

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of----

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to
Investigate the Proposed Tariffs
Filed by Kauai Island Utility
Cooperative and Other Related
Matters.

DOCKET NO. 2006-0498

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY
DEPT. OF PUBLIC WORKS AND
CONSUMER AFFAIRS
STATE OF HAWAII

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PUBLIC UTILITIES
COMMISSION

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Cooperative and Other Related)	
Matters.)	
_____)	

DECISION AND ORDER

By this Decision and Order,¹ the commission approves in part and denies in part the Settlement Agreement, which is attached as Exhibit 1 to the Supplemental Stipulation jointly filed by the Parties on April 14, 2008.² As a result,

¹The Parties in this proceeding are: (1) KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"); (2) HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"); (3) the COUNTY OF KAUAI; (4) CHAPEAU, INC., dba BLUEPOINT ENERGY, STARWOOD HOTELS AND RESORTS WORLDWIDE, INC., and the HAWAII HEALTH SYSTEMS CORPORATION (collectively, the "BluePoint Energy Intervenors"); (5) MARRIOTT HOTELS SERVICES, INC., on behalf of KAUAI MARRIOTT RESORT & BEACH CLUB ("Kauai Marriott"); and (6) the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

²Supplemental Stipulation Requesting Approval of Parties' Revised Standby Proposal (Exhibit 1) in Lieu of Stipulation and Proposed Stipulated Procedural Order/Schedule Filed on November 30, 2007; Exhibit 1, Settlement Agreement (hereinafter referred to as the "Settlement Agreement" or "Revised Standby Proposal"); and Certificate of Service, filed on April 14, 2008 (collectively, "Supplemental Stipulation"). Throughout the Supplemental Stipulation, the Parties utilize the term Revised Standby Proposal in referring to their Settlement Agreement, including requesting the commission's approval of the Revised Standby Proposal. Hence, the commission likewise

KIUC shall, until the conclusion of its next general rate case proceeding, retain its monthly standby service charge of \$5.00 per kW of standby demand for non-renewable projects and facilities; and remove its existing standby service charge for renewable energy systems and projects.

I.

Background

KIUC is a member-owned, non-profit cooperative that is the provider of electric utility service on the island of Kauai. All electric utility customers on the island of Kauai are members/owners of KIUC, except those customers that have elected against becoming a member/owner.

A.

Rider S

KIUC's existing Rider S, in effect since January 1984, provides for a monthly standby charge of \$5.00 per kW of standby demand, described as follows:

RIDER "S"
Standby, Auxiliary, Supplementary or
Breakdown Service for Customers with Demands of
30 Kilowatts or More

utilizes the term Revised Standby Proposal in this Decision and Order.

A copy of the Revised Standby Proposal is attached as Exhibit 1 to this Decision and Order.

Availability:

Applicable to and becomes a part of any standard rate schedule of the Company where the customer regularly obtains electrical energy from a capacity source or source other than the Company with a capacity of 30 kilowatts or more. This Rider will not apply where the customer's own capacity sources are used exclusively for emergency service in case of failure of the normal supply from the Company.

Rate:

For such service as defined above, the terms and conditions of the Company's standard applicable rate schedule shall apply except that the billing demand shall be not less than the "Standby" demand and there shall be an additional Standby Charge in the amount set forth below.

Standby Charge:

Standby charge shall be \$5.00 per month per KW of "Standby" demand.

Determination of "Standby" Demand:

The customer shall specify in writing the maximum KW "Standby" demand requested, which will be known as the "Standby" demand during the next twelve (12) months and continue thereafter until the Company is otherwise notified in writing. If, at any time, the actual measured demand exceeds the "Standby" demand, the higher demand shall be used and will establish a new "Standby" demand for the subsequent twelve (12) months. At the end of such twelve (12) month period, the "Standby" demand shall continue at the higher amount unless the Company is otherwise notified in writing.

Limitation of Capacity:

The Company shall not be required to supply electricity at a rate greater than the "Standby" demand and may, at its option, limit the capacity of the service connection to conform with the "Standby" demand. The circuit breaker and other equipment necessary for the purpose shall be paid for by the customer but will be maintained by the Company.

Parallel Operation:

The operation of the customer's plant in parallel with the Company's system will be permitted when special approval is granted by the Company, in which case the Company shall specify the terms and conditions for such parallel operation.

KIUC's Tariff, Rider S.

KIUC presently has two standby service customers on Rider S.³

B.

Docket No. 03-0371

By Decision and Order No. 22248, filed on January 27, 2006, in In re Public Util. Comm'n, Docket No. 03-0371 ("Docket No. 03-0371"), the commission's distributed generation investigative proceeding, the commission "set forth certain policies and principles for the deployment of distributed generation in Hawaii and certain guidelines and requirements for distributed generation, some of which will be further defined by tariff as approved by the commission."⁴

³See KIUC's Supplemental and Confidential Response, filed on April 28, 2008 (KIUC's identification of its two existing standby service customers under confidential seal).

⁴Docket No. 03-0371, Decision and Order No. 22248, filed on January 27, 2006, at 1. The parties in Docket No. 03-0371 were: (1) Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO") (collectively, the "HECO Companies"); (2) KIUC; (3) the Consumer Advocate; (4) Life of the Land; (5) HREA; (6) Hess Microgen, LLC; and (7) the County of Maui. The County of Kauai was the sole participant. On April 6, 2006, the commission: (1) granted in part and denied in part the motion for clarification filed by the HECO Companies; and (2) denied the HECO Companies' motion for partial reconsideration. Docket No. 03-0371, Order No. 22375, filed on April 6, 2006.

Decision and Order No. 22248 sets forth certain requirements for the electric utilities, including the requirement that the utilities file proposed interconnection and standby service tariffs for the commission's review and approval.

On July 27, 2006, KIUC filed its proposed interconnection tariff.⁵ On August 8, 2006, the commission solicited comments from the parties and participant on whether the commission should adopt, modify, or decline to adopt in whole or in part, the PURPA interconnection standards, including the extent to which the electric utilities have already met the PURPA interconnection standards.⁶ On September 8, 2006: (1) KIUC responded to the commission's information requests on KIUC's proposed interconnection tariff;⁷ (2) HREA submitted its comments on KIUC's proposed interconnection tariff; and (3) KIUC and the Consumer Advocate submitted comments on the PURPA interconnection standards issue. On October 10, 2006, KIUC filed

⁵KIUC's proposed interconnection tariff was based on the Federal Energy Regulatory Commission's Small Generator Interconnection Procedures (For Generating Facilities No Larger Than 20 MW), issued on May 10, 2005, as amended.

⁶The term "PURPA interconnection standards" refers to the federal interconnection standards set forth in Section 111(d)(15) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Policy Act of 2005, which adopt by reference the Institute of Electrical and Electronics Engineers, Inc.'s Standard 1547, Standard of Interconnection Distributing Resources with Electric Power Systems, "as they may be amended from time to time." 16 U.S.C. § 2621(d)(15).

