

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Competitive Bidding)
for New Generating Capacity in)
Hawaii.)
_____)

DOCKET NO. 03-0372

DECISION AND ORDER NO. 23799

Filed Nov. 5, 2007
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

Karen Higashi

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DECISION AND ORDER

By this Decision and Order,¹ the commission approves the proposed tariffs for interconnection and transmission upgrades, filed by the HECO Companies.

I.

Background

A.

Procedural Background

On December 8, 2006, the commission issued Decision and Order No. 23121 in which it adopted a Framework for Competitive Bidding as a mechanism for acquiring or building new energy

¹The Parties are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, the "HECO Companies"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), and 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).

generation in the State of Hawaii ("CB Framework").² Specifically, the CB Framework outlines a comprehensive mechanism for the electric utilities to acquire a future generation resource or a block of generation resources under the competitive bidding process. As part of the implementation process governing competitive bidding, Decision and Order No. 23121 requires the HECO Companies to file their proposed tariffs containing procedures for interconnection and transmission upgrades for the commission's review and approval.

On April 17, 2007, the HECO Companies filed their proposed tariffs for interconnection and transmission upgrades, designated as Rule 19.³ On April 26, 2007, KIUC informed the commission that "it takes no position on the proposed tariffs for interconnection and transmission upgrades filed by [the] HECO [Companies] on April 17, 2007, and therefore has no comments to the same."⁴ On May 21, 2007, HREA filed its comments on the HECO Companies' Rule 19.⁵ On June 5, 2007, the HECO Companies filed their response to HREA's Comments.⁶

²Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006, attached.

³HECO Companies' Transmittal Letter; Exhibits A and B; HECO's Rule 19; HELCO's Rule 19; MECO's Rule 19; and Certificate of Service, filed on April 17, 2007. The commission granted the HECO Companies additional time, until April 17, 2007, to file their proposed tariffs for interconnection and transmission upgrades. See Commission letter, dated March 12, 2007; and Order No. 23385, filed on April 26, 2007. While separate tariffs are proposed by HECO, HELCO, and MECO, this Decision and Order collectively refers to their proposed tariffs as Rule 19.

⁴KIUC's letter, dated April 26, 2007, at 1.

B.

Rule 19

As proposed, Rule 19 consists of three sections: (A) General; (B) Interconnection Study Process for Competitive Bidding; and (C) Interconnection Cost and System Upgrade Cost Allocation for Competitive Bidding. An Interconnection and Transmission Upgrades diagram is attached as Attachment A to Rule 19.

In general, an independent power producer's generating facility will interconnect with the utility's system from the generating facility to the point of interconnection, then to the grid connection point.⁷ The independent power producer shall own

⁵Comments of HREA on HECO's Proposed Tariffs for Interconnection and Transmission Upgrades; and Certificate of Service, filed on May 21, 2007 (collectively, "HREA's Comments"). The Consumer Advocate did not submit any comments.

⁶HECO Companies' Joint Response to HREA Comments, filed on June 5, 2007 ("HECO Companies' Response"); see also Commission letter, dated May 24, 2007.

⁷As defined in Section A.1 of Rule 19:

"Company's System" means the electric system owned and operated by the Company (to include any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

"Generating Facility" means a bidder or utility-owned electrical energy generation resource that is interconnected to the Company electrical grid.

"Grid Connection Point" means the point at which Interconnection Facilities connect to the Company's System, normally the Company's transmission grid. Facilities from the Generating Facility to the Grid Connection Point shall be considered Interconnection Facilities

"Interconnection Facilities" means the equipment and devices required to permit a Generating Facility to operate in

and maintain the facilities from the generating facility to the point of interconnection, while the utility shall own and maintain the facilities from the point of interconnection to the utility's system.⁸

The Interconnection Requirements Study ("IRS"), conducted by the utility or its consultant, identifies the interconnection facilities, system upgrades, and other system requirements and all associated costs to interconnect the generating facility with the utility's system.⁹ The IRS is conducted in accordance with the applicable terms of the IRS letter agreement, request for proposal ("RFP"), and power purchase agreement ("PPA"). The interconnection agreement between the bidder and the utility specifies the terms and conditions under which the interconnection facilities, and in some cases certain system upgrades, will be designed, installed,

parallel with and deliver electrical energy to the Company's System and provide reliable and safe operation of, and power quality on, the Company's System . . . , such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

"Point of Interconnection" means the point of delivery of Energy and/or Capacity supplied by the bidder to the Company, where the facilities owned by the bidder interconnect with the facilities owned or to be owned by the Company. The bidder shall own and maintain the facilities from the Generating Facility to the Point of Interconnection. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's System[.]

Rule 19, Section A.1; see also Rule 19, Attachment A, Interconnection and Transmission Upgrades diagram.

⁸Rule 19, Section A.1.n (definition of point of interconnection); and Attachment A, Interconnection and Transmission Upgrades diagram.

⁹See Rule 19, Section A.1.j (definition of IRS).

paid for, owned, operated, and maintained.¹⁰ In some cases, "such terms and conditions may be included in the PPA with a bidder, instead of in a separate Interconnection Agreement."¹¹

1.

