data/information pertaining to this renewable energy project was not available when the list of candidate supply-side resources was being compiled for screening and inclusion into such plan, and it would not be feasible to include such data/information at this juncture without causing a significant delay in submitting KIUC's preferred 3rd IRP. In developing its 3rd IRP, however, KIUC was able to model the impact of the Green Energy Team's renewable energy project relative to KIUC's 3rd IRP and determine that the proposed project would not be detrimental to its 3rd IRP. As such, KIUC believes that such purchased power was adequately considered, to the extent possible, to retain the integrity of its preferred 3rd IRP, and has sufficiently satisfied the IRP Framework, as clarified by Decision and Order Nos. 11523 and 11630. Moreover, KIUC contends that the PPA with Green Energy Team was executed to be consistent with [the Public Utility Regulatory Policies Act of 1978 ("PURPA")] and the State's Renewable Portfolio Standard[s] ("RPS"), as set forth in HRS §§ 269-91 et seq. At this juncture, KIUC anticipates that the State's existing RPS will be met . . . as a result of this PPA with Green Energy Team.

KIUC's Application, at 16-17 (footnote and text therein omitted) (emphasis added).

Subsequently, KIUC, in its responses to the commission's information requests, expands on its position by providing the following additional information and arguments:

1. In December 2005, KIUC issued a request for proposal ("RFP") to solicit competitive proposals for energy-only renewable energy resources. "The goal of the RFP was to provide KIUC the ability to evaluate, select, and pursue installation of a combination of energy-only resources that best fit KIUC's needs [and] to increase KIUC's supply of renewable energy."²⁵ As a result of the RFP, KIUC received twenty bids of various types of technology. KIUC evaluated the proposals based on price and non-price criteria, and selected two biomass projects, a municipal solid waste project and Green Energy Team's biomass project.²⁶ "In the total spectrum of proposals, Green Energy Team was the lowest qualified bidder in the biomass category and 5th lowest overall (wind and municipal solid waste proposals were lower, as would be expected)."²⁷

²⁵KIUC's response to PUC-IR-101.

²⁶The specific non-price criteria utilized by KIUC in evaluating the proposals: level of technical information provided; technical feasibility; level of project development; project schedule; power production profile; site description and map; project site reasonableness; level of site control; proposed interconnection facilities and location; level of resource assessment and control; development, operations, and maintenance experience; financial resources; project financial plan; environmental compliance plan, impact, and benefits; community support; and socioeconomic benefits. KIUC's response to PUC-IR-101.

²⁷KIUC's response to PUC-IR-101.

2. The energy payment rates are just and reasonable based on the following reasons:

A. As part of the competitive bidding process, Green Energy Team was the lowest qualified bidder in the biomass category, and KIUC was not bound to the price initially submitted by Green Energy Team. In fact, KIUC was successful in negotiating a reduced price.

B. The energy payment rates are lower than KIUC's Schedule Q Modified avoided cost rates over the term of the PPA.²⁸

C. Green Energy Team's profit should be in line with reasonable commercial expectations for projects with similar risk profiles.²⁹

D. The underlying price of energy is substantially decoupled from the costs of petroleum-based fossil fuel, which have been proven to be extremely volatile and upward trending.

E. The energy payment rates are consistent with PURPA and HRS § 269-27.2.

3. Energy purchased by KIUC pursuant to the PPA will qualify as renewable and be a significant contributor to KIUC's RPS compliance strategy.

4. The feedstock used in the biomass process is anticipated to be entirely Kauai sourced, the ownership group for

²⁸See KIUC's response to PUC-IR-102 (partial confidential seal).

²⁹See KIUC's response to PUC-IR-102 (partial confidential seal).

the project is Kauai-based, and rather than purchasing approximately three million gallons of fossil fuel annually from off-island sources, the expenditures will likely flow into Kauai's economy.

5. If a renewable energy credits ("RECS") market develops, KIUC will be able to participate, as ownership in the RECS will remain with KIUC.

6. To date, Green Energy Team's Facility is not certified as a qualifying facility ("QF"). Nonetheless, KIUC maintains that its actions in negotiating and executing a PPA with Green Energy Team to purchase renewable and non-fossil fuel energy are consistent with the purpose and intent of PURPA.