⁷KIUC, in its response to PUC-IR-108 (KIUC, Interconnection), revised certain provisions of its proposed interconnection tariff. KIUC's response to PUC-IR-108 (KIUC, Interconnection), Attachment PUC-IR-108.

its supplemental response to PUC-IR-102, consisting of its Supplemental Attachment PUC-IR-102.⁸

On November 9, 2006, the Consumer Advocate commented on KIUC's proposed interconnection tariff, and on November 21, 2006, KIUC responded to the Consumer Advocate's comments thereto.

On November 27, 2006, KIUC filed its proposed revisions to its existing standby service tariff, in compliance with the commission's directive. KIUC's proposed unbundled standby service charges, if implemented, would increase the utility's present monthly standby charge of \$5.00 per kW of standby demand under Rider S, to a monthly standby charge of \$32.25 to \$37.47 per kW of standby demand, depending on the applicable rate schedule. On December 8, 2006, the County of Kauai commented on KIUC's proposed standby service tariff.

The commission also received unsolicited comments on KIUC's proposed standby service tariff from third-persons who were not parties or participants to the proceeding. The non-parties, in general, requested hearings on the proposed standby charges, and the opening of a new standby rates docket so that all interested stakeholders would have the opportunity to participate.

⁸KIUC's Supplemental Attachment PUC-IR-102: (1) corrected certain references in its Attachment PUC-IR-102; and (2) effectively superseded Attachment PUC-IR-102.

C.

Docket No. 2006-0498

1.

Initiation of the Docket

As a result of the concerns raised by the interested, non-party stakeholders, the commission, on December 28, 2006, opened this investigative proceeding to review and address: (1) the proposed interconnection and standby service tariffs filed by KIUC in Docket No. 03-0371; and (2) the PURPA interconnection standards issue.⁹ The commission named KIUC and the Consumer Advocate as parties to Docket No. 2006-0498, and invited interested persons to timely move to intervene or participate.

Following public notice, the commission, on February 27, 2007, held a public hearing on the island of Kauai.

On March 1, 2007, KIUC filed its revised proposed interconnection tariff, jointly developed and agreed-upon with the Consumer Advocate.¹⁰ On March 14, 2007, KIUC filed a Motion to Defer, Suspend and/or Terminate the Review and Investigation of KIUC's Standby Tariffs ("Motion to Defer, Suspend, or Terminate").

⁹Order No. 23172, filed on December 28, 2006. Docket No. 2006-0498, in effect, supersedes Docket No. 03-0371. See Docket No. 03-0371, Order No. 23746, filed on October 19, 2007.

¹⁰As a precaution, KIUC filed its revised proposed tariff in both Dockets No. 03-0371 and No. 2006-0498. At this juncture of Docket No. 2006-0498, KIUC and the Consumer Advocate were the only named parties.

On May 8, 2007, the commission: (1) granted intervention to HREA, the County of Kauai, the BluePoint Energy Intervenors, and Kauai Marriott; and (2) deferred its ruling on KIUC's Motion to Defer, Suspend, or Terminate.¹¹

On July 27, 2007, the commission, by Decision and Order No. 23563, declined to adopt the PURPA interconnection standards.¹²

With respect to the standby service issue, the deadline for the Parties to have submitted a stipulated procedural schedule for the standby service portion of this proceeding, or for each of the Parties to submit its own procedural schedule, in the event that they are unable to agree on a joint procedural schedule, was November 30, 2007.¹³

The Parties were unable to agree on a stipulated procedural schedule for the standby service portion of this proceeding. Thus, on November 30, 2007, the Parties, with the exception of the BluePoint Energy Intervenors (the "Non-BluePoint Parties"), submitted their "Stipulation Requesting Approval of (1) Stipulating Parties' Proposed Stipulated Procedural Order and Stipulated Regulatory Schedule,

¹¹Order No. 23422, filed on May 8, 2007.

¹²See Decision and Order No. 23563, filed on July 27, 2007. At the same time, the commission noted that its decision declining to adopt the PURPA interconnection standards "does not preclude the parties from recommending that the Commission incorporate standards that are similar to the PURPA standards into the standards ultimately approved by the Commission in this proceeding." Decision and Order No. 23563, at 19 n.29 (quoting KIUC's letter, dated July 13, 2007, at 3).

¹³See Order No. 23655, filed on September 12, 2007; and Order No. 23715, filed on October 12, 2007.

and (2) Proposal for Short Term Certainty of Standby Rates."¹⁴ The BluePoint Energy Intervenors did not submit a counter-proposal for the commission's review and consideration by November 30, 2007. Instead, by letter dated December 7, 2007, the BluePoint Energy Intervenors informed the commission of their objections to the Stipulation.

The Initial Stipulation and the BluePoint Energy Intervenors' letter raised certain questions that merited written briefing by the Parties.¹⁵ Thus, on December 28, 2007, the commission: (1) instructed the Non-BluePoint Energy Parties to file a joint written brief or separate briefs addressing the issues identified in Section II of Order No. 23941; (2) instructed the BluePoint Energy Intervenors to file a responsive written brief; and (2) scheduled a non-evidentiary, oral argument hearing on the written briefs.¹⁶ Thereafter, on April 9, 2008, consistent with the Parties' requests, the commission: (1) replaced the requirement that the Parties file written briefs with the requirement that KIUC solely file a response to the issues identified in Section II of

¹⁴Stipulation Requesting Approval of (1) Stipulating Parties' Proposed Stipulated Procedural Order and Stipulated Regulatory Schedule, and (2) Proposal for Short Term Certainty of Standby Rates; Exhibits 1 and 2; and Certificate of Service, filed on November 30, 2007 (collectively, "Initial Stipulation"). Exhibit 1 of the Initial Stipulation consisted of the Non-BluePoint Energy Parties' Proposed Stipulated Procedural Order, including their Proposed Stipulated Regulatory Schedule. Exhibit 2 of the Stipulation consisted of the Non-BluePoint Energy Parties' Proposal for Short Term Certainty of Standby Rates.

¹⁵See Order No. 23941, filed on December 28, 2007.

¹⁶Order No. 23941.

Order No. 23941; and (2) effectively waived as unnecessary the non-evidentiary, oral argument hearing on the written briefs.¹⁷

KIUC subsequently reached a global settlement agreement with the other parties on the standby service issue. As a result of this development, on April 14, 2008: (1) the Parties jointly filed their Supplemental Stipulation, which includes the Revised Standby Proposal; and (2) KIUC filed its responses to the issues identified in Section II of Order No. 23941.¹⁸

On May 22, 2008, the commission approved, subject to certain modifications, the interconnection tariff proposed by KIUC and the other parties (except HREA) to govern the interconnection of distributed generating facilities operating in parallel with the electric utility's system.¹⁹

2.

Supplemental Stipulation

The Supplemental Stipulation provides in part:

WHEREAS, as a result of the revised standby proposal as set forth in Exhibit 1 hereto, the Parties all agree that, notwithstanding the requirement set forth in Order No. 23422, it is no longer necessary for KIUC to propose and submit a proposed standby methodology for review and approval as part of this proceeding, and that such submission and review should instead be undertaken in KIUC's next rate case proceeding;

¹⁷See Order No. 23988, filed on January 29, 2008; Order No. 24064, filed on March 3, 2008; and Order No. 24140, filed on April 9, 2008.