Section A: General

With respect to the application of Rule 19 and the independent observer's role in implementing Rule 19, Sections A.2 and A.3 provide:

2. Application of Tariff

This Tariff shall apply to an RFP issued pursuant to the Framework and Interconnection Requirement Studies arising from the RFP process. In the event that there is a conflict between any provision of this Tariff and that of an RFP issued pursuant to the Framework and reviewed by the Commission in accordance with Sections III.B.2 and IV.B.6.e. of the Framework, the provisions of the RFP shall prevail. The terms and conditions established in a PPA arising from the RFP and approved by the Commission shall ultimately control over the requirements and terms of both this Tariff and the RFP.

3. Independent Observer

As established in the Framework, the duties and responsibilities of an Independent Observer (IO) include, among other duties and responsibilities, reviewing and monitoring the Company's communications, methods, and implementation of this Tariff, the RFP and related IRS processes.

Rule 19, Sections A.2 and A.3.

¹⁰See Rule 19, Section A.1.h (definition of interconnection agreement).

¹¹Rule 19, Section A.1.h (definition of interconnection agreement).

Section B: Interconnection Study
Process for Competitive Bidding

Rule 19, Section B, outlines the five steps that culminate in the completion of an IRS under the competitive bidding process:

1. RFP Package Data: The issuance of RFP packages by the electric utility to prospective bidders.¹²

2. Information Requests During the Bidding Process: Information requests from prospective bidders, with responses by the utility that clarify or provide additional information relating to the utility's system.

3. RFP Requirements and Threshold Criteria Screening: The utility's review and evaluation of each bid to determine whether each bid conforms to the specified RFP requirements and meets the minimum threshold criteria.

¹²As described in Rule 19, Section B.1:

RFP packages issued by the Company shall contain general and regional system information to provide prospective bidders with high level guidance relating to the Company's existing transmission infrastructure

In addition, the RFP shall include applicable transmission planning criteria that will be used in the determination of interconnection requirements and potential Transmission System impacts. The information in the bid package will provide bidders with information (a) that should help in the selection of the proposed project's characteristics, including project site, project size, and project mode of operation, and (b) to estimate the interconnection requirements associated with their Generating Facilities and the opportunity to reflect the costs of the interconnection requirements in their bids.

Rule 19, Section B.1.

4. High Level Evaluation: All bids that pass the threshold screening in the RFP process will undergo a high level evaluation consistent with the requirements identified in the RFP, with the utility determining which bids make the short list.¹³

5. Full IRS: "An IRS shall be performed only for bid(s) that have met the RFP requirements, passed the threshold criteria, and made the short list, or as otherwise specified in the RFP."¹⁴

Based on specified factors, an IRS will be performed "either serially starting with the bid evaluated as the most competitive at the point of the evaluation process, . . . or in parallel on all or some of the short list bidders simultaneously."¹⁵ If "practicable" and based on specified factors, the utility may bundle the IRS work for multiple short

¹³As noted in Rule 19, Sections B.4.c and B.4.d:

- c. Results of the high level evaluation and high level estimate of the costs of Interconnection Facilities and required System Upgrades will be factored into the determination of which bids make the short list based on the requirements specified in the RFP.
- d. Basic curtailment analysis of the proposed Generating Facility and related impacts to operations of existing Generating Facilities may also be factored into the determination of which bids make the short list based on the requirements specified in the RFP.

Rule 19, Section B.4.c and B.4.d (emphasis added).

¹⁴Rule 19, Section B.5.a.

¹⁵Rule 19, Section B.5.b.

list bids into a single IRS. The results of the IRS will be provided to the bidders.¹⁶

Bidders shall be responsible for: (1) incorporating the costs of their interconnection facilities into their bids; and (2) the costs of the IRS, in order to evaluate the impacts of the generating facility's interconnection to the utility's system.¹⁷

3.

Section C: Interconnection Cost and System Upgrade Cost Allocation for Competitive Bidding

Unless otherwise specified in the RFP, the independent power producer (i.e., the "winning" bidder) shall be responsible for: (1) the cost of the interconnection facilities; and (2) the installation and maintenance of the interconnection facilities from the generating facility to the point of interconnection.¹⁸ Moreover, unless agreed upon otherwise, interconnection facilities: (1) from the generating facility to the point of interconnection shall be built by the independent power producer;¹⁹ and (2) from the point of interconnection to the grid connection point shall be built by the utility and paid for by the independent power producer.²⁰ Interconnection facilities from the point of interconnection to the grid connection point, if built by the independent power producer, shall be transferred to

¹⁶Rule 19, Section B.5.c.

¹⁷Rule 19, Sections B.5.e and B.5.h.

¹⁸Rule 19, Section C.1.

¹⁹Rule 19, Section C.2.

²⁰Rule 19, Section C.3.

the utility upon completion, along with the necessary land rights and easements.²¹

The utility may elect to include betterments to interconnection facilities from the point of interconnection to the grid connection point. Such betterments shall be paid for by the utility, and the cost of any betterments to the interconnection facilities will not be considered in the bid evaluation process.²²

The utility shall install and maintain the identified system upgrades arising from the interconnection of the generating facility, and shall be responsible for the cost of such system upgrades; provided that: (1) the utility's cost for system upgrades will be considered as a factor in the bid evaluations; and (2) the degree to which the system upgrades provide system benefits or betterments will be considered in the bid evaluations.²³ Generating facilities, interconnection facilities, and system upgrades shall be constructed in accordance with applicable standards, the PPA, and

²¹Rule 19, Section C.3.