7. The Interconnection Agreement is derived directly from the Federal Energy Regulatory Commission's Standardized Interconnection Agreement. The primary purposes of the Standardized Interconnection Agreement are to: (A) ensure that interconnecting customers do not cause any adverse effects to the utility's system; and (B) not be discriminatory or place any undue burden on the interconnecting customer. "As such, KIUC believes that the Interconnection Agreement will not affect KIUC's ability to provide electric service to its members and is not discriminatory to other small power producers."³⁰

8. The salient terms and conditions of interconnection and cost responsibility, as reflected in the Interconnection Agreement, is a result of collaborative, arms-length negotiations between the Contracting Parties.

³⁰KIUC's response to PUC-IR-108.

C.

Consumer Advocate's Position

On November 5, 2007, the Consumer Advocate filed its Statement of Position, stating that it does not object to the commission's approval of the PPA, related Interconnection Agreement, and the inclusion of the energy payments and related revenue taxes incurred pursuant to the terms PPA, in KIUC's ERAC.³¹

In support of its recommendations, the Consumer Advocate states:

1. Green Energy Team's Facility, as a small power production facility, meets the criteria of a QF under HAR §§ 6-74-4, 6-74-5, and 6-74-7. In particular:

A. The Facility is designed to provide a net electrical output of 6.4 MW, far below the maximum size criteria of 80 MWS (HAR §§ 6-74-4(a)(1) and 6-74-5(a)).

B. The primary energy source of the Facility will be Albizia wood chips. The fuel source for the Facility is considered a biomass or agricultural waste product, which meets the fuel criteria set forth in HAR §§ 6-74-4(a)(2) and 6-74-5(e).

C. To the Consumer Advocate's knowledge, KIUC does not have an equity interest in the Facility, thereby meeting the ownership restriction criteria set forth in HAR §§ 6-74-4(a)(3) and 6-74-7.

³¹Consumer Advocate's Statement of Position; and Certificate of Service, filed on November 5, 2007 (collectively, "Statement of Position").

2. While Green Energy Team's Facility is presently not certified as a QF, other PPAs have been negotiated with independent power producers that also had not received certification as a QF at the time the PPA was executed and approved by the commission.³²

3. The terms and conditions of the PPA are reasonable and in the public interest. Of particular note:

A. The energy payment rate is established below KIUC's avoided cost, thereby meeting the requirement set forth in HRS § 269-27.2(c):

. . . . the negotiated price per MWh as of 2007 is substantially below recent Schedule "Q" modified avoided cost rates, which averaged over \$180 per MWh for diesel over the twelve month period ending April 2007. It should also be noted that the projected Schedule "Q" modified avoided costs rates using the IRP fuel forecast levels demonstrate that the PPA energy rates continue to remain below the projected Schedule "Q" modified rates in all fuel forecast scenarios Finally, KIUC has the option to purchase the remainder of the PPA if the average Renewable Energy Payment rate should exceed KIUC's "Average Avoided Cost" by thirty percent or more during any consecutive twelve month period. Based on all of the above, the Consumer Advocate contends that the PPA energy price is reasonable.

Consumer Advocate's Statement of Position, at 16.

B. With respect to the duration of the PPA, without a long-term PPA, project financing for the Facility may be difficult to obtain. In addition, the minimum energy purchase

³²The Consumer Advocate cites to two specific examples: (1) In re Maui Elec. Co., Ltd., Docket No. 04-0365, Decision and Order No. 21701, filed on March 18, 2005 (approval of a PPA between Maui Electric Company, Ltd. and Kaheawa Wind Power, LLC); and (2) In re Hawaii Elec. Light Co., Inc., Docket No. 04-0016, Decision and Order No. 20979, filed on May 14, 2004 (approval of a PPA between Hawaii Electric Light Company, Inc. and Hawi Renewable Development, Inc.).

requirements are expected to provide Green Energy Team with some degree of certainty as to the level of compensation that Green Energy Team will receive under the PPA, thereby providing the independent power producer with some assurance that it will be able to meet its debt service obligations.