¹⁸KIUC's Responses to Commission Issues Set Forth in Order No. 23941; and Certificate of Service, filed on April 14, 2008 (collectively, "Responses").

¹⁹See Decision and Order No. 24238, filed on May 22, 2008.

WHEREAS, as a result of these extensive efforts by all Parties, the Parties have reached a global settlement on all matters concerning the standby portion of this proceeding, and, in that connection, desire through this Supplemental Stipulation to formally memorialize their global settlement and proposed resolution of the standby portion of this proceeding;

NOW, THEREFORE, the Parties, by and through their respective attorneys or authorized representatives, do hereby enter into this Supplemental Stipulation as mutually acceptable to each. The Parties request that the Commission approve, in its entirety, the Parties' Settlement Agreement (also referred to herein as the "Revised Standby Proposal"), attached hereto as Exhibit 1. In support of this, the Parties hereby state the following:

1. As a result of the subsequent discussions that have occurred between the Parties, many material changes have been made to the proposal as originally submitted with the Original Stipulation. As a result, the Parties believe that the current Revised Standby Proposal (Exhibit 1 of this Supplemental Stipulation) sufficiently addresses the certainty concerns of any potential standby customer materially affected by KIUC's November 2006 standby rate filing including, without limitation, those customers that are Parties to this proceeding, and does so in such a manner that the Parties no longer believe that it is necessary for KIUC to submit a proposed standby methodology for review as part of this proceeding as initially anticipated by Order No. 23422 and the Original Stipulation. Instead, the Parties agree that a standby methodology review should not occur at this time, but should be addressed as part of KIUC's next general rate case proceeding, where all rate items and impacts can be considered as a whole as part of a single rate case proceeding.

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2. The Parties submit that the Revised Standby Proposal attached hereto addresses the issues raised by the Commission in Order No. 23422, and addresses all of the standby issues that need to be resolved prior to the filing of KIUC's next general rate case proceeding.

3. WHEREFORE, the Parties respectfully request that the Commission issue a decision and order:

(a) Approving in its entirety the Revised Standby Proposal (Exhibit 1 hereto) in lieu of the Original Stipulation and Proposed Stipulated Procedural Order/Schedule filed on November 30, 2007;

(b) Terminating the review and investigation of KIUC's proposed standby service tariffs submitted on November 27, 2006, including, without limitation, the Commission's review and investigation of a proposed standby methodology, in this docket with the understanding that the review and investigation of a proposed standby methodology will be one of the issues to be addressed in KIUC's first application for a general rate case as an electric cooperative;

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4. The Parties acknowledge that KIUC is separately and concurrently submitting responses to the issues raised by the Commission in Section II of Order No. 23941 in further support of this Supplemental Stipulation.

5. The Parties are in agreement that each provision of this Supplemental Stipulation and the Revised Standby Proposal is in consideration and support of all other provisions, and is expressly conditioned upon the acceptance and approval by the Commission of all of the material matters expressed in this Supplemental Stipulation and Revised Standby Proposal in their entirety. In the event the Commission declines to approve and/or adopt all or any of the matters, in whole or in part, as agreed to by the Parties and as set forth in this Supplemental Stipulation and the Revised Standby Proposal attached hereto, any or all of the Parties reserve the right to withdraw from this Supplemental Stipulation and the Revised Standby Proposal and to pursue any and all of their respective positions through further negotiations and/or additional filings and proceedings before the Commission. For the purposes of this Supplemental Stipulation and the Revised Standby Proposal, whether a term is material shall be left to the sole discretion of the Party choosing to withdraw from this Supplemental Stipulation and Revised Standby Proposal.

6. The Parties are in agreement that if the Commission accepts and approves all of the material matters expressed in this Supplemental Stipulation and Revised Standby Proposal in their entirety, this docket should be closed as there are no remaining issues to be addressed.

7. The Parties agree that the purpose of this Supplemental Stipulation is to explain and support the Revised Standby Proposal. As such, in the event there is a conflict between the Revised Standby Proposal and this Supplemental Stipulation, the terms of the Revised Standby Proposal shall control.

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Supplemental Stipulation, at 8-9 and 13-15; see also KIUC's Responses, at 1-8 and 13-16 (KIUC's responses to the commission's Questions Nos. A.1, A.2, A.3, and B.5).

3.

Revised Standby Proposal

The Revised Standby Proposal consists of two sections:

(1) Section I, Goal and Objectives; and (2) Section II, Elements of the Agreement.

a.

Goals and Objectives

Section I, Goals and Objectives, outlines the terms and conditions of the Revised Standby Proposal, as follows:

The goal of this settlement agreement ("Agreement") is to address the need or desire for certainty raised by some of the parties and during the February 27, 2007 public hearing regarding KIUC's unbundled standby rate filing dated November 27, 2006. This Agreement addresses these certainty concerns, while at the same time providing a mechanism to limit or control the extent of KIUC's potential financial exposure.

This Agreement consists of two separate components. The first component is designed to provide immediate certainty to those that had already begun investing material time and resources into planned projects at the time of KIUC's November 27, 2006 filing or the February 27, 2007 public hearing, and/or that can demonstrate that they were materially harmed as a result of the uncertainty created by KIUC's November 27, 2006 filing. The second component is designed to provide an immediate benefit for renewable projects. Each of these two components is more specifically described and set forth below:

- (1) Component 1: KIUC shall keep in place without modification the rates, terms, and conditions of KIUC's existing standby tariff, currently designated as Rider "S", KIUC Original Sheet Nos. 101 and 102, including, but not limited to, the Standby Charge of \$5 per month per kW of Standby demand, until the later to occur of (a) January 1, 2015, or (b) the conclusion of KIUC's next rate case proceeding, for those proposed facilities that meet the Qualified Project/Facilities criteria set forth below; and
- (2) Component 2: In recognition of the overall public and member interest to facilitate, or at least remove certain apparent barriers to the facilitation of, the pursuit of renewables on the island of Kauai and within the entire State, KIUC shall remove its existing standby charge for renewable energy systems until at least the time of KIUC's first rate case proceeding as a member-owned cooperative.

Revised Standby Proposal, at 1 (footnote and text therein omitted).

b.

Elements of the Revised Standby Proposal

Section II consists of three sub-sections:

(1) Sub-section A, Component 1: Retention of Existing Standby Tariff Under Certain Criteria; (2) Sub-section B, Component 2: Removal of Standby Tariff for Renewables Until KIUC's First Rate Case; and (3) Sub-section C, General Conditions Applicable to Both Components.

i.

Component 1

The Rate Structure set forth in Component 1 specifies that:

1. Non-renewable projects or facilities that meet the Qualified Project/Facility Criteria and request standby service from KIUC will be assessed the standby service charge set forth in Rider S, until January 1, 2015, or the conclusion of the utility's next rate case proceeding, whichever occurs later (the "Coverage Period").

2. The standby service charge set forth in Rider S shall not be increased during the Coverage Period for the Qualified Projects/Facilities.