²²Rule 19, Section C.3. The term "betterments" is defined to include "any upgrading to a facility made solely for the benefit of and at the election of the Company, not attributable to the interconnection requirements." Rule 19, Section A.1.a. The term "system benefit," in turn, means "a material increase in power flow capability or in the reliability of the Company's electrical system from a system-wide perspective." Rule 19, Section A.1.t.

²³Rule 19, Section C.4. The term "system upgrades" means "improvements made to the Company's System, other than the Interconnection Facilities, required to provide reliable and safe operation of, and power quality on, the Company's System . . . when the Generation Facility is interconnected with the Company's System[.]" Rule 19, Section A.1.u.

interconnection agreement (if a separate interconnection agreement exists).²⁴ Interconnection facilities shall be designed, installed, operated, and maintained in accordance with the objectives of good interconnection practice, identified to include: safety; reliability; power quality; restoration; the protection of generating facilities and utility and customer equipment; and utility system over current devices and operating efficiency.²⁵

The independent power producer's generating facility may be interconnected and operated in parallel with the utility's system in accordance with the PPA and interconnection agreement (if a separate interconnection agreement exists).²⁶

Lastly, to encourage the development of renewable energy facilities, the utility, in its integrated resource planning ("IRP") process, may propose: (1) system upgrades, to be paid for, owned, and maintained by the utility; and (2) to pay for interconnection facilities between the point of interconnection and the grid connection point.²⁷

²⁴Rule 19, Sections C.5.a and C.5.b.

²⁵Rule 19, Section C.5.e.

²⁶Rule 19, Section C.5.c.

²⁷Rule 19, Section C.6. The term "renewable energy facility" means "a Generating Facility that generates electricity using renewable energy as the source." Rule 19, Section A.1.p.

C.

HECO Companies' Position

The HECO Companies contend that Rule 19 is consistent with the commission's applicable directives set forth in the CB Framework and Decision and Order No. 23121. Specifically, the HECO Companies state:

1. CB Framework, Part IV.I.4.a - Formal Queuing Process: The formal queuing process set forth in Rule 19 incorporates the process previously proposed by the HECO Companies and found to be reasonable and consistent with the CB Framework by the commission in Decision and Order No. 23121.²⁸ As a result of this process, "[a] full [IRS] will be performed only for bid(s) that have met the RFP requirements, passed the threshold criteria, and made the short list, or as otherwise specified in the RFP. The results of the IRS, including identified Interconnection Facilities, System Upgrades, Point of Interconnection, and Grid Connection Point, will be provided to the bidder."²⁹

2. CB Framework, Part IV.I.4.b - Minimizing the Cost of Studies: Rule 19 "provides that the Company may, if practicable, 'bundle' IRS work for multiple short list bids into a single IRS if the bids are, among other factors, technically, operationally and geographically (e.g., size, location,

²⁸HECO Companies' Transmittal Letter, at 3, and Exhibit A.

²⁹HECO Companies' Transmittal Letter, at 3; see also Rule, Section B.5.a and B.5.d.

technology, timing, operating characteristics, etc.) identical or sufficiently similar to each other."³⁰

3. CB Framework, Part IV.I.4.c - Cost Allocation

Methodology: Under the commission's chapter 6-74, HAR, governing standards for small power production and cogeneration, qualifying facilities are required to pay for the interconnection costs for the interconnection facilities. Because qualifying facilities must contribute the costs of the interconnection facilities up front to the utility, "this can result in negotiations or even disputes that must be resolved by the Commission as to what facilities are necessary, and who should bear the upfront costs of system upgrades that provide 'system benefits' or that result in system 'betterments.'"³¹ Accordingly, Rule 19 is intended to simplify the "rules" regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding.³²

Interconnection facilities will be paid for by the independent power producer, unless the utility agrees to pay for certain interconnection facilities for renewable energy facilities in its commission-approved IRP.³³

³⁰HECO Companies' Transmittal Letter, at 4; see also Rule 19, Section B.5.c.

³¹HECO Companies' Transmittal Letter, at 5 (citing to Exhibit B, attached to the Transmittal Letter.).

³²HECO Companies' Transmittal Letter, at 4 - 6.