C. The non-price terms and conditions do not appear to discriminate against other independent power producers or are otherwise inappropriate. In particular:

. . . the indemnification and insurance provisions of the PPA are reasonable because the provisions ensure that any claim with respect to the Facility - up to and including the point of interconnection - is covered by Green [Energy Team] and its insurance policies. Finally, the PPA allows either KIUC or Green [Energy Team] to curtail or disconnect from the other party for justifiable reasons, such as operational and safety reasons to protect KIUC's and [Green Energy Team's] personnel and electric systems. This should ensure that the supply of energy from the Facility does not impair KIUC's ability to provide reliable service to its customers.

Consumer Advocate's Statement of Position, at 17.

4. "The terms and conditions of the Interconnection Agreement allow KIUC's system and equipment to be protected during connection to the Facility while allowing the non-fossil fuel energy from the Facility to be delivered to KIUC's system and ultimately, [to] KIUC's customers."³³

5. The inclusion of the energy payment rates and related revenue taxes in KIUC's ERAC, pursuant to HAR § 6-60-6(2), is reasonable.

³³Consumer Advocate's Statement of Position, at 19.

6. The PPA is in the public interest as it will assist KIUC in meeting the RPS percentage criteria set forth in HRS § 269-92(a), and is consistent with the State's energy policy of reducing the State's dependence on fossil fuels.

D.

KIUC's Response

On November 7, 2007, KIUC filed its Response, stating that it does not have any issues, concerns, or rebuttal to any of the statements or recommendations set forth by the Consumer Advocate in its Statement of Position.³⁴

KIUC requests that the commission issue its written decision by December 8, 2007, so that the Contracting Parties may timely commence their respective obligations under the PPA.³⁵

II.

Discussion

A.

Waiver of Evidentiary Hearing

By joint letter dated July 18, 2007, the Parties noted that "[a]t this juncture, [they] do not anticipate the need for an evidentiary hearing in this proceeding."³⁶ On November 5, 2007, the Consumer Advocate filed its Statement of

³⁴KIUC's Response Statement to Consumer Advocate's Statement of Position; and Certificate of Service, filed on November 7, 2007 (collectively, "Response").

³⁵See KIUC's letter, dated October 5, 2007.

³⁶Parties' letter, dated July 18, 2007, at 2.

Position, recommending that the commission approve the underlying relief requested by KIUC. On November 7, 2007, KIUC filed its Response, informing the commission that, with the filing of the Consumer Advocate's Statement of Position, the proceeding "is now ready for decision making by the Commission."³⁷

By their pertinent statements and positions taken herein, the commission finds that the Parties effectively waive an evidentiary hearing in this proceeding. The commission approves the Parties' voluntary and intentional waiver of the evidentiary hearing.

B.

Approval of KIUC's Requests

In general, HRS § 269-27.2(c) and HAR chapter 6-74, subchapter 3, guide the commission's review of the rates agreed upon between KIUC and Green Energy Team.

HRS § 269-27.2(c) states in relevant part that "[t]he rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission[.]"

HAR § 6-74-22 of chapter 6-74, subchapter 3, provides that the rates for purchase shall:

1. Be just and reasonable to the electric consumers of the electric utility and in the public interest;

³⁷KIUC's Response, at 4.

2. Not discriminate against qualifying cogeneration and small power production facilities; and
3. Be not less than one hundred percent of avoided cost for energy and capacity purchases to be determined as provided in HAR § 6-74-23 from qualifying facilities and not less than the minimum purchase rate.

Notwithstanding HAR § 6-74-22, nothing in subchapter 3 prohibits an electric utility or any qualifying facility from agreeing to a rate for purchase, or terms or conditions relating to any purchase, which differ from the rates, terms, or conditions that would otherwise be required by subchapter 3.³⁸

HAR § 6-60-6(2) states that "[n]o changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission."

The commission, upon its review of the docket record, makes the following findings and conclusions:

1. The PPA is for as-available energy subject to certain minimum annual energy purchase requirements by KIUC, and certain minimum annual production level requirements by Green Energy Team. On balance, the minimum annual energy purchase requirements are designed to provide Green Energy Team with a certain level of income stream for the purpose of reasonably meeting its debt service obligations, while the minimum annual production level requirements ensure KIUC of receiving a

³⁸HAR § 6-74-15(b)(1).

consistent amount of as-available energy during the term of the PPA.

2. Green Energy Team was the lowest qualified bidder in the biomass category, and KIUC successfully negotiated an energy payment rate that is lower than the initial bid price.