3. During the Coverage Period, all other applicable tariff rate schedules shall remain in effect.

In the event that KIUC completes its next rate case proceeding before the expiration of the Coverage Period, and the standby rate established upon the completion of the rate case proceeding is higher than the standby rate set forth in the Rate Structure, above, the Qualified Projects/Facilities:

. . . shall nevertheless continue to pay the standby rate under the above Rate Structure for the remainder of the Coverage Period. In such an event, KIUC may propose to reflect any test year revenue difference in determining the revenue requirement for that rate case proceeding (that is, any difference in the test year revenues based on the standby rate under the above Rate Structure and the standby rate established in that rate case proceeding) through revenue sources other than the standby charge discussed herein. [The] Parties reserve all rights to challenge any such revenue deficiency adjustment, including, but not limited to, the right to challenge the derivation, computation, allocation, and level of any such proposed test year revenue difference or adjustment, and the right to argue that the operation of Qualified Projects/Facilities has benefited or will benefit the KIUC system and that such benefits offset any alleged revenue deficiency or adjustment.

Revised Standby Proposal, at 6.

The customer, generator of a Qualifying Project/Facility must timely coordinate all planned maintenance outages with KIUC, as well as any emergency repair outages, to the extent practicable under the circumstances. KIUC will not unreasonably withhold its approval of any such scheduled outages, and it acknowledges that a customer's generator may occasionally be taken off-line for emergency repair work.

Upon the expiration of the Coverage Period, the then applicable, commission-approved standby service tariff rate will apply.

The Qualified Project/Facility Criteria, in turn, is capped at a total combined nameplate rating of 5,000 kW, consisting of:

1. The following projects or facilities, which comprise 3,975 kW of the 5,000 kW cap:
 - A. The 67 - 70 kW and 245 kW existing facilities utilized by KIUC's two existing standby service customers, plus a planned 250 kW expansion for one of these customers;
 - B. Kauai Marriott's proposed 810 kW propane-fired combined heat and power project ("CHP"); and
 - C. BluePoint Energy's planned facilities, which total 2,600 kW in the aggregate.
2. The remaining 1,025 kW will be reserved for any other projects or facilities that qualify as a Qualified Project/Facility on a first-come, first-served basis, subject to the customer generator meeting the following requirements:
 - A. The customer generator has submitted to KIUC a completed interconnection application for the proposed project or facility;
 - B. The customer generator has provided KIUC with evidence satisfactory to KIUC that the customer generator: (a) had already begun investing material time and resources into planned projects at the time of

KIUC's November 27, 2006 filing or the February 27, 2007 public hearing; or (b) was materially harmed as a result of KIUC's November 27, 2006 filing;²⁰ and

C. The proposed project or facility will not result in KIUC exceeding the remaining 1,025 kW limit.

To the extent that a customer generator is able to satisfy the requirements set forth in the Qualifying Conditions 2.A and 2.B, above, "but is not able to qualify as a Qualified Project/Facility because KIUC's 1,025 kW limitation has already been reached or will be exceeded by the addition of the proposed [P]roject/[F]acility, KIUC will analyze whether or not it could or should expand its limitation at that time to include the Customer Generator's proposed [P]roject/[F]acility as a Qualified Project/Facility under this Agreement. At that time, KIUC will submit notice and/or application to the Commission either explaining its reasons

²⁰"This Agreement is not intended to cover projects/facilities that were simply in the evaluation or early planning stages where no material funds or resources had yet been committed, no financial and/or contractual commitments had yet been entered into as of the time of the above filing and public hearing, and/or where the proposed Customer Generator cannot demonstrate that they were otherwise materially harmed by the November 27, 2006 filing. In these cases, these potential standby customers and their associated projects/facilities should be treated similarly to any other customer of KIUC, with certainty of ongoing rates only until the time of the utility's next rate case proceeding." Revised Standby Proposal, at 3 n.7.

for not including the proposed [P]roject/[F]acility as a Qualified Project/Facility under this Agreement, or, alternatively, requesting that this Agreement be modified to expand its 1,025 kW limitation accordingly. The Commission shall then take any action it deems necessary and/or appropriate with respect to KIUC's filing."²¹

With respect to the expansion of or the addition of a new phase to a Qualified Project/Facility, the expanded or new phase of the facility "shall not automatically be deemed to be a Qualifying Project/Facility."²² Instead, the expanded or new phase must independently meet the applicable conditions set forth in the Revised Standby Proposal in order to qualify as a Qualified Project/Facility. If the expanded or new phase does not meet the applicable conditions, "the expansion or addition to the existing system shall be charged at the Rate Structure only until the conclusion of KIUC's next rate case proceeding, at which time said expansion or addition shall be charged at the applicable standby rate structure in effect at that time."²³

²¹Revised Standby Proposal, at 3-4.

²²Revised Standby Proposal, at 5.

²³Revised Standby Proposal, at 5.

ii.

Component 2

Renewable energy systems or projects will not be assessed any standby service charge until, at a minimum, the completion of KIUC's next rate case proceeding, at which time the commission-approved, applicable tariff rate (including any applicable standby service charge) shall apply. All other applicable tariff rate schedules shall remain in effect. Moreover, "[t]here will be no limit to the number of Renewable Energy systems that KIUC will cover under this Agreement (i.e., these systems will not be included as part of the 5,000 kw limitation set forth [in Component 1])."²⁴

c.

Conditions Applicable to Both Components

Based on the Revised Standby Proposal, the Parties agree that: (1) KIUC should not be required to submit a standby service methodology for the commission's review and consideration in this proceeding, Docket No. 2006-0498; and (2) a standby service methodology should be submitted as part of KIUC's new rate case.

II.

Discussion

As noted above, the Revised Standby Proposal has two main components. Component 1 requires KIUC to maintain its

²⁴Revised Standby Proposal, at 7.

existing standby charge of \$5.00 per month per kW of standby demand for non-renewable projects or facilities until the later of January 1, 2015 or the conclusion of KIUC's next rate case proceeding. Upon review, the commission will approve the Parties' agreement to maintain the existing standby charge for non-renewable projects or facilities, but only until the completion of KIUC's next rate case proceeding.

The revised standby service charge initially filed by KIUC in November 2006, in response to the commission's directive, proposed a 525 percent to 650 percent increase over the existing monthly standby service charge; specifically, from \$5.00 per kW for standby demand under Rider S, to a monthly standby service charge of \$32.25 to \$37.47 per kW of standby demand, depending on the applicable rate schedule. From the outset of this proceeding, KIUC has consistently maintained that its existing standby service charge, as set forth in Rider S, should remain in effect until a new standby service methodology and charge are adopted and approved by the commission following the completion of KIUC's first rate case as an electric utility cooperative.²⁵

²⁵As noted by the commission in Order No. 23422:

. . . KIUC essentially contends that it makes no sense for the commission to establish, over KIUC's objection, a standby rate in this proceeding, when a newer, different rate will be willingly proposed by KIUC in its forthcoming application for a general rate case, utilizing the updated cost data that corresponds to KIUC's test year. Thus, with respect to its standby service tariff, KIUC seeks to maintain the status quo by terminating the commission's investigation of this issue, . . . KIUC makes it clear that its proposed new standby charges were filed in compliance with the commission's directive in Docket No. 03-0371.