³³See Rule 19, Section C.1 and C.6. According to the HECO Companies, Rule 19 provides that "the Company may propose System Upgrades, in its IRP process, to be paid for, owned and maintained by the Company, to encourage the siting of renewable energy facilities. The Company could consider proposing such

In particular: (1) the independent power producer will pay for and install the interconnection facilities up to the point of interconnection;³⁴ and (2) the utility will install and the independent power producer will pay for the interconnection facilities from the point of interconnection to the grid connection point, unless agreed to otherwise by the utility.³⁵ System upgrades, meanwhile, will be installed, owned, and paid for by the utility; provided that the utility's cost for system upgrades will be considered in the bid evaluation process.³⁶

4. CB Framework, Part IV.I.4.d - Process for Obtaining Information: "RFP packages issued by the Company shall contain general and regional system information to provide prospective bidders with high level guidance relating to the Company's existing transmission infrastructure."³⁷ Detailed geographic maps of the transmission system may not be part of the RFP package due to security concerns. Instead, a map of the island with shaded areas to identify areas (rather than circuits) of transmission constraints, may be provided.³⁸

facilities if there is a mechanism in place for timely recovery of the utility's costs, and the Company plans to propose such a mechanism in the [Renewable Portfolio Standards] Docket, Docket No. 2007-0008." HECO's Transmittal Letter, at 6.

³⁴See Rule 19, Section C.1 and C.2.

³⁵See Rule 19, Section C.3 and C.4.

³⁶See Rule 19, Section C.4.

³⁷Rule 19, Section B.1; see also HECO Companies' Transmittal Letter, at 6 - 7.

³⁸HECO Companies' Transmittal Letter, at 7; see also Rule 19, Section B.1.

"During the bidding process, if a prospective bidder requires clarification or additional technical or operational information pertaining to the Company's system, a written request with specific questions may be submitted to the Company in accordance with the requirements set forth in the RFP. The written request, specific questions, and written Company response will be provided to all bidders."³⁹

5. Interconnection Agreement: While Rule 19 does not specify the terms and conditions applicable to interconnection operations, beyond high level guidance, more detailed guidance to bidders will be provided in the RFP and in the forms of contracts attached to the RFP. Pursuant to Part IV.C.1 of the CB Framework, the RFP shall include proposed forms of PPAs and other contracts, which may include forms of interconnection agreements.⁴⁰

6. Application of Rule 19: Rule 19 applies to an RFP issued pursuant to the CB Framework and IRS arising thereto. In the event of a conflict between any provisions of Rule 19 and the RFP issued pursuant to the CB Framework and reviewed by the commission in accordance with Parts III.B.2 and IV.B.6.e of the CB Framework, the provisions of the RFP will prevail. The terms and conditions established in a PPA arising from the RFP and

³⁹HECO Companies' Transmittal Letter, at 7; see also Rule 19, Section B.2.

⁴⁰Part IV.C.1 of the CB Framework states in relevant part that "[t]he RFP shall include proposed forms of PPAs and other contracts, with commercially reasonable terms and conditions that properly allocate risks among the contracting parties in light of circumstances."

approved by the commission will ultimately control over the requirements and terms of both Rule 19 and the RFP.⁴¹

Rule 19 is based on the standard provisions in the CB Framework, "which may not be applicable to all RFP processes."⁴² In addition, Rule 19 is "intended to ensure that the tariff is as flexible as the Framework is intended to be."⁴³ Nonetheless, pursuant to Parts III.B.2 and IV.B.6 of the CB Framework, the commission will review and modify, if appropriate, any RFP issued pursuant to the CB Framework.

⁴¹HECO Companies' Transmittal Letter, at 7.

⁴²HECO Companies' Transmittal Letter, at 7. As an example, the HECO Companies cite to Part IV.F.1 of the CB Framework, which states: "The evaluation and selection process shall be identified in the RFP, and may vary based on the scope of the RFP. In some RFP processes, a multi-stage evaluation process may be appropriate."

⁴³HECO Companies' Transmittal Letter, at 8. As examples, the HECO Companies cite to Parts II.B.4 and IV.H.7 of the CB Framework, which state:

Part II.B.4

Competitive bidding processes may vary by resource type, provided those processes are consistent with this Framework.

...

Part IV.H.7

If the IRP indicates that a competitive bidding process will be used to acquire a generation resource or a block of generation resources, then the utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.

D.

HREA's Comments

HREA provides the following comments to the HECO Companies' Rule 19:

1. HREA disagrees with the requirement set forth in Section C.3 that interconnection facilities from the point of interconnection to the grid connection point be built by the utility and paid for by the independent power producer, unless agreed upon otherwise. In HREA's view, this requirement creates a liability for the independent power producer, and negatively impacts the producer's ability to finance the project.

Instead, HREA proposes two options: (A) should the utility determine that ownership of the interconnection facilities provides a system benefit, the utility should request authorization from the commission to purchase and thereby own the facilities; or (B) should the utility determine that ownership of the interconnection facilities does not provide a system benefit, the independent power producer should purchase and thereby own the facilities.⁴⁴

Under no circumstance "can HREA support the [independent power producer's] purchasing [of] the interconnection facilities and then be[ing] required to 'gift' the facilities to the utility."⁴⁵

⁴⁴HREA's Comments, Comment No. 2, at 2-3.

⁴⁵HREA's Comments, at 3; see also HREA's Comment No. 1, at 1 (all interconnection facilities paid for by the independent power producer will be owned by the producer, with no requirement that the producer be required to subsequently "gift" such facilities to the electric utility).