3. The energy payment rates to be paid by KIUC pursuant to the PPA are lower than KIUC's Schedule Q Modified avoided cost rates over the term of the PPA.³⁹

4. As noted by KIUC, "the underlying price of energy is substantially decoupled from the costs of petroleum-based fossil fuel[.]"⁴⁰ Specifically, the annual fixed escalator component appears to significantly reduce the linkage between the price of fossil fuels and the rate for the non-fossil fuel energy, and constitutes, in this instance, a mechanism for reasonable and appropriate incremental adjustments.⁴¹

5. The Environmental and Renewable Energy Credits, to the extent that a RECs market develops in the future, will remain under the ownership and claim of KIUC.

6. In the event that the average energy payment rate exceeds KIUC's average avoided cost by thirty percent or more during any consecutive twelve-month period, KIUC has the option

³⁹See KIUC's response to PUC-IR-102 (partial confidential seal).

⁴⁰KIUC's response to PUC-IR-102.

⁴¹See KIUC's response to PUC-IR-102 (partial confidential seal).

of purchasing the remainder of the PPA, provided that Green Energy Team may elect to irrevocably lower its energy payment rate for the remaining term of the PPA to the Schedule Q Modified Rate filed with the commission by KIUC on a monthly basis.

7. Based on findings 1 through 6, above, the energy payment rates set forth in the PPA are reasonable and consistent with HRS § 269-27.2(c) and HAR §§ 6-74-15(b)(1) and 6-74-22, as applicable.

8. The non-price terms of the PPA include provisions governing: (A) KIUC's rights to disconnect or curtail the delivery of energy or to purchase the Facility; and (B) default, insurance coverage for KIUC's benefit, and cross-indemnification. In addition, Green Energy Team's liability to KIUC under the PPA is not "capped" by the policy limits of the insurance coverage.

9. The terms and conditions of the PPA, as a whole, are reasonable and consistent with the public interest and the State's overall energy policy of reducing the State's dependence on fossil fuel. Thus, the purchased power arrangements described in the PPA, pursuant to which KIUC will purchase energy from Green Energy Team, appear prudent and in the public interest.

10. KIUC is authorized to include the purchase energy costs and related revenue taxes it incurs under the PPA, in KIUC's ERAC, for the term of the PPA, consistent with HAR § 6-60-6(2).

11. The Interconnection Agreement: (A) sets forth the terms and conditions for the delivery of Green Energy Team's as-available energy from the Facility to KIUC's transmission

system, consistent with the PPA; and (B) provides KIUC's system and equipment with the appropriate protection and safeguards related to the interconnection of Green Energy Team's Facility. The terms and conditions of the Interconnection Agreement, as a whole, are reasonable.

III.

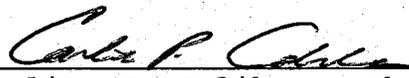
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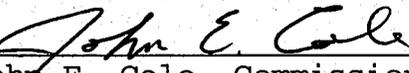
THE COMMISSION ORDERS:

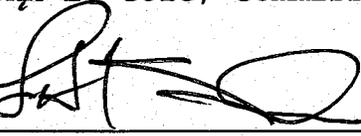
1. The Parties' voluntary and intentional waiver of an evidentiary hearing is approved.
2. The energy payment rates to be paid by KIUC pursuant to the PPA are reasonable.
3. The purchased power arrangements under the PPA, pursuant to which KIUC will purchase energy from Green Energy Team, are prudent and in the public interest.
4. The PPA between KIUC and Green Energy Team, dated March 26, 2007, is approved.
5. KIUC may include, in its ERAC, the purchased energy costs and related revenue taxes that it incurs under the PPA, for the term of the PPA.
6. The Interconnection Agreement between KIUC and Green Energy Team, dated May 24, 2007, is approved.
7. This docket is closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii NOV 28 2007.

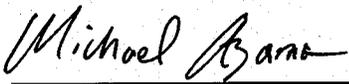
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2007-0142.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23855 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

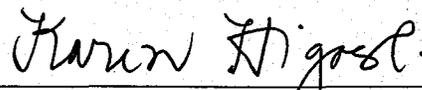
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DATED: NOV 28 2007