KIUC reasons that its rate case application will be supported by a current cost of service study that is based on the utility's proposed test year revenue requirement. By contrast, KIUC notes that its efforts in attempting to establish a new standby service methodology and charge in this proceeding (Docket No. 2006-0498), outside the context of a general rate case proceeding, is ill-advised and may constitute single-issue ratemaking, which is generally discouraged by the commission.

KIUC's proposal to establish and implement a new standby service methodology and charge as part of its general rate case has merit. The stipulated standby service charges proposed by the parties in In Public Util. Comm'n, Docket No. 2006-0497 ("Docket No. 2006-0497"), are based on the unbundled cost elements for generation, transmission, and distribution, as reflected in the current pending rate cases for HECO, HELCO, and MECO; specifically, the interim decisions issued by the commission in each of these dockets.²⁶ Thus, the standby service charges approved by the commission in Docket No. 2006-0497 are based on the current unbundled cost elements for HECO, HELCO, and MECO. Here, by contrast, there is no current cost study that the Parties may meaningfully utilize in developing a standby service charge for KIUC.

Order No. 23422, at 22-23 (underscoring in original).

²⁶See Docket No. 2006-0497, Decision and Order No. 24229, filed on May 15, 2008 (approving the stipulated standby service tariffs for HECO, HELCO, and MECO, as proposed by the parties in Docket No. 2006-0497).

As a result, the commission approves the Parties' agreement to maintain the existing standby rate for non-renewable projects or facilities until KIUC's next rate case.

The commission, however, declines to adopt those portions of the Parties' agreement to maintain the existing rate until KIUC's next rate case or January 1, 2015 (whichever is later),²⁷ and to limit the rate to Qualified Projects/Facilities. According to the Parties, these agreements were "to address the need and desire for certainty raised by some of the parties and during the February 27, 2007 public hearing while at the same time providing a mechanism to limit or control the extent of KIUC's potential financial exposure."²⁸

However, in the commission's view, to hold the \$5.00 standby rate beyond KIUC's next rate case would be discriminatory. Such a disparity in treatment between Qualified Projects/Facilities and distributed generation facilities that do not meet the Qualified Projects/Facilities criteria appears to constitute "unreasonable discrimination

²⁷KIUC believes that it is reasonable to assume that it may be filing an application for a general rate case during the later part of 2009, thereby utilizing a 2010 test year. Under this scenario, KIUC's rate case proceeding will, in all likelihood, be completed by 2011 or sooner. The commission, in effect, presumes that KIUC's rate case proceeding will be completed prior to 2015. Thus, pursuant to the Revised Standby Proposal, following the completion of KIUC's rate case proceeding, the monthly standby service charge of \$5.00 per kW for standby demand will remain in place for Qualified Facilities/Projects until January 1, 2015. Conversely, distributed generation facilities that do not meet the Qualified Facilities/Projects criteria will be subject to the new standby service charge that is established and approved by the commission as part of KIUC's rate case proceeding.

²⁸Revised Standby Proposal, at 1.

between localities or between users or consumers under substantially similar conditions," which is prohibited by HRS § 269-16(b)(2)(B). In this regard, the commission rejects as unpersuasive KIUC's justification that only its two existing standby service customers and the intervenors to this proceeding should retain the benefit of the \$5.00 monthly charge until January 1, 2015, in order to provide a greater degree of certainty to them.

Moreover, the commission finds that the Parties' selection of the January 1, 2015 date is arbitrary and unsupported. There does not appear to be anything in the record to support the January 1, 2015 date chosen by the Parties.²⁹ In the commission's distributed generation proceeding, Docket No. 03-0371, the commission stated that "[t]he policy of the commission is to promote the development of a market structure that assures: (a) distributed generation is available at the lowest feasible cost; (b) distributed generation that is economical and reliable has an opportunity to come to fruition; and (c) distributed generation that is not cost-effective does not enter the system."³⁰ To move toward this articulated policy, the standby rate approved by the commission in this docket must be temporary. Indeed, the commission notes that the Parties' agreement with respect to the standby rate for

²⁹See KIUC's Responses, at 12 (the Parties negotiated and agreed-upon the prescribed January 1, 2015 date as a reasonable period of time).

³⁰Docket No. 03-0371, Decision and Order No. 22248, at 12; see also id., Ordering Paragraph No. 1, at 45.

renewable energy systems and projects (Component 2) only applies until the completion of KIUC's next rate case proceeding. As such, the commission sees no reason to extend the \$5.00 standby rate for non-renewable projects or facilities beyond the next rate case when the standby rates for renewable projects will be reevaluated in the next rate case, and indeed standby rates in general will be evaluated.

B.

Component 2

Component 2 of the Revised Standby Proposal requires KIUC to remove its existing standby charge for renewable energy systems until "at least the time of" KIUC's next rate case proceeding "[i]n recognition of the overall public and member interest to facilitate, or at least remove certain apparent barriers to the facilitation of, the pursuit of renewables on the island of Kauai."³¹

Such an exemption, the commission notes, will likely promote the use of renewable energy resources on the island of Kauai,³² and is consistent with HRS § 269-6, which allows the commission to consider the need for increased renewable energy use in exercising its authority.

³¹Revised Standby Proposal, at 1.

³²See KIUC's Responses, at 17-18 (KIUC's response to Question No. B.6).

Based on the foregoing reasons, the commission approves in part and denies in part the Revised Standby Proposal. In particular:

1. KIUC's monthly standby service charge of \$5.00 per kW for standby demand will remain in place for all distributed generation customer facilities (excluding renewable energy systems and projects, which are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding. Following the completion of KIUC's general rate case, the new standby service charge that is established and approved by the commission will apply.

2. Given that the \$5.00 monthly charge will apply to all distributed generation customer facilities (excluding renewable energy systems and projects, that are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding, regardless of whether the facilities meet or do not meet the Qualified Projects/Facilities criteria, the 5 MW cap governing Qualified Projects/Facilities and the related procedures thereto are unnecessary.³³

3. In effect, until KIUC's forthcoming general rate case proceeding is completed by the commission, at which time a new standby service charge will be established and approved by the commission, the commission hereby approves: (A) the retention of KIUC's \$5.00 monthly charge for non-renewable projects or

³³See KIUC's Responses, at 15 (KIUC established its 5 MW cap because it believes that 5 MW represents the potential projects on Kauai that may qualify under the Revised Standby Proposal).

facilities; and (B) the exemption of renewable energy systems and projects from the \$5.00 monthly charge.

4. The commission, in KIUC's general rate case proceeding, intends to review whether the exemption for renewable energy systems and projects should be discontinued, continued for a specific duration, or adopted on a permanent basis.

III.

Orders

THE COMMISSION ORDERS:

1. The Revised Standby Proposal, attached as Exhibit 1 to the Supplemental Stipulation jointly filed by the Parties on April 14, 2008 (a copy of which is attached hereto), is approved in part and denied in part, effective from the date of this Decision and Order.

2. KIUC's monthly standby service charge of \$5.00 per kW for standby demand will remain in place for all distributed generation customer facilities (excluding renewable energy systems and projects, which are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding. Following the completion of KIUC's general rate case, the new standby service charge that is established and approved by the commission will apply.