2. For Section C.6, governing renewable energy facilities, HREA proposes changing "may" to "will," such that Section C.6 will now read as follows:⁴⁶

Renewable Energy Facilities

- a. In its IRP process, the Company [may] will propose System Upgrades, to be paid for, owned and maintained by the utility, to encourage the development of Renewable Energy Facilities.
- b. In its IRP process, the Company [may] will propose to pay for Interconnection Facilities between the Point of Interconnection and the Grid Connection Point, in order to encourage the development of Renewable Energy Facilities.

See HREA's Comments, Comment No. 7, at 5.

HREA also: (1) urges the commission to establish the policies set forth in Section C.6 now;⁴⁷ and (2) states that, for future renewable energy facilities, it will not support any requirement that the renewable energy producer pay for certain interconnection facilities and then "gift" such facilities to the electric utility.⁴⁸

3. Referring to Section A.2, governing the application of Rule 19, HREA does not agree with the HECO Companies' position that in the event of a conflict between any provisions of Rule 19 and the RFP, the provisions of the RFP will prevail. Instead, HREA recommends that in the event of a conflict: (A) the electric utility and bidders discuss and reach

⁴⁶Proposed additions are underscored, proposed deletions are bracketed.

⁴⁷See HREA's Comments, Comment No. 3, at 3-4.

⁴⁸HREA's Comments, Comment No. 6, at 5.

agreement on which requirements (Rule 19 or the RFP) should prevail; and (B) if agreement is not reached, the bidders will have the right to seek a ruling from the commission.⁴⁹

4. Section B.5.a states that "[a]n IRS shall be performed only for bid(s) that have met the RFP requirements, passed the threshold criteria, and made the short list, or as otherwise specified in the RFP."⁵⁰ HREA seeks clarification of certain matters relating to Section B.5.a.⁵¹

⁴⁹HREA's Comments, Comment No. 4, at 4.

⁵⁰See also HECO Companies' Transmittal Letter, Exhibit A, at 2 ("An interconnection requirements study, which includes a detailed steady-state and a dynamic analysis, would be performed on the short list of bids.").

⁵¹Specifically:

1. Whether an IRS will be performed on the short list for bidders on all RFPs.
2. Whether bidders on the short list will have attractive proposals with competitive bid-in prices for selling power to the electric utility.
3. Given that the results of an IRS will likely affect the bid-in price for one or more bidders on the short list, whether one of the purposes of the IRS is to allow bidders to adjust their bid-in price and other aspects of their proposal.

If so, whether the utility is anticipating that such bidders will then have the opportunity to submit a best and final offer, upon which the utility will then select the winning proposal.

4. Whether non-short-list bidders will be informed of their deficiencies, and be given an opportunity to correct such deficiencies.

See HREA's Comments, Comment No. 5, at 4.

E.

HECO Companies' Response

The HECO Companies, in response to HREA's Comments, contend:

1. Requiring developers of independent power producer projects to contribute to the costs of utility-owned interconnection facilities, including those facilities between the point of interconnection and the grid connection point, as well as certain system upgrades, is a long-standing practice in this and other jurisdictions. Rule 19 proposes to simplify the "rules" regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. In this regard, the "burden" on winning bidders under Rule 19 will be less than what the "burden" has been under the commission's chapter 6-74, HAR.

2. Developers of independent power producer projects negotiated pursuant to chapter 6-74, HAR, have been able to finance their projects. Thus, there is no basis for the claim that Rule 19 will pose an unfair burden on bidders, or render independent power producer projects "unfinanceable."

3. The interconnection facilities between the point of interconnection and the grid connection point become an integrated part of the utility's system, making the utility's ownership of such facilities essential, unless agreed to or determined otherwise by the utility. The utility's ownership of

interconnection switching stations is consistent with past commission rulings.⁵²

4. The intent of Rule 19, Section C.6, is to provide the utility with the option of proposing facility additions for renewable energy to the commission in the utility's IRP filings, after which the commission will have the opportunity to review and decide on whether such facilities should be funded by the recovery mechanism being proposed by the HECO Companies in Docket No. 2007-0008, the Renewable Portfolio Standards docket. The merits of this proposal are better addressed in the respective IRP processes for HECO, HELCO, and MECO.

5. The reason for Rule 19, Section A.2, "is that the RFP, which is subject to Commission review, will be more detailed than the tariff provision. Similarly, any PPA resulting from the RFP process, which will be subject to Commission approval, will specifically identify the cost responsibilities of the parties to the contract The review and comment process applicable to an RFP is already specified in the Competitive Bidding Framework, and HREA's proposal is neither necessary nor consistent with the process in the framework."⁵³

⁵²The HECO Companies specifically cite to In re Apollo Energy Corp., Docket No. 00-0135, Decision and Order No. 21227, filed on August 9, 2004.

⁵³HECO Companies' Response, at 5.

6. For Rule 19, Section B.5.a, the HECO Companies respond to HREA's request for clarification of four matters.⁵⁴

⁵⁴In particular, the HECO Companies respond as follows:

1. An IRS will only be done for short-listed bidders, just as contract negotiations will only take place with short-listed bidders, consistent with Parts IV.B.1.(d)(vii) and IV.G.3 of the CB Framework.
2. Bidders on the short list will be those with the most attractive proposals.
3. "Bidders on the short list may be offered an opportunity to adjust their bids to reflect differences between the facilities or payments for system upgrades assumed in the bid as a result of information made available prior to the bid (as would be addressed in the RFP) and the facilities or payments for system upgrades required as a result of an IRS. Alternatively, the RFP could allow bids to include an adjustment (e.g., \$x/KW or y cents/kwh per \$Z of additional interconnection cost responsibility) based on differences between the high level transmission upgrade cost estimate for which the bidder would be responsible, and the cost resulting from the IRS. Then a bid adjustment, which might reopen the bid process for other bidders, would not be necessary." HECO Companies' Response, at 7 (footnotes and text therein omitted).
4. While the relevance of HREA's Question No. 4 is unclear, since an IRS will not be performed on non-short-list bidders, the HECO Companies note that Part IV.D.7 of the CB Framework provides: "Bids may be deemed non-conforming if they do not meet or otherwise provide all of the information requested in an RFP. At the utility's discretion, in consultation with the Independent Observer, proposals that are non-conforming may be given additional time to remedy their non-conformity. The utility, in consultation with the Independent Observer, may decline to consider any bid that is non-conforming."

II.

Discussion

HRS § 269-16(a) states in relevant part:

Regulation of utility rates; ratemaking procedures. (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission

HRS § 269-16(a); see also HRS §§ 269-16(b) (just and reasonable standard) and 269-16.2 (any rules, guidelines, or other standards of a public utility that interpret state laws governing non-utility generators shall be approved by the commission).

Part IV.I of the CB Framework, governing transmission interconnection and upgrades, states:

1. A winning bidder has the right to interconnect its generation to the electric utility's transmission system, and to have that transmission upgraded as necessary to accommodate the output of its generation.
2. With respect to procedures and methodologies for:
 - a. Designing interconnections;
 - b. Allocating the cost of interconnections;
 - c. Scheduling and carrying out the physical implementation of interconnections;
 - d. Identifying the need for transmission upgrades;
 - e. Allocating the cost of transmission upgrades; and
 - f. Scheduling and carrying out the physical implementation of transmission upgrades;

the electric utility shall treat all bidders, including its own bid and that of any affiliate, in a comparable manner.

3. Upon the request of a prospective bidder, the electric utility shall provide general information about the possible interconnection and transmission upgrade costs associated with project locations under consideration by the bidder.
4. In a compliance filing to be made within ninety days after issuance of this Framework, the electric utility shall submit a proposed tariff containing procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders including any electric utility or electric utility affiliate bid. This submission shall contain at least the following elements:
 - a. A formal queuing process that ensures nondiscriminatory, auditable treatment of all requests for interconnection, upgrades and studies thereof;
 - b. A means, if practical, of minimizing the cost of studies by bundling different requests into a single study;
 - c. A methodology for allocating the costs of interconnection and transmission upgrades between the electric utility and the generator; and
 - d. A process for obtaining information on current capacity, operations, maintenance and expansion plans relating to the transmission and distribution systems.
5. To ensure comparable treatment, the Independent Observer shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

CB Framework, Part IV.I, at 27-28 (emphasis added).

With respect to Part IV.I of the CB Framework, the commission, in Decision and Order No. 23121, held in relevant part:

The HECO Utilities and Consumer Advocate note that Part IV.I of the Proposed CB Framework does not address if or when an interconnection requirements study should be conducted for a proposed bid. The HECO Utilities assert that interconnection requirements studies should be performed only for bids that have met the threshold criteria and made the "short list" of bids, in order to avoid the need to undertake and complete interconnection requirements studies on non-compliant or non-competitive bids.

The HECO Utilities also seek confirmation that their planned, multi-step process for performing interconnection requirements studies in a request for proposal is consistent with the Framework.

The commission finds that, in general, the HECO Utilities' plan to limit interconnection requirements studies to proposals that make the "short list" of bids, together with their proposed multi-step process for performing interconnection requirements studies, appear reasonable and consistent with the Framework, subject to review by the independent observer

Decision and Order No. 23121, at 32-34 (footnotes and text therein omitted).

Here, the commission finds that the HECO Companies' Rule 19 appears consistent with the applicable requirements set forth in Part IV.I.4 of the CB Framework, and the pertinent rulings made by the commission in its adoption of the CB Framework in Decision and Order No. 23121.

A.

Formal Queuing Process

With respect to Part IV.I.4.a, the term "formal queuing process" is not defined in the CB Framework. Nonetheless, Rule 19, Section B, sets forth procedures to ensure that each bid undergoes the same review process in the same chronological

steps.⁵⁵ Meanwhile, the fifth and final step in Section B culminates in the completion of an IRS under the competitive bidding process for bids that have "made the short list, or as otherwise specified in the RFP."⁵⁶ Based on specified factors, an IRS will be performed "either serially starting with the bid evaluated as the most competitive at the point of the evaluation process, . . . or in parallel on all or some of the short list bidders simultaneously."⁵⁷ During the fifth step, this approach of narrowing the number of bids to a short list of bidders is consistent with the commission's finding that "in general, the HECO [Companies'] plan to limit interconnection requirements studies to proposals that make the 'short list' of bids, together with their proposed multi-step process for performing interconnection studies, appear reasonable and consistent with the Framework, subject to review by the independent observer."⁵⁸

⁵⁵As noted in Rule 19, Section B, the four initial steps consist of:

Step 1, RFP Package - available to all prospective bidders.