3. Until KIUC's general rate case proceeding is completed by the commission, at which time a new standby service charge will be established and approved by the commission, the commission approves: (A) the retention of

KIUC's \$5.00 monthly charge for non-renewable projects or facilities; and (B) the exemption of renewable energy systems and projects from the \$5.00 monthly charge.

4. KIUC's Motion to Defer, Suspend and/or Terminate the Review and Investigation of KIUC's Standby Tariffs, filed on March 14, 2007, as supplemented on March 16, 2007, is dismissed as moot.

5. KIUC shall promptly file revised tariff sheets for Rider S, with applicable issued and effective dates, to reflect that: (A) the monthly standby service charge of \$5.00 per kW for standby demand only applies to non-renewable energy projects or facilities; and (B) renewable energy systems and projects are exempt from the \$5.00 monthly charge.

6. KIUC shall submit a proposed revised standby service tariff as part of its next general rate case.

DONE at Honolulu, Hawaii

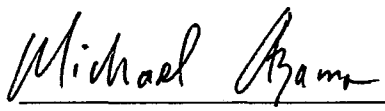
JUN 24 2008


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By: 
Leslie H. Kondo, Commissioner

2006-0498.laa

Exhibit 1

Settlement Agreement Docket No. 2006-0498

I. GOAL AND OBJECTIVES

The goal of this settlement agreement ("Agreement") is to address the need or desire for certainty raised by some of the parties and during the February 27, 2007 public hearing regarding KIUC's unbundled standby rate filing dated November 27, 2006. This Agreement addresses these certainty concerns, while at the same time providing a mechanism to limit or control the extent of KIUC's potential financial exposure. This Agreement consists of two separate components. The first component is designed to provide immediate certainty to those that had already begun investing material time and resources into planned projects at the time of KIUC's November 27, 2006 filing or the February 27, 2007 public hearing, and/or that can demonstrate that they were materially harmed as a result of the uncertainty created by KIUC's November 27, 2006 filing. The second component is designed to provide an immediate benefit for renewable projects. Each of these two components is more specifically described and set forth below:

- (1) Component 1: KIUC shall keep in place without modification the rates, terms, and conditions of KIUC's existing standby tariff, currently designated as Rider "S", KIUC Original Sheet Nos. 101 and 102, including, but not limited to, the Standby Charge of \$5 per month per kW of Standby demand, until the later to occur of (a) January 1, 2015, or (b) the conclusion of KIUC's next rate case proceeding, for those proposed facilities that meet the Qualified Project/Facility criteria set forth below; and
- (2) Component 2: In recognition of the overall public and member interest to facilitate, or at least remove certain apparent barriers to the facilitation of, the pursuit of renewables on the island of Kauai and within the entire State, KIUC shall remove its existing standby charge for renewable energy systems until at least the time of KIUC's first rate case proceeding as a member-owned cooperative.¹

II. ELEMENTS OF THE AGREEMENT

A. Component 1: Retention of Existing Standby Tariff Under Certain Criteria

1. Qualified Projects/Facilities: This Agreement is made available to standby customers ("Customer Generators") whose proposed non-renewable projects/facilities meet the qualifications set forth below, up to a total combined nameplate rating of 5,000 kW (i.e., 5.0 MW) ("Qualified

¹ KIUC reserves the right to seek to implement a standby charge for renewable energy systems at the time of its first rate case proceeding as a member-owned cooperative.

Project/Facility" individually or "Qualified Projects/Facilities" collectively).

2. Requirements to Become a Qualified Project/Facility and Time Period

a) The following have already qualified as "Qualified Projects/Facilities" under this Agreement:

- (1) The 67-70 kW and 245 kW existing facilities used by KIUC's two (2) current standby customers, plus a planned 250 kW expansion for one (1) of these customers.²
- (2) Kauai Marriott's proposed 810 kW propane-fired CHP project.³
- (3) Bluepoint's planned facilities totaling 2,600 kW in the aggregate.⁴

Total: 3,975 kW⁵

² As mentioned above, the purpose of this Agreement is to provide certainty for those potential standby customers that had already begun investing material time and resources into planned projects at the time of KIUC's November 27, 2006 filing or the February 27, 2007 public hearing, and/or that can demonstrate that they were materially harmed as a result of the uncertainty created by KIUC's November 27, 2006 filing. Because these two (2) existing standby customers and their respective facilities have been in service since at least December of 2005 (i.e., well in advance of KIUC's November 27, 2006 filing), KIUC did not initially agree to make this Agreement available to these two (2) existing standby customers. However, as part of this subject Agreement, KIUC has agreed to make this Agreement available to the two (2) existing standby customers as well. In addition, KIUC has also agreed to include in this Agreement a proposed 250 kW expansion for one of these two standby customers, based on information received from that customer demonstrating that their planned expansion should be a Qualified Project/Facility under this Agreement.

³ KIUC has received a completed interconnection application from Kauai Marriott, and KIUC and Kauai Marriott have entered into an Interconnection Agreement covering the proposed 810 kW facility. Also, Kauai Marriott has already had equipment shipped. Based on the above and the information obtained from Kauai Marriott, KIUC hereby states and confirms that Kauai Marriott has complied with all requirements set forth in this Agreement and qualifies as a Qualified Project/Facility under this Agreement.

⁴ As part of their continued settlement discussions, Bluepoint has provided KIUC with various confidential information about its various planned or potential projects/facilities on the island of Kauai, the level of resources it has placed into these projects, the commitments it has in place, the amounts of funds expended to date, as well as how some of these projects/facilities were impacted and Bluepoint negatively impacted by the uncertainty caused by KIUC's November 27, 2006 filing. Due to the confidential and competitive nature of the information provided to KIUC, Bluepoint provided this information to KIUC confidentially and for the sole purpose of allowing KIUC to determine whether KIUC may be willing to consider Bluepoint's proposed projects/facilities as Qualified Projects/Facilities under this Agreement. Based on the information provided to KIUC by Bluepoint, Bluepoint has sufficiently demonstrated that the specific projects/facilities provided confidentially to KIUC should be Qualified Projects/Facilities under this Agreement.

If requested by the Commission, Bluepoint agrees to provide the Commission with a list of the wattage of the various projects and their estimated date of completion, together with any additional information the Commission may require. However, due to the extremely sensitive and competitive nature of this information, Bluepoint agrees to provide this information confidentiality only to the Commission, the Consumer Advocate and KIUC and, in so doing, respectfully requests that it be allowed to work with the Commission to determine the appropriate mechanism and scope of disclosure required to satisfy the Commission's request while at the same time ensuring that the information will not be made available to anyone other than the Commission, the Consumer Advocate, KIUC, and their respective authorized representatives.

- b) The remainder of the 5,000 kW (i.e., 1,025 kW) will be reserved for other project(s)/facility(ies).⁶ KIUC will qualify a proposed project/facility as a Qualified Project/Facility under this Agreement for the remaining 1,025 kW amount on a first-come, first-served basis to those that meet each of the following requirements:
- (1) The Customer Generator has submitted to KIUC a completed interconnection application for the proposed project/facility;
 - (2) The Customer Generator has provided KIUC with evidence satisfactory to KIUC in its reasonable discretion that the Customer Generator (a) had already begun investing material time and resources into planned projects at the time of KIUC's November 27, 2006 filing or the February 27, 2007 public hearing, and/or (b) was materially harmed as a result of KIUC's November 27, 2006 filing;⁷ and
 - (3) The proposed project/facility will not result in KIUC exceeding this additional 1,025 kW limitation.
- c) To the extent a Customer Generator is able to satisfy the requirements set forth in Sections II.A.2.b(1) and (2) above, but is not able to qualify as a Qualified Project/Facility because KIUC's 1,025 kW limitation has already been reached or will be exceeded by the addition of the proposed project/facility, KIUC will analyze whether or not it could or should expand its limitation at that time to include the Customer Generator's proposed project/facility as a Qualified Project/Facility under this Agreement. At that time, KIUC will submit notice and/or application to the Commission either explaining its reasons for not including the proposed project/facility as a Qualified Project/Facility under this Agreement, or, alternatively, requesting that this Agreement be modified to expand its 1,025 kW limitation accordingly. The Commission shall

⁵ The specific projects listed above (i.e., the two (2) existing standby facilities, Kauai Marriott's proposed 810 kW facility, and the specific projects/facilities confidentially provided to KIUC by Bluepoint) are the Qualified Projects/Facilities that comprise the 3,975 kW amount set forth above under this Agreement. Except as specifically provided in footnote 2 of this Agreement, to the extent Bluepoint, Kauai Marriott, the existing standby customers or any other entity seeks to have another project/facility treated as a Qualified Project/Facility under this Agreement, that project/facility shall not be considered a Qualified Project/Facility under this Agreement unless or until it has met the requirements set forth in this Agreement to become a Qualified Project/Facility as it pertains to the remaining 1,025 kW limitation (or such other limitation as may be in effect at that time).

⁶ Id., footnote 5

⁷ This Agreement is not intended to cover projects/facilities that were simply in the evaluation or early planning stages where no material funds or resources had yet been committed, no financial and/or contractual commitments had yet been entered into as of the time of the above filing and public hearing, and/or where the proposed Customer Generator cannot demonstrate that they were otherwise materially harmed by the November 27, 2006 filing. In these cases, these potential standby customers and their associated projects/facilities should be treated similarly to any other customer of KIUC, with certainty of ongoing rates only until the time of the utility's next rate case proceeding.

then take any action it deems necessary and/or appropriate with respect to KIUC's filing.

3. Coverage Period

- a) For Qualified Projects/Facilities, KIUC will keep in place the Rate Structure described in Section II.A.4. below until the later to occur of (1) January 1, 2015, or (2) the conclusion of KIUC's next rate case proceeding ("Coverage Period").
- b) Upon termination of the Coverage Period, the then applicable PUC-approved applicable tariff rate(s) shall apply.

4. Rate Structure for Qualified Projects/Facilities during Coverage Period

- a) The Standby Charge of \$5 per kW per month of Standby demand, as currently set forth in KIUC's standby tariff, which shall not be increased during the Coverage Period for the Qualified Projects/Facilities.⁸
- b) Usage charge or other standby charges = none.
- c) All other applicable tariff rate schedules shall remain intact (in other words, demand charge, energy charge, customer charge, and surcharge will be calculated and billed as prescribed in the applicable tariff rate schedule in effect at that time).

5. Limitations and Other Terms and Conditions

- a) The above Rate Structure applies (i.e., is guaranteed) only to Qualified Projects/Facilities and during the Coverage Period.
- b) Except as specifically provided in Section II.A.2.c above, once the above 1,025 kW limitation is exceeded, no other Customer Generators or projects/facilities shall be entitled to participate in this Agreement.
- c) Spinning reserve⁹ will not be offered to or required of KIUC by interconnecting Customer Generators under this Agreement.¹⁰

⁸ For implementation purposes, the term "actual measured demand" as set forth in KIUC's existing standby tariff means the generator nameplate rating of the subject facility except where the customer's generator nameplate rating exceeds the customer's highest historical demand. In such cases the facility's metered demand would establish a new standby demand for the subsequent twelve (12) month period. At the end of such twelve (12) month period, the standby demand shall continue at the higher amount unless KIUC is otherwise notified in writing. Notwithstanding the above, the customer utilizing standby service shall have the right set forth in Rider "S", KIUC Tariff No. 1, Original Sheet 101, to specify in writing the maximum kW "Standby" demand requested, which will be known as the "Standby" demand during the next twelve (12) months and continue thereafter until KIUC is otherwise notified in writing. If, consistent with the tariff, at any time, the actual measured demand exceeds the "Standby" demand, the higher demand shall be used and will establish a new "Standby" demand for the subsequent twelve (12) months, and, at the end of such twelve (12) month period, the "Standby" demand shall continue at the higher amount unless KIUC is otherwise notified in writing.

⁹ KIUC, by virtue of its unit dispatch strategy, provides a nominal amount of reserve. However, KIUC does not have criteria for providing a fixed amount of spinning reserve and will not commit to doing so under or as part of this Agreement.

¹⁰ Based on the size of the units already installed and anticipated to be installed, KIUC does not anticipate a need to carry spinning reserve to meet distributed generation loads. KIUC anticipates addressing the issue of Firm Backup in the development of its standby methodology at the time of its first rate proceeding as an electric cooperative.

- d) For Qualified Projects/Facilities, as a condition to being entitled and continuing to be entitled to the above Rate Structure for the Coverage Period, the Customer Generator shall timely coordinate all planned maintenance outages with KIUC, as well as any emergency repair outages to the extent practicable under the circumstances.¹¹ KIUC will not unreasonably withhold approval of such scheduled outages.
- e) Expansion of initial facilities.
 - (1) If the Customer Generator expands or adds additional phases of distributed generation facilities to an existing system classified as a Qualified Project/Facility beyond that set forth in the interconnection agreement signed between the Customer Generator and KIUC, the existing system shall continue to be a Qualified Project/Facility and shall continue to be charged at the Rate Structure for the entire Coverage Period. Any expansion or addition facilities shall not automatically be deemed to be a Qualified Project/Facility. In order to be deemed a Qualified Facility, the expansion or addition facilities must meet the conditions set forth in Section II.A.2.b. or Section II.A.2.c.. If the expansion or addition facilities fail to meet the conditions set forth in Section II.A.2.b. or Section II.A.2.c. above, the expansion or addition to the existing system shall be charged at the Rate Structure only until the conclusion of KIUC's next rate case proceeding, at which time said expansion or addition shall be charged at the applicable standby rate structure in effect at that time. As a condition to being entitled to the above, however, the Customer Generator must install at its own expense any meter(s) or other facilities deemed necessary by KIUC to allow KIUC to charge the existing system and the expansion or addition at their respective differing rate structures that may be in effect at that time.
 - (2) Notwithstanding the above, Section II.A.5.e.(1) above shall not apply to situations in which a Customer Generator replaces, modifies, or upgrades a generator or generators at its facility even where a new, modified, or upgraded generator or generators of the same type is not reasonably available with an identical generator nameplate rating. In this situation, a Customer Generator's facility will remain as a Qualified Project/Facility for the entire Coverage Period under this Agreement for the full generator nameplate rating of the replaced, modified or upgraded facility, provided that (1) the Customer Generator sufficiently demonstrates to KIUC's satisfaction that a new, modified, or upgraded generator or generators with identical generator nameplate rating is/are not reasonably available at that time, (2) the nameplate rating of the new generator(s) is no higher than