Step 2, Information Requests During Bidding Process - available to all prospective bidders.

Step 3, RFP Requirements and Threshold Criteria Screening - evaluation performed on all bids received.

Step 4, High Level Evaluation - performed on all bids that pass threshold screening in RFP process.

See Rule 19, Section B, at Sheets Nos. 40D-40F (emphasis added).

⁵⁶Rule 19, Section B.5.a.

⁵⁷Rule 19, Section B.5.b.

⁵⁸Decision and Order No. 23121, at 33.

In conclusion, while the commission finds that Rule 19, Section B, appears consistent with the overall intent of establishing a "formal queuing process" to ensure the nondiscriminatory and uniform treatment of all bids, in compliance with Part IV.I.4.a of the CB Framework, the utilities, to the extent permitted by their available resources, are encouraged to review and respond to "all requests for interconnection, upgrades and studies thereof" in the order in which they are received.

B.

Bundling of IRS Work

With respect to Part IV.I.4.b, Section B.5.c of Rule 19 provides that the utility, if practicable, may "bundle" IRS work for multiple short list bids into a single IRS if the bids are, among other factors, identical or sufficiently similar to each other.

C.

Allocation of Costs

With respect to Part IV.I.4.c governing the allocation of costs for interconnection and transmission upgrades, Section B.5.h of Rule 19 provides that the independent power producer is responsible for the cost of the IRS, while Section C outlines the allocation of costs between the interconnecting customer and utility. In general, the independent power producer is responsible for the cost of the interconnecting facilities,

from the generating facility to the point of interconnection, and from the point of interconnection to the grid connection point.

The requirement of making the independent power producer responsible for the cost of the interconnecting facilities from the distributed generating facility to the point of interconnection, then to the grid connection point, is consistent with the guidance set forth in HAR chapter 6-74, governing qualifying facilities.⁵⁹ Moreover, as noted by the HECO Companies, the facilities between the point of interconnection and the grid connection point become an integral part of the utility's system, thus warranting the ownership and control of

⁵⁹Specifically, HAR §§ 6-74-1 and 6-74-26 provide in relevant part:

§6-74-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

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"Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualified facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

§6-74-26 Interconnecting costs. (a) Each qualifying facility shall be obligated to pay any interconnection costs which the commission may order paid by the qualifying facility on a non-discriminatory basis with respect to other customers with similar load characteristics.

HAR §§ 6-74-1 and 6-74-26(a).

such facilities by the utility.⁶⁰ In this regard, the HECO Companies, as the franchised providers of electric utility service, are: (1) responsible for ensuring the overall reliability and integrity of its generation, transmission, and distribution systems; and (2) obligated to provide reliable electric utility service to their ratepayers at just and reasonable rates.⁶¹ In addition, under Rule 19, Section C, the independent power producer is not solely responsible for all of the costs associated with the interconnection and transmission upgrade process. Instead, the utility is responsible for the costs associated with betterments and system upgrades.⁶² Therefore, the commission approves the "methodology for allocating the costs of interconnection and transmission upgrades

⁶⁰See, e.g., In re Apollo Energy Corp., Docket No. 00-0135. In Docket No. 00-0135, the commission found it reasonable for HELCO to construct, own, and operate the proposed three-breaker switching station and control building to govern the interconnection of a qualifying wind facility with HELCO's system. In the commission's view, "[t]he 3-breaker system, in essence, will become a new segment of the Kilauea-Kealia 69 kV line." Docket No. 00-0135, Decision and Order No. 21227, filed on August 9, 2004, at 12.

⁶¹See Docket No. 00-0135, Decision and Order No. 21227, at 11.

⁶²Under Rule 19, Section C, the cost of any betterments to the interconnection facilities will not be considered in the bid evaluation process, while the utility's costs for system upgrades will be considered as a factor in the bid evaluations, and the degree to which the system upgrades provides system benefits or betterments will be considered in the bid evaluations.

In a similar vein, in Docket No. 00-0135, while the commission found that HELCO's proposed three-breaker switching station and control building were technically feasible, it appeared that the betterment of HELCO's system would result from such a design. "Accordingly, the commission believe[d] that an allocation of the costs associated with the construction of a 3-breaker system and control building [was] appropriate." Docket No. 00-0135, Decision and Order No. 21227, at 16.

between the electric utility and the generator" set forth in Rule 19, Sections B.5h and C.

In reaching this decision, the commission declines to adopt the two primary recommendations advanced by HREA.

First, based on the reasons articulated by the commission in this Decision and Order, the commission accepts the cost allocation methodology set forth in Rule 19, over HREA's stated objections.

Second, the commission notes that there needs to be a cost recovery mechanism in place and some level of commission consideration of the magnitude of the costs and rate impacts prior to implementing, by way of this Decision and Order, any requirement that the HECO Companies implement their Renewable Energy Facilities policy (Rule 19, Section C.6) "now." The commission, thus, generally concurs with the HECO Companies' assessment that IRP processes for HECO, HELCO, and MECO, and the pending Renewable Portfolio Standards proceeding (Docket No. 2007-0008), appear to be the appropriate vehicles to review and address the merits of such a policy.⁶³

⁶³The parties in Docket No. 2007-0008 are the HECO Companies, KIUC, HREA, the Consumer Advocate, and Life of the Land. On October 12, 2007, the HECO Companies, KIUC, HREA, and the Consumer Advocate, jointly submitted their Stipulation and Joint RPS Framework for the commission's review and consideration. Part II.B.9 of the proposed Joint RPS Framework refers to the IRP processes, as follows:

Interconnection facilities. In their IRP processes, the Companies may propose:

- (a) System Upgrades, to be paid for, owned and maintained by the utility, to encourage the development of Renewable Energy Facilities; and

D.

Process for Obtaining Information on the Utility's System

With respect to Part IV.I.4.d, the first two steps set forth in Rule 19, Section B - the RFP Package Data (Section B.1) and Information Requests During Bidding Process (Section B.2), respectively -- outline "[a] process for obtaining information on current capacity, operations, maintenance and expansion plans relating to the [utility's] transmission and distribution systems."

While these steps effectively implement Part IV.I.4.d of the CB Framework, the commission finds it necessary to allow potential bidders to submit requests for information to the utility prior to the issuance of an RFP package by the utility; subject to the following conditions: (1) the utility has the available resources to respond to the request for information; (2) the requester is responsible for and pays for all costs associated with obtaining and compiling the requested information; (3) the information is provided to all potential bidders, as part of or as a supplement to any applicable RFP package issued by the utility; (4) any Independent Observer retained in the matter affirmatively determines that such a process "ensures comparable treatment," consistent with the Independent Observer's mandate, as set forth in Part IV.I.5 of

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- (b) To pay for Interconnection Facilities between the Point of Interconnection and the Grid Connection Point, in order to encourage the development of Renewable Energy Facilities.

Docket No. 2007-0008, proposed Joint RPS Framework, Part II.B.9, at 8. The Stipulation and Joint RPS Framework are presently under the commission's review and consideration.

the CB Framework; and (5) disclosing the requested information does not represent an unreasonable security concern to the utility. This additional process, in the commission's view, complies with Parts IV.I.3 and IV.I.4.d of the CB Framework.

E.

Ultimate Findings and Conclusions

The HECO Companies' Rule 19 is intended to provide pertinent and timely information to interested bidders about the possible interconnection and transmission upgrade costs associated with a competitive bidding project, and to ensure that all bidders are treated in a fair and comparable manner, consistent with Part IV.I of the CB Framework. The HECO Companies' Rule 19, in conjunction with the Code of Conduct and list of qualified Independent Observer candidates previously approved by the commission,⁶⁴ "represents a sound foundation that 'should promote confidence in the procurement process, thereby encouraging interested, prospective participants to submit bids.'"⁶⁵ Accordingly, the commission approves as reasonable the HECO Companies' Rule 19.

⁶⁴See Decision and Order No. 23614, filed on August 28, 2007 (Code of Conduct); and Decision and Order No. 23503, filed on June 22, 2007 (list of qualified Independent Observer candidates).

⁶⁵Decision and Order No. 23614, at 18-19 (quoting Decision and Order No. 23503, at 9).

Concomitantly, based on its review and consideration of HREA's third recommendation,⁶⁶ the commission will require the utility to clearly identify in its draft RFP all provisions that are inconsistent with Rule 19 when submitting its draft RFP for the commission's review and approval.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' Rule 19 is approved, effective from the date of this Decision and Order.

2. HECO, HELCO, and MECO shall promptly file their respective tariff sheets for Rule 19, with the appropriate issued and effective dates.

3. Consistent with Part IV.I.4.a of the CB Framework, the HECO Companies, to the extent permitted by their available resources, are encouraged to review and respond to "all requests for interconnection, upgrades and studies thereof" in the order in which they are received.

4. Potential bidders may submit requests for information to the utility prior to the issuance of an RFP package by the utility; subject to the following conditions: (A) the utility has the available resources to respond to the request for information; (B) the requester is responsible for and

⁶⁶To reiterate, HREA's third recommendation is that, in the event of a conflict between any provisions of Rule 19 and the RFP: (1) the utility and bidders discuss and reach agreement on which requirements (Rule 19 or the RFP) should prevail; and (2) if an agreement is not reached, the bidders will have a right to seek a ruling from the commission.


pays for all costs associated with obtaining and compiling the requested information; (C) the information is provided to all potential bidders, as part of or as a supplement to any applicable RFP package issued by the utility; (D) any Independent Observer retained in the matter affirmatively determines that such a process "ensures comparable treatment," consistent with the Independent Observer's mandate, as set forth in Part IV.I.5 of the CB Framework; and (E) disclosing the requested information does not represent an unreasonable security concern to the utility.

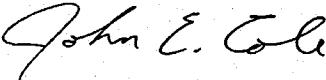
5. The utility shall clearly identify in its draft RFP all provisions that are inconsistent with Rule 19 when submitting its draft RFP for the commission's review and approval.


DONE at Honolulu, Hawaii

NOV - 5 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

03-0372.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23799 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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