¹¹ KIUC acknowledges that occasionally a generator may be taken off-line for emergency repairs. To the degree possible, KIUC desires the opportunity to mobilize additional generation, if required, to meet the anticipated load to be transferred to KIUC as a result of the shutdown of the Customer Generator's unit.

the next reasonably higher size available, and (3) the replacement of the new generator(s) will not result in the total nameplate rating of the subject facility being more than 5% over the total nameplate rating of the facility as set forth in the interconnection agreement covering that facility, unless KIUC and the Customer Generator otherwise agree in writing.

f) **Next Rate Case Proceeding**

- (1) In the event KIUC completes its next rate case proceeding before the expiration of the Coverage Period, and the standby rate established at the completion of that proceeding is higher than the standby rate in the Rate Structure set forth above, the Qualified Projects/Facilities hereunder shall nevertheless continue to pay the standby rate under the above Rate Structure for the remainder of the Coverage Period. In such an event, KIUC may propose to reflect any test year revenue difference in determining the revenue requirement for that rate case proceeding (that is, any difference in the test year revenues based on the standby rate under the above Rate Structure and the standby rate established in that rate case proceeding) through revenue sources other than the standby charge discussed herein. Parties reserve all rights to challenge any such revenue deficiency adjustment, including, but not limited to, the right to challenge the derivation, computation, allocation, and level of any such proposed test year revenue difference or adjustment, and the right to argue that the operation of Qualified Projects/Facilities has benefited or will benefit the KIUC system and that such benefits offset any alleged revenue deficiency or adjustment.
- (2) Notwithstanding the above, in the event KIUC completes its next rate case proceeding before the expiration of the Coverage Period, each Customer Generator covered under this Agreement shall have the option to opt out of the terms of this Agreement and instead be covered under KIUC's new standby tariff resulting from that rate case proceeding.

6. **Reporting Requirements**

- a) As a condition to a Qualified Project/Facility remaining eligible for the above Rate Structure for the Coverage Period, the Customer Generator shall be required to provide a project schedule and timeline to KIUC. In addition, the Customer Generator shall be required to provide updates/reports to KIUC regarding the timing and status of the project at KIUC's reasonable request, together with any additional support that reasonably may be requested by KIUC to validate the same.
- b) The purpose of the above is to assist KIUC in either determining whether the project/facility has been canceled and/or whether any delays are or will result in a completion deadline for the project/facility outside of the Coverage Period, such that KIUC could then give another project/facility the opportunity to participate in this Agreement.

- c) Failure to provide the above information on an expedited basis, absent a reasonable reason for the delay, may result in the Customer Generator losing their eligibility to participate in this Agreement.
7. KIUC's Standby Service Obligations
- a) KIUC shall not be required to maintain spinning reserve to provide Firm Backup under this Agreement.

B. Component 2: Removal of Standby Tariff for Renewables Until KIUC's First Rate Case

1. Renewable Energy Systems: Notwithstanding the above, renewable energy systems ("Renewable Energy projects") will be covered by the following terms:
- a) "Renewable Energy" or "renewable energy" for the purpose of this Agreement is defined as non-capacity resources such as wind and solar PV.¹²
 - b) Instead of KIUC's standby tariff, there shall be no standby charge for Renewable Energy projects.
 - c) All other applicable tariff rate schedules to remain intact (in other words, demand charge, energy charge, customer charge, and surcharge will be calculated and billed as prescribed in the applicable tariff rate schedule in effect at that time).
 - d) There will be no limit to the number of Renewable Energy systems that KIUC will cover under this Agreement (i.e., these systems will not be included as part of the 5,000 kW limitation set forth above).
 - e) This no charge provision for Renewable Energy projects will remain until the conclusion of KIUC's next rate case proceeding, at which time the PUC-approved applicable tariff rate (including any applicable standby rate) shall apply.

C. General Conditions Applicable to Both Components

1. Removal of Exhibit 1 of Stipulation. At the time of filing the Stipulation with the Stipulating Parties (KIUC, Consumer Advocate, County of Kauai, Kauai Marriott and HREA) on November 30, 2007, KIUC was not willing to go above the 1,534 kW maximum limitation set forth in the Stipulation to Approve Procedural Order executed and filed with the Commission on November 30, 2007. The Stipulating Parties recognized that this threshold provided certainty to only certain parties, and that the certainty concerns of Bluepoint as well as other third parties whose proposed projects/facilities may have been able to qualify as a Qualified Project/Facility but for the 1,534 kW limitation would not be fully addressed to their satisfaction. As a result, in addition to providing a proposal as Exhibit 2 to that Stipulation

¹² The distinction between non-capacity and capacity resources is relevant in that there are significant differences in load factor and subsequent determination of loss of kWh sales that affects KIUC's analysis of the financial impact that can result from this Agreement.

(modified by this Agreement), the Stipulating Parties also proposed a document titled Exhibit 1, which proposed a procedural schedule to allow for the development of a standby methodology to be approved as part of this proceeding, but then implemented at the time of KIUC's first rate case proceeding. The purpose of this Exhibit 1 was to provide certainty to those not covered by the Exhibit 2 proposal as to what type of methodology will be utilized by KIUC at the time of its next rate case proceeding.

The changes made in this subsequent Agreement address all of the parties' concerns with KIUC's November 27, 2006 filing by including their proposed projects as Qualified Facilities that are allowed to be charged KIUC's existing structure as described in Section II.A.4. above. In addition, as described in Section II.A.2. above, the instant Agreement provides for an additional 1,025 kW of eligible Qualified Projects/Facilities to be covered under this Agreement and establishes a process to potentially increase above this amount in the event KIUC receives applications in excess of the additional 1,025 kW limitation. As a result, the parties agree that the procedural steps set forth in Exhibit 1 of the Stipulation filed by the Stipulating Parties on November 30, 2007, are no longer needed. Instead, consistent with standard ratemaking practice, KIUC's proposed standby methodology will be proposed and sought for implementation at the time of KIUC's first rate case as an electric cooperative, where all aspects of ratemaking can be appropriately considered and then implemented as part of the general rate proceeding. The parties also believe that this request is in the public interest, as it will save all parties and the Commission from the time and resources needed to develop and review a standby methodology in the instant proceeding without having the opportunity to review KIUC's test year revenue requirement resulting from the implementation of KIUC's existing rates and potentially be deemed to be single-issue ratemaking. Furthermore, any new rate developed in the instant proceeding would need to be reexamined for reasonableness in KIUC's next general rate proceeding.

Thus, for the reasons set forth above, KIUC and the other parties propose that KIUC not be required to submit a standby methodology for review and consideration as part of this proceeding. Instead, such methodology should be submitted as part of KIUC's next rate case.

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
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